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National Policing Improvement Agency

Digest

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

This edition Digest contains an article on the recent Law Commission report on reforming the law on criminal liability, together with two draft Bills which have been published in relation to this issue, the Participation in Crime Bill and the Participating in Crime (Jurisdiction, Procedure and Consequential Provisions) Bill.

This edition also contains a number of articles relating to recently published consultation papers on a number of issues, including: Proposals to change the Misuse of Drugs Regulations 2001 and the Misuse of Drugs Regulations (Northern Ireland); The Governments Asset Recovery Action Plan; The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc) Regulations 1989; Implementation of Provisions in the Immigration, Asylum and Nationality Act 2006; Consultation on Sentencing; and on guidance to local authorities in England and Wales on climate change mitigation and fuel poverty.

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

Case law in association with lawtel From Sweet & Maxwell

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National Disabled Police Association

The Home Office has provided funding of £31,000 to the National Disabled Police Association (NDPA) for 2007-08 and has committed to providing the same amount for each of the next two years.

Promote People not Stereotypes Campaign

The Equal Opportunities Commission has launched a 'Promote People not Stereotypes' campaign which is aimed at busting the myths surrounding Bangladeshi, Pakistani and Black Caribbean women in the workplace. The campaign features Asian and black women who have succeeded, including those who have thrived in traditionally male-dominated professions, such as engineering, and those who have smashed their way through the glass ceiling into the boardroom, and are making a difference in today's workplace.

The EOC's campaign is available online at http://www.eoc.org.uk/bme

Administration of Additional Paternity Leave and Pay

The Government has published a consultation on the administration of Additional Paternity Leave and Pay.

The Government's intention is to bring in Additional Paternity Leave and Pay, alongside the extension of Statutory Maternity Pay (SMP), Maternity Allowance (MA) and Statutory Adoption Pay (SAP) from 39 weeks to 52 weeks, by the end of this Parliament.

Additional Paternity Leave and Pay will enable employed fathers to take up to 26 weeks Additional Paternity Leave, some of which can be paid if the mother of the child has returned to work. This new provision will be available during the second six months of the child's life, providing parents with more choice in child care responsibilities and, for the first time ever, the option of dividing a period of paid leave entitlement between them.

The earliest date that Additional Paternity Leave and Pay will be implemented will be for babies due on or after 5 April 2009. However, this is not a firm date for introduction.

The purpose of this consultation is to invite practical comments on the preferred administration process and some of the remaining detail of the scheme to ensure that burdens on business are minimised, whilst providing more choice for parents and allowing fathers a greater opportunity to be involved in raising a child.

The closing date for the consultation is 3 August 2007. The consultation paper can be found in full at http://www.dti.gov.uk/files/file39396.pdf

Law Commission Report on Assisting and Encouraging Crime

The Law Commission has published a second report on its project to reform the law governing the criminal liability of those who encourage or assist others to commit offences.

The Commission's first report, 'Inchoate Liability for Assisting and Encouraging Crime' was published in July 2006 together with a draft Bill, the Crime (Encouraging and Assisting) Bill. This sought to rectify what was seen as a major defect of the law, that, whereas those who encourage a crime are instantly guilty of inciting the crime whether or not the offence takes place, those who actively seek to assist a crime can only become guilty of assisting the crime if the offence is subsequently committed. Slightly amended provisions from this draft Bill now form the basis of Part 2 of the Serious Crime Bill currently before Parliament (see article in January *Digest*).

This second report, 'Participating in Crime', looks at how the law should deal with 'secondary liability'. Those who encourage or assist others to commit offences are called 'accessories' and the doctrine that makes them criminally liable is known as 'secondary liability'. The doctrine is complicated, uncertain and anomalous, particularly that part related to 'joint enterprise'.

The report discusses the issues in detail and contains a number of recommendations in relation to two draft Bills which are attached as part of the report, details from which are summarised below.

The recommendations made in the report are underpinned by the following principles:

- Where someone has helped or encouraged a crime, but was not part of a joint plan to commit that crime, that person should be liable to conviction only if they intended the crime to be committed.
- Where someone was part of a joint plan to commit a crime, they may be liable for criminal consequences that they realised might occur when putting that plan into effect.
- There should be a defence available for someone who has participated in a joint plan to commit a crime, if their participation was reasonably undertaken for the purpose of preventing crime.

One of the main recommendations in the report is that Section 8 of the Accessories and Abettors Act 1861 and Section 44(1) of the Magistrates' Courts Act 1980 should be repealed and replaced by a statutory provision which describes the conduct element as 'assisting or encouraging'.

The report goes on to recommend that:

- 'Encouraging' a person to do an act, should include doing so by emboldening, threatening or pressurising another person to do a criminal act.
- Encouraging or assisting a person to do a criminal act should include doing so by failing to take reasonable steps to discharge a duty.
- That a person failing to respond to a constable's request for assistance in preventing a breach of the peace should not be regarded as encouraging or assisting a person to do a criminal act.

The two draft Bills attached to the report are the:

- Participation in Crime Bill.
- Participation in Crime (Jurisdiction, Procedure and Consequential Provisions) Bill.

Participation in Crime Bill

Clause 1 provides that if P commits an offence, then D is liable for that offence if:

- D did an act which encouraged or assisted P to commit a 'criminal act'.
- D intended that P or another person should commit that criminal act.
- D believed that a person doing the criminal act would commit the offence (or D's own state of mind was such that, had D committed the criminal act, he or she would have committed that offence).

Clause 2 sets out the conditions for secondary liability for an offence committed by P in cases where D and P are parties to a joint criminal venture. The Bill does not define 'joint criminal venture'. However, the expression is employed to describe cases where D and P share a common intention to commit an offence and is wide enough to address three categories of joint venture:

- The type of venture which is preceded by a conspiracy to commit the offence ultimately committed by P.
- The less formal type of venture, where D and P tacitly agree (perhaps on the spur of the moment) that the offence ultimately committed by P should be committed.
- The type of spontaneous venture where it would be difficult to infer a tacit agreement, but it would be possible to infer a shared common intention,

such as where a number of youths spontaneously involve themselves in an attack on a person outside a public house.

The purpose of Clause 3 is to ensure that D may be convicted of an offence even though he or she could not be convicted of the offence as a principal offender. For example, if D (a woman) encourages P (a man) to rape V, D can be convicted of rape by virtue of Clause 3 or, if P is an innocent agent, by virtue of Clause 4.

Clause 4 of the Bill provides that, where D has used P to commit the external elements of an offence, but P is not liable (on the basis that or he or she acted without the fault required for liability or that he or she lacked the capacity to be liable because he or she was under the age of 10 or was legally insane), D is to be treated as having committed the offence and liable for it.

Clause 5 introduces an offence of causing a no-fault offence. For example, if D, knowing that P will soon drive home from D's party, surreptitiously laces P's orange juice with alcohol, causing him to commit the no-fault offence of driving while 'over the limit', he would be guilty of this offence if it was proved that in addition to causation, that it was D's intention to cause a person to commit the no-fault offence or that D knew or believed that his or her behaviour would cause a person to commit it.

Clause 6 provides an exemption from secondary liability. This means that D cannot be liable for an offence by virtue of the Bill's provisions on secondary liability and the provisions on innocent agency, if D would be regarded as the 'victim' of P's offence and he or she falls within a category of persons that the offence in question was designed to protect.

For example, if D1 (a 12-year-old girl) and D2 (D1's 15-year-old female friend) encourage P to have sexual intercourse with D1, and P subsequently has sexual intercourse with D1, P is thereby committing the offence of rape of a child under the age of 13. In this case D2, but not D1, would be secondarily liable for P's offence on the basis that D1 would be regarded as the 'victim' of P's offence.

Clause 7 sets out a 'good purpose' defence to secondary liability, the burden of proof in relation to which lies with the accused. Under this clause, if the Crown establish a prima facie case that D is secondarily liable for an offence committed by P, D will nevertheless be entitled to an acquittal if he or she can prove, on the balance of probabilities, that the purpose was to prevent crime or prevent or limit the occurrence of harm and that the conduct was reasonable in the circumstances.

Clauses, 8, 9, 10, 11 deal with the interpretations of the Bill.

Clause 8 does not contain a definition of encouraging or assisting. The words are expected to be interpreted widely in accordance with their ordinary meaning. The clause does provide that conduct by D which encourages or assists a person to do an act includes:

- Conduct which puts pressure on someone (for example where D threatens P).
- Conduct which reduces the possibility of criminal proceedings being brought in respect of the act (such as the provision of advice to P on how to avoid detection or the provision of a gun for P to use against a police officer, should he be found committing the offence).

It also states that a person is not to be regarded as encouraging or assisting another person to do an act merely because he fails to respond to a constable's request for assistance in preventing a breach of the peace.

Clause 9 of the Bill provides that a particular type of indirect encouraging or assisting by D can render him or her liable under the Bill. This provision ensures that a person such as a gang leader (D1) can be held secondarily liable for the criminal conduct of another person (D2) in carrying out D1's instructions, even though D1 himself has no further involvement in giving effect to those instructions.

Clause 10 explains, for the purposes of Clauses 1 and 2, what is meant by committing an offence.

Clause 11 of the Bill provides that a reference in the Bill:

- To an act, includes a reference to a course of conduct and a reference to the doing of an act is to be read accordingly.
- To a criminal act is, in relation to an offence, a reference to an act (or a failure to act) that falls within the definition of the act (or failure to act) that must be proved in order for a person to be convicted of the offence.
- To the doing of a criminal act includes a reference to the continuation of an act that has already begun, and an attempt to do an act (except in relation to an offence of attempting to commit another offence).

Participating in Crime (Jurisdiction, Procedure and Consequential Provisions) Bill

This Bill complements the Participation in Crime Bill by setting out the rules on jurisdiction, procedure and sentencing.

Clause 2 and Schedule 1 to the Bill set out the rules on jurisdiction if the allegation is that D is secondarily liable for an offence committed by P.

Examples given in the report include:

- D in Berlin sends an e-mail to P in London, encouraging P to commit burglary. D may be tried in England or Wales for the burglary committed by P in London.
- D in London sends a parcel of poison to a French citizen (P) in Paris, encouraging him to use it to murder V in Brussels. D can be convicted in England or Wales of the murder committed by P in Brussels, on the ground that it would have been possible to convict P in England or Wales if he had satisfied the requirement of being a 'subject of Her Majesty'.
- D in London sends a letter to an Indonesian citizen (P) in Jakarta, encouraging him to commit an act of piracy on the high seas. P commits such an act and could, in theory, be convicted in England or Wales of that offence. Accordingly, D may be convicted of P's offence in England or Wales.
- D (a British citizen) holds V down in a Prague night-club while P1 and P2 (neither of whom are British citizens) kick him to death. D can be convicted in England or Wales of the murder because, as a British citizen, it would have been possible to convict him in England or Wales if he had been one of the principal offenders.
- D (a British citizen) in the Philippines encourages P (who is not a British citizen) to rape a 10-year-old girl in Manila. D can be convicted in England or Wales of the child-rape because, as a British citizen, it would have been possible to convict D of the offence in England or Wales if he, rather than P, had been the principal offender.

Clause 3 and Schedule 1 to the Supplementary Bill set out the rules on jurisdiction if the allegation is that D is liable for an offence under Clause 4 of the Participation in Crime Bill, that is, that he committed it through the medium of an innocent agent.

Clause 4 sets out the rule on jurisdiction if the allegation is that D caused P to commit a no-fault offence contrary to Clause 5 of the Bill. It provides that D may be convicted of the offence only if it was committed by P in England or Wales and D's own relevant conduct took place wholly or partly in England or Wales.

Clause 5 relates to the doctrine of secondary liability, in that an accused person may be convicted of an offence if it cannot be proved whether he was guilty as a principal offender or guilty as an accessory (by the application of Clauses 1 and 2 of the Participation in Crime Bill), if it can be proved that he must have been one or the other.

Clause 6 provides that:

- If D is charged with causing P to commit a no-fault offence, the mode of trial of D is to be determined as if D had been charged with committing the no-fault offence.
- If D is convicted of causing P to commit a no-fault offence, D is liable to any penalty for which he or she would have been liable if convicted of the no-fault offence.

Clause 7 provides that where P's offence is committed outside England and

Wales or, in cases where P is an innocent agent, would have been committed outside England and Wales, proceedings under Clauses 1, 2 or 4 can only be instituted by, or with the consent of, the Attorney General.

Clause 8 abolishes the common law doctrine of secondary liability and the common law doctrine of innocent agency.

Clause 9 and Schedule 3 repeal a number of statutory provisions, including Section 8 of the Accessories and Abettors Act 1861 and Section 44(1) of the Magistrates' Courts Act 1980.

Full details of the report and the Bills can be found at http://www.lawcom.gov.uk/assisting_crime.htm

HOC 15/2007
The Firearms (Sentencing) (Transitory Provisions) Order 2007 (SI 2007/1324) (Modification of Firearms Act 1968 to apply 5 years mandatory minimum sentence to 18-20 year olds convicted of certain firearm possession offences)

This Circular looks at the provisions of the Firearms (Sentencing) (Transitory Provisions) Order 2007. This Order came into force in England and Wales on 28 May 2007 by way of SI 1324/2007 (see SI Section).

The Order modifies Section 51A of the Firearms Act 1968 (inserted by Section 287 of the Criminal Justice Act 2003), which provides for minimum sentences to be imposed for offences of possessing certain prohibited firearms. When originally enacted, Section 51A provided that an offender aged 18 or over, when convicted of a qualifying offence for which a sentence of imprisonment is imposed, would receive a minimum term of five years.

However, the intention of the Criminal Justice Act 2003, to apply a minimum five year sentence to all offenders aged 18 or over, has not been fulfilled because:

- When enacted it was thought that the sentence of detention in a young offender institution and the statutory prohibition on imposing a sentence of imprisonment on 18-20 year olds would be repealed, meaning that offenders 18 or over could be sentenced to a term of imprisonment. However, these repeals have not yet happened and detention remains the appropriate custodial sentence for those aged 18-20.
- The Court of Appeal has ruled that the mandatory minimum sentence of imprisonment referred to in Section 51A Firearms Act 1968 does not include imprisonment for those aged 18-20.

In response to this, this Order has been made to amend Section 51A so that it applies the five year minimum term for offences of possessing certain prohibited firearms to:

- Offenders aged 21 or over who are sentenced to imprisonment.
- 18-20 year olds sentenced to detention in a young offender institution.

The offender must be 18 or over on the date of conviction. The maximum sentence for those aged 16-18 at the date of conviction remains three years in a young offender institution.

These modifications apply pending the coming into force of Section 61 of the Criminal Justice and Court Services Act 2000 (abolition of sentences of detention in a young offenders institution for offenders aged 18 to 20 at the time of conviction).

