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Digest

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Legal Validation and Research

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Legal Validation and Research Department

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

This edition contains detailed articles looking at the provisions contained within the Racial and Religious Hatred Act 2006 and the Equality Act 2006. Other legislative articles include the Crime Prevention and the Built Environment Bill, which contains provisions which will involve the police in consultation with local authorities in certain circumstances relating to building regulations for the purpose of furthering the prevention or detection of crime; The Fireworks (Amendment) Bill which will extend the types of fireworks which are prohibited under fireworks regulations; and new Regulations governing the use of child car seats or boosters which are due to come into force in September 2006.

Also included this month are several articles in relation to the criminal justice system including, a new protocol on the disclosure of unused material in Crown Court criminal trials, new guidance on dealing with disclosure issues concerning expert witnesses, draft guidelines on the allocation of cases between magistrates' and Crown Courts.

Articles which will be of particular interest to police officers and special constables include a look at the new Code of Professional Standards for police officers and special constables, which is intended to replace the current Code of Conduct in Schedule 1 of the Police (Conduct) Regulations 2004 and which is currently under consultation: the New Police Pension Scheme: and further guidance for officers joining the 30+ Scheme.

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

Case law in association with

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CONTENTS

Expert Advice on Positive Action

As a result of concerns being raised regarding Avon and Somerset Constabulary's positive action recruitment campaign conducted during the summer of 2005, Avon and Somerset Police Authority sought expert advice from Counsel.

The recruitment campaign was intended to try and encourage women and people from black and minority ethnic groups to join the force, to boost the under-representation of these groups within the force.

The independent expert advice has concluded that the actions taken by the force may have contravened sections of the Sex Discrimination Act 1975 and the Race Relations Act 1976.

As a result, two hundred applications received from white men, who were then de-selected purely on the basis of their colour and sex, are to be reconsidered by the force.

The police authority has announced that neither it nor the Chief Constable intends to try and test the case in the courts, due to the financial implications, but will instead endeavour to put into place a recruitment process which is transparent, robust and best serves the needs of all its community.

The Employment Equality (Age) Regulations 2006

The Employment Equality (Age) Regulations 2006 (covered in the January 2005 and August 2005 editions of the *Digest*) have been laid before Parliament for approval by both Houses. It is anticipated that the necessary debates will take place before the end of March and then, subject to approval, the Regulations will come into force on 1 October 2006.

The Regulations apply to employment and vocational training. They prohibit unjustified direct and indirect age discrimination, and all harassment and victimisation on grounds of age, of people of any age, young or old.

As well as applying to retirement they:

- Remove the upper age limit for unfair dismissal and redundancy rights, giving older workers the same rights to claim unfair dismissal or receive a redundancy payment as younger workers, unless there is a genuine retirement.
- Allow the continuation of pay and non-pay benefits which depend on length of service requirements of 5 years or less or which recognise and reward loyalty and experience and motivate staff.
- Remove the age limits for Statutory Sick Pay, Statutory Maternity Pay, Statutory Adoption Pay and Statutory Paternity Pay, so that the legislation for all four statutory payments applies in exactly the same way to all.
- Remove the lower and upper age limits in the statutory redundancy scheme, but leave the current age-banded system in place.

Provide exemptions for many age-based rules in occupational pension schemes.

The Government has also published its analysis of responses to the public consultation on the draft regulations.

ACAS is presently preparing good practice guidance which it intends to publish after the Regulations have been approved.

The Department for Trade and Industry is also to publish guidance on the pensions aspects of the Regulations.

The analysis report on the consultation can be found at
http://www.dti.gov.uk/er/equality/coming_of_age_consult.doc

Guidance on How to Develop a User-Friendly Website for Disabled People

An investigation by the Disability Rights Commission (DRC), which revealed that 81% of British websites are inaccessible to disabled people, has led to the publication of guidance on how to develop a website which is user-friendly for disabled people.

The guidance document, Publicly Available Specification (PAS) 78, was developed by the British Standards Institution (BSI) and sponsored by the DRC. It is intended to be applicable to all organisations and is intended for use by those responsible for commissioning or maintaining public-facing websites and web-based services. It gives advice and guidance on:

- Building an accessible website, from commissioning and developing it, through to publishing and maintaining it.
- Accessibility policies.
- Web Accessibility Initiative (WAI) guidelines.
- The involvement of disabled people, particularly in the requirements gathering, conceptual design and testing processes.
- Adhering to conformance checking.
- Additional accessibility provisions.

It is intended that review of the guidance will be conducted every two years and revised where necessary. Although it is not a legally binding document, it is suggested by the BSI that it could be used in court to illustrate whether a business had complied with its obligations under disability discrimination legislation.

Copies of the guidance cost £30 and can be obtained by contacting BSI Customer Services on 020 8996 9001 and by email at **orders@bsi-global.com**.

National Senior Careers Advisory Service (NSCAS)

The National Senior Careers Advisory Service (NSCAS) has been launched by Home Office Minister, Hazel Blears. It will provide a new career development programme to support the personal and professional development of senior managers (officers and staff) within the police service.

The new service aims to:

- Address the under-representation of members of minority groups qualified to apply for ACPO/ equivalent police staff roles.
- Incorporate positive action initiatives at all levels.
- Enhance leadership capacity and capability.
- Ensure that there is a large pool of officers and staff able to meet the growing leadership challenges at the top of the service.

The ultimate goal of NSCAS is the creation of a senior police leadership that is fully equipped and supported in delivering improving performance and customer service in line with the Home Office five-year strategy and the National Policing Plan.

NSCAS proposes to meet these objectives by providing a service which will support and assist the development of qualifying individuals. The service will be available to officers and staff in Home Office forces in England and Wales and the Police Service of Northern Ireland (including individuals on secondment from those forces). It works by providing two levels of service:

Level One:

This is a free service which is available to all officers of superintendent rank and above and police staff at an equivalent level. It aims to provide advice and support in an easy to understand format and encourages individuals to consider their developmental needs. The service is web-based, rather than face-to-face, and allows participants to enter a 'members' zone' where they will be able to access:

- Information and guidance on personal development.
- Guidance on preparing a Personal Development Plan (PDP).
- Self-analysis tools and tools that can provide feedback from colleagues and managers about development needs (often called 360 degree reviews).

Each self-assessment tool can only be used once, but the results are entirely confidential.

There is no requirement to use any particular Level One tool before seeking access to Level Two. However, it is recommended good practice to do so.

Level Two:

Level Two services are available to:

- All officers of substantive ACPO rank and police staff at equivalent level and to those qualified by success at senior Police National Assessment Centre (PNAC) to apply for chief officer roles.

- Substantive superintendents and police staff at equivalent levels who have been assessed as having the potential, desire and commitment to reach chief officer level within 4 years.

At Level Two, individuals will work to develop a Personal Development Plan (PDP). During this process they will have the support of a Development Adviser, who can use a range of self-analysis tools to help to identify development needs and personal strengths.

In order to achieve their plan, individuals will have access to the full range of NSCAS services, which include:

- Access to all suitable Leadership Academy programmes.
- Executive coaching.
- Mentoring.
- Development attachment to organisations inside and outside the police service.
- Membership of Action Learning Sets (groups of senior managers in different sectors/ businesses who share problems and discuss issues).
- Access to management development programmes.
- Opportunity to work with clients of other Leadership services.

The Development Adviser will continue to offer support and assistance throughout the process and will be paid for by the Home Office.

The cost of the developmental activities identified in the PDP will be shared between NSCAS and the individual's force.

Although NSCAS is currently managed by the Home Office, it is expected to become the responsibility of the National Policing Improvement Agency when this comes into effect.

Further details on NSCAS can be found at **http://police.homeoffice.gov.uk/training-and-career-development/senior-careers-nscas/**

Consultation on Additional Paternity Leave Scheme

The Department of Trade and Industry has launched a consultation on paternity leave and pay. As reported in the November *Digest*, the Work and Families Bill proposes that a new entitlement to Additional Paternity Leave be made available. This would allow the employed father or partner of a mother or adopter to be absent from work for a maximum of 26 weeks to care for a child after the mother has returned to work. The leave would have to be taken before the child's first birthday. This leave would be in addition to the current paternity leave entitlement of two weeks within the first eight weeks following birth or the child's placement for adoption.

The Bill also provides for an employed father or partner to be eligible to receive Additional Statutory Paternity Pay. To qualify for this, the mother must have returned to work and have some of her entitlement to Statutory Maternity Pay, Maternity Allowance or Statutory Adoption Pay left at the time of her return to work.

The consultation seeks views on how the Additional Leave and Pay Scheme will work in practice. Views are being sought on the following in particular:

- Eligibility criteria for leave and pay, including length of service with an employer. The consultation provides three options – six months, one year or 60 weeks.
- The earliest point when additional paternity leave and pay could be taken. The consultation proposes 20 weeks from the date of birth of the child.
- Rights to return to work and conditions whilst on Additional Paternity Leave, e.g. should the father's rights be the same as those of a woman on Additional Maternity Leave?
- Details of how the scheme will operate in practice and administration of the scheme, including a suggested eight week notice period prior to starting the leave.

The closing date for the consultation is 31 May 2006.

The consultation document can be seen at
http://www.dti.gov.uk/er/Additional_paternity_leave_and_pay.pdf

Proposal for Trade Union Freedom Bill

The Trades Union Congress (TUC) has called on the General Council to support a Trade Union Freedom Bill to mark the centenary of the Trade Disputes Act 1906. The Bill will seek to make changes to the law on industrial action by reducing the regulatory burden. It also looks to improve the protection of those who exercise their rights to take industrial action. The proposals include:

- Improved protection from dismissal and more effective remedies for workers taking part in official industrial action.
- Simplification of the complex regulations on notices and ballots, which restrict the ability of unions to organise industrial action where a clear majority of members have voted in support.
- Modernisation of the definition of a trade dispute, to include disputes concerning future employers in the context of the transfer of a business, and disputes between workers and their employer and any associated employer.

- Permission for workers to take supportive action, where work or production has been transferred in connection with a trade dispute or where the union reasonably believes that an intervention by a principal supplier or customer has caused or substantially contributed to the proposal/decision which is the subject of a primary trade dispute.

The TUC is also preparing campaign materials and further briefings on the Bill which will be circulated to unions in the near future. The TUC hopes that a Bill will be ready by December 2006.

Details on the Bill can be accessed at **http://www.tuc.org.uk/law/tuc-11539-f0.cfm**

Racial and Religious Hatred Act 2006

The *Digest* first reported on the Racial and Religious Hatred Bill in the July 2005 edition. Since then the Bill has undergone several amendments, before finally receiving Royal Assent on 16 February 2006. The provisions of the new Racial and Religious Hatred Act 2006 are discussed below.

Section 1 gives effect to the Act's Schedule. This inserts a new Part 3A into the Public Order Act 1986. The new Part 3A creates offences involving stirring up hatred against persons on religious grounds and will fill the gaps in the existing legislation, which only made it illegal to threaten people on the basis of their race or ethnic background.

Part 3A of the Public Order Act 1986 will be entitled 'Hatred Against Persons on Religious Grounds'. It will contain the following sections:

Section 29A defines 'religious hatred' as 'hatred against a group of persons defined by reference to religious belief or lack of religious belief'.

However, the Act does not seek to define what amounts to a religion or religious belief. It will be for the courts to determine whether a religion or belief falls within this definition. However, it is clear that atheists and humanists will be protected by the new Act as the offences are defined by reference to a lack of religious belief.

Sections 29B to 29G create new offences of stirring up religious hatred in relation to:

- The use of words or behaviour or the display of written material (s.29B). This offence may be committed in a public or private place, but not where the words, behaviour or written material are used or displayed inside a dwelling and are not seen or heard except by other persons in that or another dwelling. There is an exemption for words, behaviour or written material used or displayed solely for the purpose of being included in a programme service.
- Publishing or distributing written material to the public or a section of the public. (s.29C)
- The public performance of a play which involves the use of threatening words or behaviour (s.29D). The presenter (not a performer) or director of the performance can be liable for this offence. However an offence will not be committed if the performance is given as a rehearsal, for the purposes of making a recording of the performance or to enable the performance to be included in a programme service.
- Distributing, showing or playing a threatening recording (s.29E). The recording can be of visual images or sounds and must be distributed to the public or a section of the public for the offence to be committed. However, showing or playing the recording solely for the purpose of including it in a programme service, will not fall under this section.
- Broadcasting or including a programme in a programme service which involves threatening visual images or sounds (s.29F). The person providing the programme service, the producer or director or any person who uses the offending words or behaviour may be guilty of this offence if they intend to stir up religious hatred.
- Possession of inflammatory material (s.29G). This includes written material and recordings of visual images or sounds which are threatening. The person must possess the inflammatory material with a view to it being displayed, published, distributed or included in a programme service. (Under Section 29H a search warrant may be issued for premises where it is suspected that inflammatory material is situated.)

In order for a person to commit any of these offences he/she must:

- Intend to stir up religious hatred; and
- The words, behaviour, written material, recording or programme must be threatening.

The Act provides a number of safeguards for freedom of expression.

Firstly, the threshold for the offences is high, it only applies to words, behaviour, written material, recordings or programmes which are 'threatening'. Initially the Bill required the words, behaviour, written material, recording or programme to be 'threatening, abusive or insulting' but the terms 'abusive or insulting' have now been left out in the Act, in response to amendments suggested by the House of Lords.

Secondly, for an offence to be committed the perpetrator must intend to stir up religious hatred. The burden will be on the prosecution to prove this intention.

Thirdly, what must be stirred up is hatred of a group of persons defined by their religious beliefs (or lack of), and not hatred of the religion itself. Therefore, legitimate discussion, criticism, expressions of antipathy, dislike, ridicule, insults or abuse of particular religions or belief systems or the beliefs or practices of their adherents will not be caught under the Act. Neither will attempts to convert or dissuade the practise of religion or belief (s.29J).

A saving exists for reports of proceedings in Parliament, courts and tribunals. The provisions of Part 3A will not apply to these reports so long as they are 'fair and accurate' (s.29K).

Any prosecutions under the new Part 3A will require the consent of the Attorney General. If a person is found guilty of any of the new offences they will be liable:

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

Upon conviction, a court may also order the forfeiture of any written material or recording relating to an offence under Sections 29B (in relation to the display of written material), 29C, 29E, or 29G.

Under Section 29M a director, manager, secretary or similar officer of a body corporate, or a person purporting to act in any such capacity, will be liable (as well as the body corporate) for an offence committed by the body corporate if the offence was committed with the consent or connivance of that person.

Section 2 of the Act states that the 'other persons' power of arrest without warrant under Section 24A PACE does not apply in relation to any of the offences listed in the new Part 3A Public Order Act 1986. PACE will be amended accordingly.

