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# Digest

June 2006

## Legal Validation and Research

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**Legal Validation and Research Department**

**www.centrex.police.uk/digest**

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

This edition contains articles on the recently published Corruption Bill and the draft Coroners Bill as well as details of proposals to introduce changes to provisions contained in the Regulation of Investigatory Powers Act 2000 in relation to the acquisition of communications data by public authorities and its disclosure by communications service providers and the contents of a draft statutory code of practice on investigation of protected electronic data.

Articles on the 7 July Review Committee Report which sets out the recommendations relevant to police forces and the latest Lord Carlile report on the operation of the Terrorism Act 2000 are included this month.

Also featured are summaries of other recently released reports on the subjects of, Domestic violence, Tackling neighbourhood crime and Anti-social behaviour, Neighbourhood policing, Police Professional Standards, Police Complaints, and a Race for Justice Taskforce report.

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




Digest Editorial Team: Telephone: +44 (0)1423 876664

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# Race for Justice Taskforce Report

The Race for Justice Taskforce set up by the Government to look into how the Criminal Justice System deals with racist and religious crime has published a report in which it recommends steps to improve the handling of racist and religious crimes. Therecommendations relate to all areas of the system from the police, the CPS and the courts.

In order to further the consistent and effective investigation, prosecution and monitoring of the treatment of race crimes the report specifically recommends that the police forces across England and Wales should:

- Develop a common reporting method or methodology, or at least a core content for each force's forms that includes use of the same categories and definitions across all forces.
- Develop national on-line reporting forms.
- Evaluate training to ensure it is both effective and, where possible, common to all forces.
- Incorporate the ACPO hate crimes guidance into the NCPE guidance and training material.
- Ensure that the training of police officers in these matters is not confined to the newly recruited and those making up specialised squads dealing with such offences.
- Ensure that training clearly demonstrates both that officers' views, knowledge and experience can influence decisions on whether or not to prosecute alleged race crimes and that officers should be prepared to be involved in discussion or consultation in this regard.
- Ensure that training encompasses not just the investigation of such offences, but the handling of victims once a prosecution has been launched through to its conclusion.
- Seek to involve local communities in such training.
- Link training and monitoring to that of the CPS.
- Establish nationwide key protocols, to be adopted by all forces for the investigation of these offences, whilst at all times ensuring these are sufficiently flexible to allow for the needs and resources of individual Chief Officers.
- Establish effective links with the local media to ensure there is more comprehensive reporting of the high numbers of defendants who are prosecuted for these offences.

In answer to the report the Government has announced that it will be establishing a Delivery Board to drive forward the recommendations made by the Taskforce.

The report can be found in full at
**http://www.cjsonline.gov.uk/the_cjs/whats_new/news-3370.html**





 

# Disability Discrimination Guide

The TUC has published a guide to disability equality, entitled 'Disability and work: a trade union guide to the law and good practice'. The guide includes up-to-date case studies to show how the courts have interpreted the Disability Discrimination Act (DDA), and recommendations of good practice in some of the major areas of working life where disabled people face the worst problems.

It advises employers and union representatives, when implementing anti-discriminatory practices to:

- Establish a policy which aims to prevent discrimination against disabled people and which is communicated to all employees and agents of the employer.
- Provide disability equality training to all employees. In addition, train employees and agents so that they understand the employer's policy on disability, their obligations under the Act and the practice of reasonable adjustments.
- Provide managers with specialist training.
- Inform all employees and agents that conduct which breaches the policy will not be tolerated, and respond quickly and effectively to any such breaches.
- Monitor the implementation and effectiveness of such a policy.
- Address acts of disability discrimination by employees as part of disciplinary rules and procedures.
- Have complaints and grievance procedures which are easy for disabled people to use and which are designed to resolve issues effectively.
- Have clear procedures to prevent and deal with harassment for a reason related to a person's disability.
- Establish a policy in relation to disability-related leave, and monitor the implementation and effectiveness of such a policy.
- Consult with disabled employees about their experiences of working for the organisation.
- Regularly review the effectiveness of reasonable adjustments made for disabled people in accordance with the Act, and act on the findings of those reviews.
- Keep clear records of decisions taken in respect to each of these matters.

It warns employers and union representatives **not** to assume that:

- Because a person does not look disabled, they are not disabled.
- Because they don't know of any disabled people working within an organisation that there are none.
- Most disabled people use wheelchairs.
- People with learning disabilities cannot be valuable employees or that they can only do low status jobs.
- A person with a mental health problem cannot do a demanding job.
- All blind people read Braille or have guide dogs.

- All deaf people use sign language.
- Because a disabled person may have less employment experience (in paid employment) than a non-disabled person, they have less to offer.

A copy of 'Disability and work: a trade union guide to the law and good practice' is available at **http://www.tuc.org.uk/extras/disabilityandwork.pdf**

## Promoting Disability Equality

The TUC has published a revised edition of its 'Advice for Unions on the 2006 Public Sector Disability Equality Duty'. The revised version includes a chapter on procurement, and amends the previous text. The revised document can be found at **http://www.tuc.org.uk/equality/tuc-12006-f0.cfm**

## National Black Police Association International Education and Training Conference

The National Black Police Association, UK, and the National Black Police Association, USA, are jointly hosting an International Education and Training Conference in Manchester from 7-11 August 2006. The conference will feature keynote speeches from politicians, police officers and academics, as well as workshops on issues affecting black communities and black police officers and staff.

Full details of the programme of events can be found at **http://www.nationalbpa.com/index.php?option=com_frontpage&Itemid=1**

## Reforming the Law Applicable to Cohabiting Couples on Separation and Death

The Law Commission has been asked by the Government to examine the options for reforming the law that applies to cohabiting couples on separation and death.

The Law Commission's project is concentrated in particular on the following issues:

- Whether cohabitants should have access to any remedies providing periodical payments, lump sums, or transfers of property from one party to the other when they separate.
- A review of the operation of existing remedies providing capital awards (such as lump sums and property transfers) for the benefit of children under the Children Act 1989.
- Whether, where a cohabitant dies without a will (intestate), the surviving partner should have automatic rights to inherit. The law currently gives surviving spouses an automatic inheritance in such circumstances. Cohabitants can normally only benefit from the estate in such cases if the courts (under the Inheritance (Provision for Family and Dependants) Act 1975) grant them a discretionary award on the basis of their needs.
- A review of the Inheritance (Provision for Family and Dependants) Act 1975 as it applies to cohabitants and their children.





 

- Whether contracts between cohabitants, setting out how they will share their property in the event of the relationship ending, should be legally enforceable and, if so, in what circumstances.

As part of its project the Commission has published a consultation paper, 'Cohabitation: The Financial Consequences of Relationship Breakdown', inviting views on these issues so as to assist it in making recommendations to Parliament for reform.

The consultation period runs until 30 September 2006. The paper can be found in full at **http://www.lawcom.gov.uk/cohabitation.htm**

# Review of Policing and Law Enforcement National Occupational Standards

Skills for Justice is currently recruiting for working groups for a project running from June 2006 until the end of February 2007, to review the existing National Occupational Standards (NOS) units and S/NVQs for Policing and Law Enforcement.

Potential work areas are:

- Investigation (including child abuse investigation).
- Covert Human Intelligence Sources.
- Surveillance.
- Major incident command.
- IPLDP- 22 Units.
- Management, including promotion review units.
- Community safety.

Subject to the findings of the review, the units will be revised and where necessary, if major gaps are identified, new units developed.

There will be approximately 3 rounds of working group meetings for each work area between June and August, to revise any existing NOS and draft any new units required. Outcomes will then be sent for wider consultation in the autumn and the working groups will meet for a final meeting at the end of the year to consider all feedback and comments.

Interested parties should email their details and work area of interest to **malcolm.roberts@skillsforjustice.com**





 

# Consultation on Amendments to Dispute Resolution Procedures - Employment Act 2002

The Department for Trade and Industry has published a consultation document seeking views on minor amendments the Government proposes to make to the Employment Act 2002, concerning the duty on employers and employees to follow the dispute resolution procedures.

The proposed amendments will add three employment rights to Schedules 3, 4 and 5 of the Employment Act 2002, therefore bringing them within the scope of the dispute resolution procedure.

Failure by either an employer or employee to follow the dispute resolution procedures affects the way in which the employment tribunal considers

claims. For a particular employment right to be subject to the procedures, it must be included within Schedules 3, 4 and 5 of the Employment Act 2002.

The three employment rights it is proposed to add are:

- Regulation 45 of the European Public Limited-Liability Company Regulations 2004.
- Regulation 33 of the Information and Consultation of Employees Regulations 2004.
- Regulation 17 and Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006.

The consultation document also presents a draft Order which will effect the change and which, subject to legislative procedure, is expected to bring these amendments into force on 6 April 2007.

It is expected that in late 2006, the way in which the dispute resolution procedures operate are to be the subject of a separate review.

Details of the consultation, for which the closing date for comments is 11 August 2006, can be found at **http://www.dti.gov.uk/consultations/page29153.html**

# More Annual Leave for Low Paid Workers

The Government has issued a consultation, looking at proposals that would ensure that all workers would receive paid leave for bank holidays as well as the statutory four weeks annual leave. The proposals involve phasing in the additional leave, increasing it from 20 days to 24 days from 1 October 2007, with views being sought on the phasing in of the additional four days. This could involve:

- Introducing it in one stage from October 2008.
- Introducing it in one stage from October 2009.
- Introducing it in two phases, increasing to 26 days in October 2008 and 28 days in October 2009.

The consultation closes on 22 September 2006.

The consultation can be viewed at
**http://www.dti.gov.uk/employment/holidays/index.html**

# Draft Coroners Bill

The Coroners Bill was published on 12 June 2006. The proposals outlined in the Bill are the result of the reports of two public enquiries and also a Government position paper.

The Fundamental Review of Death Certification and Investigation and also the Shipman Inquiry, both published in 2003, made valuable suggestions in relation to the reform of the coroner service. The Government position paper proposals also built on these suggestions, in March 2004.

Following the transfer of responsibility for coroners to the Department for Constitutional Affairs (DCA) from Home Office, it was decided that the way forward was by way of a Bill. The Bill is intended to replace the Coroners Act 1988 and has three underlying aims, which are:

- An improved service for bereaved people and also other people who interact with the coroner system.
- National leadership along with improvements to enhance local systems.
- An increase in the effectiveness of coroners' investigations.

Part 1 of the Bill contains measures relating to the appointment of coroners and investigations into deaths. Some of the main points in Part 1 of the Bill include:

- Coroners will continue to be appointed and funded by their local authorities.
- The Lord Chancellor will have power to determine new coroner area boundaries.
- Coroners will become full time (there will probably be 60-65 full-timers as opposed to the current mix of 110 full and part-timers). Some coroners will be working for a cluster of local authorities: in these instances, a lead local authority with responsibility for making appointments will be established with the approval of the Lord Chancellor.
- Local authorities will decide how many part-time assistant coroners are required in their areas to support full-time coroners, and will be responsible for appointing a pool of such coroners.
- Extending the previous requirement to investigate where the death has occurred 'in prison' to cover circumstances where the deceased was 'in prison or otherwise lawfully detained in custody'.
- Removing the need for coroners to investigate certain categories of deaths, such as deaths which occurred over 50 years ago and deaths abroad. There are exemptions to allow for investigations of such deaths in certain cases, including where it would be in the public interest to do so.
- New powers to assist in the transfer of cases between coroners, with a power for the Chief Coroner to intervene to direct that cases be transferred.
- New powers in respect of post-mortem examinations, which allow the coroner to move bodies to any place for a post-mortem rather than, as at present, just within his or her area or a neighbouring area.
- Reducing the numbers of jurors required for a coroner's jury and the circumstances in which a jury is required.

Part 2 of the Bill contains provisions for the role of coroners in treasure cases, which is largely governed by the Treasure Act 1996. Under this part of the Bill, a new treasure coroner will be appointed called the Coroner for Treasure; he/she will be responsible for dealing with treasure across England and Wales.





 

To encourage reporting of treasure finds, the Bill contains provisions to amend the Treasure Act 1996 by extending the reporting responsibility to those who come into possession of treasure and not simply those who discover it.

Part 3 of the Bill contains more detailed provisions about investigations and deaths. It includes:

- Measures to enable coroners to obtain information and evidence relevant to investigations, including provisions for coroners to have increased power to require information to be provided to them and new powers to enter and search premises, and seize property.
- Provisions for the protection of children, including a power to direct that a child gives evidence via live link or unsworn.
- Measures aimed at ensuring early release of bodies, by requiring the consent of the Chief Coroner for retention for a prolonged period. This measure is designed intentionally to prevent abuses by defendants in criminal cases who might insist that the body is retained on the remote possibility that it may be a significant source of evidence.

Part 4 of the Bill contains provisions for governance. The key measures are:

- The appointment of a Chief Coroner.
- The establishment of a national Coronial Advisory Council.
- Appeal rights for interested persons against coroners' decisions.
- Powers for the Chief Coroner and Lord Chancellor in setting and reviewing standards.

Part 5 of the Bill contains supplementary provisions, including the abolition of the office of Coroner of the Queen's Household.

Full details of the Bill can be found via
**http://www.dca.gov.uk/legist/coronersreform.htm**

## Consultation on the Revised Statutory Code for Acquisition and Disclosure of Communications Data

The Home Office has published a consultation paper seeking views on the contents of a revised draft statutory code of practice on the acquisition of communications data by public authorities and its disclosure by communications service providers under Chapter II of Part I of the Regulation of Investigatory Powers Act 2000.

The consultation will close on 30 August 2006, following which it is expected that the revised code will be laid before Parliament for approval later this year.

One of the main objectives in the development of the new code has been to try and reduce unnecessary bureaucracy that was highlighted in a pre-consultation phase. The revised code, if approved by Parliament, will:

- Enable the designated person to authorise the acquisition of subscriber information without needing to know which provider operates the telephone number and how that data is going to be acquired (whether automatically or manually) and without having to refer back to the designated person to resolve these issues.

- Provide that the requirement to acquire communications data may be cancelled without requiring the authorising superintendent to make that decision personally.
- Take dropped emergency service calls outside the scope of RIPA entirely, within an hour of the call being dropped.
- Make clear that where data is required in an emergency, and is authorised under the Act, if evidence of the decision making involved exists in operational logs, then no additional form filling is required (but those logs must be available to inspectors working for the Interception Commissioner to inspect compliance with the law).
- Clarify the arrangements for the investigation of malicious and nuisance calls, so that providers can disclose data to the police without involving the Act, where a complainant reports to the police something already reported to their service provider (some providers and forces were, and still are, imposing the requirements of the Act on it).
- Make clear that an error occurs only when data acquisition or disclosure is initiated, rather than at the point where the designated person makes their decision, and produces (in conjunction with the Interception of Communications Commissioner), a succinct reporting form for errors in place of spurious and random reporting arrangements.

The code also includes guidance as to what should be included within an application, and where matters may be recorded by the applicant, the Single Point of Contact and the designated person.

It encourages the use of a single application, assessment, authorisation and cancellation form, in place of separate forms, and a jointly agreed one-page notice to be served on industry.

As part of this consultation, views are also being sought on additional grounds for obtaining communications data. Section 22(2) of the Regulation of Investigatory Powers Act 2000 sets out the grounds under which the information can be required. These are:

- In the interests of national security.
- For the purpose of preventing or detecting crime or of preventing disorder.
- In the interests of the economic well-being of the United Kingdom.
- In the interests of public safety.
- For the purpose of protecting public health.
- For the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department.
- For the purpose, in an emergency, of preventing death or injury or any damage to a person's physical or mental health, or of mitigating any injury or damage to a person's physical or mental health.
- For any purpose (not falling within the above reasons) which is specified for the purposes of this subsection by an order made by the Secretary of State.

The first of the additional grounds that is proposed is for the purpose of:

- Assisting in identifying any person who has died otherwise than as a result of crime or who is unable to identify himself because of a physical or mental condition, other than one resulting from crime,

or





 

- Obtaining information about the next of kin or other connected persons of such a person or about the reason for his death or condition.

It is intended that this would cover circumstances where the emergency has passed, and the disaster, accident or other event has happened, and a person has already died or been injured (such as the Indian Ocean tsunami, where the obtaining of communications data may have assisted enquiries to identify, trace and account for victims), or a where vulnerable person has been taken into care, but it is necessary and proportionate to acquire communications data to identify the person, or their next of kin or other responsible person.

