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CASELAW Police News Diversity
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DIVERSITY Criminal Justice

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

This edition Digest contains a number of articles on issues in relation to:

Children and young persons – including, a review of the arrangements for protecting children from sex offenders, a review of Section 58 of the Children Act 2004, a consultation on the vetting and barring scheme to be introduced by the Safeguarding Vulnerable Groups Act 2006, a consultation on measures to improve the criminal trial process for young witnesses, and the rollout of the vulnerable witness intermediary scheme.

Terrorism – including, measures to be included in the forthcoming Counter Terrorism Bill and the revised Code of Practice for Examining Officers.

Traffic – including, the draft Local Transport Bill, changes to the Highway Code, a consultation on the introduction of a graduated fixed penalty scheme and deposit scheme.

The Criminal Justice and Immigration Bill has just been published and will be covered in depth in next month's issue.

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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Review of Discrimination Law

The Government has published a consultation document which sets out its proposals for bringing together the whole of discrimination law under one single Equality Bill. It also includes the Government's proposed plans for implementing Council Directive 2004/113/EC ('the Gender Directive'), which implements the principle of equal treatment between women and men in the access to and the supply of goods and services.

The consultation document is in divided into three parts, with three annexes.

Part 1 asks for views on proposals to:

- Promote a culture of compliance with the law.
- Simplify and standardise definitions and tests in discrimination law.
- Simplify and harmonise exceptions.
- Simplify and harmonise the way the law treats public functions and public services.
- Bring the law of equal pay into the Single Equality Bill and update it in line with case law.

Part 2 asks for views on proposals to:

- Allow a wider range of balancing measures to effectively address entrenched discrimination and disadvantage.
- Simplify the public sector equality duties in a single duty to tackle disadvantage more effectively.
- Extend the coverage of public sector equality duties.
- Explore how public authorities can actively take account of equality issues in procurement.
- Improve equality practice in the private sector.
- Improve the resolution of discrimination disputes outside the workplace.

Part 3 asks for views on whether changes should be made to:

- The statutory protected grounds.
- Extend prohibiting age discrimination to areas outside employment.
- Strengthen the protection on grounds of gender reassignment outside employment.

- Strengthen the protection on grounds of pregnancy and maternity outside employment.
- Strengthen prohibitions on discrimination by private clubs.
- Improve access to, and use of, let residential premises for disabled people.
- Extend express statutory protection from harassment outside the employment area for the different grounds of discrimination.

Annex A contains two tables of exceptions in current and forthcoming discrimination law:

Table 1 sets out exceptions that the Government considers should be retained in relation to employment and vocational training; goods, facilities and services; premises; general exceptions; education in schools; public authorities exercising public functions/services; and the public duty to have due regard to eliminate unlawful discrimination. This table includes:

- Section 17(2) of the Sex Discrimination Act 1975 – in relation to the police and differences in uniform; and special treatment of women in connection with pregnancy or childbirth; and pensions.

Table 2 sets out exceptions that the Government considers should be removed in relation to employment and vocational training; goods, facilities and services; premises; and general exceptions. This table includes:

- Section 17(2)(a) of the Sex Discrimination Act 1975 – in respect of the police in relation to height.

Annex B contains the proposals for implementing the EU Gender Directive. The Directive requires the amendment of some existing provisions in the Sex Discrimination Act 1975. The deadline for implementation of the Directive is 21 December 2007. Because a Single Equality Bill could not come into force until after this deadline, the Government intends to implement the Directive using powers under the European Communities Act.

Annex C contains a glossary of terms, definitions and abbreviations.

The Discrimination Law Review consultation paper can be accessed at http://www.communities.gov.uk/index.asp?id=1511211

Home Affairs Select Committee Report on Young Black People in the Criminal Justice System

The Home Affairs Select Committee has published a report on young black people in the criminal justice system.

The report concludes that the Government must 'review, revise, redouble' its efforts to reduce the overrepresentation of young black people at all stages of the criminal justice system, as this represents a 'serious crisis' for sections of black communities.

The Committee makes a number of recommendations in the report. Those that impact in some way on the police and wider policing family include:

Stop and search powers

- Strategies for the use of stop and search should explicitly recognise the balance that needs to be struck between use of the power to prevent or detect crime and the negative impact its use has on public co-operation with, and support for, the police. Strategies should focus on halting the increase and then reducing the proportion of stops and searches which detect no crime or criminal intent and whose impact is damaging.
- Changes need to be made to the nature of the stop and search encounter in order to ensure it is respectful, courteous and well explained.
- Alternatives to stop and search that might help the police engage better with young people should be considered.

Training and recruitment

- Forces should provide, as standard, training relating to local ethnic minority communities, both for probationers and on an ongoing basis as the ethnic composition of an area changes. Fairness and objectivity should be key performance measures against which individual officers should be assessed when it comes to appraisal, and the police should prioritise these attributes when recruiting.
- Recruitment from minority ethnic groups should be through a combination of: (a) increased effort put into 'positive action', that is, promotional and outreach activities aimed at encouraging more members of minority groups to apply to join the police; and (b) the prioritising in recruitment of certain abilities, such as language skills and knowledge of cultural background, where relevant to policing needs in particular areas. (Arguing that a case can be made for doing this on a purely crime-fighting basis).

- That attention is given to improving perceptions of policing as a career option at school in ethnic minority communities. Forces should publicise work experience and internship programmes. Forces should demonstrate their commitment to the development of all employees, by publicising their activities in this area to local communities and potential recruits.

Policing

- That more police forces should create local forums in which police and young people can come together to talk about issues affecting the community. These panels could identify local flashpoints or areas of tension and find solutions; and may also prove useful for gathering intelligence about local needs and priorities.
- CDRPs, neighbourhood policing teams and, where they exist, Safer Schools Partnerships, should provide regular forums to communicate with young people and understand their primary concerns in terms of personal safety and crime. This could be done by way of a drop-in session or surgery at the school.
- Neighbourhood police officers should publicise a local telephone number that young people can call with information and to pass on personal safety concerns. In particular trouble spots, neighbourhood policing teams should ensure there is a visible police presence on routes to and from schools.
- Police forces should consider whether other similar initiatives to the Metropolitan police Operation Trident are necessary in areas where levels of gun crime are high.
- Police forces, who do not already do so, should consider instigating Safer Schools Partnerships in high crime areas.

The report can be found in full at http://www.publications.parliament.uk/pa/cm200607/cmselect/cmhaff/181/18109.htm

Diversity and Fairness in the Jury System

The Ministry of Justice has published a research report entitled, 'Diversity and Fairness in the Jury System', based on the findings from a project which looked at concerns about the under-representation of ethnic minorities on juries in England and Wales. In particular, the project looked at how representative of the local community were those summoned for jury service, those serving as jurors and juries at each Crown Court, and if ethnicity affects jury decision-making.

The research found that, in certain cases, ethnicity did have a significant impact on the individual votes of some jurors. Statistical analysis of the individual votes of jurors who took part in a case simulation showed that, in certain cases, black and minority ethnic (BME) jurors were significantly less likely to vote to convict a BME defendant than a white defendant.

This same race leniency among BME jurors was only present when race was not an explicit element of the case (defendant charged with ABH only).

When the same assault was prosecuted as racially-aggravated ABH, BME jurors and white jurors had similar conviction rates for both the white and BME defendants.

Same-race leniency among BME jurors appeared to reflect their belief that the courts treat ethnic minority defendants more harshly than white defendants.

The study also found that same-race leniency did not occur among all BME jurors for all BME defendants. Both black and Asian jurors showed leniency for the black defendant, but there was no evidence of leniency for the Asian defendant by either Asian or black jurors.

Evidence was also found that white jurors showed some same-race leniency towards white defendants, but again this was only present in cases where race was not an explicit element of the case. In non-race salient cases, white jurors had very low conviction rates for the white defendant, despite consistently stating that they did not believe his evidence and felt he was dishonest.

The crucial finding of the study is that these tendencies towards same-race leniency by BME or white jurors did not have an impact on the verdicts of the juries on which they sat. It concludes that this is due to, and highlights the benefits of permitting, majority verdicts and of having 12 member juries. It also puts it down to the impact that jury deliberation has on jurors.

Some of the other main findings in the report include:

- There was no significant under-representation of BME groups among those summoned for jury service at virtually all Crown Courts in England and Wales.
- Jury pools at individual courts closely reflect the local population in terms of gender and age, and the self-employed are represented among serving jurors in direct proportion to their representation in the population.
- The main factor affecting non-responses to summonses is high residential mobility, not ethnicity.

- There were no significant differences between BME and white respondents in their willingness to do jury service or support for the jury system (which was high for both).

The report suggests that a further study is now needed in order to answer the key questions that this study was not able to answer, those being: do all-white juries discriminate against defendants based on their ethnicity; do white jurors on all-white juries vote differently than the white jurors on racially mixed juries; and do jury deliberations with all-white juries differ from deliberations with racially mixed juries.

The report can be found in full at http://www.justice.gov.uk/docs/JuriesReport2-07-webVersion.pdf

Migration Impacts Forum

The Migration Impacts Forum (MIF) has been formed to advise Government on how migration affects public services and local communities. Its members include experts from local government, health, education, the police and criminal justice system, the voluntary sector, the CBI and TUC. The police representative on the forum is Grahame Maxwell, Chief Constable North Yorkshire Police.

The MIF will help collect evidence on how migration affects issues such as housing, employment, education, health and social care, crime and disorder and community cohesion. It will:

- Consider information about the social benefits of migration and any transitional impacts and requirements.
- Identify and share good practice in managing transitional or adjustment requirements.
- Bring together existing evidence about the impacts of migration.
- Suggest areas for Government research on the impacts of migration.

In addition to the MIF, a new Migration Advisory Committee (MAC) has also been set up, which will be made up of a team of independent experts to advise Government on where in the economy there are shortages that could sensibly be filled by migration.

Reports on the Effects of Migration to Britain

The Joseph Rowntree Foundation (JRF) has published three separate reports all of which examine the effects of migration to Britain. They form part of the JRF's Immigration and Inclusion programme, which seeks to provide evidence of what is happening in local areas affected by immigration, from the perspective of both newcomers and long-term residents.

The first report, 'Social cohesion in diverse communities', examined the effects of migration on neighbourhood relationships in Manchester and London. The report found that deprivation and disadvantage played a pivotal role in neighbourhood relationships. It also found that racial tensions were often driven by struggles for resources such as employment and housing.

The second report, 'The experiences of Central and East European migrants in the UK', showed that Migrants' experiences at work, including low pay and long working hours, had a significant impact on their lives beyond the workplace, showing that labour market and social experiences cannot be understood or addressed in isolation.

The third report, 'East European immigration and community cohesion', revealed that only a minority of immigrants felt they belonged to their neighbourhood (half as many as long-term residents). It found that the sense of belonging to the neighbourhood was positively affected by:

- Better housing status.
- Length of time in the UK.
- Plans to stay in the UK.
- Having their children living with them.

The reports can be found at http://www.jrf.org.uk/default.asp

National Crime Scene Investigation Manual 2007 - Issue 1

The National Crime Scene Investigation Manual (NCSIM) 2007 – Issue 1 is now available on the Police Genesis extranet site. It is divided into four sections: Introduction; Quality Standards; Quality Processes and Operational Processes.

The sections on Quality Standards and Quality Processes are designed to meet the requirements of the International Quality Standard ISO 9001:2000. Crime Scene Investigation Units will be required to document appropriate local procedures, where necessary, to support the requirements of the NCSIM for both Operational and Quality Processes.

Although the content of the NCSIM will continue to change and develop frequently, the National Crime Scene Investigation Board (NCSIB) will strive to ensure that crime scene investigation units are in possession of the most up-to-date information as soon as possible following any amendment or change to the processes.

The Journal of Homicide and Major Incident Investigation - Volume 3, Issue 1 - Spring 2007

The latest volume of the Journal of Homicide and Major Incident Investigation is now available on the Police Genesis extranet site. The purpose of the journal is to encourage practitioners and policy makers to share their professional knowledge and practice. The latest journal contains articles on:

- Managing and Preventing Critical Incidents.
- Honour Related Violence: Context, Culture, and Consequences.
- The Development of Intelligence-Led Mass DNA Screening.
- Managing the Relationship with the Family Liaison Officer.
- The Impact of Homicide on Community Reassurance.
- Legal Attendance at Post-Mortem Examinations.
- What Solves Hard to Solve Murders? Identifying the Solving Factors for Category A and Category B Murders. Does the SIO's Decision Making Make a Difference?

Integrated Competency Framework

Version 9 of the Integrated Competency Framework (ICF) for police forces is now available to subscribing organisations on the Skills for Justice website. Changes that have been made from the previous version include:

- The addition of 8 new activities.
- The addition of 18 new national role profiles.
- 13 amended national role profiles.
- 39 changes to existing activities.
- The updating of the Behavioural Framework to include the Police Leadership Qualities Framework (PLQF).

Employment Retention Bill

The Employment Retention Bill, a Private Member's Bill introduced by MP John Robertson to make provision for a statutory right to rehabilitation leave for newly disabled people and people whose existing impairments change, has been published.

Clause 1 of the Bill would amend the Employment Rights Act 1996 by inserting a Part 8B (rehabilitation leave) after Part 8A. This would require the Secretary of State to make regulations entitling a disabled employee who satisfies specified conditions to be absent from work on leave under this section for the purpose of:

- Employment assessment.
- Rehabilitation.
- Re-training.
- Enabling his employer to make reasonable adjustments to working conditions and arrangements.

Such regulations would also include provision for determining:

- The extent of a disabled employee's entitlement to leave under this section.
- When leave under this section may be taken.
- The specified conditions above.

Other provisions proposed in the Bill would preserve that person's rights during and after rehabilitation leave and present a complaint to an employment tribunal, if his employer unreasonably postponed a period of rehabilitation leave requested by the employee or his employer prevented or attempted to prevent the employee from taking rehabilitation leave.

The Bill can be found in full at http://www.publications.parliament.uk/pa/cm200607/cmbills/079/2007079.pdf

Criminal Justice and Immigration Bill

The Criminal Justice and Immigration Bill was introduced in the House of Commons on 26 June 2007. It has been published and will be covered in depth in next months issue of the *Digest*. It can be found at http://www.publications.parliament.uk/pa/pabills/200607/criminal_justice_and_immigration.htm

Sections 1 and 4 of the Domestic Violence, Crime and Victims Act 2004

As was previously reported in the January *Digest* Sections 1 and 4 of the Domestic Violence, Crime and Victims Act 2004 are being brought into force on 1 July 2007. At the time of publication of this *Digest* we are informed by the Home Office that the Commencement Order bringing these provisions into force has been signed by the Minister and is to be laid before Parliament in Statutory Instrument form imminently.

Section 1 inserts a new section, Section 42A into the Family Law Act 1996 which makes breach of a non-molestation order a criminal offence. A person guilty of an offence under this section is liable:

- On conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both.
- On summary conviction, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both.