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

HOC 17/2007
Power of Search and Entry to Risk Assess Sex Offenders Subject to the Notification Requirements

Home Office Circular 17/2007 provides guidance on the power of entry and search to risk assess sex offenders subject to the notification requirements, as provided by the insertion of Section 96B into the Sexual Offences Act 2003, made by Section 58 of the Violent Crime Reduction Act 2006. This power comes into force on 31 May 2007 by virtue of SI 858/2007 (covered in March *Digest*).

The Circular contains the full text of the new Section 96B of the Sexual Offences Act 2003, an explanation of the reason for its introduction and guidance on how the power should be used in practice.

In summary, the new power is intended to enable the police to gather all the information they need about a relevant offender for the purposes of assessing the risks he poses, even if he is in apparent compliance with the notification requirements and there are insufficient grounds to believe he has committed a new substantive offence.

The new provisions allow the police to seek a warrant from the magistrates' court to enter and search, by force if necessary, the last notified address of a registered sex offender (or a place where there are grounds to believe the offender resides or can be regularly found) where there have been two failed attempts to enter a specified premises, for the purpose of assessing the risks he poses.

The application for the warrant must be made by a senior police officer, not below the rank of superintendent. The senior police officer should attend court in person to apply for the warrant.

A warrant will only be issued by a magistrate if they are satisfied that the following conditions are met:

- That the offender is a relevant offender (i.e. an offender subject to the notification requirements).
- That the offender is not: remanded in or committed to custody by order of a court; serving a sentence of imprisonment or a term of service detention; detained in a hospital; or outside the United Kingdom.
- That the address of each set of premises to which the warrant relates is either the home address which was last notified in accordance with Part 2 of the Sexual Offences Act 2003, or there are reasonable grounds to believe that the registered offender resides there or may regularly be found there.
- That it is necessary for a constable to enter and search the premises for the purpose of assessing the risk posed by the offender.
- That on at least two occasions, a constable has sought entry to the premises in order to search them for that purpose and has been unable to obtain entry for that purpose.

The warrant may also authorise entry to and search of premises on more than one occasion if, on the application, the magistrate is satisfied that it is necessary to authorise multiple entries for the purposes of risk assessment. Where a warrant authorises multiple entries, the number of entries authorised may be unlimited or limited to a maximum.

If more than one address is to be searched, then the constable will need to attempt (and fail) to enter each address for which the warrant is sought.

A warrant can be issued even if the two previous occasions on which the constable sought entry occurred before 31 May 2007. However, on the two previous occasions, the constable must have sought entry to the premises in order to search them for the purpose of assessing risk. Visits for other reasons will not count.

In circumstances where a constable has been allowed into the premises to search for the purpose of risk assessment, but not allowed into parts of the premises (e.g. a particular room), this will count as being 'unable to obtain entry' for the purpose of risk assessment.

As the warrant does not grant a power of seizure, where evidence of a crime is found during a search under such a warrant, constables can use their general powers of seizure provided by Section 19 of PACE.

A template to apply for the warrant under Section 96B can be found at http://www.crimereduction.gov.uk/sexualoffences/sexual04.htm

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

New European Union Law on Travellers Declaring Cash

Under a new European Union (EU) law, as from 15 June 2007, people who are either entering the UK from a non-EU country, or are travelling from the UK to a non-EU country and are carrying 10,000 Euros or more in cash (or the equivalent in other currencies) will be required to declare the cash to HM Revenue & Customs (HMRC) at the place of their departure from, or arrival in, the UK. 'Cash' for the purposes of this law means not only currency notes and coins but also bankers' drafts and cheques of any kind (including travellers' cheques).

The law is being introduced to help combat money laundering. Forms on which to make the declaration will be available at ports or airports and will also be downloadable from the HMRC internet site. Travellers could face a penalty of up to £5000 if they fail to comply with the obligation to declare, or they provide incorrect or incomplete information. There will be no declaration required for people travelling between the UK and other EU countries.

The declaration form will be produced with a carbon-backed top copy so as to allow travellers to have a duplicate, which officers of HMRC may ask them to produce as evidence of having made a declaration.

The EU cash declaration scheme derives from European Parliament and Council Regulation No. 1889/2005 and will come into effect in all EU Member States on 15 June.

European Parliament and Council Regulation No. 1889/2005 can be found in full at http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_309/l_30920051125en00090012.pdf

Consultation on Proposed Changes to the Misuse of Drugs Regulations 2001

The Home Office has published a consultation paper which sets out a number of proposals to change the Misuse of Drugs Regulations 2001 and the Misuse of Drugs Regulations (Northern Ireland).

One proposal which could impact on policing is the proposal to amend Regulation 27 to allow Accountable Officers to authorise a person or a class of persons to witness the destruction of controlled drugs.

Under Regulation 27, those required to maintain a Controlled Drugs Register are not allowed to destroy Schedules 1- 4 surplus or out-of-date stock controlled drugs without the destruction being witnessed by an authorised person. These will predominantly be Schedule 2 controlled drugs. Currently, only the Secretary of State can authorise a person or a class of persons to witness this.

Normally, police chemist inspection officers have performed the vast majority of witnessed destructions in the community, but due to these officers changing their methodology for inspecting community pharmacies to a risk-based inspection programme, a need to ensure that there are sufficient people authorised to witness destruction at a local level to prevent a build-up of surplus or out-of-date stock has been identified.

The Government proposes to give power to the Accountable Officer under the Regulations to authorise a person or a class of persons to witness the destruction of surplus or out-of-date controlled drugs. The Accountable Officer is responsible for the safe management of controlled drugs, including governance issues in their healthcare organisation, which captures community pharmacy and dispensing practices. As part of this role, they are expected to ensure that there are sufficient authorised witnesses to avoid a build-up of surplus or out-of-date controlled drugs. The Accountable Officer is therefore in an unrivalled position to assess local requirements and to identify those best placed to be authorised to witness destruction.

Accountable Officers themselves will not be authorised to witness destruction, as they must be independent of the day-to-day management of controlled drugs. Equally, the person or class of persons that they authorise to witness must have sufficient seniority within the organisation and must not be closely associated with the day-to-day management of controlled drugs in the location where they have authority to witness, e.g. pharmacists working in GP practices. The Accountable Officer must document any authority he/she gives and set out any terms that are to be applied to that authority.

The existing powers of the Secretaries of State under Regulation 27 will not be altered and the group authorities already in place will continue. Examples of groups authorised to witness under this authority include Royal Pharmaceutical Society GB Inspectors and police constables. The powers to be given to the Accountable Officer under Regulation 27 will sit side-by-side with those of the Secretaries of State.

Other proposals in the consultation include:

- Re-scheduling Midazolam from Schedule 4 to Schedule 3 of the Regulations, to allow it to continue to be supplied and administered under Patient Group Directions and to exempt it from the requirements of the Misuse of Drugs (Safe Custody) Regulations 1973.
- Introducing two new requirements in respect of requisitions (used for the supply of any Schedule 1-3 controlled drug otherwise than on prescription or by way of administration) for human use in the community. These are, firstly, that the name and address of the supplier must be recorded on the requisition; and, secondly, that the original requisition must be submitted to the Prescription Pricing Division of the NHS Business Services Authority (PPD) for England or processed as directed by its equivalent for the Devolved Administrations. Initially, the Government intends to place this requirement on requisitions used for supply in the community only.
- Allowing Operating Department Practitioners to possess and supply controlled drugs in a hospital operating department; replacing the term 'Sister' with 'Senior Registered Nurse' and extending the authority to supply controlled drugs in certain settings for the purpose of administration in accordance with the directions of an independent prescriber or supplementary prescriber under a clinical management plan.
- Removing the requirement to maintain a Controlled Drugs Register in the prescribed form set out in Schedule 6 of the Regulations and replacing it with a requirement to record designated fields of information in a Controlled Drug Register.

- Amending the Misuse of Drugs (Safe Custody) Regulations 1973 and the Misuse of Drugs (Safe Custody) (Northern Ireland) Regulations 1973 to include care homes.

The Home Office is also seeking views on:

- Allowing prescriptions for controlled drugs to be written and transmitted electronically, signed with an advanced electronic signature.
- The general authority to possess and supply Schedule 2 and 3 controlled drugs given by Regulation 6(4) of the Regulations in relation to licences granted under the Wildlife and Countryside Act 1981 and the Wildlife (Northern Ireland) Order 1985.

This consultation will close on 6 July 2007. The consultation paper can be found in full at http://www.homeoffice.gov.uk/about-us/haveyoursay/current-consultations/?view=Standard

HOC 18/2007
Trespass On Protected Sites - Sections 128-131 of the Serious Organised Crime and Police Act 2005

Home Office Circular 18/2007 informs police officers of two Orders made under Section 128 of the Serious Organised Crime and Police Act 2005, which designate a number of sites designated as protected sites for the purposes of Sections 128-131 of that Act.

The Orders are:

- The Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) Order 2007. (See SI 930/2007 in March *Digest*).
- The Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) (Amendment) Order 2007. (See SI Section in this *Digest*).

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

Home Secretary to Resign

John Reid has announced he will stand down from the Cabinet when Tony Blair resigns as Prime Minister.

Forced Marriage Unit Two-year Strategy Launched

Following on from its consultation 'Wrong Not a Right' (covered in previous *Digests*), the Government's Forced Marriage Unit (FMU) has published a two-year strategy, based on the recommendations emanating from the consultation. The strategy sets out three main objectives and activities that will be undertaken to achieve them. These are:

Objective 1: To increase education and work to raise levels of awareness of forced marriage within affected communities and professionals by:

- Working with overseas governments to raise awareness of the risks of coming to the UK as a result of forced marriages.
- Developing a targeted outreach programme to engage with affected communities and build capacity of professionals.
- Ensuring that MPs are aware of the issue of forced marriage to better advise constituents, in particular the immigration issues.
- Ensuring the FMU website contains accurate and updated information for victims, third parties and professionals.
- Raising awareness of forced marriage amongst men and the older generations in affected communities.
- Developing a programme of support for survivors of forced marriage.

Objective 2: To engage in more joined-up work with statutory agencies and ensure that best practice is shared effectively by:

- Continuing to improve the response to assisting victims of forced marriage.
- Working with health professionals to raise awareness and build their capacity in recognising risk factors and helping patients at risk.
- Working with the Immigration and Nationality Directorate and UK visas to assess the effectiveness of current policies.
- Ensuring that all cases involving a visa application are dealt with sensitively.

- Working with ACPO to develop a programme of work to target honour-based violence, including forced marriage.
- Working with Department of Education and Skills to target young and vulnerable people at risk of forced marriage.
- Working with Registrars to reduce the number of forced marriages taking place within the UK.
- Working with Safeguarding Children's Boards in the UK to ensure that appropriate policies are in place to tackle forced marriage.
- Sharing best practice with partners across the EU.
- Sharing best practice with diplomatic posts and work with Non-Governmental Organisations overseas to assist victims of forced marriage.

Objective 3: To work with partners in the police and criminal justice system to ensure that existing legislation is used effectively in cases of forced marriage by:

- Working with Local Criminal Justice Boards to ensure effective responses to cases of forced marriage.
- Working with ACPO to strengthen the police response in cases of forced marriage.
- Working with the Crown Prosecution Service to ensure effective responses to cases of forced marriage.
- Working to build capacity within the legal profession in using legal remedies in cases of forced marriage.

In relation to its first objective, the FMU has launched two new initiatives to assist survivors of forced marriage.

The first is a new handbook for survivors which offers practical help and information to help survivors take control of their lives. Copies of the handbook can be found at http://www.fco.gov.uk/Files/kfile/Survivors%20Handbook.pdf

Secondly, a network is also being launched to provide long term emotional support. The Survivors' Network has been developed in partnership with Karma Nirvana, a Derby-based charity which has received £30,000 of funding from the Forced Marriage Unit. Karma Nirvana is on 01332 604098/299166.

Although, following the consultation, the Government decided that it would not create specific criminal legislation around forced marriage at this time, there

does appear to be quite a lot of Governmental support for the Forced Marriage (Civil Protection) Bill. This Bill (covered in the December 2006 *Digest*) was drafted as a private member's Bill and introduced to Parliament by Lord Lester. Several amendments were made to the Bill at the Lords Committee Stage on 10 May. The main amendment was to Clause 1 of the Bill, to imbed the provision of the legislation into family law, adding to the Family Law Act 1996.

The latest version of the Bill can be found at
http://www.publications.parliament.uk/pa/ld200607/ldbills/070/2007070.pdf

The FMU strategy document can be found in full at

http://www.fco.gov.uk/Files/kfile/FMU%20Two-Year%20Strategy.pdf

British Crime Survey Update

The Home Office Research, Development and Statistics Directorate has published Statistical Bulletin 07/07 'Crime in England and Wales: Quarterly Update to December 2006'.

The report presents findings from both the British Crime Survey (BCS) and police-recorded crime.

Statistics from the British Crime Survey

The BCS results were gathered from interviews conducted in the period January 2006 to December 2006 and show that, on the whole, crime in England and Wales has remained stable in that period. The statistics show:

- An estimated 11.1 million crimes were committed against adults living in private households.
- The risk of being a victim of crime has risen by 1%, from 23% to 24%, compared with the year ending December 2005.
- There was no statistically significant change in vehicle thefts and domestic burglary, compared to the year to December 2005.
- Violent crime is stable.
- There was an 11% rise in the number of incidents of vandalism.
- There was no change in the overall levels of perceived anti-social behaviour.
- There was a reduction in confidence in the criminal justice system effectively bringing offenders to justice, reducing crime, and meeting the needs of victims.

- Confidence in the local police improved.

Recorded crime

The report gives a quarterly update of statistics for the period of October to December 2006. These indicate that:

- The total number of crimes recorded by the police fell by 2% (compared with the same period a year earlier).
- Recorded domestic burglary and vehicle crime each fell by 3%.
- There has been a 2% rise in criminal damage.
- Recorded violent crime showed a 1% decrease over the same period in 2005.
- Violence against the person is down 2%.
- Robbery is up 8%.
- Drug offences are up 3%.

The Report can be viewed in full at
http://www.homeoffice.gov.uk/rds/pdfs07/hosb0707.pdf

Charter to Tackle Cash in Transit Robbery

A new Charter, intended to help tackle the problem of cash in transit robbery, has been signed by representatives of local and central Government, the banking and security industries, trade unions and the police.

Under the Charter, actions to be taken include:

- Securing places where cash is delivered, including removing overgrown bushes, improving street lighting, installing CCTV and removing obstacles and unnecessary street furniture.
- Putting safer cash delivery at the heart of urban design and planning. A safe cash delivery area is required in all new-build shops.
- Producing and sharing best practice.
- Producing an annual report of progress against the Charter's aims, the first being published in 12 months' time.

Study into the Effect of the Provisions in the Licensing Act 2003 on the Number of Serious Assaults

A study published by Cardiff University's Violence Research Group has found that the number of serious violent assaults has fallen since the implementation of the Licensing Act 2003. The research was based upon injury data from 33 hospital accident and emergency departments in England and Wales.