The full text of the Racial and Religious Hatred Act 2006 can be found at **http://www.opsi.gov.uk/acts/acts2006/20060001.htm**

Equality Act 2006

The Equality Bill received Royal Assent on 16 February 2006 and therefore has now become the Equality Act 2006. It is not in force yet: under Section 93(1), it shall come into force in accordance with provision made by the Secretary of State by Order. The Equality Bill was discussed on page 13 of the March 2005 edition of the *Digest*. Now the Equality Act has received Royal Assent, we provide a more in-depth analysis of the specific provisions which will affect the police.

The Equality Act 2006 has five Parts and four Schedules.

Part 1 The Commission for Equality and Human Rights

Part 1, including Schedules 1, 2 and 3, establishes the Commission for Equality and Human Rights (CEHR). It sets out its duties, general powers, enforcement powers and also the interpretation of this Part of the Act. Dissolution of the existing equality commissions is also covered in this Part.

The CEHR will take on the work of the existing equality commissions, which are the Equal Opportunities Commission, the Commission for Racial Equality, and the Disability Rights Commission. The CEHR will, additionally, have the responsibility for promoting human rights and for promoting equality and combating unlawful discrimination in three new strands: sexual orientation, religion or belief and age.

Part 2 Discrimination on Grounds of Religion or Belief

This sets out provisions which prohibit discrimination on the grounds of religion or belief in the provision of goods, facilities and services, education, premises and also the exercise of public functions.

Section 44

The first sections of this Part provide definitions for the terms used in the later provisions. Section 44 defines what is meant by 'religion or belief' for the purposes of the Act. Under Section 44(1), 'religion' is defined as 'any religion' including those religions which are widely recognised in this country such as Christianity, Islam, Hinduism, Judaism, Buddhism, Sikhism, Rastafarianism, Baha'ism, Zoroastrianism and Jainism. Denominations and sects within a religion can also be considered as a religion or as a religious belief. However, there is a limitation on what constitutes a religion or belief in that there must be a clear structure and belief system present. Note that a 'lack of religion' and 'lack of belief' are also covered by the phrase 'religion or belief', (see Section 44(c) and (d)). Under Section 44(b), 'belief' is defined as 'any religious or philosophical belief'.

Section 45

Section 45 defines 'discrimination' on the grounds of religion or belief. This includes:

- Direct discrimination - where person A treats B less favourably than he would treat others on grounds of religion or belief (see S.45(1) and (2)).
- Indirect discrimination – where a provision, criterion or practice has the effect of putting people of a particular religion or belief at a disadvantage which cannot be justified (see S.45(3)).
- Victimisation - where someone is treated less favourably than others because, for example they have complained of discrimination or have assisted someone else in their complaint (see S.45(4) and (5)).

Section 46

Section 46 will make it unlawful for a person whose business or concern it is to provide goods, facilities and services to the public or a section of the public to discriminate on the grounds of religion or belief in the provision of these things.

Section 52

Section 52 is also very important in that Section 52(1) prohibits discrimination on grounds of religion or belief in the exercise of functions of all public authorities. Section 52(2) defines a 'public authority' as any person who has functions of a public nature and 'function' as any function of a public nature. The police will be included under this definition: however, some other bodies are excluded from the definition (see S.52(3) and 52(4).

Please note that in our previous article on this subject we discussed clause 47 of the Equality Bill. This clause provided a definition of harassment on the grounds of religion or belief. However, this area of the Bill was not transferred across to the Equality Act 2006.

Section 74

Another major effect of the Equality Act 2006 coming into force will be Section 74, called 'Employers' and principals' liability'. This means that an employer is liable for the acts of their employees for the purposes of this Part. This is true whether or not the employer knew or approved of those acts. Similarly, a principal will be liable for the acts of their agent. However, an employer will escape liability if they can prove that they took all reasonable steps to ensure that the employee could not perform the discriminatory act.

Section 75

In relation to the police, Section 75 of the Equality Act 2006 is very important. It applies to all members of police forces under the Police Act 1996 or the Police (Scotland) Act 1967, and also to special constables and police cadets appointed in accordance with either of these two Acts, (see S.75(1)), who will be treated as employees of the chief officer of police for the purposes of this Part of the Act. Therefore, anything done by them in the course of their duties will be treated as done in the course of that employment (see S.75(2)).

Under S.75(3), any compensation or costs and expenses awarded against or incurred by a chief officer of police, in proceedings brought against him under this Part of the Act, will be paid out of the police fund. The police fund will also provide for sums which are required by a chief officer of police for a settlement of any claim made against him under this Part.

S.75(4) also provides that a police authority can pay, out of a police fund, damages or costs awarded in proceedings under this Part against a person under the direction and control of the chief officer of police. It can also pay, out of the police fund, costs incurred and not recovered by such a person in such proceedings and sums required in connection with the settlement of a claim that has or might have given rise to such proceedings.

S.75(5) states that a reference to the Equality Act 2006 will be included in the list of discrimination legislation in Section 57 of the Serious Organised Crime and Police Act 2005. This lists the anti-discriminatory legislation which applies to the Serious Organised Crime Agency.

Part 3 Discrimination on Grounds of Sexual orientation

This Part allows provision to be made by regulations prohibiting discrimination on the grounds of sexual orientation in providing goods, facilities and services, education and the use and disposal of premises and the exercise of public functions.

Section 81

Section 81 seems to be of particular importance, as it provides a power under which the Secretary of State can make regulations which prohibit sexual orientation discrimination, which will include indirect discrimination, victimisation and harassment. The Secretary of State will be able to make provisions similar to those in Part 2, which will mean that the regulations can prohibit, either generally or in specified circumstances, discrimination when providing goods, facilities and services, the exercise of public functions, education and the disposal of premises.

Part 4 Public Functions

This Part sets out provisions which prohibit sex discrimination in the exercise of public functions. It also creates a duty on all public authorities to have regard to the need to eliminate unlawful discrimination and harassment and to promote equality of opportunity between women and men.

Section 83

Section 83 has the effect of inserting a new S.21A into Part III of the Sex Discrimination Act 1975 (SDA 1975). Section 21A SDA 1975 will make it unlawful for a public authority (such as the police) to discriminate or commit acts of harassment on the grounds of sex when it is carrying out its functions. This prohibition of sex discrimination in public functions, which is termed 'the prohibition', will bring the SDA 1975 into line with Section 19B Race Relations Act 1976.

Please note that the Disability Discrimination Act 2005 (DDA 2005) also similarly extends the Disability Discrimination Act 1995 (DDA 1995) by inserting a new Section 21B into the DDA 1995. If a person has been discriminated against contrary to Section 21A SDA 1975, the aggrieved person will be able to bring proceeding in a county court (or a sheriff court in Scotland) in accordance with Section 66 SDA 1975.

Section 84

One of the most important aspects of the Equality Act 2006 is Section 84, the 'general duty to promote equality'. Section 84 amends the SDA 1975 by inserting into it a new Section 76A. This imposes on public authorities, including the police, a duty to promote equality of opportunity that is similar to the duty imposed by Section 71 of the Race Relations Act 1976 (as substituted by Section 2 of the Race Relations (Amendment) Act 2000) and the duty which is imposed by Section 3 DDA 2005 (which inserts a new Section 49A into the DDA 1995).

Section 76A(1) imposes on public authorities a general duty when they carry out their public functions, either as service providers or as employers. This general duty states that:

A public authority shall in carrying out its functions have due regard to the need-

(a) to eliminate unlawful discrimination and harassment, and

(b) to promote equality of opportunity between men and women.

This general duty, when the Equality Act 2006 comes into force, will be enforceable through judicial review, rather than creating a cause of action for individuals through the means of private law actions.

It is also worthy of note that S.76A(2) SDA 1975 extends the definition of what is classed as a public authority, so that it will include anyone if they have functions of a public nature. Therefore private firms will be included if they are contracted to carry out public functions. This sub-section also confirms that the duty which is imposed on public authorities to eliminate unlawful discrimination also covers contravention of the Equal Pay Act 1970.

Some bodies are excluded from the definition of public authority under the Act: these include the intelligence services (see S76A(3) SDA 1975).

Part 5 General

Part 5, including Schedule 4, contains general supplementary material including repeals, Crown application, commencement and extent.

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

New Seat Belt and Child Restraint Regulations

Following consultation in June 2005, new Regulations governing the use of child car seats or boosters are due to come into force in September 2006. The Regulations implement Directive 2003/20 EC on the approximation of the laws of the Member States relating to compulsory use of safety belts in vehicles of less than 3.5 tonnes. This Directive updates Directive 91/671/EEC (which failed to specify what kind of child restraint system should be used), and extends the compulsory use of child restraints to the back seat of vehicles in addition to the front seat. Child restraints include baby seats, child seats, booster seats and booster cushions. Under the Regulations:

- Children under 3 must use an appropriate child restraint when travelling in any car or goods vehicle (except in the rear of a taxi if the right restraint is unavailable).
- Children aged 3 or more and up to 135 cms (approximately 4 ft 5 ins) in height must use an appropriate child restraint when travelling in cars or goods vehicles fitted with seat belts (there are a few exceptions to this regulation).
- Rear-facing baby seats must not be used where there is a frontal air-bag if the air-bag cannot be deactivated.
- Child restraints must comply with the UN ECE 44.03 standard (or subsequent versions) from May 2008.
- From May 2009, the number of people carried in the rear of vehicles may not exceed the number of seats available fitted with seat belts or child restraints.

Drivers of vehicles remain responsible for the use of child seats and the wearing of seat belts by children aged under 14. Penalties for offenders are either a £30 fixed penalty notice or a maximum fine of £500 if a case goes to court. The Regulations exempt emergency vehicles, including police vehicles.

The Regulations will be laid before Parliament in the spring, but it has been proposed that they should not come into force until September, allowing parents and carers to prepare and install appropriate child restraints if necessary.

Directive 2003/20/EC on the approximation of the laws of the Member States relating to compulsory use of safety belts in vehicles of less than 3.5 tonnes can be accessed at **http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:32003L0020:EN:HTML**

Further information on the proposed Regulations can be found at **http://www.dft.gov.uk/stellent/groups/dft_rdsafety/documents/page/dft_rdsafety_611257.hcsp**

Law Lords Reject Gypsy Case

In an important decision from the House of Lords, a gypsy family have failed in their bid to remain on council owned land on human rights grounds. The Maloney family argued that their right to family life and home under Article 8 of the European Convention on Human Rights was breached when they were forced to leave a public recreation ground owned by Leeds City Council.

Leeds City Council originally began standard eviction proceedings claiming it had the right to take the land back because the encampment was unauthorised. The family subsequently moved on to official travellers sites but continued their case up to the House of Lords.

Seven Law Lords backed the previous Court of Appeal decision that had ruled against the family, saying that the land could never have been considered a 'home' within the meaning of human rights law. The family had only been on the land for two days when proceedings were initiated against them and had therefore not established the links in place for it to be considered their home under the Convention. The case means that councils are legally entitled to take back their own land. Councils had predicted that a win for the family would have meant evictions of unauthorised traveller encampments would have had to stop. Details of the case can be found in full at **http://www.publications.parliament.uk/pa/ld200506/ldjudgmt/jd060308/leeds-1.htm**

Non-Domestic Premises Fire Safety Rules

The commencement date of new fire safety rules contained within the Regulatory Reform (Fire Safety) Order, which affect all non-domestic premises in England and Wales, has been amended (see SI 484/2006). The new rules will now come into force on 1 October 2006, as opposed to 1 April as initially announced.

The Office of the Deputy Prime Minister (ODPM) has stated that it has deferred the commencement date to give businesses and stakeholders more time to prepare for the changes. It has produced a series of guidance documents which inform businesses and stakeholders what they have to do to comply with fire safety law, carry out a fire risk assessments and how they can identify the general fire precautions that they need to have in place.

Further information is available at **http://www.odpm.gov.uk/index.asp?id=1162101**

Fireworks (Amendment) Bill

The Fireworks (Amendment) Bill was introduced into the House of Commons on 20 December 2005. The main aim of the Bill is to extend the types of fireworks which are prohibited under fireworks regulations, where these regulations contain prohibitions designed to minimise or remove the risk of defined harmful consequences.

At present there is a prohibition on category 4 fireworks, which are those that are incomplete or which are not intended for sale to the general public. Regulation 5 of the Firework Regulations 2004, prohibits the possession of a category 4 firework, subject to certain exceptions for example where the possession is by persons who are local authority officers and people involved in professional displays (contained in Regulation 6).

Regulation 8 of the 2004 Regulations prohibits the supply of 'excessively loud category 3 fireworks' (those which produce a maximum sound pressure exceeding 120 dBAI). The Bill concentrates on these category 3 fireworks.

Clause 1 subsection (1) of the Bill inserts a new section 5A after section 5 of the Fireworks Act 2003. This subsection would prevent fireworks which produce a maximum sound pressure exceeding 97 dBAI from being available to the public. This sound pressure will be measured as a horizontal distance of 15 metres from the device. These are known as loud fireworks of category 3. A category 3 firework is not expressly defined in the Bill, although this terminology reflects categories 1 to 4 which are used in BS 7114 Part 1. Also, the categories are already referred to in the 2003 Act s.5(3).

The definition of a 'loud firework' is provided by the new s.5A(2), (3) and (4). This is a firework which does not meet the noise requirement of 97 dBAI.

Clause 2 sets out consequential amendments. It does so by referring to Schedule 2, which brings the 2004 Regulations into line with the requirements of new section 5A by extending the prohibitions to loud category 3 fireworks.

Clause 3 subsection 3 states that the territorial extent of the Bill would be England and Wales.

Schedule 1 sets out a new Schedule 1 to the 2003 Act. This contains changes to the relevant test specifications which are set out in BS 7714 Part 3, which will give effect to the 97 dBAI threshold (which the new s.5A(3) imposes for category 3 fireworks).

Schedule 2 sets out the consequential amendments. These are in relation to the 2004 Regulations. The relevant prohibitions which are imposed by Regulations 5, 7 and 8 are either modified or extended to include loud category 3 fireworks.

The commencement of this Bill will be three months after it is given Royal Assent (Clause 3(2)). This will affect the police, as the amendments to the 2004 Regulations extend the scope of prohibitions which have criminal sanctions.

The Bill can be found in full via **http://www.publications.parliament.uk/pa/pabills.htm#s**

Crime Prevention and the Built Environment Bill

The Crime Prevention and the Built Environment Bill was introduced into the House of Commons on 22 June 2005. The second reading of the Bill will take place on 17 March 2006.

The Bill would make amendments to the following:

- Building Act 1984.
- Town and Country Planning Act 1990.
- Town and Country Planning (General Development Procedure) Order 1995.

Clause 1 makes provision for amendments to the Building Act 1984. Clause 1(2) would insert a new section 15A into the Building Act 1984. Section 15A(1) imposes a duty on local authorities to consult with the relevant chief officer of police in certain circumstances. The circumstances would be where the local authority has an exercisable power with respect to any premises where there is a requirement contained in building regulations which relate to the purpose of furthering the prevention or detection of crime or the power to dispense with or relax that requirement.