The other proposed additional purpose for obtaining communications data is where a person is missing or otherwise unaccounted for, and there is a concern for their safety or welfare and the person is not believed to be missing as a result of crime, and where either:

- The person is under the age of 16.
- A request has been made to an emergency service to find the person by a spouse, a partner or close relative or a person who lives in the same premises, or a person responsible for the care and welfare of the missing person.
- The person is believed lost in a natural disaster or accident.

or

- The person is the subject of an international missing persons enquiry made through the International Criminal Police Organisation (Interpol).

Should these proposals be accepted by Parliament, Section 22(2)(h) allows the Secretary of State to introduce new specified purposes by Order.

The consultation document can be found at
**http://www.homeoffice.gov.uk/documents/cons-2006-ripa-part1/**

## Consultation on the Draft Code of Practice for the Investigation of Protected Electronic Information

The Government has published a consultation paper to seek views on the contents of a draft statutory code of practice on investigation of protected electronic data, which relates to the exercise and performance of the powers and duties when Part III of the Regulation of Investigatory Powers Act 2000 (RIPA) is brought into force.

Part III of RIPA contains powers to impose a requirement upon a person to put protected electronic information into an intelligible form or to disclose a key which will enable the data to be put into an intelligible form.

The provisions have not yet been implemented, as the Government has felt there has not been a need to due to the general lack of encryption and other information protection technologies being available. However, over the last couple of years investigators have begun encountering encrypted and protected data with increasing frequency. It is expected that the provisions contained within Part 111 of RIPA (Sections 49 to 56) will be implemented in the near future.

To close a possible loophole, views are also sought in the consultation on whether the penalty of two years imprisonment, in Section 53 of RIPA, for knowingly failing to comply with a requirement to disclose protected electronic information in an intelligible form or to

disclose a key to that information, should be extended in cases related directly or indirectly to offences involving the possession of indecent images or pseudo-indecent images of children. This would cover circumstances where an offender had indecent images or pseudo-indecent images of children encrypted on his/her computer, for which he/she could receive up to ten years imprisonment, and instead readily accepted a sentence of two years imprisonment for failing to disclose protected information or the key to that information.

The consultation period closes on 30 August 2006. The consultation paper can be found at **http://www.homeoffice.gov.uk/documents/cons-2006-ripa-part3/**

## Corruption Bill

The Corruption Bill intends to repeal the Public Bodies Corrupt Practices Act 1889, which deals with misdemeanours and corruption in a public office, and replace the Act and amend other connected Acts with more overreaching powers and offences.

A general corruption offence under Clause 1 of the Bill will be committed if a person gives an advantage to or procures an advantage for any person, or offers or agrees to give an advantage to or to procure an advantage for any person, with the intention of influencing that person or another person to exercise a function improperly or as a reward for exercising a function.

A person will also commit an offence if he obtains an advantage for himself or another, or solicits or agrees to obtain an advantage for himself or another on the basis that it will or may influence him or another to exercise a function improperly or as a reward for exercising a function.

Clause 7 explains that the term 'advantage' will include: any benefit whether direct or indirect; any other act done or omission made at the request of another and whether or not the nature or timing of the advantage is then known or the making of the request is expressed or implied direct or indirect. The term 'agent' is defined as any person employed by or acting for another, and to 'exercise a function' includes exercising or failing to exercise a duty or power irrespective of whether the function is carried out in any part of the United Kingdom (UK) or elsewhere or is or is not within the competence of the person exercising it.

Similar offences, involving agents in corrupt transactions committed by agents and bribing a foreign public official, can be found in Clause 2 and 3 respectively. A foreign public official is defined under the Bill as a person, whether appointed or elected, holding a legislative, executive, administrative or judicial office of a country or territory outside the UK; an official of a public international organisation or a person authorised by such an organisation as its agent; or a person exercising a public function for a country or territory outside the UK, which includes for a public agency or public enterprise.

In relation to proceedings under Clause 1 and 2, it is proved that a person has committed the offences outlined in the Clauses, unless evidence is adduced on the balance of probabilities which casts doubt on the presumed fact (Clause 6).

An offence involving foreign bid-rigging is established under Clause 4, where a person agrees with another to make or implement or cause to be made or implement a bidding-arrangement. Thus, in response to a request for competitive bids for the supply of goods or services, the execution of works, the production of goods or the provisions in investment or finance to or from a country or territory outside the UK, an offence is committed where one or more involved in the arrangement agree not to bid, withdraw their bid or where at least one of the bids is arrived at in accordance with the arrangement. The arrangement is carried out in return, or as a reward for an advantage for himself or another. However, if





 

the person who made the bidding request was made aware of the bid-rigging arrangement before or at the time the bid was made, then this would not be classed as an arrangement.

Under Clause 11 there is a duty to supervise foreign compliance. A holding company or a company which is party directly or indirectly to a relevant contractual arrangement, which is incorporated in the UK, shall take all reasonable steps to secure that any of its subsidiary companies incorporated outside the UK does or omits to do something outside the UK which would be an offence under Clause 1 to 3 if committed in the UK. A failure to supervise foreign compliance is an offence under Clause 12.

A corruption offence committed outside the UK will occur under Clause 13, if a national of the UK, or a body incorporated under the law in any part of the UK, does or omits to do anything in a country or territory outside the UK where the act or omission if committed in England, Wales or Northern Ireland would constitute a corruption offence. A corruption offence is defined as any offence, including any attempt, conspiracy, an incitement to commit an offence, aiding, abetting, counselling or procuring the commission of an offence under Part 1 of this Bill (currently Clauses 1 - 19). A national is a British citizen, a British overseas territories citizen, a British National (Overseas), a British Overseas citizen, a person or British protected person under the British Nationality Act 1981.

The area of corruption in sport is covered by Clause 5. Here, an offence is committed where a person gives, procures or obtains an advantage for himself or any person, or offers or agrees to give or procures or solicits or agrees to obtain an advantage for another person, with the intention of influencing that person or another to: do or not do something which constitutes a threat to the integrity of a sporting event, including the run of play or the outcome of the event, or does not report an act or omission to a person appointed to receive such reports. This would include a governing, international or umbrella body or regulatory authority or a constable. An 'umbrella body' means any body which has authority over all other bodies in relation to a particular sport, group of sports or sporting events, and includes the International Olympic Organisation.

A sporting event is defined as one which includes an event or contest in any sport between individuals, teams or where an animal or bird competes and which:

- Is usually attended by the public, and
- Is governed by rules which include the constitution, rules or code of conduct of:

  Any sporting body which stages any sporting event, or

  Any regulatory body under whose constitution, rules or code of conduct the sporting event is conducted.

Although the Bill outlines that the offence will impact on those events that the public **usually** attends it does not state whether payment to watch the event is required. So it could mean that provided a sporting event held by a school or the local five-a-side football match is governed by rules which include a Code of Conduct then Clause 5 will have an affect on the event - perhaps?

The offences of a duty to report and a failure and interfering with a duty to report public sector corruption is covered by Clauses 8, 9 and 10 respectively. A person exercising a public function and who is offered or receives an advantage as those outlined in Clause 1 or 2, shall disclose as soon as reasonably practicable and in the prescribed manner:

- The existence and nature of the advantage, or the offer of it.

And

- The name, if known, of the person by whom it was given or procured or offered or who agree to give or procure it.





 

Further, a person exercising any public function who knows or reasonably suspects, or ought reasonably to have known or reasonably to have suspected, that any person has committed, is committing or is about to commit an offence under Clause 1 and 2 of the Bill, or the common law offence of bribery, must disclose, as soon as reasonably practicable and in the prescribed manner, that knowledge or suspicion, and the information on which it is based, or cause such knowledge or suspicion to be so disclosed.

A person exercising a public function includes a person in the United Kingdom's Diplomatic Service but excludes foreign public officials. Disclosing in the 'prescribed manner' means reporting to a constable only, or following the procedures in accordance with the employee's public function role and also to a constable. Failure to comply with Clause 8 will be an offence; however, there will be a defence under Clause 9, if the person charged with an offence can prove that he reasonably believed that, had he made the disclosure, physical harm would be done to him or another or to his or their property. A person who intentionally takes any action harmful to any person, including interference with a person's lawful employment or occupation because that person may or has made a disclosure, commits an offence under Clause 10.

The terms 'reasonably practicable', 'reasonably believed', 'physical harm' and 'harmful' have not been defined under this Bill. The Employment Rights Act 1996 will be amended to incorporate this Bill.

The penalties for committing any of the above offences are on conviction on indictment, to a term of imprisonment or a fine or both; on a summary conviction, to a term of imprisonment not exceeding 6 months or a fine or both. The maximum term of imprisonment for offences under this Bill will be as follows:

- 5 years for an offence under Clause 4.
- 2 years for an offence under clauses 9 & 10.
- 7 years in any other case.

Readers can view the Bill and the remainder of the Clauses, which includes the repeals and revocations, at the Parliament website at **http://www.parliament.uk/bills/bills.cfm**

## New EU proposed Regulation on the Identification of Horses

Proposals from the European Commission on the identification of horses have been published as a draft Commission Regulation. The objective of the draft Regulation is to consolidate the various bits of legislation on the identification of equidae into one Regulation, and also to introduce a requirement for foals to be identified by a microchip.

The Regulation is currently due to come into force on 1 January 2007, but the Government is to lobby for this implementation date to be put back by at least another year.

Some of the main proposals contained within the draft Regulation are:

- Foals will need to be identified by a microchip (conforming to the ISO standard 11784 and 11785) before an owner is able to apply for a passport. The requirement for microchips will replace the need for the markings of the horse to be recorded on the silhouette (unless this is a requirement of the organisation where the horse is registered, as a back-up means of identification).
- Passports issued for foals should be done on the basis of one passport per animal, and that passport should remain with that animal for its life.





 

- All passport issuing organisations will be required to ensure that all foals are microchipped and the microchip number is recorded in the passport, and on a database.
- The person who inserts the microchip will be responsible for recording in Section II of the passport where the transponder has been implanted into the equine, and for signing this section of the passport.
- The silhouette will also need to record where there is evidence of the removal of a microchip; and in such cases a replacement passport must be issued and signed as not intended for human consumption.
- Before issuing a new passport, a PIO will need to make reasonable checks to ensure a passport does not already exist for that horse which will probably mean checking the National Equine Database before issuing a new passport.
- Horse passports that are issued after the implementation date will need to be in a slightly different format. Passports issued prior to the implementation date will need to be updated by 31 December 2009.
- Wild or semi-wild animals within a designated area will not to require passports unless they are moved from those areas.
- Exemptions can be issued by the Department for Food and Rural Affairs to any organisation or association allowing them to send foals under 12 months of age direct to slaughter without a passport.
- The Regulation requires the recovery of microchips from all dead horses.

Details of the draft Regulation can be found in full via
**http://www.defra.gov.uk/corporate/consult/horse-passports2006/index.htm**





 

# Report of the 7 July Review Committee

The London Assembly 7 July Review Committee, set up to examine the lessons to be learned from the response to the London bombings on 7 July 2005, and in particular communications issues, has published its first report. This contains a detailed analysis of the response to the bombings, as well as a total of 54 recommendations intended to improve the way such major incidents, and the people caught up in them, are managed.

The Committee found that, following the bombings and generally in major or catastrophic incidents, there is a lack of consideration of the individuals caught up in them, as procedures tend to focus too much on incidents rather than on individuals and on processes rather than people. The report also comments that emergency plans tend to cater for the needs of the emergency and other responding services, rather than explicitly addressing the needs and priorities of the people involved.

The Committee's recommendations, which call for changes to London's emergency plans and protocols, are said in the report to be relevant to any major or catastrophic incident in London or in any other city in the world. The report invites the emergency services and other authorities to draw lessons from its findings and apply its recommendations to their plans.

The report is considered to be a part of an ongoing process: the Committee will be following up progress made on its recommendations (some of which call for reviews and feasibility studies to be carried out over the next six months) and is expected to publish further reports in November 2006 and May 2007.

Some of the recommendations relevant to the police forces in general, and the Metropolitan Police in particular, are:

- That the London Resilience Forum reviews the protocols for declaring a major incident to ensure that, as soon as one of the emergency services declares a major incident, the others also put major incident procedures in place. This could increase the speed with which the emergency services establish what has happened and begin to enact a co-ordinated and effective emergency response.
- That London's emergency plans be revised to include an explicit provision for communication with people affected by a major incident as soon as possible after the arrival of emergency or transport service personnel at the scene.
- That the London Resilience Forum identifies a lead agency for the establishment of survivor reception centres at the sites of major incidents in the initial stages, before handover to local authorities. The Committee believes this task would most appropriately fall to the Metropolitan Police Service, which is already responsible for the collection of personal details of survivors.
- That the Metropolitan Police Service establishes protocols for ensuring that personal details are collected from survivors at the scene of a major incident.
- That future resilience exercises include senior representatives from the media as participants rather than simply as observers.
- That in the event of major incident in London, the Metropolitan Police Service should appoint a senior officer, with appropriate skills. to act as the police spokesperson throughout the day. That person's primary responsibility would be to communicate with the public, via the media to pass on accurate and timely advice and information.
- That the Metropolitan Police Service, in consultation with the London Media Emergency Forum, revises its plans to provide basic advice, as opposed to detailed information, for the public within an hour of a major incident if at all possible.





 

- That the Metropolitan Police Service:

  a. reviews the technical protocols for establishing a Casualty Bureau, to ensure that errors and technical problems do not delay the establishment of a Casualty Bureau in the future.

  b. ensures the use of a free-phone number for any future Casualty Bureau that may be set up.

  c. prepare standard public information about a Casualty Bureau, to include instructions as to its purpose and information about sources of advice and information for people who do not need to report missing persons.

- That the MPS establishes a process whereby advisory messages are explicitly time-limited, and updated on an hourly basis, even if there is no change in the basic advice.
- That the Metropolitan Police Service, in consultation with the London Media Emergency Forum, produces a guidance document on the establishment and running of an effective media centre that meets the needs of the media, building on the lessons to be learnt from their experience on 7 July.
- That the Metropolitan Police Service news statements include key pieces of advice and information relating to broader issues, including advice on the use of mobile phones in the event of network congestion.
- That the Metropolitan Police Service, in consultation with resilience partners, develops a standard list of issues to be covered in early news conferences in the event of a major incident. The Committee requests that the Metropolitan Police Service report back to it in November 2006 to tell it what action has been taken towards this end.
- That the Metropolitan Police Service provides the Committee with an update of the implementation of the new 'Casweb' Casualty Bureau technology, and any other measures that might be identified to manage the initial high volume of calls to a Casualty Bureau, in time for its follow-up review in November 2006.

The report can be found in full at **http://www.london.gov.uk/assembly/index.jsp**

## Bichard Inquiry Recommendations - 3rd Progress Report

The Home Office has published the third progress report on the work being undertaken to implement the 31 recommendations from the Bichard inquiry into the Soham murders.

The report states that 21 of the 31 recommendations have been implemented and that work is underway to implement the remaining 10.

Future dates for completion of strands of the recommendations yet to be completed include:

- June - December 2006. Proof of concept trials for CRISP (Cross Regional Information Sharing Programme) in selected forces.
- July 2006. INI (IMPACT Nominal Index) fully deployed throughout all Child Abuse Investigation Units.
- Autumn 2006. Anticipated date for Police and Justice Bill receiving Royal Assent.

- October 2006. Implementation and rollout of QAF (Quality Assurance Framework) to all forces.
- March 2007. Completion of implementation of first phase of MoPI (Management of Police Information).
- December 2007. Direct reporting of results from magistrates' courts.
- 2008. Direct reporting of results from Crown Courts.
- 2008. Vetting and barring system to be implemented.

The report can be found in full at
**http://www.homeoffice.gov.uk/about-us/news/bichard-third-report**

# Report on the Operation in 2005 of the Terrorism Act 2000

Lord Carlile, who in 2001 was appointed Independent Reviewer of the Terrorism Act 2000, has published his fourth report on the working of the Act as a whole. The report looks at the Act's operation in 2005.

The report has been produced under the statutory requirement in Section 126 of the Terrorism Act 2000 which states that "The Secretary of State shall lay before both Houses of Parliament at least once in every 12 months a report on the working of this Act". The following are some of his main observations:

**Updated version of Act**

Lord Carlile makes a request that an up to date edition of the Terrorism Act 2000 should appear on the Home Office website. In response, the Home Office has stated that the Department for Constitutional Affairs is undertaking work to provide a UK Statute Law Enquiry service for use by the Government service and the public. Government service users will have access to the facility this summer and the public will have access by the end of the year.

**Definition of Terrorism**

The report states that the definition of terrorism has proved practical and effective. It is currently the subject of a special review.

