

Digest

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CASELAW Police News Diversity
LEGISLATION POLICE NEWS
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DIVERSITY Criminal Justice

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


This month's issue sees the Criminal Justice and Immigration Bill receiving Royal Assent and also looks forward to the draft legislative programme for the Parliamentary session 2008-2009.

This month also sees number of NPIA and ACPO Guidance documents published. The Guidance is listed and summarised with the full documents being available from the Genesis Extranet site.

There are a number of articles announcing Government plans to tackle various issues such as anti-social behaviour, cocaine use and knife crime. Also covered in this issue is the reclassification of cannabis to class C and an important Home Office Circular on the use of police stations as a place of safety under the Mental Health Act 1983.

There are several reporting and statistical updates in areas such as custody, probation and the performance of Local Criminal Justice Boards. An inquiry into the performance of the Human Rights Act 1998 is also announced and the second annual report from the Serious Organised Crime Agency is published.

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

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Hate Crime Campaign Launched by PSNI

The Police Service of Northern Ireland (PSNI) has launched an advertising campaign aimed at drawing attention to the rising number of hate crimes taking place in Northern Ireland. The campaign will also encourage the reporting of hate crimes and incidents.

The campaign was initiated after figures from the PSNI indicated that there had been a sharp rise in the number of racist, homophobic, sectarian, religious and disability related incidents over the past few years. During April 2006 - March 2007 there were:

- ◆ 1,047 racist incidents;
- ◆ 155 homophobic incidents;
- ◆ 136 faith/religion incidents;
- ◆ 1,695 sectarian incidents;
- ◆ 48 disability related incidents.

The campaign will consist of advertisements on billboards, buses and in retail and community premises, carrying a simple message - "Nobody deserves this and nobody deserves to get away with it". The message will accompany photographic images representing the five main areas of hate crime - racist, homophobic, sectarianism, religion and crimes against people with disabilities.

The new campaign will run for the next month in areas where high incidents of hate crime have taken place. These areas include:

- ◆ Belfast;
- ◆ Craigavon;
- ◆ Ballymena;
- ◆ Dungannon;
- ◆ Lisburn;
- ◆ Coleraine;
- ◆ Magherafelt; and
- ◆ Foyle.

For more information on hate crime reporting from the PSNI please see http://www.psni.police.uk/index/hate_crime_reporting.htm

50% of New Recruits in Lancashire are Female

Lancashire Police have announced that they are the first force in the country to have recruited exactly 50% men and 50% women, in their annual intake of new recruits. There were 182 new recruits in total, 91 males and 91 females. The force have also stated that in their November intake, 83% of students were female, clearly exceeding their 36.2% target.

Figures Reveal an Increase in the Number of Recorded Incidents of Race Crime in England and Wales

The number of racially aggravated offences reported to police in England and Wales has increased according to figures obtained from the Home Office by the Conservatives. Overall there was a 39 per cent rise in the number of race crimes between 2003 and 2007, although virtually all forces recorded much greater individual increases. In Merseyside, for example, there was a 94 per cent increase in racially aggravated offences reported to police and in South Yorkshire the number rose from 242 to 1037, an increase of 330 per cent in 4 years.

Suresh Grover, chief executive of the Monitoring Group, said the rise could be attributed to attacks on new types of migrant who have arrived in Britain, however a spokesman for the Home Office suggested that the figures show an increased confidence in the police that cases of racial abuse would be taken seriously.

Tackling racially aggravated crime is a key government initiative as outlined in its 2005 Community Cohesion strategy; however a recent government citizenship survey showed an increase in perceptions of levels of racism in Britain. Furthermore, last year the Commission for Racial Equality warned that segregation - residentially, socially and in the workplace - is growing, and that extremism, both political and religious, is on the rise as people become increasingly disillusioned and disconnected from each other.

Emergency Text Service Launched

Sussex Police have launched a new emergency SMS text service for those people with hearing and speech impairments.

It is hoped that the initiative will improve access to the emergency services for those who are unable to use a voice telephone.

Users can text the new "65999" number stating which emergency service they require by typing the relevant word, for example - 'police', 'fire', 'ambulance', or 'coastguard'. They would also have to type in the nature of the emergency and the location.

Messages sent to the new number will be received by Sussex Police Control who will deal with the request on behalf of the emergency services. A reply would be sent confirming receipt of the message and more questions asked if needed.

ACPO-APA International Policing Exhibition and Summer Conference

The ACPO-APA annual Policing Exhibition, the UK's biggest and most influential event for policing, will take place from 25-26 June at the Liverpool Arena and Convention Centre (ACC). The 2008 event is free to all police officers, staff, associates and colleagues and will showcase the latest equipment and technology for the policing and security sector. It is also an opportunity to discuss career development and to network and share best practice with colleagues from around the country.

Running alongside the exhibition will be the ACPO-APA Summer Conference which takes place from 24-26 June at the same venue. The conference is a paid closed session for members of the Association of Chief Police Officers and the Association of Police Authorities. It brings the most senior ranking police officers of all the forces, police authorities and national police agencies in England, Wales and Northern Ireland together, to discuss and review all aspects of policing policies, strategies and methods. Those who are eligible to attend as delegates will be contacted directly by these authorities.

To find out more, or to register online, go to <http://www.acpo-apa.co.uk>

Roll Out of National Review Officers Training Course

South Wales Police Force is the first force to roll out the new National Review Officers training course. This course aims to prepare senior investigating officers to successfully undertake a full Major Crime Review. By the end of the course students will be able to:

- ◆ Conduct a Major Crime Review;
- ◆ Write a Review Report;
- ◆ Make Recommendations.

National Strategic Assessment

The ACPO National Strategic Assessment is an annual assessment of policing issues in the UK. It is commissioned by the Association of Chief Police Officers (ACPO) to identify and assess the current, emerging and long-term factors that impact on the Police Service.

This assessment is part of a continuous process of horizon-scanning and assessment which also provides support to ACPO business area leads and produces an updated and more concise assessment in September each year.

Half yearly updates are given on the assessment and this is now available on Genesis.

Police Overtime Bill

A request made under the Freedom of Information Act 2000 has revealed that in the 2006/07 financial year officers in England and Wales claimed more than £402 million in overtime. However, this figure does not include costs from the City of London Police, Gwent Police and West Yorkshire Police - making the total more likely to be £411.9 million (as estimated by the Home Office).

- ◆ The largest overtime bill came from the Met - nearly £136 million. However, in the preceding financial year this figure was £150 million more;
- ◆ The lowest overtime bill came from Humberside Police - £1,598,964.

Cannabis Reclassified Back to Class B

The Home Secretary has announced in a statement to the House of Commons that cannabis is to be reclassified back to a class B drug, reversing Tony Blair's 2004 downgrading of the drug to class C. The statement has come despite the Advisory Council on the Misuse of Drugs' (ACMD) Review, commissioned by Gordon Brown, saying that it should remain class C.

The Home Secretary explained that the reason for the reversal of the classification was twofold:

- ◆ There was 'uncertainty at least' on the impact of young people's health from cannabis and because of that doubt they must err on the side of caution.
- ◆ Since cannabis has been downgraded there has been widespread concern about the prevalence of skunk varieties which are said to be 3 times stronger than other types of cannabis and which now accounts for between 70 and 80% of samples seized by police.

However in its report, 'Cannabis: Classification and Public Health', the advisory council said that it should still remain a class C drug, as the risks were not as serious as those of other class B substances such as amphetamines and barbiturates. Although the council did describe cannabis as a significant public health issue; it said that the evidence suggested only a weak causal link between cannabis use and psychotic illness and that in relation to the population as a whole cannabis use only played a modest role in the development of such conditions.

Taking effect from early 2009, the reclassification will mean:

- ◆ More robust enforcement against cannabis supply and possession and those repeatedly caught with the drug would not just receive cannabis warnings.
- ◆ A new strategic and targeted approach to tackling cannabis farms and the organised criminals behind them.
- ◆ Introducing additional aggravating sentencing factors for those caught supplying cannabis and other illegal substances near further and higher education establishments, mental health institutions and prisons.
- ◆ Working with ACPO to look at how existing legislation and powers can be used to curtail the sale and promotion of cannabis paraphernalia.
- ◆ Updating and refreshing public information messages on the harm caused by cannabis use.

The ACMD's full report can be found at <http://homeoffice.gov.uk/drugs-law/acmd>

Inquiry into the Human Rights Act 1998

The Equality and Human Rights Commission have launched an inquiry into the performance of the Human Rights Act 1998 (HRA) in Great Britain. The inquiry, conducted under the powers of the Commission laid down in section 16 of the Equality Act 2006, is currently at the evidence gathering stage, and the Commission is calling for evidence from public authorities and those who use their services, to find out if people are being treated with dignity and respect.

The Inquiry will be chaired by Dame Nuala O'Loan, former Northern Ireland Police Ombudsman and it is expected that the inquiry will be complete before the end of December 2008.

The Commission aims to gather a reliable set of findings about the state of human rights in Britain and make recommendations on how to move the human rights agenda forward.

It will look at the activities of all public authorities covered by the HRA. These include:

- ◆ Those bodies which would usually be thought of as public authorities (like local authorities); and
- ◆ Private and voluntary organisations when they are carrying out public functions (for example, a private company running a prison).

Purpose of the Inquiry

It is hoped that the inquiry will help the Commission to:

- ◆ Promote understanding of the importance of human rights;
- ◆ Encourage good practice in relation to human rights;
- ◆ Promote awareness, understanding and protection of human rights; and
- ◆ Encourage public authorities to comply with the HRA.

Terms of Reference

Following a consultation, the following have been laid down as the terms of reference of the inquiry:

- ◆ To assess progress towards the effectiveness and enjoyment of a culture of respect for human rights in Great Britain.
- ◆ To consider how the current human rights framework might best be developed and used to realise the vision of a society built on fairness and respect, confident in all aspects of its diversity.

Calls for evidence

The Commission is currently calling for evidence to use in the inquiry. It has produced a form which it is requesting respondents complete. It is also gathering evidence for the inquiry by commissioning research and using inquiry panels to hear evidence from witnesses.

The closing date for the submission of completed forms is 21 June 2008.
Forms can be returned to HRI@equalityhumanrights.com

For more information, and other ways in which the form can be returned, please see

<http://www.equalityhumanrights.com/en/newsandcomment/Pages/Inquirycallforevidence.aspx>

HOC 07/2008

The Use of Police Stations as Places of Safety Under Section 136 of the Mental Health Act 1983

This Circular concerns the issue of the transfer of a person under the Mental Health Act 1983 from one place of safety to another before an assessment has been carried out.

The introduction to the Circular contains a statement from Alan Brown, head of the Police Powers unit at the Home Office. It states that it is a widely recognised fact that a police station is not a suitable place of safety for detaining persons under section 136 of the Mental Health Act 1983 (save for exceptional circumstances involving the risk or threat of serious harm posed by the person to themselves or those tasked with looking after their healthcare needs).

Sections 135 and 136 of the Mental Health Act 1983 allow a police officer to remove a person who is believed or appears to be suffering from a mental disorder to a place of safety. These 'places of safety' include:

- ◆ Part III accommodation;
- ◆ An NHS hospital;
- ◆ An independent hospital or care home for mentally disordered persons;
- ◆ A police station;
- ◆ Or any other suitable place whose occupier is willing to receive the patient temporarily.

These provisions caused a problem in that once a person was admitted to a police cell as a place of safety, there was no power to move them to a more suitable clinical location, even for the purpose of assessing their mental health treatment needs.

New law

However, a recent change in the law has allowed the transfer of a person from one place of safety to another before a risk assessment has been carried out under Section 44 of the Mental Health Act 2007 which is in force 30 April. Section 44 amends sections 135 and 136 of the 1983 Act to enable a person detained at a place of safety to be transferred to another one, subject to the overall time limit for detention of 72 hours.

This should allow for appropriate working arrangements to be in place which minimise the need for detainees to be taken to a police station and instead to be

taken to an appropriate healthcare facility in order to have access to and to receive the appropriate level of care.

The Circular states that the change should give the police, the NHS and social services greater flexibility when making arrangements for the detention of a person at a place of safety and when drawing up protocols and arrangements for the handling of such detainees.

Local policy should be in place for the effective and efficient multi-agency handling of persons who need to be detained in a place of safety.

Good practice advice is set out in Home Office Circular 17/2004 and includes:

- ◆ The local social services authority, hospitals, NHS commissioners, police forces and ambulance service must ensure that they have a clear and jointly agreed policy for use of the powers under sections 135 and 136 of the Mental Health Act 1983, as well as the operation of agreed places of safety within their localities;
- ◆ All professionals involved in its implementation should understand the power and its purpose, the roles and responsibilities of other people involved, and follow the local policy;
- ◆ Professionals should receive the necessary training in order to do the above;
- ◆ Providing prompt assessment and, where appropriate, admission to hospital for further assessment and/or treatment.

Identifying the best 'Place of Safety'

Local policy should outline the most appropriate place of safety. When determining what this is, the Circular makes the following points:

- ◆ Police stations should only be used on an exceptional basis, for example where the persons' behaviour would pose an unmanageably high risk to other patients, staff or users of a health care setting;
- ◆ A police station should not be assumed to be the automatic second choice if the first choice place of safety is not immediately available. Other options such as a residential care home; home of a friend/relative, should also be considered;
- ◆ If a police station must be used, health and social care agencies should work with the police in supporting the care and welfare of the person while in police custody, and assist in arranging, where appropriate, the transfer of the patient to a more suitable place of safety;
- ◆ Use of a police station can give the impression that the person detained is viewed as a criminal. This can cause distress and anxiety to the person concerned and is likely to affect their co-operation with, and therefore the effectiveness of, the assessment process;
- ◆ Where a police station is to be used as the place of safety, contact should be made quickly with the local Social Services Authorities and an appropriate doctor. This will enable the examination and interview to be

commenced as quickly as possible to ensure that the person spends no longer than necessary in police custody. Early assessment will also allow consideration to be given to the possibility of a transfer to an alternative place of safety as soon as this is considered to be safe and appropriate in all the circumstances.

Where the police are responsible for removing a person to a place of safety, the Circular recommends that where this will be a hospital, immediate contact should be made with the hospital and the local Social Services Authorities, prior to arrival. This will enable arrangements to be made for the patient to be interviewed and examined as soon as possible. Where a warrant has been used under section 135, the arrangements should, wherever possible, have been made in advance.

The information contained in the Circular will be included in the revised Mental Health Code of Practice, which is due to be published shortly.