The study revealed that:

- 6,000 fewer people have needed hospital treatment since pub opening hours changed in November 2005.
- There were 8% fewer female victims of violent assaults during 2006, although those involving males remained constant.
- The highest number of assaults was at weekends, peaking during the summer months.

The report concludes that its findings are not consistent with the hypothesis that implementation of the 2003 Licensing Act in November 2005 would increase violence in England and Wales.

The full report can be found at http://www.cardiff.ac.uk/dentistry/research/phacr/violence/pdfs/Trends_violence_England_Wales_2006.pdf

Firearms Certificates in England and Wales 2005/06

The Home Office Research, Developments and Statistics Directorate has produced a Statistical Bulletin entitled 'Firearm Certificates in England and Wales 2005/06'. The report provides information about firearm and shotgun certificates issued under the Firearms Acts 1968 and 1997 and about registered firearms dealers. The statistics are based on information from the period 1 April 2005 to 31 March 2006.

In relation to firearm certificates, the report reveals the following:

- There were 127,920 firearms certificates on issue on 31 March 2006, an increase of 1% from March 2005.
- The certificates on issue at the end of March 2006 covered 368,658 firearms, a 2.9% increase from the previous year. This figure is 11% lower than that recorded in 1995.
- Rifles accounted for 67 % of the weapons covered by certificates.
- In 2005/06 there were 8,615 new firearms certificates granted (5% less than in 2004/05).

- 1 % of applications for new firearms were refused in 2005/06, compared to 1.6% in 2004/05.
- 196 firearm certificates were revoked in 2005/06, compared with 258 in 2004/05.

Statistics regarding shotguns include:

- 563,588 shotgun certificates were on issue at the end of March 2006, a 1.5% reduction compared to the end of March 2005.
- Shotgun certificates in force at the end of March 2006 covered 1,360,770 shotguns, a figure down 1.7 % from March 2005.
- The average number of shotguns per certificate was 2.4.
- 25,220 shotgun certificates were granted during 2005/06, a 7.7% rise on the previous year.
- In 2005/06, 1.5% of new applications for shotgun certificates were refused.
- 699 certificates were revoked, a figure down by 6.2%.

The report also states that on 31 March 2006 there were 2,029 registered firearms dealers in England and Wales, an increase of 3.2% from the previous year.

The report can be found in full at http://www.homeoffice.gov.uk/rds/pdfs07/hosb0907.pdf

Ministry of Justice Ministers

The Ministers in the Ministry of Justice will be:

- The Rt Hon Lord Falconer of Thoroton QC (Lord Chancellor and Secretary of State for Justice).
- The Rt Hon Harriet Harman QC MP (Minister of State).
- The Rt Hon David Hanson MP (Minister of State).
- The Rt Hon Baroness Ashton of Upholland (Parliamentary Under-Secretary of State).
- Gerry Sutcliffe MP (Parliamentary Under-Secretary of State).
- Bridget Prentice MP (Parliamentary Under-Secretary of State).
- Vera Baird MP (Parliamentary Under-Secretary of State).

Gerry Sutcliffe will move to the Ministry for Justice and will not be replaced at the Home Office, due to functions moving to this new department.

A document entitled, 'Justice – a new approach' has been published by the Ministry of Justice, which sets out information on the new Ministry and its objectives. This can be found at http://www.justice.gov.uk/docs/Justice-a-new-approach.pdf

Conclusions on Possible Developments of Migration Policy, Organised Crime, Drug Trafficking and Counter-Terrorism within the EU

On 11 and 12 May, the Interior Ministers of France, Germany, Italy, Poland, Spain and the United Kingdom met in Venice to evaluate possible developments in the areas of migration policy, organised crime, drug trafficking and counter-terrorism.

They reached the following conclusions:

On migration

- The Ministers reaffirmed the importance of sharing information, improving co-ordination and supporting each other in their efforts to govern migration at the European and domestic level. On a case-by-case basis, this will include an informal dialogue to prepare legislation at EU-level.
- They noted that management of legal migration is an important factor in fighting illegal immigration and countering criminal organisations that exploit it, in a comprehensive common approach of dialogue and cooperation with countries of origin and transit.
- They took note of the initiatives carried out by the European Commission in the area of legal migration between EU and Third Countries, and look forward to the proposals which have been announced.
- They agreed to regularly proceed to an exchange of information, experiences and evaluation on the criteria and mechanisms adopted nationally as regards immigrants' entry and stay in their national territory.
- They recognised the need to develop work with Third Countries to tackle the challenge of illegal immigration.

On organised crime and drug trafficking

- They expressed their concern about the increase in cocaine production and the sharp growth in its consumption in Europe.

- They pointed out that the cocaine route towards Europe, originating from South America and passing through Western and Central Africa, is gaining ground.
- They agreed on the need to promote initiatives aimed at preventing the entry of cocaine into Europe through routes from Central Asia, particularly from Afghanistan.
- They agreed that the Maritime Analysis and Operation Centre-Narcotics (MAOC-N) Project needs to be fully implemented, by extending the operational area to include also the basin of Western Mediterranean.
- They agreed it is necessary to establish an African platform of European Anti-Drug Experts/Liaison Officers stationed in Western Africa, as well as to convene anti-drug meetings at senior officials level of G6 Countries and Mediterranean African States.
- They welcomed the initiative aimed at developing more effective techniques to combat document forgery/counterfeiting, which is an instrument widely used by criminal organisations in order to commit other more serious crimes.

On counter-terrorism

- They recognized the need to carry on their efforts aimed at preventing and struggling against radicalization and recruitment.
- They agreed on the importance of preventing and pursuing behaviours inciting the violence and racial hatred.
- They welcomed the Commission's intention of mapping the situation of radicalisation in the EU, of organizing a conference on youth and radicalisation and of issuing a handbook of best practices on what works in the field of violent radicalisation.
- They agreed to promote a more in-depth common study about the different systems and best practices in relation to expulsion related to terrorism, which was agreed to have proven to be an effective tool for States in order to protect their people from foreign nationals who are believed to pose a threat to national security.

Review of Safeguards to Protect the Charitable Sector (England and Wales) from Terrorist Abuse

The Home Office and HM Treasury have published a consultation paper to seek views from all relevant stakeholders on the findings and recommendations of their review of the safeguards which exist to protect the charitable sector from the risk of abuse by terrorists.

The review found:

- To date, identified instances of terrorist exploitation of charities are rare.
- The latent risk of terrorist exploitation inherent in some parts of the sector is significant, and continued vigilance is required from all stakeholders to ensure that this risk is not realised.
- The legislative framework for controlling the terrorist abuse of charities can only be effective if the sector is fully aware of and compliant with its provisions.
- The Charity Commission is a world-leader in the regulation of charities, and it is essential that it implements appropriate and proportionate measures to deal with the evolving threat of terrorist finance.

As a response to its findings, the review team make a number of recommendations, including:

That the Charity Commission

- Publish its strategic and operational objective to identify and minimise the risk of terrorist exploitation of charities and have a business strategy that directs activities and resources to deliver this objective.
- Develop its investigative capacity and the appropriate co-ordination with counter-terrorism agencies, to help ensure that possible instances of terrorist finance in the sector are identified.
- Establish, and keep under review, protocols to encourage effective working relationships between the Commission and the counter-terrorist agencies.

That charities

- Assess their exposure to the risk of terrorist exploitation and, in response, take proportionate steps to ensure that funds are not passed, directly or indirectly, to partner organisations with terrorist connections.

- A 'know your beneficiary' principle should extend to identifying and forestalling any funding connections either to designated terrorist organisations (such as those on the Bank of England's asset freeze list) or to recipients whose activities may give support to terrorism.

Responses to the consultation are requested by 2 August 2007.
The consultation can be found at http://www.homeoffice.gov.uk/documents/Charities_consultation.pdf?view=Binary

Consultation on Asset Recovery Action Plan

The Government has published a paper setting out its Asset Recovery Action Plan and seeking stakeholder views on proposals contained in the plan for new powers to assist in the recovery of criminal assets.

The plan sets out the Governments intention to increase the amount of illegal assets seized to at least £250m by 2009-10.

Proposals in the paper include:

- New powers to seize the high value goods of those charged with acquisitive crimes and enable them to be sold if necessary to meet confiscation claims.
- A new administrative procedure for cash forfeitures, where cash is forfeited automatically unless the owner exercises his right to a court hearing.
- Possible extension of cash seizure powers to cover other high value goods, enabling forfeiture to civil standard of goods that might have served as tools in crime, e.g. vehicles.
- Removing loopholes in the civil recovery powers in the Proceeds of Crime Act 2002.
- Making legislative changes in relation to the use of compensation orders, which benefit the victims of acquisitive crime, with a view to improving current performance.
- Extending the use of tax powers to target unexplainable criminal assets.
- Introducing US style 'qui tam' provisions, which enable private citizen whistleblowers to sue organisations defrauding the government, securing a share of the damages in return.

The Consultation Period will end on 23 November 2007. The consultation paper can be found in full at http://www.homeoffice.gov.uk/documents/cons-2007-asset-recovery/

Consultation on Possible Changes to the Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc) Regulations 1989

The Home Office has published a consultation document seeking views on Government proposals to make changes to the Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc) Regulations 1989.

The police have powers under Section 99 of the Road Traffic Regulation Act 1984 and the Removal and Disposal of Vehicles Regulations 1986 to remove vehicles that are illegally, obstructively or dangerously parked, abandoned or broken down. The 1984 Act authorises the police to recover from the vehicle owner (or other person responsible) such charges as may be prescribed for the removal, storage and disposal of the vehicle.

Under the Removal and Disposal of Vehicles (Prescribed Sums and Charges etc) Regulations 1993 the current charges (for England and Wales) are: removal £105; storage £12 per day; disposal £50. These charges currently apply uniformly to vehicles of all types and sizes irrespective of their condition, their position on or off road, and the work required to remove them.

When introduced, the aim of the charges was to allow the police, or the recovery operators acting on behalf of the police, to recoup the full cost of operations, but were not intended as a source of income.

The Government has decided to review the charges and system for several reasons, including:

- The fact that there has been no change made to the charges since 1993.
- Changes to the operational environment.
- Suggestions that the flat rate charges applying in respect of all vehicles, in all situations, in all parts of the country do not adequately reflect the different costs that may be incurred.

The main proposals in the document are:

- To replace the current statutory charge for removal (£105) with a set of charges dependent on the vehicle type, its condition and its location.
- To replace the current statutory charge for storage (£12 per day) with a set of storage charges dependent on the vehicle type and the part of the country in which it is stored.
- To replace the current statutory charge for disposal (£50) with a set of charges dependent on the vehicle type.

- To review statutory charges annually and increase them in line with inflation.
- To conduct a full-scale review of statutory charges every 3 years.

The consultation period will run for 12 weeks and end on 31 July 2007.

The consultation document can be found via http://police.homeoffice.gov.uk/operational-policing/road-traffic.html

Consultation on the Implementation of Provisions in the Immigration, Asylum and Nationality Act 2006

The Border and Immigration Agency, which is part of the Home Office, has published a consultation document seeking views on Government proposals to implement new powers contained in the Immigration, Asylum and Nationality Act 2006, to tackle illegal working by nationals of countries outside the European Economic Area.

The document provides information about the proposed new system of civil penalties and criminal offences relating to illegal migrant working. It also includes two separate draft codes of practice, which form a key part of the new legal framework on the prevention of illegal working.

The draft Civil Penalties Code of Practice sets out the level of penalty to be imposed per illegal worker, in a flow chart format. Civil penalties will be levied on companies which have been negligent in carrying out checks on workers. The maximum level of penalty is subject to consultation. At this stage, it has been suggested that the statutory maximum may be set at £5,000 for each illegal worker found.

This penalty may be increased or reduced according to different criteria. For example, the penalty can be increased according to the number of times an employer is found with illegal migrant workers in their workforce and has failed to establish a statutory excuse.

In all cases, employers must undertake the specified checks before a person begins employment in order to establish the statutory excuse and, where required, make subsequent checks on migrant staff to retain the statutory excuse.

A full check shall be considered to have been conducted where employers can provide copies of certain specified documents for all relevant employees and the official is satisfied that the specified steps were taken when checking these documents. However, the provision of such records does not prevent an employer from being prosecuted for a criminal offence, including the offence of

knowingly employing an illegal migrant worker or facilitating a breach of UK immigration law. Action will be taken against any employer where there is sufficient evidence available and where prosecution would be in the public interest.

A partial check will be considered to have been conducted where, for example, an employer has only checked and copied one of two original documents that are required by law to be checked as part of a combination, or failed to conduct a follow-up check on a worker with temporary immigration status after having conducted a full document check at the point of recruitment.

If an employer cannot provide a record of having conducted the prescribed document checks prior to recruitment, or they have accepted a document which clearly shows the person does not have a current entitlement to work in this country, they shall be considered as having conducted no check for the purpose of imposing a penalty. In each case, it is for the employer to show that they have complied with the requirements to establish a statutory excuse.

A sum may be deducted from the amount of penalty due for each worker when an employer has reported any suspicions about an employee's entitlement to work in the UK, or to undertake the work in question. This information must have been reported before any immigration visit is made to the employer.

Civil penalties may be reduced at the discretion of the Border and Immigration Agency, within the given minimum and maximum penalties set out in the Code of Practice. If more employees are found working illegally than suspected, employers can be penalised for each worker found, but any reduction made may be applied proportionately for each illegal worker detected.

The second Code of Practice is for employers. This gives them practical guidance on how to avoid unlawful racial discrimination whilst also complying with the law to prevent illegal migrant working. It is a statutory Code, but does not impose any legal obligations on employers and can be used as evidence in legal proceedings. Courts and Employment Tribunals must take account of any part of the Code that might be relevant on matters of racial discrimination in employment practices.

Public authorities are also subject to the requirements of this Code.

Responses to the consultation are requested to be returned no later than 7 August 2007. This consultation document is available at http://www.bia.homeoffice.gov.uk/lawandpolicy/consultationdocuments

Or

www.bia.homeoffice.gov.uk/lawandpolicy/consultationdocuments

Consultation on Guidance to Local Authorities in England and Wales on Climate Change Mitigation and Fuel Poverty

The Department of Trade and Industry has published a consultation paper on guidance to local authorities in England and Wales on climate change mitigation and fuel poverty.

The Climate Change and Sustainable Energy Act 2006 commits the Government to produce an 'energy measures report' by August 2007. This report must contain information on measures that local authorities can take in order to:

- Improve energy efficiency.
- Increase the levels of microgeneration.
- Reduce greenhouse gas emissions.
- Reduce the number of households living in fuel poverty.

Local authorities will have to 'have regard' to this report when exercising their functions, including their public sector estate management and procurement function, which will obviously have some impact on police forces.

Responses to the consultation should reach DTI by Wednesday, 1 August 2007. It is expected that the report will be published by 21 August 2007.