Section 4 extends the availability of non-molestation orders to those in domestic relationships who have never cohabited or have never been married.

Two further Statutory Instruments which are related to the implementation of Sections 1 and 4 are:

SI 1622/2007 relates to The Family Proceedings (Amendment) Rules 2007, which come into force on 1 July 2007.

These Rules amend the Family Proceedings Rules 1991 following the amendment made by Section 1 of the Domestic Violence, Crime and Victims Act 2004 to Part IV of the Family Law Act 1996 providing that breach of a non-molestation order is a criminal offence. Repeals made in Schedule 11 and consequential amendments made in Schedule 10 to the Domestic Violence, Crime and Victims Act 2004 also limit the power of the court to attach a power of arrest to an occupation order only.

Rule 3 provides that occupation orders and non-molestation orders are to be issued on Form FL404 and FL404a respectively.

Rule 4 provides that where the court attaches a power of arrest to an occupation order that the relevant provisions of that order are to be set out on Form FL406. This rule also provides for service upon the officer for the time being in charge of any police station for the applicant's address or of such other police station as the court may specify.

Rule 5 makes consequential amendments to rule 3.10 regarding applications for bail.

Rule 6 introduces amendments to existing forms and Form FL404a.

Rule 7 provides for transitional provisions.

SI 1628/2007 relates to The Family Proceedings Courts (Matrimonial Proceedings etc.) (Amendment) Rules 2007 which come into force on 1 July 2007.

These Rules amend the Family Proceedings Courts (Matrimonial Proceedings etc.) Rules 1991 following the amendment made by section 1 of the Domestic Violence, Crime and Victims Act 2004, providing that breach of a non-molestation order is a criminal offence. Repeals made in Schedule 11 and consequential amendments made in Schedule 10 to the Domestic Violence, Crime and Victims Act 2004 also limit the power of the court to attach a power of arrest to an occupation order only.

Rule 3 provides that applications for an occupation or a non-molestation order must be supported by a statement.

Rule 4 provides that the designated officer for the court shall supply a copy of the record of the reasons for a decision to the parties in proceedings under Part IV of the Family Law Act 1996 and to other persons on request in other proceedings caught by these Rules.

Rule 5 provides that occupation orders and non-molestation orders are to be issued on Form FL404 and Form FL404a respectively and that a copy of the record of the reasons for a decision is served upon the respondent.

Rule 6 provides that where the court attaches a power of arrest to an occupation order that the relevant provisions of that order are to be set out on Form FL406. This rule also provides for service upon the officer for the time being in charge of any police station for the applicant's address or of such other police station as the court may specify.

Rule 7 makes consequential amendments to rule 21(1) regarding applications for bail.

Rule 8 introduces amendments to existing forms and Form FL404a.

Rule 9 provides for transitional provisions.

NB Officers should note on Form FL404a that the Note to the Arresting officer is misleading in that it states that the offence under Section 42A of the Family Law Act is an arrestable offence.

The power of arrest available for officers in dealing with this offence is that under Section 24 of the Police and Criminal Evidence Act 1984 (PACE).

As the offence is a triable either way offence (i.e. triable summarily or on indictment) there is also a power of arrest without warrant available to persons other than constables under Section 24A PACE.

As from 1 July 2007 breach of a molestation order will be a recordable and notifiable offence.

In the article in the January *Digest* we also mentioned that it was the Governments intention to also implement Section 12 of the Domestic Violence, Crime and Victims Act 2004. We have now been informed that is not the case due to available resources.

Outline Proposals for Inclusion in a new Counter Terrorism Bill

The Home Secretary, John Reid, has confirmed to Parliament that, as first announced in the Queen's Speech in November 2006, a new Counter Terrorism Bill will be introduced later this year. Mr Reid set out the direction the Government would like to take, by outlining a number of measures that might be included in the Bill. These include:

- Longer pre-charge detention - holding suspects beyond 28 days.
- Post charge questioning – allowing terrorist suspects to be questioned after charge on any aspect of the offence for which they have been charged, and allowing adverse inference to be drawn in circumstances where a subject refuses to answer questions but then later relies on something they had the opportunity to mention previously.
- Notification requirement – introducing notification requirements similar to those for sex offenders once convicted terrorists leave prison.
- Enhanced sentences – so when terror suspects are charged with general offences, the sentences they receive are longer than in non-terror cases.

- Control Orders – introducing a self-standing power of entry and search of premises for police officers to enforce and monitor a control order effectively.
- Allowing intercept material as evidence in terrorism court cases.
- Stop and question - enhancing police powers to allow them to stop and question people about their activities.
- Data sharing powers for the intelligence agencies - providing statutory data sharing powers for the intelligence and security agencies, that are similar to those already provided for the Serious and Organised Crime Agency by Sections 32-34 of the Serious Organised Crime and Police Act 2005. Also, putting the police's counterterrorist data DNA database on a similar statutory footing to the National Police Database.
- Police powers to hold passports and travel documents at ports – providing the police with powers to enable them to temporarily hold travel documents from individuals, suspected on the basis of an examination undertaken and/or other intelligence, of wanting to travel abroad for terrorism-related purposes, for a sufficient, though limited, period to enable further investigations to be undertaken.
- Seizure of terrorist assets – extending the power to seize assets from those convicted of a terrorist or terrorist-related offence, where the court believes that their assets might be used for terrorist purposes.
- Increased security at key gas sites – introducing provisions to cover the arrangements for the funding of increased security at key gas supply sites.

These measures have been announced to encourage interested organisations, including police, the judiciary, civil liberties groups and communities, to discuss them with the Government. This process is to also include publication of a fuller content paper in the next few weeks, the sharing of draft clauses later in the year and scrutiny by the Home Affairs Select Committee and the Joint Committee on Human Rights, before any legislation is introduced.

The outline proposals can be found in full at http://www.homeoffice.gov.uk/documents/ct-discussion-document.pdf

A web page dedicated to the Bill has also been set up and will contain documents relevant to the Bill and related issues. It can be found at http://security.homeoffice.gov.uk

Queries or concerns about the Bill, or measures for inclusion in the Bill should be emailed to CTBill2007@homeoffice.gsi.gov.uk

Revised Code of Practice for Examining Officers under the Terrorism Act 2000

The Home Office has published a draft revised Code of Practice for Examining Officers under the Terrorism Act 2000. The draft is now subject to a period of consultation during which comments are invited from any organisations, groups or individuals who may have an interest in the Code.

The revised Code provides further clarification on certain areas in the Code and notes for guidance for examining officers on the use of Schedule 7 powers, to reflect a number of legislative and operational changes. The Code is intended to ensure that the rights of those individuals examined or detained are upheld, whilst also maintaining the effectiveness of police powers to investigate terrorism. The notes for guidance are not provisions of the Code but are guidance to examining officers on its application and interpretation.

Main changes that have been made to the Code include:

- The removal from paragraph 3 of the part that states that the Code applies to members of HM armed forces in Northern Ireland when exercising such functions as examining officers under Section 97 of the Terrorism Act 2000. This is due to Section 97 of the Act having been repealed by the Terrorism (Northern Ireland) Act 2006.
- The addition to paragraph 11 (which deals with procedures when exercising examination powers) of clarification that examining officers should explain to the person concerned, either verbally or in writing, that they are being examined under Schedule 7 of the Terrorism Act 2000 and that he/she has the power to detain them should they choose to leave. It also clarifies that an examination begins as soon as a person or vehicle has been stopped and screening questions have been asked.
- The addition to paragraph 11 of a guidance note, which states: *Initial screening questions, used to identify the individual and their travel patterns, constitute an examination. The examination begins at the point at which any of the following occurs: More than brief screening questions are asked; The person or vehicle is directed to another place for examination; The person, or anything which s/he has with him/her or belongs to him/her, is searched.*
- In relation to detention, covered in paragraph 9 of the Code, it clarifies that neither examination or detention (nor any combination of examination/detention) can exceed nine hours.

- Paragraph 9 has also been amended to clarify that if the examining officer has exercised the power to detain a person and transfer that person to a police station, because it is considered necessary to take the person's fingerprints or other action to identify him/her, this is subject to the required consent not having been given by the person. This is further explained in a guidance note to paragraph 19, which states: *Where consent has been obtained from an individual, fingerprints may be taken at the port of entry. However, where consent has been refused a person should be taken to a police station (because of the greater security offered).*

- The addition of a note for guidance at paragraph 20 which explains that: *'Information' requested by an examining officer includes electronic devices and data and passwords to access that data. Where the information is located elsewhere, for example on another server, and is accessed via a mobile phone or internet connection, further warrantry or other authority would be required.*

- An addition to paragraph 212 of the Code which allows an examining officer to use electronic equipment in order to identify persons and property.

- The addition of a new paragraph 23 which relates to property. It states: *Under Paragraph 11 of Schedule 7 an examining officer may seize and retain for examination anything produced during an examination or found during a search for a period of up to seven days. If anything is found which in the opinion of the examining officer may be needed for use in criminal proceedings or which he believes may be needed in connection with a decision by the Secretary of State whether to make a deportation order under the Immigration Act 1971, it may be detained for as long as is necessary.*

- The addition of a note for guidance at paragraph 35 which explains that landing/embarkation cards shall be produced and paid for by the police not the aviation/maritime industry.

- The addition of a new paragraph to the Code at paragraph 37 which deals with complaints, and states: *Complaints about the conduct of officers or treatment of an individual during examination/detention should be directed to the Chief Constable of the force responsible for the port/airport where the person has been examined/detained.* This paragraph has also been added to the TACT1 form, an explanatory notice of examination which must be served by the examining officer on the person once an examination has lasted for one hour.

The revised Code also makes minor additions to both the TACT1 form and the TACT2 form (notice of detention form), including pointing out to a person who has been served with a TACT1 form that the examination will not be suspended pending the arrival of a solicitor.

The closing date for responses to the consultation is 24 August 2007.

Details of the consultation and the draft revised code of practice can be found at http://www.homeoffice.gov.uk/documents/cons-2007-tact-cop-exam-officers/

Consultation on the Detail of the Graduated Fixed Penalty and Deposit Schemes

The Department for Transport (DfT) has published a consultation document in relation to the introduction of provisions in the Road Safety Act 2006 for a graduated fixed penalty scheme and a deposit scheme.

This document explains how the current fixed penalty notice regime works, and explains why it is felt necessary to introduce a graduated fixed penalty scheme and a deposit scheme.

The purpose of the consultation document is to seek views on the details to be incorporated in secondary legislation.

Currently, fixed penalties are not related to the severity of an offence.

When enacted, the provisions contained within the Road Safety Act 2006 will allow:

- Graduated penalties that reflect the level of offending.
- Vehicle examiners from the Vehicle and Operator Services Agency (VOSA) to issue fixed penalty notices in respect of many of the offences they are responsible for enforcing.
- VOSA vehicle examiners and the police to collect deposits in respect of fixed penalties or prospective court fines from those offenders who do not have a satisfactory British address.
- VOSA vehicle examiners and the police to immobilise vehicles which are under prohibitions issued for roadworthiness defects, overloading and drivers' hours, as well as for non-payment of a deposit.

There are a number of implications for police forces in relation to the powers for police to collect deposits and the administration of the deposits; and, in respect of immobilising vehicles, the setting up of a system to deal with immobilisations. Of these, the most controversial will be the collection of

money at the roadside from non-British offenders by the police and the risk of corruption and bribery/theft.

The consultation document proposes that VOSA enforcement officers will be able to issue fixed penalty notices in respect of the following categories of offences:

- Overloading.
- Drivers' hours, tachograph records.
- Roadworthiness and statutory testing.
- Driver licensing.
- European Community authorisations and licences.
- Vehicle excise duty.

The document stresses that these offences will remain criminal offences and that the Government has no intention to decriminalise them in the future.

The decision on whether to issue a fixed penalty notice, or to prosecute, for an offence will be one for the VOSA officer taking all relevant factors into consideration, as the police do. Fixed penalty notices will be issued by the VOSA examiner to the driver committing the offence. There is no option to make them out to anyone else. If the offence is one that falls within the fixed penalty scheme, the examiner, who will interview the driver, will decide whether to issue the appropriate fixed penalty notice. The notice will detail the offence(s) found; (if appropriate) the band it falls in and the corresponding penalty; and, instructions on how to pay.

The Road Traffic Offenders Act 1988, as amended by the Road Safety Act 2006, does not specify particular offences, but provides that the particular offences for which penalties will be graduated will be specified by Order applying to England, Wales and Scotland. The DfT's priority is to introduce graduation of offences in relation to offences for which VOSA examiners carry out checks.

It is proposed that there will be 4 bands of offences, which will attract fixed penalties of £30.00, £60.00, £120.00 and £200.00. The document sets out both the proposed bandings for offences that will be covered by fixed penalty notices, other than those offences that the police can already issue fixed penalty notices for (e.g. construction and use offences in the Road Traffic Offenders Act), and the proposed graduation and bandings in relation to drivers' hours and overloading offences.

Deposit Scheme

The introduction of a financial penalty deposit scheme is intended to deal with difficulties that have arisen in practice of enforcement against offenders who have no settled address in Great Britain.

Under the scheme, a driver of a vehicle of any type (commercial or private) who has committed a relevant offence and who does not have a satisfactory address in Britain, will be required to make an immediate payment as a deposit against a fixed penalty notice or, if they have committed a more serious offence, to make a payment as a 'deposit' against any fine they might receive if they are subsequently convicted at court.

The driver would then have 28 days in which to decide whether to contest the matter in court or to allow the deposit to be taken to pay off the fixed penalty. In the event of proceedings, the deposit would either be put towards any fine imposed by the court or be returned to the alleged offender, in the event that the court finds in his/her favour.

What constitutes a satisfactory address would be a matter within the discretion of the police officer/ VOSA enforcement officer at the time, but it would have to be an address at which the officer considered it likely that it would be possible to find the person subsequently. Normally, in the case of commercial drivers, the usual documentation which a driver has in his possession when driving, such as a driving licence, should be sufficient to establish this.

The consultation paper proposes that the amount payable as a deposit will be:

- For fixed penalty notice offences - the same as the level of the relevant fixed penalty, which, if graduated, will be to that banding.
- In cases where the offending is considered too serious to be dealt with by means of a fixed penalty - £300 per offence, with a ceiling of £900 (i.e. 3 or more offences would always be £900).

The method of payment of deposits may cause some concern to police officers, as it is proposed that a person who is required to pay a deposit must pay the required sum **on the spot**. The paper does state that the preferred payment method would be by credit or debit card. With VOSA transactions, the credit card details would be phoned through to VOSA's call centre; the police would setting up similar such centres to deal with cases they were processing.

In cases where credit or debit card payment could not be made, it proposes that both VOSA examiners and the police would take cash deposits, including Euros, at the roadside; but foreign cheques, other than credit card cheques, will not be acceptable as a method of payment.