The Circular can be found in full at

<http://www.knowledgenetwork.gov.uk/HO/circular.nsf/>

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HOC 08/2008

The £40 Million Basic Command Unit (BCU) Fund 2008-2009

The Police and Crime Standards Directorate of the Home Office have published Home Office Circular 08/2008, entitled "The £40 Million Basic Command Unit (BCU) Fund 2008-2009". It is addressed to:

- ◆ Crime and Disorder Reduction Partnerships/Community Safety Partnerships in Wales;
- ◆ Drug Action Teams/Community Safety Partnerships in Wales;
- ◆ Chief Officers of Police (England and Wales);
- ◆ Clerk to the Police Authority;
- ◆ Chief Executives of Local Authorities (England and Wales).

The Circular provides updated guidance on Year 6 (2008/09) of the Basic Command Unit (BCU) Fund. The purpose of the fund is to:

- ◆ Help deliver crime and disorder reduction locally through supporting work with BCU partners on Crime and Disorder Reduction Partnerships or Community Safety Partnerships (CDRP/CSPs);
- ◆ Promote partnership working, for example by supporting the implementation of the recently introduced legislative requirements for partnerships;
- ◆ To assist in the delivery of objectives set out in the Government's Public Service Agreements for 2008-11 with a particular focus on PSA 23 (Making Communities Safer) and PSA 25 (Reduce the harm caused by Alcohol and Drugs).

The Circular states that BCU fund spending plans in England will need to be appropriately aligned with Partnership priorities as set out in the Local Area Agreements and will need to take account of the work of the emerging performance management and delivery landscape. All BCU spending plans will need to be aligned with the priorities in the partnership plan. This requires:

- ◆ BCU Commanders to agree their spending plans with their CDRP/CSPs and submit them to the Home Office Regional Deputy Director by no later than 31 May for approval by 13 June.
- ◆ BCU Commanders to be aware that the fund should not be used to support mainstream policing activity.
- ◆ The plans to represent value for money and be able to stand up to scrutiny/audit.

Each BCU receives an individual allocation. No changes have been made to the formula for calculating allocation to take into account changes to BCU boundaries since the fund was established in 2003.

Because of this, the Home Office Regional Deputy Director may agree any adjustments with Chief Constables which are needed and to re-allocate monies within and between BCUs in a Force area as necessary.

BCU Commanders in England may, in consultation with the Home Office Regional Deputy Director, continue to have the flexibility to decide whether to pool locally, or align, part or all of their allocation with CDRP monies under the Area Based Grant. However, the BCU fund remains separate from funding provided through the Local Area Agreement and is not a centrally agreed component of that fund.

BCU Fund money should be spent on:

Crime and Disorder Interventions

- ◆ The fund should be used for direct police activity and operations and a wide range of crime and disorder and anti-social behaviour interventions. These include focusing on repeat victims, tackling anti-social behaviour, introduction of pub watch schemes and youth inclusion work. They also include substance misuse work.
- ◆ The interventions which are funded should be based on the partnerships' priorities identified through the CDRP/CSP strategic assessment.
- ◆ Interventions should be based on a problem solving approach and a knowledge of what works in crime reduction.
- ◆ They should be in line with police force area priorities as set out in the Home Secretary's Strategic Policing Priorities.
- ◆ Priorities for spending should take into account the priorities in the National Community Safety Plan 2008-11, incorporating the National Policing Plan.

Partnership Capacity

The fund may be used to increase partnership capacity to tackle crime. For example, programme and project management staff, analytical support and training programmes.

The Circular makes it clear that the fund should not be used to purchase capital assets. However, Resource funding can be used to purchase small scale inventory items that fall below the threshold for capitalisation.

During the summer the Home Office will be consulting with key stakeholders with a view to making reforms to the BCU fund which will be effective from April 2009.

Guidance on technical and accounting issues is to be found in Appendix A.

Grant Conditions are laid down in Appendix B.

Individual BCU allocations are found in Appendix C.

For the Appendices and the Circular in full please see

<http://www.knowledgenetwork.gov.uk/HO/circular.nsf/>

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HOC 09/2008 New Rates for Motor Vehicle Allowances

This circular publicises the new rates of motor vehicle allowances for police officers. It came into effect on 1 April. The revised rates are as follows for engine sizes 451-999cc; 1000-1199cc and 1200-1450cc respectively:

Essential Users

- ◆ Lump sum per annum - £753 (451-999cc); £849 (1000-1199cc); £1,095 (1200-1450cc)
- ◆ Per mile - first 8,500 - 34p; 36.9p; 45.8p
- ◆ Per mile - after 8,500 - 13.3p; 13.6p; 15.8p
- ◆ Petrol element - 9.227p; 9.804p; 10.695p
- ◆ Amount of VAT per mile in petrol element - 1.374p; 1.460p; 1.592p

Casual Users

- ◆ Per mile - first 8,500 miles - 42.9p; 46.9p; 58.7p
- ◆ Per mile - after 8,500 miles - 13.3p; 13.6p; 15.8p
- ◆ Petrol element - 9.227p; 9.804p; 10.695p
- ◆ Amount of VAT per mile in petrol element - 1.374p; 1.460p; 1.592p

The circular can be found in full at

[http://www.knowledgenetwork.gov.uk/HO/circular.nsf/](http://www.knowledgenetwork.gov.uk/HO/circular.nsf/79755433dd36a66980256d4f004d1514/)

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Criminal Justice and Immigration Bill Receives Royal Assent

On 8 May the Criminal Justice and Immigration Bill received Royal Assent.

The new Act will:

- ◆ Introduce a new criminal offence of incitement to hatred on the grounds of sexual orientation;
- ◆ Clarify the law on self defence, articulating the state's responsibility to stand by those acting in good faith when using force in self defence;
- ◆ Introduce new civil penalties for serious breaches of data protection principles;
- ◆ Abolish the common law offences of blasphemy and blasphemous libel;
- ◆ Reinstate the statutory ban on industrial action by prison officers;
- ◆ Introduce a minimum tariff of two years for prisoners serving indeterminate public protection sentences;
- ◆ End automatic discounts for offenders given an indeterminate sentence after the initial sentencing decision has been judged unduly lenient;
- ◆ Give powers for courts to make dangerous offenders given a discretionary life sentence serve a higher proportion of their tariff before being eligible for parole;
- ◆ Create a presumption that trials in the Magistrates' Court will proceed in the event that the accused fails to appear;
- ◆ Introduce a new offence of possession of extreme pornographic images;
- ◆ Extend existing crack house closure powers to tackle premises at the centre of serious and persistent disorder or nuisance, regardless of tenure;
- ◆ Create a new offence of causing a nuisance or disturbance on NHS premises;
- ◆ Provide for non-dangerous offenders who breach the terms of their licence to be recalled to prison for a fixed 28 day period;
- ◆ Create a Youth Rehabilitation Order - a generic community sentence for children and young offenders. This will target the causes of offending behaviour and will simplify the current sentencing framework;
- ◆ Create the Youth Conditional Caution for young offenders;
- ◆ Bring compensation for those wrongly convicted broadly in line with compensation for victims of crime;
- ◆ Provide for special immigration status for terrorists and serious criminal who cannot currently be removed from the UK for legal reasons.

The Act can be found in full at

http://www.opsi.gov.uk/acts/acts2008/ukpga_20080004_en_1

Draft Legislative Programme 2008-2009

The Government has issued a Green Paper detailing the Government's plans for legislation in the Parliamentary session for next year. The programme includes proposed bills and other non-legislative actions and is organised into four themes: economic stability; making the most of your potential; personalisation and improvement of public services and handing power back to people.

The Green Paper proposes 18 bills, including the following:

Equality Bill

The Bill will extend to England, Wales and Scotland, and aims to:

- ◆ Make Britain fairer through a single equality duty requiring public bodies to consider the diverse needs and requirements of their workforce and the communities they serve when developing employment policies and planning services;
- ◆ Make public bodies more transparent, to measure and progress equality;
- ◆ Improve enforcement;
- ◆ Allow political parties to use all-women election shortlist until 2030;
- ◆ Make the law more accessible and easier to understand, by bringing together 9 major pieces of legislation and around 100 other laws in a single bill.

Consultation on these proposals took place in 2007 and the Government is due to publish its response shortly. Further consultation is planned on specific issues to be dealt with in regulations.

Policing and Crime Reduction Bill

The Bill will extend in some parts to the whole of the UK, other parts will extend to only parts of the UK. The Bill aims to:

- ◆ Implement reforms set out in the Policing Green Paper, including reducing bureaucracy in the police service and providing directly elected representatives to reflect the public in decision making;
- ◆ Implement recommendations from Sir Clive Booth's report, 'Determining Pay in the Police Service';
- ◆ Improve the arrangements for recovery of assets obtained through criminal means;
- ◆ Improve the arrangements for judicial co-operation in relation to extradition;
- ◆ Repeal provisions in this area which are unused, unlikely to be commenced, or no longer required.

The Government aims to publish a Policing Green Paper for consultation in June and will also consult on implementing the recommendations of Sir Clive Booth's

review. Details of these consultations will be available at <http://www.homeoffice.gov.uk>

Consultation on other parts of the Bill has either already taken place or no formal consultation is planned.

Transport Security Bill

This Bill will extend to the whole of the United Kingdom, and aims to:

- ◆ Implement the recommendations of the 2006 'Independent Review of Airport Policing', by:
 - ◆ Requiring the majority of airports to agree a local airport security plan with their key stakeholders;
 - ◆ Allowing the policing element of this plan to be charged to the airport operator.
- ◆ Ratify in new law the 2005 Protocols to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. This will be achieved by creating a number of new offences relating to terrorism at sea, such as:
 - ◆ Using a ship to transport weapons of mass destruction or in any other manner that causes death, serious injury or damage;
 - ◆ Using a ship or fixed platform to discharge any explosive, radioactive material or Biological, Chemical or Nuclear weapon or any other hazardous substance to cause death or injury, or using any of those substances against a ship or fixed platform;
 - ◆ Sheltering a person who has committed such an offence on board ship.
- ◆ Permit enforcement officers (such as members of the Royal Navy) to:
 - ◆ Board and detain ships where there are reasonable grounds to suspect that a ship or a person aboard is involved in such an offence;
 - ◆ Search for and seize evidence and arrest persons suspected of such offences;
 - ◆ Board ships that are suspected of being involved in acts of piracy.

The Government plans to launch a public consultation on these proposals in summer 2008. This will be available at <http://www.dft.gov.uk/consultations>

The Maritime Security proposals will not be included in this consultation as they have been consulted on as part of the 2005 Protocols mentioned above.

Communications Data Bill

This Bill will extend to the whole of the United Kingdom, and aims to:

- ◆ Modify the procedures for acquiring communications data and allow this data to be retained;
- ◆ Transpose EU Directive 2006/24/EC on the retention of communications data into UK law.

The Government plans to publish this Bill in draft for pre-legislative scrutiny later this year and will then be made available at <http://www.homeoffice.gov.uk>

Law Reform, Victims and Witnesses Bill

The territorial extent of this Bill will vary for different parts of the Bill. The Bill aims to:

- ◆ Reform some aspects of the criminal law on homicide, the detail of which will depend of the outcome of the current review considering the Law Commission's recommendations on infanticide, complicity in relation to murder and the defences of diminished responsibility and provocation;
- ◆ Increase provisions in courts for vulnerable and intimidated witnesses, including witnesses in cases involving guns and offensive weapons, by amending and extending special measures;
- ◆ Introduce a civil recovery scheme to prevent criminals from profiting from books and other publications about their crimes;
- ◆ Strengthen data protection laws through the audit powers of the Information Commissioner;
- ◆ Establish a structured sentencing framework and a Sentencing Commission to better align the demands and resources of correctional services, subject to Government consideration of the conclusions of the Sentencing Commission Working Group.

The Sentencing Commission Working Group published its consultation paper 'A Structured Sentencing Framework and Sentencing Commission' on 31 March. This can be found at

http://www.judiciary.gov.uk/docs/consultation_ssfc_310308.pdf

A consultation on increasing prison capacity by the creation of up to 3 Titan prisons will be published shortly.

Citizenship, Immigration and Borders Bill

This Bill will extend, in the main, to the whole of the United Kingdom. It aims to:

- ◆ Set out the eligibility requirements for UK citizenship, supporting the concept of earned citizenship;
- ◆ Support the establishment of the UK Border Agency;
- ◆ Replace 10 separate pieces of immigration law, of which some have already been partially superseded, with a single Act of Parliament;
- ◆ Provide sharper and more consistent immigration rules, which can be quickly adjusted in response to changing circumstances.

The Government aims to publish some of the immigration proposals above in draft for pre-legislative scrutiny later this year. Consultation on the citizenship proposals in this Bill has already taken place.

Coroners and Death Certification Bill

This Bill will extend, in the main, to England and Wales, however some provisions amending the Treasure Act 1996 will extend to Northern Ireland. The Bill aims to:

- ◆ Create a new national coroner service;
- ◆ Create a new system of secondary certification of deaths that are not referred to the coroner;
- ◆ Establish a new group of medical examiners to scrutinise independently the causes of death given by doctors on death certificates;
- ◆ Introduce new powers of investigation for coroners;
- ◆ Establish a new Chief Coroner as head of the coroner service;
- ◆ Create flexible boundaries between coroner areas, with powers for the Chief Coroner to reallocate work to prevent backlogs of work;
- ◆ Establish new and accessible rights of appeal for bereaved people against coroners' decisions;
- ◆ Introduce a Charter for the Bereaved outlining the rights for bereaved people to be informed and consulted about case progress by coroners.

Consultation on this Bill has already taken place. The Government will publish its response to the consultation on death certification and new clauses will be added to the Bill.

Constitutional Renewal Bill

This Bill will extend to England and Wales, with some provisions also extending to Scotland and Northern Ireland. The Bill aims to:

- ◆ Place the Civil Service on a statutory footing and establish an Independent Commission for the Civil Service;
- ◆ Give MPs the final say on all treaties;
- ◆ Reform the role of the Attorney General, removing the ability to give a direction to prosecutors in individual cases, save in exceptional circumstances when the Attorney General will need to report to Parliament, and requiring the Attorney General to report to Parliament annually on the exercise of his or her functions;
- ◆ Reduce the role of the Lord Chancellor and Prime Minister in judicial appointments and removing the need for the Lord Chief Justice to consult or obtain the agreement of the Lord Chancellor in exercising certain functions;
- ◆ Remove restrictions on protests around Parliament by repealing the requirement to give notice of demonstrations in the designated area and removing the offence of holding such a demonstration without the authorisation of the Metropolitan Police Commissioner.

This Bill has already been subject to consultation and has been published for pre-legislative scrutiny.

Included in the Draft Legislative Programme are a series of consultation questions for people to comment on the programme as a whole, on specific policy issues and individual bills. Comments can be sent by post or made online. The deadline for responses is 6 August 2008.