The consultation can be found at http://www.dti.gov.uk/consultations/page39274.html

HM Revenue & Customs Departmental Report 2007

The HM Revenue & Customs (HMRC) Departmental Report 2007 has been published. The report, for the first time, combines the HMRC Spring Departmental and Annual Report into one document. It details HMRC's business and operations and how the Department is currently performing against its Public Service Agreement (PSA) targets.

The report is available to view via http://www.hmrc.gov.uk/about/reports.htm

Sentencing Guidelines on the Sexual Offences Act 2003

On 30 April, the Sentencing Guidelines Council published its definitive guidelines on the Sexual Offences Act 2003.

The key principle of the guidelines is that sexual offences are always serious offences that harm victims both physically and psychologically.

The main features of the guidelines include:

- The establishment of ranges into which sentences would normally fall.
- The sentencer will identify a starting point, using the categories of seriousness described for each offence, and will move up or down from that to reflect the aggravating and mitigating factors present.
- Judges and magistrates are not precluded from sentencing outside the range, but will be expected to explain their reasons for imposing sentences that fall outside the sentencing range identified in the guidelines.
- The 'dangerous offender' provisions in the Criminal Justice Act 2003 apply to most of the offences covered by the Sexual Offences Act 2003, so that any offender who is found to present a 'significant risk of serious harm' to other people will receive lengthy sentences under those provisions designed to protect the public.
- In those cases involving victims under 13 where consent has been given (when it cannot actually be given in law), the Council advises that the presence of consent may be material in relation to sentence, particularly when the case involves a young offender whose age is close to that of the victim or whose mental capacity or maturity is impaired.

The guidelines break the Sexual Offences Act 2003 into types of offence. They then list aggravating factors for each offence. Aggravating factors common to a lot of the offences include:

- Extreme youth or old age of the victim. Cases involving victims under 13 should have a higher starting point.
- Where the victim has a mental disorder which impedes choice.
- Use of dugs, alcohol or other substance to facilitate the offence.
- Threats to prevent the victim from reporting the offence.
- Abduction or detention of the victim.
- Use of a weapon to frighten or injure the victim.

- Offences carried out by offenders operating in gangs or groups.
- Vulnerability of the victim.
- Additional degradation of the victim.

It is the aim of the guidelines to achieve consistency of approach for the same type of offence, whilst giving sentencing judges the flexibility to deal with the facts of each case on its own merits. The Sentencing Guidelines Council has stated that the new guidelines should not lead to reductions in the average length of sentences imposed on offenders.

The guidelines can be found in full at http://www.sentencing-guidelines.gov.uk/docs/82083-COI-SCG_final.pdf

New Programme of Improvements in Court Performance

Lord Falconer, the Lord Chancellor and Secretary of State for Justice, has disclosed that a new programme of improvements in court performance, called Breakthrough, has been launched. Breakthrough consists of 8 promises that Her Majesty's Courts Service has come up with to deliver better services for the public.

The eight specific Breakthrough commitments are:

- Give greater priority and urgency to public law cases often involving issues such as whether children should be taken into care, with a view to ensuring that the matter is resolved in less than 40 weeks or such later time as the judge or magistrate deems appropriate.
- Simplify and speed up criminal cases in the magistrates' courts so: most guilty plea cases are dealt with at the first hearing; most contested cases have no more than two hearings; the majority of simple charged cases take from a day to 6 weeks (on average) from charge to disposal.
- Embed the underlying principles behind community justice in all magistrates' courts, ensuring local courts improve their awareness and take account of local issues, particularly when dealing with low level crime.
- Encourage more families to resolve issues themselves through providing in-court conciliation or directing parties to mediation where it is appropriate and safe to do so.
- Put in place systems and incentives to ensure that the vast majority of civil business is initiated online.

- Provide a simpler and quicker service in the county courts through introducing a presumption that all but the most complex small claims are dealt with by way of mediation.
- Reduce the time taken to deal with cases in the Crown Court, so that the majority of cases are commenced and concluded within 16 weeks.
- Provide a knowledgeable, personalised and readily accessible service, keeping users informed about the progress of their case.

Legal Aid Advice by Telephone

Commencing in October 2007 the Criminal Defence Service Direct (CDS Direct) telephone service is to be extended to also cover situations where a client requests the services of a specific solicitor or solicitors' firm under legal aid - known as 'own client' work.

As from this date persons in police stations in the Greater Manchester, West Midlands and West Yorkshire criminal justice areas will receive legal aid advice over the telephone for all charges involving less serious offences.

Calls for legal aid assistance at police stations will be routed through the Duty Solicitor Call Centre (DSCC) to CDS Direct.

The Legal Services Commission will monitor and refine the CDS Direct service before rolling it out for 'own client' work across England and Wales in early 2008. Less serious offences include: driving with excess alcohol and failure to give a specimen and non-imprisonable offences such as fare evasion.

Consultation on Sentencing

The Constitutional Affairs Committee has launched a new inquiry entitled, 'Towards Effective Sentencing'. The Committee will be holding its first evidence session on this issue on 5 June.

This inquiry was originally launched by the Home Affairs Committee on 6 February 2007. However following the recent changes, on 9 May, when the Department for Constitutional Affairs became the Ministry of Justice (MoJ), the new inquiry will cover all the areas for which the MoJ has responsibility including sentencing. All evidence previously submitted to the Home Affairs Committee has been passed onto the Constitutional Affairs Committee in connection with this inquiry, and is subject to the same terms and conditions.

The Terms of Reference for the inquiry are as follows:

- What are the main drivers for the current size of the prison population?
- What solutions are there to counter the current trend towards higher numbers of people being imprisoned?
- To what extent are prisons occupied by people who should not be there?
- What should be done about people in prison for whom more constructive options than custody may be appropriate (i.e. alternatives to remand in custody, restorative justice, prosecutorial diversion etc)?
- What approach should be taken to vulnerable people in custody (i.e. some women, young people, and those suffering from mental health and addiction problems)?
- To what extent is the traditional approach to sentencing sustainable (i.e. to take no account of the extent to which prison resources are available) or should resources be part of judges' thinking when sentencing?
- If so, how should this be done? Should there be specific legislation to cover this?

Home Secretary's Speech to Police Federation Annual Conference

During his speech to the Police Federation Annual Conference, the Home Secretary, John Reid, announced that a new Criminal Justice Bill will be introduced this summer. He stated that the Bill would contain provisions which would extend police powers, enabling them to close all premises generating yobbish behaviour, not just crack dens. He also said that the police would be given more powers to restrict the behaviour of dangerous offenders, such as where they can live or whom they can associate with.

In his speech, Mr Reid also referred to extending the use of Taser (see article below).

The full speech made by the Home Secretary can be found at http://www.wired-gov.net/wg/wg-news-1.nsf/lfi/147099

Taser Trial

The Government is planning, subject to independent medical authority approval, to run a trial which would allow specially trained police officers to use Taser. The Home Office has submitted proposals to an advisory committee, which will report back next month. The trial, which is proposed will involve 10 forces (Metropolitan, Northumbria, West Yorkshire, Merseyside, Gwent, Northamptonshire, Devon and Cornwall, Avon and Somerset, Lincolnshire and North Wales), will be subject to a trial and evaluation review for the first 12 months by the Home Office.

The proposed participating forces have received the detailed training and guidance required to prepare for the trial start date. At present, it is hoped to commence the trial on 1 September 2007. It is anticipated that, should the trial be successful in this wider availability and use of Taser, that this facility will then be made available to all forces.

Police Authority Capital Grant 2007/2008

Minister for Security, Counter Terrorism and Police, Mr. Tony McNulty has announced that the capital allocations to police authorities for 2007/08 which were announced January 2006 had been adjusted to take account of money which had been retained centrally for the capital costs associated with police force mergers. A further £25m of capital is now available for distribution to police authorities for 2007/08. Home Office officials are writing to police authorities and forces to inform them of this additional grant.

Home Affairs Committee on Police Funding

The Home Affairs Committee, chaired by the Labour MP John Denham, has held a one-off evidence session into the police funding allocation. It heard from representatives from the Association of Chief Police Officers, the Association of Police Authorities, the Police Federation and the Police Superintendents' Association.

During the session, the Committee also heard from Policing Minister Tony McNulty.

When asked if real value for money had been obtained out of the resources that the police had been given, Tony McNulty said that it had; and he added that that this Committee session and the forthcoming CSR raised important questions about value for money.

When asked why the burden of police funding was falling more heavily on the local taxpayer, Tony McNulty said that it was not and that much of the funding still came from central government. He added that it was not clear, from a public policy point of view, what would be a good cut-off point for the local versus central contribution.

Asked if he accepted that there was a funding gap, Tony McNulty said that he accepted that resources were 'plateauing', but added that he did not accept many of the assumptions and presumptions about the extent of the gap.

When asked if he accepted that debt was rising from £656 million in 2008/09 to £966 million, Tony McNulty acknowledged that this figure was based on fair assumptions, but suggested that they were overestimates. Figures of inflation running at more than five per cent were unrealistic, he claimed, pointing to the potential for efficiency savings. The Minister remained upbeat on possibility of keeping down wage inflation.

Mr McNulty said that there would be "tight years ahead because of the CSR settlement", but that there would be many ways across the piece that they would be dealt with.

Asked if staff reductions were inevitable. Mr McNulty agreed with the estimate that every £100 million shortfall would represent a loss of around 2-3,000 staff. However, he maintained that the projected shortfalls represented a pessimistic view and claimed that it was not inevitable that jobs would be lost.

Mr McNulty said that the service was entering a period of consolidation with the next CSR, rather than decline.

When asked if the police assumptions made by Government would be made clear when the CSR was published, the Minister replied that if this could happen in a practical sense then it should, but that he suspected that it would happen when the Home Office decided to 'divvy up' the CSR.

When asked if funding measures on CPI would be sufficient, the Minister replied that they would be.

He said that funding needed to be looked at in a wider context and that one of the huge growths in police activity had been in counter-terrorism, noting that more funding had been put into this area. He added that it was quite proper for forces to use reserves to get over a temporary blip, as long as it was just temporary.

When asked if, since the Home Office was no longer dealing with prisons and probation, more resources could be devoted to prisons and police, Tony McNulty said that it would not, and that he was not sure why this would have been the case.

When asked for examples of areas where the police had failed, Tony McNulty replied that he was not sure that it was about success or failure but at looking at building on what the police had achieved.

When asked about neighbourhood policing and PCSOs, he said that his concern was that in 'officialdom', not with the police on the ground - there was a fight over the existence of PCSOs and whether they had a role to play and that this was a shame.

Asked if PCSO numbers would be reduced in 2008, Tony McNulty said that he hoped not, and that he wanted to consolidate the position of PCSOs.

When asked for his thoughts on the ways in which organisations like the National Policing Improvement Agency (NPIA) operated, the Minister said that NPIA was seven weeks old, but the balance about what it did needed to be right and that this could be addressed over the coming years.

When asked if the Government and the police were too target driven and whether the outcomes were what the public wanted, the Minister replied that the police were not too target driven, but acknowledged the need to be flexible to respond to improvements in policing.

There were some distortions and perversions of the system that should be got rid of, Mr McNulty observed, but he did not accept that targets were solely responsible for this. Added to this, Mr McNulty said that he disagreed with the Police Federation that those distortions were the norm.

When asked if the police was suffering from 'initiative-itis', Tony McNulty said that it was not, but admitted that there was an issue around local accountability and more collaboration around protective services.

When asked about the reduction in number of traffic police and of MOD police officers, he said that roads policing numbers had gone down because much more was now being done by local forces. On MOD police officers, Mr McNulty offered to further discuss the matter with Mr Russell.

Asked what the next definition of front line policing would be and whether it would include paper work and file preparation, the Minister replied that he did not know and that he would get back to the Committee on this.

When asked when the 73% target would be reached on cutting police bureaucracy, the Minister replied that it would be reached as soon as possible and that it was absolutely central to policing to get rid of inappropriate red tape.

When asked to what extent pay would take the burden of the new budget, the Minister replied that pay formed a significant part of the police resourcing budget. He said that it would form part of the negotiations and predicted that these would be 'delicate and interesting'.

A full transcript of all oral and written evidence given at the session should be soon available on the UK Parliament website http://www.parliament.uk/index.cfm

Good Practice Guide on Local Policing Summaries

The Home Office has published a guidance document entitled, 'Local Policing Summaries - Good Practice Guide: Maximising Impact'. The guidance is intended as a tool to which police authorities and forces can refer to help them meet their legislative requirements and as advice on how to maximise the impact of their summaries going forward. The guidance is based on the findings of a Home Office-commissioned review which looked at summaries that had been produced by police authorities during 2006, the first year of implementation of Local Policing Summaries.

The guidance can be found in full at http://police.homeoffice.gov.uk/news-and-publications/publication/police-reform/local-policing-summaries/

SOCA Annual Report

The Serious Organised Crime Agency (SOCA) has published its first annual report. It covers the exercise of SOCA's functions during 2006/07, against the plans that were published in SOCA's Annual Plan 2006/07 before its launch on 1 April 2006.

Overall, the assessment is that the Annual Plan has been carried out. All the financial information contained in the report is un-audited. A further document is to be published later in the year which will contain other information, including the audited accounts and governance information.

The report can be found in full at http://www.soca.gov.uk/assessPublications/downloads/SOCAAnnualRep2006_7.pdf

Assaults against the Police

A report has been published by Grant Shapps MP revealing the level of assaults on front-line police officers in Britain. The report, entitled "Police on the Beat: A comprehensive study into the alarming level of assault on front-line police officers", is based on research aimed at assessing how many police officers have been assaulted over the last five years.

The statistics in the report are based upon the results from Freedom of Information requests to all 51 police forces in England, Scotland and Wales (98% of forces responded) and empirical research carried out in the author's Welwyn Hatfield constituency.

The report shows that:

- In 2006, a police officer was assaulted somewhere in Britain every 20 minutes.
- In the last 5 years, a record 126,860 police officers have been assaulted on Britain's streets.
- In 2006 alone, 25,368 police officers were assaulted. That is an average of 70 assaults on police every day.
- Last year one-in-six police officers in England, Scotland and Wales were assaulted while on duty.
- Five out of every six police officers have been the victim of assaults in the line of duty since 2002.

The report states that the rising number of assaults is likely to lead to difficulties in recruiting new officers and PCSOs.

'Most Wanted' was launched in November 2006 as the UK's first national website dedicated to locating child sex offenders who have failed to comply with notification requirements. The new facility will enable members of the public to be notified each time an offender is added to the website, via an email alert. The alert will automatically be sent to anyone who has registered for updates and will direct users to the CEOP website where they can view the latest photographs and details in full.

This new facility will not affect anonymity when giving information about an offender online.

Details about the alerts can be found at http://www.ceop.gov.uk/wanted

Police Vulnerable Witness Pocket Guide

The Police Vulnerable Witness Pocket Guide was launched at Derby Magistrates' Court on 2 May. 170,000 copies of the pocket guide have been produced by a partnership of ACPO and three learning disability charities: VOICE UK, Respond and the Ann Craft Trust. They have been distributed amongst police officers in England, Wales and Northern Ireland.