It is proposed that all deposit payments made to the police will immediately be transferred to the Court Service. This would require new systems to be established by the Court Service. It is suggested in the paper that, once developed, these arrangements could be piloted in one or more criminal justice areas, ahead of a national roll-out of the arrangements.

Payments to VOSA will initially be held in a holding account in VOSA's name until the deadline for requesting a court hearing has expired. If a hearing is requested, and the court finds in the driver's favour, the deposit payment would be refunded in full from the holding account, together with interest. If the court finds against the driver, the deposit will be retained as all or part of the penalty, depending on the court's ruling. This will include court costs.

Any payments collected through the Graduated Fixed Penalty and Deposit Scheme will not be kept by VOSA, the police or the courts as income. There will be no incentive-based schemes to raise money by issuing fixed penalties.

The police or VOSA can use existing legislation to issue a 'prohibition' notice which prohibits the driving of the vehicle for a specified time or until a specified event. These are normally used to deal with cases where a vehicle is overloaded or unroadworthy, or because the driver has driven for too long a period without the required break or rest.

To deal with problems that have been identified of drivers failing to comply with the conditions set out in prohibition notices, the Road Safety Act 2006 enables the Secretary of State to make regulations empowering VOSA and the police to immobilise vehicles which are under prohibition. This includes prohibitions issued for roadworthiness defects, overloading and drivers' hours, as well as for non-payment of a deposit.

They will allow vehicles issued with an immediate prohibition to be immobilised either by the enforcement officer or authorised person until such time as the prohibition requirements are satisfied or, in cases of offenders who do not have a reliable UK address, until such time as a deposit is paid or the case is settled in court.

The consultation paper remarks that VOSA is currently evaluating different types of immobilisation devices; and is seeking an appropriate balance between avoiding excessive costs of purchasing and applying the devices and ensuring that it is difficult for the devices (e.g. wheel clamps) to be removed. Consideration is also being given as whether to use contractors to fit immobilisation devices.

The DfT intends to consult separately on the implementation of proposals for a graduated structure for speeding penalties, which is also contained in the Road Safety Act 2006.

The provisions envisaged in this consultation document in respect of financial deposits will extend to any type of road traffic offence for which the police are empowered to issue a fixed penalty notice.

The consultation will run until 30 August. It can be found in full at http://www.dft.gov.uk/consultations/open/consulfixedpendepsch/pdfgradfixedpen

Draft Local Transport Bill

The Government has published a draft Local Transport Bill, which is to be the subject of a public consultation and pre-legislative scrutiny. The Bill aims to tackle congestion and improve public transport by proposals to restructure the delivery of local transport within communities – making local authorities take action to meet local transport needs. The draft Bill is consistent with the Government's long-term strategy on road pricing but does not provide the legal powers that would be needed for a national system of road pricing. This would require separate legislation.

The Bill intends to:

- Give local authorities the right mix of powers to improve the quality of local bus services, building on the measures set out in 'Putting Passengers First';
- Reform the arrangement for local transport governance in major conurbations, to ensure strong leadership and a coherent approach to transport across individual local authority boundaries and across different transport modes; and
- Reform the existing legislation relating to local road pricing schemes to ensure that, where local authorities wish to develop local schemes, they have the freedom and flexibility to do so in a way that best meets local needs – while ensuring that any schemes are consistent and interoperable.

The draft Bill is organised in six Parts and Six Schedules.

Part 1 - Preliminary

This Part of the draft Bill contains some preliminary provisions.

Senior traffic commissioner (STC)

- Role of STC will be placed on a statutory footing, with power to issue directions and guidance to the individual transport commissioners (TCs), covering any aspect of the conduct of their functions.

- The Secretary of State would be able to issue guidance to the STC on matters of generic process and policy.

Part 2 – Bus Services

Part 2 contains provisions relating to local bus services and, in particular, it amends Part 2 of, and Schedule 10 to, the Transport Act 2000. It gives local authorities powers to improve the quality of local bus services.

Quality Partnership Scheme

- Quality partnership schemes could cover minimum frequencies, timings and maximum fares, as appropriate. Schemes would still be subject to the competition test in Schedule 10 to the Transport Act 2000.
- Improvements by local authorities and operators could be phased in over a period of time.

Quality Contracts Schemes

- The "only practicable way" test would be replaced with a series of public interest criteria.
- In England, the Secretary of State's approval role would be replaced with a new framework for scheme approval and appeals.
- The duration of a scheme could be extended beyond the current ten years in certain circumstances.
- There would be an increase to a maximum of ten years for individual contracts.

Voluntary partnership agreements between local authorities and bus operators

- The Bill would provide strengthened voluntary agreements with a revised competition test to facilitate multilateral agreements between a local authority and more than one operator. The competition test would be consistent with other domestic and EC competition law requirements, but with terms tailored to the bus market.
- Such agreements could specify minimum frequencies, timings and maximum fares, as appropriate.

Part 3 – General Provisions Relating to Passenger Transport etc.

Part 3 contains a number of general provisions relating to passenger transport, amending various sections of the Transport Act 1968, the Transport Act 1985 and the Transport Act 2000.

Traffic regulation conditions – appeals

- The Transport Tribunal would decide appeals against traffic regulation conditions.

Taxi-buses

- Holders of private hire vehicle (PHV) licences would also be able to apply for "special restricted" public service vehicle (PSV) operator's licences, to enable them to provide local bus services.

Community transport

- For section 19 permits under the Transport Act 1985: the Bill would allow the use of vehicles with fewer than nine seats, and would simplify the permit issuing system so that all permits are issued by TCs.
- For section 22 permits under the Transport Act 1985: the Bill would allow drivers on those local services to be paid, and would allow the use of vehicles with more than 16 seats.

Punctuality

- The Bill would develop a new performance regime where the local TC receives better quality data; and local authorities, as well as operators, can be held to account for their contribution to the performance of local bus services (e.g. the provision and enforcement of bus priority measures).

Flexibility for local authorities

- The Bill provides clarification of powers to subsidise improvements in the standard of service (for example, frequency, hours of operation and quality of vehicle).
- It would extend the maximum length of bus subsidy contracts from five to eight years.

Part 4 – Passenger Transport Authorities (PTAs) etc

Part 4 makes new provision relating to PTAs and other aspects of local transport governance, as well as amending various sections of Part 2 of the Transport Act 2000.

Local reviews of transport governance arrangements

- The Secretary of State would be able to direct local authorities, in metropolitan and other areas, to review existing governance arrangements and publish a scheme with their proposals for change in order to improve effectiveness of transport in their area.

- The Secretary of State could issue guidance on carrying out reviews and schemes, and implement proposed changes through secondary legislation. The Bill would allow for different arrangements according to needs of each area.
- Subject to specific criteria, the Bill would allow establishment of new PTAs and changes to existing boundaries.
- Areas would be able to keep their arrangements under review and submit further proposals for changes in future.

Transport planning and duties

- For metropolitan areas, the joint duty on district councils and PTAs to produce a Local Transport Plan would be replaced with a duty on PTAs (including any successor bodies following implementation of proposals in a city's governance review) to produce an Integrated Transport Strategy (ITS) and an Implementation Plan.
- Bus strategies would be absorbed into the ITS in metropolitan areas.
- Secretary of State would be able to issue guidance on producing ITSs and Implementation Plans.
- Local authority "wellbeing" powers would be extended to PTAs.
- A new duty would be placed on PTAs and metropolitan district councils to have regard to Government policy and guidance on climate change in carrying out their functions.

Part 5 – London and Local Charging Schemes

Part 5 amends provisions relating to local and London charging schemes in Part 3 of, and Schedule 12 to, the Transport Act 2000 and Schedule 23 to the Greater London Authority Act 1999.

Local freedom and flexibility: Role of PTAs

- A scheme could be made jointly by local traffic authorities and the relevant Passenger Transport Authority (but not by a PTA acting in isolation).

Role of Secretary of State

- A new framework of local accountability would replace the current role for the Secretary of State in approving schemes and local authorities' plans for the application of the net proceeds from schemes.

- The power enabling the Secretary of State to hold an inquiry into a local scheme (or to require a local authority to do so) would be repealed, but a local authority would still be able to hold such an inquiry if it wished.

Purpose of schemes and application of revenues

- References to Local Transport Plans would be replaced by (more general) references to local transport policies.
- The requirement for the application of revenues by local authorities to support local transport policies would apply to all local schemes at all times.
- Local authorities would be under a new duty to consider potential impacts on climate change and air pollution when considering whether to introduce a scheme.

Variation of charges

- Legislation would specify that charges could also be varied according to the methods or means of recording, administering, collecting or paying the charge.

Consistency and interoperability

- This power would be extended to cover the "use" of equipment, so that standard data formats, encryption standards and equipment numbering systems could be specified.
- The appropriate national authority could make regulations requiring charging authorities to accept payment from specific types of road user in a specific manner.

Information flows

- The appropriate national authority would be able to charge a reasonable fee to cover the costs of supplying such information.
- The appropriate national authority would be able to require charging authorities to provide information about their schemes, for example to inform the future national debate on road pricing.

Part 6 – Supplementary Provisions

Part 6 contains supplementary provisions regarding the financial effects of the draft Bill and its effect upon public service manpower. It also states that the following provisions would come into force on enactment:

- The provisions in Part 6 (Supplementary Provisions), other than Clause 84

and Schedule 6 (Repeals); and

- Any power under or by virtue of the Bill to make regulations or an order.

Other provisions will be brought into force by statutory instrument.

The Schedules to the draft Bill are as follows:

- Schedule 1 substitutes references to "local transport policies" (as defined by a new provision inserted by Part 1) in place of certain references in the Transport Act 2000 to local transport plans or bus strategies, and makes other related amendments.
- Schedule 2 applies a modified form of the competition test in Schedule 10 to the Transport Act 2000 to certain voluntary bus partnership agreements.
- Schedule 3 contains amendments to various enactments, consequential on clause 38, which provides that the metropolitan county passenger transport authorities established under the Local Government Act 1985 are to be known as Passenger Transport Authorities.
- Schedule 4 contains minor and consequential amendments to the Transport Act 2000, relating to clauses in Part 5 that allow PTAs to make local charging schemes jointly with local traffic authorities.
- Schedule 5 amends Schedule 12 to the Transport Act 2000, which contains financial provisions relating to charging schemes under Part 3 of that Act.
- Schedule 6 contains repeals relating to Parts 2 to 5 of the draft Bill.

The public consultation on the provisions of the draft Bill closes on Friday 7 September.

Copies of the draft Bill and details of the consultation can be found at http://www.dft.gov.uk/pgr/regional/localtransportbill/

Introduction of an Alcohol Limit for Non-Professional Mariners

The Transport Minister, Stephen Ladyman, has announced his intention to bring into force provisions in the Railways and Transport Safety Act 2003 that will introduce an alcohol limit for non-professional mariners and an offence of exercising, or purporting or attempting to exercise, a function in connection with the navigation of the ship, whilst impaired because of drink or drugs.

The offence is contained in Section 80 of the Act; the relevant provisions will be brought into force by way of a statutory instrument. The offence created is

a 'moving" offence', which only applies if the vessel is in motion. The offence does not apply to passengers. The prescribed limits are:

- In the case of breath, 35 microgrammes of alcohol in 100 millilitres.
- In the case of blood, 80 milligrammes of alcohol in 100 millilitres.
- In the case of urine, 107 milligrammes of alcohol in 100 millilitres.

These limits are the same as those introduced for professional mariners in March 2004.

Section 80 also contains provisions which allow the Secretary of State to make regulations which set out specified circumstances when the offence will not apply. Such regulations may make provision by reference, in particular, to:

- The power of a motor.
- The size of a ship.
- The location of the ship.

The provision to make these regulations is already in force having been brought into force on 30 March 2004 by way of the Railways and Transport Safety Act 2003 (Commencement No. 2) Order 2004 (SI 827/2004).

Mr Ladyman has already stated that, in respect of the size and power of a ship, the offence will only apply to those persons involved in the navigation of a vessel greater than 7 metres in length and/or capable of a maximum speed of more than 7 knots.

It is expected that a set of draft regulations will be published for public consultation later in the summer.

The regulations will not apply to jet skis, due to a previous Court of Appeal ruling that jet skis are not ships. It is the Government's intention to consult on extending the legislation to them in due course.

The provisions to deal with the offence under Section 80 are contained in Sections 83, 84 and 86 of the Act.

Section 83 replicates certain provisions of the Road Traffic Act 1988, amended where appropriate to apply to shipping, adopting in relation to mariners the same procedures for taking specimens as are applicable to motorists. This Section also replicates, as similarly amended, the new provisions of the Road Traffic Act 1988, introduced by Section 107 and set out in Schedule 7 to this Act, in relation to preliminary impairment tests and preliminary drug tests.

Section 83 also applies certain provisions of the Road Traffic Offenders Act 1988 to offences under Sections 78, 79 or 80 of this Act, by substituting navigation functions for references in the 1988 Act to driving a motor car.

Section 84 allows marine officials to detain a vessel, when they reasonably suspect that a person on board is committing an offence under this Part, pending the arrival of the police. This provision does not apply to ships which are being used for a purpose of Her Majesty's forces or which form part of the Royal Fleet Auxiliary.

Section 86 allows a constable in uniform to use reasonable force to board a ship or enter any other place, if he reasonably suspects that he may wish to exercise a power under this Act, e.g. to administer a preliminary breath test. In exercising his right of entry he may be accompanied. This Section does not extend to Scotland, where adequate common law powers of entry already exist.

The *Digest* will report further when the implementation date of Section 80 is announced.

The Railways and Transport Safety Act 2003 can be found in full at http://www.opsi.gov.uk/acts/acts2003a.htm

Further Proposed Changes to the Cycling Elements of the Revised Highway Code

The Department for Transport is proposing further changes to the cycling elements of the revised Highway Code laid before Parliament on 28 March 2007. The changes are put forward in order to clarify advice in the revised Code on the use of cycle facilities and cycle lanes.

It is proposed that draft rules 61 and 63 of the revised Highway Code be amended so that they would read as follows:

Rule 61 - Cycle Facilities. Use cycle routes, advanced stop lines, cycle boxes and toucan crossings unless at the time it is unsafe to do so. Use of these facilities is not compulsory and will depend on your experience and skills, but they can make your journey safer.

Rule 63 - Cycle Lanes. These are marked by a white line (which may be broken) along the carriageway (see Rule 140). When using a cycle lane, keep within the lane when practicable. When leaving a cycle lane check before pulling out that it is safe to do so and signal your intention clearly to other road users. Use of these facilities is not compulsory and will depend on your experience and skills, but they can make your journey safer.