The Draft Legislative Programme and the online form for comments on the programme can be found at

<http://www.commonleader.gov.uk/draftprogramme>

Tough New Public Protection Sentences in Northern Ireland

On 15 May 2008 tough new public protection sentences for those convicted of sexual and violent crimes in Northern Ireland came into effect making an important landmark for the Criminal Justice System in Northern Ireland.

A new body of Parole Commissioners will also be created to assess prisoners on the risk they pose to the public and manage their release from prison. The Commissioners will also have the power to keep the most dangerous offender in jail indefinitely.

The legislation comes under the Criminal Justice Order 2008 which received Royal Assent on 7 May 2008. The legislation also includes measures reforming sentencing arrangements in Northern Ireland. The main elements are: new sentencing powers, electronic monitoring, new license conditions, new arrangements for the risk assessment of offenders and an increase in the scope of post custody supervision of offenders.

The new measures represent a fundamental change to offender management in Northern Ireland and will require a significant programme of reform to implement the new provisions in the Order.

Climate Change Bill

Amendments have recently been tabled to the Climate Change Bill which if enacted will have implications for police forces and local authorities.

The Bill will place a duty on persons or bodies who are listed in Parts 1 to 4 of Schedule 1 of the Civil Contingencies Act 2004, including Chief Officers of Police and any other persons or bodies as specified in regulations to be issued by a Minister to:

- ◆ Assess the risks of the impact of climate change on the ability of the person or body to continue to perform any of his/her or its functions.
- ◆ Produce an action plan to reduce, control or mitigate the risks of those impacts.
- ◆ Comply with any relevant guidance issued by the Secretary of State.

- ◆ Disclose relevant information on request to another person or body to which this section applies.
- ◆ Co-operate, to such an extent and in such a manner as may be specified in relevant guidance, with any other person or body to which this section applies.

This could include for example changes to working hours and arrangements to reduce energy consumption and unnecessary travel to and from the workplace.

The Bill has completed its process through the House of Lords and received its first reading in the House of Commons on 2 April. The Bill can be found at <http://services.parliament.uk/bills/2007-08/climatechange1.html>

Crime Safe Gadgets to Tackle Youth Crime

The Design Council hosted an event on 15 May which brought together the Home Secretary, young people, youth workers, branding experts, representatives from the police and senior designers from leading technology firms including Sony and Nokia.

The event was focussed on harnessing the power of design to protect young people from crime, in particular theft of 'hot products' like mobile phones and MP3 players, by generating innovative design briefs which would offer a clear business opportunity for manufacturers who will be encouraged to develop them into the next generation of crime safe gadgets.

The Design Council also published its research commissioned by the Home Office which showed that the vast majority of 11-16 year olds in England carry a gadget with them at some point. The research also showed that 12% of these young people have been the victim of 'hot product' theft in the last 3 years and that 31% of these victims were using their gadget i.e. listening to music on headphones, talking or texting on a mobile phone or playing on a games console when their item was stolen.

The Home Secretary also announced that the British Crime Survey would be extended to include surveys of under 16's experiences of crime. A Youth Crime Action Plan is to be published this summer to further coordinate the Government's effort to understand and tackle youth crime.

Further information on the 'Designing Out Crime' initiative can be found at <http://designcouncil.org.uk/crime>

Home Office Departmental Report 2008

The Home Office have published their Departmental Report for 2008. The report (previously called the annual report) sets out how well the Home Office met its objectives in the previous year, and sets out the performance plans for the Home Office for 2008-2009.

Achievements of the Home Office over the past year have included:

- ◆ Sharpening its focus on protecting citizens and their families in their homes and communities;
- ◆ Focusing on tackling terrorism, cutting crime, providing effective policing, securing borders and protecting personal identity;
- ◆ The implementation of Neighbourhood Policing Teams;
- ◆ The removal of more than 4,200 foreign national prisoners in 2007 and 1,400 immigration offenders per month;
- ◆ Significant reductions in crime and disorder through multi-agency work of Crime and Disorder Reduction Partnerships in 44 priority areas.

Plans to take forward into 2008-2009 include:

- ◆ The forthcoming Green Paper on Policing which will set out measures to improve performance and public confidence in a visible, accessible and responsive police force;
- ◆ Introduction of the points-based system for immigration will ensure that only those foreign workers whose skills Britain needs can come here.

The Report can be found in full at

<http://www.homeoffice.gov.uk/documents/ho-annual-report-08?view=Binary>

Statistical Updates on Custody, Probation, End of Custody Licences Releases and Motoring Offences

The Ministry of Justice has published its recent figures on the population in custody, the number of people released on End of Custody licences, probation and motoring offences. The population in custody statistics and the End of Custody licence figures cover March 2008. The figures on probation are for the final quarter of 2007. Finally, the motoring offences and breath test statistics publication is an annual National Statistics release for 2006.

Main points include:

Population in Custody - March 2008

- ◆ The population in custody on 31 March 2008 was 82,226, an increase of 2% on the previous year. This was made up of 81,695 in prisons, 64 in police cells, 250 in Secure training Centres and 217 in Secure Children's Homes.
- ◆ The male prison population increased to 77,275 and the female prison population increased to 4,420, an increase of 2% and 3% respectively.
- ◆ Among those on remand, the largest percentage increases since March 2007 were seen in relation to fraud and forgery and sexual offences - up 24% and 16% respectively. Decreases were seen in motoring and theft and handling offences - down by 14% and 4% respectively.
- ◆ Among the 67,136 sentenced prisoners, fraud and forgery, violence against the person, sexual offences and other offences saw the largest percentage increases up by 6, 5, 4 and 7 per cent from March 2007. The largest decrease was seen in the number of people serving sentences for motoring offences - down by 12%.
- ◆ The adult population in prison was 69,832, up 3% on the previous year. Over the same period the number of young adults (those aged 18-20 when convicted) has increased to 9,513 and the number of 15-17 year olds decreased to 2,350.
- ◆ As of 31 March, there were 11,371 foreign nationals in prison establishments in England and Wales. This includes those held in immigration removal centres under the Immigration Act 1971, as well as those held on remand or serving custodial sentences.

End of Custody Licence releases and recalls - March 2008

End of Custody Licence (ECL) releases were introduced in June 2007 by the then Lord Chancellor. Under the scheme all prisoners released on ECL are liable to recall if they are reported to have misbehaved during the period of the licence.

Prisoners falling under certain categories are excluded from release on ECL. These include registered sex offenders, those serving sentences for serious violence including murder and manslaughter, and those who have previously escaped custody.

- ◆ During March 2008 there were 2,675 releases on ECL; 2,385 males and 290 females.
- ◆ There were 75 decisions to recall offenders to custody during March, the most common reason being alleged re-offending.

Probation Statistics - October to December 2007

- ◆ There was a 7% increase in the number of offenders starting court order supervisions and a 6% increase on those starting pre or post release supervision.
- ◆ Half of all Community Orders starting in quarter 4 had only one requirement and a further 35% had 2 requirements. Supervision was the most used requirement, closely followed by unpaid work and then accredited programme.
- ◆ Of the 29,400 Community Orders that were terminated, 57% had run their full course or were terminated early for good progress. This is compared to the 32% that were terminated for negative reasons.

Motoring offences and breath test statistics - 2006

- ◆ The total number of motoring offences dealt with by the police and parking attendants during 2006 was 12.7 million, a decrease of 3% on the figures in 2005.
- ◆ The largest number of offences fell under obstruction, waiting and parking offences, a total of 8.3 million.
- ◆ The largest number of offences dealt with by the police was for speed limit offences which made up 40%.
- ◆ The number of court proceedings at magistrate's courts for motor offences decreased by 15% between 2005 and 2006 to 1.7 million. These were mostly for licence, insurance and record keeping offences; amounting to 59% of offences.
- ◆ The number of guilty verdicts rose 2% since 2005 to 1.23 million. This amounted to 71% of all court proceedings for motoring offences. Of those found guilty nearly 9 out of 10 were male.
- ◆ 166,400 people were disqualified from driving in 2006 for specific motoring offences, a decrease of 9,600 on 2005.

- ◆ 601,600 screening breath tests were carried out in 2006; a 1% decrease on the previous year.

The statistics can be found in full at

<http://www.justice.gov.uk/news/announcement300408a.htm>

Home Office Pilot Poster Campaign on Prostitution

A new poster campaign was launched last month by the Home Office as part of the Government's six month review into tackling the demand for prostitution. The posters were targeted at men who pay women for sex and aimed to raise awareness of the trafficking and exploitation that many of these women face. They were piloted in the men's toilets of pubs and clubs in Westminster and Nottingham, and were further supported by online advertising.

The UK Action Plan on Tackling Human Trafficking was developed last year and the objectives include undertaking publicity and awareness-raising in an attempt to reduce the demand for prostitution in the UK. The United Kingdom Human Trafficking Centre (UKHTC) was established in 2006. It provides support and guidance to both law enforcement agencies and their partners. The role of the UKHTC can be seen in the recent Pentameter 1 and Pentameter 2 campaigns established to help those being trafficked for the purpose of sexual exploitation. The Government further reiterated its commitment to tackling human trafficking in January, when the Home Secretary Jacqui Smith announced that the Council of Europe Convention on Action against Trafficking in Human Beings would be ratified by the UK before the end of the year.

A 2007 research report by the Child and Woman Abuse Studies Unit revealed that the peak age for buying sex is 34, with the majority aged 20-40. Most are employed, around half are in a relationship and over a fifth have children.

The poster campaign ran from 5 to 30 May. The online advertisements however will continue to run until 27 June. The results of the marketing campaign will feed into the overall findings of the ongoing review.

Further information on the campaign can be found at

<http://www.crimereduction.homeoffice.gov.uk/humantrafficking003.htm>

To read more about the UK Action Plan on Human Trafficking see

<http://www.homeoffice.gov.uk/documents/human-traffick-action-plan>

Home Secretary's Action to Tackle Anti-Social Behaviour

In a speech entitled "Anti-Social Behaviour: We're Not Having It", the Home Secretary has announced a range of measures to deal with anti-social behaviour. Statistics show that it is 7% of persistent troublemakers who cause the most problems. She called for the focus to be moved from ASBO's to use of early intervention measures to prevent anti-social behaviour earlier on.

During her speech Jacqui Smith talked about a successful project run by Essex Police - Operation Leopard. This 4 week project involved intensive targeting of 14 persistent offenders, including daily police visits, repeated warning and filming

of offenders. It has seen a 100% success rate in targeting the hardcore repeat offenders. She called on police officers, anti-social behaviour practitioners and housing officers to follow Essex's lead and announced:

- ◆ The establishment of a new Action Squad. The squad will help police and local agencies make full use of the tools and good practice available to tackle anti-social behaviour. It will receive £255,000 of new funding and will be made up of specialists involved in combating anti-social behaviour. They would ensure that successful practice is shared around the country.
- ◆ New calls for police officers, anti-social behaviour coordinators and housing officers to use all of the tools at their disposal to stop low level violence and street thuggery.

Other measures outlined include:

- ◆ Improved joined up working between statutory agencies and local authorities to expose wider criminal behaviour of persistent anti-social behaviour offenders;
- ◆ A joint review by the Home Office and the Department for Transport which will ask passengers, staff and operators what they think about the current measures in place to address anti-social behaviour on public transport;
- ◆ More action to combat poor parenting. This will allow intervention at the first sign of problems. Courts will be required to consider making a Parenting Order when giving ABOS's to 10 to 17 year olds;
- ◆ New investment for the "Taking A Stand Awards". This is a jointly supported initiative by the Home Office and the Department for Children, Schools and Families which celebrates and supports members of the community and people making a difference in their communities.
- ◆ Anti-social behaviour practitioners in every area will be given guidance about every tool at their disposal and how best to use them.

In addition to these, the Criminal Justice and Immigration Act 2008 (see page 16) extends crack house closure order powers to cover more serious types of anti-social behaviour. The new Act also includes a statutory requirement to review ASBO's on all under 18 year olds after one year to ensure that they are working and to pave the way for other interventions, if necessary.

The Home Secretary also published figures evidencing progress made in preventing anti-social behaviour at an early stage:

- ◆ The CDRP survey showed that the total use of wider anti-social behaviour tools and powers have increased to 26,675 (an increase of 258% since the survey began in 2003/04). These include things like acceptable behaviour contracts and parenting orders.
- ◆ ASBO statistics showed that the number of ASBO's fell from 4,123 in 2005 to 2,706 in 2006, indicating the successful use of early intervention measures.

She stated that a much wider range of tools was now being used to tackle anti-social behaviour: housing injunctions; eviction orders, and parenting contracts.

Government Crackdown on Cocaine

The Government has announced that it is launching a new crackdown on cocaine. Figures show that despite overall drug use being at an 11 year low, cocaine use has risen since 1998 (although the figures have been stable since 2000).

The campaign will consist of:

- ◆ A £1 million FRANK campaign targeted at 15-18 year olds. It aims to make young people aware of the health and social harms of cocaine use;
- ◆ Issuing of cocaine leaflets for young people and drug workers to illustrate the dangers and consequences of cocaine use;
- ◆ Signing up to the Colombian Government's Shared Responsibility campaign which highlights the global consequences of cocaine use;
- ◆ Hosting a summit to explore how cocaine use can be driven down.

The campaign is part of the Governments continued work to crackdown on drug dealers. Successes have included the closure of over 1,100 crack houses since crack house closure orders were introduced in 2004, and the seizure of 85 tonnes of cocaine by the Serious Organised Crime Agency.

In addition, the 19-23 May was the first ever National Tackling Drugs Week. During this time drugs agencies and police officers took to the streets to promote the work being done in communities to tackle drugs.

More information can be found at

<http://drugs.homeoffice.gov.uk/communications-and-campaigns/tackling-drugs/NationalTacklingDrugsWeek/>

£5 Million to Tackle Knife Crime

The Home Secretary Jacqui Smith has announced the provision of £5 million to tackle violent crime, with special focus on knife crime.

The announcement was made at a conference in Birmingham celebrating local progress in tackling gang crime.

Tackling Gangs Action Programme

The Tackling Gangs Action Programme was set up in September 2007. Its aim was to tackle gun crime and serious violence amongst young people. Areas in London, Liverpool, Birmingham and Manchester received £1.5 million over 6 months to develop innovative approaches to dealing with gangs. Recently released figures about the Programmes' work show:

- ◆ There was a reduction of 51% in gun related injuries across the four areas (from 93 offences in October 2007 to 46 in February 2008);
- ◆ There was a 27% decrease in the overall number of gun offences in the four areas, from 165 in October to 120 in February;

- ◆ Targeted enforcement in November resulted in 124 arrests and the seizure of 10 real and over 1,000 imitation firearms, as well as vehicles, cash and drugs;
- ◆ People living in the four areas said they had seen more police activity in their own areas over the last six months compared with those elsewhere in the country.