**Proscribed organisations**

The report mentions a general public acceptance of the proscription regime, which is seen as both a proportionate and necessary response to terrorism. The inevitably confidential processes used to determine whether an organisation should be proscribed are described as "generally efficient and fair". The report concludes that intelligence information in this context appears to be cautious and reliable. The Special Advocates system involved in the appeals process against proscription is said to work rigorously in practice and is viewed with interest in other jurisdictions.

**Port and Border security**

The report comments on the number of customs officers, which it describes as being "thinly spread". Lord Carlile is also opposed to the suggested requirement that all intuitive stops at ports must be recorded, which he suggested would cause massive delays. The use of technology is to be encouraged; and attention needs to be given to accommodation to ensure that the working of the Act is not compromised by a lack of decent facilities for law enforcement agencies.





 

**Aircraft**

Lord Carlile also raises concerns over the potential for private jets to be hijacked by terrorists and calls for tighter policing of the executive aircraft industry. He states that the Government and the aviation industry have a responsibility to ensure the effective international policing of such aircraft, although he does acknowledge that the developing high level of contact between local police forces and operators of small airfields is encouraging.

In response, the Home Office has announced that the Department for Transport will decide later this year whether to introduce tighter security regulation for private jets.

**Stop and search**

The report warns that the use of stop and search powers under Section 44 of the Terrorism Act 2000 for reasons other than preventing terrorism could damage community relations and lead to demands for the law to be repealed. Disparity between forces with similar risk profiles regarding the use of Section 44 authorisations also causes concern. Lord Carlile points out that such powers should, and could, be used less. The report emphasises that police officers on the ground must have a fuller understanding of the differences between the various stop and search powers available to them.

A full copy of the report can be found at
**http://security.homeoffice.gov.uk/news-and-publications1/publication-search/independent-reviews/tact-2005-review**

## Guidance for Domestic Homicide Reviews

The Government has issued a consultation document which sets out proposals for the format that domestic homicide reviews under Section 9 of the Domestic Violence, Crime and Victims Act 2004 should follow.

Section 9 of this Act, which is not yet in force, defines a 'domestic homicide review' as:

- A review of the circumstances in which the death of a person aged 16 or over has, or appears to have, resulted from violence, abuse or neglect by either a person to whom he was related or with whom he was or had been in an intimate personal relationship, or a member of the same household as himself, held with a view to identifying the lessons to be learnt from the death.

In practice, learning lessons from a death will include:

- Identifying the lessons to be learnt, in particular about how local professionals and agencies work together to safeguard victims.
- Identifying how those lessons will be acted upon and what is expected to change as a result.
- Improving inter-agency working.
- Improving protection for domestic violence victims.

Deaths of those under 16 years, i.e. child deaths, are already considered under Part 8 of the Serious Case Reviews ('Working Together to Safeguard Children') guidance.

Subsection 9(2) gives the Secretary of State the reserve power to direct a review to be established in a particular case, specifying who must establish and/or participate in such a review.

Under subsection 9(3), relevant authorities have a duty to have regard to guidance issued by the Secretary of State when establishing or conducting such a review.

Subsection 9(4)(a) lists the relevant authorities in England and Wales as:

- Chief officers of police.
- Local authorities.
- Local probation boards.
- Strategic Health Authorities.
- Primary Care Trusts.
- Local Health Boards.
- NHS trusts.

The proposed guidance document covers different aspects of the review methodology, from the initial stages of determining whether a review should take place and the level of involvement from family members, to the production of the final report. Some of the main points include:

- Although there is a presumption that there will be a review in every case, the final decision on whether a review is necessary may need to be determined by the chair of the local review body. If the review body makes a decision not to hold a review, it will need to make a case to the appropriate government department (to be determined), stating the reason why it has reached this decision.
- It may not be necessary for there to have been a criminal conviction or prosecution before a review can take place.
- Where there is a related criminal investigation and prosecution, this will need to be discussed and agreed as early as possible with the relevant criminal justice agencies, to ensure that the review does not prejudice these proceedings.
- Agencies are free to combine overlapping reviews into a single process and final report, depending on the facts of the case. If there are combined reviews, the terms of reference should make it clear that both procedures are fully addressed and specific actions included.
- That a decision on whether to hold a review or not is taken within one month of a case coming to the attention of the potential local review body.
- That the review's final report should be completed within three months of the commencement of the review.

During the passage of the Act through Parliament, it was expected that the costs of the reviews would be absorbed into the daily working routines of the relevant agencies.

The consultation period will end on 13 September 2006. The consultation paper can be found in full at **http://www.crimereduction.gov.uk/domesticviolence62.htm**





 

# National Report for Domestic Violence - Progress Report

The Home Office has published a progress report which provides an update on the comprehensive framework set out in its National Report for Domestic Violence published in March 2005.

The report also includes the re-defined objectives of the plan for 2006/07, these being:

- Increase the early identification of and intervention with victims of domestic violence, by utilising all points of contact with key front line professionals.
- To build capacity within the domestic violence sector to provide effective advice and support to victims of domestic violence.
- The promotion and promulgation of a co-ordinated community response to domestic violence.
- To increase reporting and arrests rates for domestic violence.
- Increase the rate at which sanction detections are converted into offences brought to justice, particularly in high incidence areas and/or communities as well as in areas with high attrition rates.
- To support victims through the CJS and manage perpetrators to reduce risk.
- Develop the evidence base to close key knowledge gaps, particularly around understanding the nature and scope of domestic violence and understanding what works in reducing the prevalence of domestic violence.

Some of the actions planned for the coming year in support of the re-defined objectives include:

- Hosting a series of regional breakfast seminars to promote Primary Care Trust engagement in violent crime reduction generally, and specifically domestic violence.
- Promote collaboration by making clear to partnerships how Multi-agency Public Protection Arrangements, Multi-agency Risk Assessment Conferences, and Local Safeguarding Children Boards can link together.
- Further development of the Corporate Alliance Against Domestic Violence.
- Publishing a summary of the responses to the Forced Marriage Consultation.
- Develop the work streams around occupational standards and the Change Up Programme.
- Greater collaboration between the help lines for all victims of domestic violence.
- Producing guidance for local authorities on homelessness prevention and accommodation options for victims of domestic violence.

In addition, the Association of Chief Police Officers' guidance on investigating domestic violence and the CPS good practice guidance on successfully prosecuting domestic violence cases will continue to be promulgated through the Centrex/CPS training programme which is being rolled out to cover all police forces and CPS areas by 2008.

The report can be found at
**http://www.crimereduction.gov.uk/domesticviolence61.htm**





 

# HOC 15/2006
# Offences Relating To Possession of False Identity Documents

This Circular provides information on several new criminal offences and provisions contained within the Identity Cards Act 2006, which came into force on 7 June (see SI 1439/2006).

These are:

- Section 25 (possession of false identity documents etc.).
- Section 26 (identity documents for the purposes of s.25).
- Section 30 (amendments relating to offences), except for the purposes of the references to Sections 27 and 28 of the Identity Cards Act 2006 in the amendment made by subsection (4) which inserts a new paragraph (q) into Article 26(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 2)).
- Section 40 (orders and regulations).
- Schedule 2 (repeals - including in section 5 of the Forgery and Counterfeiting Act 1981).
- Sections 1(5) to (8) (definition of registrable fact).
- Section 42 (interpretation) so far as necessary for the interpretation of the provisions specified above.

An explanation of Sections 25 and 26 was included in the May edition of the *Digest*.

Section 30 contains a number of consequential amendments relating to the Section 25 offences:

- Subsection (1) extends the usual jurisdiction of the courts in England and Wales for the offences in Section 25.
- Subsection (2) adds the false documents offence (Section 25) to Section 31(3) of the Immigration and Asylum Act 1999, giving a specific defence for refugees with false documents. This is of particular relevance as those who destroy any false documents will commit an offence under Section 2 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.
- Subsection (3) adds the false documents offence (Section 25) to Section 14(2) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. This gives immigration officers power to arrest without warrant for the offence and ancillary powers to search for and seize documents.
- Subsection (4) makes the Section 25(5) offence arrestable in Northern Ireland.
- Subsection (5) extends the usual jurisdiction of the courts in Northern Ireland for the offences in Section 25.

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





 

# Evaluation of Section 41 Youth Justice and Criminal Evidence Act 1999

The Home Office Online Report 20/06 presents the findings of research examining the operation and impact of Section 41 of the Youth Justice and Criminal Evidence Act 1999, which was intended to control the introduction of evidence about a complainant's previous sexual behaviour in sex offence trials.

The research looked at nearly 240 rape cases coming before the Crown Courts in England and Wales in 2003. The researchers' also analysed 170 Crown Prosecution Service (CPS) rape case files, observed over 30 rape trials, examined Home Office statistical data and analysed recent reported Court of Appeal decisions. They also interviewed judges, barristers, CPS lawyers, complainants, police officers and those involved with supporting victims. Some of their main findings are listed below:

- Section 41 applications occurred in just under a third of the sample jury trials. Applications were successful in two out of every three cases.
- The applications procedures laid down in the Crown Court (Amendment) (No.2) Rules 2000 were rarely followed, with almost half the judges interviewed being unaware of their existence.
- Judges and barristers were mainly in favour of legislation to control sexual history evidence, but also thought that there were occasions where sexual history evidence was relevant.
- Section 41 has had no discernible effect on attrition and the conviction rate for rape is continuing to fall.
- Some defence counsel were timing their applications to come just before or during cross examination, creating more pressure on the complainant.
- Judges failed to sanction the defence when they introduced sexual history material without reference to the legislation.

In light of these observations, the authors of the report have made the following recommendations:

- The terms 'sexual behaviour' and 'sexual experience' should be defined.
- The embargo on sexual behaviour evidence should be applied to the prosecution as well, as is the case in some other jurisdictions.
- A new exception to the rule of exclusion should be inserted into Section 41, allowing for evidence of previous or subsequent sexual behaviour with the accused. This exception could have a time limitation.
- There should be a clear statement in the legislation that sexual behaviour evidence is not to be admitted by trial judges other than in the exceptional circumstances set out in the legislation.
- Consideration should be given to amending Section 42(1)(b) which allows the court to give leave for evidence of sexual behaviour to be admitted as evidence that the defendant had a belief in consent. The amendment should reflect Section 1 of the Sexual Offences Act 2003, which requires a defendant's belief in consent to be reasonable. It should also reflect the fact that it is not generally reasonable to formulate a belief in consent on the basis of past sexual history.

- Efforts should be made to ensure that judges and lawyers understand the Crown Court Rules.
- The Explanatory Notes to the Youth Justice and Criminal Evidence Act 1999 should be amended to make it clear that where a complainant has made previous allegations of rape, this should not be an excuse for questioning her about her previous sexual history, simply because the allegations have not been proved in court.
- Steps should be taken to ensure that the Crown Court Rules are observed.
- It should be a requirement that all Section 41 applications are made in writing and are made pre-trial.
- Judges should be required to give their decisions and reasons for them in writing to both sides.
- Consideration should be given to permitting complainants to be present at application hearings.
- There should be a prosecution right of appeal against decisions to permit the introduction of sexual behaviour evidence.
- ACPO should develop training and guidance for police officers on how to deal with sexual history evidence in investigations and when and how to provide information about it to complainants.
- The implementation and impact of Section 41 should continue to be monitored.

The report can be found in full at **http://www.homeoffice.gov.uk/rds/onlinepubs1.html**

## Report on Improving Local Working to Tackle Neighbourhood Crime and Anti-social Behaviour

The Audit Commission has published a report which considers how local agencies responsible for community safety, i.e. the police, local government, the fire authorities and, in England, primary care trusts, or, in Wales, local health boards, can work better together and with local people to make neighbourhoods safer and improve the perception of public safety.

The report contains a number of specific recommendations for local partnerships, local government, central government and regulators.

It states that local partnerships should:

- Analyse and understand specific crime and anti-social behaviour problems in their neighbourhoods, using the principles of the police national intelligence model (NIM) to collect community intelligence, including local information provided by frontline workers.
- Deploy resources cost-effectively, respond quickly to local concerns and inform people when action has been taken.
- Evaluate neighbourhood interventions regularly, assessing cost-effectiveness and value for money through a rigorous performance management framework which focuses on neighbourhood improvement.





 

To contribute to better neighbourhood outcomes, it recommends that councils should:

- Ensure that the data they hold on anti-social behaviour is reliable, up to date, easily accessible to other partners and conforms to the National Standard for Incident Recording (NSIR).
- Make better use of their frontline workers in gathering information and community intelligence, empowering them to take swift action.
- Enable frontline workers to perform an effective two-way communication role between the council and local people, with an emphasis on keeping residents well informed of action taken, and use their enhanced scrutiny powers to support improved performance in CDRPs.

The report can be found in full at
**http://www.audit-commission.gov.uk/reports/NATIONAL-REPORT.asp?CategoryID=ENGLISH^573&ProdID=A51CB5E1-B7F8-46a1-AF8D-12EDFA3DED8F**

## Home Office Findings Report 277 - Under age Drinking

The Home Office has published a report on under age drinking, based on findings from the 2004 Offending, Crime and Justice Survey. Key points from the report show:

- Over half (56%) of all 10 to 17 year-olds reported having had an alcoholic drink in the previous 12 months. This figure was highest among 16 to 17 year-olds (88%) and lowest among 10 to 13 year-olds (29%).
- There was no gender difference in frequency of alcohol consumption among 10 to 17 year-olds. However, among 18 to 25 year-olds, more men (68%) than women (51%) reported drinking alcohol once a week or more.
- One-third of those 10 to 17 year-olds who reported drinking alcohol once a month or more also reported feeling very drunk once a month or more in the previous 12 months.
- For those respondents aged 10 to 17 years who had drunk alcohol in the past year, the majority reported drinking alcopops (59%) and beer (46%).
- 48% of 10 to 17 year-olds who had drunk alcohol in the past year reported that they obtained alcohol from their parents, although those who got very drunk at least once a month generally obtained alcohol from pubs, bars and shops rather than from their parents.
- Around half of 16 to 17 year-olds had tried to buy alcohol from pubs and bars (59%) or shops (47%) in the past 12 months; and most had been successful at least once (98% of those trying pubs and bars and 96% of those trying shops).
- Those who drank alcohol once a week or more committed a disproportionate volume of crime, accounting for 37% of all offences reported by 10 to 17 year-olds but only 14% of respondents. Those who had never drunk alcohol or had not drunk alcohol in the past year committed 16% of all offences but comprised 45% of respondents.
- A higher proportion of those who drank alcohol once a week or more reported committing criminal damage (12%) and theft (4%) offences during or after drinking than those who drank less frequently.

The full report can be found at **http://www.homeoffice.gov.uk/rds/whatsnew1.html**





 

# Home Office Findings Report 278 The Offender Assessment System: an evaluation of the second pilot

The Offender Assessment System is a structured clinical assessment tool whereby offenders are assessed at pre-sentence stage, at the start of most community and custodial sentences and at regular intervals during sentences in order to assess:

- Offending related needs.
- The likelihood of reconviction.
- The risk of serious harm.

The system, which was rolled out nationally from 2001 -2004 is used by adult correction services to aid the effective management of offenders and to help target interventions designed to reduce reconviction.

The Home Office have recently published Research Findings 278 which reports on the risks and needs profiles of offenders, predicts the likelihood of reconviction and suggests actions to be taken. The findings are taken from the second implementation pilot of the system, which was run between November 1999 and April 2000. It shows that:

- Education, training and employability thinking and behaviour were the most frequent needs of offenders. Needs also differed significantly depending on gender and offence type.
- On average offenders had 3.8 different offending needs.
- Risk of serious harm being caused by the offender was assessed as low for 53% of offenders, medium for 36% and high for 11%. The risk was highest for those in prison, those aged over 40, and those convicted of violent, sexual and criminal damage offences.
- OASys scores were found to be a good predictor of reconviction. 26% of those rated as a low likelihood of reconviction were reconvicted within 24 months, compared with 58% rated as medium likelihood and 87% rated as high likelihood.
- Drug misuse and accommodation were the offending-related needs most predictive of reconviction. Alcohol misuse, emotional well-being and thinking and behaviour were the least predictive.
- The piloted identified the need to test consistency between assessors and to monitor the quality of risk of serious harm assessments and sentence plans.

The report can be found in full at **http://www.homeoffice.gov.uk/rds/rfpubs1.html**





 

# Consideration of Introduction of US Style - Megan's Law System

A Government minister, Gerry Sutcliffe, is to travel to the United States to examine the Megan's Law system, which deals with sex offenders. The visit is part of an initiative being considered by Home Secretary John Reid, to see how the law works and whether a British version could be introduced.

Under the US system, introduced in 1997 following the rape and murder of seven year old Megan Kanka, parents must be informed when offenders move to their area after being freed from prison.