The guide will give frontline officers information on how to identify and help those witnesses and victims who need extra assistance in giving evidence. It has been produced in response to a Home Office report entitled 'An evaluation of the use of special measures for vulnerable and intimidated witnesses' which found that police officers had difficulty identifying those who could benefit from special measures, with less than half of vulnerable of intimidated witnesses being identified.

International Policing Exhibition

The International Policing Exhibition is being held this year on 20–21 June at the G-Mex Manchester. The exhibition, which is free to all ranks of the police service and individuals working with the police service, will be held alongside the ACPO-APA Summer Conference.

The organisations which will be exhibiting include:

- National Policing Improvement Agency – will outline its programme of change to help police forces and law enforcement agencies to evolve.
- NICE Systems – will be demonstrating how unified multimedia management can be used to enhance end-to-end operational policing by using real operational scenarios.

- Police National Legal Database PNLD - will be showing forces how to use the database and will introduce the new Police National Statistics Database and the National Vacancies recruitment service.

The exhibition will also include a number of specialised 'zones':

- The Information Technology and Communications Zone will look at specialist applications including crime recording systems, mobile communications and criminal intelligence analysis.
- The Security Zone.
- The Special Operations Zone, featuring companies specialising in forensics and a range of uniform solutions, for example protective clothing and ballistic helmets.

The exhibition will also play host to a seminar programme involving presentations by leading policing organisations on issues such as command and control, community cohesion and forensics; and case studies by exhibitors working on projects with police forces and authorities.

Further details about the exhibition can be found at http://www.acpo-apa.co.uk/index.cfm?do=home.page

National Black Police Association Funds Frozen

From 1 April, the National Black Police Association has had its funding frozen by the Home Office. The accounts of the Association, which received £180,000 from the Government last year, were being audited by the audit assurance unit when the following issues emerged:

- Inadequate financial controls; and
- A lack of other financial management procedures being in place.

A full Home Office Review will be carried out of the Associations accounts.

Dedicated Helpline for Police Extended

A pilot helpline scheme run by the Motor Insurers Bureau (MIB) to assist the police with difficult roadside situations, where there may be doubt over the validity of insurance cover for a suspect vehicle, is to be extended.

When set up in 2006, the Metropolitan Police, South Yorkshire Police, West Yorkshire Police and Merseyside Police were given access to the Police Helpline. The scheme has now been extended to include: Cambridgeshire, Lincolnshire, North Wales, Gloucestershire, Bedfordshire, Hertfordshire, Thames Valley,

Greater Manchester, Leicestershire, City of London, Hampshire, Essex and Kent. The Motor Insurers' Bureau website is http://www.mib.org.uk

YJB Research Report on Groups, Gangs and Weapons

The YJB has published a report it commissioned try and ascertain whether an increase of gang-related offending and the use of weapons by young people was occurring and to try and discover the factors underlying any trends, as well as identifying their implications for policy and practice.

The research report, 'Groups, gangs and Weapons', found that currently, there is no national trend data on knives available to support the growing concern (shared by professionals working with young people) about the extent to which knives are carried by 10 to 17 year-olds.

The report authors do comment on concerns they have about what they see as the current indiscriminate use of the term 'gang' and recommend that distinctions need to be made between 'real' gangs and groups of young people who may commit low-level anti-social behaviour and crime. It warns that the mislabelling of youth groups as gangs runs the risk of glamourising them and may even encourage young people to become involved in more serious criminal behaviour.

The full report can be found at http://www.yjb.gov.uk/publications/Scripts/prodView.asp?idproduct=342&eP=

Analysis Report of the Youth Justice System in England and Wales

The Centre for Crime and Justice Studies has published a report containing a number of essays from numerous authors which analyse the youth justice system in England and Wales. The report, 'Debating youth justice: From punishment to problem solving', contains a range of policy proposals by the different authors including:

- Moving responsibility for youth justice from the Home Office to the Department for Education and Skills.
- Raising the age of criminal responsibility.
- Ending the use of prison custody for children.
- Introducing a new sentencing framework including a residential training order of up to two years or five years in the case of grave crimes.
- Expanding restorative justice schemes, particularly in schools, where offenders make amends for their actions.
- Greater investment in prevention programmes and services to support children in trouble or at risk who have educational and health problems.

- Expanding child and adolescent mental health services.
- The creation of an extensive network of family support services.
- The withdrawal of Anti Social Behaviour Orders for children.

The full report can be found at http://www.crimeandsociety.org.uk/opus375/dyjmonoembargo.pdf

Multi-Agency Information Sharing

The Times newspaper has published details of a draft Home Office plan on 'multi-agency information sharing'. Details in the report, apparently circulated around Whitehall by Simon King, head of the Home Office's violent crime unit, proposes that public bodies who become sufficiently concerned about an individual, must consider initial risk assessment of risk to/from that person and refer the case to a multi-agency body. It also suggests that two new agencies could be set up, one for potential criminals and the other for potential victims. These bodies would collate tip-offs from the front line and carry out 'full risk assessments'.

The report suggests that danger signs used to identify an individual as a potential perpetrator might include a violent family background, heavy drinking or mental health problems. It suggests that potential victims could be identified when seeking treatment for stress from their GP.

The Times article can be found http://www.timesonline.co.uk/tol/news/politics/article1816772.ece

Case Law

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

Control Order for Terrorist Suspect Did Not Breach ECHR Rights

SECRETARY OF STATE FOR THE HOME DEPARTMENT v (1) E (2) S (2007)

CA (Civ Div) (Pill LJ, Wall LJ, Maurice Kay LJ) 17/5/2007

CRIMINAL PROCEDURE - HUMAN RIGHTS

Conditions Precedent: Non-Derogating Control Orders: Prosecutions: Restrictions: Right To Liberty And Security: Impact Of Control Order On Rights Under Art.5 European Convention On Human Rights 1950: Secretary Of State's Continuing Duty To Review Prospects Of Prosecution: Art.5 European Convention On Human Rights: Art.3 European Convention On Human Rights: Art.8 European Convention On Human Rights: S.8(2) Prevention Of Terrorism Act 2005

A non-derogating control order imposed on an individual suspected of being involved in terrorism-related activity, which imposed a curfew, required him to wear an electronic monitoring tag, restricted visitors to his home and restricted his use of communications equipment, did not breach his rights under the European Convention on Human Rights 1950 Art.5.

The appellant secretary of state appealed against a decision ((2007) EWHC 233 Admin) quashing a non-derogating control order made against the respondent (E). Under the terms of the order, E was required to remain at home between 19.00 and 07.00, to wear an electronic monitoring tag and to report to a monitoring company by telephone every day. There were restrictions on who could visit his home and who he could have pre-arranged meetings with, as well as restrictions on the type of communications equipment he could use. The judge below found that those restrictions breached E's rights under the European Convention on Human Rights 1950 Art.5. The judge also found that the secretary of state had become aware of

judgments of the Belgian court in cases in which associates of E were successfully prosecuted, and had failed to consider the impact of those judgments on the prospects of bringing a prosecution against E. The judge found that the secretary of state's failure sufficiently to consider the prospect of prosecuting E meant that his continuing decision to maintain the control order was flawed. The secretary of state submitted that (1) the restrictions in the control order did not constitute a breach of Art.5: E was able to live in his home with his family and was not isolated from social contact; during the 12 hours when he was not subject to curfew, there was no geographical restriction upon the places he could visit. The court had to look at the objective characteristics of E's actual situation, and not "person specific" characteristics. Control orders were only valid for 12 months and their duration should be considered on that basis; the court should not speculate as to further periods of detention. Further, where Art.3 and Art.8 challenges had been made and rejected by the judge, factors relevant to them should not be reconsidered in an Art.5 context; (2) the judge had been wrong to find that he had breached his duty to consider and review the prospects of prosecuting E. The judge had wrongly elided the duties of the secretary of state on the one hand and the duties of the police and the Crown Prosecution Service on the other hand. Once the secretary of state had consulted the police at the outset, pursuant to the Prevention of Terrorism Act 2005 s.8(2), the duty to keep under review was satisfied by periodic enquiry of the police as to whether the prospect of a successful prosecution had increased.

HELD

(1) The degree of physical restraint on E's liberty was far from a deprivation of liberty in terms of Art.5, Guzzardi v Italy (A/39) (1981) 3 EHRR 333, Engel v Netherlands (A/22) (1979-80) 1 EHRR 647 and Trijonis v Lithuania (Admissibility) (2333/02) considered. E lived in his own home with his family, and was able to leave his home for 12 hours a day with no geographical restriction on where he could go. E had ample opportunity to engage in everyday activities and make a wide range of social contacts, Secretary of State for the Home Department v JJ (2006) EWCA Civ 1141, (2006) 3 WLR 866 distinguished. While the state of a controlled person's health, and possibly other "person specific" characteristics, might have an impact on the severity of the effect of the restrictions imposed, the judge below was correct in finding that, in the instant case, only very limited weight could be given to that factor. The judge had been right to conclude that the control order was likely to be renewed on expiry of the relevant 12-month period and to consider the restrictions on that basis. The judge had not erred in considering matters relevant to arguments under Art.3 and Art.8 in his consideration of Art.5.

(2) When properly considered in its statutory context, the duty under s.8(2) of the 2005 Act to consider and review the possibility of prosecution was not a condition precedent to the making or renewal of a control order. The judge below had been right to find that the secretary of state had breached his duty to keep the possibility of prosecuting E under review. It was incumbent upon him to provide the police with material in his possession which was or might be relevant to any reconsideration of prosecution. The duty extended to a duty to take reasonable steps to ensure that the prosecuting authorities were keeping the prospects of prosecution under review; it did not extend to the secretary of state becoming the prosecuting authority. The secretary of state had breached his continuing duty of review by omitting to provide the police with the Belgian judgments so as to prompt and facilitate a reconsideration, Secretary of State for the Home Department v MB (2006) EWCA Civ 1140, (2006) 3 WLR 839 applied.

(3) The judge had erred in describing the Belgian judgments as "evidence" giving rise to a realistic possibility of prosecution. He had erred in law in holding that the secretary of state's breach justified the quashing of the control order, and ought instead to have further analysed the consequences of the breach.

APPEAL ALLOWED

Appropriateness of Disciplinary Procedures

R (on the application of INDEPENDENT POLICE COMPLAINTS COMMISSION) (Claimant) v CHIEF CONSTABLE OF WEST MERCIA (Defendant) & DAVID WALTON (Interested Party) (2007)

QBD (Admin) (Keith J) 4/5/2007

POLICE- PROFESSIONS

Abuse Of Process: Conduct: Coroners' Courts: Disciplinary Procedures: Police Officers: Disciplinary Procedures Against Police Officer: Appropriateness Of Disciplinary Procedures: Police Act 1996: S.76(3) Police Act 1996

A disciplinary panel appointed by the chief constable erred in staying disciplinary proceedings against a police officer as an abuse of process on the grounds that the issue before it had already been determined by a jury sitting in the Coroner's Court, because the jury's verdict could not be treated as having determined whether the police officer had committed a disciplinary offence.

The claimant Independent Police Complaints Commission applied for judicial review of a decision of the respondent chief constable to stay disciplinary proceedings against the interested party police officer (W). In order to effect the arrest of a third party (H) for being drunk and disorderly W had taken H to the ground. When he did so H's head struck the pavement. H was handcuffed and taken to a police station where a medical examiner certified that H was fit to be detained. H later died in hospital and the cause of death was extradural haemorrhage and blunt-force head injury. A coroner sitting with a jury conducted an inquest into H's death. The jury determined a number of factual questions and held that the fatal injury to H was sustained at the time of arrest, but that the force used to effect that arrest was reasonable. W's conduct was referred to the Police Complaints Authority, the commission's precursor, under the statutory regime then in place, namely the Police Act 1996. The chief constable decided not to bring disciplinary proceedings against W after considering the views expressed by the jury. The commission took the view that disciplinary proceedings should be brought and, under s.76(3) of the 1996 Act, directed the chief constable to do so. The disciplinary panel appointed by the chief constable stayed the disciplinary proceedings as an abuse of process. It was of the opinion that the instant case was an exceptional one because the matter before it required the determination of essentially the same question or issue that had been decided by the jury on essentially the same facts and argument and there was no new evidence or different standards of proof or a need to consider appropriate sanction that

made it a matter that the panel would need to address. Accordingly the disciplinary panel concluded that it was under a duty to stay the proceedings.

HELD

The panel was not under any duty to stay the disciplinary proceedings on the basis upon which it purported to do so. Although the panel had not spelt out how the administration of justice would be brought into disrepute so that the proceedings against W should be stayed as an abuse, in essence it's decision was that the issues that the proceedings raised had already been decided and if the charges against W were found to be proved, two different bodies would have arrived at diametrically conflicting decisions on the same issues on the same evidence. However, in the instant case, even if the actual questions asked of the jury appeared to determine whether W had committed a disciplinary offence that was a product of the way the questions were drafted. The fact remained that the jury's verdict could not be treated as having determined whether W had committed a disciplinary offence, and W could not be said to have been exonerated in that sense. Further, it was of significance that the commission had not been a party to the coroner's proceedings, and H's family had not been represented at the inquest. The absence of representation for the commission or H's family at the inquest meant that, although the proceedings had been inquisitorial in nature with the coroner taking the lead in eliciting W's account of what had happened, W's version of events would not have been probed and tested in the way it would have been by the presenting officer in the disciplinary proceedings, Hunter v Chief Constable of the West Midlands (1982) AC 529, R v Chief Constable of Merseyside Ex p Merrill (1989) 1 WLR 1077 and R v Belmarsh Magistrates Court Ex p Watts (1999) 2 Cr App R 188 considered. Accordingly it was appropriate to quash the decision of the panel that the disciplinary proceedings be stayed as an abuse of process, and the panel should hear and determine the disciplinary charges that W faced.

JUDGMENT FOR CLAIMANT

Principles of Double Jeopardy not extended to Prosecutions under the Terrorism Act 2000

R v (1) IK (2) AB (3) KA (2007)

CA (Crim Div) (Sir Igor Judge (President QB), Hallett LJ, Hedley J) 27/4/2007

CRIMINAL PROCEDURE - CRIMINAL LAW

Abuse Of Process: Detention Without Charge: Double Jeopardy: Public Interest: Special Immigration Appeals Commission: Stay Of Proceedings: Terrorism: Terrorists: Criminal Prosecution Following Proceedings Before Special Immigration Appeals Commission: Application Of Double Jeopardy: S.21(1) Anti-Terrorism, Crime And Security Act 2001: Terrorism Act 2000

It was inappropriate for the principles of double jeopardy to be extended and applied to a situation where a defendant was being prosecuted for offences under the Terrorism Act 2000 having previously appealed to the Special Immigration Appeals Commission against a certificate issued under the Anti-terrorism, Crime and Security Act 2001 s.21(1), since the latter proceedings were not criminal.