Pilot Schemes

The announcement revealed that the extra money would be given to the police, local authorities and communities to support intensified action on knife crime.

The money will be used to set up a number of pilot schemes in various towns and cities across the country. The schemes will be designed to prevent knife related crimes. The pilot areas will be decided upon after consultation with the Association of Chief Police Officers.

It is hoped that by working with the police, more knife search arches will be introduced and there will be an increase in the use of targeted stop and search. It is also hoped that the money will help support the work of the Crown Prosecution Service to ensure that those carrying knives are prosecuted. It will also support community projects, like 'Be Safe' to show young people the risks and consequences of carrying a knife.

Other initiatives mentioned in the announcement include:

- ◆ Forthcoming knife marketing campaign - this will include adverts in women's weekly magazines encouraging mums to talk about knives with their children;
- ◆ A new good practice guide for local agencies to help them tackle gang-related crime across all communities.

Community Cohesion Guidance

New Guidance for Local Authorities entitled "Community Cohesion Contingency Planning and Tension Monitoring" has been published.

The aim of the guidance is to encourage local authorities to better map their communities and the people that live in them. It is hoped that this will assist them in monitoring tensions which arise and in promoting more cohesive and integrated communities.

Better Planning

The Guidance emphasises the importance of good planning and early intervention to prevent community based conflicts. It advocates the better use of local data, for example improved sharing of information and feedback from the police, neighbourhood wardens and community workers. It also stresses the need to bring together all key players in the community to address issues and to keep watch on tension levels across the community.

Action

The Guidance also encourages authorities to think about possible triggers for problems and to take action by:

- ◆ Monitoring racist, religious and other criminal incidents closely, looking at where and when they occur and then taking action to resolve tensions that may follow;
- ◆ Countering rumours and scaremongering with myth busting information setting out the facts;
- ◆ Working with local media to ensure that reporting of local issues is balanced and does not exacerbate tensions;
- ◆ Working closely with young people in the community from all different faith and cultural groups;
- ◆ Developing greater awareness that increased globalisation means international issues can play out at local level with the potential to threaten cohesion.

The Guidance can be found in full at

<http://www.communitites.gov.uk/publications/communities/cohesionplanning>

Changes to Home Office Counting Rules

A number have changes have been made to the Home Office Counting Rules for Recorded Crime. The changes came into effect on 1 April 2008.

Some of the main changes include:

- ◆ New offence codes have been added to align with new offences, for example Fraud offences.
- ◆ All maximum sentence tables have been updates.
- ◆ Following meeting with the Serious Organised Crime Agency (SOCA), wording was formalised to clarify procedures for recording and detecting crimes where SOCA was responsible for the investigation. This wording has been added to the General Rules Section A.
- ◆ It was agreed that a detection could be claimed when a breach of a non molestation order was brought before a Civil Court.
- ◆ The Violence Against the Person Section has been significantly reviewed and amended.
- ◆ Classification 3 - Threat of Conspiracy to Murder, has been split into Classification 3A Conspiracy to Murder, and Classification 3B Threats to Kill.
- ◆ A new classification code (4/10) for the new offence of corporate manslaughter, commenced on 6 April.
- ◆ A legal definition of "capable of being born alive" in relation to the Infant Life (Preservation) Act 1929, has been added to the classification page.

- ◆ Changes to some offence classification to aid public understanding. For example, moving bigamy from the 'sexual offences' group to the 'other miscellaneous offences' group.

For more details and a summary of the full changes, please see http://www.homeoffice.gov.uk/rds/pdfs08/countchanges24_4_08.doc

Human Rights Issues Arising from Policing and Protest

The Joint Committee on Human Rights has announced an inquiry into the human rights issues arising from policing and protest.

The Committee wished to explore the following issues:

- ◆ The proportionality of legislative measures to restrict protest or peaceful assembly;
- ◆ Existing powers available to the police and their use in practice;
- ◆ Reconciling competing interests of public order and protest.

The Committee is inviting written evidence for consideration to be submitted by Monday 9 June. The evidence should focus upon issues which are relevant to policing and protest and requests opinions on answers to the following questions:

- ◆ Are current legislative measures which restrict protest or peaceful assembly (such as SOCPA 2005 and the Public Order Act 1986) necessary and proportionate to the rights to freedom of expression and peaceful assembly?
- ◆ How do existing common law and legislative police powers (such as the common law power to prevent a breach of the peace, stop and search under the Terrorism Act 2000 and the use of force) operate in practice?
- ◆ Can the competing interests of public order and the right to protest be reconciled?

Guidance on what issues to address when answering these questions, and details of how to make submissions can be found at

http://www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights/jchrpn070832.cfm

Home Affairs Select Committee Extend Inquiry into 'Policing in the 21st Century'

The Home Affairs Select Committee has announced that it is to extend its inquiry into 'Policing in the 21st Century' to include the issue of the police's relationship with the media. The Committee is concerned about instances where the media have apparently been privy to information about operational details of investigations and also where police have involved themselves in media investigations, for example last year's police complaint to Ofcom regarding a Channel 4 'Dispatches' documentary.

One further evidence session will be held to hear from police representatives and from people who have been affected by the media's awareness of confidential police activities. The date of the session and details of the witnesses will be announced in due course.

Since details of the inquiry into 'Policing in the 21st Century' were announced in January this year, (covered in February's issue of the *Digest*, page 40) the Committee have heard evidence regarding the bail system from family members in two high profile murder cases, those by Adam Swellings and Garry Weddell, a police inspector.

The Committee have also heard evidence from Peter Neyroud, our Chief Executive of the NPIA and Sir Norman Bettison, Chief Constable of West Yorkshire Police on the issues of front line policing and the granting of bail.

The minutes of these sessions can be found at <http://www.parliament.uk/homeaffairscom/>

Quarterly Performance Figures for Local Criminal Justice Boards

The latest quarterly regional performance figures for the Criminal Justice System were published at the beginning of May. The figures covering England and Wales show:

- ◆ An increase in offences brought to justice by 45% since the baseline year ending March 2002.
- ◆ Of these offences 50% were convictions, 26% cautions, 10% penalty notices for disorder, 7% offences taken into consideration at court and 7% formal warnings for cannabis.
- ◆ The average time from arrest to sentence for persistent young offenders has more than halved. The average time for the period October to December 2007 was just 60 days.
- ◆ The total value of fines collected as a percentage of the value of fines imposed has increased by 1% to 93%.
- ◆ The proportion of ineffective trials in both the Magistrates and Crown Courts has fallen ahead of target.
- ◆ The number of outstanding Failure To Appear warrants has decreased by 47% since March 2005.
- ◆ The average time to resolve community penalty breaches has not met its target of 35 days and for the measured period was 42 days.

For further information including a list of and explanation of the targets please see <http://www.cjsonline.gov.uk/>

Crime in England and Wales - Update

The Home Office has published the latest national statistics on crime in England and Wales. The statistics are on crime figures up to December 2007. They include data from the British Crime Survey (BCS) and police recorded crime (for the October to December 2007 period).

The BCS figures, published in "Crime in England and Wales: Quarterly Update to December 2007" show that crime in England and Wales fell by 6% in the year to December 2007. However, police recorded crime figures estimate the fall to be 12%.

British Crime Survey

Findings from the BCS interviews with 40,000 people for the year ending December 2007 show that:

- ◆ The level of all BSC crime decreased by 6% to 10.4 million crimes;
- ◆ Violent crime remained stable;
- ◆ Vandalism fell by 8%;

- ◆ Domestic burglary remained stable;
- ◆ Vehicle related thefts fell by 10%;
- ◆ Theft from the person remained stable;
- ◆ Household acquisitive crime decreased by 5%;
- ◆ Personal acquisitive crime remained stable;
- ◆ The risk of being a victim of crime fell to 23% (compared with 24% in the year to December 2006);
- ◆ 4% rise in firearms offences, though there was a fall in fatalities and serious injuries relating to firearms.

In relation to public perceptions, the British Crime Survey also revealed that the level of perceived anti-social behaviour remained stable and that worries about all the main crime types actually decreased. Confidence in the local police increased, as did confidence in the Criminal Justice System in 3 of its 7 different aspects.

Police Recorded Crime

Recorded crime for the quarter October to December 2007 shows that:

- ◆ Total recorded crime decreased by 12% (the biggest single quarterly drop in the crime figures for at least 5 years);
- ◆ Domestic burglary fell by 5%;
- ◆ Offences against vehicles decreased by 19%;
- ◆ Violence against the person fell by 10% (26,000 fewer incidents than the same quarter in 2006);
- ◆ Robbery decreased by 21%;
- ◆ Drug offences increased by 20%;
- ◆ Criminal Damage fell by 17%.

“Crime in England and Wales: Quarterly Update to December 2007” can be found in full at <http://www.homeoffice.gov.uk/rds/pdfs08/hosb0408.pdf>

New Director of Corporate Services for Youth Justice Board

Craig Watkins has been appointed as the Director of Corporate Services for the Youth Justice Board. He began the role at the beginning of May and joins from the Office of Criminal Justice Reform.

The Youth Justice Board oversee the youth justice system in England and Wales. Their role includes advising the Secretary of State on the operation of, and standards for, the youth justice system and monitoring its performance.

To find out more about the Youth Justice Board see <http://www.yjb.gov.uk>

Process Announced for the Appointment of new Lord Chief Justice

The Ministry of Justice has announced the process for the appointment of the next Lord Chief Justice. The announcement comes as the present Lord Chief Justice, Lord Phillips of Worth Matravers, has been appointed as the Senior Lord of Appeal in Ordinary and will take up his post on 1 October 2008.

At the request of the Lord Chancellor and the Secretary of State for Justice, a selection panel has been convened consisting of:

- ◆ Lord Bingham, in his capacity as Senior Law Lord - he will chair the panel;
- ◆ Sir Anthony Clarke, Master of the Rolls, nominated by Lord Bingham;
- ◆ Baroness Prashar, as Chairman of the JAC;
- ◆ Sir Geoffrey Inkin, a lay member of the JAC designated by Baroness Prashar.

The panel will be responsible for determining the selection process to be followed for the appointment of the new Lord Chief Justice. It will also apply the process and make a selection. The Lord Chancellor will then confirm the selection or require the panel to reconsider its decision.

The appointment process is due to be completed in late June or early July and the successful candidate will take up their position on 1 October 2008.

Home Secretary's Commitment to Victims of Domestic Violence

The Home Secretary Jacqui Smith has written an article in May's edition of *Good Housekeeping*, stating her commitment to ensuring that victims of domestic violence get the support they need.

The article outlines the measures taken by the Government to help women who are trapped in a cycle of domestic violence. They include:

- ◆ Development of Multi-Agency Risk Assessment Conferences (MARACs). This new multi-agency approach ensures that all agencies, including the police, social services, health agencies and the voluntary sector, work together to provide continuous support to victims and their families from the first report through to court.
- ◆ The Government has pledged to invest £20 million into this approach to expand the number of MARACs available across the country from 100 to over 250 by 2011.
- ◆ The creation of Specialist Domestic Violence Courts across the country (these have just increased in number - see the May edition of the *Digest*). These courts are designed with the particular needs of domestic violence victims in mind.

- ◆ The National 24 hour Domestic Violence Freephone Helpline, funded by the Home Office and Comic Relief, is run in partnership with Women's Aid Federation for England and Wales and Refuge. It is available to provide support and advice.
- ◆ Every Police Force and Crown Prosecution area now has a domestic violence co-ordinator. This ensures that cases of domestic violence are dealt with by staff who have the training and experience to deal sensitively and appropriately with victims.
- ◆ Work with health and social services professionals to identify those women who may be at risk of domestic violence.

Publication of Quarterly Performance Figures for Local Criminal Justice Boards

The latest performance figures for Local Criminal Justice Boards have been published. They cover the period for the quarter to December 2007.

In the 12 months to December 2007, 1.449 million offences were brought to justice. This figure exceeds the target of 1.25 million offences. Of these offences:

- ◆ 50% resulted in convictions;
- ◆ 26% resulted in cautions;
- ◆ 10% resulted in penalty notices for disorder;
- ◆ 7% were offences taken into consideration at court; and
- ◆ 7% were formal warnings for cannabis.

Other findings include:

- ◆ Performance on public confidence in the criminal justice system for the year to December 2007 was at 44%. This has remained stable since 2005.
- ◆ The proportion of ineffective trials has fallen in the Crown Court to 12.7% (from 23.7%) and in the Magistrates' Court to 18.5% (from 30.9%).
- ◆ During the financial year to December 2007, the value of confiscation orders collected was £75.7 million.
- ◆ There were 810 restraint orders for the period April to December.
- ◆ The number of outstanding Failure to Appear (FTA) warrants has decreased by 47% since March 2005. The figure has now achieved the March 2008 target of a 47% reduction.
- ◆ The total value of fines collected as a percentage of the value of fines imposed (excluding confiscation orders) across Local Criminal Justice Board areas has increased from 92% for the period April to September 2007 to 93% for the financial year to date period (April to December 2007). It is exceeding the 2007/08 target of 85%.

- ◆ The average time from arrest to sentence for persistent young offenders from October to December 2007 was 60 days.
- ◆ The proportion of FTA warrants notified to the police within 1 working day was 93% for the period October to December 2006 and has remained at 93% for the period between October to December 2007, exceeding the 90% target.
- ◆ The proportion of FTA warrants notified within 3 working days has dropped from 99% to 98% over the same period as above.
- ◆ The proportion of FTA warrants executed in a timely manner, between October and December 2007, for category A warrants was 62% within 14 working days; for category B warrants was 65% within 21 working days; and for category C warrants was 57% within 28 working days.
- ◆ The average time to resolve community penalty breaches for the period October to December 2007 was 42 days. This did not meet the target of 35 days.

Publication of Revised Sentencing Guidelines for Magistrates' Courts

Following a period of consultation earlier this year (as detailed in the February edition of the *Digest*), the Sentencing Guidelines Council have published the revised Sentencing Guidelines for Magistrates' Courts. The new Guidelines are the first revision to the Guidelines since 2003.

The Guidelines:

- ◆ Deal with a greater number of offences;
- ◆ Provide more detailed and clear advice on a range of issues such as compensation for personal injury, loss or damage suffered by victims, sentencing for road traffic offences, and the range and availability of ancillary orders;
- ◆ Include both starting points and ranges into which sentences should usually fall in order to enhance consistency in sentencing in Magistrates Courts;
- ◆ Give Magistrates' and District Judges additional guidance on the setting of fines, including dealing with offenders on low incomes;
- ◆ Provide guidance on the approach to offences committed for commercial purposes when calculating fines.