All 50 states have introduced the legislation in some form. Fifteen states list offenders' details on the internet, allowing parents to check if anybody has moved in nearby. Other states have introduced measures that range from forcing convicted paedophiles displaying a sign in their window, to police calling at every house in the neighbourhood to warn people when an offender moves in.

# Assets Recovery Agency Annual Report 2005-06 and Business Plan for 2006/07

The Assets Recovery Agency (ARA) has published its Annual Report for 2005/06 and its Business Plan for 2006/07.

The annual report shows that during 2005/06 ARA:

- Froze a total of £85.7million (£49.8m under its civil and tax powers and £35.9m using its criminal powers).
- Gained civil court orders to recover £4.4 million of criminal assets (£0.3 million in NI).
- Realised £4.1 million (£0.8 million in NI) through disposals of houses, financial instruments and luxury items such as jewellery.
- Assisted law enforcement partners in confiscating £7.2 million from convicted criminals.

The amount of monies the agency has managed to recover in 2005/2006, set against the amount the agency costs to actually run, has come under some critical scrutiny by MPs. The report explains that the time taken to complete litigation in civil recovery cases affected the Agency's ability to meet its targets on achieving final orders and realising receipts.

The Business Plan focuses on the Agency's aims, priorities and targets for the year ahead. It includes:

- A plan to significantly increase the number of cases taken on by the Agency.
- Clarification of its ambition to ensure that its case selection reflects the harm reduction priorities in the UK Threat Assessment (UKTtA) and, in respect of Northern Ireland cases, the Organised Crime Task Force (OCTF) Threat Assessment.
- Working with the Serious Organised Crime Agency (SOCA), supporting them in their attempts to deter, disrupt and dismantle the most serious organised criminals.

Both reports can be found in full at
**http://www.assetsrecovery.gov.uk/TargetsandResults/**





 

# Crystal Meth to Become Class A Drug

Following the article published in the December 2005 *Digest*; the Government has announced that methylamphetamine (otherwise known as crystal meth) will be reclassified as a Class A drug. The decision has been made on the recommendation of the Advisory Council on the Misuse of Drugs, which recently revised its advice on reclassification of this drug.

Methylamphetamine is a derivative of amphetamine but is much more potent than other forms of the drug, with potential for greater physical and psychological harm. It is sold in powder, tablet or crystal form and can be snorted, smoked, injected or swallowed, so it appeals to all classes of drug users. When smoked, it produces a 'rush' similar to that produced by crack cocaine. This can quickly become highly addictive and long-term use can lead to severe addiction. Chronic use can lead to psychotic behaviour characterised by paranoia, hallucinations and violent behaviour. It is also known as speed, ice, crystal or yabba. It is not currently commonly used in the UK, but its use has recently emerged in Australia, China, Japan, the Philippines, Thailand and the USA.

Possession of a Class A drug can attract a penalty of up to seven years in prison, unlimited fine or both. Supply can lead to life imprisonment, unlimited fine or both. The reclassification of crystal meth will enable the police to close down, for long periods, illicit laboratories where it is produced, a power only available for Class A drugs.

For more information on the Government's drugs policy, visit **http://www.drugs.gov.uk/**

# Sanctioning of Housing Benefit for Anti-social Behaviour

The Government has announced that it is planning to introduce a pilot scheme, under which people evicted from their homes for anti-social behaviour would risk losing their housing benefits for up to five years if they refuse to change their behaviour. The scheme would operate as follows:

- If a household is evicted on the grounds of anti-social behaviour, the members of the household concerned will be offered appropriate rehabilitation.
- If the household does not engage with the referral and rehabilitation process, a local authority will be able to issue a 'warning notice' if it considers this appropriate. The notice will ask the household to engage with the rehabilitation.
- If the household does not comply without good cause following the warning notice, the household will be sanctioned when they claim housing benefit.
- The sanction will increase incrementally. There will be a 10% loss of benefit for the first four weeks, 20% for a further four weeks, and then total removal for up to five years if they don't co-operate. Lower rates would apply to those in hardship.
- People who are sanctioned would be able to appeal to the Tribunal Service.
- The offer of support and rehabilitation can be accepted at any stage, at which point benefits would be reinstated.

In order for this scheme to come into being, primary legislation will have to be laid before parliament by the Department of Work and Pensions (DWP). The DWP is currently seeking the views of stakeholders before implementing pilot schemes in 10 authorities during 2008.





 

# Findings of Forced Marriages Consultation

Following the Government's public consultation on the issue of creating a specific criminal offence in relation to forced marriage (covered in the September 2005 *Digest*), the Government has announced that, based on the input received, it has no intention of creating legislation specifically outlawing forced marriage.

The Government has decided that action should be taken by its Forced Marriage Unit to:

- Improve training for professionals who work within the communities in which forced marriages occur, so that they can offer more help.
- Further educate agencies dealing with the problem on ways they can intervene to protect women.
- Ensure that existing legislation is properly utilised to stop the practice through the courts.

# New Measures to Tighten Record Keeping in Schools and Colleges

Ofsted, the non-ministerial government department inspectorate for children and learners in England, has published a report entitled, 'Safeguarding children: an evaluation of procedures for checking staff appointed by schools' which sets out the findings of a survey it conducted at the request of the Secretary of State for Education and Skills.

The report shows that all schools and local authorities involved in the recruitment of staff display a high commitment to protecting children and are highly motivated in making thorough checks.

However, it found that once staff are in place, few schools and local authorities keep a secure, reliable and accessible record of List 99 or Criminal Records Bureau (CRB) checks.

As a result of the findings in the report, the Education Secretary, Alan Johnson, has announced new measures to tighten record keeping in schools and colleges. These include:

- Ensuring that all schools and colleges review their records and can demonstrate that they have robust record-keeping procedures, through checks on record keeping undertaken as part of regular Ofsted inspections.
- Making it mandatory for local authorities, schools and colleges to carry out CRB checks on all overseas applicants for work in education, and to seek additional information about an applicant's conduct.
- The Government updating existing guidance, to be issued for consultation in a few weeks, so that schools will have all the necessary information in one place.

The updated guidance is intended to clearly set out:

- The responsibility of every school and college for carrying out checks and each keeping a single, central record collating when and by whom checks on the identity, qualifications and outcomes of List 99 and Criminal Record Bureau checks on staff were made.





 

- The rules for staff who are employed pending the completion of a CRB check so that they only work with children under appropriate supervision.
- The process for checking volunteer staff, including governors, who come into regular contact with children.
- The responsibility of schools to request full details of CRB checks carried out on staff supplied through an agency and the need for schools to keep a record that these checks have been verified.

Letters are being sent out to all schools and colleges and to chairs of Local Safeguarding Children Boards explaining these measures. All these measures are in advance of the Safeguarding Vulnerable Groups Bill that is currently before Parliament, which will introduce numerous other reforms see article in April 2006 *Digest*).

The Ofsted report can be found at **http://www.ofsted.gov.uk/**

## Gambling Commission Sets out Regulatory Framework

The Gambling Commission has set out how it will monitor and regulate the activities of British gambling operators and the action it will take against those who fail to comply with the rules, or who run illegal gambling operations.

From September 2007, the Commission will have substantial new powers under the Gambling Act 2005. The consultation document, 'Licensing, Compliance and Enforcement', provides the gambling industry with its first indication on how the Commission intends to regulate the industry. The framework includes:

- All gambling operators will need a licence from the Commission.
- Key individuals involved in running the business, shareholders and major investors will be subject to a range of checks. Checks will include criminal record checks, integrity checks and financial checks for insolvency.
- Once licensed, operators must comply with a range of rules designed to keep crime out of gambling and ensure the industry is socially responsible.
- Commission staff will visit casinos, bingo clubs, betting shops and amusement arcades, and check gambling websites on a regular basis using spot checks.
- There will also be scheduled examinations to ensure standards are being met by operators and their staff.
- Covert investigation methods such as mystery shoppers will also be used.
- Sanctions against licensed operators who breach their licence could include licence suspension or revocation and potentially unlimited fines (although the Commission will usually regard 10% of turnover as the maximum).
- The Commission will also investigate and prosecute a range of criminal offences, including running unlicensed, illegal gambling facilities, and severe cases of cheating at gambling.

The closing date for responses to the consultation is 22 August 2006 and it is expected that a summary of the responses will be published in October.

The consultation document can be accessed at
**http://www.gamblingcommission.gov.uk/Client/detail.asp?ContentId=77**





 

# Review of Guideline - Reduction in Sentence for a Guilty Plea

The Sentencing Advisory Panel (SAP) has issued a consultation paper in relation to the existing guideline about reduction in sentence for a guilty plea. The paper has been prepared by the SAP following a request from the Sentencing Guidelines Council, who determined that there are a number of issues not presently covered in the existing guideline that should be considered for inclusion and a number of issues that are covered in the guideline on which differing views have been expressed.

Key issues in the consultation paper include:

- Does a maximum reduction of one third properly balance the interests of justice and the encouragement of guilty pleas?
- Should there be an upper limit on the amount of the reduction?
- Should there be further clarification of the "first reasonable opportunity" for entering a guilty plea?
- To what degree, if any, should the fact that the prosecution case is overwhelming influence the level of reduction?

Responses to the consultation paper should be received by 25 August 2006.

The consultation paper can be found in full at **http://www.sentencing-guidelines.gov.uk/**

# Draft Sentencing Guidelines for Sexual Offences

The Sentencing Guidelines Council (SGC) has published draft guidelines on the sentencing of offences contained within the Sexual Offences Act 2003. The proposals set out detailed instructions for judges on how to sentence more than 50 different types of sex crime.

The main principles behind the guidelines are the SGC's recognition that all sexual offences are serious and that there is a wide range of harm caused to victims, which should be reflected in sentences imposed on offenders.

The SGC recommends a minimum starting point of five years' imprisonment for rapists whose victim was aged over 18. Currently 98% of those convicted of rape receive a custodial sentence, with the average length of sentence being seven and a half years. None of the recommendations in the guidelines would lead to reductions in the average lengths of sentences.

The guidelines also suggest aggravating factors for sentencing purposes, such as extreme youth or old age of the victim. The guidelines suggest higher starting points where a victim is aged less than 13 or they have any form of mental disorder which impedes their choice. Another aggravating factor is where the offender is in a position of trust in relation to the victim. The Council supported the existing case law, which states that 'acquaintance rape' and 'relationship rape' should be treated as seriously as attacks by strangers.

Other offences contained in the guidelines include:

- Preparatory offences such as grooming.
- Exposure.
- Voyeurism, for example recording of sexual activity and putting it on a website.
- Indecent photographs of children.
- Trafficking.

The draft guidelines have been put out to consultation until 31 July.

The draft guidelines can be found at **http://www.sentencing-guidelines.gov.uk/**

## Housing of Paedophiles in Probation Hostels

The Home Secretary, Dr Reid, has instructed the National Offender Management Service to implement a 'restricted admission' policy at certain probation hostels which are situated within close proximity to schools.

11 of the 100 or so probation hostels in England and Wales to which ex-offenders are being sent to live after their release from prison will no longer be used to house convicted paedophiles; these are:

- Haworth House, Blackburn.
- Norfolk Park Hostel, Sheffield.
- Kirk Lodge, Leicester.
- St Johns, Leeds.
- Bunbury House, Ellesmere Port.
- Elliot House, Birmingham.
- Camden House, London.
- McIntyre House, Nuneaton.
- Wordsworth House, Lincoln.
- Staitheford House, Stafford.
- Luton House, Luton.





 

# Fall in Juvenile Re-offending

A Home Office report has shown that juvenile re-offending is falling. The report, 'Re-offending of juveniles', showed a drop of 3.8% in rates of those who re-offended within one year of receiving pre-court disposals, non- custodial disposals and those who were released from custody. The study compares rates from the first quarter of 2004 with the same period in 1997. When 2004 was compared with 2000, the report found a reduction of 1.4%. Overall, 41.3% of juvenile offenders re-offended within 12 months. The report also shows:

- 75% of those who re-offended did so within six months.
- Older offenders are more likely to re-offend: for example, of offenders aged 12, 34.5% re-offended; for offenders aged 17, 44% re-offended.
- Re-offending rates vary considerably depending on the original offence committed. Those sanctioned for absconding or bail offences, theft from vehicles and other motoring offences have a high re-offending rate, over 55%. Re-offending rates for sexual offences and offences relating to the import/export and supply of drugs are under 30%.
- Offenders who have been in custody are more likely to re-offend than those with other penalties such as fines and community orders. 30% of those who were dealt with by pre-court disposal re-offended, compared with 78% of those discharged from custody.
- Those with a larger number of previous convictions are more likely to re-offend. 80% of offenders with eight or more previous sentencing occasions re-offended within one year, while for those with no previous history the rate is around 24%.

The report can be accessed at **http://www.homeoffice.gov.uk/rds/pdfs06/hosb1006.pdf**

# New Chief Executive of Centrex Appointed

Centrex has announced the appointment of Carol Bernard CBE as its new Chief Executive. Ms Bernard's appointment follows the departure of Sir Norman Bettison, who is joining ACPO to coordinate its restructure and reform programme.

Ms Bernard is currently Director of the National Offender Management Service in Wales; she will join Centrex on Wednesday 5 July.

# HMIC Thematic Inspection Report on Police Professional Standards

As mentioned in the April edition of the *Digest*, following its publication of its baseline assessment reports on professional standards units in police forces in England and Wales, Her Majesty's Inspectorate of Constabulary for England and Wales (HMIC) has now published a report entitled, "Raising the Standard" based on its findings from the baseline assessment reports.

The report examines the structure, scope and scales of forces' professional standards activities, highlighting a number of case studies and examples of good practice. In addition, the report contains a number of recommendations and suggestions, which are:

Recommendations

- The Association of Chief Police Officers (ACPO) should lead a project to establish and promulgate a standard template for the structure, functions and terminology used within professional standards, having regard to, and in anticipation of, the restructuring of the Service into strategic police forces.
- All forces should embed the National Intelligence Model across every aspect of professional standards and have direct and robust links between professional standards departments and the core business processes of the force.
- Chief officers should establish methods of testing processes, systems and staff, for example by using mystery shoppers, to ensure that they are able to record and process complaints against the police in a timely and efficient manner.
- Chief officers should review policy in relation to disciplinary sanctions and subsequent payment of competency-related threshold payments (CRTPs) and special priority payments (SPPs). They should ensure that the principles espoused in the Taylor Review are reflected in this policy and that disciplinary sanctions and the payment of CRTPs and SPPs are kept entirely separate.
- Strategic threat assessments, at both local and national levels, should be completed by all forces in accordance with the timescales and reporting periods set by the National Criminal Intelligence Service (or by its replacement, the Serious Organised Crime Agency). Assessments should draw on intelligence from, and subsequently inform, all the business areas within the professional standards environment, including complaints, civil actions, claims against the force, security issues and vetting.
- Subject to the findings from the pilot, Centrex, in agreement with the ACPO PSC (ACPO's Counter-Corruption Advisory Group), should develop a nationally accredited course for anti-corruption staff to cover the skills areas specific to the role.
- ACPO and the Home Office should ensure that there is a coordinated approach to the ongoing research into the disproportionate number of investigations conducted into officers from black and ethnic minority backgrounds.



 

- Forces should cease to use executive authorities and - depending on the circumstances - either utilise the existing Regulation of Investigatory Powers Act 2000 (RIPA) legislation to authorise surveillance methods or use lawful business monitoring methods.
- Forces should apply the full effect of the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 to all monitoring or recording of transmissions on telecommunication systems used wholly or partly for police service business, unless authority for such action is granted by RIPA.
- Chief officers should review their operational security arrangements, to guarantee that measures are in place to ensure the integrity and confidentiality of sensitive information and that operational security is thoroughly maintained.
- Chief officers should carry out an analysis of current vetting structures within their force and, where gaps exist, move towards being fully compliant with ACPO's vetting policy no later than April 2007.
- The Home Office should determine a nationally agreed grievance procedure.
- Chief officers should review all forms used in misconduct proceedings and unsatisfactory performance procedures to ensure that they are fit for purpose, contain all the necessary information, and comply with employment legislation and police regulations.
- The Police Superintendents' Association of England and Wales should, in collaboration with police forces, explore the option of introducing a cadre of retired superintendents whose services could be employed on a retainer basis as friends.
- Centrex should clarify its policies and procedures concerning seconded members and work to improve the information provided before induction and increase the level of awareness among staff of their personal and professional responsibilities following appointment.
- The Home Office should review the legislation relating to officers on secondment to achieve transparency, clarity and consistency. Secondments should be subject to central registration and recording.
- The Independent Police Complaints Commission (IPCC) should, in consultation with ACPO, the Home Office, the Association of Police Authorities (APA) and key stakeholders, agree a national standard for the recording of complaints and a programme of implementation and monitoring of compliance, without adding unnecessary layers of bureaucracy or other impediments to improving police performance.
- ACPO should work in partnership with the IPCC, the APA, HMIC and other stakeholders in the design and implementation of a robust and transparent performance framework which is subject to routine internal and external oversight and monitoring.
- ACPO, APA, IPCC, the Home Office and HMIC, as the key stakeholders in the implementation of this thematic's recommendations, should establish a dedicated implementation group to regularly review the progress of recommended action and address any barriers to implementation.