Clause 2(2) inserts after s.71A of the Town and Country Planning Act 1990 a new s.71B. The new section 71B(1) provides that the Secretary of State may make provision by regulations for consideration to be given before planning permission for development. This consideration would be in relation to the likely effects of the proposed development on the prevention or the reduction of crime. Again, s.71B(2) states that the regulations can impose requirements relating to consultation with chief officers of police and further the option of making different provisions for different classes of development.

Clause 3(1) makes provision for amendments to the Town and Country Planning (General Development Procedure) Order 1995 (S.I. 1995/419). Clause 3(2) inserts into Article 10, after paragraph (zc) a paragraph (zd). This would mean that before granting planning permission for development which is likely to affect the incidence of crime or the effectiveness of measures to prevent or reduce the incidence of crime, a local planning authority is under a duty to consult with the chief officer of police in that area.

Clause 5(3) provides that the Act extends to England and Wales only and clause 5(2) provides that the commencement of the Act will be two months after the day that it is passed.

The Bill can be found in full via **http://www.publications.parliament.uk/pa/pabills.htm#s**

HOC 1/2006
Application for Access to a DNA Profile for Paternity Testing

The Home Office has issued this Circular to advise and remind police and forensic providers about the action they should take should they receive a request for access to a DNA sample or profile, that has been taken under provisions in the Police and Criminal Evidence Act 1984, and the purpose of the request is to use the sample or profile for paternity testing.

The Circular states that such requests should be refused due to the purpose of paternity testing not falling within the provisions in PACE for which a sample or profile can be used. The Circular also advises that the case of London Borough of Lambeth v S, C, V, and J (No 3) in the Family Division of the High Court, could also be referred to when responding to such a request.

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

HOC 3/2006
Drug Testing/Assessment/Restriction on Bail

This Circular updates and replaces HO Circulars 49/2005 and 15/2005 and their attachments. It draws attention to the wider implementation with effect from 31 March 2006 of the new provisions relating to:

- Drug testing on arrest introduced by Section 7 of the Drugs Act 2005.
- The required (initial) assessment of drug misuse, known as the Required Assessment introduced in Section 9 of the Drugs Act 2005.
- The roll out in England of the provisions under the Bail Act 1976 relating to Restriction on Bail for drug users introduced by Section 19 of the Criminal Justice Act 2003.

It provides a brief summary of the new and expanded measures and their policy background. It also sets out the key points of the relevant legislation, details of where the provisions are currently in operation and will be implemented from 31st March 2006, and the implications, particularly in respect of Restriction on Bail, for the police and courts.

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

HOC 4/2006
Proceeds of Crime

This Home Office Circular contains a summary of the new powers of freezing and confiscating/forfeiting the proceeds and instrumentalities of crime introduced by:

- The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (see SI 3181/2005).
- The Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 2005 (see SI 3180/2005).

The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 came into force on 1 January 2006 and was made under powers conferred by Sections 444 and 459(2) of the Proceeds of Crime Act 2002. It sets out the provisions for the United Kingdom to respond and co-operate with other countries in freezing and confiscating assets at the beginning of an investigation without the need for formal treaties. The provisions extend to both criminal and civil recovery/forfeiture proceedings and they correspond to the domestic provisions of the Proceeds of Crime Act.

The Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 2005 came into force on 31 December 2005. It enables assistance to be given to other countries or territories designated under the Order, by enforcing a forfeiture order made by an overseas court in respect of anything used or intended for use in connection with the commission of an offence.

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

Electronic Monitoring of Adult Offenders

A report by the National Audit Office has concluded that electronic monitoring of adult offenders provides value for money and a cost-effective alternative to custody for low risk offenders. However, it also concludes that the National Offender Management Service (NOMS) could make savings of up to £9 million per year by streamlining the assessment of offenders regarding suitability for Home Detention Curfew. The report looked into:

- Whether breaches of curfew are detected and dealt with promptly and effectively.
- The cost of electronic monitoring compared to custody and the costs to the wider criminal justice system.
- The impact of electronically monitored curfew on the curfewee's offending behaviour.

The main conclusions of the report were as follows:

- Electronically monitored curfews are considerably cheaper than custody. For example, 90 days on an Adult Curfew Order costs £1,400 compared to £6,500 for the same period in custody.
- Only 85% of offenders placed under a Curfew Order or Home Detention Curfew were tagged within the contractual time limit by the private contractors, Securicor Justice Services and Premier Monitoring Services. NOMS is currently reviewing this process to identify and rectify the causes of these delays.
- The monitoring equipment used efficiently records curfew violations but response times to breaches vary widely within the criminal justice system. Response times were affected by the late notification of breaches by contractors to the Home Office and courts, delays in making hearing dates available and delays in returning offenders to prison. The report suggests that such delays may result in offenders absconding, further breaches and re-offending.
- Electronic monitoring may reduce re-offending, although further research into this is recommended.
- There are significant variations between prisons in the proportion of offenders recalled for breaching a Home Detention Curfew. This suggests that the consistency of assessments for suitability could be improved.

- Savings could be made by ensuring that prisoners granted Home Detention Curfew were released on time. Only 59% of offenders were released within two days of their eligibility date. Delays are often because the prison governor or Home Office controller is waiting for information to complete the Home Detention Curfew assessment.

The report recommends that the procedures of all the criminal justice systems involved in electronic monitoring be reviewed to ensure that there are minimal delays at the beginning and end of the process. This will involve improving communication and co-ordination between contractors, the courts and prisons. It also recommends that the Home Office should carry out regular audits of private contractors to promote public confidence in the use of curfews.

The full report can be accessed at **http://www.nao.org.uk/publications/nao_reports/05-06/0506800.pdf**

Taxing Vehicles Online

A new online and telephone car tax service has been launched by the Driver and Vehicle Licensing Agency (DVLA) to make relicensing easier and more convenient. Through the new system, registered keepers can apply to renew their tax discs online or over the telephone. The new process, which will allow people to relicense from home, or even when they are abroad, utilises the new Electronic Vehicle Licensing (EVL) facility, which links Britain's electronic insurance and MOT databases with the DVLA's vehicle records. In practice, this means that drivers will no longer have to show paper copies of their tax renewal reminder, MOT certificates and insurance certificates in order to renew their tax discs.

This new service has been introduced in response to a recent survey (YouGov Survey of 2,281 UK Drivers, December 2005) which highlighted the customer demand. The survey revealed that 68% of motorists would prefer to renew their car tax online because it is quicker and more convenient and 39% of drivers admitted they would be more likely to relicense on time.

The way the service works is described below.

The DVLA will automatically send invitations to vehicle keepers (known as a vehicle licence application or V11 form) to renew their tax discs and they will be given a unique 16 digit reference number to allow them to complete the process online. However, in order to do this certain requirements must be met.

For cars less than 3 years old (which do not require an MOT certificate):

- Keepers are automatically eligible to use the service.
- If the keeper has not received a V11 form and the vehicle does not require an MOT, the 11 digit reference number found on the front of the Vehicle Registration Certificate (V5C) can be used.

For cars over 3 years old:

- Keepers of cars over 3 years old will need a new computerised MOT certificate (now available in the majority of MOT garages and from all MOT garages from the end of March 2006) to complete the transaction.
- If the vehicle has a new style computerised MOT certificate, the keeper can use the 11 digit reference number on the front of the V5C.

Regardless of the age of the vehicle, a registered keeper will not be able to use the new system if they:

- Have recently purchased the vehicle and their details are not held on the DVLA's records.
- Have recently changed their name or address.
- Have recently changed their insurance company or any details of their vehicle.

If the keeper is eligible, the vehicle's insurance details will be electronically checked with the Motor Insurance Database (MID), which is run by the Motor Insurers Information Centre (MIIC). The new style MOT certificates will also be checked electronically via a link to the computerised MOT test certificate database.

The registered keeper can then choose the tax disc they require (6 or 12 months) and then must enter their payment details (an additional charge of £2.50 will be added if payment is by credit card).

The tax disc and the receipt for payment will then be sent to the registered keepers address (as held by the DVLA) within 5 working days.

The service is available 24 hours a day, 7 days a week at **http://www.direct.gov.uk/taxdisc** or by calling 0870 850 4444

Statistical Report on the Numbers of Fixed Penalty Notices Issued by English Local Authorities

The Department for Environment Food and Rural Affairs (Defra) has published details of the number of fixed penalty notices issued by English local authorities in 2004/05 for littering, dog fouling, graffiti, fly-posting and noise.

The report reveals that:

- Almost 20,000 fixed penalty notices (FPNs) were issued.
- Around 8,000 of these FPNs were not paid.
- In the vast majority of cases where FPNs were not paid, no further action was taken by the local authority.
- The majority of FPNs issued were for littering offences: 17,428.
- Of the 250 or so local authorities who submitted returns, only 78 achieved a payment rate of over 75%.
- 33 local authorities had a less than 50% payment rate.
- 5 local authorities had a payment rate of less than 10%.
- Over half of all local authorities had not issued any FPNs at all.

The returns Defra receives from local authorities on their fixed penalty notice performance is available at **http://www.defra.gov.uk/environment/localenv/legislation/fpn/index.htm**

UK Ratifies UN Convention Against Corruption

UK Foreign Secretary Jack Straw announced on 14 February that the UK has ratified the UN Convention Against Corruption (UNCAC). This is the first global anti-corruption instrument and focuses on:

- Preventative measures.
- Criminal law enforcement.
- International legal co-operation.
- Asset recovery.
- Monitoring and information exchange.

The Convention requires Member States to implement legislation to counter corruption. In the UK, this has already taken place with the introduction of, for example, the Anti-terrorism, Crime and Security Act 2001, which extended the UK's jurisdiction to corruption offences committed abroad by UK nationals and companies, and the Proceeds of Crime Act 2002, which strengthened the rules on money laundering. UK law became fully compliant with the Convention on 1 January 2006 when the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 came into force.

The full text of the Convention can be accessed at **http://untreaty.un.org/English/notpubl/Corruption_E.pdf**

Proposed Changes to Compensation Bill in Respect of Negligence

The House of Commons Constitutional Affairs Committee has voiced its concerns that Part 1 of the Compensation Bill could result in an increasing number of court claims, due to a vaguely-worded clause relating to the law of negligence.

Under the current common law, for a negligence claim to succeed there must be a duty of care owed by the defendant to the claimant, that duty must have been breached and the breach must have caused loss or injury to the claimant. The clause relates to whether there has been a breach of the duty of care. The question of whether there has been a breach involves two elements:

- How much care is required to be taken (standard of care).
- Whether that care has been taken.

The ordinary standard of care is 'reasonable care', and the question of whether the care has been taken is a question of fact for the court to decide, having regard to all the circumstances of the case. What amounts to reasonable care will vary according to the circumstances. In some cases, what would be required to prevent injury of the kind suffered may be such that to demand it of the defendant would be to demand more than is reasonable.

The new clause does not change the standard of care or the circumstances in which a duty of care will be owed. The clause is concerned with the court's assessment of what must be done to satisfy the standard of reasonable care. The clause provides that, when considering a claim in negligence, a court may, in determining whether the defendant should have taken particular steps to meet the standard of care (whether by taking

precautions or otherwise), have regard to whether a requirement to take those steps might prevent an activity which is desirable from taking place, or might discourage persons from undertaking functions in connection with the activity.

The Bill was designed to assist in preventing frivolous or speculative claims for compensation, and to tackle practices that stop normal activity taking place because people fear litigation or have become risk-averse. The Constitutional Affairs Committee's report into the compensation culture highlights three main concerns:

- It is not clear precisely what effect the provision is meant to have. If it is a mere restatement of the existing law, it seems unnecessary to use primary legislation.
- The Bill is likely in the short term to lead to additional litigation. The clause does not provide a definition of 'desirable activity' and it is not clear at this stage how far it is intended to apply, e.g. whether it will extend to employees. Litigation would be required to define this term.
- Interested parties may seek to rely upon the clause before the courts in order to improve their shield against liability. This could result in possibly inconsistent decisions where judges try to refine further the concept of 'desirable activity'.

The report concludes that the clause is unnecessary and should not be in the Bill.

The Bill can be accessed at **http://www.publications.parliament.uk/pa/ld200506/ldbills/083/06083.i.html**

The Committee's report can be viewed at **http://www.publications.parliament.uk/pa/cm200506/cmselect/cmconst/754/75402.htm**

Protocol on the Disclosure of Unused Material in the Crown Court

A new protocol on the disclosure of unused material in Crown Court criminal trials in England and Wales has been published and became effective from 20 February 2006.

The protocol applies to all trials on indictment and is designed to establish firm principles for the management of disclosure, whether by the prosecution or the defence, in order to improve the efficient delivery of justice and thereby enhance public confidence in the criminal justice system.

It sets out the 'overarching principle' that unused prosecution material will fall to be disclosed if, and only if, it satisfies the test for disclosure applicable to the proceedings in question, subject to any overriding public interest considerations.

The protocol requires a strict compliance with the provisions in the Criminal Procedure and Investigations Act 1996 (CPIA) and the Codes of Practice issued under Section 23(1) of the CPIA. The date of the commencement of the relevant criminal investigation depends on which disclosure provisions need to be followed, due to relatively recent amendments to the CPIA by the Criminal Justice Act 2003 (see article on page 10 of April 2005 *Digest*).

So, if the criminal investigation commenced:

- On or after 1 April 1997, but before 4 April 2005, then the CPIA in its original form will apply, with separate tests for disclosure of unused prosecution material at the primary and secondary disclosure stages (the latter following service of a defence statement by the accused). These disclosure provisions are supported by the Code of Practice introduced in S.I. 1033/1997.
- On or after 4 April 2005, the law is set out in the CPIA as amended by Part V of the Criminal Justice Act 2003. This introduced a single test for disclosure of unused prosecution material and this is supported by the Code of Practice introduced in S.I. 985/2005.

In relation to offences in respect of which the criminal investigation began prior to 1 April 1997, the common law will apply, and the test for disclosure is that set out in R v Keane (1994).

Guidance in the protocol, aimed specifically at police officers, investigators and disclosure officers, stresses the need:

- For rigorous compliance with the provisions in the Code of Practice for the gathering of material, the assessment of it for 'relevance' and the scheduling of material satisfying the latter test.
- For schedules to be prepared timeously, so as to ensure that the prosecutor's duty to make disclosure under Section 3(1) of the Act can be discharged 'as soon as practicable' after the matter has been committed or transferred to the Crown Court, or case papers have been served following a Section 51 Crime and Disorder Act 1998 'sending'.
- For information to be communicated promptly to the prosecutor where there are problems with providing him/her with case papers and/or disclosure schedules within the normally permitted timescales, so that an appropriate variation of the standard directions can be sought at the magistrates' court (or subsequent Crown Court hearing).