The revised Highway Code presently before Parliament contains around 40 changes to the current Code. Subject to Parliamentary approval, it is expected that the revised Highway Code will be introduced this summer. It can be found in its draft form at http://www.dsa.gov.uk/Documents/consult/Responses/Highway_Code_Draft.pdf

Ban on the Cat and Dog Fur Trade in the EU

The European Parliament has adopted a report on a proposed EU-wide ban on trading in cat and dog fur.

In December 2003, the European Parliament adopted a declaration calling on the European Commission to draft a regulation banning the import, export, sale and production of cat and dog fur and skins. At the time, the regulation was not made; but a voluntary code of conduct was adopted by European fur traders. However, since the voluntary code was adopted, evidence has kept coming to light that cat and dog fur products have still been entering the EU.

Article 1 of the draft regulation proposed by the Commission, prohibits the placing on the market and the import to or export from the Community of fur of cats and dogs and products containing such fur.

In the course of negotiations with the European Council, European Parliament members did agree, that, "by way of exceptional derogation", that the Commission may adopt provisions allowing cat and dog fur on the EU market "for educational or taxidermy purposes".

The European Parliament did not back a derogation proposed by the Commission to the ban, that the fur (or products containing it) would be exempt if (a) "labelled as originating from cats or dogs that have not been bred or killed for fur production", or (b) constituted "personal or household effects" introduced into, or exported from, the Community.

The European Council is expected to back the European Parliament's report (i.e. its amendments) and to adopt the legislation without any further changes. The ban will apply from 31 December 2008.

Review of the Protection of Children from Sex Offenders

Following a comprehensive review of the arrangements for protecting children from sex offenders, commissioned by the Home Secretary in June 2006, the Home Office has now published a report, 'Review of the Protection of Children from Sex Offenders', which includes a package of new measures to help to protect children from sex offenders.

The twenty proposals set out in the report are intended to lead to short, medium and long-term improvements in how children are protected from sex offenders. They are:

ACTION 1 - Pilot a community awareness programme, in partnership with non-governmental organisations, to provide better child protection advice and develop messages to help parents and carers to safeguard children effectively.

ACTION 2 - Increase public awareness of how sex offenders are managed in the community, by ensuring easy-to-use information is widely available, and by ensuring strong local communication of Multi-Agency Public Protection Arrangements (MAPPA) work.

ACTION 3 - Introduce a legal duty for MAPPA authorities to consider the disclosure of information about convicted child sex offenders to members of the public in all cases. The presumption will be that the authorities will disclose information if they consider that an offender presents a risk of serious harm to a member of the public's children.

ACTION 4 - Pilot a process where members of the public can register their child protection interest in a named individual. Where this individual has convictions for child sex offences and is considered a risk, there will be a presumption that this information will be disclosed to the relevant member of the public. The new policy will be piloted, in order to work through the details of implementation and to ensure that there is a system of two-way disclosure that is as effective as possible without increasing the risk to children. It will be important for people who register an interest to receive a timely response. In all cases they should be given generic information on how best to protect their children. Following the pilot, the Home Office will consider whether this principle of two-way disclosure should be extended.

ACTION 5 - Provide early access to help, for non-convicted individuals concerned about their sexual thoughts or behaviour, to prevent new or continued sexual abuse from occurring.

ACTION 6 - Develop the use of drug treatment to support existing psychological treatment.

This is intended to support offenders, by helping them to suppress their sexual urges through the use of medication, and in successfully completing psychological treatment. The report also mentions exploring more intensive treatments for those of greatest risk.

ACTION 7 - Conduct a feasibility study of joint prison and probation treatments.

ACTION 8 - Develop national MAPPA structural and management arrangements, to be applied in each area to ensure consistent, auditable processes.

ACTION 9 - Develop national standards for MAPPA and ensure each area has strong central co-ordination and administration and is able to provide a single point of contact for general public enquiries about the work of MAPPA, support the roll-out of ViSOR, facilitate the duty to consider disclosure and support the key processes of risk assessment, recording of decisions and follow-up.

ACTION 10 - Develop robust performance management arrangements for MAPPA.

ACTION 11 - Establish a defined and consistent role for MAPPA lay advisers, which includes increasing public awareness.

ACTION 12 - Develop the current process for managing cross-border MAPPA cases.

ACTION 13 - Take a power to amend sex offender notification requirements by secondary legislation, and consider changes to the information registered to strengthen public protection.

The proposed changes would require all registered sex offenders to:

- Provide a DNA sample where one has not been given previously.
- Notify the police of any e-mail addresses, passport numbers, or bank account numbers.
- Notify the police if they are living in the same household as a child under the age of 18.
- Notify the police about risk factors that might increase the likelihood of them re-offending, for example if they form a relationship with a woman who has children.
- Notify the police of any foreign travel (at present only trips of three days or longer must be notified).
- Report regularly to a police station if they register as homeless.

As with the current notification requirements, if an offender breached these rules, they would be subject to a maximum penalty of five years in prison.

The report suggests that all of these possible changes would be made easier by a legal change to the Sexual Offences Act 2003, to allow amendments to notification requirements to be made through secondary rather than primary legislation.

ACTION 14 - Revise MAPPA guidance to provide direction on managing young offenders.

ACTION 15 - The Youth Justice Board to ensure all Youth Offending Teams have appropriate guidance and training on MAPPA, and all Youth Offending Teams have a policy on public protection that includes reference to engagement with the local MAPPA.

ACTION 16 - Develop guidance on compulsory programmes of purposeful activity for residents in approved premises.

ACTION 17 - Implement standard rules of residence for all approved premises.

ACTION 18 - Maximise the use and awareness of the Child Exploitation and Online Protection Centre website's 'most wanted' list of non-compliant and missing high-risk sex offenders.

ACTION 19 - Pilot the use of compulsory polygraph (lie detector) tests as a risk management tool.

This requires a change in the law which is expected later this year.

ACTION 20 - Review the potential to expand the use of satellite tracking to monitor high-risk sex offenders.

The 'Review of the Protection of Children from Sex Offenders' can be found at http://www.homeoffice.gov.uk/documents/chid-sex-offender-review-130607?view=Binary

Section 58 of Children Act 2004 Review (Consultation)

The Government is reviewing the practical consequences of Section 58 of the Children Act 2004 since its introduction on 15/1/2005.

Section 58 removed the defence of reasonable chastisement in any proceedings for an offence of assault occasioning actual bodily harm, unlawfully inflicting grievous bodily harm, causing grievous bodily harm with intent, or cruelty to a child. It also prevents the defence being relied upon in any civil proceedings where the harm caused amounted to actual bodily harm, which has the same meaning as it has for the purposes of Section 47 of the

Offences Against the Person Act 1861. The defence would still be available in proceedings before the Magistrates Court for common assault on a child.

As part of this review it has published a consultation paper seeking the views of parents on physical punishment and evidence from those working with children and families on the practical consequences of the changes in the law brought about by Section 58.

Findings from the two elements of the consultation will inform the review report, which will identify issues for the effectiveness, administration and operation of Section 58 of the Children Act 2004 and, if necessary, make recommendations on changes to practice. The findings of the review and a summary of consultation responses are to be included in a report to be laid before Parliament in the autumn.

The consultation paper can be found in full at http://www.dfes.gov.uk/consultations/conDetails.cfm?consultationId=1494

Consultation on the Policy and Processes of the Vetting and Barring Scheme to be introduced by the Safeguarding Vulnerable Groups Act 2006

The Government has published a consultation paper seeking views on its proposals for the barring process and the criteria which result in automatic barring on the new barred lists which are part of the provisions contained in the Safeguarding Vulnerable Groups Act 2006 (covered in the April 2006 *Digest*), which are expected to be brought into force from Autumn 2008.

The consultation paper includes the proposed automatic barring offences and set it out in two sections:

- Automatic Barring Offences in relation to the children's list – without and with representations
- Automatic Barring Offences in relation to the vulnerable adults' list – without and with representations

The consultation asks whether respondents agree with the list of offences.

The paper suggests that in cases where someone is permitted to make representations about whether they should be barred, the period of time in which those individuals are allowed to make those representations to the Independent Safeguarding Authority about their case will be set at 8 weeks.

Under the provisions once an individual is barred there will be a minimum length of time before the individual is able to apply for a review of his case (the 'minimum no-review period'). The paper sets out that it is the

Governments intention to set this minimum no-review period at 10 years for adults and 5 years for younger people at the time when the relevant offence or allegation occurred. The consultation sets out details it is considering in relation to the interpretation of adult and younger person age boundaries and invites views on whether the shorter minimum period after which a review of barring may be sought, 5 years, should come into play at age 18, as under the current schemes, or age 25.

The consultation which closes on 14 September can be found in full at http://www.dfes.gov.uk/consultations/conDetails.cfm?consultationId=1476

Government's National Alcohol Strategy

The Government has published a document that sets out the next steps in the National Alcohol Strategy, reviews progress since the publication of the Alcohol Harm Reduction Strategy for England (2004) and outlines further national and local action to achieve long-term reductions in alcohol-related ill-health and crime. It stresses that Government departments, local communities, the police, local authorities, the NHS, schools, voluntary organisations, the alcohol industry, the wider business community and the media all have a vital role to play in delivering this strategy.

Key actions in the document, 'Safe Sensible Social - the next steps in the National Alcohol Strategy', include:

- Sharpened criminal justice for drunken behaviour.
- A review of NHS spending on alcohol-related health issues.
- More help for those who want to drink less.
- Tougher enforcement of underage drinking laws.
- Public consultation on alcohol pricing and promotion.
- Compulsory local alcohol strategies.

Some of the measures promised to achieve these include:

- The production of new Home Office guidance and support for local area initiatives to reduce alcohol-related harm.
- Asking Government Offices for the Regions to ensure strategic regional coordination of the requirement for local partnerships to tackle alcohol-related crime and disorder.
- The Home Office assessing the contribution of the existing arrest referral pilot projects and initiatives and establishing a small number of alcohol

referral schemes by autumn 2007.

- By October 2007, the development of a data collection model and further guidance on enforcement of underage sales (produced jointly by the Government, the Association of Chief Police Officers (ACPO) and Local Authorities Coordinators of Regulatory Services (LACORS)), to further to ensure that enforcement activity is efficient and well targeted.
- Setting up an expert group, comprising police, doctors, academics and representatives of the alcohol industry, to gather further evidence of where targeted interventions might produce benefits and agree how high-risk premises can be best identified. The group will be in place by autumn 2007 and will be tasked with outlining the evidence base and proposals for further action in 2008.

The strategy document can be found in full at http://www.homeoffice.gov.uk/documents/Alcohol-strategy.pdf?view=Binary

Guidance for Health Professionals on Forced Marriage

In connection with one of the objectives set out in the Government's Forced Marriage Unit two year strategy plan (covered in the June *Digest*), a guidance document has been produced to provide assistance to health professionals dealing with cases of forced marriage involving young people and vulnerable adults.

The guidance includes a number of scenarios with which a health professional could be confronted and outlines what action to undertake, whom to contact and related best practice.

The guidance can be found at http://www.fco.gov.uk/Files/kfile/Health%20Guidelines%20FINAL.pdf

Consultation on Simplifying Immigration Law

The Home Office has published an initial consultation paper on simplifying immigration and citizenship law. The consultation aims to seek a range of views to inform a fundamental overhaul of the legal framework within which the Border and Immigration Agency (BIA) operates.

The Government believes that simplifying the legal framework, including primary legislation and rules and guidance, will create a user-friendly and clearer decision-making process and will hopefully:

- Help to increase the number of removals of those who have no legal right to stay here.

- Decrease the likelihood of legal challenges following refusals of asylum claims.
- Provide a new clear decision making system that potential asylum applicants can use to assess the strength of their case before submitting it, helping BIA to work more efficiently.

The consultation period will end on the 29 August 2007. Subject to Parliamentary timetable, the planned new primary legislation would be introduced in 2008.

The consultation document can be found at http://www.bia.homeoffice.gov.uk/lawandpolicy/consultationdocuments/currentconsultations

Memorandum of Understanding to Combat Human Trafficking

The United Kingdom has signed a Memorandum of Understanding (MoU) with the United States to improve international co-operation to combat human trafficking. The MoU expands the ability of U.S. and U.K. law enforcement agencies to share information, intelligence and leads about criminal organizations involved in human trafficking.

Consultation on Amending the Traffic Signs Regulations and General Directions 2002

The Department for Transport (DfT)has published a consultation paper seeking views on its proposals to amend the Traffic Signs Regulations and General Directions (TSRGD) 2002 (SI 3113/2002). These regulations set out the statutory requirements for signing speed limits, including sign designs and conditions of use. They also describe how informatory camera enforcement signs may be used to make the public aware that speed enforcement is being undertaken by safety cameras on a particular road.

Amending the Regulations and General Directions is intended to make additional improvements to the signing of safety cameras to further assist drivers to recognise and comply with the speed limit on roads where camera enforcement is taking place.

The proposed changes are as follows:

Local speed limits (40mph, 50mph, 60mph on dual carriageways)

- The General Directions currently require that repeater speed limit signs are placed at regular intervals along a road. The location of the camera will not always fit neatly with this and there will be occasions when an

additional speed limit sign may be required to ensure that the speed limit can be seen in the same view as the camera. This would interrupt the regular placement. It is therefore proposed to amend the directions to allow, where they are permitted, an additional speed limit repeater sign to be placed in the vicinity of a safety camera.

Restricted roads (30mph limit due to presence of system of streetlights)

- Currently the General Directions prohibit the placing of repeater speed limit signs but do allow use of one camera informatory sign (diagram 880) be placed not more than one kilometre from the enforcement camera site. It is proposed to amend the direction to allow up to two camera informatory signs (diagram 880) to be used at each camera site and to remove the current specific distance requirement.
- The proposed amendments also clarify that the camera informatory sign (diagram 880) can be used in conjunction with both fixed and mobile enforcement cameras.
- Also 30mph carriageway roundels will be allowed to be placed on the road surface in conjunction with diagram 880 where camera enforcement is taking place

National speed limit in force

- The proposed amendments will allow for an additional speed limit repeater sign to be placed in the vicinity of a safety camera on street lit roads where the National Speed Limit is in force. This change is the same as set out for local speed limits above except that the sign to be used is a variant of the camera informatory sign 880 which combines the camera warning sign with the National Speed Limit sign (diagram 880.1) and this sign will be inserted into Schedule 4 to the Traffic Signs Regulations 2002 and incorporated in TSRGD.

Whilst not directly related to camera signing, the DfT is also proposing to take this opportunity to clarify another area of the General Directions. As currently worded Schedule 2 to the Regulations show diagram 675 to signify the end of a 20 mph zone and the beginning of a new speed limit.

However, the sign is not identified in Direction 8(1), which signify those signs which are required to be placed at the beginning a speed limit. In order to clarify that the 675 sign can be used to signify the beginning of a speed limit (and that a second sign is not required) it is therefore proposed that diagram 675 be added to the current list of signs set out in Direction 8(1). Similarly it is also proposed that Direction 10(2) is amended to clarify that a second sign to diagram 671 is not required to indicate the end of a speed limit when diagram 675 has been used.