Suggestions

- In the revised ACPO PSD guidance, the role of a professional standards committee is defined to enable forces to ensure that their own strategic groups address professional standards issues appropriately. Also, all forces should develop professional standards subgroups at basic command unit (BCU) level to improve communication between BCUs and PSDs.



 

- ACPO should include consideration of appropriate levels of resourcing for PSDs in the work it has already started on structures and terminology (see recommendation 1).
- There is the potential for ACPO to identify a national standard package, or perhaps for Centrex or the National Policing Improvement Agency (NPIA) to fill this void, or to use the experience of the training provider to develop a national programme delivered regionally to professional standards practitioners, superintendents and ACPO. The case for training is even more imperative in the light of potential changes to the discipline code, which are likely to be implemented in 2007.
- Chief officers should review audit arrangements currently in place in respect of IT systems and put in place measures to ensure that all internal systems are both capable of audit and audited in order to prevent unauthorised access and information leakage. In addition, a member of the ACPO team should be a suitably qualified professional chief information officer, taking responsibility for information management and information and communications technology, which includes data quality, information security, data protection and freedom of information.
- In view of the forthcoming force restructuring, before any further police funds are spent purchasing vetting databases that may prove to be incompatible, the ACPO PSC should carry out a review of vetting databases. Any review should take into account the feasibility of a national product.
- In view of the recent legislation and the threat posed to the Service by drug misuse, forces should now be treating the area of drug testing as a professional standards priority. They should have fully human rights-compliant and integrated policies in place no later than January 2007.
- All forces should have a service confidence policy in place by January 2007.
- Centrex should make better use of the management information available from records of the unsatisfactory performance and misconduct processes.
- The Police Advisory Board for England and Wales (PABEW) should ensure that the secondment template recognises the increasing and diverse secondments available and ensures that: secondees are appropriately supported during the secondment; there is a named central contact within each seconding-out force; each seconding-in unit has a central role, with responsibility for management of secondees; and the secondment template agreement is completed between the two organisations and the secondee prior to commencement of the secondment (subject to exigencies of urgent demand).
- Stakeholders, including the APA, the IPCC, HMIC and NPIA, should devise a nationally accredited training package for members, chairs and officers of police authority professional standards panels, to ensure that they are fully equipped to deal with the complex issues surrounding professional standards and related issues such as civil litigation.

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

# ACPO Advice to Police Ground Commanders on Policing International (and Other High Risk) Cricket Matches

Following serious public disorder situations arising at cricket matches during the 2001 season, a Cricket Disorder Review Group was set up. This group recommended, and Government accepted, that ACPO and the Home Office should monitor the use and impact of existing public order and other legislation at international and other higher risk cricket matches and otherwise keep the additional legislation issue under review.

ACPO has recently published an advice document, forwarded to all forces, which sets out the measures that have been taken by the cricket authorities to ensure that spectators are fully aware of what they can and cannot do. It also urges ground commanders to adopt a policy of prosecuting individuals for unauthorised pitch encroachment and other misbehaviour, using the public order and other legislative powers which are set out in the advice document.

**N.B.**

It should be noted that there are some areas in the advice document that do require amending in light of recent legislative changes.

In the report, it states that, in relation to the offence of causing harassment, alarm or distress contrary to Section 5 of the Public Order Act 1986, that:

**"Persons can only be arrested under Section 5 if they have been warned about the impact of their behaviour but have persisted."**

This requirement to warn before arrest was originally contained in subsection 5(4) of the 1986 Act. However, s.5(4) was repealed by the Serious Organised Crime and Police Act 2005, s.111, s.174(2), Sch 7 Pt 1 para 26(1) (5), Sch 17 Pt 2, which came into effect on 1 January 2006 (SI 2005/3495, art 2(1)(m), (t), (u)(xxvi).)

Therefore, although it may still be good practice to do so, it is no longer a legal requirement for a warning to have been issued before an arrest can be made for the Section 5 offence. The power of arrest for this offence is now covered by Section 24 PACE.

In relation to the offence of aggravated trespass, contrary to Section 68 (1) of the Criminal Justice and Public Order Act 1994, the advice document states that:

**"A constable in uniform who reasonably suspects that a person is committing an offence under this section may arrest him without a warrant"**

The requirement for a constable to be in uniform in order to arrest for this offence came under Section 68(4) of the Criminal Justice and Public Order Act 1994. However, S.68(4) was repealed by the Serious Organised Crime and Police Act 2005, s.111, s.174(2), Sch 7 Pt 1 para 31(1) (6), Sch 17 Pt 2, which came into force on 1 January 2006 (SI 2005/3495, art 2(1)(m), (t), (u)(xxxvi).)

Therefore, the power of arrest for this offence is now covered by Section 24 PACE. This power of arrest does not require a constable to be in uniform.

Arrangements are in hand by ACPO to circulate forces with details of these required amendments.

Some of the measures the cricket authorities have taken to ensure that spectators are fully aware that certain behaviour will trigger action against them include:

- Issuing warning notices with the tickets, setting out the legal measures that may be used, the need for such powers in the context of major cricket matches, and confirmation that these powers will be exercised if needed.
- Posting notices at entrances, around the ground, on scorecards,on the perimeter fence and in other visible positions in the ground and on screens during breaks in play.
- Reminders to spectators through announcements on the public address system at breaks, high risk periods and prior to the end of a match (in appropriate languages as well as English).

On a practical note, inclusion in a prosecution file of evidence that these measures were taken by the authorities should assist in proving that any spectator who misbehaves will have done so in full knowledge of the consequences.

## 2006/07 Statutory Performance Indicators Good Practice Guide

The Home Office has published a Statutory Performance Indicators (SPI) Good Practice Guide. The guide is intended to provide forces with good practice for each of the 2006/07 Statutory Performance Indicators included within the Policing Performance Assessment Framework (PPAF).

It is intended for force strategic leads and Basic Command Unit (BCU) commanders.

Under each SPI heading, the document provides:

- A user-friendly definition of the SPI.
- A summary of what other forces consider to be good practice.
- A number of sample case studies (with contact details).
- A reference section detailing strong performing forces and listing of useful documents, guides and websites from the range of agencies including ACPO, HMIC, PCSD and NCPE.

The guidance document can be found at **http://police.homeoffice.gov.uk/news-and-ublications/publication/performance-and-measurement/SPI_Good_practice_guide_-_A1.pdf?version=1**

# Police Complaints: Statistics for England and Wales 2004/05

The Independent Police Complaints Commission has published a report presenting the figures on complaints concerning the conduct of persons serving with the police in England and Wales for the 2004/05 financial year.

Key findings from the report include:

- In 2004/05 a total of 22,898 complaint cases were recorded, an increase of 44% increase on the previous year. This increase was not uniform across police forces: some experienced very large increases, whilst others had small decreases.
- A total of 34,680 allegations were recorded on complaint cases in 2004/05, an average of 1.5 allegations per complaint case.
- The most common allegations were incivility, impoliteness and intolerance (21%), other neglect or failure of duty (19%), assault (19%).
- The majority of complainants were men (65%). Due to a lack of recorded data on age, employment status and ethnicity, it is not possible to glean anything about the profile of complainants at a national level.
- A total of 28,861 people serving with the police were subject to a complaint. 95% of complaints were against police officers, 4% against civilian and contracted staff and 1% against special constables, traffic wardens and community support officers.
- Men made up the vast majority of those subject to a complaint (79%). This figure generally equates to the gender breakdown across the police force as a whole.
- A lack of recorded data concerning the ethnicity of those subject to complaints makes it impossible to provide a national picture.
- A total of 27,909 allegations were dealt with, by: local resolution (50%), investigation (20%), dispensation (17%) and 13% being withdrawn.
- In comparison to the previous year, these figures show a significant increase in allegations dealt with through local resolution.
- Of those allegations investigated, 13% were substantiated.
- 1,033 appeals from complaints were received by the IPCC. Of the 768 valid appeals, the most common were against the non-recording of a complaint (49%), followed by appeals about the outcome of an investigation (35%) and the local resolution process (17%).
- A total of 46% of appeals against non-recording were upheld, compared to 20% of those against the outcome of an investigation and 13% of those against the local resolution process.
- Misconduct sanctions were imposed on 1,204 police officers.
- 324 officers received sanctions resulting from a misconduct hearing. Of these, 34 officers were dismissed and 57 officers were requested to resign.
- 228 police officers were convicted of criminal offences. 69% of these convictions were for traffic offences; 67 officers were convicted of offences linked to a complaint by a member of the public.

The report found no evidence to suggest that the increase in complaints is due to a sudden change in behaviour among those serving with the police. It states that it is likely that the increase in complaints is due to a number of factors, including:

- The Police Reform Act 2002, which has widened the categories of complainant and those who could be subject to complaints. Figures presented in the report indicate that this change may have had a small contribution to the overall increase.
- Administrative and procedural changes undertaken by police forces in preparation for the Police Reform Act 2002, including improvements in accessibility and recording procedures. It is felt likely to have resulted in more people being formally included in the complaints system who, in the past, would have had their complaint dealt with informally or, while aggrieved, would not have presented their complaint.

The report looks closely at the issue of the police monitoring of demographic factors, in particular information on ethnicity, which attracts the most public interest. The figures reveal that ethnicity was recorded as unknown for 30% of complainants across England and Wales and that the recording of such data did vary widely between forces. The report discusses the possible reasons for this lack of data. It accepts that forces face practical difficulties in collecting this data, for reasons including:

- Complainants being unwilling to provide personal information.
- Cases where a complainant may be represented by a third party and the police may never have an opportunity to directly ask for this information.
- People within the police service who are taking complaints feeling uncomfortable about asking for personal details, such as ethnicity, and therefore not asking.
- Instances where the information has been collected, but is not passed on to those who enter it onto the force database.

The report suggests that the national figures need to be, and could probably be, significantly improved by looking at how ethnicity information is asked about and recorded.

The full report can be found at **http://www.ipcc.gov.uk/index/resources/stats.htm**

## Familial DNA Tactical Advice Document

The Home Office Police Standards Unit and the National Centre for Policing Excellence Directorate of Centrex have jointly produced an advice document on the use of familial DNA products in serious crime investigations. It is hoped the document will encourage investigators to use familial DNA intelligence more frequently in both current and 'cold case' serious crime investigation (there are presently over 40,000 unmatched crime scene DNA profiles on the National DNA Database).

In the procedure, the National DNA Database is searched for individuals whose profiles are similar to that from the crime scene and who therefore might be related in some way to the actual offender. 'Familial DNA intelligence' often results in lists of potential relatives numbering hundreds and sometimes thousands. The advice document provides Senior Investigating Officers with a methodology and proven tactical options to prioritise the elimination of large numbers quickly and efficiently.

Further information and copies of the document (which is restricted and not for dissemination outside police or law enforcement agencies) can be obtained from **Natasha.matthew3@homeoffice.gsi.gov.uk**

# ACPO Personal Safety Manual

The current CD ROM programme for the ACPO Personal Safety Manual issued in May 2005 shows an expiry date of 31 May 2006. This is in light of the yearly review process administered by Centrex on behalf of ACPO.

Due to the recent loss of personnel within Centrex responsible for this work and the late submission of material to be considered for inclusion, it has become necessary to delay the review process. It is expected that a revised programme will be produced by Centrex and be available by 1 September 2006.

Until that time the ACPO Self-Defence, Arrest & Restraint Working Group has deemed that the current manual remains active and fit for purpose until such time as a replacement has been issued.

# New BCU Inspections Programme

Her Majesty's Inspectorate of Constabulary has announced a new BCU inspection programme which is due to commence in October 2006. It will replace the current 'Going Local Again' (GL2) programme whereby the performance of all BCU's in the country is assessed.

The new programme, GL3, is based on the result of research which began in 2004. Instead of all BCU's being inspected, GL3 will use performance review and validated risk assessment to identify a limited number of BCU's for inspection. The highest performing BCU's will 'earn autonomy'. HMIC hope that this will reduce the burden of inspectorial activity on performing BCU's and forces, focus activity where it is most likely to add value, and reduce costs.

The new programme will involve:

- Initial selection based on performance data utilising NIM intelligence led processes.
- Self Assessment followed by review and confirmed or deferred inspection.
- Inspection, which will largely follow the old model, although an additional feature is a mandatory leadership audit that every BCU selected for inspection will be expected to undertake. Co-ordination and analysis will however be managed by HMIC.
- Notional contract regarding the implementation of recommendations and follow-up activity.

Further details can be found in the BCU inspection handbook which can be found at **http://inspectorates.homeoffice.gov.uk/hmic/docs/going-local/going-local-3-handbook.pdf**

# Decision Delayed on Police Force Mergers

The Home Secretary has announced that he will not be laying any orders for enforced police mergers before Parliament before the summer recess. It is likely that processes to proceed with the voluntary merger of the Cumbria and Lancashire police forces will be continued.

# Neighbourhood Policing Progress Report

A progress report summarising the progress being made in rolling out neighbourhood policing and, in particular, the Government's strategy of ensuring a neighbourhood policing team in every community by April 2008, has been published jointly by Matt Baggott, Chief Constable of Leicestershire and the ACPO lead on neighbourhood policing, and Moira Wallace, Director General of Crime, Policing and Counter-Terrorism in the Home Office.

The report shows that

- Around 6,000 neighbourhoods now have dedicated neighbourhood policing.
- Over 50% of police Basic Command Units have implemented substantial coverage.
- Nearly 11% of police officers and police community support officers are already involved in neighbourhood policing.

The authors of the report envisage that, by April 2007, every community in England and Wales will see increased patrolling, better local information and a greater focus on confidence and reassurance. By April 2008, there will be a dedicated neighbourhood policing team embedded into every area in England and Wales.

The report can be found in full at
**http://police.homeoffice.gov.uk/news-and-publications/publication/community-policing/neighbourhood_booklet_170506.pdf**

# Proceeds of Crime Act Seizures

The Home Office Minister for Financial Crime, Vernon Coaker, has announced that in the last financial year police, customs officers and public agencies seized £96 million from criminals under provisions in the Proceeds of Crime Act 2002, bringing the total seizures since the introduction of the provisions to £234 million.

He also announced a new incentive scheme for 2006-07 that will allow recovery agencies to retain half of what they recover to encourage them to recover more criminal assets.

The incentive payments that will be made to the 43 police forces under this scheme for 2006-07 are based on forces' performance from 01/04/05 to 31/03/06. These are:

- Avon and Somerset Constabulary - £346,275
- Bedfordshire Police - £61,878
- British Transport Police - £70,890
- Cambridgeshire Constabulary - £48,033
- Cheshire Constabulary - £188,357
- City of London Police - £349,163
- Cleveland Police - £207,858
- Cumbria Constabulary - £83,689
- Derbyshire Constabulary - £75,185
- Devon and Cornwall Constabulary - £200,287

- Dorset Police - £221,302
- Durham Constabulary - £229,703
- Dyfed-Powys Police - £104,545
- Essex Police - £148,333
- Gloucestershire Constabulary - £84,246
- Greater Manchester Police - £1,207,704
- Gwent Police - £111,391
- Hampshire Constabulary - £195,681
- Hertfordshire Constabulary - £129,226
- Humberside Police - £59,934
- Kent Police - £290,317
- Lancashire Constabulary - £1,050,921
- Leicestershire Constabulary - £255,028
- Lincolnshire Police - £340,685
- Merseyside Police - £763,699
- Metropolitan Police Service - £7,965,507
- Norfolk Constabulary - £812,751
- North Wales Police - £233,190
- North Yorkshire Police - £94,031
- Northamptonshire Police - £170,225
- Northumbria Police - £172,066
- Nottinghamshire Police - £108,501
- Police Service of Northern Ireland - £160,994
- South Wales Police - £1,175,168
- South Yorkshire Police - £293,962
- Staffordshire Police - £264,852
- Suffolk Constabulary - £151,647
- Surrey Police - £179,710
- Sussex Police - £518,862
- Thames Valley Police - £514,945
- Warwickshire Police - £57,849
- West Mercia Constabulary - £296,744

- West Midlands Police - £811,569
- West Yorkshire Police - £1,009,220
- Wiltshire Constabulary - £53,166

The Serious Organised Crime Agency will receive £4.1 million due to the efforts of one of its precursor agencies, the National Crime Squad.