The Crown appealed under the Criminal Justice Act 2003 s.58 against a terminating ruling made in the Crown Court staying the prosecution of the defendants for conspiracy to provide property and money for the purposes of terrorism contrary to the Terrorism Act 2000. The defendants were Libyan nationals resident in the United Kingdom and members of an organisation aimed at overthrowing the Libyan government. The first defendant (D) had been arrested and detained under a certificate issued under the Anti-terrorism, Crime and Security Act 2001 s.21(1) on the grounds that he had sent money to people linked to Al Qaeda and other Islamist extremists. His appeal to the Special Immigration Appeals Commission, asserting that his activities were unconnected to terrorism, was allowed and the certificate was cancelled. The other defendants (D2 and D3) had been charged with forging passports. They pleaded guilty, on the basis that their motive had been humanitarian as they had helped those at risk of persecution, and served a term of imprisonment. All three defendants were subsequently re-arrested and detained in connection with their proposed deportation, and then charged with the terrorism offences. The prosecution evidence was based on material seized from D2 and D3 prior to their forgery charges, and from D1 prior to his proceedings before the commission. The proceedings against them were stayed on the grounds of double jeopardy in respect of the earlier proceedings. D1 submitted that the judge had been entitled to exercise his discretion as he did and that it was fair

to apply the concept of double jeopardy as the facts underlying both sets of proceedings were broadly similar; the Crown submitted that double jeopardy should not be extended to proceedings before the commission. D2 and D3 submitted that they had cooperated throughout their earlier prosecution and, having served their sentences, were then being prosecuted for offences based on substantially the same course of conduct as had been alleged against them before; the Crown submitted that the judge had wrongly elided two distinct issues, namely the facts relied on by the prosecution in the forgery proceedings and the facts that were or could have been known to the police but were not relied on in those earlier proceedings.

HELD

(1) It was inappropriate for the principles of double jeopardy to be extended and applied to the proceedings before the commission and the instant criminal proceedings. It was true that the proceedings under the 2001 Act deprived D1 of his liberty until the certificate was cancelled, but he was not being prosecuted, he was never at risk of conviction and the proceedings were not criminal. Furthermore, the terrorism proceedings against D1 involved the deployment of additional evidence, particularly that seized from the other defendants, and the issues at stake were different and considerably broader. The commission was not a "competent" court for the purposes of criminal proceedings, just as the family court was not a "competent" court, R v Levey (Stephen) (2006) EWCA Crim 1902, (2006) 1 WLR 3092 applied. Given the developing jurisprudence in relation to abuse of process there was no realistic scope for, nor any purpose in, developing the concept of double jeopardy beyond its established limits.

(2) Both the earlier forgery proceedings and the later terrorism proceedings against D2 and D3 were criminal, but they addressed quite different offences. The reality was that the evidence to justify prosecution for the terrorism offences was not available when D2 and D3 were sentenced for their forgery convictions. In any event, the question of double jeopardy was not answered by considering whether or not there was such evidence and there was no necessity for any such extension to the principles of double jeopardy. Further, the evidence relating to the forgery offences was not the same or substantially the same as the evidence supporting the terrorist offences as the facts were significantly different. D1 and D2 had not previously been directly or indirectly in jeopardy for the terrorism offences and were not facing sequential trials for offences on an ascending order of gravity on the same facts, R v Beedie (Thomas Sim) (1998) QB 356 distinguished.

(3) Accordingly, the judge's rulings staying the terrorism proceedings were reversed and in the interests of justice the proceedings were ordered to be resumed in the Crown Court.

APPEALS ALLOWED

Factors to Consider When Deciding Whether Victim was Not Giving Oral Evidence through Fear

R v MALCOLM BOULTON (2007)

CA (Crim Div) (Hooper LJ, Gibbs J, Roderick Evans J) 26/4/2007

CRIMINAL PROCEDURE - CRIMINAL EVIDENCE

Domestic Violence: Failure To Attend: Hearsay Evidence: Oral Evidence: Putting People In Fear Of Violence: Rape: Similar Fact Evidence: Failure To Give Oral Evidence Through Fear: Proof Of Fear: S.116 Criminal Justice Act 2003

On a consideration of whether a victim was not giving oral evidence through fear in accordance with the Criminal Justice Act 2003 s.116, the victim's state of mind had to be assessed against the history of the case which had involved allegations of rape and domestic violence. Where the perpetrator had used threats against her and financial resources to try to stop her giving evidence, there was ample evidence of her continuing fear of giving evidence against him.

The appellant (B) appealed against his convictions for rape, false imprisonment and putting people in fear of violence contrary to the Protection from Harassment Act 1997 s.4. The offences were alleged to have taken place during a relationship between B and the victim (V) at a time when she was pregnant with his child. V had alleged that B had beaten and raped her on several occasions. B was charged with the offences as well as a count of conspiracy to intimidate witnesses for which he was charged with two co-defendants (C). The Crown alleged that whilst B was in custody, he and C had made threats to V and other witnesses in order for them to retract their evidence. Consequently V was offered full witness protection which she eventually left. Witnesses alleged that B had offered a reward for information as to V's location. She gave an explanation at a hearing prior to B's trial that she did not wish to give evidence against him due to the threats to herself, her friends and her family. Thereafter V deliberately concealed her whereabouts

and failed to attend to give evidence at B's trial. The trial judge allowed V's evidence to be read to the jury as he found, in accordance with the Criminal Justice Act 2003 s.116, that she was not giving oral evidence through fear. The trial judge also ruled that another witness (D) was permitted to give evidence of B raping her when she had been pregnant with his child. B had previously been acquitted of all charges arising from D's allegations. B submitted that

(1) V had not failed to give evidence through fear but because of an unwillingness to submit to the trauma of giving evidence against him; and

(2) the trial judge was wrong to allow D to give evidence.

HELD

(1) It may have been the case that V had the additional reason for not giving evidence that was suggested by B. However that did not resolve the issue of whether the judge was correct to find that V was absent from court through fear. It was clear during the period that V was in witness protection that B was taking steps to find her whereabouts. He was using threats and his financial resources to try to stop her giving evidence. V's state of mind had to be assessed against the full history of the case. There was ample evidence of V's continuing fear of what might happen to her if she gave evidence against B. Accordingly the judge was entitled to reach his conclusion.

(2) There were sufficiently similar features between the allegations made by D and those made by V that B's acquittal did not prevent D's allegations from being admissible at B's trial, R v Z (Prior Acquittal) (2000) 2 AC 483 applied.

APPEAL DISMISSED

Decision as to whether an 'accident' had occurred Within the Meaning of s.2 Road Traffic Offenders Act 1988 is Judges as Opposed to a Jury's

R v PAUL ALAN CURRIE (2007)

CA (Crim Div) (Scott Baker LJ, Openshaw J, Sir Richard Curtis) 26/4/2007

CRIMINAL PROCEDURE - CRIMINAL EVIDENCE - CRIMINAL LAW - ROAD TRAFFIC

Accidents: Burden Of Proof: Dangerous Driving: Juries: Notices Of Intended Prosecution: Service: Standard Of Proof: Meaning Of "Accident" In S.2 Road Traffic Offenders Act 1988: Determining Occurrence Of Accident: Burden And Standard Of Proof: Jury Matters: Judicial Matters: S.2 Road Traffic Offenders Act 1988: S.1 Road Traffic Offenders Act 1988: S.1(3) Road Traffic Offenders Act 1988

It was for a judge rather than a jury to decide on the criminal standard of proof, with the burden resting on the prosecution as to whether "an accident" had occurred within the meaning of the Road Traffic Offenders Act 1988 s.2 that obviated the requirement under s.1 of the Act for the service of notice of intended prosecution on an individual charged with dangerous driving.

The appellant (C) appealed against his conviction for dangerous driving. C had been driving a car when he was stopped by two police officers. They noticed a strong smell of cannabis and told C and his two passengers to get out of the car, which they did. One of the officers dealt with C whilst the other dealt with the passengers. When the latter officer required assistance, the other attempted to give it. On being left alone, C attempted to drive off. One of the officers tried to stop C, but C allegedly drove, or let the car "lurch forward", towards the officer, who had to place her hands on the bonnet of the car. C then allegedly reversed at speed, narrowly missing a number of parked vehicles, before finally driving off. When charged with dangerous driving, C's defence was that he had panicked and decided to leave in a hurry. At trial, C's case was that he had not driven dangerously and that there had not been "an accident" within the meaning of the Road Traffic Offenders Act 1988 s.2 such as would obviate the requirement under s.1 of the Act for service of notice of intended prosecution on him, and that, as there had been no such service, it was not open to the jury to convict him. The judge held that, on the facts, there had been "an accident". In reaching that conclusion, he held that C had wholly failed to discharge the burden required on the balance of probabilities, as set out in s.1(3) of the Act. Issues arose as to (i) whether an issue of fact had to be determined in order to decide whether there had been "an accident",

and whether it was for the judge or jury to decide that issue; (ii) on whom the burden of proof lay in deciding whether there had been an accident and to what standard of proof; (iii) whether there had been "an accident" within the meaning of s.2 of the Act.

HELD

(1) It was for the judge rather than the jury to decide if the facts disclosed "an accident" within the meaning of s.2 of the Act. C had been indicted for dangerous driving; proof of "an accident" was not necessary to establish the offence of dangerous driving itself. Rather, it went to whether there had been compliance with the procedural requirement in s.1 of the Act of giving a person notice. Compliance with procedural matters was pre-eminently a matter for a judge rather than a jury to decide, and it was appropriate for the judge to decide the issues of fact as to whether there had been "an accident" rather than to leave them to the jury, R v Bolkis (William) (1934) 24 Cr App R 19 and R v Stacey (1982) RTR 20 applied, R v Seward (James Richard) (1970) 1 WLR 323 and R v Morris (Kenneth Morleen) (1972) 1 WLR 228 distinguished.

(2) The burden of proof was on the prosecution to prove to the criminal standard that there had been "an accident". The issue for the judge to determine was whether there had been an accident within the meaning of s.2(1) of the Act, so the prosecution was not required to comply with the provisions of s.1(1). As the prosecution were positively averring that there had been "an accident" and that in consequence it was not obliged to comply with the notice provisions in s.1(1), it had the burden of proof and the criminal standard applied. However, the outcome of the factual issue did not turn upon where the burden of proof lay or to what standard. It was clear that the judge accepted the police evidence, wholly rejected C's evidence, and had he directed himself correctly the result would inevitably have been the same. Thus, the judge's misdirection in placing the burden on C of disproving whether there had "an accident" did not threaten the safety of the conviction.

(3) There had been an accident within the meaning of s.2 of the Act. The word "accident" was to be given a commonsense meaning and was not restricted to untoward or unintended consequences having an adverse physical effect, Chief Constable of the West Midlands v Billingham (1979) 1 WLR 747 considered and Bremner (Robert John) v Westwater 1994 JC 25 approved. On the evidence that he accepted, the judge was fully entitled to conclude that there had been an accident within the meaning of s.2(1) of the Act. Accordingly, the prosecution was not required to serve a notice under s.1 of the Act and C's conviction was safe.

APPEAL DISMISSED

Police Forces Bound to Secure the Safety of Witnesses

1) IRWIN VAN COLLE (ADMINISTRATOR OF THE ESTATE OF GILES VAN COLLE, DECEASED) (2) CORINNE VAN COLLE v CHIEF CONSTABLE OF HERTFORDSHIRE (2007)

CA (Civ Div) (Sir Anthony Clarke MR, Sedley LJ, Lloyd LJ) 24/4/2007

HUMAN RIGHTS - CRIMINAL LAW - CRIMINAL PROCEDURE - POLICE

Causation: Intimidation Of Witnesses: Just Satisfaction: Police Powers And Duties: Right To Life: Right To Respect For Private And Family Life: Witness Protection: Police In Breach Of Duty To Take Preventive Measures In Relation To Protection Of Witness: S.7 Human Rights Act 1998: S.8 Human Rights Act 1998: Art.2 European Convention On Human Rights: Art.3 European Convention On Human Rights

The police had been under a duty to take preventive measures to protect a witness who was being threatened and who was subsequently murdered, and they were in breach of that duty and therefore acted incompatibly with the European Convention on Human Rights 1950 Art.2. The judge's award of damages to the witness's estate and to his parents under the Human Rights Act 1998 s.8 had been too high and was reduced.

The appellant chief constable appealed against the decision that he had acted unlawfully in violation of the European Convention on Human Rights 1950 Art.2 and Art.8 by failing to discharge the positive obligation of the police to protect the life of the respondents' son (G). G was murdered just days before he was due to give evidence for the prosecution at the trial of a defendant (B) on charges of theft. B was convicted of G's murder. The respondents alleged that G's murder by B had occurred after a number of threats and incidents of witness intimidation by B against G and others of which the investigating police officer (R) should have been aware and which should have led R to take steps to protect G against the risk of serious harm. In disciplinary proceedings R had been found guilty of failing to perform his duties conscientiously and diligently in connection with the intimidation of G. In proceedings by the respondents under the Human Rights Act 1998 s.7 the judge held that the chief constable was vicariously liable for the police's failure to protect G and in that way failed in his duty to act compatibly with G's rights under Art.2 and Art.8 of the Convention. The judge awarded damages under s.8 of the 1998 Act of £15,000 for G's distress in the weeks leading up to his death and of £35,000 in respect of the respondents' grief and suffering. The chief constable submitted that the judge had been wrong to hold that R had acted in breach of his duty to take protective measures in relation to G; that the correct

approach to causation was the common law test and that it had not been shown that but for the infringement of Convention rights G would have survived; and that the award of damages was too high.

HELD

(1) Where it was established that the state authorities knew or ought to have known of the existence of a real and immediate risk to the life of an individual as a result of the criminal acts of a third party, the state had a positive obligation under Art.2 of the Convention to take preventive, operational measures to protect that individual. That obligation was breached if they failed to take the measures, within the scope of their powers, which, judged reasonably, might have been expected to avoid that risk.

(2) The question whether there was a real and immediate risk to G's life had to be considered in the context that he was not simply a member of the community but was to be a witness for the prosecution at a criminal trial. In the instant case if there was a real risk then it was immediate because it existed or would have existed until the trial of B, R (on the application of DF) v Chief Constable of Norfolk (2002) EWHC 1738 and R (on the application of Bloggs 61) v Secretary of State for the Home Department (2003) EWCA Civ 686, (2003) 1 WLR 2724 considered.

(3) It was plain from the fact that B was responsible for G's murder that there was in fact a risk to his life. The police ought to have been aware that there was such a risk and that it was real and immediate. R had failed to consider whether or not he should take action to protect G when a properly instructed officer would have done so. There had been a failure on the part of R as a professional police officer to carry out his duties properly in circumstances in which there was evidence of intimidation of a witness. The judge's conclusions were not based on hindsight or on applying too high a standard to a busy policeman. The judge had been right to hold that the police were under a duty to take preventive measures in relation to G and were in breach of that duty and therefore acted incompatibly with G's right to life under Art.2.