The Guidelines will come into effect on 4 August 2008. Copies have been sent to every District Judge, magistrate and legal adviser prior to implementation. Copies are also to be sent to every Crown Court Centre.

The Judicial Studies Board is developing an extensive training programme to support the implementation of the new Guidelines.

The Guidelines can be found in full at <http://www.sentencing-guidelines.gov.uk/>

Launch of a Two Tier Tribunal System

The Ministry of Justice have announced the introduction of a new two tier tribunal system. The authority for the new system is laid down in the Tribunals, Courts and Enforcement Act 2007. From 3 November individual tribunal jurisdictions doing similar work will be brought together. The new simplified system, headed by Lord Justice Carnwarth, will consist of a First Tier and an Upper Tribunal. It is hoped that the more unified service will:

- ◆ Speed up justice;
- ◆ Make the process easier for the public to understand; and
- ◆ Bring together the considerable expertise that exists in each tribunal jurisdiction.

First Tier Chambers

There will be 5 First Tier Chambers; two of them (the Social Entitlement Chamber and the Health, Education and Social Care Chamber) will commence on 3 November. The other 3 include Taxation; Land, Property and Housing; and General Regulatory.

Upper Tribunal Chambers

There will be 3 Upper Tier Chambers: Administrative Appeals; Lands; and Finance and Tax. The Upper Tribunal will be a Superior Court of Record that can deal with onward appeals and judicial reviews.

The Employment Tribunal and the Employment Appeal Tribunal will be separate from the First Tier and Upper Tribunal. However, the Tribunal Service will continue to provide an integrated administration of the new system.

In addition, on 19 May a Tribunals Procedure Committee was established to make and amend rules governing the practice and procedure in the First Tier Tribunal and the Upper Tribunal.

The Government is also likely to consult shortly on bringing the Asylum and Immigration Tribunal into the new unified tribunal's structure.

The Government's response to the implementation of the Tribunals, Courts and Enforcement Act 2007 can be found at

http://www.tribunals.gov.uk/Documents/TransformingTribunals_GovernmentResponseMay2008finalweb.pdf

Driver Testing and Training to be Reformed

New proposals to reform the way people learn to drive and how they are tested have been announced by Transport Secretary Ruth Kelly. While the number of road deaths and serious injuries has fallen by a third since the mid 1990s, the casualty rate for young drivers has remained unchanged. One in five people have an accident within six months of passing their test, and a further 70% report near misses in the same period. Furthermore, newly-qualified drivers and

their passengers account for one in five of all car deaths in Britain. The consultation, entitled 'Learning to Drive', aims to create safer drivers for life by strengthening the current learning and testing procedures, and creating a culture of extended and advanced learning. The proposals include:

- ◆ A new foundation course, to be piloted in schools and colleges in Scotland from this autumn, leading to a qualification on safe road use being offered across Great Britain;
- ◆ A more focused and thorough learning process before the driving test, which focuses not just on vehicle control but also on the wider skills needed to be a safe driver, from driving in difficult conditions (for example at night or in poor weather) to learning to predict and respond to other road users' intentions;
- ◆ A new training syllabus to ensure learners understand what is required of them to become a responsible driver, enabling them to undertake structured and efficient learning and accurately assess when they are ready to pass their driving test;
- ◆ An improved driving test which requires the driver to demonstrate independent driving skills and a clear understanding of different situations on the road, with the option of modular assessment;
- ◆ New opportunities to take extra training post test; working with the insurance industry and employers in the driving for work sector to develop new courses and qualifications to be taken after the driving test that could lead to lower premiums and a better chance of securing a career in the driving for work sector;
- ◆ A star-rating system for driving instructors so that learners can make an informed choice based on pass rates and the level of training instructors have undergone;
- ◆ A review of driving instructor training and testing to ensure they provide a quality service and are focussed on those areas of driving performance that are closely linked to safe driving.

Over 2 million people take a car driving test every year with a current pass rate of 44 %. It is estimated that the average driver has 52 hours of lessons and spends £1,500 learning to drive. It is proposed that the driving test will be revised to place less emphasis on mechanical manoeuvres and to allow examiners to properly assess the full range of a candidate's abilities. Under the new scheme, the driver training and testing could potentially take a longer period of time, although ministers have denied that this could cause an increase in costs.

Proposals for changing the test include:

- ◆ The theory test will be updated to test understanding of safe driving and include case studies;
- ◆ The hazard perception test will be reformed to encourage learners to take it when they have some on-road experience. The use of 3D animation clips instead of film is being considered;

- ◆ The practical test will be changed by introducing independent driving when the candidate finds the route and 'situational judgement' when the candidate is asked to explain what they did in a situation and why;
- ◆ The Driving Standards Agency is looking at splitting the theory and practical tests into modules, to enable learners to pass elements of the tests as they learn. Re-takes could be done in the same way;
- ◆ Candidates will be offered better feedback at all stages of the test whether successful or not;
- ◆ The Driving Standards Agency is also exploring a new marking system for the practical test to make it more effective and consistent.

The Consultation will run for a total of 16 weeks, until 8 September 2008. Some trialling for new elements in the test is already in progress and the Driving Standards Agency expect young people to be able to begin studying for a foundation qualification in safe road use from Autumn 2008. The remaining proposals, including changes in the driving test, could be in place within two to three years.

The 'Learning to Drive' consultation document can be accessed in full at <http://www.dsa.gov.uk/Category.asp?cat=545>

Update on Police Pay

It was stated in the May edition of the *Digest* that we would report in this edition of the *Digest* on the outcome of the Police Federation's High Court Challenge of the Home Secretary's decision not to backdate the pay award for Police Officers.

At the time of writing we are still awaiting the decision of the Court.

In a speech made at the Police Federation Conference on 21 May, the Home Secretary stated that she stood by her decision regarding Police Officer pay.

Police Firing Range Cuts Carbon Emissions

Officers at the indoor Oulton Firing Range in West Yorkshire have slashed their carbon footprint despite using the range more than ever.

By making the equipment more efficient and making sure it only runs when required, West Yorkshire Police have reduced their emissions by just over 50% from 179,228 KG's of Carbon Dioxide in 2002/2003 to 89,464 KG's in 2007/2008. The reduction has also saved the force £15,000 a year on electricity bills which is being put back into policing.

Experts worked with staff to fix problems with the heat recuperators which capture heat and allow it to be reused. They also investigated faults with cooling fans at the facility and installed more reliable systems.

Other energy efficiency measures such as cutting water usage through fitting sensors to toilets and reducing leaks, paper recycling and an initiative to use more bio fuels in police vehicles are set to come in over the next 12 months. The measures aim to make the force cleaner and greener with the added cost benefits being reinvested into force.

ACPO (2008) Guidance Published This Month

The NPJA and ACPO have published several guidance documents this month which are listed below:

- ◆ **The ACPO (2008) Guidance on Investigating Domestic Abuse.** This guidance replaces ACPO (2004) Guidance on Investigating Domestic Violence and the Update Briefing No. 1/2006. Its purpose is to provide the Police Service with clear information about the policing of domestic abuse.
- ◆ **ACPO (2008) Guidance on Casualty Bureau Standard Administrative Procedures (CBSAP).** The Guidance sets out the nationally agreed roles for a casualty bureau, the activation procedures, the operational procedures and the way in which a casualty bureau inter-operates with other key units within the police response to an emergency.
- ◆ **ACPO (2008) Practice Advice on The National Compromise Database.** This is a restricted Practice Advice document on behalf of the ACPO, Her Majesty's Revenue and Customs and the Serious Organised

Crime Agency. The Practice Advice, entitled "Practice Advice on The National Compromise Database" complements "ACPO (2008) Guidance on the Lawful and Effective Use of Covert Techniques - The Legal Framework and Covert Operational Management".

- ◆ **ACPO - Guiding Principles for the Police Service in Relation to the Articulation and Expression of Religious Beliefs and their Manifestation in the Workplace.** The Guidance sets out key principles and guidance to help people working within the police service understand and deal with issues that arise in relation to the expression of religious beliefs in the workplace.
- ◆ **Practice Advice on Investigating Drug Offences.** The NPIA's Professional Practice team have published a restricted document, "Practice Advice on the Investigation of Drug Offences". Developed on behalf of ACPO, the document is designed to raise awareness in the Police Service of the opportunities to reduce drugs-related criminality at basic command unit level or small force area level.

All guidance can be found on the Police Genesis Extranet site with the exception of 'Guiding Principles for the Police Service in Relation to the Articulation and Expression of Religious Beliefs and their Manifestation in the Workplace' which can be accessed from the ACPO intranet site.

Increase in Number of Taser Uses and Discharges

The Home Office have published figures showing that the number of Taser uses and discharges has increased. This trend follows an increase in the number of trained police officers having the authority to use Tasers.

10 Police forces have been taking part in a trial which has seen Taser being used by specially trained units who are not firearm officers, but could face similarly violent circumstances. Results from this trial show that from 1 September 2007 to 29 February 2008:

- ◆ The number of Taser usages was 252;
- ◆ Tasers were actually only discharged in 31 situations - indicating that drawing or aiming the Taser is enough of a deterrent in most situations.

Figures have also been published showing the breakdown of all Taser use across England and Wales since Taser were introduced for authorised firearms officers in April 2004.

For the figures in full please see

<http://police.homeoffice.gov.uk/news-and-events/news/taser-discharges-increase>

Police Chief Rules Out Alert System

The most senior officer responsible for missing children in England and Wales has announced that it is not necessary for police forces in the UK to adopt the American system of immediate information broadcasts in the event of suspected child abduction. Deputy Assistant Commissioner, and ACPO lead on missing people, Richard Bryan said that the forces already operate an effective Child Rescue Alert system and said police would rather use investigative techniques to trace children before going public and potentially alerting abductors.

He did however admit that the guidelines under the current scheme may be too strict, as only three alerts have been issued in the past five years. The Child Rescue Alert system was originally introduced in Sussex in 2002, before being gradually rolled out across the country. It is managed by the Missing Persons Bureau and works by seeking the assistance of the public in situations where a child has been abducted and is feared to be in danger. Its intention is to raise awareness via the media that a child has been taken, so the public look out for the child, the abductor(s) or any vehicle used in the abduction and thereby engage their support.

There are four key criteria which must be met before a Child Rescue Alert is issued:

- ◆ The child is under the age of 16 years old;
- ◆ There is reasonable belief that the child has been kidnapped or abducted;
- ◆ There is reasonable belief that the child is in imminent danger of serious harm or death;
- ◆ There is sufficient information available to enable the public to assist the police in locating the child.

These guidelines work to discover whether there are genuine concerns for the child's safety and aim to reduce overuse of the alert system amid fears that to do so would undermine confidence in the system.

The Child Rescue Alert system is based on the AMBER (American Missing Broadcasting Emergency Response) alert system, which has been used in the US since 1997. France and Greece are currently the only European countries to introduce full alert systems along the same lines as the American scheme.

To read more about the Child Rescue Alert system visit <http://www.npia.police.uk/en/10239.htm>

Serious Organised Crime Agency Publishes Second Annual Report

The Serious Organised Crime Agency (SOCA) has published its second annual report. The report highlights the Agency's performance for the year 2007/2008. Some of the findings in the report include:

War against Drugs

- ◆ Almost 90 tonnes of Class A drugs were seized with partners at home and abroad;
- ◆ Over 30 tonnes of cannabis was seized;
- ◆ Over 60 tonnes of precursor chemicals were seized (principally in Colombia and Afghanistan).

New Tools and Powers

- ◆ 41 Financial Reporting Orders were in force during the year on convicted criminals' finances;
- ◆ 53 Disclosure notices were issued, requiring individuals to co-operate with investigations by producing documents or answering questions;
- ◆ 10 ancillary orders were issued - including travel restrictions and director disqualifications;
- ◆ There were 12 cases of additional licence conditions to reduce re-offending by serious criminals - including non-association with co-defendants and exclusion zones.

Prevention of serious crimes by working in new ways

- ◆ 46 warnings on crime threats issued to over 2,500 private sector organisations throughout the UK;
- ◆ One bank alone reported an estimated that a loss of £500,000 was prevented as a result of a single alert.

Improved intelligence

- ◆ 2,000 serious organised criminals were subject to SOCA operational activity;
- ◆ A recent mapping project with the police has identified thousands more criminals who will now be targeted jointly;
- ◆ Specialist operational support to police contributed to the effective handling of 14 threats to life and successfully resolved 22 kidnaps.

Cutting off criminal cash flow

- ◆ Over £46 million criminal assets were restrained by the domestic courts;
- ◆ All SOCA operations now include financial investigations and an additional 35 financial investigators were appointed during the year.

To view the annual report in full, please see <http://www.soca.gov.uk/>

Illegal Driving Instructors

The Driving Standards Agency (DSA) Fraud and Integrity Team (FIT) is currently investigating over 400 cases of suspected illegal driving instruction across the country.

The agency is working closely with police forces at national, regional and local levels and is asking the public to notify their local police of any unqualified instructors driving on our roads. They urge those taking driving lessons to check that their instructor is qualified by ensuring that they display in their wind screen during lessons:

- ◆ An in-date pink licence which indicates that they have trainee status and are entitled to give paid instruction whilst obtaining practical experience; or
- ◆ A green certificate which indicates that their name is in the Register of Approved Driving Instructors.

Learners are also asked to check that the photo on the badge matches the person giving the instruction.

To prove the offence of providing illegal instruction under Section 123 of the Road Traffic Act 1988, there must be evidence of money or money's worth being exchanged in consideration. The police also have increased powers to charge illegal instructors under the provisions of the Fraud Act 2006, where it can be proved that they have misrepresented themselves by implying that they are qualified.

Registered instructors are now required to undergo criminal record checks to ensure they are 'fit and proper' to become qualified instructors.

For Further information and for the public to report an illegal instructor please contact the DSA Fraud and Integrity Team, Operational Intelligence Unit on 02920 581155 or email integrity.team@dsa.gsi.gov.uk

Stop and Search for Knives in the Capital

Scotland Yard undertook a stop and search blitz in response to the murder of 16 year old Jimmy Mizen in South East London on 10 May who was the 13th teenager to have been killed on the capital's streets in recent months. Last year 26 teenagers were killed, 16 of those with knives. So far this year, 13 teenagers have been killed, 9 by knives. Many of the murders were arguments where someone had produced a knife or street robberies that had gone wrong.

'Operation Blunt 2' deployed stop and search teams across the London boroughs under the powers provided by Section 60 of the Criminal Justice and Public Order Act 1994.