## Skills for Justice SOCA Project

Skills for Justice is working with the Serious Organised Crime Agency to help deliver a 'Professional People Management' system. This will include:

- Development of National Occupational Standards (NOS) for SOCA.
- A competency framework which will be linked to appraisal, recruitment and selection, and reward.
- The development of a framework of nationally recognised qualifications, based upon the suite of SOCA NOS.
- The design and implementation of a professional register.

Further information on the SOCA project can be obtained from Sarah Bloom (SOCA Programme Manager) telephone 0114 231 7254 or by e-mail at **sarah.bloom@skillsforjustice.com**.

## Police Diving Conference

The Association of Chief Police Officers is to host a police diving conference which will take place from 19 to 21 November 2006 at Carden Park, Cheshire. The event will include seminars and presentations on a number of issues including:

- Crime scene investigation.
- Marine prosecutions.
- REMIT, intelligence system.
- The use of Sonar.
- Remotely operated vehicles.

Further information can be obtained from Jane Orme, Force operations Directorate, Cheshire Police, CW7 2UA

## NPIA Workshops

The team creating the National Policing Improvement Agency (NPIA) is organising a number of workshops to inform stakeholders about the new body that will come into being in April next year.

The first workshop aimed at police authority members will take place in London on 5 July in London. A further session, also in London, will be run for BCU commanders on 14 July.

# Think Tank Report on Police Force Mergers

The Think Tank Policy Exchange has published a report entitled, 'Size Isn't

Everything - Restructuring Policing in England and Wales', which advises against government plans to merge several police forces into larger joint forces.

The report states that research it has undertaken shows that in its opinion:

- There is no evidence that big forces perform better than small ones. Though force performance varies widely, even amongst those covering socio-economically similar areas, this does not correlate with size.
- Amalgamation would reduce police accountability and responsiveness by distancing force HQs from the communities they serve, and by sacrificing co-terminosity with local authority boundaries.
- Basic Command Units lack the stability and powers effectively to support local policing on their own.
- The estimated £500m-£600m cost of amalgamation would come at the expense of the Government's Neighbourhood Policing Strategy, as well as necessitating rises in police precept. Even if all the costs were borne by central government, equalization of precepts across the new superforce regions would mean unpopular tax hikes for city dwellers.
- Amalgamation would make it hard for police to cooperate well with the Crown Prosecution Service, courts and probation services.

It recommends that the Government should allow forces voluntarily to federate where necessary.

It suggests, in cases where forces lack the capacity to cope with serious or new types of crime, allowing them to jointly establish permanent specialist units. It suggests that other such units could be used to exploit economies of scale in purchasing, IT and fleet management.

It suggests that, in an effort to deal with serious inter-regional organized and serial violent crime, either the remit of the Serious Organised Crime Agency should be expanded to cover these areas or alternatively, that Regional Crime Squads could be re-established.

It suggests that BCUs should be made genuinely accountable to local communities, that BCU Commanders be allowed to manage their own budgets and set their own policies, that BCU commanders should be hired and fired by city mayors or council leaders, and that BCU boundaries should be made so far as possible coterminous with local authority boundaries.

The report can be found in full via **http://www.policyexchange.org.uk/**

# Drug Consumption Rooms

An Independent Working Group (IWG) which included UK experts from the police, legal and health sectors, has published a report which provides a detailed examination of whether drug consumption rooms (DCRs) should be introduced in the UK.

DCRs are places where dependent drug users are allowed to inject drugs in supervised, hygienic conditions. At present there are no such facilities in the UK, but they are 65 such facilities that operating in eight countries around the world.

Following its 20 months of research, during which time it reviewed existing evidence, commissioned new research and visited drug consumption rooms in five countries and interviewed relevant witnesses, the IWG's report concludes that drug consumption rooms:

- Can avert drug-related deaths, prevent needle-sharing and improve the general health of users.
- Can decrease injecting in public places and reduce the number of discarded, used syringes and drug-related litter.
- Do not appear to increase levels of acquisitive crime.
- Were generally not associated with public order nuisance or other problems, especially with good interagency co-operation in place.
- Are mostly used by local drug users.

The report goes on to say that the IWG does not feel that UN Conventions or UK law present insurmountable obstacles to allow the implementation of DCRs in the UK; and it concludes that DCRs could be piloted within the UK without legislative change. It states that although risks would remain, it feels that the potential benefits substantially outweigh the risks and recommends that pilot DCRs are set up and evaluated in the UK.

It acknowledges that, in the future, should DCRs prove their worth, primary and/or secondary legislation would need to be introduced to fully protect those involved in the management of the premises and those using drugs within them.

The is published by the Joseph Rowntree Foundation and is available on line via **http://www.jrf.org.uk/bookshop/details.asp?pubID=785**

## Research of the Number of Doctors Charged with Manslaughter

Research conducted by Dr Robin Ferner and Sarah McDowell of Birmingham City Hospital, into the number of doctors in the United Kingdom charged with manslaughter in the course of medical practice has been published in a report in the Journal of the Royal Society of Medicine.

The research shows that, between 1795 and December 2005, 85 doctors were charged with manslaughter, with 38 of the cases taking place since 1990. Of these 85 cases, 60 doctors were acquitted, 22 were convicted and three guilty pleas were issued.

The research quantifies the number of doctors charged with manslaughter in the course of legitimate medical practice and classifies cases, as mistakes, slips (or lapses), and violations, using a recognized classification of human error system. It found that the most common reason for a doctor to be accused of manslaughter was due to a judgment error (44%), followed by accidental slips while performing surgery (20%).

The report raises concerns that there appears to be an increasing trend to charge doctors for reasons of vengeance or retribution rather than to protect patients. It concludes that the criminal prosecution of a doctor is appropriate when there is clear evidence of violation of safety rules. However, it stresses that human error is unavoidable in the course of care. It suggests that in the case of doctor error there are two choices: either to continue to perpetuate the myth of perfection or to examine the systems in which they work. Further concluding that threats or fears of prosecution do not result in better health systems; rather, they lead to cover-up, where faults remain hidden and more patients die.

The report can be found in full at **http://www.jrsm.org/cgi/content/full/99/6/309**





 

# Attack on Swedish Police Website

The Swedish Police website recently came under a widespread and intense denial-of-service attack which forced the site administrators to take it offline after it was overloaded by net data. During the attack, the site homepage was receiving the equivalent of 500,000 visits per second.

Although there is no specific evidence to link the attack to the investigation at this time, the attack came the day after Swedish police raided 10 different locations in Sweden and seized servers in a massive crackdown on torrent site Piratebay.org.

Last year Sweden passed a law banning the sharing of copyrighted material on the Internet without payment of royalties, in a bid to crack down on free downloading of music, films and computer games. Violators can face a two-year prison sentence. The legislation is unpopular within Sweden, hence the general belief that the attack was probably in retaliation for the raid on Pirate Bay.

# Support for Sexually Exploited Young People

The charity organisation Barnardo's has published the results of a long term study of its work with children who have been exploited for sex or groomed for abuse through prostitution.

The study found that the young people Barnardo's helped had often been abused and neglected, but that intensive support with its specialist services led to positive outcomes like:

- Reducing the number of episodes of going missing.
- Reducing conflict and improved relationships with parents and carers.
- Access to safe, stable accommodation.
- An improved ability to recognise risky and exploitative relationships.
- An increased awareness of their own rights.

The research concludes that taken together, these outcomes significantly reduce the risk of ongoing sexual exploitation.

The report calls for:

- A securely funded UK-wide network of community-based services for children who have been sexually exploited.
- Government to make child protection a policing priority.
- The Department for Education and Skills to ensure preventative and protective work is undertaken with the most vulnerable young people.

The report can be found at
**http://www.barnardos.org.uk/resources/research_and_publications/reducingtherisk**

# Case Law

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

# Payment for "special police services" under Police Act 1996

READING FESTIVAL LTD v WEST YORSHIRE POLICE AUTHORITY (2006)

[2006] EWCA Civ 524

**CA (Civ Div) (Scott Baker LJ, Jacob LJ, Neuberger LJ) 3/5/2006**

POLICE

Attendance: Entertainment: Formation Of Contract: Police Powers And Duties: Request For Special Police Services: Policing Of Music Festival: Recovery Of Policing Costs: S.25(1) Police Act 1996

Where a music festival organiser had expressed its hope that the police would deploy officers on the festival site as they had done in previous years, but in fact the police deployed their officers mostly in the communities surrounding the festival site and the festival organiser hired private security for the site, the organiser was not liable to pay the police under the Police Act 1996 s.25(1) because there had been no request and the services provided were not "special police services".

The appellant music festival organiser (R) appealed against judgment given in favour of the respondent police authority (W) on its claim for payment for special police services under the Police Act 1996 s.25(1). For four years W had provided special police services to R for the running of an annual three-day music festival. Each year a fee had been agreed and paid. The following year W were opposed to the festival taking place due in part to the escalation of violence at the event in previous years. At a meeting before the event R had expressed its desire to have W police the event as it had before, while W made clear their position that they would not be putting significant numbers of officers on the site, but the parties did not reach agreement. However, the event took place, with W changing its strategy by having fewer officers and a much lower profile on site. R hired security staff to manage the safety of the site. W provided officers based in the surrounding community who were ready to be called on if necessary. The issues on appeal were

(1) whether R had made a request for special police services under s.25(1), and

(2) whether the services provided by W were special police services within the meaning of s.25(1).

HELD

(1) The judge had erred in his conclusion that R's expression at the meeting of its hope that there would be officers on the festival site amounted to a request for special police services under s.25. However, even assuming that, that conclusion was correct W had provided something entirely different, namely a large contingent offsite that could be called up if R's onsite arrangements proved inadequate. There was nothing to suggest that the police were required in surrounding villages in order for R to stage the





 

festival. The request under s.25(1) could not be divorced from the special services for which a charge was to be made. The judge was not entitled on the facts that he found to hold that R had requested special police services under s.25. The judge's conclusion that no agreement had been reached between W and R meant that W's claim was bound to fail because it was very hard to see how s.25(1) could operate without a contract, even though it did not expressly say so. It was for R to decide, albeit after negotiation, what special services it wanted even though it was for W to decide how they would provide them.

(2) W had not provided special police services. The predominant purpose of W's operations was the protection of the public at large, albeit occasioned by the festival. When considering the application of s.25(1) it was inapposite to consider special police services without considering the request at the same time. Although much of what W did outside the festival site was arguably for the dual benefit of the public and R, R had not requested it. It was impossible comprehensively to define special police services, and the particular circumstances were likely to be critical. However, one of two key features were likely to be present: either the services would have been asked for but would be beyond what the police would consider necessary to meet their public duty obligations, or they would be services that, if the police did not provide them, the asker would have to provide from its own resources. Essentially, however, special police services would be something that somebody wanted. Whether services were provided on private or public property was likely to be a very strong factor. There was a strong argument that where promoters put on a function that was attended by large numbers of the public the police should be able to recover their additional costs of policing the event and the local community affected by it. That seemed only just where the event was run for profit. However, that was not the law. Harris v Sheffield United Football Club Ltd (1988) 1 QB 77 considered.

APPEAL ALLOWED





 

# Conduct of Undercover Police Officers

**R v (1) RAYMOND HARMES (2) GARY CRANES (2006)**

[2006] EWCA Crim 928

**CA (Crim Div) (Moses LJ, Penry-Davey J, Grigson J) 9/5/2006**

CRIMINAL EVIDENCE - POLICE

Authorisation: Codes Of Practice: Conduct: Conspiracy: Covert Surveillance: Entrapment: Police Officers: Conduct Of Undercover Police Officers: Stay Of Proceedings: Undercover Officers: Covert Human Intelligence Sources Code Of Practice: Breaches: Authorisation In Relation To Undercover Operation: Reviews Of Authorisations: S.170 Customs And Excise Management Act 1979: Regulation Of Investigatory Powers Act 2000

The conduct of police officers during an undercover police operation was not so seriously improper as to require the court to stay prosecution for conspiracy.

The appellants (H and C) appealed against their convictions for conspiracy to contravene the Customs and Excise Management Act 1979 s.170. During an undercover police operation an officer had supplied H with soft drinks in exchange for a small amount of drugs worth half the value of the drinks. H subsequently revealed to another officer a system whereby drugs could be imported into Heathrow with the assistance of C who worked at the airport. H also revealed that he could import 44 kilos of cocaine every other day. A test run for the importation of 200 kilos of cocaine was successfully undertaken. Thereafter, a dummy package was loaded onto an aircraft in Johannesburg by police. The appellants were later arrested. The trial judge stayed counts of supplying Class A drugs but held that the count of conspiracy should not be stayed as it was not tainted by any unlawful activity on the part of the police. The judge held that the appellants had willingly participated in drug smuggling for their own substantial gain and rejected the suggestion that they had been induced to commit a state generated crime. The appellants submitted that it was the conduct of the officers in agreeing to supply soft drinks in exchange for drugs that led to H's revelation of a system by which drugs could be imported, and that to permit a prosecution based upon the officers' use of that system would be to condone the officers' conduct, which was so seriously improper as to bring the administration of justice into disrepute. They also contended that there was a lack of proper authorisation for the undercover operation in breach of the Regulation of Investigatory Powers Act 2000 and the Covert Human Intelligence Sources Code of Practice and that those breaches underlined the impropriety of the officers' conduct.

HELD

(1) There were serious breaches of the Act and the Code in the process of authorisation. Without a careful record of that which was proposed and approved, the court was deprived of the opportunity of assessing whether the undercover actions of officers were necessary and proportionate. In the instant case, there was no reference at all to the plan to supply soft drinks, to the plan to explain the availability of such soft drinks as part of a plan to conceal smuggled drugs or to turn the supply of soft drinks into a plan to exchange the drinks for drugs. Nor was there any reference to the extent of the inducement presented by the opportunity to buy soft drinks of a far greater value than the drugs for which they were exchanged. The prosecution could not answer the defence's question of who authorised the tactics adopted and when they were adopted. The plans should have been authorised in advance or, if circumstances were too urgent, there should have been some proper record subsequently on a review. No such records were present in the instant case. Further, the reviews of authorisation did not disclose the nature of the plans that appeared to have triggered





 

H's revelation that he had access to a means of importing drugs. The trial judge had erred in concluding that there was no breach of the restriction, described as a restraint on "actively engaging in planning and committing crime". However, the mere fact of breaches of the Code did not dispose of the issue as to whether the prosecution for conspiracy should have been stayed.

(2) The officers' suggestion that they should be supplied with drugs in exchange for the soft drinks did not trap the appellants into the agreement to import substantial quantities of drugs. The judge had correctly concluded that it was not the supply of drinks that persuaded H to become involved in the supposed importation but the hope of big returns for himself. Although the officers' conduct was criminal and was not properly authorised, it should not be regarded as so seriously improper as to require the court to intervene to prevent the prosecution for conspiracy. The officers' conduct, viewed as a whole, did not stray beyond that which was permissible to investigate. The officers' activities were insignificant in comparison to the offers made by H to import, on their behalf, large amounts of drugs of a high value. R v Looseley (2002) 1 Cr App R 360 considered. The trial judge, whilst underestimating the breaches of the Code, correctly concluded that the prosecution for conspiracy should not be stayed.

APPEALS DISMISSED



# Evidence of a Defendant's Previous Convictions

R v JIMMY BRIMA (2006)

**CA (Crim Div) (Hallett LJ, Newman J, Royce J) 8/2/2006**

CRIMINAL EVIDENCE - CRIMINAL LAW

Murder: Previous Convictions: Propensity: Evidence Of Previous Convictions Correctly Admitted In Evidence: S.101(1)(D) Criminal Justice Act 2003

Evidence of a defendant's previous convictions had been correctly admitted at trial under the Criminal Justice Act 2003 s.101(1)(d) as the judge had clearly and correctly applied the principles in R v Hanson (2005) EWCA Crim 824.

The appellant (B) appealed against a conviction of murder. The victim of the offence had been stabbed. It was B's case that another man (C) had committed the offence. One witness, who knew B, positively identified him as the offender, however, four other witnesses failed to identify B. Three police officers looked at CCTV footage and identified the offender as C. The prosecution contended that their evidence was mistaken. Bloodstained clothing that was found in a dustbin was found to have both the victim's and B's DNA on it. Other DNA on the clothing was inconclusive but it could not be excluded that C had worn the clothing. At trial C gave evidence that B had met him on the day of the offence and had told him that he had stabbed someone. At the outset of the trial the prosecution sought to adduce evidence of two of B's previous convictions under Criminal Justice Act 2003 s.101(1)(d). The judge granted the application after hearing evidence from the witness identifying B and evidence in chief from C. B contended, inter alia, that the evidence of his previous convictions should not have been admitted as they merely bolstered a manifestly weak case and did not amount to evidence of a propensity to commit this offence, alternatively, the evidence ought to have been excluded under s.101(3) of the Act.