Police officers, investigators and disclosure officers should also be aware that under the protocol, CPS lawyers advising pre-charge at police stations are advised to consider conducting a preliminary review of the unused material generated by the investigation and provide early advice on disclosure issues. If a preliminary review is not undertaken, CPS lawyers should conduct a review of disclosure at the same time as they conduct an initial review of the evidence.

The full protocol document can be found in full at
http://www.hmcourts-service.gov.uk/cms/files/disclosure_protocol.pdf

Guidance on Dealing with Disclosure Issues Concerning Expert Witnesses

In the light of several high profile cases involving expert witnesses, including the 'shaken baby syndrome' cases, the Director of Public Prosecutions has issued new guidance on dealing with disclosure issues. The guidance has been published following a project chaired by the DPP. Currently, the Criminal Procedure and Investigations Act 1996 does not impose disclosure obligations on expert witnesses who are not employed by the police. The new guidance, therefore, seeks to impose obligations as part of the contractual relationship with the expert.

Experts who are not employed by the police will receive a guidance booklet which describes what is required of them. This includes requirements to:

- Retain and record material relevant to the investigation in question.
- Reveal to the investigator all the material they have created while working on the case.
- Certify that they have revealed to the prosecution or investigating officer any information that might adversely affect their credibility and/or competence as an expert witness.
- Sign a declaration that they have fully complied with their disclosure obligations.
- Not give expert opinion beyond their area of expertise.

The guidance booklet describes in detail what, when and how an expert must retain, record and reveal information and includes a flowchart illustrating the process.

In addition to this booklet, further guidance has been issued to prosecutors and police officers regarding their dealings with expert witnesses. The guidance concerns situations where the credibility and competence of an expert witness is an issue, and includes procedures for the disclosure by experts of material relevant to this issue.

Investigators have a duty to pursue all reasonable lines of enquiry, including satisfying themselves that any expert is both credible and competent. The guidelines state that it may be sufficient that an expert is employed by a reputable company or organisation and that their report cites relevant qualifications and experience. However, more investigation might be required where the expert is a sole practitioner or a member of a small group, or the field of expertise is not widely recognised.

The guidance can be found at Chapters 36 and 37 of Part 2 of the Disclosure Manual, the joint operation instructions agreed by the CPS and ACPO for handling unused material in criminal cases. To view the guidance online visit **http://www.cps.gov.uk/legal/section20/chapter_a.html**

Pilot Scheme to Allow Victims' Relatives to Make a Statement in Court

Following a consultation last year (reported in the September 2005 *Digest*), Lord Falconer, the Lord Chancellor, has announced the introduction of a pilot scheme allowing relatives of murder and manslaughter victims to make a statement in court about the effect the crime has had on them. Respondents to the consultation supported Government proposals for courts to be better informed about the impact that murder and manslaughter have on relatives of victims.

From April 2006, 'victims' advocates' will be allowed to make a statement in murder and manslaughter trials at Crown Courts in Birmingham, Cardiff, Manchester Crown Square and Winchester. Statements can also be made at the Old Bailey. The advocate can be a relative of the victim or a third party such as a lawyer. The advocate's statement will deal with how the death and subsequent events have affected the family and will be given at the sentencing stage, after a defendant has been found guilty.

A spokesman for the Department of Constitutional Affairs says that funding will be made available to families that wish to hire a barrister but cannot afford one. This funding will be separate from the Legal Aid budget.

Responses to the consultation can be found at **http://www.dca.gov.uk/consult/manslaughter/manslaughter.htm**

Draft Guidelines on Allocation of Cases between Magistrates' and Crown Courts

The Sentencing Guidelines Council (SGC) has published draft guidelines on the allocation of cases between magistrates' and Crown Courts.

The draft guidelines cover the legislative and other factors that should influence the magistrate's decision on whether an either-way offence is tried in the magistrates' court or sent to the Crown Court (the allocation decision).

Allocation procedures are due to change in autumn 2006 under Section 41 and Schedule 3 to the Criminal Justice Act 2003, and the new guidelines will reflect these changes.

In the new allocation procedure, the magistrates' court should provide an indication of sentence once it has decided that a case could be heard in the magistrates' court. In addition, the sentencing powers of magistrates will increase to a maximum of 12 months. This will clearly impact on allocation decisions going forward, bringing more cases into the magistrates' courts.

When considering whether an offence is suitable for summary trial or trial on indictment the court must:

- Be informed of any previous convictions.
- Listen to any representations from the prosecution and defence on whether summary trial or trial on indictment is suitable.
- Consider whether the magistrates' court has adequate sentencing powers for the offence.

The draft guidelines provide a set of principles for magistrates to work to when making allocation decisions, these are:

- Adequacy of sentencing powers is to be based on an assumption that the prosecution version of the facts is correct.
- The charges and the defendant's range of conduct should be considered, for example, has the defendant acted criminally over a long period.
- The need for a separate tribunal to determine facts in exceptional cases.
- Presumption in favour of summary trial.
- As a general rule, linked cases, where several defendants are contesting linked charges, should be dealt with at a single trial.

Detailed guidelines are also given on indication of sentence.

Before the definitive guidelines can be issued to courts, the SGC must consult various bodies, including the Home Secretary, the Lord Chancellor, the Attorney General, the Home Affairs Select Committee and party leaders in the House of Lords. This consultation closes on 10 April 2006. The SGC will, after considering responses from the consultation, issue definitive guidelines to which every court must have regard, in accordance with Section 172 of the 2003 the Criminal Justice Act 2003.

The Sentencing Advisory Panel (SAP) has also published advice on this subject. Both the draft guidelines and the SAP advice can be found at **http://www.sentencing-guidelines.gov.uk**

Crown Prosecution Service Performance in the Magistrate's Courts

The National Audit Office (NAO) has produced a report highlighting the ineffectiveness of the Crown Prosecution Service in trials and hearings in magistrates' courts.

The NAO was tasked to look at whether the CPS:

- Planned and prepared cases to make effective use of hearings.
- Used court time for the purposes of cases listed.
- Was taking action to improve its performance in magistrates' courts.

The findings showed that 28% of pre trial hearings in magistrates' courts did not go ahead on scheduled days and 62% of magistrates' courts trials were ineffective. This resulted in a cost to the criminal justice system of £173 million a year, of which £24 million was attributable to the performance of the CPS.

The report identified a number of failings by the CPS which contributed to its ineffective performance. These included:

- Lack of ownership of cases.
- Lack of preparation before hearings – many lawyers received files less than 24 hours before hearings.
- Inadequate prioritisation of cases which required urgent action.
- Poor case tracking, resulting in files being mislaid.
- Incomplete evidence on the file.

The report also attributed the failings to the police, who often did not provide evidence in time for hearings, and court staff, who regularly moved cases between courtrooms, so that prosecuting lawyers had to present cases they had not prepared.

However, the report did recognise that the CPS is seeking to improve its performance through initiatives such as 'No Witness, No Justice', which aims to support prosecution witnesses through the courts process, and the Charging Initiative, which passes responsibility for determining charges from the police to the Crown Prosecution Service. Also, it is playing a key part in Local Criminal Justice Boards to promote joint working with the other criminal justice agencies. Despite these initiatives, the report states that the CPS needs to do more to re-organise and modernise its management of magistrates' court casework.

To help the CPS achieve this objective, the NAO has laid down a number of recommendations:

- Improve joint working with other criminal justice agencies.
- Maintain proper oversight of the cases.
- Make more prosecutor time available for review and preparation.
- Prioritise cases to ensure that they are ready when they come to court.
- Remove duplication and release resources.
- Give lawyers palmtop computers so they can record case outcomes in court, saving £1 million a year in typing costs.
- Encourage the use of e-mail and answering machines to make it easier for the police, courts or defence solicitors to contact the relevant prosecutor.

The full report, entitled 'Crown Prosecution Service – Effective use of magistrates' courts hearings', can be found at **http://www.nao.org.uk/publications/nao_reports/05-06/0506798.pdf**

Magistrates' Courts Unable to View CCTV Evidence

A report by the National Audit Office into the performance of the CPS in making effective use of magistrates' courts trials and hearings has found that some magistrates' courts are unable to view CCTV evidence because they don't possess the right technology.

The report found that most courts, Crown Prosecution Service offices and defence solicitors use standard VHS video equipment, while most CCTV footage is now on DVD. For a case to progress, the police must obtain the CCTV footage, arrange for it to be reformatted and provide copies for the CPS and the defence. This results in delays in getting the evidence to all the relevant parties; and the lack of CCTV evidence in the correct format has led, in some cases, to the CPS dropping the case or the case being dismissed.

The report emphasises that CCTV evidence needs to be available with the full file, as it is often conclusive, leading to early guilty pleas or dismissals, thus avoiding the additional costs of the trial.

The full report is entitled 'Crown Prosecution Service: Effective Use of Magistrates' Courts Hearings' and can be found at **http://www.nao.org.uk/publications/nao_reports/05-06/0506798.pdf**

Police Force Restructuring

The Home Secretary Mr. Charles Clarke has recently issued a number of written statements on the subject of the police force structures in Wales and England.

In respect of three regions, the North East, the North West and the West Midlands, following discussions with representatives of the police forces and authorities in these areas he has announced that:

- Greater Manchester Police will continue to stand alone as a strategic force.
- Following a request from Cumbria and Lancashire Constabularies and Police Authorities to allow their two areas to amalgamate into one new strategic force area, he will in accordance with the provisions in Section 32(3)(a) of the Police Act 1996, make the necessary alterations so that the new force will come into being on 1 April 2007.

The Home Secretary has also given notice to all the police authorities, local authorities and Chief Constables in below named areas and, in respect of Wales, to the Welsh Assembly Government of his intention to merge the following police force areas:

- Cheshire and Merseyside.
- Cleveland, Durham and Northumbria.
- Staffordshire, Warwickshire, West Mercia and West Midlands.
- Dyfed Powys, Gwent, North Wales and South Wales

In accordance with Sections 32 and 33 of the Police Act 1996 these police authorities, local authorities and Chief Constables now have until 2 July to submit any objections to the proposed mergers.

The Home Secretary has announced that he will consider any objections submitted and subject to that consideration then proposes to lay the necessary draft orders for approval by both Houses before the summer recess (25 July) with a view to the new forces coming into being from 1 April 2007.

Copies of the Home Secretary's notices to these Police and Local Authorities of his intention to amalgamate the police force areas and copies of the cases for amalgamation of those police forces can be found via **http://police.homeoffice.gov.uk/police-reform/Force-restructuring**

On 20 and 21 March the Home Secretary made a further written statement in respect of other regions, namely the East Midlands, South East, Eastern and Yorkshire. He has proposed the mergers of:

- Derbyshire, Leicestershire, Lincolnshire, Northamptonshire and Nottinghamshire.
- Surrey and Sussex.
- Cambridgeshire, Norfolk and Suffolk.
- Bedfordshire, Essex and Hertfordshire.
- Humberside, North Yorkshire, South Yorkshire and West Yorkshire.

In addition he has also proposed that Hampshire, Kent and Thames Valley be reconfigured as strategic forces.

These forces and police authorities have been invited to respond by 7 April, following which the Home Secretary will announce his decision on how to proceed in these areas.

New Code of Professional Standards for Police Officers

A working party of the Police Advisory Board has drawn up a proposed new Code of Professional Standards for police officers, which is intended to replace the current Code of Conduct in Schedule 1 of the Police (Conduct) Regulations 2004.

The new Code of Professional Standards will apply to all police officers and special constables. It is expected that a similar code for police staff will also be produced in the near future.

The proposed new Code has been published for a public consultation period, which will run until 19 May 2006.

The Code of Professional Standards sets out 10 principles that reflect the expectations that the police service and the public have of how police officers should behave. The principles are:

- **Responsibility and Accountability** - Police officers are personally responsible and accountable for their actions or omissions.
- **Honesty and Integrity** - Police officers are honest, act with integrity and do not compromise or abuse their position.
- **Lawful Orders** - Police officers obey lawful orders and refrain from carrying out any orders they know, or ought to know, are unlawful. Police officers abide by the law.
- **Use of Force** - When police officers use force it is only to the extent that is necessary and reasonable to obtain a legitimate objective.
- **Authority, Respect and Courtesy** - Police officers do not abuse their powers or authority and respect the rights of all individuals. Police officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.
- **Equality** - Police officers act with fairness and impartiality. They do not discriminate unlawfully on the grounds of sex, race, colour, language, religion or belief, political or other opinion, national or social origin, association with a national minority, disability, age, sexual orientation, property, birth or other status.
- **Confidentiality** - Police officers treat information with respect and access or disclose it only for a legitimate police purpose.
- **Fitness for Duty** - Police officers, when on duty or presenting themselves for duty, are fit to carry out their responsibilities.
- **General Conduct** - Police officers, on duty, act in a professional way. Police officers do not behave in a manner which brings, or is likely to bring, discredit on the police service or that undermines or is likely to undermine public confidence in the police, whether on or off duty. Police officers report any action taken against them for a criminal offence, conditions imposed by a court or the receipt of any penalty notice.
- **Challenging and Reporting Improper Conduct** - Police officers challenge and when appropriate take action or report breaches of this code and the improper conduct of colleagues.

In connection with the Code of Professional Standards, a guidance document has been produced which expands on the principles to try and assist police officers and the public to understand more clearly which types of conduct are unacceptable.

It is also intended that the guidance will assist police managers and police professional standards departments to interpret the Code in a consistent way, when deciding whether an officer has acted in breach of the Code and whether disciplinary action should be taken.

Although the guidance is not intended to be a definitive interpretation of the Code, as it is intended to be eventually issued by the Secretary of State in accordance with the provisions of Section 87 of the Police Act 1996. Those who are responsible for administering the procedures described in the guidance will be required to take its provisions fully into account when discharging their functions and should not depart from it without good reason.

Some of the main points in the guidance include:

In respect of Responsibility and Accountability

- When deciding if a police officer has neglected their duties all of the circumstances should be taken into account.
- Police officers have a lot of discretion and may have to prioritise the demands on their time and resources. This may involve leaving a task to do a different one, which in their judgement is more important. This is accepted and in many cases essential for good policing.
- Police supervisors are role models for delivering a professional, impartial and effective policing service. They have a particular responsibility to maintain professional standards and integrity by advice, remedial or other relevant and appropriate action.
- Police officers ensure that accurate records are kept of the exercise of their duties and powers as required by relevant legislation, force policies and procedures.
- In carrying out their duties, police officers have a responsibility to exercise reasonable care to prevent loss or damage to property of others, including police property.

In respect of Honesty and Integrity

- During the course of their duties, police officers may be offered hospitality (e.g. refreshments) and this may be acceptable as part of their role. However, police officers always consider carefully the motivation of the person offering a gift or gratuity of any type and the risk of becoming improperly beholden to a person or organisation.
- It is not anticipated that inexpensive gifts would compromise the integrity of a police officer, such as those from conferences (e.g. promotional products) or discounts aimed at the entire police force (e.g. advertised discounts through police publications). However, all gifts and gratuities must be declared in accordance with local policy where authorisation may be required from a line manager, chief officer or police authority to accept a gift or hospitality. If an officer is in any doubt then they should consult with their line manager.
- Police officers never use their position or warrant card to gain advantage (financial or otherwise) that could give rise to the impression that the officer is abusing their position. A warrant card is only for identification and to express authority.