The consultation will run until 17 September 2007. It can be found at http://www.dft.gov.uk/consultations/open/trafficsignsregulations/

Consultation on Proposals to Improve Access to the English Coast

The Department for Environment, Food and Rural Affairs has published a consultation paper seeking views on plans to open up the whole of England's coastline to the public.

At present, parts of the English coastline are out of bounds to the general population. The consultation seeks views on four options:

- Using existing rights of way legislation to create a footpath all round the coast.
- Extending open access using the Countryside and Rights of Way Act 2000 to give access to types of land which are considered coastal, e.g. beach, dunes, cliffs, etc.
- Voluntary agreements with landowners using existing mechanisms such as those for agri-environment schemes.
- Introducing new legislation to allow Natural England to designate a coastal corridor providing a continuous route along which people can enjoy access to the coast.

The opening up of coastal areas could impact on police forces with coastlines, in relation to disputes over access and also in respect of offences committed in public places.

The consultation closes on 11 September 2007. It can be found in full at http://www.defra.gov.uk/corporate/consult/coast-access/consultation.pdf

Inquiry into the Transparency of the Lobbying Industry

The Public Administration Select Committee is conducting an inquiry into the transparency of the lobbying industry, the effectiveness of recent attempts at self-regulation, and whether the rules for those in Parliament and Government should be changed.

Following a number of political scandals throughout the 1990s, including the cash for questions affair the lobbying industry did introduce an element of self-regulation. The Committee on Standards in Public Life also produced some recommendations about the role of MPs and lobbyists. However, lobbying is still viewed with suspicion.

Responses to the questions set out in the consultation are requested by Friday 21 September 2007. The Committee will be holding oral evidence sessions in the autumn and winter of 2007-08.

Further details can be found at http://www.parliament.uk/parliamentary_committees/public_administration_select_committee/pasclobbying.cfm

New Campaign against Mobile Phone Robbery

Home Office Minister Baroness Scotland has launched a new advertising campaign, 'R u getting the msg?', to highlight the fact that stolen mobile phones are blocked within 48 hours and that buying one is a waste of money. The adverts are aimed at 16-25 year olds and will be placed in magazines and on websites, with text-style language, making the case that buying a stolen mobile is a waste of money and foolish. The campaign is scheduled to run until mid-August.

National Rollout of Vulnerable Witness Intermediary Support Scheme

Section 29 of the Youth Justice and Criminal Evidence Act 1999 enables an application to be made and granted to allow the use of an interpreter or an approved intermediary, under a Special Measures Direction, to three categories of vulnerable witness:

- Those under 17.
- Those whose quality of evidence is likely to be affected because he/she suffers from mental disorder within the meaning of the Mental Health Act 1983, or otherwise has a significant impairment of intelligence and social functioning.
- Those whose quality of evidence is likely to be affected because he/she has a physical disability or is suffering from a physical disorder.

Between February 2004 and June 2005, six pathfinder projects implemented the intermediary special measure. A further two pathfinder projects were also subsequently trialled. As a result of an evaluation of these trials, the Government has announced its intention to roll out the intermediary scheme nationally.

The research findings into the pilot schemes were published on 12 June 2007.

The research report summarises an evaluation of the implementation of the intermediary special measure in six pathfinder areas. The results describe the implementation of the scheme, including the recruitment of intermediaries, intermediary appointments, outcomes of cases where intermediaries were used, emerging benefits and challenges and recommendations for the scheme.

Although the Government has not announced any implementation dates as yet, the research report recommends that the Office for Criminal Justice Reform (OCJR) should take forward the intermediary scheme by proceeding with a two-year transitional phase, with national roll-out completed no later than the end of the first year, and that individual case costs are borne centrally at least until the end of the second year.

It further recommends that, in proceeding to national roll-out, central management of the scheme should be strengthened and that functions including recruitment and training, obtaining feedback and monitoring intermediary activities, and matching witness needs to the skills of registered intermediaries, should remain as centralised functions.

The research shows that certain issues do have an impact on the effectiveness of the use of the measure and highlights that these need addressing as a

priority. The issues that do have a particular impact on the police are:

Identifying eligible witnesses

The report found that the number of referrals received during the evaluation were low and not a reliable guide to potential demand. It found that, of the witnesses for whom an intermediary was appointed, 24% had already given a witness statement, suggesting that eligibility was missed at the point of interview. None of the 16 witnesses assisted by an intermediary at trial had the benefit of an intermediary at the initial investigative interview.

In respect of witnesses aged under 17, it found that criminal justice practitioners were not particularly receptive to using the measure. During the pilot, only four witnesses (aged between six and ten years) were identified by criminal justice practitioners and used the measure. The report suggests there is a significant gulf between legislative intent and receptivity of criminal justice practitioners to the automatic eligibility of witnesses under 17.

Lack of planning

The research showed that intermediaries and police officers felt that the intermediary's contribution at investigative interview was most valuable where there was time to plan beforehand. Where witnesses were assessed for the first time on the day of interview (as happened for almost 50%), intermediaries felt pressured.

To deal with these issues, the report recommends addressing cultural as well as factual issues in raising awareness of the scheme, by:

- Giving a clear message about the scope of eligibility (highlighting in particular the automatic eligibility of those under 17).
- Promoting early identification of eligible witnesses prior to interview.
- Encouraging the development of safety-net procedures across criminal justice organisations, to assist in identifying those overlooked during the investigation.

The research report can be found in full at http://www.justice.gov.uk/publications/research.htm

Consultation on Measures to Improve the Criminal Trial Process for Young Witnesses

The Office for Criminal Justice Reform has published a consultation paper, 'Improving the Criminal Trial Process for Young Witnesses', the purpose of which is to:

- Seek the views of professional practitioners, victims, witnesses and the general public on a range of recommendations aimed at improving the way young witnesses give evidence in criminal proceedings.
- Invite views and suggestions about how we might move forward on a number of general issues. This includes ways of making better use of technology.
- Seek views on ways of improving the management of trials involving young witnesses, including reducing delay in proceedings and the quality and appropriateness of the questions put to young witnesses.

On of the main issues is the implementation of Section 28 of the Youth Justice and Criminal Evidence Act (YJCEA) 1999.

Section 28 provides that, where the court has already allowed a video recording to be admitted as the witness's main evidence, the witness may be cross-examined before trial, and the cross-examination, and any re-examination, recorded on video for use at trial.

The consultation paper can be found at http://www.justice.gov.uk/docs/cjr-consult-young-witnesses.pdf

House of Lords to Consider Appeals of Cases where Jury included a Police Officer

In July, the House of Lords is due to hear appeals of two cases where the defendant in each case was found guilty by a jury which included a police officer.

At the same time, the Law Lords will consider a further case in which one of the jurors who delivered a guilty verdict was a lawyer working for the Crown Prosecution Service, which brought the prosecution.

Lawyers acting on behalf of the convicted persons will argue that their clients were denied a fair trial because the police officers and the lawyer who sat on the juries were too closely involved in the case and that this therefore breached their clients' rights, under Article 6 of the European Convention on Human Rights, to be guaranteed a trial by 'an impartial tribunal'.

At the Court of Appeal stage, it was ruled in each case that there had not been a breach of the defendant's right to a fair trial.

Consultation on Sentencing

The inquiry, 'Towards Effective Sentencing', which is being conducted by the House of Commons Constitutional Affairs Committee, has been formally passed all the oral and written evidence gathered in the course of the inquiry which was previously being undertaken by the Home Affairs Committee (covered in the June *Digest*).

This evidence has now been published and is available to view at http://www.parliament.uk/homeaffairscom

Ministerial Statement on Prison Population

In a ministerial statement in the House of Commons, Justice Minister David Hanson announced plans for the building of an additional 1,500 prison places, on top of the commitment to provide an extra 8,000 by 2012. Work is to start immediately on 500 of the new 1,500 places, with the first coming on stream in January 2008.

Mr Hanson also announced that guidance was being issued to prison governors to allow wider use of release on licence for those coming towards the end of their sentences. Sexual or violent offenders and foreign national prisoners are to be excluded. The guidance comes into effect on 29 June.

Managing Conflict of Interest and Capacity Issues in Very High Cost Cases

The Ministry of Justice has published a response document in relation to its consultation paper, 'Proposals to manage conflict of interest and capacity issues in Very High Cost Cases' (VHCCs), which was published on 4 August 2006.

The summary of responses document outlines the conclusions reached on the options and how the Government intends to proceed; some changes have been now made to the original proposals in the light of concerns expressed in the consultation.

The original proposals have been modified so that the issues of capacity and conflict of interest will be dealt with separately.

The new process to deal with issues of capacity will ensure that the decision to dismiss representatives is not solely the responsibility of the trial judge.

Where he suspects that representatives have insufficient capacity to represent their client adequately, such that the progress of the trial could be impeded, the judge will recommend that the Complex Crime Unit (CCU) at the Legal Services Commission (LSC) investigate his concerns. It will ultimately be the decision of the LSC whether to terminate the contract or not. The CCU is also at liberty to investigate of its own volition, as is now the case.

With regards to the problem of a conflict of interest, at its discretion, the LSC will contract in VHCCs on a one defendant per firm basis, where it considers that there is sufficient risk of a conflict of interest disrupting the progress of the trial. This would clearly remove the potential problem from the outset rather than requiring intervention from the judge at a later date, which could prove problematic, given the need to preserve legal professional privilege.

In relation to setting prescribed time frames for appointing a new representative, particularly where a defendant is in custody, it will be at the judge's discretion to decide on a timetable, having regard to the individual circumstances of the case and the need to maintain momentum in the proceedings.

The response document can be found in full at http://www.justice.gov.uk/docs/response_cpr1706.pdf

Building of New Courts

The Government has announced that six new major courts are to be built.

Four of the new courts will be magistrates' courts located in Birmingham, Liverpool, Bolton and Salford. Sunderland is to get a new combined court comprising Crown, county and magistrates' court and Aylesbury will get a new Crown court. It is expected that these courts will be open for business around 2012.

HMIC Business Plan 2007-2008

Her Majesty's Inspectorate of Constabulary has published its business plan for 2007/08. The following specific priorities and targets have been identified for HMIC during 2007/08:

Core programme

- Protective services, including 'protecting vulnerable persons'.
- Strategic services, including performance management and diversity.
- Delivery of neighbourhood policing.
- Further developing Serious Organised Crime Agency and HM Revenue and Customs inspections.

Thematic and commissioned issues

- Effectiveness of front-line supervision.
- Delivering customer service.
- Airports policing.
- Policing the Olympics.
- Delivering policing through collaboration.

Criminal justice

- Joint inspection of the criminal justice system (England, Wales and Northern Ireland).

The business plan can be found in full at http://inspectorates.homeoffice.gov.uk/hmic/docs/our-work/bp07-08.pdf?view=Binary

HOC 19/2007 Amendments to Determinations under the Police Regulations 2003: Chief Constable Eligibility

Home Office Circular (HOC) 19/2007 publicises further amendments to determinations under the Police Regulations 2003, in respect of chief constables' eligibility.

This amendment was omitted from HOC 14/2007, which publicised other amendments to the Police Regulations 2003 (covered in May *Digest*).

The Home Secretary has determined that, with effect from 22 May 2007, the Part 1 of the determination under Regulation 11 of the Police Regulations 2003

(appointment of senior officers – experience) shall read:

Part One. Experience

1. Subject to Section 11(1) of the Police Act 1996, regulations 9 and 10 and paragraph (2), no person shall be appointed as chief constable of a police force unless for a period of not less than two years, he holds or has held the rank of assistant chief constable (or commander in the Metropolitan Police force or the City of London police force) or above:

a) in some other police force;

b) in the British Transport Police;

c) whilst engaged on relevant service within the meaning of Section 97(1) of the Police Act 1996; or

d) partly in one of the capacities above and partly in another.

2. This requirement may be waived when exceptional circumstances apply.

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

HOC 20/2007
The Introduction of Police (Amendment) Regulation 2007

Home Office Circular 20/2007 publicises the introduction of the Police (Amendment) Regulations 2007, which were brought into force on 1 June 2007 by SI 1160/2007 (covered in May *Digest*).

The Regulations amend the Police Regulations 2003.

Schedule 3 to the Police Regulations 2003 contain provision for certain officers to receive a replacement allowance, which is calculated by reference to a compensatory allowance that was payable under the Police Regulations 1987 (which have now been revoked) in certain circumstances.

Regulation 2 provides that certain officers shall be entitled to a replacement allowance, calculated as if for regulation 52B (compensatory allowance) of the Police Regulations 1987 there were substituted the wording set out in regulation 2.

Regulation 52B formerly provided that where two police officers were married to each other and one served as a part-time officer, then the other officer could receive a further sum to take account of the part-time officer's reduced housing or related allowances. These Regulations provide that the replacement allowance shall be calculated as if compensatory allowance were not limited to married couples, and extended to two or more officers living together, where at least one of them is a part-time officer.

The amendments have effect from the date on which the Police Negotiating Board agreed to the amendments, except in so far as they relate to married part-time officers, where the amendments have effect from 1 July 2000. Such retrospection is permitted under Section 50(5) of the Police Act 1996.

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

Pilot Data Share Scheme with Consumer Direct

A pilot scheme between Consumer Direct, the Government advice service managed by the Office of Fair Trading and Hertfordshire Police, has been started. It will run for three months, during which Consumer Direct will share its complaints data with the police.

The scheme will involve 12 officers being trained to use the Consumer Direct database, which currently holds details of over two million consumer contacts.

Of the almost one million cases logged by Consumer Direct last year, 8500 were about uninvited doorstep callers. Research shows that there is often a link between rogue doorstep tradesmen and distraction burglaries and it is hoped that the scheme will provide some real-time intelligence to the police.

Research Report on Detecting Deceit

Research funded by the Economic and Social Research Council (ESRC) and undertaken by academics at the University of Portsmouth has cast doubt on the effectiveness of several approaches recommended in police manuals to help investigators to decide whether they are being told the truth,.

The report found that although certain visual behaviours are associated with lying, this doesn't always work, nor does comparing a suspect's responses during small talk, and then in a formal interview, as whether lying or telling the truth, people are likely to behave quite differently in these two situations. It found that liars are concerned about not being believed, and so are unlikely to come across as less helpful than truthful people during interview.

The three 'traditional methods' recommended in training manuals are:

- Focusing on visual cues such as eye contact and body movement.
- The Baseline Method strategy in which investigators compare a suspect's verbal and non-verbal responses during 'small talk' at the beginning of interview with those in the interview proper.
- The Behavioural Analysis Interview (BAI) strategy, which comprises a list of questions to which it is suggested liars and those telling the truth will give different verbal and non-verbal responses.