 

HELD

(1) There was sufficiently strong evidence against B to justify admitting the evidence of his previous convictions. The judge clearly had in mind the guidance in R v Hanson (Nicky) (2005) EWCA Crim 824 , (2005) 1 WLR 3169 when giving his ruling. He had correctly concluded that the evidence of the previous convictions was sufficient to establish a propensity to commit offences of the type charged, that that propensity made it more likely that B had committed the offence charged and that it was not unjust to admit the evidence. The judge was plainly correct in his ruling as he had heard a substantial part of the prosecution's case to determine its strength or weakness and was fully entitled to come to the conclusion he did.

APPEAL DISMISSED



# Compatibility of The Sexual Offences Act 2003 s.5 with the European Convention on Human Rights 1950 Art.6(2)

**R v G & SECRETARY OF STATE FOR THE HOME DEPARTMENT (2006)**

[2006] EWCA Crim 821

**CA (Crim Div) (Lord Phillips LCJ, Andrew Smith J, Wilkie J) 12/4/2006**

CRIMINAL LAW - HUMAN RIGHTS - SENTENCING

Consent: Mitigation: Offences Against Children: Presumption Of Innocence: Rape: Right To Respect For Private And Family Life: Strict Liability: Young Offenders: Rape Of Child Under 13: Compatibility With Art.6(2) European Convention On Human Rights: Compatibility: S.5 Sexual Offences Act 2003: Part 2 Sexual Offences Act 2003: Art.6 European Convention On Human Rights: S.13 Sexual Offences Act 2003: Art.8 European Convention On Human Rights

The Sexual Offences Act 2003 s.5, which created the offence of rape of a child under 13 even where a defendant reasonably believed that the child was 13 or over, was compatible with the European Convention on Human Rights 1950 Art.6(2).

The appellant (G) appealed against his conviction and sentence following a plea of guilty to rape of a child under 13 years of age, contrary to the Sexual Offences Act 2003 s.5. G, aged 15 at the time of the offence, had pleaded guilty on the basis that he had believed that the complainant had been 15 years old. A 12-month detention and training order was imposed on G. The effect of that sentence was to subject G to the notification requirements under Part 2 of the Act for a period of five years. G submitted that:

(1) s.5 of the Act, on its natural interpretation, was incompatible with the European Convention on Human Rights 1950 Art.6(2) and therefore s.5 had to be "read down" so as to require the prosecution to establish an absence of belief that the complainant was 13 or over;

(2) it was inappropriate to prosecute a child under s.5 where consensual sexual intercourse had taken place, or the prosecution should have been brought under s.13 of the Act, and that the prosecution, conviction and sentence, taken individually or together, constituted a disproportionate interference with respect for his private life, in breach of Art.8 of the Convention;





 

(3) there were considerable mitigating factors rendering the sentence imposed by the judge excessive.

HELD

(1) On its natural meaning, s.5 created an offence even if a defendant reasonably believed that the child was 13 or over. The section was not incompatible with Art.6 and accordingly there was no requirement to read it down. An absolute offence might subject a defendant to conviction in circumstances where he had done nothing blameworthy. Prosecution for such an offence and the imposition of sanctions under it might well infringe articles of the Convention other than Art.6. The legislation would not, however, render the trial under which it was enforced unfair, let alone infringe the presumption of innocence, Barnfather v Islington LBC Education Authority (2003) EWHC 418 (Admin) , (2003) ELR 263 applied, R v Muhammad (2002) EWCA Crim 1856 , (2003) 2 WLR 1050, R v Daniel (2002) EWCA Crim 959 , (2003) 1 Cr App R 6 and Salabiaku v France (1998) 13 EHRR 379 considered.

(2) Prosecution of a child under s.5 rather than s.13, or indeed prosecution at all, in relation to consensual sexual intercourse could, on the particular facts, produce consequences that amounted to an interference with the child's Art.8(1) rights that were not justified under Art.8(2). However, where, as in the instant case, no criticism could be made of an initial charge of breach of s.5, it did not follow that the judge had to substitute an alternative charge of breach of s.13 if it transpired that the sexual activity was consensual. The judge had not infringed Art.8 by proceeding to sentence G under s.5.

(3) Although absence of consent was not an ingredient of the offence under s.5, the presence of consent was material in relation to sentence, particularly in relation to young defendants. A very short period of custody was likely to suffice for a teenager where the other party consented. The age of the defendant was also an important factor and in exceptional cases a non-custodial sentence might be appropriate for a young defendant, R v Corran (2005) EWCA Crim 192 , (2005) 2 Cr App R (S) 73 applied. The judge had not taken the view, as he should have done, that, having regard to the basis of G's plea, the instant was an offence that fell properly within the ambit of s.13 rather than s.5. In all the circumstances, the appropriate course was to quash G's sentence and to replace it with a conditional discharge for a period of 12 months. Provided that he committed no offence during that period, the notification requirement would end with it.

APPEAL ALLOWED IN PART

This judgment has been approved for reporting. However the transcript is being withheld to protect the anonymity of the parties involved. An anonymised official transcript will be published as soon as one becomes available.






 

# Consent to Receipt Of Bulk Emails

DIRECTOR OF PUBLIC PROSECUTIONS v LENNON (2006)

**DC (Keene LJ, Jack J) 11/5/2006**

INFORMATION TECHNOLOGY - CRIMINAL LAW

Authorisation: Computer Crime: Consent: Data: Electronic Mail: Unauthorised Modification: Bulk Sending Of Emails: Consent To Receipt Of Bulk Emails: Bulk Electronic Mail: Modification Of Data: S.3 Computer Misuse Act 1990: S.17(7) Computer Misuse Act 1990

For the purposes of the Computer Misuse Act 1990 s.17(8)(b) the owner of a computer able to receive emails would ordinarily be taken to have consented to the sending of emails to his computer. However, such implied consent was not without limits, and the consent did not cover emails that had been sent not for the purpose of communication with the owner but to interrupt his computer system.

The appellant DPP appealed by way of case stated against the decision of a district judge sitting in a youth court that the respondent (L) had no case to answer to a charge of causing an unauthorised modification to the contents of a company's computer with the intent to impair its operation, contrary to the Computer Misuse Act 1990 s.3. The DPP had alleged that, after being dismissed from his employment with the company, L had used a "mail-bombing" program that, once activated, automatically sent continuous emails to the company's server until the program was manually stopped. The server received over 500,000 emails, the vast majority of which purported to come from a human resources manager within the company when in reality they did not. The DPP asserted that as such under s.17(7) and s.17(8) of the 1990 Act, L's actions amounted to an unauthorised modification to the computer by the adding of unauthorised data. The DPP further alleged that L had the requisite knowledge to commit the offence as he knew that the emails were unauthorised. L contended that he had no case to answer as the purpose of the company's server was to receive emails and that the company had consented to the receipt of emails and the modification in data content consequent upon receipt of such emails. The district judge held that s.3 of the Act was intended to deal with sending of malicious material such as viruses and Trojan horses rather than email and that as the company's server was configured to receive emails the company had therefore accepted the modification of its computers by the addition of data in the form of emails. On appeal an issue arose as to whether the addition of data by the sending of emails was authorised within the meaning of s.17(8)(b) of the Act.

HELD

The district judge had erred in law in holding that L had no case to answer. It was clear that the emails had resulted in the modification of the data on the company's computers so that the key question was whether L had consent to that modification. The owner of a computer able to receive emails would ordinarily be taken to have consented to the sending of emails to his computer. However, such implied consent was not without limits, and the consent did not cover emails that had been sent not for the purpose of communication with the owner but to interrupt his system. The position was somewhat analogous to that of a householder who consented to people with a lawful purpose using the path to his front door but who would not consent to a burglar walking up his path or his post box being filled with rubbish. Further, for the purpose of implied consent in the instant case the emails could not be considered on an email-by-email basis but as a whole. The emails resulted from the single action of L running the program that he did. It was probable that the response from the company if asked whether it would receive an email from L would differ from its response if asked if it would receive 500,000 emails from L. (Obiter) The fact that an email purported to come from someone other than its true author did not mean that that email





 

was automatically unauthorised and its classification was dependent upon the circumstances. It was possible that in certain circumstances such as in the context of a joke it would be an authorised email.

APPEAL ALLOWED

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# Interpretation of Section 132(1) of the Serious Organised Crime and Police Act 2005

R (on the application of BRIAN HAW) v (1) SECRETARY OF STATE FOR THE HOME DEPARTMENT (2) COMMISSIONER OF POLICE FOR THE METROPOLIS (2006)

[2006] EWCA Civ 532

**CA (Civ Div) (Sir Anthony Clarke MR, Laws LJ, Hallett LJ) 8/5/2006**

LEGISLATION - CRIMINAL LAW

Demonstrations In Vicinity Of Parliament: Statutory Interpretation: Demonstration Starting Before Commencement Of S.132 Serious Organised Crime And Police Act 2005: Commencement Orders: S.133(1) Serious Organised Crime And Police Act 2005: S.134(2) Serious Organised Crime And Police Act 2005: S.132(1) Serious Organised Crime And Police Act 2005: Serious Organised Crime And Police Act 2005 (Commencement No. 1, Transitional And Transitory Provisions) Order 2005: S.132(6) Serious Organised Crime And Police Act 2005

The Serious Organised Crime and Police Act 2005 s.132(1), on its proper construction, included demonstrations starting before the commencement of the Act as well as those starting after.

The appellant secretary of state appealed against the decision ((2005) EWHC 2061 (Admin)) that the provisions of the Serious Organised Crime and Police Act 2005 did not apply to the continuing demonstration of the respondent (H) in Parliament Square. H had been demonstrating in Parliament Square since June 2001. He lived on the pavement and displayed a large number of placards protesting about government policy in Iraq. The demonstration had been held to be lawful since it neither caused an obstruction nor gave rise to any fear that a breach of the peace might arise. The Serious Organised Crime and Police Act 2005 s.133(1) required any person who intended to organise a demonstration in the vicinity of Parliament to apply to the police for authorisation to do so and s.134(2) permitted the police to impose conditions on the holding of a demonstration in the vicinity of Parliament. Section 132(1) provided that a person who carried on a demonstration in the designated area was guilty of an offence if when the demonstration started appropriate authorisation had not been given. H sought judicial review and the Administrative Court held that those provisions of the 2005 Act did not apply to H and quashed certain provisions of the Serious Organised Crime and Police Act 2005 (Commencement No. 1, Transitional and Transitory Provisions) Order 2005 as outside the relevant enabling power so far as they purported to extend the application of the Act to continuing demonstrations. H submitted that the Act did not apply to his demonstration because his demonstration had started before the Act came into force and that the provisions of the commencement order, in so far as they purported to alter the provisions of the Act so as to make the Act apply to demonstrations which began before the Act came into force, were ultra vires and of no effect.

HELD

(1) The critical provision was s.132(1) which provided that a person who carried on a demonstration in the designated area was guilty of an offence if when the demonstration started appropriate authorisation had not been given. Construing the statutory language in context the parliamentary intention was clearly to regulate all demonstrations in the designated area, whenever they began. That was made clear by s.132(6). Any other conclusion would be irrational. Section 132(1) on its proper construction included demonstrations actually starting before the commencement of the Act as well as those starting after. Those starting before, like H's, were deemed to





 

start at commencement; and in such cases the words "when the demonstration starts" referred to the time of commencement. The provisions of s.133 and 134 then worked perfectly satisfactorily by reference to such a start date.

(2) On that construction of the Act there was nothing in the commencement order that contradicted any provision of the Act.

APPEAL ALLOWED



# Aggression Not Capable of Being a "Crime" Under Criminal Law Act 1967 or an "Offence" under Criminal Justice And Public Order Act 1994

R v JONES: R v MILLING: R v OLDITCH: R v PRITCHARD: R v RICHARDS: AYLIFFE & ORS v DIRECTOR OF PUBLIC PROSECUTIONS: SWAIN v DIRECTOR OF PUBLIC PROSECUTIONS (2006)

[2006] UKHL 16

**HL (Lord Bingham of Cornhill, Lord Hoffmann, Lord Rodger of Earlsferry, Lord Carswell, Lord Mance) 29/3/2006**

CRIMINAL LAW - INTERNATIONAL LAW

Aggravated Trespass: Crime Of Aggression: Criminal Damage: Customary Law: Defences: Demonstrators: Justiciability: Offences: Prerogative Powers: Reasonable Force: War: Defence To Charges Of Criminal Damage And Aggravated Trespass: Status Of Crime Of Aggression In Domestic Law Of England And Wales: S.3 Criminal Law Act 1967: S.68(2) Criminal Justice And Public Order Act 1994

The crime of aggression was neither capable of being a "crime" within the meaning of the Criminal Law Act 1967 s.3 nor an "offence" within the Criminal Justice and Public Order Act 1994 s.68(2). Therefore, individuals facing charges for criminal damage and aggravated trespass arising out of their actions in protesting against the war in Iraq could not argue that they were using reasonable force to prevent the commission of a crime, nor that the activities of the Crown at the military bases were unlawful.

In joined proceedings, the court was required to determine questions that had been certified as being of general public importance in cases concerned with the legal justification of acts that would otherwise be criminal offences ((2004) EWCA Crim 1981, (2005) QB 529 and (2005) EWHC 684, (2005) 3 WLR 628). The appellants (X) had all been charged with or convicted of aggravated trespass or criminal damage arising out of their separate, independent actions taken at military bases by way of protest against the war in Iraq. X had claimed that they were entitled to rely upon the Criminal Law Act 1967 s.3, as they were using reasonable force to prevent the commission of a crime, or that their acts of disruption were not aggravated trespass because the activities of the Crown at the military bases were not lawful within the meaning of the Criminal Justice and Public Order Act 1994 s.68(2), since they were being carried out in pursuance of a crime of aggression under customary international law. The questions certified were whether the



 

crime of aggression was capable of being a "crime" within the meaning of s.3 of the 1967 Act and, if so, whether the issue was justiciable in a criminal trial, and whether the crime of aggression was capable of being an "offence" within s.68(2) of the 1994 Act and, if so, whether the issue was justiciable in a criminal trial. X contended that

(1) customary international law was, without the need for any domestic statute or judicial decision, part of the domestic law of England and Wales;

(2) at all times relevant to the instant appeals customary international law recognised a crime of aggression;

(3) crimes recognised in international customary law were, without the need for any domestic statute or judicial decision, recognised and enforced by the domestic law of England and Wales;

(4) "crime" in s.3 covered a crime established in customary international law, such as the crime of aggression;

(5) alternatively, "crime" in s.3 meant a crime in the domestic law of England and Wales, and the crime of aggression was such;

(6) "offence" in s.68(2) covered an offence established in customary international law, such as the crime of aggression;

(7) alternatively, "offence" in s.68(2) meant a crime in the domestic law of England and Wales, and the crime of aggression was such.

HELD

(1) For the purposes of the instant proceedings, the court accepted that customary international law was, without the need for any domestic statute or judicial decision, part of the domestic law of England and Wales, since the Crown did not challenge that proposition.

(2) Customary international law recognised a crime of aggression and understood it with sufficient clarity to permit the lawful trial of those accused of the crime. It did not lack the certainty of definition required of a criminal offence.

(3) It was at least arguable that war crimes, recognised as such in customary international law, would be triable and punishable under English domestic criminal law. However, war crimes were distinct from the crime of aggression. A crime recognised in customary international law might be assimilated into the domestic criminal law of England and Wales. However, the authorities did not support the proposition that that result followed automatically, R. v Keyn (Ferdinand) (The Franconia) (1876-77) LR 2 Ex D 63 considered and Hutchinson v Newbury Magistrates' Court Independent, November 20, 2000 applied.

(4) The focus of the 1967 Act was entirely domestic. It was very unlikely that Parliament understood "crime" in s.3 as covering crimes recognised in customary international law but not assimilated into domestic law by any statute or judicial decision. Therefore, "crime" in s.3 did not cover a crime established in customary international law, such as the crime of aggression, R (on the application of Rottman) v Commissioner of Police for the Metropolis (2002) UKHL 20 , (2002) 2 WLR 1315 applied.