In respect of Lawful Orders

- Two factors should be considered when assessing if it was reasonable not to follow a lawful order. First of all, was there a good reason and secondly, was it sufficient to justify not following such an order having regard to the circumstances and possible consequences.

- The police service has a responsibility to keep police officers informed of changes to police regulations, local policies and procedures. Police officers have a duty to keep themselves up-to-date on the basis of the information provided.

In respect of Equality

- Police supervisors have a particular responsibility to support the promotion of equality and by their actions to set a positive example. In certain cases, different treatment, which has an objective justification and is a proportionate means of achieving a legitimate aim, may not amount to discrimination.

In respect of Confidentiality

- Police officers who are unsure if it is legitimate to access or disclose information should always consult with their line manager or department that deals with data protection or freedom of information before accessing or disclosing information.
- Police officers should oppose any attempt by a third party to gain access to any information that they are not entitled to. This includes, for example, requests from family or friends, approaches by private investigators and disclosure to the media.

In respect of Fitness for Duty

- Police officers who present themselves to their force with a drink or drugs misuse problem will be supported. However, the use of illegal drugs cannot be condoned.
- Police officers who are aware of any health concerns that may impair their ability to perform their duty should seek guidance from the occupational health department or their line manager as to their fitness to perform their assigned role.
- A police officer who is unexpectedly called to attend for duty should be able to say that they are not fit to perform the required duty as a result of having consumed alcohol, without risk of bringing discredit on themselves or the police service.
- Police officers when absent from duty on account of sickness, do not engage in activities that they know, or ought to know, are likely to impair their return to duty. It is expected that police officers will engage with the force medical officer or other member of the occupational health team if required.

In respect of General Conduct

- In the interests of fairness, consistency and reasonableness, the test as to whether an officer has brought discredit to the police service is not solely about the amount of media coverage but having regard to all the circumstances.
- All managerial actions and disciplinary outcomes are available in response to off-duty conduct and in all cases, whether on or off-duty, it should be the actual conduct of the officer that is considered. It must also be clearly articulated how that conduct brings or is likely to bring discredit to the police service.
- Police officers should not purchase or consume alcohol when on duty, unless specifically authorised to do so or it becomes necessary for the proper discharge of a particular police duty.

In respect of off duty conduct

- Police officers have some restrictions on their private life and this has to be balanced against the right to a private life. In considering whether a breach of this Code has occurred for off-duty conduct, due regard should be given to that balance and any action should be proportionate, taking into account all of the circumstances.

- When police officers produce their warrant card (other than for identification purposes only) or act in a way to suggest that they are a police officer (i.e. declaring that they are a police officer), they are demonstrating that they are exercising their authority and have therefore put themselves on duty for the purposes of this Code. For example, during a dispute with a neighbour, an officer who decides to produce a warrant card would be considered to be on duty.
- An approved business interest should always be carried out in a way that does not give the impression of compromising the officer's impartiality and in such a way as not to risk bringing discredit on the police service.

In respect of Challenging and Reporting Improper Conduct

- Police officers should be supported by the police service if they report a breach of this Code, unless such a report is found to be malicious or otherwise made in bad faith.
- It will not always be necessary to report an officer's conduct if the matter is of a minor nature and has been dealt with by normal management action.

The draft Code, guidance and consultation document can be found via **http://www.homeoffice.gov.uk/about-us/haveyoursay/**

HOC 2/2006
Law Enforcement Liaison with the Immigration and Nationality Directorate to Support Foreign Witnesses or Covert Investigations

This Circular provides guidance to UK law enforcement agencies (LEAs) on revised procedures for dealing with persons who are subject to immigration control and required to give evidence at criminal prosecutions in the UK, or to support the deployment of foreign covert human intelligence sources (CHIS), and all other matters where covert policing assistance is required in respect of foreign nationals. It replaces HOC 12/97.

Some of the main points that LEAs need to be aware of and consider include:

- Contact should be made by LEAs with the Immigration and Nationality Directorate (IND) in every case where they are seeking the entry of a person into the UK or whose stay in the UK they wish to extend; and all information relevant to the entry, or stay, of a person in the UK must be provided to IND.
- LEAs are liable for the appropriate application fee of the person they are sponsoring for an extension of stay in the UK.
- Prior to the consideration of any application for an extension of stay, it will be necessary for the subject's immigration status to be formally established.
- Where the person is a witness in a criminal prosecution, a letter from the Crown Prosecution Service confirming the necessity of their presence will be required.
- Final decisions concerning the granting of leave to enter or remain in the UK, or deferral of removal from the UK, will be made by IND. In appropriate cases, Ministers may be consulted.

The Circular has two annexes attached. Annex A sets out the different information that must be supplied to IND in relation to CHIS applications, Foreign Witness applications, and Witness Protection cases. Annex B contains details of the IND contact in respect of each type of application.

Initial advice may be sought by any officer from an LEA. However, any formal written approach must be made at Assistant Chief Constable/Commander/ Band 11 HM Revenue & Customs/Deputy Director Level in the Serious Organised Crime Agency to the IND nominee indicated in Annex B.

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

New Police Pension Scheme

The New Police Pension Scheme (NPPS) is being introduced from 6 April 2006. From this date, all new recruits to the police service will become members of the NPPS.

Under the NPPS, members:

- Contribute 9.5 % of their pay to the scheme.
- Receive a maximum final pension of half final pay plus a lump sum of four times pension **or** they may opt to exchange all or part of this lump sum for more annual pension. The final salary is based on the highest pensionable pay up to 10 years before retirement.
- Build-up pension scheme benefits over their career (compared with the current scheme which has two rates of pension accrual, depending on length of service).
- Have the option to nominate an unmarried partner (including a same sex partner) as pension beneficiary.

Another significant change is that under the NPPS, married or civil partners as well as unmarried partners who are not civil partners but who have submitted appropriate declaration forms, will be eligible to receive pension benefits for life, notwithstanding that they remarry, form a new partnership or cohabit.

Officers who are currently members of the Police Pension Scheme (PPS) will also shortly be offered the chance to transfer to the new scheme. It is currently expected that the opportunity to transfer from the PPS to the NPPS will be offered in the autumn of 2006. It is likely that the opportunity to transfer will only be available for a three month period.

The NPPS includes a two-tier ill health retirement scheme, based on levels of disability. The level of disability an officer falls into will be dependent on a medical examination.

The two levels of disability are:

- Permanent inability to perform ordinary police duties.
- Permanent inability to undertake any regular employment.

Following the determination as to what level of disability an officer falls under, the police authority will consider each case to ascertain whether a standard ill-health pension or one with an enhanced top-up will be paid. It is expected that police authorities may also decide, particularly if an officer has been assessed as having a permanent disability to perform ordinary police duties, that there are alternative duties that the officer could undertake, so instead of awarding an ill-health pension the officer would be allowed to remain as a police officer.

These changes do not affect the retirement ages of officers in the PPS, nor the scale of benefits payable to those medically retired under the PPS.

30+ Scheme

The Police Federation has issued further guidance (JBB Circular 16/2006) for officers joining the 30+ Scheme.

A provision in the Finance Act 2004 means that, as from 6 April 2006, Police Pension Scheme (PPS) members will have to be 50 or above in order to join the 30+ Scheme. The reason for this is that they would be taking advantage of a 'protected pension age', allowing them to draw benefits before the age of 55. It is understood that the Home Office is seeking an exemption from this provision from Her Majesty's Treasury, which would allow officers under 50 to join the 30+ scheme.

As from 6 April, should an exemption not be granted, the Federation has suggested that officers under 50 who wish to join the 30+ Scheme might consider:

- Serving until the age of 50 and then applying to rejoin under the 30+ Scheme.

Or

- Retiring below the age of 50, collecting their lump sum and then waiting until they are 50 to rejoin on the 30+ Scheme.

Officers are reminded that:

- Acceptance to join the scheme is at the discretion of the force.
- Normally officers should not have been retired for more than 12 months before applying.
- Advice should probably be taken from an independent financial adviser, who will be able to provide opinions on the best path for an officer to take.

Nothing in these legislative changes affects:

- Anyone currently on the 30+ scheme.
- Anyone who joins it prior to 6 April.
- An officer under 50, who retires, receives their PPS pension and immediately rejoins a force as a member of police staff.
- A PPS member's entitlement to an ordinary pension payable at any age with 30 years' pensionable service or from age 50 with between 25 and 30 years' pensionable service.

Single Non-Emergency Number

It has been announced that 101 has now been designated as the new Single Non-Emergency number (SNEN).

Trials of the new SNEN will now be undertaken in five areas, Hampshire, Northumbria, Cardiff, Sheffield and two areas in Leicestershire (Leicester City and Rutland County) during this summer. The scheme is then expected to be rolled out across England and Wales by 2008.

There is still a great deal of controversy over the charging of 10p for each call: one of the justifications put forward by the Home Office for the charge is that it may help deter time-wasters.

The SNEN service will operate around the clock, with callers receiving information and advice on non-emergency matters from specially-trained operators. These operators will be able to transfer calls to 999 if they deem the incident needs an emergency response.

The Home Office has announced that the SNEN service will deal with issues in respect of drug-related anti-social behaviour including drug dealers, intimidation and harassment, vandalism, graffiti and other criminal damage.

Clarification on Points Raised in Respect of Lost/Stolen/Misappropriated Passport Guidance

Following a number of queries being raised in relation to police working practices in relation to lost/stolen/misappropriated passports (see February *Digest*), further information has been issued via ACPO which is intended to answer those queries and clarify any ambiguity. These additional points are:

- If a passport is mislaid/lost at a port such as the person carelessly leaving the passport at a check-in point, then providing that there are no indications that the passport has been used fraudulently, it may be returned to the holder rather than delay or postpone their travel should they present themselves to either the police or airport authority who may have taken the passport for safe keeping. In this instance, the passport can be retained for up to 24 hours before it is returned to the Passport Service as indicated in the guidance. This will apply to all passport holders.
- If a passport is left by the holder at a place where you are satisfied that it could not be fraudulently used, such as a post office, bank or shop, then it may be returned to the holder should they present themselves to the police.
- The corners of foreign documents, including identity cards, should not be cut off; the documents should be dealt with as outlined in the original guidance.

National Evaluation of Community Support Officers

The Home Office's Research, Development and Statistics Directorate has published its findings following a national evaluation of Community Support Officers (CSOs). The study was carried out between July 2004 and June 2005 and its key aims were to:

- Provide a national profile of CSOs and their deployment.
- Explore public perceptions of the role.
- Provide indications of the impact of CSOs on levels of crime and anti-social behaviour.

The main findings of the study were:

- CSOs spent most of their time in the community on visible patrol and engaging with members of the community. Much of their time was spent dealing with youth disorder and alcohol related issues.
- CSOs were seen as more accessible than police officers by some members of the public. As a result they were more likely to report issues to them that they wouldn't normally 'trouble' police officers with. The public were also more likely to pass on information to CSOs.
- CSOs' activities varied in different locations. This reflected force-level and local priorities.
- There was no evidence that CSOs were having a measurable impact on the level of recorded crime or reported incidents of anti-social behaviour in the areas where they were deployed.
- The public valued the role of CSOs. Evidence from the study suggested that where CSOs were well known by name to the community, that the residents and businesses felt they made a real impact in the area, especially when dealing with youth disorder.
- The diversity of CSOs, specifically in terms of age and ethnicity, has been one of the successes of the implementation of the new role.
- More than 40% of CSOs said they had joined as a stepping stone to becoming a fully sworn police officer.

The report concludes that CSOs have the potential to be, and have been, successful in some neighbourhoods. Some aspects of deployment and staffing, however, need further consideration if CSOs are to be fully effective.

The full report can be obtained from the Home Office's Research, Development and Statistics Directorate website at **http://www.homeoffice.gov.uk/rds/pdfs06/hors297.pdf**

Case Law

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

Stop and Search Under the Terrorism Act 2000 – Compatible with the European Convention on Human Rights

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

HL (Lord Bingham of Cornhill, Lord Hope of Craighead, Lord Scott of Foscote, Lord Walker of Gestingthorpe, Lord Brown of Eaton-under-Heywood) 8/3/2006

POLICE - HUMAN RIGHTS

Freedom of expression: Freedom of peaceful assembly: Police powers and duties: Prescribed by law: Right to liberty and security: Right to respect for private and family life: Statutory interpretation: Stop and search: Terrorism: compatibility of powers in Terrorism Act 2000 with convention rights: Authorisations: Geographical area: Justification: Exceptions: Arbitrariness: S.44 Terrorism Act 2000: S.44(4) Terrorism Act 2000: S.44(3) Terrorism Act 2000: Art.5 European Convention on Human Rights: Terrorism Act 2000: European Convention on Human Rights: S.45(1)(b) Terrorism Act 2000: Art.8(2) European Convention on Human Rights: Art.10 European Convention on Human Rights: Art.11 European Convention on Human Rights

The stop and search regime in the Terrorism Act 2000 did not give rise to violations of the European Convention on Human Rights 1950.

The appellant (G) appealed against a decision of the Court of Appeal ((2004) EWCA Civ 1067, (2005) QB 388) that the "stop and search" provisions in the Terrorism Act 2000 s.44 were not unlawful. G, a student, had been stopped and searched under s.44 when he came to London on September 9, 2003 to protest against an arms fair being held in east London. The Assistant Commissioner of the Metropolitan Police had given an authorisation under s.44(4) on August 13. It covered the whole of the Metropolitan Police District and was expressed to have effect for 28 days. Such authorisations had been made continuously for successive periods since s.44 had come into force in February 2001. G argued that:

(1) s.44(3) should be interpreted as permitting an authorisation to be made only if the decision-maker had reasonable grounds for considering that the powers were necessary and suitable, in all the circumstances, for the prevention of terrorism;

(2) the authorisation was excessive in respect of its geographical coverage;

(3) the successive authorisations had in effect authorised a continuous ban throughout the London area;

(4) a person stopped and searched was deprived of his liberty in breach of the European Convention on Human Rights 1950 Art.5;

(5) the exercise of the power to stop and search involved a breach of Art.8(1) of the Convention;

(6) the power to stop and search infringed the rights to freedom of expression and freedom of assembly under Art.10 and Art.11 of the Convention respectively;

(7) for the purposes of the Convention, the power to stop and search was not "prescribed by law" or "in accordance with the law".