The search teams of 15 officers used 550 metal detecting devices and placed 244 detection 'arches' in areas where intelligence told them that knives are being carried. In addition, officers are attending 185 schools to explain to young people the dangers of carrying knives.

Although the powers are limited to a specified locality and for 24 hours only, Assistant Commissioner Tim Godwin has said that he sees the measures happening for the long term as it was about making people safe in London.

UK Signs Child Protection Convention

The Government have signed the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. The Convention has been open for signature since 2007 and will ensure global co-operation to combat sexual crimes against children.

The objective of the Convention is to protect children against any form of sexual exploitation and sexual abuse. It aims to protect child victims and prosecute perpetrators. The Convention ensures consistency in the standard of investigation and prosecution of sexual crimes against children. It covers:

- ◆ Preventative and protective measures;
- ◆ Assistance to child victims and their families;
- ◆ Intervention programmes or measures for child sex offenders;
- ◆ Criminal offences such as child grooming;
- ◆ Child-friendly procedures for investigation and prosecution;
- ◆ Recording and storage of data on convicted sex offenders, including the exchange of information about the identify of convicted offenders;
- ◆ International co-operation;
- ◆ Monitoring mechanisms.

The signing of the Convention coincides with the second anniversary of the Child Exploitation and Online Protection Centre (CEOP).

The Government has already responded to the principles laid down in the Convention. It has amended the Sexual Offences Act 2003 to remove the condition of dual criminality in relation to sexual offences committed by British nationals against children overseas. The result is that a British national will not be able to target a particular country with less stringent protection of children than England and Wales or Northern Ireland.

In addition, the passing of the Criminal Justice and Immigration Act 2008 (see Article on page 16) which received Royal Assent on 8 May, will allow UK nationals to be prosecuted in the UK for sexual offences committed against a child anywhere in the world, if the act committed would be a relevant offence in this country. The age of a 'child' for these purposes has also been raised from 16 to 18.

The Convention will come into effect once ratified by 5 of the signature countries. Home Office Minister Vernon Coaker has stated that the UK is aiming to ratify the Convention as soon as possible.

More details about the Convention can be found at
[http://www.coe.int/t/e/legal_affairs/legal_co-operation/
Fight_against_sexual_exploitation_of_children/](http://www.coe.int/t/e/legal_affairs/legal_co-operation/Fight_against_sexual_exploitation_of_children/)

VOSA Business Plan 2008/2009

The Vehicle and Operator Services Agency (VOSA) has published its business plan for 2008-2009. VOSA, whose mission is to "Save more lives, ensure safer roads, cut crime, protect the environment, value our people and deliver value for money" plan to build on the successes of 2007-2008 in which it achieved over a 10% increase in the number of dangerous drivers and vehicles removed from the roads, contributing to safer and more reliable journeys.

The plan outlines the priorities for 2008-2009 as:

- ◆ Improving the availability and consistency of vehicle testing;
- ◆ Increasing road safety and journey reliability by improving the efficiency and effectiveness of our targeting of high risk operators and MOT garages;
- ◆ Contributing towards the cross-Government Service Transformation Agreement through introducing further new e-services such as booking HGV and PSV tests on-line;
- ◆ Increasing work on the detection of high-risk traffic on international journeys;
- ◆ Making further on-line information available through the Transport Office Portal and working towards the migration to Business Link;
- ◆ Investing a further £9m in our core testing and enforcement estate.

The Business Plan can be found in full at
<http://www.vosa.gov.uk/vosacorp/repository/2008%20-%202009%20VOSA%20Business%20Plan.PDF>

Survey Reveals an Increase in Violence Against Children

A study by Cardiff University has revealed that the number of children under the age of 10 admitted to accident and emergency departments last year rose to 8,067 from 3,805 in 2006. While there was an overall decrease in serious violence of 12% the survey reports that this increase in violence directed against children is a cause for concern. It is the first time since surveillance of this data commenced in 1995, that the number of violence related admissions into A and E was greater for those aged 0-10 years than those aged 51 and over.

The report says that it is not clear whether violence at the hands of parents or carers is responsible for the increase and states that recent evidence suggests that violence between children at school and in public places may be more frequent. It goes on to reemphasise the importance of the roles of local safeguarding agencies, including the NHS, police and local authorities.

The NSPCC has now begun working with experts at Cardiff University to establish guidance which would enable doctors, health visitors and social workers

to diagnose with more confidence whether an injury is accidental or abusive. The government has also recently published its Tackling Violence Action Plan which includes new resources for healthcare providers, local authorities and the police to share information to ensure that people at risk are protected and offenders are brought swiftly to justice.

The full report by Cardiff University's violence research group can be found at http://www.cardiff.ac.uk/dentl/resources/Trends_in_violence_2007.pdf

Police Report Increase in Drinking Amongst Women

Police announced last week that the number of women arrested for being drunk and disorderly has risen by more than 50% in the past five years. In the survey by Channel 4 news, of the 38 forces that responded, 21 reported an increase. The results have prompted Chief Constable Mike Craik of Northumbria police, whose force saw an increase from 1414 to 2101, to call for an end to happy hours and the advertising of alcohol.

A recent survey of hospital admissions across Britain found a 25% increase in the number of alcohol-related cases, despite Government claims that the burden on the NHS was stable. A spokesman for the Home Office said that they will continue to ensure that the police and the courts have all the tools and powers they need to bring the irresponsible minority, men and women alike, swiftly to justice. The spokesman went on to say that although alcohol-related violence overall has fallen by around a third since 1995, there will be no let up in the Government's efforts to create a healthier drinking culture.

To read about the government's strategy on alcohol related crime, please see <http://www.homeoffice.gov.uk/crime-victims/reducing-crime/alcohol-related-crime/>

Alcohol Campaign Launched

The Department of Health have announced a £6 million "Know Your Limits" campaign, aiming to tell drinkers how many units are in their drinks.

The campaign will consist of TV, radio and billboard adverts. The adverts will show how many units of alcohol are in individual drinks. They will also state the recommended daily guidelines for regular drinking:

- ◆ **Women** - 2-3 units a day;
- ◆ **Men** - 3-4 units a day.

The launch comes at a time when a YouGov poll indicated that English drinkers are not aware of how much they are drinking. 1,972 adults were questioned about their alcohol consumption. The survey produced the following statistics:

- ◆ 82% claim to know what a unit of alcohol is, yet 77% did not know how many units were in a typical large glass of wine;
- ◆ 55% thought a large glass of wine would contain 2 units when it actually contains 3;

- ◆ 35% did not know that an average pint of beer contains 2 units;
- ◆ Nearly 3 out of 5 did not know that a double gin and tonic contains 2 units;
- ◆ 52% of adult drinkers in England and Wales drink alcohol at least two to three times a week;
- ◆ 1 person in 10 drinks every day;
- ◆ Unit awareness gets worse with age.

A £4 million binge drinking campaign is due to be launched by the Home Office next month.

The Government have also launched a new online calculator to help people add up the units in their drinks <http://www.nhs.uk/units>

Government Plans to Reduce the Speed of Traffic on Residential Roads

The Government has announced plans to reduce the speed limit on thousands of residential roads to 20 mph in a move to cut road deaths by a third over the next 10 years.

A recent Transport Research Laboratory study of 250 20 mph schemes across Britain found that after the limit was reduced crashes fell by 60%; child casualties fell by 67%; and average speeds fell by 9 mph.

Some of the proposed measures include:

- ◆ Variable limits on main roads near schools, with digital signs ordering drivers to cut their speed to 20mph or less when pupils are arriving or departing;
- ◆ Cameras will be used to detect a vehicles average speed.

The proposals are part of a road safety strategy for the next decade, which is currently being prepared by the Government. Other measures being proposed are:

- ◆ Lower drink-drive limit;
- ◆ Six penalty points for serious breaches of the speed limit;
- ◆ Harsher penalties for not wearing seat belts.

The move comes following Department for Transport research which shows that:

- ◆ 1 in 40 pedestrians struck by a car at 20 mph dies;
- ◆ 1 in 5 pedestrians struck by a car at 30 mph dies;
- ◆ At 40 mph the survival rate is just 10%;
- ◆ A 1 mph cut in average vehicle speed reduces crash frequency by about 5%.

More than 3,000 people die on the roads each year. The Government target is to reduce this figure to 2,000 by 2020.

Olympic Torch De-Briefing

A briefing paper on the Olympic Torch relay has been published by the Metropolitan Police Service. The paper gives details of the cost of policing the Beijing Olympic Torch Relay event and covers a number of other areas that may be of interest.

The Olympic Torch relay took place on Sunday 6 May 2008 travelling across a 31 mile route through ten London boroughs. The planning for the event began over a year ago and it was always assumed that the relay would be subject to demonstrations along the length of its route. This was further confirmed by the incidents seen around the world, prior to the torch's arrival in the UK.

The briefing paper reveals that the estimated total cost of the policing operation was £746,000, with £502,000 spent on officers who were assigned to policing the event. The remainder went on additional costs including overtime and non-pay costs, such as air support and the purchasing of specialist equipment. In total around 2 thousand officers were used during the day and 37 arrests were made, 29 for Breach of the Peace incidents.

The full briefing paper can be viewed at
<http://www.mpa.gov.uk/about/foi/briefings/2008/default.htm>

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Peart Report Published

A joint inspectorate report has been published following an inquiry into the circumstances which led to the fatal stabbing of Richard Whelan, by Anthony Peart, in July 2005. It was commissioned amid extensive public concern after it was discovered that Peart had been released from prison earlier that day, despite there being in existence an outstanding warrant for his immediate arrest.

The report found that while no single act or specific omission led to the unlawful killing of Richard Whelan, the actions within the Criminal Justice System contributed to the events taking place as they did. The report condemns the 'lackadaisical' or 'nonchalant' approach within the Criminal Justice System when handling cases, in particular with regard to bail conditions and a failure to effectively deal with breaches of these conditions. The report also criticises the clack of communication between the agencies in various parts of the country.

The inquiry was led by the Inspectorate of the Crown Prosecution Service, together with the Inspectorates of the courts, the police and the Prison Service. It recommends that as a matter of urgency, the National Offender Management Service and the Home Office look into providing all custodial establishments with access to the Police National Computer. It also suggests a review throughout the Criminal justice System of the Bail Act 1976 and how its provisions are implemented.

The full report, "A review to ascertain the circumstances in which Anthony Leon Peart, also known as Anthony Leon Joseph came to be at liberty on 29 July 2005" can be found at http://www.attorneygeneral.gov.uk/attachments/Peart_Review.pdf

Rising Prison Population Figures

According to Prison Service statistics, prison population levels have reached new record levels. The most recent monthly reported figures show that as of 25 April 2008, the total prison population was 82,319. A Prison Service Spokesperson said the total included 12 inmates held as part of emergency measures to deal with overcrowding known as 'operation safeguard.'

Prison Service figures announced on 16 May 2008 show a further increase in the population to 82,682, compared to 80,658 a year earlier. The Prison Service's useable operational capacity was said to be 83,433.

The figures were announced after a row between the Prison Service and the Prison Officers Association, which claimed that its members had lost control of sections in some jails. It has also emerged that prisons have been ordered to ignore established safety limits governing the number of inmates they can hold. A Prison Service Spokesperson has reportedly confirmed that the Ministry of Justice had issued a 'clear operational emergency' and has instructed two prisons to accept more inmates, although they are already full.

Ministry of Justice figures reveal that the population in custody on 31 March 2008 was 82,226, 2 per cent more than a year earlier. In her 2006-2007 Annual Report published in January 2008, the Chief Inspector of Prisons, Anne Owers, warned of a prison population crisis and that the prison system was facing serious challenges in the future. She recommended a Royal Commission or major public inquiry that draws on a wide range of expertise to develop a coherent penal policy for the future.

Full details of prison population statistics can be found at <http://www.hmprisonservice.gov.uk/resourcecentre/publicationsdocuments/index.asp?cat=85> and <http://www.justice.gov.uk/publications/populationincustody.htm>

HM Chief Inspector of Prisons Annual Report 2006-2007 can be found at http://inspectorates.homeoffice.gov.uk/hmiprison/docs/prisons_ann_rep_06-07.pdf

CCTV Failed to Cut Crime

A Senior Police Officer has claimed that despite huge investment, CCTV has failed to cut levels of crime.

During a speech made at the Security Document World Conference in London, Detective Chief Inspector Mike Neville has spoken out, claiming that only 3% of London's street robberies are being solved using security cameras. The reasons given for the lack of effectiveness include:

- ◆ Criminals were not afraid of the cameras - they assume the cameras are not working;
- ◆ More training was needed for officers who often avoided trawling through CCTV images because it was seen as 'hard work';
- ◆ No thought has been given to how the CCTV images are to be used by the police and in court.

Detective Chief Inspector Neville is heading a unit (the Visual Images Identification and Detection Office) tasked with piloting a new database to track offenders using CCTV. The Unit is currently looking at ways to improve the effectiveness of CCTV. Some initiatives include:

- ◆ Using software which can follow distinctive brand logos on the clothing of unidentified suspects;
- ◆ Putting images of suspects in muggings, rape and robbery cases on the internet.

Case Law



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Non Compellable Witnesses Statement Can Be Admitted in Evidence

R v L (2008)

CA (Crim Div) (Lord Phillips LCJ, Bean J, Wilkie J) 7/5/2008

Criminal Evidence

Compellability: Hearsay Evidence: Indecent Assault: Rape: Admissability of Hearsay Evidence where Witness Not Compellable: S.80 Police and Criminal Evidence Act 1984: S.114 Criminal Justice Act 2003

[There were no grounds for finding that convictions of rape and indecent assault were unsafe where a statement given by the appellant's wife, implicating her husband, was admitted under the Criminal Justice Act 2003 s.114 after the trial judge had ruled that the wife was not a compellable witness against her husband under the Police and Criminal Evidence Act 1984 s.80.](#)

The appellant (L) appealed against his convictions on four counts of rape and five counts of indecent assault. The complainant (V), who was L's daughter, had alleged that L had raped her at her flat. She told police that L had ejaculated on the floor and sofa and had wiped himself with a towel. V informed police that L had indecently assaulted her repeatedly throughout her childhood, between the ages of 10 and 16, and thereafter the assaults had amounted to rape. Police examinations found L's seminal fluid on the carpet near to the sofa and on a towel lying on the sofa. In interview L stated that he had had sexual intercourse with his wife (W) on the sofa whilst they were staying at V's flat three months previously. W gave a statement to police to the effect that she did not recall having sexual intercourse at V's flat, but that if she had it would have only been in bed. W subsequently alleged that the statement had been made up by the police. At trial the judge held that W was not a compellable witness under the Police and Criminal Evidence Act 1984 s.80 as her evidence related to offences that had taken place when V was aged 19. The prosecution made an application to admit the statement under the Criminal Justice Act 2003 s.114; the judge ruled that it was in the interests of justice to admit the statement. L contended that (1) the judge was wrong to admit W's statement; (2) the police should have informed W that she could not be compelled to give evidence against L before taking a statement from her and her statement should have been automatically excluded, or excluded as a matter of discretion, because of the provisions of s.80 of the 1984 Act.