(4) The judge had been entitled to hold that causation was established even on the "but for" test. Therefore the appeal on liability was dismissed.

(5) In awarding damages under s.8 of the 1998 Act the English court had to derive what assistance it could from decisions of the European Court of Human Rights. In considering whether to award compensation in respect of a death resulting from a breach of Art.2 a person's suffering before the death could be taken into account even if it would not of itself have given

rise to a claim under Art.3 of the Convention. The judge had taken into account two matters that she should not have done when assessing damages: the lack of a proper apology, and the disciplinary sanction against R. Furthermore, the awards were too high and the judge should have awarded £10,000 to G's estate and £15,000 to the respondents personally. To that extent the appeal was allowed.

APPEAL ALLOWED IN PART

Criminal Damage – Departure from Home Office Guidance Warranted in Exceptional Circumstances

R (on the application of A) v SOUTH YORKSHIRE POLICE (2007)

DC (May LJ, Gray J) 9/5/2007

CRIMINAL PROCEDURE

CRIMINAL DAMAGE: DECISIONS TO PROSECUTE: HOME OFFICE: YOUNG OFFENDERS: FINAL WARNINGS: HOME OFFICE GUIDANCE: EXCEPTIONAL CIRCUMSTANCES

A police authority had been entitled to prosecute youths for criminal damage, rather than issue them with a final warning as recommended by the relevant Home Office guidance, as it was not unreasonable, given the aggravating factors present in the case, to have concluded that there were exceptional circumstances to justify such a course of action.

The claimant youths (X) applied for judicial review of a decision made by the defendant police authority to prosecute them for criminal damage. X had used knives to damage seats on their school bus. The arresting officer (B), having found that the offence warranted a final gravity score of 4 pursuant to the guidance set out in the Home Office circular 14/2006, brought charges against X. B subsequently conceded that in fact the offence only warranted a score of 3 but maintained that he would still, in any event, have prosecuted X, citing aggravating factors such as the extent of the damage and the political climate at the time of the incident with regard to the use of knives. The guidance provided that offences that warranted a final gravity score of 4 would normally result in a prosecution. Conversely, it provided that score of 3 would normally only require issuing the offender with a final warning and that reprimand would only be justified in exceptional circumstances. X submitted that B had applied the gravity factor system incorrectly and had failed to recognise that issuing a final warning was a more appropriate course of action.

HELD

The police authority's decision to prosecute X was sustainable. The suitable approach was to refrain from intervening in the determinations of police authorities unless a decision to prosecute constituted a departure from the relevant guidelines and there was no rational explanation for such a departure. It was difficult to fully accept B's claim that he would have prosecuted X even if he had identified the correct gravity score, as he did not appear to apply his mind to the requirement that there be exceptional circumstances. However, it did not follow that to charge X marked a departure from statutory guidance.

It was not unreasonable, given the aggravating factors that were undoubtedly present in the instant case, to have concluded that there were exceptional circumstances to justify charging X with criminal damage.

APPLICATION REFUSED

'Defence of Property' Defence to a Charge of False Imprisonment Dependant upon Belief That Complainant was a Burglar

R v SHWAN FARAJ (2007)

CA (Crim Div) (Tuckey LJ, Bennett J, Langstaff J) 4/5/2007

CRIMINAL LAW

Arrest: Defence Of Property: Defences: False Imprisonment: Mistake: Entitlement To Detain Suspected Burglar On Basis Of Honest But Unreasonable Belief

Defence of property as a defence to a charge of false imprisonment was not dependent upon whether the defendant had reasonable grounds for suspecting that the complainant was a burglar, but only upon whether in fact he believed that the complainant was a burglar.

The appellant (F) appealed against his conviction for false imprisonment. The complainant (H) was an engineer who had gone to F's house to repair a time switch. It was common ground that H had briefly entered the house before being allowed or told to leave. H alleged and F denied that F had armed himself with a knife and forced H to sit in a corner. F's case was that he had believed H to be a burglar but that he had not detained or restrained H at any time. The prosecution case was that H had been unlawfully restrained from the moment he was threatened with the knife. The judge gave directions to the effect that if they decided F did restrain H they could consider whether F was exercising his lawful right either to arrest or to detain in defence of his property. The jury convicted. F submitted that the defence of mistaken belief had been overlooked and that the jury should have been directed that if they accepted that F believed that H was or might have been a burglar F was entitled to be acquitted because his restraint of H was not unlawful. The Crown submitted that it had been unnecessary for the jury to consider mistaken belief because F did not claim that he was acting on the mistaken belief that H was a burglar but said that he had not restrained H at all.

HELD

(1) If the judge had left the case to the jury on the simple basis that they had to decide whether F had restrained H or not she could not have been criticised. But once she agreed to direct the jury as to what the position would be if F had restrained H, it was incumbent upon her to give correct directions as to the law. If she did not do so it was open to F to raise the matter on appeal even though his counsel at trial did not put his case as it was put on appeal.

(2) H's evidence established that he had been intentionally restrained by F. The question was whether that restraint was unlawful or without legal justification. Lawful arrest was one defence and reasonable defence of property was another. It was unnecessary to decide whether there had been a lawful arrest if F genuinely but unreasonably believed H to be a burglar. That was because in respect of defence of property if F believed that H was a burglar he would be entitled to be judged on that basis even if his belief was unreasonable. There was no reason why a householder should not be entitled to detain someone in his house whom he genuinely believed to be a burglar. He would be acting in defence of his property by doing so. Full effect could be given to the defendant's belief however unreasonable it might be. But the householder had to believe honestly that he needed to detain the suspect and had to do so in a way that was reasonable. If all that F had done was to detain H for the purposes of establishing his identity it was most unlikely that he would be found to have acted unreasonably. Whether his use of a knife to do so was reasonable was another matter, which would be for the jury to decide.

(3) There was no free standing right to detain that was not subject to the same limits as the defences of arrest and defence of property. (4) The judge had not referred to mistaken belief and had erroneously elided the defences of arrest and defence of property. Defence of property was a separate defence. It was not dependent upon whether F had reasonable grounds for suspicion, but only upon whether in fact he believed that H was a burglar. The summing up was accordingly flawed in such a way as to cast doubt on the safety of F's conviction.

APPEAL ALLOWED

Guidance on the Impact of Increased Penalties for Driving Related Offences

R v RICHARDSON: R v SHEPPARD: R v ABERY: R v LITTLE: R v POEL: R v ROBERTSON (2006)

CA (Crim Div) (Sir Igor Judge (President), Forbes J, Royce J) 18/12/2006

SENTENCING - CRIMINAL LAW

Careless Driving: Causing Death By Dangerous Driving: Causing Death When Under The Influence: Maximum Sentences: Sentencing Guidelines: Increase In Maximum Sentences: Impact On Sentencing Guidance In R. V Cooksley (Robert Charles) (2003) Ewca Crim 996: (2003) 2 Cr App R 18: S.285 Criminal Justice Act 2003: Road Safety Act 2006

The court gave guidance on the impact of the Criminal Justice Act 2003 s.285, which increased the penalties for driving-related offences, on the guidance offered to sentencers in R v Cooksley (Robert Charles) (2003) EWCA Crim 996, (2003) 2 Cr App R 18.

In joined appeals, the court was required to determine the impact of the Criminal Justice Act 2003 s.285 , which increased the penalties for driving-related offences, on the guidance offered to sentencers in R v Cooksley (Robert Charles) (2003) EWCA Crim 996 , (2003) 2 Cr App R 18 . Before February 27, 2004 the maximum sentence for causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs was 10 years' imprisonment. Section 285 of the 2003 Act increased those maximum sentences to 14 years. The issues for determination were

(i) whether the increases effected by s.285 should normally lead to increased sentences throughout the entire range of the offences covered by the increased maximum, or whether increases should be directed at cases of the greatest culpability, which had caused the greatest harm;

(ii) the relationship between causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs. The appellants submitted that the maximum sentence for dangerous driving was still two years' imprisonment; the fact that it remained unchanged showed that the increased maximum sentence where death resulted was directed at the consequences of the bad driving. The appellants argued that the logical conclusion was that the increase was directed at cases where the worst consequences had occurred. The Crown submitted that

the increase in the maximum sentence was intended to reflect the broad view of Parliament that sentencing courts should approach driving-related offences with greater severity than in the past. The Crown argued that that would produce a greater effect in the more serious cases rather than the less serious cases, but nevertheless it would have some impact throughout the range of sentences.

HELD

(1) The primary object of the increase in the maximum sentence was to address cases of the most serious gravity, so as to permit the sentence to be greater than before. However, it had not been the intention that the increase in sentence should reflect the consequences of the increase from 10 years to 14 years in a strictly mathematical proportion. Appropriate proportionality between the variety of driving-related offences led to the conclusion that if the sentence in the most serious cases was significantly increased, there should be some corresponding increase in sentences immediately below that level of gravity, continuing down the scale to cases where there were no aggravating features at all, Attorney-General's Reference (No14 of 1993), Re (1994) 1 WLR 530 followed. Given the multiple circumstances covered by driving-related offences, and the numerous potential aggravating features, it was unwise to be over-prescriptive in the identification of a single starting point which would normally be appropriate for the different categories of culpability and seriousness. The relevant starting points in Cooksley should be reassessed as follows: no aggravating circumstances - 12-24 months' imprisonment; intermediate culpability - two-four years six months' imprisonment; higher culpability - four years six months-seven years' imprisonment; most serious culpability - 7-14 years' imprisonment, Cooksley applied.

(2) The approach of treating on an equal basis the offences of causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs would shortly become open to question. There must be no doubt that where death arose from a road traffic accident caused when the driver had voluntarily consumed excess alcohol, in culpability terms that was and should be equated with causing death by dangerous driving. In the context of the Road Safety Act 2006 the difference in culpability between dangerous driving and careless driving assumed critical importance. Taken on its own, excluding any element of drink or drugs, careless driving was far less culpable than dangerous driving. It usually involved culpability at the lowest possible scale. When the 2006 Act came into force it would no longer be appropriate for the difference between dangerous and careless driving to be elided. Where

the offender pleaded guilty to causing death by careless driving when under the influence of drink or drugs, the sentencing judge should reach his preliminary conclusion as to the appropriate sentence level before taking account of and applying the discount for the guilty plea. Further, it was a specific mitigating feature that the offender behaved responsibly and took positive action to assist at the scene of the accident.

APPEALS ALLOWED IN PART

SI 1183/2007 The Licensing Act 2003 (Persistent Selling of Alcohol to Children) (Prescribed Form of Closure Notice) Regulations 2007

In force **3 May**. These Regulations prescribe the form of a closure notice given under Section 169A of the Licensing Act 2003.

A closure notice offers an alternative to prosecution under Section 147A of the Licensing Act 2003 for persistently selling alcohol to children. That offence may be committed by the holder of a premises licence (a form of authorisation for alcohol sales under the 2003 Act) if, on three or more occasions within three consecutive months, alcohol is sold unlawfully to an individual aged under 18 on the premises to which the licence relates.

If he considers, on the evidence, that there is a realistic prospect of conviction of the licence holder for such an offence, a police officer (of the rank of superintendent or above) or an inspector of weights and measures may give a closure notice under s.169A, proposing that the premises concerned be 'closed' (that is, alcohol sales be prohibited) for a period of up to 48 hours beginning not less than 14 days after the date the closure notice is served.

If the closure notice is accepted by the premises licence holder (or if there is more than one, all of them), the prohibition on alcohol sales proposed in it takes effect, and no proceedings may subsequently be brought against the holder or holders for the alleged s.147A offence or any related offence. If the closure notice is not accepted by all relevant licence holders. they may be liable for prosecution for the s.147A offence in the usual way.

SI 1263/2007 The Equality Act (Sexual Orientation) Regulations 2007

In force **30 April**. These Regulations have been made under Section 81 of the Equality Act 2006. The purpose of the regulations is to make it unlawful to discriminate on the grounds of sexual orientation in the provision of goods, facilities and services, education, disposal and management of premises and exercise of public functions.

Section 35 of the Equality Act 2006 defines sexual orientation as an individual's sexual orientation towards persons of the same sex as him or her, persons of the opposite sex, or both.

The regulations provide for three types of discrimination on grounds of sexual orientation:

- Direct discrimination occurs where a person is treated less favourably than another on grounds of sexual orientation (regulation 3(1)).

- Indirect discrimination occurs where a provision, criterion or practice, which is applied generally, puts a person of a particular sexual orientation at a disadvantage and cannot be shown to be a proportionate means of achieving a legitimate aim (regulation 3(3)).
- Victimisation occurs where a person receives less favourable treatment than another by reason of the fact that he has brought (or given evidence in or provided information in connection with) proceedings, made an allegation or otherwise done anything under or by reference to the Regulations, or because he intends to do so (regulation 3(5)).

Regulation 3(4) provides that, for the purpose of the provisions defining whether discrimination has taken place, when comparing the treatment of two people, the fact that one is a civil partner and the other is married is not a material difference in the circumstances.

The Regulations prohibit discrimination in the following areas:

- Regulation 4 – provision of goods, facilities or services.
- Regulation 5 – disposal and management of premises.
- Regulation 7 – access to education and educational facilities.
- Regulation 8 – exercise of public functions (subject to certain exceptions in Schedule 1).

Regulation 9 makes discriminatory practices unlawful, and regulation 10 makes discriminatory advertisements unlawful. It is unlawful to instruct or cause another person to discriminate (regulation 11). However, regulation 13 provides that it will not be unlawful for a person to do anything by way of meeting the needs for education, training or welfare of persons on the grounds of their sexual orientation, or providing ancillary benefits related to these aims.

Exceptions to the regulations are provided:

- Regulation 14 – exemption for organisations relating to religion and belief - those whose purpose is to practise a religion or belief, to advance a religion or belief, to teach the principles of a religion or belief, or to enable persons of a religion or belief to engage in any activity or receive a benefit within the framework of that religion or belief. It does not, however, extend the exception to organisations whose sole or main purpose is commercial, or those who act under a contract with and on behalf of a public authority.

- Regulation 18 - charities are also exempt in so far as they are established to confer a benefit on a particular group by virtue of sexual orientation, and act in accordance with this charitable instrument.
- Regulation 27 - where a person is treated less favourably on grounds of his sexual orientation in relation to an annuity, or life insurance policy, or similar matter.

Regulation 15 provides a transitional period for religious adoption and fostering agencies to comply with the Regulations, provided they refer a person who has been refused their service on grounds of their sexual orientation, to another provider.

Regulation 16 extends the Regulations to membership rights of private clubs and associations.

Regulation 17 provides for exceptions to regulation 16 for associations whose main object is to allow benefits to be enjoyed by persons of a particular sexual orientation.

Regulations 19 to 26 deal with the enforcement of the Regulations. Any legal recourse for individuals will be for a claim in tort for breach of a statutory duty (regulation 20(1)). But the Regulations do not prevent proceedings by the Commission for Equality and Human Rights under parts of the Equality Act 2006, judicial review or immigration proceedings (regulation 19).