HELD

(1) The word "expedient" in s.44(3) had a meaning quite distinct from "necessary". It was true that s.45(1)(b), in dispensing with the condition of reasonable suspicion, departed from the normal rule applicable where a constable exercised a power to stop and search, so that one would incline to give "expedient" a meaning no wider than the context required. But examination of the statutory context showed that the authorisation and exercise of the power were very closely regulated, leaving no room for the inference that Parliament had not meant what it said. There was every indication that Parliament had appreciated the significance of the power that it was conferring but thought it an appropriate measure to protect the public against the grave risks posed by terrorism, provided the power was subject to effective constraints. The legislation embodied a series of such constraints.

(2) The authorisation was not excessive in respect of its geographical coverage. The first respondent commissioner and the second respondent secretary of state had shown that they had made considered and informed evaluations of the terrorist threat.

(3) The authorisations and subsequent confirmations complied with the letter of the statute, and the evidence contradicted the inference of a routine bureaucratic exercise. In the circumstances, there was no material to justify the conclusion that the authorisation of August 13 or the subsequent confirmation were unlawful.

(4) The power to stop and search did not involve a deprivation of liberty under Art.5. The procedure would ordinarily be relatively brief, and the person stopped would not be arrested, handcuffed, confined or removed to any different place. In the absence of special circumstances, such a person should not be regarded as being detained in the sense of being confined or kept in custody; he was more properly to be regarded as being detained in the sense of being kept from proceeding or kept waiting, Guzzardi v Italy (A/39) (1981) 3 E.H.R.R. 333 applied. In any event, assuming the detention was lawful, the respondents could rely on the exception in Art.5.

(5) It was doubtful whether an ordinary superficial search could be said to show a lack of respect for private life. It was clear from Convention jurisprudence that intrusions had to reach a certain level of seriousness to engage the operation of the Convention. In any event, the respondents could rely on the exception in Art.8(2).

(6) It was hard to conceive of circumstances in which the power to stop and search, properly exercised, could give rise to an infringement of Art.10 or Art.11. If it did, it was likely that the restriction would fall within the heads of justification in Art.10(2) and Art.11(2).

(7) The lawfulness requirement in the Convention addressed supremely important features of the rule of law. The exercise of power by public officials, as it affected members of the public, had to be governed by clear and publicly accessible rules of law. The public must not be vulnerable to interference by public officials acting on any personal whim, caprice, malice, predilection or purpose other than that for which the power was conferred. That was what, in the instant context, was meant by arbitrariness, which was the antithesis of legality. That was the test that any interference with or derogation from a Convention right had to meet if a violation was to be avoided. The stop and search regime did meet that test. The 2000 Act informed the public that the powers were, if duly authorised and confirmed, available. It defined and limited the powers

with considerable precision. Anyone stopped and searched had to be told, by the constable, all he needed to know. In exercising the power, the constable was not free to act arbitrarily, and would be open to a civil suit if he did.

APPEAL DISMISSED

Duty of Police to Protect Witnesses

1) IRWIN VAN COLLE (ADMINISTRATOR OF THE ESTATE OF GILE VAN COLLE, DECEASED) (2) CORINNE VAN COLLE v CHIEF CONSTABLE OF HERTFORDSHIRE (2006)

QBD (Cox J) 10/3/2006

HUMAN RIGHTS - CRIMINAL LAW - POLICE

Causation: Intimidation Of Witnesses: Police Powers And Duties: Right To Life: Right To Respect For Private And Family Life: Witnesses: Witness Protection: Duty Of Police To Protect Witnesses: Protection Of Right To Life Under Art.2 European Convention On Human Rights 1950: Respect For Family Life Under Art.8: Real And Immediate Risk To Life: S.7 Human Rights Act 1998: Art.2 European Convention On Human Rights: Art.8 European Convention On Human Rights

In the circumstances, a chief constable had violated the European Convention on Human Rights 1950 Art.2 and Art.8 by failing to discharge his positive obligation to take protective measures to protect the life of a witness, due to give evidence for the prosecution in a criminal trial, and to safeguard his family where that witness had been subject to an escalating series of incidents of intimidation prior to being murdered.

The claimant parents (C) claimed under the Human Rights Act 1998 s.7(1) an award of damages and a declaration that the defendant chief constable (D) as vicariously liable for the acts and omissions of his officers, had violated the European Convention on Human Rights 1950 Art.2 and Art.8 by failing to discharge his positive obligation to protect the life of their son (G). G was murdered several days before he was due to give evidence for the prosecution at the trial of a defendant (B) on dishonesty charges. G's murder occurred after he had received a number of threats from B, which he had reported to the police officer conducting the case against B (R). R had not taken any further action, although he had been aware of B's interference with other witnesses and of fires affecting the property of one of the witnesses. R was subsequently found guilty by a disciplinary panel of failing to perform his duties conscientiously and diligently, as he had failed to respond to an escalating situation of intimidation. R had been unaware of the constabulary's witness protection policy, which contemplated that some protective action should be taken in cases involving a threat of danger. C submitted that

(1) D was under a duty to take appropriate measures to protect the risk to G's life, since G had been exposed to potential risks as a witness and was therefore in a category of persons separate from ordinary members of the public, and as D had failed to take appropriate measures or follow the guidelines in the witness protection policy Art.2 had been engaged and breached;

(2) D had also violated Art.8 in that there was a risk both to G's integrity and to his family life of which R knew or ought to have known;

(3) Whilst C had to prove that the violation had caused them loss, Convention jurisprudence had adopted a flexible approach to causation of loss and therefore the "but for" or "balance of probabilities" tests did not apply.

HELD

(1) G was, by virtue of his status as a witness, in a special category of persons separate and apart from ordinary members of the public, as the existence of the constabulary's witness protection policy recognised. He was exposed by the state to potential risks as a witness and entitled to look to the state for a reasonable level of protection from such risks. G was an important witness in B's trial and as B had threatened and intimidated him he was at a special and distinctive risk of harm. It was a risk of which R knew or ought to have known and there had been appropriate measures reasonably available to him to alleviate or obviate that risk. The appropriate threshold of risk had been passed in order for the Art.2 obligation to be engaged as the risk to G had been real and immediate, Osman v United Kingdom (2000) 29 EHRR 245 applied, Hill v Chief Constable of West Yorkshire (1988) 138 NLJ 126 and Brooks v Commissioner of Police for the Metropolis (2005) UKHL 24 , (2005) 1 WLR 1495 distinguished.

(2) There was also a violation of Art.8, since the culpable failure to protect G's life and the subsequent loss of his life had led to the complete destruction of his family life.

(3) In order for the court to be satisfied that an award of damages was necessary to afford just satisfaction to a victim of the state's breach of Art.2, the victim did not have to prove causation of damage on the "but for" test. In the instant case, the proper question was whether the protective measures that were reasonably open to R in the circumstances could have had a real prospect of altering the outcome and avoiding G's death. On the evidence, it was more likely than not that G's death would have been avoided had those steps been taken. R had accepted in cross-examination that if he had complied with the witness protection policy, there would have been a real prospect that G's life would have been saved.

(4) In order to decide the level of damages the court had to consider the character and conduct of the parties and the extent and seriousness of the breach. Factors taken into account included: R's failure to appreciate the escalating pattern of intimidation or to consider the need to protect G; D's failure to implement the witness protection protocol; that C received no suitable apology from the police before the hearing, and none at all from R; the minor disciplinary sanction imposed on R; and C's enormous distress and grief. C should receive an award of damages of £15,000 for G's distress in the weeks leading up to his death and £35,000 for C's own grief and suffering.

JUDGMENT FOR CLAIMANTS

Continuous Identification Procedure – PACE Code D

B v DIRECTOR OF PUBLIC PROSECUTIONS (2006)

DC (Latham LJ, Jack J) 16/3/2006

CRIMINAL EVIDENCE

Admissibility: Pace Codes Of Practice: Visual Identification: Street Identifications: Admissibility Of Evidence: Two Drive-By Identifications Were One Continuous Identification Procedure: S.78 Police And Criminal Evidence Act 1984

Where the victim of a robbery had identified the defendant in the street by twice being driven past him by the police, the second identification, during which police officers had stood by the defendant, did not breach the PACE codes of practice Code D, para.3.4 because there had been only one continuous identification procedure.

The appellant (B) appealed by way of case stated against his conviction for robbery. Information had been laid against B that he had, as part of a group of youths, robbed a number of cigarettes from an individual (V). Shortly after the alleged offence occurred V was driven by the police around the area in order to identify those responsible. He was driven past a bus stop where he identified B and two other youths as being members of the group that had robbed him. Police officers then approached B at the bus stop. V was driven past the bus stop a second time and he again identified B and the other two youths. B had contended before the youth court that the second street identification should be excluded under the Police and Criminal Evidence Act 1984 s.78 as at that stage B was known to the police for the purposes of the PACE codes of practice Code D, para.3.4 because V had identified B during the initial drive-by at the bus stop. The youth court found that there had been no breach of Code D, para.3.4 as the identification had taken place over one continuous period of time and therefore the evidence of the second identification would not be excluded. The question for the opinion of the High Court was whether the youth court was correct in concluding that there was a continuous identification that did not breach Code D, para.3.4.

HELD

The youth court was correct to hold that there was no breach of Code D, para.3.4. There had been only one continuous identification procedure, which could be divided into two parts: the initial identification and then the confirmation of that identification by the second drive-by. The police officers did not bring B to V's attention but rather he drew their attention to B. The presence of the police officers at the bus stop on the second drive-by did not affect that identification, K v DPP (2003) EWHC 351(Admin) considered.

APPEAL DISMISSED

Conditional Offers for Fixed Penalty Offences – The Requirement to State the Period for Commencement of Proceedings

DIRECTOR OF PUBLIC PROSECUTIONS v HOLDEN (2006)

DC (Richards LJ, Clarke J) 24/2/2006

CRIMINAL PROCEDURE – ROAD TRAFFIC

Abuse Of Process : Defects : Notices Of Intended Prosecution : Road Traffic Offences : Conditional Offers Of Fixed Penalties : Failure To State Period For Commencement Of Proceedings : Effect Of Failure On Proceedings : S.75(7) Road Traffic Offenders Act 1988

The failure of a conditional offer of a fixed penalty to comply with the Road Traffic Offenders Act 1988 s.75(7)(c) did not in itself preclude proceedings being brought against an alleged offender, provided that the proceedings were not commenced before the minimum specified period.

The DPP appealed by way of case stated against the decision of a district judge sitting in a magistrates' court to stay proceedings against the respondent (H) on the grounds that they were an abuse of process. H had received a notice of intended prosecution related to an alleged speeding offence. The notice contained a conditional offer of a fixed penalty, which was authorised under the Road Traffic Offenders Act 1988 s.75(7), and also contained a requirement that the person to whom the notice was addressed had to respond within 28 days of the notice date. The conditional offer of a fixed penalty failed to specify any period during which proceedings could be commenced against H for the alleged speeding offence. Within 28 days of receiving the notice H indicated that he would dispute the case against him. Thereafter a summons was issued against H who then contended that the proceedings against him were unfair as they were an abuse of process. At a preliminary hearing the judge held that the notice was defective as it failed to comply with s.75(7)(c) of the Act. The judge concluded that, as no time was given in which H could react to a conditional offer to avoid a prosecution, it was an abuse of process to prosecute, as the law made it clear that proceedings could not be commenced until the end of 28 days or such other period as might be specified. The judge further held that it was manifestly unfair to prosecute as there had been an abuse of process. The questions stated for the opinion of the High Court were (i) where a conditional offer of a fixed penalty failed to state that proceedings against an alleged offender could not be commenced in respect of that offence until the end of 28 days following the date on which the conditional offer was issued, or such longer period as may be specified in the order, as required by s.75(7)(c), whether proceedings against the offender thereafter were precluded, and (ii) whether the judge was correct to conclude that the proceedings against H were manifestly unfair.

HELD

(1) The failure of a conditional offer of a fixed penalty to comply with s.75(7)(c) did not in itself preclude proceedings being brought against an alleged offender provided that the proceedings were not commenced before the minimum specified period.

(2) The judge erred in determining that the proceedings were manifestly unfair. The judge failed to examine how H was personally prejudiced by the proceedings and there was nothing to suggest that H could not have a fair trial. In the absence of any suggestion of bad faith, the jurisdiction of a magistrates' court to stay proceedings was to be exercised sparingly and it had erred in doing so in the instant case, R v Horseferry Magistrates' Court, Ex p Bennet (1994) AC 42 applied.

APPEAL ALLOWED

Fairness of Trial not Affected by Attack on Judge

R v SEBASTIAN LEE RUSSELL (2006)

CA (Crim Div) (Thomas LJ, McCombe J, Judge Stewart QC) 10/3/2006

CRIMINAL PROCEDURE - CRIMINAL EVIDENCE

Bias: Fairness: Juries: Jury Directions: Summing Up: Trials: Defendant Escaping Dock And Attacking Judge During Summing Up: Effect On Fairness Of Trial: Fair-Minded Observer: Directions Of Law: Discharging Jury

A trial judge had been entitled to continue with his summing up after an attempt by the defendant to disrupt it, by escaping the dock and attacking the judge, since no fair-minded observer would conclude that continuing with the trial was unfair or perceived to be unfair. There had been no need for the judge to enquire into the effect of the defendant's actions on the jury, because it was bound to continue with the trial. If a defendant was able to stop his trial and obtain a new one by causing such disruption, it would have the potential to make trial by jury unworkable.

The appellant (R) appealed against his convictions for handling stolen goods, attempted murder, making use of a firearm with intent to resist arrest and perverting the course of justice. During the course of the trial judge's summing up, R had escaped from the dock and physically attacked the judge. The judge subsequently retired to his room and a police inspector and another police officer, who was a prosecution witness, came in to see him to discuss security for the remainder of the trial. An unsuccessful application was made to discharge the jury and the judge later continued with his summing up. R submitted that:

(1) the judge's summing up of the case, in particular the evidence, had failed to meet the standards of fairness and balance to be expected of a judge;

(2) after he had disrupted the trial, the judge should have discharged the jury and ordered a fresh trial before another judge as the jury was not able to continue to try the case fairly in the light of what had happened, in particular because a prosecution witness had gone into the judge's room, and because the judge had refused to ask the jury about the effect R's disruptive actions had had on it.

HELD

(1) The severe and serious criticism of the judge was unfounded. The summing up was well prepared and entirely balanced and fair. It put properly before the jury for its consideration the respective cases of the prosecution and the defence. The directions of law were lucid and a clear summing up of the evidence was given.

(2) Given that the prosecution witness had gone into the judge's room with a more senior officer as an immediate reaction to R's attack on the judge, and that the judge had been in the concluding stages of summing up when R attacked him, it was fanciful to believe that any fair-minded observer could have thought that there had been any effect on the fairness of the trial. R was responsible for attacking the judge. There could be no excuse for what he had done. If the summing up had been unfair, as R had contended was the explanation for his actions, the remedy lay in the instant court.