HELD

- (1) L's explanation as to the presence of his semen at V's flat was incredible to the extreme. It was unlikely that he would have had intercourse with W on the sofa rather than in the bedroom and incredible that the towel would still have been on the sofa three months later. The only other explanation consistent with L's evidence was that V had observed him having intercourse with W and had deliberately kept the towel in order to invent the count of rape. That had never been put to V in cross-examination and, in the circumstances, there were no grounds for saying that L's conviction was unsafe whether or not W's statement should have been admitted.
- (2) (Obiter) There was no requirement to tell a wife that she was not a compellable witness against her husband before interviewing her about a crime of which her husband was suspected. However, there may be circumstances where the police would be well advised to make it plain that a wife need not make a statement that implicated her husband. Compelling a wife to give evidence was not the same as permitting another witness to give evidence of a voluntary statement made by the wife in the past. Accordingly, s.80 of the 1984 Act did not pose a legal bar to the admission of such evidence. However, there was an obvious paradox in excusing a wife from giving evidence, but then placing before a jury in the form of a hearsay statement the evidence she did not wish to give.

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Guidance on Ear Print Evidence

R v MARK KEMPSTER (2008)

CA (Crim Div) (Latham LJ, Swift J, Foskett J) 7/5/2008

Criminal Evidence

Burglary: Ear Prints: Expert Evidence: Identification: Gross Detail Of Ear Structure Capable Of Providing Identifying Information

Although ear print comparison was capable of providing information that could identify a person who had left an ear-print on a surface, where the print was of such quality that only the gross detail of the ear structure was visible and could be compared, it was only capable of providing a reliable match where there was a truly precise match between the prints.

The appellant (K) appealed via a reference from the Criminal Cases Review Commission, against a conviction for burglary. K had been arrested on suspicion of the burglary of an elderly woman's residence. The police had recovered an ear print from the fixed window pane to the side of the window that had been forced in order to gain entry to the property. Expert evidence at trial was that no two ears left the same mark and that the ear print found on the window pane matched ear prints subsequently taken from K. K was convicted and

sentenced to ten years' imprisonment. His appeal was dismissed. A further expert report concluded subsequently that the prints used in K's case were not of sufficient quality to conclude safely that there was a match and that the gross anatomical features of the ear visible at the crime scene did not accord with the reference prints provided by K. K referred the matter to the Criminal Cases Review Commission, which concluded that there was a real possibility that the conviction might be overturned.

HELD

The experts agreed that ear prints presented a different and more difficult problem than fingerprints, in that ears were cartilaginous structures that were flexible, and deformed when subjected to pressure, which distorted the shape of the ear and the mark that it would leave. It was clear that ear print comparison was capable of providing information that could identify a person who had left an ear print on a surface, but could only be done with certainty where the minutiae of the ear structure could be identified and matched. Where the print was of such quality that only gross detail was visible and could be compared, there was less confidence in such a match due to the flexibility of the ear and the uncertainty of the pressure which would have been applied at the relevant time. Therefore, gross features were capable of providing a reliable match but only where they truly provided a precise match. However, although a comparison of the print on the window pane with that taken from K was similar in shape and size, it did not provide a precise match. The extent of the mismatch led to the conclusion that it could not be relied on by itself as justifying a guilty verdict.

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Refusal to allow Fresh Evidence of Diminished Responsibility to be Introduced

R v STEWART MICHAEL DIAMOND (2008)

CA (Crim Div) (Thomas LJ, Irwin J, Coulson J) 29/4/2008

Criminal Law - Mental Health

Diminished Responsibility: Fitness To Plead: Fresh Evidence: Mental Impairment: Murder: Schizophrenia: Refusal Of Assessment For Mental Illness: Fresh Medical Evidence Of Mental Illness: S.47 Mental Health Act 1983: S.49 Mental Health Act 1983: S.23 Criminal Appeal Act 1968

Where a defendant who was charged with murder had refused to be assessed for mental illness and refused legal advice to plead guilty to manslaughter on the grounds of diminished responsibility, it was not in the interests of justice to admit fresh evidence 10 years after the offence in relation to the defendant's mental state at the time of the killing as it was clear from the evidence that the defendant's decision to plead not guilty was tactical.

The appellant (D) appealed against his conviction for murder on a reference by the Criminal Cases Review Commission. D had killed a 17-year-old boy and dismembered his body. He had a long history of psychiatric problems and, six months before the offence, whilst in custody for another offence, had been diagnosed with a psychopathic disorder but not as suffering from a mental illness. D was charged with murder; he was seen by a psychiatrist, who concluded he was fit to plead. D refused recommendations that he be assessed to see if he was suffering from a mental illness and refused to allow a defence of diminished responsibility to be put forward. He instructed his legal representatives to conduct his defence on the basis that he had not committed the killing. D was convicted of murder and sentenced to life with a recommended tariff of 20 years. He was later diagnosed as suffering from the mental illness of paranoid schizophrenia and was admitted to hospital by order of the secretary of state under the Mental Health Act 1983 s.47 and s.49, where he remained. Permission to appeal, on the basis he had not committed the killing was refused. D's case was referred on the basis that (i) he now admitted the killing; (ii) there was strong evidence that his responsibility was substantially impaired by an abnormality of the mind; (iii) his mental capacity was significantly impaired by mental illness at the time he instructed his legal representatives and (iv) a verdict of manslaughter should be substituted. The issue for determination was whether, 10 years after the killing, the court should admit fresh evidence under the Criminal Appeal Act 1968 s.23 in relation to D's mental state at the time he committed the killing.

HELD

- (1) A defendant had to advance all aspects of his case at trial and the court would not admit fresh evidence to enable a defendant to run a different case, *R v Ahluwalia (Kiranjit)* (1992) 4 All ER 889 CA (Crim Div) applied. Guidance as to when the court could exercise its discretion, in accordance with the principles set out in s.23 of the Act, in relation to cases where the evidence related to a plea of diminished responsibility that was not

advanced at trial was set out in R v Neaven (Damian James) (2006) EWCA Crim 955, (2007) 2 All ER 891 Neaven applied.

- (2) On the evidence available the decision made by D to plead not guilty at the trial and not avail himself of the defence of diminished responsibility was tactical. Given it was a tactical decision, not materially caused by his mental condition, there was no reasonable explanation for the failure to adduce the evidence at the trial. Prior to his conviction D had not been diagnosed as suffering from a mental illness and it was impossible to accept the fresh medical evidence, based on an assessment many years later, that D was so suffering. He had been given competent and clear advice in the period leading up to his trial that it would be in his own interests to undergo an assessment and consider the defence of diminished responsibility. The probability was that the self-interest in obtaining an acquittal was the dominant motive in his decision to plead not guilty and the decision was tactical and made with sufficient understanding on his part. It was also significant that D only finally admitted the killing when all other avenues of appeal were at an end and his only hope was to advance a defence of diminished responsibility. Accordingly, there was no reasonable explanation for the failure to adduce the evidence at the trial and it was not in the interests of justice to admit the evidence.

APPEAL DISMISSED



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Arresting Police Officer Escorting a Drunken Person from a Private Garden was not Assault

MCMILLAN v CROWN PROSECUTION SERVICE (2008)

DC (Maurice Kay LJ, Penry-Davey J) 12/5/2008

Criminal Law

Assault: Drunk And Disorderly: Police Officers: Arresting Police Officer Escorting Drunken Person From Private Garden: Actions Acceptable In Ordinary Conduct Of Daily Life: S.5 Public Order Act 1986

A police officer had been acting within the bounds of what was generally acceptable in the ordinary conduct of daily life when he physically escorted a woman from a garden to a public footpath after finding her shouting and swearing in a drunken state.

The appellant (M) appealed by way of case stated against a decision of a magistrates' court to convict her of the offence of being drunk and disorderly in a public place. Police officers had found M on the street in a drunken state, warned her about her behaviour and advised her to go home. The officers later found M in the garden of her daughter's house shouting and swearing at the front door. One of the officers (S) advised her to leave but M continued to shout and swear. S then took M by the arm and escorted her down a set of steps from the garden and onto a public footpath. M shouted at and argued

with S and was arrested. The lawfulness of S's actions in physically leading M from the garden to the footpath was considered at trial. The magistrates held that there had been no assault, and convicted M of the offence charged. The principal question posed for the consideration of the High Court was whether the magistrates were correct to find that there had been no assault. M submitted that from the moment S took her by the arm, he was in law assaulting her, and her disorderly behaviour was the behaviour of someone who was the victim of a continuing assault against which she was entitled to protest.

HELD

The question was whether the magistrates were entitled to hold that S, by taking M by the arm, had been acting within the bounds of what was generally acceptable in the ordinary conduct of daily life, *Collins v Wilcock* (1984) 1 WLR 1172 DC applied. Common sense compelled that they were so entitled. The magistrates were plainly satisfied that S had made the pragmatic decision not to arrest M in the garden, perhaps for an offence under the Public Order Act 1986 s.5, preferring instead a negotiated conclusion which would be in M's interests. The magistrates found that S had taken M by the arm to escort her out of the garden so he could speak to her in the street, and they rejected any suggestion that she was removed to a public place so as to justify an arrest for an offence with a public place requirement. In acting as he did, S, who had had in mind the steepness of the steps and had wanted to steady her for her own safety, could properly be said to have acted in conformity with generally acceptable standards of conduct.

APPEAL DISMISSED



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Reflux or Regurgitation from the stomach during Breath Test did not affect the Specimen of Breath

RYAN MCNEIL v DIRECTOR OF PUBLIC PROSECUTIONS (2008)

DC (Latham LJ, Underhill J) 28/4/2008

Criminal Evidence - Police - Road Traffic

Blood Samples: Breath Samples: Breath Tests: Driving While Over The Limit: Police Powers And Duties: Effect Of Reflux Or Regurgitation On Breath Test: Validity Of Police Guidance: Road Traffic Act 1988: S.7(3)(bb) Road Traffic Act 1988

It was settled law that a specimen of breath that had been affected or potentially affected by reflux or regurgitation from the stomach was to be treated as a specimen of breath for the purposes of the Road Traffic Act 1988 and a note in a pro forma document, namely MGDD/A (Station Procedure), used for the administering of breath tests at a police station to the effect that if an individual had brought something up from his stomach his specimen of breath did not give a reliable indication of breath alcohol, was erroneous.

The appellant motorist (M) appealed by way of case stated against the decision of a magistrates' court to convict him of driving over the alcohol limit. M had failed a roadside breath test and had been required to produce a specimen of breath at a police station in relation to an offence of driving over the alcohol limit. At the police station a pro forma document, namely MGDD/A (Station Procedure), was used with a view to administering an intoximeter breath test. M provided two breath specimens but indicated that he had burped in the course of providing the second specimen. That indication was in response to a question, namely question A17 prescribed by the form, as to whether he had brought up anything from his stomach since he had started to use the intoximeter. A note to the question stated that if a police officer received a positive answer to that question there was reasonable cause to believe that the instrument used had not produced a reliable indication and directed the police officer to require a specimen of blood or urine. The officer followed that direction and required M to provide a specimen of blood. M was convicted of driving over the limit on the basis of the analysis of a specimen of blood that he provided. M contended that as it was settled law that a specimen of breath that had been affected or potentially affected by reflux or regurgitation from the stomach was to be treated as a specimen of breath for the purposes of the Road Traffic Act 1988, an indication obtained from an intoximeter in such circumstances could not be regarded as unreliable for the purposes of s.7(3)(bb) of the Act so as to entitle a police officer to require a specimen of blood.

HELD

Although no blame attached to the police officer for following the procedure prescribed by the pro forma document, the fact remained that the cause that he thought he had had, namely that the breath specimen tested by the intoximeter had not given a reliable indication of the amount of alcohol in R's breath was not, in law, capable of rendering that indication unreliable, *Zafar v DPP (2004) EWHC*

2468 (Admin), (2005) 169 JP 208 and Woolfe v DPP (2006) EWHC 1497 (Admin), (2007) RTR 16 applied. It followed that the police officer had not been entitled to require M to provide a specimen of blood, and, accordingly, M's conviction was quashed.

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Breath Samples and the Use of Cycles of Breath Analysis Devices

PLACKETT v DPP (2008)

DC (Maurice Kay LJ, Penry-Davey J) 15/5/2008

Criminal Evidence - Road Traffic

Breath Samples: Breath Tests: Drink Driving Offences: Failure To Provide Breath Specimen: Cycles Of Breath Analysis Devices

A driver's conviction for failing to provide a breath specimen was quashed where, having been given another opportunity by a police officer to provide a sample following several previous refusals, he was only given one minute of a three minute cycle of a breath analysis device in which to provide it.

The appellant (P) appealed by way of case stated against his conviction for failing to provide a specimen of breath contrary to the Road Traffic Act 1988 s.7(6). P had been found by a police officer (J) sitting alone in his car in a car park. J formed the opinion that P was drunk and requested that he take a breath test. P refused and J took him to the police station where J set up the relevant device. Once operated, the device began a three minute cycle during which a specimen had to be provided. P again refused to provide a breath sample and left the room to speak to the duty solicitor. While he was out of the room, J commenced the operating cycle of the device. On returning, P indicated that he wished to provide a specimen. J agreed and P attempted to give a sample. However there remained only one minute of the three minute cycle. During that time P's first attempt failed because the mouthpiece fell off and his second attempt failed because of insufficient breath. The device then stopped and J refused to commence another cycle. P was charged with failing to provide a specimen. The magistrates found that P had been given an expectation by J that he would be allowed to give a sample, but held that that expectation had been satisfied and that J had not been obliged to commence another cycle. The questions posed by the magistrates for the consideration of the High Court were whether they were entitled to convict P where the officer had begun the operation of the device in P's absence and whether they were right to find that P had had an opportunity to provide a specimen when he was only given one minute of the device's cycle as opposed to three.

HELD

It might well be that when P left the room having refused to provide a specimen, the officer was entitled to treat that refusal as a commission of the offence. However, having decided to give P another opportunity to provide a specimen, it was incumbent on the officer to allow P to take the test in the normal way and to use the full cycle of the device. The fact that the officer began the operation of the device in P's absence was not necessarily a bar to conviction. However in circumstances where the officer had agreed to give P another opportunity to provide a specimen and the normal procedure was not then followed, the offence was not made out. The magistrates were not right to find that P had had an opportunity to provide a specimen when he was only given one minute of the device's cycle.