Regulation 28 applies to any person who operates a service for the collection and distribution of human blood in order to provide a medical service. It is unlawful to discriminate on grounds of sexual orientation against a person who offers to donate blood, unless refusal of their donation is reasonably based on clinical and epidemiological data.

Regulation 29 makes it unlawful knowingly to help another to do anything which is unlawful under these Regulations.

Regulation 30 deals with liability of employers and principals, and in particular makes acts committed by an employee treated as if they had been done by his employer as well as him.

Regulation 31 applies to the police. It states that police officers shall all be treated as employees of their chief officer of police. Any compensation for an unlawful act must be paid out of police funds.

Regulation 32 amends the Equality Act 2006 to add regulations 10 and 11 of these Regulations to section 25 of that Act, which deals with the power of the Commission for Equality and Human Rights to make applications to court to restrain unlawful advertising, pressure, etc.

Regulation 33 deals with Crown application.

Regulation 34 deals with territorial application.

SI 1286/2007 The Proscribed Organisations Appeal Commission (Procedure) Rules 2007

In force **7 May**. These Rules set out the procedure to be followed on appeals to the Proscribed Organisations Appeal Commission under the Terrorism Act 2000, against refusals by the Secretary of State to deproscribe organisations and in related proceedings before the Commission under Section 7(1)(a) of the Human Rights Act 1998.

These Regulations replace the Proscribed Organisations Appeal Commission (Procedure) Rules 2001 (S.I. 2001/443).

The Rules also take account of an amendment to the Terrorism Act 2000 by the Terrorism Act 2006, which empowers the Secretary of State to order that a name is to be treated as another name for a proscribed organisation and allows an appeal to the Commission against a refusal to order that that name cease to be treated as another name for the organisation (rules 2, 6 and 7).

The Rules follow the 2001 rules in the following ways:

- They require the Commission to secure that information is not disclosed contrary to the public interest (rule 4).
- They entitle the appellant to be legally represented (rule 33).
- They set out the circumstances in which a special advocate is to be appointed to represent the interests of the appellant (rule 9).
- They allow appeals to be heard in the absence of the appellant and his representative, where necessary (rule 22).
- They enable applications to be made for permission to appeal to an appellate court on a point of law from a determination of the Commission (rule 30).

However, they also contain new provisions on:

- Early directions hearings (rule 11).
- Further material (rule 13).
- Closed material (rules 14 and 15).
- Redacting material (rules 14 and 16).
- The withdrawal and striking out of appeals (rules 18 and 19).

- The amendment of determinations (rules 28 and 29).
- The effect of errors of procedure and the correction of determinations (rules 37 and 38).

SI 1324/2007 The Firearms (Sentencing) (Transitory Provisions) Order 2007

In force **28 May**. Section 51A of the Firearms Act 1968 provides for minimum sentences to be imposed for certain offences under Section 5 of that Act.

Section 51A provides that an offender aged 18 or over, when convicted of a qualifying offence for which a sentence of imprisonment is imposed, will receive a minimum term of five years.

This Order modifies Section 51A pending the repeal of the sentence of detention in a young offender institution for offenders aged 18 to 20 at the time of conviction. The modifications in this Order apply the five-year minimum term for a qualifying offence to offenders aged 21 or over sentenced to imprisonment and to 18 to 20 year olds sentenced to detention in a young offender institution.

These Regulations are explained further in HOC 15/2007 (see article on page 12)

SI 1387/2007 The Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) (Amendment) Order 2007

In force **1 June**. This Order amends the Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) Order 2007 to substitute a new map for the map in Schedule 1 to that Order, so as to correct errors in that map.

The map sets out the part of the Chequers Estate that is to be designated for the purposes of Section 128 of the Serious Organised Crime and Police Act 2005.

SI 1392/2007 The Serious Organised Crime and Police Act 2005 (Amendment of Section 76(3)) Order 2007

In force **4 May**. If a person is convicted of an offence that is mentioned in Section 76(3) of the Serious Organised Crime and Police Act 2005, the court, when sentencing or otherwise dealing with the person, may also make a financial reporting order in respect of him.

This Order amends Section 76(3) to add the following offences to it:

- A common law offence of conspiracy to defraud.
- Section 17 of the Theft Act 1968 (false accounting).

- A common law offence of bribery.
- 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).
- Section 93A of the Criminal Justice Act 1988 (assisting another to retain the benefit of criminal conduct).
- Section 93B of the Criminal Justice Act 1988 (acquisition, possession or use of proceeds of criminal conduct).
- Section 93C of the Criminal Justice Act 1988 (concealing or transferring proceeds of criminal conduct).
- Section 49 of the Drug Trafficking Act 1994 (concealing or transferring proceeds of drug trafficking).
- Section 50 of the Drug Trafficking Act 1994 (assisting another person to retain the benefit of drug trafficking).
- Section 51 of the Drug Trafficking Act 1994 (acquisition, possession or use of proceeds of drug trafficking).
- Section 15 of the Terrorism Act 2000 (fund-raising for purposes of terrorism).
- Section 16 of the Terrorism Act 2000 (use and possession of money etc. for purposes of terrorism).
- Section 17 of the Terrorism Act 2000 (funding arrangements for purposes of terrorism).
- Section 18 of the Terrorism Act 2000 (money laundering in connection with terrorism).
- Section 329 of the Proceeds of Crime Act 2002 (acquisition, use and possession of criminal property).
- A common law offence of cheating in relation to the public revenue.
- Section 170 of the Customs and Excise Management Act 1979 (fraudulent evasion of duty).
- Section 72 of the Value Added Tax Act 1994 (offences relating to VAT).
- Section 144 of the Finance Act 2000 (fraudulent evasion of income tax).
- Section 35 of the Tax Credits Act 2002 (tax credit fraud).

Financial reporting orders can also be made in respect of attempting, conspiring in or inciting the commission of an offence mentioned above (except a common law offence of conspiracy to defraud) or similarly in respect of aiding, abetting, counselling or procuring the commission of these offences.

SI 1409/2007 The Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007

In force **21 May**. The Gambling Act 2005 gives the Secretary of State power to make regulations which provide for conditions to be attached to premises licences under Sections 167 and 168 of the Act.

Two types of conditions may be attached:

- Mandatory conditions - attached to premises licences under Section 167 — will attach to all specified types of premises licence and can only be amended or excluded by further regulations made by the Secretary of State.
- Default conditions - attached to premises licences under Section 168 - will attach to all specified types of premises licence, unless they are excluded by the licensing authority responsible for issuing the premises licence.

These regulations provide for various conditions to be attached to premises licences.

Regulation 3 sets out mandatory conditions that will apply to all premises licences.

Regulations 4 to 8 provides for various conditions to be attached to casino premises licences. The conditions set out in Part 1 of Schedule 1 will be attached as mandatory conditions to all casino premises licences. In addition, further mandatory conditions contained within Schedule 1 will apply to different types of premises licences dependent on their size.

Regulation 9 provides that the conditions set out in Part 6 of Schedule 1 will be attached as default conditions to all casino premises licences. These conditions can be excluded by licensing authorities under Section 169 of the Act. Should they choose to exclude these conditions, licensing authorities have the discretion to attach new conditions to the premises licence which address a matter that was addressed by the excluded condition.

Regulation 10 provides that the conditions set out in Part 1 of Schedule 2 will be attached as mandatory conditions to all bingo premises licences.

Regulation 11 provides that the conditions set out in Part 2 of that Schedule will be attached as default conditions to all bingo premises licences.

Regulations 12 and 13 provide that the mandatory conditions set out in Schedules 3 and 4 will be attached to Adult Gaming Centre Premises Licences and Family Entertainment Centre Premises licences respectively. No default conditions will attach to these types of premises licence.

Regulation 14 provides that the conditions set out in Part 1 of Schedule 5 will be attached as mandatory conditions to betting premises licences, other than betting premises licences in respect of premises that are tracks. Regulation 15 provides that the conditions set out in Part 2 of that Schedule will be attached as default conditions to betting premises licences (other than in respect of premises that are tracks).

Regulation 16 provides that the conditions set out in Part 1 of Schedule 6 will be attached as mandatory conditions to all betting premises licences in respect of premises that are tracks ('track premises licences'). In addition, it provides two different sets of further mandatory conditions to be attached to the premises licences for horse-race courses and a set for licences for dog tracks.

Regulation 17 provides that the conditions set out in Part 4 of Schedule 6 will be attached as default conditions to all betting premises licences in respect of premises that are tracks.

SI 1410/2007 The Gambling Act 2005 (Exclusion of Children from Track Areas) Order 2007

In force **1 September**. This Order amends Section 182(2) of the Gambling Act 2005.

Section 182(1) of the Act prevents children and young persons from entering any area on a track where facilities for betting are provided (Section 182(1)(a)) or where a gaming machine, other than a Category D machine, is situated (Section 182(1)(b)).

Section 182(2) of the Act provides an exemption to Section 182(1)(a) for dog tracks and horse race courses on a day when racing takes place, or is expected to take place, on the track or course as appropriate. This exemption enables children and young persons to enter any area of the track where betting facilities are provided on a race day.

This Order amends Section 182(2) to add an exemption for all other tracks on a day when a race or other sporting event takes place, or is expected to take place, on the track.

SI 1411/2007 The Football Spectators (2007 European Under-21 Championship Control Period) Order 2007

In force **5 June**. This Order describes the control period under the Football Spectators Act 1989 for the 2007 UEFA (Union of European Football Associations) European Under-21 Championship tournament in the Netherlands.

The control period begins on 5 June 2007, that is, five days before the day of the first match in the tournament, and ends when the last match in the tournament is finished or cancelled. The last match is due to be played on 23 June 2007.

During a control period, the powers contained in Section 19 (requirements for those subject to banning orders to report to police station and surrender passport) and Sections 21A and 21B (summary powers to detain and refer to a court with a view to the making of a banning order) of the 1989 Act are exercisable.

SI 1419/2007 The Finance Act 2006, Section 19, (Appointed Day) Order 2007

In force **1 June**. This Order provides that the amendments made by Section 19 of the Finance Act 2006 have effect in relation to supplies of specified goods of a kind used in missing trader intra-community fraud.

Section 19(1) inserts a new Section 55A into the Value Added Tax Act 1994, which makes provision for the recipient of relevant supplies, rather than the supplier, to account for and pay tax on those supplies.

Section 19(2) inserts a new Section 26AB into the Act, which makes provision for a person to make an adjustment to any tax he is liable to account for and pay on a supply by virtue of Section 55A(6) of the Act if, as a result of Section 26A (disallowance of input tax where consideration not paid), he is taken not to have been entitled to credit for input tax in respect of that supply.

Section 19(3) to (7) makes amendments to the Act to provide for the submission of statements containing particulars of supplies to which Section 55A(6) applies and consequential amendments.

SI 1426/2007 The Motor Vehicles (Compulsory Insurance) Regulations 2007

In force **11 June**. These Regulations implement provisions of Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005, amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles.

Directive 2005/14/EC increases the minimum level of compulsory insurance required for motor vehicles in respect of property damage under Article 1.2(b) of Directive 84/5/EEC to 1 million Euros per claim. In order to ensure compliance with this requirement, in the light of possible currency fluctuations, the sum of £1 million has been substituted.

SI 1437/2007 The Dangerous Wild Animals Act 1976 (Modification) Order 2007

In force **1 October**. This Order substitutes a revised Schedule to the Dangerous Wild Animals Act 1976, which specifies the kinds of animals to which the provisions of the Act apply.

This Order adds the following animals to the Schedule:

- Argentine black-headed snake.
- Peruvian racer.
- South American green racer.
- Amazon false viper.
- Middle eastern thin-tailed scorpion.
- Dingo.

The following animals are no longer listed in the Schedule and so the provisions of the Act no longer apply to them:

- Certain smaller primates (woolly lemurs, tamarins, night (or owl) monkeys, titis and squirrel monkeys).
- Sloths.
- North American porcupine.
- Capybara.
- Crested porcupines.
- Cacomistles.

- Racoons.
- Coatis.
- Olingoes.
- The little coatimundi.
- Kinkajou.
- Binturong.
- Cat hybrids which are predominantly domestic cat.
- Hyraxes.
- Guanaco.
- Vicuna.
- Emus.
- Sand snakes.
- Mangrove snakes.
- Brazilian wolf spider.

SI 1441/2007 The Local Authorities (Contracting Out of Anti-social Behaviour Order Functions) (England) Order 2007

In force **11 May**. Section 1F of the Crime and Disorder Act 1998 provides that the Secretary of State may make an order permitting a local authority to enter into arrangements whereby another person is able to exercise the local authority's powers relating to anti-social behaviour orders under Sections 1 to 1E of the Act.

This Order allows a local authority to enter into such arrangements with a person (housing manager) with whom it has already entered into an agreement under Section 27 of the Housing Act 1985 to manage houses, or land held for related purposes, for that local authority.

It also makes provision for conditions to which arrangements must or may be subject.

The Order also applies the provisions of Section 223 of the Local Government Act 1972, which allows authorised employees of a local authority to prosecute or defend proceedings in a magistrates' court, to the housing manager and his employees.

SI 1442/2007 The Armed Forces Act 2006 (Commencement No. 1) Order 2007

In force **4 June**. This Order brings into force certain provisions of the Armed Forces Act 2006, these being:

- Section 378(1), to the extent that it gives effect to paragraph 28 of Schedule 16. That paragraph amends Section 52D of the Naval Discipline Act 1957, which relates to summary trial by commanding officers of persons charged with offences under that Act. The amendments remove restrictions on the right under Section 52D to elect trial by court-martial instead of summary trial. Paragraph 28 also provides for changes as to who gives an officer the right t o elect and as to the person to whom a case is referred, where an officer has elected trial by court-martial and subsequently withdraws his election.
- Section 378(1), to the extent that it gives effect to a number of other paragraphs of Schedule 16. These paragraphs make changes to legislation consequent upon the change of name of the Royal Naval Regulating Branch to that of 'the Royal Navy Police'.
- Section 379, which empowers the Secretary of State, for prescribed purposes in relation to giving full effect to the Act, to amend or repeal or revoke earlier legislation by Order.
- Section 381, which empowers the Secretary of State, by Order, to align specified legislation relating to the Armed Forces with the effect of the Act.

SI 1493/2007 The Countryside and Rights of Way Act 2000 (Commencement No. 12) Order 2007

In force **21 May**. This Order brings into force, in relation to England, Section 57 of, and Schedule 6 to, the Countryside and Rights of Way Act 2000 to the extent that those provisions insert the following provisions into the Highways Act 1980:

- Section 119D, which provides for the diversion of certain highways for the protection of the special features of sites of special scientific interest.
- Section 119E, which makes provisions supplementary to Section 119D.

This Order also brings into force the consequential amendments in Schedule 6 to the Act relating to the above Sections.

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