No defendant could pre-empt that course by seeking to disrupt the trial. If a defendant was able to stop a trial and obtain a new trial by acting in the way that R did, it would have the potential to make trial by jury unworkable. In the circumstances, no fair-minded observer would have concluded that continuing with the trial was unfair or perceived to be unfair, R v Brown (2001) EWCA Crim 2828 , (2002) Crim LR 409 considered. There had been no need for an enquiry into the effect of R's actions on the jury; it was bound to continue with the trial. The jury was properly directed to try the case on the evidence it had heard and pay no regard to the attempt to disrupt the trial. In the circumstances R's conviction was safe.

APPEAL DISMISSED

Possession of Indecent Photographs of Children Requires Custody and Control of the Images

R v ROSS WARWICK PORTER (2006)

CA (Crim Div) (Dyson LJ, Grigson J, Walker J) 16/3/2006

CRIMINAL LAW - LEGISLATION

Computers: Indecent Photographs Of Children: Interpretation: Knowledge: Deleted Computer Images: Meaning Of "Possession" In S.160(1) Criminal Justice Act 1988: Statutory Construction: Possession Of Indecent Photographs: Recycle Bin: S.160(1) Criminal Justice Act 1988: S.160(1) Criminal Justice Act 1988

A person could not be in possession of indecent photographs of children under the Criminal Justice Act 1988 s.160(1) if he no longer had custody or control of the images. In the case of deleted computer images if a person could not retrieve or gain access to an image then he no longer had custody or control of it.

The appellant (P) appealed against convictions for possessing indecent photographs of children contrary to the Criminal Justice Act 1988 s.160(1). The police had seized computer hard drives from P. They were found to contain numerous still images and movie files of child pornography. Some of the images and movie files had been deleted and the recycle bin emptied and of the remaining still images some had been saved in a database that contained "thumbnail" images. All of the larger images had been deleted and could not be viewed by clicking on the thumbnail. The prosecution conceded that the deleted items had been deleted before the date of possession contained in the indictment, that P did not have the software to retrieve or to view the deleted files and the thumbnail images were only retrievable using specialist forensic techniques that would not have been available to the public. At the close of the prosecution case P submitted there was no case to answer in relation to the deleted items as none of the items were in his possession for the purposes of s.160(1) of the Act. The judge ruled there was a case to answer and that P possessed the files within the computer whether they were in an active or deleted category. P contended that a person could not commit the offence of the possession of indecent photographs on the hard drive of a computer unless the images were readily accessible to him for viewing at the time when they were said to be possessed. P further contended that a person who had at some stage in the past been in possession of such images but who had taken all reasonable steps to destroy them or make them irretrievable was no longer in possession of them.

HELD

Whilst the judge was right in refusing the submission of no case to answer, his summing up was flawed as he failed to direct the jury about the factual state of affairs necessary to constitute possession. In the case of deleted computer images if a person could not retrieve or gain access to an image then he no longer had custody or control of it. In interpreting the meaning of possession in s.160(1) of the Act there was no reason not to import the concept of having custody or control of the images. It would not be appropriate to say a person who could not retrieve an image from the hard drive was in possession of the image merely because he was in possession of the hard drive and the computer. It would be for a jury to determine whether a defendant had possession of the image at the relevant time in the sense of custody or control of the image. If at the alleged time of possession the image was beyond a defendant's control then he would not possess it. It was for the jury to decide whether images were beyond the control of a defendant having regard to all the circumstances of the case, including his knowledge.

APPEAL ALLOWED

Causing Danger to Road Users – Reasonable Bystander Test

DIRECTOR OF PUBLIC PROSECUTIONS v D (2006)

DC (Richards LJ, Clarke J) 21/2/2006

ROAD TRAFFIC

Highway Control: Road Safety: Road Signs: Road Traffic Offences: Obvious Danger To Road Users: Reasonable Bystander Test: Placing Objects On Highways: Danger Of Injury To Road Users: S.22A(1)(A) Road Traffic Act 1988

For the purposes of the Road Traffic Act 1988 s.22A(1)(a) the test for whether the placing of anything on a road was dangerous was whether a reasonable bystander, regardless of whether he was a motorist or not, would consider that the act in question represented an obvious danger.

The DPP appealed by way of case stated against the decision of a district judge that the respondent (D) had no case to answer to a charge under the Road Traffic Act 1988 s.22A(1)(a). D and another had placed a metal road sign in one lane of a single carriageway road that was subject to a 50 mph speed restriction. Thereafter a car travelling at excessive speed had crashed near the sign killing the occupants of the car. At trial evidence was adduced that the sign was visible from up to 100 metres away, that the braking distance for a car travelling at 70 mph was 96 metres and that a number of other road users had passed the sign safely. The judge held that, for the purposes of s.22A(1)(a) of the Act, in determining whether it would be obvious to a reasonable person that placing the sign in the road was dangerous, it was appropriate to consider whether danger would be obvious to a reasonable, prudent, straightforward and careful motorist driving at the correct speed. The judge concluded, having regard to the size and width of the road, the lines of sight and the speed limit, that danger was not reasonably obvious, and he acceded to a submission of no case to answer by D.

HELD

The judge had erred in his approach to the appropriate question for the determination of whether an offence under s.22A(1) of the Act had occurred. The appropriate test was not whether the danger would be obvious to a reasonable and prudent motorist driving at the correct speed but whether a reasonable bystander, whether he was a motorist or not, would consider that the act in question represented an obvious danger. A reasonable person would not expect all motorists to drive carefully and well. A reasonable person should realise that the placing of a sign as in the instant case could cause an accident, notwithstanding that the primary factor of such an accident was excessive speed. In the circumstances the judge had erred in acceding to D's submission of no case to answer and the case was remitted.

APPEAL ALLOWED

Issue of Caution for Suspected Drink Driving

SNEYD V DIRECTOR OF PUBLIC PROSECUTIONS (2006)

DC (Richards LJ, Clarke J) 24/2/2006

CRIMINAL EVIDENCE - CRIMINAL LAW – ROAD TRAFFIC

Breath Tests : Cautions : Driving While Over The Limit : Pace Codes Of Practice : Suspicion : Administration Of Caution : Timing Of Caution : Suspicion Of Drink Driving : S.5 Road Traffic Act 1988 : Police And Criminal Evidence Act 1984 : S.6 Road Traffic Act 1988

A police officer who suspected that a motorist had been drinking was not obliged to administer a caution pursuant to the Police and Criminal Evidence Act 1984 Code C, until the motorist produced a breath specimen that exceeded the alcohol level prescribed in the Road Traffic Act 1988 s.5.

The appellant (S) appealed by way of case stated against his conviction for driving with excess alcohol contrary to the Road Traffic Act 1988 s.5. After leaving a public house car park, S had been stopped by a police officer who asked him if he had been drinking. S stated that he had been drinking and the police officer required him to undertake a roadside breath test, which he failed. The police officer cautioned S and took him to a police station where a further breath test was administered by means of an intoximeter. S failed that breath test as well. At trial the DPP did not rely upon a print-out from the intoximeter to prove its results but relied upon the oral evidence of the police officer who administered the test. The questions posed for the opinion of the High Court were whether the magistrates' court

(i) was right in law to hold that there had been no breach of the Police and Criminal Evidence Act 1984 Code C;

(ii) was right to determine that there was admissible evidence on which it could conclude that S's alcohol level exceeded the prescribed limit;

(iii) erred in law in rejecting S's contention that it was not entitled to convict because there was no evidence of calibration of the intoximeter.

HELD

(1) The magistrates' court were right in law to hold that there had been no breach of Code C of PACE. The police officer had merely had a suspicion that S had been drinking. S's reply that he had been drinking then gave the police officer cause to suspect that S had alcohol in his body that required him to produce a specimen of breath pursuant to s.6 of the Act. It was only when that specimen of breath revealed an alcohol level that exceeded the prescribed limit that the police officer had had reasonable grounds to suspect that an offence had been committed and was obliged to administer a caution, which in the instant case he had.

(2) It was convenient to answer questions two and three together. There was sufficient evidence on which to convict S. It was well established that a police officer who administered a breath test by means of an intoximeter could prove the results and calibration of the intoximeter by means of oral evidence. In the instant case a police officer gave unchallenged evidence at trial that the intoximeter was working correctly and that its readings were accurate, Greenaway v Director of Public Prosecutions (1994) RTR 17 applied

APPEAL DISMISSED

SI 390/2006 The Local Elections (Principal Areas and Parishes and Communities) (Amendment) (England and Wales) Rules 2006

In force **24 March**. These Rules amend the Local Elections (Principal Areas) Rules 1986 and the Local Elections (Parishes and Communities) Rules 1986 to change the hours of polling at relevant elections from 8 a.m. to 9 p.m. to 7a.m. to 10 p.m.

SI 392/2006 The Private Security Industry Act 2001 (Commencement No 10) Order 2006

In force **20 March**. This Order brings the following sections of the Private Security Industry Act 2001 into force:

- Section 14 (register of approved contractors).
- Section 15 (arrangement for the grant of approvals) to the extent not already in force.
- Section 16 (right to use approved status).
- Section 18 (appeals relating to approvals).

SI 401/2006 The Road Traffic (NHS Charges) Amendment Regulations 2006

In force **1 April**. These Regulations amend the Road Traffic (NHS Charges) Regulations 1999 by altering the amount of the charges that are recoverable in connection with the treatment by the National Health Service of road traffic casualties.

Where a traffic casualty receives NHS treatment, but is not admitted to hospital, in respect of an incident which occurs on or after 1 April 2006, the charge is increased from £483 to £505. The daily charge for NHS in-patient treatment in respect of an incident which occurs on or after 1 April 2006 is increased from £593 to £620. The maximum charge for in-patient treatment in respect of an incident which occurs on or after 1 April 2006 is increased from £35,500 to £37,100.

SI 425/2006 The Private Security Industry Act 2001 (Approved Contractor Scheme) Regulations 2006

In force **20 March**. These Regulations specify a requirement which the Security Industry Authority (SIA) must apply when granting an approval for the Approved Contractor Scheme under Section 15 of the Private Security Industry Act 2001. They require a person granted such an approval to ensure that they and any person working for them do not work with a child or vulnerable adult unless they hold a licence granted by the SIA. They also set out the fees which apply in respect of the application for such an approval and the annual fee which applies for persons who are so approved.

SI 426/2006 The Private Security Industry Act 2001 (Designated Activities) Order 2006

In force **20 March**. This Order designates manned guarding, door supervision, vehicle immobilisation (including the restriction and removal of vehicles) and keyholding activities for the purpose of requiring them to be licensed under the Private Security Industry Act 2001. This makes it a criminal offence to undertake licensable conduct involving those activities without an SIA licence from that date. Door supervision and vehicle immobilisation were designated under a previous designation order which this instrument consolidates

SI 427/2006 The Private Security Industry Act 2001 (Duration of Licence) Order 2006

In force **20 March**. This Order makes provision regarding the length of a licence issued to an individual by the SIA. It provides that the duration of a front line vehicle immobilisation licence is one year and allows for the unexpired period of a current licence to be added to the length of a renewed licence. Provision in respect of a front line vehicle immobilisation licence was made in a previous order which this instrument consolidates.

SI 428/2006 The Private Security Industry Act 2001 (Exemption) (Aviation Security) Regulations 2006

In force **20 March**. These Regulations exempt certain persons from the requirements of the Private Security Industry Act 2001, on the basis that suitable alternative regulation is already in place. The Regulations set out the circumstances in which it would not be an offence under Section 3 of the Act for a person to work without a licence. The circumstances apply to certain persons performing aviation security functions under the Aviation Security Act 1982.

SI 438/2006 The Management of Health and Safety at Work (Amendment) Regulations 2006

In force **6 April**. These Regulations amend Regulation 22 of the Management of Health and Safety at Work Regulations 1999, which concerns civil liability for breach of the duties imposed by those Regulations. These amendments exclude the right of third parties to bring civil actions against employees, extending to them the same rights as exist for employers.

SI 484/2006 The Regulatory Reform (Fire Safety) Subordinate Provisions Order 2006

In force **31 March**. This Order modifies the commencement date of the Regulatory Reform (Fire Safety) Order 2005 from 1 April 2006 to 1 October 2006. (See article on page 17).

SI 512/2006 The Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2006

In force **11 March**. This Order extends, until 10 March 2007, Sections 1 to 9 of the Prevention of Terrorism Act 2005, which provide for the imposition of control orders upon those believed to be involved in terrorist-related activity.

SI 524/2006 The Motor Vehicles (Driving Licences) (Amendment) Regulations 2006

In force **1 April**, except for Regulation 9(3) which will come into force on **1 July 2007**. These Regulations amend the Motor Vehicles (Driving Licences) Regulations 1999.

Regulation 3 is of particular importance, as it changes the minimum period for which a qualified driver supervising a provisional licence holder must hold a licence.

The 1999 Regulations provided that the supervisor must have been qualified to drive a vehicle of the same category as the provisional licence holder for three years. However, due to the Motor Vehicles (Driving Licences) (Amendment) (No2) Regulations 2005, the

categories of vehicle in respect of which a person supervising a provisional licence holder driving (broadly) a coach, bus or lorry may hold a licence were widened. This made it so that in some circumstances the supervising driver did not need to hold such a licence for three years. The 2005 Regulations therefore inadvertently amended the principal 1999 Regulations in respect of other vehicles. Regulation 3 of the 2006 Regulations amends Regulation 17 of the 1999 Regulations to restore the requirement in respect of these other vehicles.

Regulation 3 also amends Regulation 17 of the 1999 Regulations by providing that a person supervising a provisional licence holder driving (broadly) a coach, bus or lorry may hold a licence which does not authorise the driving of a class of vehicle in the same class as the vehicle driven by the provisional driver. The supervisor must, however, have a licence for three years of the type specified but this must also authorise driving of vehicles in the same category as the vehicle driven by the provisional driver, and the supervisor must have held this latter authorisation for one year.

Regulations 4, 5 and 6 amend the 1999 Regulations so as to allow instructors of drivers of motor cars to make block bookings for theory driving tests for their pupils.

Regulation 5 also removes a spent provision concerning tests conducted before 4 January 2000.

Regulation 7 amends the 1999 Regulations by removing an error in the regulation specifying fees for theory tests by substituting 'motor vehicle' for 'motor car'.

Regulations 7 and 8 amend the 1999 Regulations so as to specify that the fee for taking theory and practical or unitary tests is determined according to whether the application for the test is made before 1 April 2006, or on or after that date, rather than according to whether the test is to be conducted before 1 April 2006, or on or after that date.

Regulation 9(2) amends the 1999 Regulations so as to require category C and C+E vehicles (broadly lorries with or without trailers) that are provided for practical driving tests to be fitted with seat belts for use by the examiner and any person authorised by the Secretary of State to be present at the test for the purpose of supervising it or otherwise. It also amends the 1999 Regulations so as to require certain vehicles (broadly cars, lorries and buses with or without trailers) provided for practical driving tests to be fitted with nearside and offside mirrors that give the examiner adequate rearward vision.