The research tested the three aforementioned methods and a new strategy to detect deception, called the 'cognitive load' approach. This approach is based on the premise that, in most interviews, lying is cognitively demanding. Several aspects of lying contribute to this increased mental load on the interviewee, including:

- Formulating the lie itself.
- Monitoring and controlling their demeanour.
- Monitoring the interviewer's reactions more carefully in order to assess whether they are getting away with their lie.
- Being preoccupied by the task of reminding themselves to act and role-play.
- Having to suppress the truth while they are lying.
- While activation of the truth often happens automatically, activation of the lie is more intentional and deliberate, and thus requires mental effort.

Results from the project showed that, whilst the methods traditionally used by investigators to distinguish between truths and lies did not work, the new cognitive load approach showed potential, particularly when researchers raised the 'cognitive load' on interviewees by asking them to tell their stories in reverse order.

Findings are to be shared with UK constabularies, and further research to refine this new approach is now underway.

The report can be found in full via the ESRC website http://www.esrc.ac.uk/ESRCInfoCentre/index.aspx

OFT Interactive Scam Guides

The Office of Fair Trading has launched a series of interactive scams guides designed to help people avoid being tricked into losing money. The guides expose the tactics used by scammers. There are presently three interactive guides available:

- A 'prize draw scam mailing'.
- A 'bogus lottery mailing'.
- A 'fake clairvoyant mailing'.

Each guide contains 'pop-up' text highlighting the tricks used by the scammers to convince people that the letters are genuine.

Consumers who are unsure about unsolicited mailings that they have received can contact Consumer Direct for clear, practical advice on 08454 04 05 06 or visit the Consumer Direct website at http://www.consumerdirect.gov.uk/

The interactive guides can be found at http://www.oft.gov.uk/oft_at_work/consumer_initiatives/scams/scam-letters

Research Report into Violent Crime Figures

A report published has been published by the independent think-tank Civitas entitled, 'Crime in England and Wales: More Violence and More Chronic Victims', which finds that the official government reports on crime using the

British Crime Survey, understate the amount of crime experienced by some three million or around three in every ten crimes.

It reports that crimes against the person were underestimated most, and by more than half in 2005-6. It states that the reason for this distortion is that if people are victimised in the same way by the same perpetrators more than

five times in a year, the number of crimes is put down as five. The justification for this policy in respect of the calculation of crime figures is 'to avoid extreme cases distorting the rates'. The report argues that capping the number of crimes that occurred at five also has the effect of distorting the figures.

The report can be found in full at http://www.civitas.org.uk/pdf/CivitasReviewJun07.pdf

Research Report on the Effect of Increased Local Autonomy on Policing

The independent think tank Policy Exchange has published a report entitled, 'Fitting the bill', which investigates whether, and to what extent, increased local autonomy could improve policing.

As part of their research the authors, with the cooperation of the Police Superintendents Association of England and Wales conducted a survey of the views of police superintendents in England and Wales. The results of the survey revealed high levels of dissatisfaction among police commanders in England and Wales with the reforms of the service.

The report makes several key recommendations, including:

- BCU Commanders must take responsibility for all resource management, including the ability to buy-in services that could support operational policing. The Government must end the system by which funds may be devolved, but the ability to determine how that money is spent is not. Local commanders should have the ability to raise funds and recover costs. Financial freedom must be balanced with responsibility for internal management issues, including abstraction rates.
- There is an immediate need to address these problems and build a system of performance targets. National targets do not reflect the priorities of the public. Headline rates in crime reduction and weighted detection rates should be balanced by the levels of community safety, including how safe the public feels.
- There is an argument for reforming the role of local authorities in policing although this would require a radical change in the direction of accountability. There needs to be a clearer relationship between local authorities and Basic Command Units: local government members should be involved in the selection of their BCU commander and ways in which council tax could help to fund the local BCU should be explored.
- The primary method of determining the size and viability of local policing units should be a 'bottom-up' process. There is currently no known

methodology developed by the Inspectorate or the police service to determine the size or make up of local police units.

- Reducing turnover of local commanders would enhance delivery by improving relationships with crime and disorder reduction partnerships. Both increased support from the force senior management team and better training would enhance the quality of policing.

The report can be found at http://www.policyexchange.org.uk/Home.aspx

Case Law

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

Police Not Guilty of Entrapment Where They Had Not Incited or Instigated the Crime

R v IAN ANTHONY JONES (2007)

CA (Crim Div) (Thomas LJ, Penry-Davey J, Wyn Williams J) 15/5/2007

CRIMINAL EVIDENCE - CRIMINAL LAW

Attempts: Causing Children To Engage In Sexual Activity: Child Sex Offences: Criminal Investigations: Entrapment: Incitement: No Actual Child Victim: Effect Of Police Officer Posing As Child: Undercover Police: S.8 Sexual Offences Act 2003

The police were not guilty of entrapment with regards to an attempt to commit offences under the Sexual Offences Act 2003 s.8 where they posed as a 12-year-old girl to gather evidence against the offender, as the police had not incited or instigated the crime.

The appellant (J) appealed against his conviction for an attempt to commit an offence under the Sexual Offences Act 2003 s.8. The police had received reports of graffiti being written in black marker on the toilets of trains and stations seeking girls of 8-13 years old for sex, offering payment and leaving a contact number. A journalist saw one of the messages, telephoned the number, and made contact with J. She then received several text messages from him, which requested confirmation of her age and whether she was prepared to perform oral sex. The journalist contacted the police who began an undercover operation using an officer posing as a 12-year-old girl. The undercover officer exchanged several texts with J which clarified her age and arrangements for a meeting, although he failed to turn up. J sent the officer further text messages of an explicit nature including various sexual acts that he expected he would be able to perform on her. J and the officer arranged to meet again, and J was arrested. He was found in possession of the mobile phone used to send text messages to the officer and a black marker similar to

the type used for writing the graffiti. A handwriting expert later concluded that J probably wrote the graffiti. J was charged with a number of offences including attempting to incite a child under 13 years old into penetrative sexual activity pursuant to s.8 of the Act. J submitted that

(1) It was a case of entrapment. He contended that he only believed he was communicating with a real child due to the deception of the police, and that no offence would have been committed otherwise;

(2) There was no offence known to law. J argued that he did not have the requisite intention to commit the alleged attempt because it was an essential element of the offence that he intended to cause an actual child under the age of 13 to engage in sexual activity, but there was no actual child in this case;

(3) It was only because the police had chosen the age of 12 that J was charged with the more serious offence under s.8 of the Act and there was no evidence that it mattered to J that the undercover officer was younger than 13.

HELD

(1) The criminality of the offence was the incitement of children under the age of 13 to engage in sexual activity, and it did not matter if it was directed at a particular child or whether the child could be identified, R v Most (1880-81) LR 7 QBD 244 applied. It was clear from J's conduct with the journalist that he was looking for opportunities to incite a child to penetrative sexual activity. The police did not incite or instigate a crime but merely provided the opportunity for J to commit a similar offence and provide evidence for a conviction. The officer did no more than pretend to be a child of a particular age, it was J who thereafter went on to incite penetrative sexual activity. It was also relevant to take into account the actions of the journalist in answering the graffiti message as a further measure by which the acceptability of the police conduct could be judged. The offence was not instigated by the police but by J's own actions, Attorney General's Reference (No3 of 2000), Re (2001) UKHL 53, (2001) 1 WLR 2060 applied.

(2) J had the objective and the intention of inciting a particular child to engage in penetrative sexual activity, his intention was to evade the prohibition of the law, and his acts were more than merely preparatory to commission of the offence, R v Shivpuri (Pyare) (1987) AC 1 applied. J could not argue that by reason of the police having substituted an adult for a child, provided the other elements of the offence were made out, that there was a defence in law to the charge.

(3) The police did not behave improperly in choosing the age of 12. It was J who had asked the officer for her age, and he therefore believed that he was inciting penetrative sexual activity with a child under 13. The graffiti on the train was evidence that J directed his activities to 8-13 year olds.

APPEAL DISMISSED

Exceptional Progress in Prison can be used to Re-settle a Prisoner's Minimum Term

R v TIMOTHY CAINES: R v DAVID ROBERTS (2006)

CA (Crim Div) (Sir Igor Judge (President QB), Holland LJ, Goldring J) 23/11/2006

SENTENCING

Conduct: Life Prisoners: Mandatory Life Imprisonment: Minimum Term: Murder: Reduction Of Sentence: Effect Of Exceptional Progress In Prison: Sch.22 Criminal Justice Act 2003

Exceptional progress in prison could be taken into account for the purposes of resetting a prisoner's minimum term, and any reduction for such progress should be made from the fixed minimum term, not from the newly assessed notional tariff.

The appellant (C), who had been convicted of murder in 1995, appealed against the judge's decision to set his minimum term at 22 years, and the applicant (R), who had been convicted of murder in 1986, applied for leave to appeal against the judge's decision to set his minimum term at 22 years. In C's case, the judge found that the exceptional progress that he had made in prison merited a reduction of two years. However, she applied that reduction to her newly assessed notional tariff of 22 years rather than to the minimum term of 14 years notified by the secretary of state. The issues raised by C's appeal and R's application were

(1) the Criminal Justice Act 2003 Sch.22 being silent on the matter, whether exceptional progress in prison could be taken into account for the purposes of resetting the minimum term;

(2) if so, whether any reduction for such progress should be made from the fixed minimum term or from the newly assessed notional tariff.

HELD

(1) Exceptional progress in prison could be taken into account for the purposes of resetting the minimum term, R (on the application of Cole) v Secretary of State for the Home Department (2003) EWHC 1789 (Admin) and Cadman (Setting of Minimum Term), Re (2006) EWHC 586 (Admin) , (2006) 3 All ER 1255 approved, and Waters (Setting of Minimum Term), Re (2006) EWHC 355 (QB) , (2006) 3 All ER 1251 disapproved. Several considerations supported such a conclusion. First, every prisoner serving a mandatory life sentence since 1997 had spent a significant part of the sentencing period under a regime in which exceptional progress provided a recognised basis for a reduction in the minimum term. Second, the review required by Sch.22 was unusual and specific for transitional purposes, and the exclusion of the secretary of state was deliberate. Third, the decision consequent on an application under Sch.22 was a sentencing decision to which normal sentencing principles applied.

(2) If the reduction was to operate effectively, it had surely to do so against the fixed minimum term, not against the newly assessed notional tariff. If exceptional progress was properly to be taken into account, it should produce a real benefit for the prisoner.

(3) When the court was considering whether exceptional progress had been made, it would be helpful for the relevant information to include the observations from the governors of the last two prisons in which the offender had served his sentence. The information should not merely be directed to the governor's overall view of the offender's progress, but should also provide assistance on how that progress should be assessed by comparison with other similar prisoners. Furthermore, the court should be provided with a satisfactory risk assessment.

(4) The 22-year minimum term was amply justified in R's case. In C's case, the two-year reduction for his exceptional progress in prison should have been applied to the 14-year fixed minimum term. Accordingly, R's application was refused and C's appeal was allowed.

JUDGMENT ACCORDINGLY

District Judge's Decision to Exclude Evidence of an Accused Person's Previous Bad Character

DIRECTOR OF PUBLIC PROSECUTIONS V CHAND (2007)

DC (Scott Baker LJ, David Clarke J) 17/1/2007

CRIMINAL EVIDENCE - CRIMINAL PROCEDURE

Admissibility: Bad Character: Previous Convictions: Propensity: Admissibility Of Bad Character Evidence: S.101(1)(D) Criminal Justice Act 2003

A district judge's decision to exclude evidence of an accused person's previous bad character was neither perverse nor one that no reasonable tribunal could have come to.

The appellant DPP appealed by way of case stated against the decision of a magistrates' court to acquit the respondent (C) of theft. Information had been preferred by the DPP against C that he had stolen a charity box. The theft was recorded by CCTV and a police constable purported to recognise C from the CCTV footage. An interim hearing was held before a district judge to deal with an application by the DPP to adduce evidence of C's bad character pursuant to the Criminal Justice Act 2003 s.101(1)(d). The DPP sought to adduce evidence of C's previous convictions under the 2003 Act. C opposed admission of the convictions on the ground that they did not reveal a propensity to commit offences of the type alleged, namely, a "walk-in theft". The district judge held that the convictions revealed a significant history of dishonesty and established a propensity to commit offences of the kind charged. However, the district judge further held that, having regard to R v Hanson (Nicky) (2005) EWCA Crim 824, (2005) 1 WLR 3169, the previous convictions were dissimilar to the offence with which C had been charged and there was a real possibility that the evidence of bad character was being used to bolster a weak case. The district judge concluded that the admission of the bad character evidence would have such an adverse effect on the fairness of the proceedings that it had to be excluded. Thereafter, the magistrates' court found that the CCTV evidence against C was insufficiently clear to enable C to be identified, and acquitted C. The question posed for the opinion of the High Court was whether the decision of the district judge in excluding the bad character evidence was perverse such that the magistrates' court should have had available to it the evidence relating to the previous bad character of C. The DPP contended that the district judge had erred and misapplied Hanson.

HELD

The district judge's decision was not perverse and was not one that no reasonable tribunal could have reached. If a judge had directed himself correctly a court would be very slow to interfere with a ruling as to admissibility of bad character evidence. In the instant case the judge was correct to exclude the evidence, and the magistrates' court was not entitled to have had the evidence of C's previous bad character before it, Hanson applied.

APPEAL DISMISSED

Application of Dangerous Offender Provisions in the Criminal Justice Act 2003 Where Offences Straddle the Commencement Date

R v MICHAEL HARRIES: R v F: R v S: R v TS: R v B (2007)

CA (Crim Div) (Sir Igor Judge (President QB), Field J, Treacy J) 7/6/2007

SENTENCING - CRIMINAL LAW

Arranging Child Sex Offences: Causing Children To Engage In Sexual Activity: Child Pornography Offences: Child Sex Offences: Dangerous Offenders: Dangerousness: Engaging In Sexual Activity In Presence Of Children: Extended Sentences: Imprisonment For Public Protection: Mandatory Requirements: Maximum Sentences: Sentencing Powers: Offences Straddling Commencement Dates: Indeterminate Sentences: Commencement: Drafting Of Indictments: Criminal Justice Act 2003: S.229 Criminal Justice Act 2003: S.224 Criminal Justice Act 2003: S.234 Criminal Justice Act 2003: Art.7 European Convention On Human Rights

The court considered the dangerous offender provisions contained in the Criminal Justice Act 2003 in relation to offences that straddled the commencement date. Where offences were committed after the commencement date, the provisions should be applied and any other offences, including those committed prior to the commencement date, could be considered by the sentencing judge in making an assessment of dangerousness under s.229 of the 2003 Act.

The court heard five applications against sentences imposed under the dangerous offender provisions contained in the Criminal Justice Act 2003. Each of the applicants had pleaded guilty on independent indictments to various child sex offences, ranging from engaging in sexual activity with child

family members to the distribution of indecent photographs of children. In each case, the offences straddled the coming into force of the dangerous offender provisions contained in the 2003 Act. The court listed the applications together to consider how the Act should be applied in such cases.