(5) It was clear that the crime of aggression was not a crime in the domestic law of England and Wales within the meaning of s.3. The fact that it had not been incorporated by statute was relevant. There existed no power in the courts to create new criminal offences; statute was the only source of new criminal offences, Knuller (Publishing, Printing and Promotions) Ltd v DPP (1973) AC 435 applied. When it was sought to give domestic effect to crimes established in customary international law, the practice was to legislate. There were no compelling reasons in the instant case for departing from the democratic principle that it was for Parliament, not the executive or





 

judiciary, to determine what types of conduct attracted criminal penalties. The court would be very slow to review the exercise of prerogative powers in relation to the conduct of foreign affairs and the deployment of the armed services, and slow to adjudicate on rights arising out of transactions entered into between sovereign states on the plane of international law.

(6) "Offence" in s.68(2) must be understood as meaning an offence under the domestic criminal law of the relevant UK jurisdiction.

(7) The crime of aggression was not an "offence" under s.68(2) for the same reasons that it was not a "crime" for the purposes of s.3.

(8) (Per Lord Hoffmann) The discretionary nature or non-justiciability of the power to wage war was one of the reasons why aggression was not a crime in domestic law. The state entrusted the power to use force only to the armed forces, the police and other similarly trained law enforcement officers. The right of the citizen to use force on his own initiative was circumscribed, and even more so when the citizen was not defending his own interests but those of third parties. It would set a dangerous precedent if individuals were permitted to use force against military installations simply to give effect to their honestly held views of the legality of action taken by the Crown and the armed forces. The district judges in the proceedings below would have been entitled to convict even if aggression had been a crime in domestic law, since s.3 only justified the use of reasonable force and the apprehension by the appellants that the crime of aggression was about to be committed could not have made it reasonable for them to use force to obstruct military activities, Burmah Oil Co (Burma Trading) Ltd v Lord Advocate (1965) AC 75 and HM Advocate v Zelter (2001) (Unreported) considered.

APPEALS DISMISSED

# No Reasonable Excuse for Failing to Provide a Specimen of Breath

**OLADIMEJI v DIRECTOR OF PUBLIC PROSECUTIONS (2006)**

**DC (Keene LJ, Jack J) 11/5/2006**

ROAD TRAFFIC - CRIMINAL PROCEDURE

Breath Samples: Case Stated: Failing To Provide Specimen: Reasonable Excuse: Reasonable Excuse For Failure: S.7(6) Road Traffic Act 1988

A magistrates' court was correct in law to hold that the appellant had no reasonable excuse for failing to provide a specimen of breath contrary to the Road Traffic Act 1988 s.7(6), and its decision was neither perverse nor unreasonable.

The appellant (O) appealed by way of case stated against his conviction for failing to provide a specimen of breath contrary to the Road Traffic Act 1988 s.7(6). O, having failed a roadside breath test, had been arrested and required to produce a specimen of breath. He produced a single specimen of breath but despite three further attempts was unable to produce a second specimen. The police officer administering the breath test procedure asked O if there was any medical reason why he could not produce a specimen of breath. He made no reply but subsequently told the police officer that he was taking an antibiotic for an eye infection. At his trial in the magistrates' court, O gave evidence that he had suffered from asthma since early childhood, although it had not troubled him for a number of years. He stated that he had had a throat and eye infection that had inhibited his ability to provide a specimen of breath. His general practitioner gave evidence that O had been prescribed an antibiotic for a throat and eye infection sometime before the breath test procedure. Both parties called expert medical evidence who jointly agreed that it was unlikely that an asthma sufferer's condition could deteriorate in the short period of time between the first breath sample and the final attempt so as to prevent the provision of a sample. O's expert stated that it was possible that O had suffered from a narrowing of his airways during the breath test procedure. The magistrates' court held that it did not find O's evidence credible, that he had not established a reasonable excuse for failing to provide a specimen and that accordingly he was guilty of the offence. The questions for the opinion of the High Court were whether the magistrates' court was right to conclude that:

(i) the expert witnesses were substantially in agreement;

(ii) there was no evidence to support O's expert that O might have been suffering from a narrowing of the airways;

(iii) the general practitioner's evidence was unspecific to the date in question;

O's evidence was substantially at odds with that of the police officers at the roadside and therefore to find O not credible.

HELD

The questions posed by the case stated were not questions of law but either referred to the evidence in the case or to findings of fact, and those matters lay within the magistrates' court's jurisdiction and were for it to determine. In particular, matters of credibility were matters for the magistrates' court to determine. The real question was whether the magistrates' court had been entitled to find that O had no reasonable excuse for failing to provide a specimen of breath. It had been so entitled and its decision was neither perverse nor unreasonable. (Obiter) A case stated should contain clear findings of fact





 

and the questions of law that arose. If no questions of law arose the magistrates' court should decline to state a case. In a case stated a magistrates' court should clearly separate evidence from findings of fact. If an individual contended that a magistrates' court had reached a decision that was not open to it on the evidence before it then the appropriate remedy lay in an appeal to the Crown Court.

APPEAL DISMISSED

## SI 1334/2006 The Environmental Offences (Use of Fixed Penalty Receipts) Regulations 2006

In force **6 April**. Regulation 2 permits local authorities (not including parish councils) which are categorised in an Order made by the Secretary of State under section 99(4) of the Local Government Act 2003 as 'excellent' or 'good' authorities, to spend their fixed penalty receipts from litter, graffiti and fly posting, and dog control order offences on any of their functions.

The Regulations do this by specifying that all such functions of an authority so categorised are to be "qualifying functions" of that authority, in addition to the qualifying functions expressly specified for such receipts in Section 96(4)(a)-(c) of the Clean Neighbourhoods and Environment Act 2005.

As a transitional arrangement in the event of re-categorisation of authorities, Regulation 3 provides that those local authorities which lose their "excellent" or "good" categorisation will have one year from the date on which that loss of categorisation takes effect in which they will still be able to use any of their fixed penalty receipts as though they were still an "excellent" or "good" authority. If at the end of that year, it is still not categorised as either "excellent" or "good", it may thereafter only use such receipts for the qualifying functions specified in Section 96(4)(a)-(c) of the Clean Neighbourhoods and Environment Act 2005.

Regulation 4 also provides that a parish council may use any fixed penalty receipts it receives in respect of litter, graffiti and fly posting, and dog control order offences, for the purposes of the provisions under which it issued those notices. It further provides that a parish council that is currently approved by the Secretary of State as a "quality" parish council may spend its fixed penalty receipts on any of its functions as well. The same transitional arrangements for local authorities apply to parish councils (Regulation 5)

These Regulations apply in England only.

## SI 1361/2006 The Clean Neighbourhoods and Environment Act 2005 (Commencement No 2) (England) Order 2006

In force **4 August**. This Order brings into force Section 104 of the Clean Neighbourhoods and Environment Act 2005 and Part 10 of Schedule 5 to that Act. These provisions amend Section 78L of the Environmental Protection Act 1990, which relates to appeals against remediation notices. The provisions are commenced only in so far as they relate to appeals against remediation notices served by a local authority in England or by the Environment Agency in relation to land in England. They make the appellate authority the Secretary of State in relation to appeals against any remediation notice served on or after 4 August 2006.

## SI 1382/2006 The Natural Environment and Rural Communities Act 2006 (Commencement No 2) Order 2006

In force **31 May**. This Order brings into force the following provisions of the Natural Environment and Rural Communities Act 2006:

- Section 47 (Protection for nests of certain birds which re-use their nests).
- Section 52 and Schedule 5 (Enforcement powers in connection with wildlife).
- Section 53 and Schedule 6 (Wildlife offences: time limits for proceedings).
- Sections 56 and 57 (Denotification and effect of failure to serve certain notices in connection with SSSIs).





 

- Sections 78 and 79 (Agreement between Secretary of State and designated body and Agreement between designated bodies).
- Section 80 and Schedule 7 (Designated bodies).
- Sections 81 to 86.

## SI 1406/2006 The Police (Complaints and Misconduct) (Amendment) Regulations 2006

In force **22 June**. These Regulations amend the Police (Complaints and Misconduct) Regulations 2004.

Regulation 2(4) to (9) amends the 2004 Regulations to bring DSI matters within the scope of the police complaints system. "Death or serious injury (DSI) matters" involve a death or serious injury during or following police contact, where there is neither a complaint nor an indication that a person serving with the police had committed a criminal or disciplinary offence. This is a new category of cases, which was introduced by Section 160 and Schedule 12 of the Serious Organised Crime and Police Act 2005 (in force 1 July 2005).

Regulation 2(2) and (3) changes the timescale within which a chief officer or police authority must refer complaints and conduct matters to the IPCC. Previously, complaints or conduct matters had to be reported to the IPCC by the end of the working day following the matter coming to the attention of the appropriate authority. The changes mean that such matters now need to be reported by the end of the next day, whether or not it is a working day. DSI matters will have to be referred within the same timescale. It is hoped that this change will minimise the potential for delay.

Regulation 2(10) corrects an error in the Police (Complaints and Misconduct) Regulations 2004 in respect of the powers of a chief officer.

## SI 1421/2006 The Immigration (Leave to Remain) (Prescribed Forms and Procedures) Regulations 2006

In force **22 June**. These Regulations prescribe forms to be used for applications for leave to remain in the United Kingdom and the procedures to be followed in relation to an application for which a form is prescribed. An application made on a prescribed form may include an application in respect of anyone applying for leave to remain in the United Kingdom as a dependant of the main applicant.

These Regulations revoke and replace the Immigration (Leave to Remain) (Prescribed Forms and Procedures) (No. 2) Regulations 2005. The forms prescribed by these Regulations are largely the same as the forms prescribed by the 2005 Regulations, although there are some minor changes to existing questions, and new questions have been added which reflect the Rules changes affecting certain category of applicants. There are also two new categories of applicants: overseas qualified nurse or midwife, and visiting religious worker or religious worker in a non-pastoral role, for which forms are prescribed. These Regulations prescribe the same procedure for applications as was prescribed by the 2005 Regulations.

## SI 1439/2006 The Identity Cards Act 2006 (Commencement No 1) Order 2006

In force **7 June**. This Order brings into force the following provisions of the Identity Cards Act 2006:

- Section 25 (possession of false identity documents etc.).
- Section 26 (identity documents for the purposes of s.25).
- Section 30 (amendments relating to offences), except for the purposes of the references to sections 27 and 28 of the Identity Cards Act 2006 in the amendment made by subsection (4)).
- Section 40 (orders and regulations).
- Schedule 2 (repeals).
- Sections 1(5) to (8) (definition of registrable fact) and 42 (interpretation) so far as necessary for the interpretation of the provisions specified above.

See HOC 15/2006 article in this edition of the *Digest* as well as the article in the May edition.

## SI 1442/2006 The Police (Promotion) (Amendment) Regulations 2006

In force **1 July**. These Regulations amend the Police (Promotion) Regulations 1996 to correct errors in Schedule 1.

## SI 1450/2006 The Misuse of Drugs (Amendment No 2) Regulations 2006

In force **7 July**. apart from Regulations 7(1) and 10 which come into force on **1 January 2007**, and Regulations 5 and 6(5) (in so far as it inserts paragraphs (1C) and (1D) into regulation 16 of the 2001 Regulations) which come into force in Wales on **1 January 2007**. These Regulations amend the Misuse of Drugs Regulations 2001 (SI 2001/3998).

Regulation 4 inserts a number of new definitions into Regulation 2(1) of the 2001 Regulations.

Regulation 5 amends Regulation 15 of the 2001 Regulations in respect of private prescriptions issued for human use containing controlled drugs specified in Schedules 1, 2 or 3 of the 2001 Regulations. These prescriptions must be written on a prescription form issued for the purposes of private prescribing by a Primary Care Trust in England, a Local Health Board in Wales or a Health Board in Scotland, and must specify the prescriber identification number of the person issuing it. An exception is, however, created where the issuer of the prescription believes on reasonable grounds that a private prescription is to be supplied by a pharmacist in a hospital: in that case the prescription does not need to be written on a prescription form issued for the purposes of private prescribing by a Primary Care Trust in England, a Local Health Board in Wales or a Health Board in Scotland. "Prescriber identification number" and "private prescribing" are two of the new defined terms in the 2001 Regulations.

Regulation 6 amends Regulation 16 of the 2001 Regulations. It changes the maximum validity period under Regulation 16 of the 2001 Regulations for a prescription containing a controlled drug specified in Schedules 1 to 4 of the 2001 Regulations from 13 weeks to 28 days. This will mean that a controlled drug specified in Schedules 1 to 4 of the 2001





 

Regulations may not be supplied on a prescription (subject to Regulation 16(4) of the 2001 Regulations) more than 28 days after the appropriate date as defined in new regulation 16(7) of the 2001 Regulations.

Regulation 6 also amends Regulation 16 of the 2001 Regulations to provide exceptions to the requirement under Regulation 16(1)(a) of the 2001 Regulations that a person shall not supply a drug specified in Schedules 1, 2 or 3 (except temazepam) to the 2001 Regulations on prescription unless the prescription complies with Regulation 15 of the 2001 Regulations.

Regulation 6 also introduces provisions relating to the identification of persons collecting prescriptions for controlled drugs in Schedule 2 to the 2001 Regulations.

Regulations 7 and 10 make consequential changes to the recording requirements and Controlled Drugs Register respectively.

Regulations 8, 9 and 11 make minor amendments to the 2001 Regulations and Regulations 12 and 13 contain transitional provisions.

## SI 1467/2006 The Police (Amendment) Regulations 2006

In force **1 July**. These Regulations amend the Police Regulations 2003.

Regulation 2 provides for the abolition of fixed term appointments for Commanders in the Metropolitan and City of London police forces and for Assistant Chief Constables elsewhere.

Fixed term appointments for Deputy Chief Constables and Chief Constables (and equivalent London ranks) will now be for a maximum of 5 years. Extensions may be granted with the agreement of the police authority and the individual concerned, for up to 3 years in the first instance and not more than a year for subsequent extensions. Any extension of more than a year from the end of the initial appointment (whether or nor that appointment was for a full 5 years' term) is to require the consent of the Secretary of State, with an additional consent required for each additional extension.

Regulation 3 provides that existing fixed term appointments of Commanders in the Metropolitan and City of London police forces and Assistant Chief Constables elsewhere become indefinite.

## SI 1497/2006 The Immigration, Asylum and Nationality Act 2006 (Commencement No 1) Order 2006

This Order brings the following provisions of the Immigration, Asylum and Nationality Act 2006 into force on 16 June:

- Section 10 (grants).
- Section 30 (proof of right of abode).
- Section 43 (accommodation).
- Section 48 (removal: cancellation of leave).
- Section 56 (deprivation and citizenship).
- Section 57 (deprivation and right of abode).
- Section 60 (money).



 

- Section 61 (repeals) for the purposes of the repeal in the British Nationality Act 1981 in section 40A(3), the word “and” before paragraph (d).

Section 45 of the Act will come into force on **30 June**.

## SI 1498/2006 The Nationality, Immigration and Asylum Act 2002 (Commencement No 11) Order 2006

Article 2 brings into force Section 9 of the Nationality, Immigration and Asylum Act 2002, which substitutes new Sections 50(9), (9A), (9B) and (9C) into the British Nationality Act 1981 and makes some consequential amendments to that Act. The new provisions contain new definitions of a child’s mother and father for the purposes of the 1981 Act. New Sections 50(9A) and (9B) enable the Secretary of State to make regulations prescribing requirements about proof of paternity for these purposes.

The Section is brought in, in 2 parts. Section 9, only for the purpose of enabling regulations to be made under new Section 50(9A) and (9B) of the 1981 Act, came into force on **5 June**. For all other purposes, Section 9 will come into force on **1 July**.

Section 162(5) of the 2002 Act provides that Section 9 of that Act shall have effect in relation to a child born on or after a date appointed by the Secretary of State by order. Article 3 of this Order provides that 1 July 2006 is the appointed date for this purpose.

## SI 1629/2006 The Serious Organised Crime and Police Act 2005 (Amendment of Section 61(1)) Order 2006

In force **20 June 2006**. Section 61(1) of the Serious Organised Crime and Police Act 2005 lists the offences to which Chapter 1 of Part 2 of that Act applies. That Chapter confers powers on the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions and the Lord Advocate in relation to the giving of disclosure notices in connection with the investigation of offences to which that Chapter applies. This Order amends Section 61(1) by adding further offences to it in England and Wales, these being:

- Any common law offence of bribery.
- Any offence under Section 1 of the Public Bodies Corrupt Practices Act 1889 (corruption in office).
- The first two offences under Section 1 of the Prevention of Corruption Act 1906 (bribes obtained by or given to agents).

Should the Corruption Bill be enacted this would impact on the offences under the Public Bodies Corrupt Practices Act 1889 as it will repeal this Act. See article in Legislation section of this *Digest.*





 

# Notes

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