Regulation 9(3) amends the 1999 Regulations so as to make the requirement relating to seatbelts introduced by regulation 9(2) apply also in respect of category D and D+E vehicles (broadly buses).

SI 525/2006 The Motor Cars (Driving Instruction) (Amendment) Regulations 2006

In force **1 April**. These Regulations amend the Motor Cars (Driving Instruction) Regulations 2005.

Regulation 3 sets out that the only permitted forms that a candidate for a written examination, driving ability and fitness test, can use as evidence of proof of his or her identity are either:

- A photocard licence and its counterpart.
- A licence in a form other than a photocard and a current passport.

For the instructional ability and fitness test a candidate may also use the above or alternatively provide a licence in a form other than a photocard and a licence issued under Section 129(2) of the Road Traffic Act 1988.

The previous practice of accepting a cheque guarantee or credit card bearing his or her photograph and signature will no longer be allowed.

Regulations 4 and 5 require a candidate for a driving ability and fitness test, the instructional ability and fitness test or the practical part of the continued ability and fitness test to allow a person authorised by the Secretary of State to travel in the motor car provided for the test for the purpose of supervising the test or otherwise.

SI 537/2006 The Highways Act 1980 (Gating Orders) (England) Regulations 2006

In force **1 April**. These Regulations set out the procedures relating to gating orders made under Sections 129A to 129G of the Highways Act 1980 in England.

Regulations 3 and 4 relate to the publicising of proposals to make a gating order.

Regulation 5 obliges councils to consider representations as to the making of a gating order.

Regulation 6 enables councils to hold a public inquiry in relation to a proposed gating order and requires them to do so where the emergency services or a council object to the making of the gating order.

Regulation 7 prevents councils from making a gating order until at least 28 days have been allowed for representations to be made and any public inquiry has been concluded.

Regulation 8 sets out the content etc. of gating orders and requires them to be publicised.

Regulations 9 to 13 set out the procedure to be followed when it is proposed to vary or revoke a gating order.

Regulations 14 to 16 make provision relating to conduct of public inquiries.

Regulation 17 provides that councils must keep a register of all gating orders.

SI 538/2006 The Human Tissue Act 2004 (Powers of Entry and Search: Supply of Information) Regulations 2006

In force **7 April**. These Regulations set out the information to be included in a statement to be issued to the occupier of any premises, when a duly authorised officer executes a warrant under Schedule 5 to the Human Tissue Act 2004. A 'duly authorised person' means a person authorised by the Human Tissue Authority.

SI 540/2006 The NCIS and NCS (Abolition) Order 2006

In force **1 April**. This Order provides that the National Criminal Intelligence Service and its Service Authority and the National Crime Squad and its Service Authority will cease to exist.

SI 560/2006 The Pensions Act 2004 (Commencement No 9) Order 2006

This Order makes further provision for the coming into force of provisions of the Pensions Act 2004. In force for the purpose only of conferring power to make regulations, **9 March** and for all other purposes **6 April**.

SI 594/2006 The Serious Organised Crime and Police Act 2005 (Consequential and Supplementary Amendments to Secondary Legislation) Order 2006

In force **1 April**. This Order removes references in secondary legislation to the National Crime Squad (NCS) and the National Criminal Intelligence Service (NCIS) and their Service Authorities, consequent on their abolition. Where the functions are taken on by the Serious Organised Crime Agency (SOCA), the Order replaces the reference with one to that Agency.

This Order also makes amendments to certain transport provisions to ensure that SOCA is treated in the same manner as the police and other emergency services for the purposes of those provisions.

SI 620/2006 The Police Authorities (Best Value) Performance Indicators (Amendment) Order 2006

In force **1 April**. This Order sets out the 2006/07 best value performance indicators for police authorities by amending the Police Authorities (Best Value) Performance Indicators Order 2005 (SI 2005/470). Data from the indicators will be used to monitor, manage and assess the performance of police forces in England and Wales.

SI 629/2006 The Domestic Violence, Crime and Victims Act 2004 (Victims' Code of Practice) Order 2006

In force **3 April**. This Order brings into operation the Code of Practice for Victims of Crime, issued pursuant to Section 32 of the Domestic Violence, Crime and Victims Act 2004, making provision as to the services to be provided to a victim of criminal conduct by persons which have functions relating to victims of criminal conduct or any aspect of the criminal justice system (see article in October 2005 *Digest*).

SI 630/2006 The Race Relations Code of Practice relating to Employment (Appointed Day) Order 2006

In force **6 April**. This Order brings into force the revised Code of Practice on racial equality in employment. This revised Code replaces the Code of Practice for the elimination of racial discrimination and the promotion of equality of opportunity in employment, which was brought into force on 1 April 1984 by the Race Relations Code of Practice Order 1983.

The Order contains a saving provision, the effect of which is that the previous Code will continue to apply in the case of proceedings relating to any alleged act of unlawful discrimination committed before 6 April 2006.

SI 639/2006 The Civil Partnership Act 2004 (Commencement No 3) Order 2006

In force **6 April**. This Order brings into force Part 7 of Schedule 5 to the Civil Partnership Act 2004 which provides for the court to have regard to pension protection fund compensation when considering the question of financial relief on the dissolution or annulment of a civil partnership or on the legal separation of civil partners.

It also brings into force certain paragraphs of Schedule 7 to the Act which make similar provision where a civil partnership is dissolved or annulled or civil partners have been legally separated overseas and an application for financial relief is made in England and Wales.

SI 740/2006 The Police Pensions (Amendment) Regulations 2006

In force **5 April**. These Regulations amend the Police Pensions Regulations 1987 and the Police Pensions (Additional Voluntary Contributions) Regulations 1991. The amendments ensure parity of treatment between police officers who form civil partnerships and those who marry, and restrict the ability of a police officer who has opted out of the police pension scheme to opt back into it.

In particular, these Regulations make amendments consequent on the coming into force of the Civil Partnership Act 2004 with retrospective effect from 5 December 2005, which is the date on which the substantive provisions of that Act came into effect. Provisions which apply to married couples are amended so as to apply to couples who form a civil partnership.

These Regulations also amend regulation G6 of the Police Pensions Regulations 1987 so as to enable payments to be made by women members to enhance widowers' and surviving civil partners' awards in cases where members with service before 17 May 1990 did not elect to make such payments under that regulation before because they related only to widowers' benefits. Following the amendment such elections may be made within the period of 3 months beginning with the date on which these Regulations come into force if the woman's contributions became payable again on or before that date, or, if they became payable again on a later date, within the period of 3 months of that date.

Paragraph 8 of Schedule 1 to these Regulations imposes a cut-off date of 5 April 2006 for cancelling elections not to pay pension contributions. This is because a new pension police pension scheme is to be introduced from 6 April 2006 and it is intended that any person who has previously made such an election but then wishes to reinstate themselves as a member of the police pension scheme should, from 6 April, join the new scheme.

SI 748/2006 The Police Act 1997 (Criminal Records) (Amendment) Regulations 2006

In force **6 April**. These Regulations make several amendments to the Police Act 1997 (Criminal Records) Regulations 2002. These amendments:

- Increase the fees payable for a criminal record certificate or an enhanced criminal record certificate under Part V of the Police Act 1997 from £29 and £34 respectively to £31 and £36, with an additional fee of £6 in each case if the applicant seeks an urgent preliminary response from the Secretary of State as to his suitability for certain purposes.
- Insert into the 2002 Regulations a list of the purposes in respect of which an application can be made for an enhanced criminal record certificate. These are set out in the Schedule to the Regulations.
- Add the police forces specified in regulation 2 (c) to the list of police forces from which the Secretary of State can obtain information for the purposes of issuing a certificate.
- Remove the reference to the Secretary of State paying a prescribed fee to the police for the information which they provide to him since, by virtue of Section 119(3) of the 1997 Act (as amended by the Serious Organised Crime and Police Act 2005) he will now pay such fee as is appropriate.

SI 750/2006 The Police Act 1997 (Criminal Records) (Registration) Regulations 2006

In force **6 April**. These Regulations are made under Sections 120ZA, 120AA and 125(1) and (5) of the Police Act 1997. The Regulations set out the information to be included in the register maintained by the Secretary of State under Section 120 of the Police Act 1997 as well as other procedures and fees applicable in relation to the register.

The Regulations also revoke the Police Act 1997 (Criminal Records) (Registration) Regulations 2001 and the Police Act 1997 (Criminal Records) (Registration) (Amendment) Regulations 2001.

SI 751/2006 The Criminal Justice Act 2003 (Commencement No 12) Order 2006

In force **6 April**. Under the Order the certain provisions of the Criminal Justice Act 2003 will come into force. These provisions are:

Section 328, relating to criminal record certificates, in so far as they relate to paragraph 5 , to the extent that it is not already in force, and also paragraphs 6, 8, 9 and 12 of Schedule 35 of the Act, relating to criminal record certificates.

Section 332, relating to repeals, in Part 11 of Schedule 37 of the Act.

SI 752/2006 The Representation of the People (England and Wales) (Amendment) Regulations 2006

In force **24 March**. The Regulations make changes to provisions concerning postal and proxy voting, the supply of and access to the electoral register, and the polling hours at elections.

SI 761/2006 The Football Spectators (Prescription) (Amendment) Order 2006

In force **10 April**. This Order amends the definition of a regulated association football match for the purposes of the football banning order legislation under the Football Spectators Act 1989 and the football ticket touting legislation under the Criminal Justice and Public Order Act 1994.

It adds to the list of football matches which are proscribed as 'regulated matches' in England and Wales, any match in which a participating team represents a club from outside England and Wales.

It also makes two additions to regulated football matches outside England and Wales. These are:

- Any match involving a country or territory whose football association is a member of the Federation Internationale de Football Associations (FIFA), where the match is part of a competition or tournament organised by or under the authority of FIFA or the Union des Associations Europeennes de Football (UEFA), and where the competition or tournament is one in which the England or Wales national team is eligible to participate or has participated.

- Any match involving a club whose national football association is a member of FIFA, where the match is part of a competition or tournament organised by or under the authority of FIFA or UEFA, and where the competition or tournament is one in which a club from the Football League, the Football Association Premier League, the Football Conference or the League of Wales is eligible to participate or has participated.

An offence under Section 166 of the Criminal Justice and Public Order Act 1994 of an unauthorised person selling, offering or exposing for sale, a ticket for a regulated match in a public place, or a place to which the public have access, or in the course of a trade or business will therefore be committed in respect of any match as outlined above.

SI 779/2006 The Controls on Dogs (Non-application to Designated Land) Order 2006

In force **6 April**. This Order designates descriptions of land to which Chapter 1 (controls on dogs) of Part 6 (dogs) of the Clean Neighbourhoods and Environment Act 2005 (the Act) does not apply, for the purposes specified in relation to each description.

Two descriptions of land are designated in this Order. They are:

- Any land that is placed at the disposal of the Forestry Commissioners under section 39(1) of the Forestry Act 1967 (power of Minister to acquire and dispose of land), in respect of the making of any dog control order under section 55(1) of the Act.
- Any land over which a road passes, in respect of the making of a dog control order under section 55(1) of the Act which provides for an offence relating to the matter described in section 55(3)(c) (the exclusion of dogs from land).

SI 795/2006 The Clean Neighbourhoods and Environment Act 2005 (Commencement No 1, Transitional and Savings Provisions) (England) Order 2006

This Order brings into force:

- In England the provisions of the Clean Neighbourhoods and Environment Act 2005 set out in Schedule 1 (application of the Noise Act 1996 to licensed premises) on **14 March**.
- In England, Section 2 (Gating orders) of the Clean Neighbourhoods and Environment Act 2005 on **1 April**. This section provides local authorities with a means to erect, or allow the erection of, a physical barrier to restrict public access to a highway over which the public would normally have a right of passage.
- In England the provisions of the Clean Neighbourhoods and Environment Act 2005 set out in Schedule 2 (Commission for Architecture and the Built Environment) on **6 April**.

The Order also contains transitional provisions permitting any designation of a place, for the purpose of controlling the distribution of free literature, under either Section 4 of the London Local Authorities Act 1994 or section 2 of the City of Newcastle upon Tyne Act 2000 to continue to apply (notwithstanding the repeal of those provisions) until immediately before **6 October** or the expiry of the designation, if earlier.

The Order makes provisions under which the Dogs (Fouling of Land) Act 1996 shall continue to apply in respect of land that is "designated land" under that Act immediately before **6 April**.

SI 798/2006 The Dog Control Orders (Procedures) Regulations 2006

In force **6 April**. The Regulations prescribe the procedures to be observed in making a dog control order under Section 55 of the Clean Neighbourhoods and Environment Act 2005, or when amending or revoking such an order. Authorities that can make dog control orders are contained in Section 58 of that Act.

SI 799/2006 The Statutory Sick Pay (General) Amendment Regulations 2006

In force **10 April**. These Regulations make amendments to the Statutory Sick Pay (General) Regulations 1982 by updating the Statutory Sick Pay arrangements for dealing with a person who is not actually incapable of work but needs to be prevented from working because they are a carrier, or having come into contact with an infectious disease. The amendments replace out of date terminology and references. They do not change the existing policy intention.

SI 824/2006 The Private Security Industry Act 2001 (Designated Activities) (Amendment) Order 2006

In force **20 March**. The Order amends the Private Security Industry Act 2001 (Designated Activities) Order 2006 (2006 Order). Article 2(2)(a) of the 2006 Order designated, as of 20 March, the activities of manned guarding to be licensable conduct under the Private Security Industry Act 2001 (2001 Act). Section 3(1) of the 2001 Act makes it an offence to engage in licensable conduct except under and in accordance with a licence granted by the Security Industry Authority.

Article 2 of this Order replaces article 2(2)(a) of the 2006 Order and inserts a new article 2(3) and (4) into the 2006 Order with effect from 20 March. Following amendment by this Order, article 2(2)(a), (3) and (4) of the 2006 Order will designate manned guarding activities for the purposes of Section 3 of the 2001 Act, except in certain specified cases. The exceptions are where the activities are undertaken by certain persons operating in or in relation to a prison or secure training centre pursuant to certain arrangements, by detainee custody officers or prison custody officers performing equivalent functions and by certain persons designated by a chief officer of police.

SI 835/2006 The Anti-Social Behaviour Act 2003 (Commencement No 4) (Amendment) Order 2006

In force **31 March**. The Order amends the Anti-social Behaviour Act 2003 (Commencement No.4) Order 2004 so as to extend the period of eighteen months for which Section 85(5) of that Act has been brought partially into force in relation to juveniles (it is already fully in force in relation to adults), for the purpose of conducting a pilot. The effect is to extend that period for another six months from 1 April 2006 and so to make possible the continued conduct of the pilot for that extended period in relation to applications for anti-social behaviour orders in the following county courts:

Bristol, Central London, Clerkenwell, Dewsbury, Huddersfield, Leicester, Manchester, Oxford, Tameside, Wigan, and Wrexham.