HELD

(1) Although unconnected, the applications raised an important common feature regarding the mandatory dangerous offender provisions contained within the 2003 Act. The provisions did not apply to offences committed prior to the commencement date of April 4, 2005, but did apply to those offences committed after that date. A common problem arose where the offending straddled the commencement date. The starting point for such cases was the well established principle that a defendant should not be adversely affected in relation to the powers of sentencing by a change in the law that had occurred during the currency of the offending, R v Hobbs (Stephen Paul) (2002) EWCA Crim 387, (2002) 2 Cr App R 22 and R v Reynolds (Michael Edwin) (2007) EWCA Crim 538, Times, March 21, 2007 considered. However, where the offence in question was committed after the date the law changed, the new maximum applied to that offence. The question for the court in the instant cases, was whether or not any feature of the 2003 Act or subordinate legislation could lead the court to disapply those broad principles. The court's attention had been drawn to the wording of ss.224-228 and s.234 of the Act. Section 234 of the Act detailed the determination of the day an offence was committed but was in fact a provision that addressed s.229, concerning the assessment of dangerousness, and the way in which the court should approach that decision. Section 234 was not directed at ss.224-228 which were concerned with the offences that created the sentencing powers. It would be inappropriate to treat the text of the statute as a mistake created by an over-pressed draftsman. If s.234 were to be treated as creating a power to pass a sentence of greater severity than was available at the time of the offence, there would be significant problems with retrospectivity and the European Convention on Human Rights 1950 Art.7, R v Howe (Paul Alfred) (2006) EWCA Crim 3147, (2007) 2 Cr App R (S) 11 considered. The courts could not construe the words of a statute that had created the power to impose indeterminate sentences in any manner other than strictly and the opinion expressed in Howe should be adhered to. There were three examples where a straddling of the commencement date might apply; (a) where it was unclear from the evidence on what date a specific offence took place; (b) where a continuing offence was committed but it was not possible to state accurately when that offending began and ended; (c) when a continuing offence had been committed and

it was possible to state when it started and finished. The list was non-exhaustive but that analysis demonstrated the wide ranging problems that might occur. Where a count on an indictment spanned the April 4, 2005 commencement date, sentencing courts should not impose a sentence under the 2003 Act unless satisfied that one of the offences was committed after the commencement date. However, where an offence was not subject to the dangerous offender provisions, the sentencing court could consider that offence in relation to the assessment of dangerousness for offences that were subject to the provisions. Those offences did not cease to be relevant because the provisions did not apply to them. Therefore, care should be taken when drafting an indictment since to reflect the significance of the commencement date.

(2) Harries' appeal allowed; F's appeal allowed; S, B and TS' applications refused.

JUDGMENT ACCORDINGLY

Mass Cycle Rides Following Different Routes do not Constitute Processions

COMMISSIONER OF POLICE FOR THE METROPOLIS v DESMOND WOOLF KAY (2007)

CA (Civ Div) (Sir Mark Potter (President Fam), Wall LJ, Leveson LJ) 21/5/2007

HUMAN RIGHTS – POLICE – ROAD TRAFFIC

Bicycles: Police: Processions: Public Order: Notice Of Public Procession To Be Given To Police: Exclusion For Processions Commonly Or Customarily Held: Critical Mass Cycle Rides: S.11 Public Order Act 1986: S.11(2) Public Order Act 1986

Monthly mass cycle rides, starting from the same meeting point at the same time each month but following a different route on each occasion, did not constitute processions that were commonly or customarily held for the purposes of the Public Order Act 1986 s.11.

The appellant commissioner appealed against a decision ((2006) EWHC 1536, (2006) RTR 39) that monthly mass cycle rides, starting from the same meeting point at the same time each month but following a different route on each occasion, constituted processions that were commonly or customarily held for the purposes of the Public Order Act 1986 s.11. For a number of years cyclists had gathered at a set time in the early evening on the last Friday of each month for a mass ride through the streets of London. The events were known as "Critical Mass". The route of each ride was not fixed. The police took the view that the cycle rides were processions of which notice had to be given under the Public Order Act 1986 s.11. The respondent contended, and the Divisional Court accepted, that the rides came within the exemption in s.11(2) for processions commonly or customarily held in the relevant police area. The commissioner argued that the rides could not be said to be commonly or customarily held because each ride that had taken place had followed a different route.

HELD

(Wall LJ dissenting) The route was relevant to the question as to whether a procession was commonly or customarily held. The direction in which a procession moved and its destination were material, if not integral, to the issue of repetition, which was at the heart of what was commonplace and customary. The event that fell to be considered was the procession of cyclists on any given ride after they had moved off from the starting point, assuming the necessary collective intention to bring s.11 into play. That collective

intention was not definitive of the question as to whether a particular procession was one commonly or customarily held in the police area. For that purpose it was necessary to have regard to its nature and quality as a procession, including the route that it followed. Section 11(2) was directed to processions, the identity, nature and route of which were of sufficient consistency and longstanding to enable the police readily to anticipate the nature and extent of regulation that might be required along the route of the procession. The monthly rides of Critical Mass could not be so described, given the entirely random nature of the route followed.

APPEAL ALLOWED

Causing a Person to Move from Place to Place, Unaccompanied by the Defendant, does not Constitute Kidnap

R v ROBERT D HENDY-FREEGARD (2007)

CA (Crim Div) (Lord Phillips LCJ, Burton J, Stanley Burnton J) 23/5/2007

CRIMINAL LAW - FRAUD - SENTENCING

Dishonesty: False Imprisonment: Fraud: Jury Directions: Kidnapping: Sentence Length: Taking And Carrying Away: Fraudulently Causing Persons To Travel Around Unaccompanied By Defendant: Absence Of Deprivation Of Liberty: Safety Of Conviction

Causing a person to move from place to place, unaccompanied by a defendant, could not of itself constitute either taking and carrying away or deprivation of liberty, which were necessary elements of the offence of kidnapping.

The appellant (H) appealed against his conviction for kidnapping, and also against a sentence of nine years' imprisonment for offences of dishonesty. H had been a confidence trickster whose pretence that he was an undercover agent working for M15 or Scotland Yard had enabled him to influence his victims and take control of their lives, directing them on what to do and where to live, and fleecing them and their parents of large sums of money. In 1992, H had falsely told the first victim (J) that he was a secret agent investigating an IRA cell and that, consequently, the lives of those associated with him, namely J, the second victim (S) and another woman (M), were in danger, and that it was necessary for them to leave their homes. H told J not to disclose those matters, but to tell S and M that J was terminally ill, and to persuade them to go on a farewell tour of the country. On that basis, J and S left, although not initially accompanied by H as he had fallen ill. H and M subsequently joined J and S. J remained under H's influence and acted in accordance with his directions until 1997. S remained under H's influence until his arrest by the police in 2003. H was charged with kidnapping and offences of dishonesty. The Crown's case was that the kidnapping of J and S occurred as incidents of the journey made around the country, which they had been induced to make as a result of H's false story. At trial, H submitted that there was no case to answer in respect of the kidnapping counts where J and S had not been deprived of their liberty. The judge rejected that submission and in due course directed the jury that causing a person, by a fraudulent misrepresentation, to move from one place to another, albeit unaccompanied by the defendant in the given case, was enough in itself to constitute the "taking and carrying away" that was a necessary element in the offence of

kidnapping. H was convicted of kidnapping J and S, and sentenced to life imprisonment in respect of each count. H was also convicted of ten counts of theft, five counts of obtaining a money transfer by deception and three counts of procuring the execution of a valuable security by deception, for which he was sentenced cumulatively to nine years' imprisonment. H contended that

(1) the judge had wrongly directed the jury as to the necessary elements of the offence of kidnapping in that taking and carrying away had to involve deprivation of liberty and the offence of false imprisonment, and that consequently his conviction for kidnapping was unsafe;

(2) his total sentence for the dishonesty offences had been manifestly excessive.

HELD

1) The four ingredients of the crime of kidnapping were (a) the taking or carrying away of one person by another; (b) by force or fraud; (c) without the consent of the person so taken or carried away; and (d) without lawful excuse, R v D (Ian Malcolm) (1984) AC 778 applied. Causing a person to move from place to place, unaccompanied by a defendant, could not of itself constitute either taking and carrying away or deprivation of liberty, R v Wellard (1978) 67 Cr App R 364, R v Cort (Peter Laurence) (2003) EWCA Crim 2149, (2004) QB 388 considered. The judge had, therefore, given an incorrect direction on the law, and it was possible that the jury had convicted H of having kidnapped J and S by fraudulently inducing them to make a journey that had not deprived them of their liberty. In those circumstances, the convictions for kidnapping could not stand. H's appeal in that regard would be allowed and those convictions would be quashed.

(2) The circumstances in which the offences of dishonesty had occurred in the instant case very substantially aggravated their seriousness. They represented a very lengthy course of conduct under which H had used his malign influence on the various victims. The totality of the sentences imposed was not excessive, let alone manifestly excessive, and H's appeal against sentence would be dismissed.

APPEALS ALLOWED IN PART

Reasonable Adjustment Duty does not require an employer to continue to pay full pay to employees absent through disability related illness after they have exhausted their entitlement under employer's sick pay rules

KATHLEEN O'HANLON v REVENUE & CUSTOMS COMMISSIONERS (2007)

CA (Civ Div) (Ward LJ, Sedley LJ, Hooper LJ) 30/3/2007

EMPLOYMENT - DISCRIMINATION

Disability Discrimination: Employees' Rights: Justification: Reasonable Adjustments: Sick Pay: Fairness Of Sick Pay Policy: Disability Discrimination Act 1995

An employee could not argue that her employer's sick pay rules had been applied to her in a discriminatory manner where she had not provided any particular reason in the employment tribunal and the Employment Appeal Tribunal as to why the application of those rules discriminated against her personally as opposed to all disabled employees.

The appellant employee (H) appealed against the dismissal of her disability discrimination claim ((2006) ICR 1579) against the respondent employer (R). H was disabled within the meaning of the Disability Discrimination Act 1995. R's sick pay policy provided that an employee who was absent on sick leave would receive full pay for six months and half pay for the next six months. The rule was subject to an overriding maximum of 12 months' paid sick leave in any period of four years, thereafter an employee would receive the pension rate of pay. H had had long periods of absence from work, mostly related to her disability. H had requested that her absences due to disability not be included in her overall sickness absence when calculating sick pay. R refused on the basis that it was fundamentally at odds with its sick pay policy. H argued at the employment tribunal that the operation of R's sick pay scheme was unlawful in relation to those absent from work on the grounds of disability. H's claim was dismissed by the tribunal and that decision was upheld on appeal. H submitted that R's rules were applied to her in a discriminatory manner. H argued that

(1) R should have made a reasonable adjustment for H so that she received full pay whilst absent from work for reasons of disability after the expiry of the six-month period; and

(2) In H's case, periods of absence from work because of disability should not be aggregated with periods of absence from work because of non-disability sickness.

HELD

(1) H had rightly abandoned her claim that the operation of R's sick pay scheme was unjust to the disabled. R's sick pay rules provided for the generous, fair and flexible treatment of those suffering from a disability. H's only argument before the tribunal and the appeal tribunal for not applying R's sick pay rules to H had been that she would suffer financial hardship. H's skeleton argument for the tribunal did not set out any particular reason why the application of R's rules discriminated against H personally as opposed to all disabled employees. It would therefore be unjust and unrealistic to say that R should now be found to have failed to establish justification because they did not have regard to other unstated factors relating to H. Accordingly H's argument that she was entitled to full pay whilst absent for reasons of disability after the expiry of the six-month period failed.

(2) H's argument that periods of absence from work because of disability should not be aggregated with periods of absence from work because of non-disability sickness failed for the same reason. H had not attacked R's policy but had argued that there were special circumstances in her case that required R not to aggregate. However, there were no such special circumstances. The only circumstance relied on by H was financial hardship but it had not been alleged that she was in any essentially different position to others who were absent because of disability related sickness.

APPEAL DISMISSED

Police Officer's wrongful threat of prosecution for failure to provide a blood sample did not render evidence of blood alcohol levels inadmissible

R (on the application of RAINSBURY) v DPP (2007)

QBD (Admin) (Irwin J) 26/4/2007

ROAD TRAFFIC - CRIMINAL EVIDENCE – ROAD TRAFFIC

Admissibility: Alcohol Testing: Blood Samples: Consent: Continuity: Driving While Over The Limit: Expert Evidence: Refusal To Allow Nurse To Take Sample: Wrongful Threat Of Prosecution For Failure To Provide Sample: Effect Of Threat On Admissibility Of Blood Alcohol Level Evidence Then Obtained: Driving With Excess Alcohol

Where a man accused of driving with excess alcohol had consented to give a blood sample for analysis subject to a condition that the sample could only be taken by a doctor and not a nurse, the fact that a police officer made a wrongful threat of prosecution for failure to provide a blood sample, which had led to the accused conceding that condition, had not invalidated the blood option procedure nor rendered the resulting evidence of blood alcohol levels inadmissible.

The appellant (R) appealed by way of case stated against his conviction for driving with excess alcohol in his blood. Following a roadside breath test and a further breath test conducted at a police station which had both proved positive for excess alcohol levels, R was given the option to provide either a blood or a urine sample for analysis. R had elected to provide a blood sample, but initially refused to allow it to be taken by a nurse, insisting that it should be taken by a doctor. Upon receiving a warning from a police officer that that refusal could lead to prosecution for failure to provide a blood sample, R relented and allowed a nurse to take it. The nurse gave evidence that the sample was placed into two vials, which he shook twice, initially for up to 15 seconds, satisfying himself that there were no white preservative crystal deposits remaining in the vials. A police officer had placed the vials in a bag, which was marked with a serial number, the officer's name and R's name, and the sample was sent off for analysis by a toxicologist. During the trial it had emerged that the penultimate digit of the serial number alleged to have been marked on the sample bag had differed from that in the serial number of the analysed sample. Furthermore, an expert witness at the trial had been of the opinion that the sample had become contaminated and was unreliable. That was because, firstly, that there had been a lack of compliance with a protocol which prescribed a minimum shaking time for the vials of 30 seconds, though the expert had conceded that he was not aware of any authority which

stipulated that required time. Secondly, the circumstances in which the sample had been taken had been unhygienic, and the analysis of the blood sample had not revealed any decrease in alcohol levels when compared against the breath sample, which had been taken over an hour earlier, whereas a fall of some 10 to 15 per cent would have been expected. The District Judge had proceeded to find R guilty. The questions for the High Court were whether (i) on the facts as found by the District Judge, the wrongful threat of prosecution for refusal to give a blood sample had invalidated the blood option procedure and rendered inadmissible the evidence of the level of alcohol in R's blood; (ii) on the facts found, the District Judge had been correct in law in forming the opinion that the blood sample taken by the nurse was capable of being relied on as evidence of the level of alcohol in R's blood; (iii) whether leave should be granted for R to challenge the continuity of the blood sample as tested by the toxicologist.