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Secretary of State's power to block the release of a prisoner from jail on the recommendation of the Parole Board was incompatible with the European Convention on Human Rights

R (on the application of WAYNE THOMAS BLACK) v SECRETARY OF STATE FOR JUSTICE (2008)

CA (Civ Div) (May LJ, Latham LJ, Moore-Bick LJ) 15/4/2008

Human Rights - Penology And Criminology

Declarations Of Incompatibility: Early Release: Parole Board: Release On Licence: Right To Liberty And Security: Application Of Art.5(4) European Convention Of Human Rights 1950 To Early Release Provisions: S.35(1) Criminal Justice Act 1991: Art.5(4) European Convention On Human Rights: Art.5 European Convention On Human Rights: S.35 Criminal Justice Act 1991: S.4 Human Rights Act 1998

The Criminal Justice Act 1991 s.35, as applied to those prisoners serving 15 years or more under the 1991 Act, provided for a procedure that did not comply with the requirements of the European Convention on Human Rights 1950 art.5(4) and a declaration of incompatibility under the Human Rights Act 1998 s.4 was therefore granted in relation to that section.

The appellant (B) appealed against a dismissal of his application for judicial review of the secretary of state's decision to reject the parole board's recommendation for his early release. B had been sentenced to a total of 20 years' imprisonment for kidnap and robbery offences. B later received a further consecutive sentence of four years for escaping from custody and for assault. Both sets of offences had been committed before April 2005, so that any early release was governed by the provisions of the Criminal Justice Act 1991 s.35(1). The parole board recommended B's release on licence after he had served 11 years. However, the secretary of state found that the risk B posed to the public had not been sufficiently reduced and rejected the recommendation. B's application for judicial review of that decision was dismissed and leave to appeal was allowed on the issue of whether the secretary of state's decision breached B's rights under the European Convention on Human Rights 1950 art.5(4). B submitted that the decision as to whether to release him if recommended to do so by the Parole Board was entirely dependent on a decision by the executive, which was no different in kind from the determination by the secretary of state's predecessors in both discretionary and mandatory life sentence cases that had been held by the court to be incompatible with a prisoner's art.5(4) rights. The secretary of state submitted that a proper understanding of the House of Lords decisions in *R (on the application of Giles) v Parole Board* (2003) UKHL 42, (2004) 1 AC 1 and *R (on the application of Clift) v Secretary of State for the Home Department* (2006) UKHL 54, (2007) 1 AC 484 made it clear that the lawfulness of the continued detention of a fixed-term prisoner was always determined by the sentence imposed by the court and was therefore justified by art.5(1)(a).

HELD

- (1) Convention jurisprudence made a clear distinction between decisions depriving a person of his liberty made by an administrative body on the one hand and the court on another, *De Wilde v Belgium (No1) (A/12) (1979-80)* 1 EHRR 373 ECHR applied. In the instant case the situation was one in which the responsibility for determining the length of a sentence was shared between the judge and the secretary of state. The ratio in *Giles* was confined to longer than commensurate sentences of less than 15 years, where it was the Parole Board that had the responsibility for determining the prisoner's release dates and was not an authority for a sweeping proposition that art.5(4) had no relevance to determinate sentences, *Giles* considered. The appellant in *Clift* was in the same position as *B* although the decision in *Clift* was based solely on an analysis of the scope of art.14. However, the fact that art.5(4) was not argued in *Clift* did not make *Clift* authority for the proposition that it had no relevance in cases such as *B's*, *Clift* considered. Since that decision the Court of Appeal had had occasion to consider art.5(4) again in *R (on the application of Johnson) v Secretary of State for the Home Department (2007) EWCA Civ 427, (2007) 1 WLR 1990*. The inescapable logic of *Johnson* was that a prisoner serving a determinate sentence was entitled to have the lawfulness of his detention determined, not merely speedily, but by a court.
- (2) On the assumption that had been made so far, the Parole Board met the criteria for a sufficiently independent body to be art.5(4) compliant. That must apply to all determinate prisoners. But whatever might be the position of the Parole Board, s.35 of the 1991 Act, as it applied to those sentenced to 15 years or more, did not comply with the requirements of art.5(4) as it left the decision to the secretary of state. In other words, like *Giles*, the sentence did confer on the executive responsibility for determining when the public interest permitted the prisoner's release. Section 35 of the 1991 Act, as applied to those serving 15 years or more under the 1991 Act, provided for a procedure that did not comply with the requirements of art.5(4). It left the decision as to release in the hands of the executive and was therefore capable of being applied arbitrarily, which was the mischief at which art.5(4) was directed. Although the instant appeal must be dismissed, because the procedure in the instant case complied with domestic law, the court granted a declaration of incompatibility under the Human Rights Act 1998 s.4.

JUDGMENT ACCORDINGLY



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SI 912/2008 The Offender Management Act 2007 (Consequential Amendments) Order 2008

In force **1 April 2008**. This Order makes amendments to a number of acts consequential to Part 1 of the Offender Management Act 2007 ("the OMA"). The OMA enables the Secretary of State to make contractual arrangements with providers of probation service for the provision of such services. The OMA also establishes probation trusts. This order makes amendments to primary legislation to replace terms such as 'local probation board' and 'an officer of the local probation board' with references to the arrangements under the OMA.

SI 949/2008 The Serious Crime Act 2007 (Amendment of the Proceeds of Crime Act 2002) Order 2008

In force **1 April 2008**. This Order amends Section 280(4) of the Proceeds of Crime Act 2002, which deals with the application of sums obtained by, or vested in, a trustee for civil recovery under or in pursuance of a recovery order. The amendment clarifies the meaning of 'member of staff', ensuring that sums received under Section 280(2) can be applied to pay the remuneration of a trustee for civil recovery who is a contractor.

SI 956/2008 The Clean Neighbourhoods and Environment Act 2005 (Commencement No. 5) Order 2008

In force **6 April 2008**. This order commences Section 68 (termination of police responsibility for stray dogs) and Part 6 of Schedule 5 (repeals, stray dogs) of the Clean Neighbourhoods and Environment Act 2005.

SI 963/2008 The Sex Discrimination (Amendment of Legislation) Regulations 2008

In force **6 April 2008**. These Regulations implement in the United Kingdom Council Directive 2004/113 EC of 13 December 2004 ("the Directive"). The Directive is concerned with implementing the principle of equal treatment between men and women in the access to and supply of goods and services which are available to the public.

The Regulations apply the Directive-based definition of indirect discrimination to the areas of the Sex Discrimination Act 1975 ("the 1975 Act") and the Sex Discrimination (Northern Ireland) Order 1976 with which the Directive is concerned. Those areas are, respectively,:

- ◆ Section 29 and Article 30 (discrimination in the provision of goods, facilities or services);
- ◆ Section 30 and Article 31 (discrimination in disposal or management of premises);
- ◆ Section 31 and Article 32 (discrimination: consent for assignment or sub-letting);

except in so far as these provisions relate to education, the content of media and advertisements; and the provision of goods, facilities or services (not normally provided on a commercial basis) at a place occupied or used for the purposes of an organised religion.

The Regulations provide protection from direct discrimination on grounds of gender reassignment and pregnancy and maternity in the provision of goods, facilities, services or premises with which the Directive is concerned, and prohibit harassment in the provision of these.

The Regulations reverse the burden of proof in court proceedings relating to discrimination or harassment in the provision of goods, facilities, services or premises with which the Directive is concerned.

SI 1062/2008 The Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria) (Transitional Provisions) Regulations 2008

In force **7 April 2008**. These Regulations prescribe the criteria which are to have effect for the purposes of articles 2(7) and 4(7) of the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008 ("the Order"). Anyone meeting these criteria will not be given the right to make representations as to their inclusion under the Order in the barred lists maintained by the Independent Barring Board ("IBB") under section 2 of the Safeguarding Vulnerable Groups Act 2006.

The criteria are that a person has, within the period of 10 years ending on the day they are referred to IBB, been convicted of, or cautioned in relation to, an offence set out in the Schedule to the Regulations, or a connected offence. A connected offence is an offence of attempting, conspiring, or incitement to commit, or aiding, abetting, counselling, or procuring the commission of, an offence set out in the Schedule.

SI 1165/2008 The Football Spectators (2008 European Championship Control Period) Order 2008

In force **19 May 2008**. This order prescribes a control period for the purposes of Part II of the Football Spectators Act 1989 for the UEFA 2008 European Championship. The control period begins on 28 March 2008 and ends on the day that the last match in the tournament is played or cancelled (scheduled to be 29 June 2008).

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

SI 1183/2008 The Immigration (Biometric Registration) (Pilot) Regulations 2008

In force **26 April 2008**. These regulations require certain persons (mainly those with student or family applications) subject to immigration control to apply for a biometric immigration document.

The Regulations allow authorised persons to require an applicant to provide biometric information (a record of their fingerprints and a photograph of their face). Safeguarding provisions are made in respect of persons under 16. Provision is made for the retention, use and destruction of the biometric information, the issue, content, surrender and cancellation of biometric immigration documents and the consequences of failing to comply with a requirement of the Regulations.

SI 1211/2008 The Civil Enforcement of Parking Contraventions (County of Rutland) Designation Order 2008

In force **2 June 2008**. This Order designates the county of Rutland (excluding the A1 and its on and off slip roads, where this passes through the county) as a civil enforcement area. This enables Rutland District Council to enforce parking contraventions in its administrative area using civil enforcement measures, as opposed to enforcement by police or traffic wardens using the criminal law.

The Order is made under the Traffic Management Act 2004, which makes provision in Part 6 (together with a number of statutory instruments) for the civil enforcement of parking contraventions in England and Wales.

SI 1212/2008 (in force **26 May 2008**) similarly designates the Forest of Dean district (excluding the M50 and its on and off slip roads, and the M48, where they pass through the district) as a civil enforcement area.

SI 1214/2008 The Civil Enforcement of Parking Contraventions (General Provisions) (Wales) (No. 2) Regulations 2008

In force **22 May 2008**. The Regulations revoke and replace the Civil Enforcement of Parking Contraventions (General Provisions) (Wales) Regulations 2008. The Regulations make provision for the civil enforcement of parking contraventions in Wales in accordance with Part 6 of the Traffic Management Act 2004, and include provision for penalty charges for specific contraventions and the immobilisation of vehicles.

SI 1215/2008 (in force **22 May 2008**) specifies the "approved devices" for the purposes of civil enforcement of parking contraventions in Wales.

SI 1216/2008 The Criminal Justice Order (Northern Ireland) 2008

In force:

- ◆ 14 May 2008 - Part 1 and Articles 100 and 101;
- ◆ 7 June 2008 - Articles 84-86, 88, 89, 93-99 and Part II of Schedule 6 and Article 102(2) in so far as it relates to the above;
- ◆ To be appointed by Order by the Secretary of State - the remaining provisions.

This Order introduces for Northern Ireland:

- ◆ New sentencing powers including provision for extended and indeterminate sentences, and release on licence (Part 2);
- ◆ Risk management arrangements for sexual and violent offenders including a duty on specified criminal justice agencies to assess and manage the risk posed by certain persons in the community (Part 3);
- ◆ Road traffic offences and penalties, including a new offence of 'causing death, or grievous bodily injury by bad driving' and a new definition of careless driving (Part 4);

- ◆ Miscellaneous provisions, including provision on alcohol purchase and consumption, increased penalties for knife offences and provisions relating to youth justice legislation (Part 5).

SI 1241/2008 makes consequential amendments to other legislation and will come into force on the day appointed in SI 1216/2008 as the date Chapter 2 of Part 2 to that order comes into force. This date is to be appointed by Order by the Secretary of State.

SI 1263/2008 The Offender Management Act 2007 (Approved Premises) Order 2008

In force **1 June 2008**. This Order updates the arrangement for the regulation, management and inspection of approved premises by taking account of the new commissioning arrangements for probation under Part 1 of the Offender Management Act 2007, ensuring that there are no overlapping or contradictory arrangements.

SI 1276/2008 The Business Protection from Misleading Marketing Regulations 2008

In force **26 May 2008**. These Regulations prohibit advertising which misleads traders, requires comparative advertising to meet certain conditions and requires traders or bodies required to produce codes of conduct to ensure these codes do not promote misleading or comparative advertising.

An offence of misleading advertising is created, with a maximum penalty on summary conviction of a fine not exceeding the statutory maximum or on indictment of a fine, imprisonment of a term not exceeding two years, or both.

If this offence is committed by a body corporate and is proved to have been committed with the consent or connivance of an officer of the company, or as a result of neglect on the part of that officer, the officer is also guilty of the offence. If a person or body corporate commits the offence, or would have committed the offence but for a defence, and the commission is due to the act or default of some other person, that other person is also guilty of the offence, regardless of whether they are a trader or whether their act or default is advertising.

No proceedings can be brought for this offence after 3 years from the commission of the offence, or one year from the date of the discovery of the offence, whichever is the earlier. Defences to the offence of due diligence and innocent publication are provided.

SI 1277/2008 The Consumer Protection from Unfair Trading Regulations 2008

In force **26 May 2008**. These Regulations prohibit unfair commercial practices and the promotion of unfair commercial practices. A commercial practice will be unfair if it:

- ◆ Contravenes the requirements of professional diligence;
- ◆ Materially distorts, or is likely to materially distort, the economic behaviour of the average consumer with regard to the product;

- ◆ Is a misleading action under the provisions of Regulation 5;
- ◆ Is a misleading omission under the provisions of by Regulation 6;
- ◆ Is aggressive under the provisions of Regulation 7;
- ◆ Is listed in Schedule 1.

If this offence is committed by a body corporate and is proved to have been committed with the consent or connivance of an officer of the company, or as a result of neglect on the part of that officer, the officer is also guilty of the offence. If a person or body corporate commits the offence, or would have committed the offence but for a defence, and the commission is due to the act or default of some other person, that other person is also guilty of the offence.

No proceedings can be brought for this offence after 3 years from the commission of the offence, or one year from the date of the discovery of the offence, whichever is the earlier. Defences to the offence of due diligence and innocent publication are provided.

SI 1320/2008 The Safeguarding Vulnerable Groups Act 2006 (Commencement No. 2) Order 2008

In force **19 May 2008**. This Order brings into force a number of provisions of the Safeguarding Vulnerable Groups Act 2006 ("the Act"), including Section 4 of the Act, which makes provision for appeals against decisions of the Independent Barring Board to include, or not to remove, an individual from the children's or adult's barred list.