HELD

(1) The District Judge had approached the analysis of the evidence correctly. R had given his consent for the blood sample to be taken prior to the threat of prosecution. That threat had not affected R's consent, which remained throughout. Nor was there such a technical problem with the way the procedure was followed so as to render the blood sample inadmissible. Therefore the facts did not mean that the procedure adopted had invalidated the blood option procedure nor rendered inadmissible the evidence of the level of alcohol in R's blood, Howard v Hallett (1984) RTR 353, Wakeley v Hyams (1987) RTR 49, DPP v Winstanley (1994) 158 JP 1062 considered and Jones (David Allan) v DPP (1990) 154 JP 1013 applied.

(2) The judge had been correct in law in concluding that reliance could be placed on the blood sample as evidence of R's blood alcohol levels. As regards the adequacy of the shaking of the vials, all that the expert witness had set up was a standard for adequate mixing. By relying on the absence of any authoritative stipulation that 30 seconds was the required shaking time, and on the nurse's evidence as to the absence of crystals, the District Judge had been entitled to take the evidence as meaning that there had been adequate mixing, contrary to the opinion of the expert witness, Gregory v DPP (2002) EWHC 385, (2002) 166 JP 400 applied. In any event, had the breath sample levels been admitted in evidence to show the discrepancy in the blood levels as found, it would have been open to the Crown to argue that it could be inferred from the breath samples that the blood alcohol levels would still have been shown to be above the legal limit, because a fall of 10 to 15 per cent would still have left them above that level, Yhnell v DPP (1989) RTR 250 considered.

(3) Leave to challenge the continuity of the blood sample was declined. The analysed sample had been marked with the names of both R and the police officer. It had been perfectly proper for the learned district judge to dismiss the single digit difference as a mere typographical error, and to rely on the continuity of that blood sample as taken and analysed as having been properly established in the instant case.

APPEAL DISMISSED

SI 1508/2007 The Goods Infringing the Olympics and Paralympics Association Rights (Customs) Regulations 2007

In force **13 June**. These Regulations prescribe the forms of the notices to be given under Section 12A of the Olympic Symbol etc. (Protection) Act 1995 (detention by Revenue and Customs).

Regulation 2 and Schedules 1 and 2 prescribe the forms of the notices to be given to the Commissioners for HM Revenue and Customs, by the proprietor of the Olympics association right and the Paralympics association right, under Sections 12A(1) and 12A(8)(a) of the 1995 Act.

The giving of such notice allows the Commissioners to detain or continue to detain certain goods that have been or are expected to be imported and that infringe the proprietor's intellectual property rights in relation to the symbols.

Regulation 3 requires a person giving such notice to indemnify the Commissioners.

SI 1509/2007 The Control of Cash (Penalties) Regulations 2007

In force **15 June**. These Regulations are made under Section 2(2) of the European Communities Act 1972, to give effect to Community Regulation 1889/2005. This introduces a harmonised control and information procedure for large-scale movements of cash in or out of the Community and empowers the national authorities to take appropriate administrative actions, including an obligation to impose penalties. This was previously mentioned in the June 2007 edition of the *Digest*.

These Regulations provide for penalties for failing to declare movements of cash, as required under Article 3 of the Community Regulation, and an appeal mechanism.

Cash is defined in the Community Regulation as including not only currency (banknotes and coins that are in circulation as a medium of exchange), but also:

- Bearer-negotiable instruments, including monetary instruments in bearer form, such as travellers cheques.
- Negotiable instruments (including cheques, promissory notes and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery.
- Incomplete instruments (including cheques, promissory notes and money orders) that are signed, but with the payee's name omitted.

Regulation 3 gives effect to the obligation to create a system of penalties. A person failing to comply with Article 3 of the Community Regulation (obligation to declare cash of a value of 10,000 Euros or more) can be charged a penalty of such amount as is considered appropriate, but not exceeding £5000.

Regulation 4 enables a person subject to a penalty to require a review of the decision to impose that penalty.

Regulations 5, 6 and 7 create a right of appeal from the review decision to a tribunal, the powers of the tribunal in respect of the appeal, and a requirement that, save in the case of hardship, the penalty be paid as a condition of appealing. Article 4 of the Community Regulation creates a power to detain cash where there has been a breach of Article 3, and Regulation 8 enables the Commissioners to retain the amount of a proposed penalty from any money detained until determination of an appeal.

SI 1524/2007 The Street Litter Control Notices (England) (Amendment) Order 2007

In force **1 July**. This Order amends the Street Litter Control Notices Order 1991 (S.I. 1991/1324). Article 2 of that Order prescribes the descriptions of commercial or retail premises in respect of which a street litter control notice may be issued. Paragraph (b) of that article is replaced such that premises used wholly or partly for the sale of food or drink for consumption on the premises are prescribed.

SI 1527/2007 The Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) (Amendment) Order 2007

This Order amends the Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) Order 2006 (S.I. 2006/3272).

It provides for Article 2(3) of, and Schedule 3 to, the 2006 Order to be omitted. Article 2(3) and Schedule 3 bring into force on **1 June** the provisions of the Gambling Act 2005 relating to applications for premises licences and provisional statements, as they apply to the new categories of casino established by the 2005 Act. Article 2(3) and Schedule 3 also bring into force on that date other provisions which specifically relate to the new categories of casino established by the 2005 Act. The effect of omitting Article 2(3) and Schedule 3 is that the relevant provisions come into force instead on **1 September** in accordance with Article 2(4) of the 2006 Order.

This Order also amends Article 2(4) of the 2006 Order so that Section 89(2) and (3) and Section 245 of the 2005 Act are specified as provisions which do not come into force on **1 September**.

SI 1550/2007 The Electronic Commerce Directive (Terrorism Act 2006) Regulations 2007

In force **21 June**. These Regulations give effect to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) in relation to matters within the scope of Sections 1 to 4 of the Terrorism Act 2006.

The Directive (which has been incorporated into the EEA agreement) seeks to contribute to the proper functioning of the internal market by ensuring the free movement of information society services (ISS) between EEA states. Article 3 provides for the regulation of ISS on a 'country of origin' basis and Articles 12 to 14 require EEA states to limit, in specified circumstances, the liability of intermediary ISS providers when they provide mere conduit, caching or hosting services.

- Regulations 3 and 4 ensure that Sections 1 to 4 of the Terrorism Act apply on a country of origin basis. Section 1 of the Terrorism Act creates an offence of publishing a statement that is likely to be understood as encouraging terrorism and Section 2 creates an offence relating to the dissemination of terrorist publications. Sections 3 and 4 make specific provision for the application of Sections 1 and 2 to internet activity. In particular, Section 3 provides for the issue by a constable of a notice requiring the removal or amendment of a statement, article or record that, in the opinion of the constable issuing the notice, is unlawfully terrorism-related.

- Regulation 3 extends the application of the offences in Sections 1 and 2 of the Terrorism Act so that these offences apply to UK-established ISS providers where they provide ISS in EEA states other than the UK. This means that Sections 3 and 4 of the Terrorism Act also apply in such a case. Regulation 3 does not apply where Section 17 of the Terrorism Act (commission of offences abroad) already applies.

- Regulation 4 means that service providers who are established in an EEA state other than the UK can only be prosecuted for an offence under Section 1 or 2 of the Terrorism Act, or given a notice under Section 3, where the conditions laid down in Article 3(4) of the Directive are satisfied.

- Regulations 5 to 7 create exceptions from liability for the offences under Sections 1 and 2 of the Terrorism Act for intermediary ISS providers, when they provide mere conduit, caching or hosting services in the circumstances specified by Articles 12 to 14 of the Directive.

SI 1555/2007 The Disability Discrimination Act 2005 (Commencement No 3) Order 2007

Article 2 of this Order commences, on **11 June**, Sections 31AA, 31AD and 31AE of the Disability Discrimination Act 1995 (inserted by Section 15 of the Disability Discrimination Act 2005), for the purpose only of exercising any power to make regulations:

- Section 31AA (General qualifications bodies: discrimination and harassment).
- Section 31AD (General qualifications bodies: duty to make adjustments).
- Section 31AE (Chapter 2A: claims, leased premises and certain agreements).

It also commences Section 31AF (Chapter 2A: duty to consult before making regulations) on that date for all purposes.

Article 3 commences the following provisions on **1 September**:

- Chapter 2A of Part 4 of the 1995 Act (general qualifications bodies) (inserted by Section 15 of the 2005 Act), so far as it is not already in force.
- Paragraphs 25, 37(3), (4)(b) and 5(b) and 50(4)(a) and (5) of Schedule 1 to the Act.

SI 1587/2007 The Safety of Sports Grounds (Designation) Order 2007

In force **6 July**. This Order designates the following grounds as sports grounds requiring safety certificates under the Safety of Sports Grounds Act 1975:

- The New Stadium in Shrewsbury, occupied by Shrewsbury Town Football Club.
- Victoria Road Stadium in Dagenham, occupied by Dagenham and Redbridge Football Club.
- Stadium MK, occupied by Milton Keynes Dons Football Club.

SI 1602/2007 The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (Commencement No 7 and Transitional Provisions) Order 2007

In force **14 June**. This Order brings into force the following provisions of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004:

- Section 12 (Refugee back-dating of benefits).
- Section 47 (repeals) and Schedule 4 (repeals) to the extent that the provisions relate to: Section 123 of the Immigration and Asylum Act 1999, paragraph 42 in Schedule 2 of the State Pension Credit Act 2002, paragraph 22 in Schedule 4 of the Tax Credits Act 2002, paragraph 31 in Schedule 2 of the State Pension Credit Act (Northern Ireland) 2002, and Section 52 of the Nationality, Immigration and Asylum Act 2002.

However, the commencement of these provisions will not apply to a person who is notified on or before 14 June 2007 that he has been recognised as a refugee and granted asylum in the United Kingdom.

SI 1614/2007 The Police and Justice Act 2006 (Commencement No 3) Order 2007

This Order brings into force the following provisions of the Police and Justice Act 2006:

In force **29 June**

- Section 2 (amendments to the 1996 Act) in so far as it relates to the entries in paragraphs 7(1) and (2) (functions of police authorities) of Schedule 2. Police authorities will have a new statutory function to 'hold the chief officer of police of that force to account for the exercise of his functions and those of persons under his direction and control'. They will also be required to have regard to policing plans under new s.6ZB of the Act and the strategic priorities determined by the Secretary of State under s.37A.
- Section 3 (delegation of police authority functions). This section confers additional flexibility on police authorities to delegate their functions, in particular, by providing for a power to delegate to an area committee or to an individual member of the authority. It also enables such area committees to include people other than members of the police authority on them. It allows the Secretary of State to impose limitations on the kinds of functions that police authorities can delegate by area, on the make-up of area committees, and in respect of the officers and members of authorities to whom delegation can be made.

- Section 13 (supply of information to police etc by Registrar General). This provides a power for the Registrars General of England and Wales and of Northern Ireland to supply bulk information contained in any register of deaths to a police force in the United Kingdom; a special police force; the Serious Organised Crime Agency; or a person or body specified, or of a description specified by order in a timely manner for use in the prevention, detection, investigation or prosecution of offences. The supply of information may be subject to conditions imposed by the Registrars General and to the levy of a reasonable fee.

- Section 18 (arrest for failing to comply with conditional caution) - If a constable has reasonable grounds for believing that the offender has failed, without reasonable excuse, to comply with any of the conditions attached to the conditional caution, he may arrest him without warrant.

- Sections 23 to 25 (parenting contracts and parenting orders). These sections enable a local authority or a registered social landlord (RSL) to: enter into a parenting contract with a parent in respect of anti-social behaviour by his or her children; apply to a magistrates' court for a parenting order against a parent in respect of anti-social behaviour by his or her children; apply for such an order as an adjunct to certain proceedings in the county court; and make it possible for the Secretary of State to make an order enabling a local authority to contract out to a person specified in the order (subject to the negative resolution procedure) the functions of entering into parenting contracts and applying for parenting orders.

- Section 41 (immigration and asylum enforcement function: complaints and misconduct). This section enables the remit of the IPCC to be expanded to provide oversight of certain personnel in the Immigration and Nationality Directorate (IND) exercising specified enforcement functions.

- Section 52 (amendments and repeals) in so far as it relates to the entries in Schedules 14 (minor and consequential amendments) and 15 (repeals and revocations) in sub-paragraphs (i) and (j).

- Paragraphs 53 to 58 of Schedule 14.

- In Part 2 of Schedule 15 (repeals: powers of the police etc) the entry relating to the Criminal Justice Act 2003.

In force on 1 August

- Section 22 and Schedule 9 (amendments to the Crime and Disorder Act 1998).

- Section 52 (amendments and repeals) in so far as it relates to the entries in Schedule 15 in sub-paragraph (c).
- In Part 3 of Schedule 15 (repeals: crime and anti-social behaviour) the entries relating to; The Crime and Disorder Act 1998; The Police Reform Act 2002 and The Clean Neighbourhoods and Environment Act 2005.

SI 1709/2007 The Secure Training Centre (Amendment) Rules 2007

In force **6 July**. These Rules amend the Secure Training Centre Rules 1998 (S.I. 1998/472) in respect of:

Rule 36

This empowers the officer in charge of a secure training centre to remove a trainee from association (for such period and in accordance with such procedures as specified in the Rule) where that is necessary to prevent the trainee causing significant harm to himself or another person, or causing significant damage to property. The amendment provides that such removal may also be carried out where that is necessary to ensure good order and discipline. It also provides that, in addition to the governor, an arrangement to remove a trainee may be made by an officer authorised by the governor.

Rule 38

This provides for the use of physical restraint in the circumstances provided for in the Rule, and in accordance with the methods authorised by the Secretary of State. The amendment allows for physical restraint to be used in order to ensure good order and discipline in a Secure Training Centre.

SI 1721/2007 The Welfare Reform Act 2007 Commencement (No 1) Order 2007

This Order brings into force Section 31 of the Welfare Reform Act 2007, which relates to loss of housing benefit following eviction for anti-social behaviour etc. Section 31 inserts new sections into the Social Security Contributions and Benefits Act 1992.

Section 31 came into force on **14 June** for the purposes of making regulations. The regulations will prescribe the amount of the reduction of housing benefit and various other matters.

Section 31 comes into force on **1 November** for all other purposes.

SI 1622/2007 The Family Proceedings (Amendment) Rules 2007

In force on **1 July**. See article on Sections 1 and 4 of the Domestic Violence, Crime and Victims Act 2004.

SI 1628/2007 The Family Proceedings Courts (Matrimonial Proceedings etc.) (Amendment) Rules 2007

In force on **1 July**. See article on Sections 1 and 4 of the Domestic Violence, Crime and Victims Act 2004.

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