CENTREX
HELPING TO DEVELOP POLICING

Digest

March 2007

Legal Validation and Research

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 is the last publication of the Centrex Digest. As from the 1 April the Legal Validation Department of Centrex will become part of the Legal Services area in the Secretariat of the National Policing Improvement Agency (NPIA). The Digest will continue to be produced and published in the same way under the title of the NPIA Digest.

This last edition of the Centrex Digest takes a broad scan of issues arising in March 2007. A recurring theme this month seems to be further reviews of policing policy and police powers, including the Governments Policing Values Statement; a review and consultation on the Police and Criminal Evidence Act 1984, and changes to the preparation of the police learning and development business plan process for 2007/08. At the time of publication of this Digest the Governments Policy Review of Security, Crime and Justice had also just been published. This will be covered in detail in the next edition of the Digest.

This edition also contains a number of articles relating to equality issues, these include: The Equalities Review Panels final report; Code of Practice on the Gender Equality Duty for England and Wales; CPS Disability Hate Crime Policy; Guidance on the Requirements of the Employment Equality (Age) Regulations 2006; The draft Equality Act (Sexual Orientation) Regulations 2007; and the new criminal offence Section 44 of the Mental Capacity Act 2005.

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

Case law in association with lawtel From Sweet & Maxwell

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Final Report of the Equalities Review

The Equalities Review Panel has published its final report in relation to the Equalities Review, which was established to carry out an investigation into the causes of persistent discrimination and inequality in British society. The report, 'Fairness and Freedom: The Final Report of the Equalities Review' is divided into five chapters.

Chapter 1 looks at what equality is and why it matters.

Chapter 2 puts the Review in context by looking at the 100 year frame: what has happened over the last 60 years and what potential changes are over the horizon in the next 40.

Chapter 3 looks at some of the worst, most persistent inequalities in our society today, in particular in the areas of the early years, education, employment and retirement, health and crime and justice. It stresses that in terms of crime and criminal justice, more work is needed to understand the impact of crime and how this can be minimised, particularly for those crimes that are known to have a long-lasting impact on their victims, such as domestic violence.

In relation to crime and criminal justice issues the report found:

- People from some groups (including children, older people, disabled people, ethnic minorities, and those who have been victimised before) face significantly higher risks of being a victim of crime than others.
- There are three areas of crime which tend to be particularly serious in provoking further disadvantage: violence against women; hate crimes; and the over-representation of ethnic minorities as both victims and offenders.
- The police estimate that most racial and religious hate crime, and as much as 90% of homophobic crime, goes unreported because victims are too frightened or embarrassed to report the crime.
- Ethnic minorities account for a significantly greater proportion of the prison population (23%) than their proportion in the general population (9%). Some part of this growth is due to discriminatory treatment once within the system.
- The Youth Justice Board's research into the treatment of ethnic minority young people in the criminal justice system shows that the chances of a case involving a mixed parentage young male being prosecuted is 2.7 times that of a white young male with similar case characteristics. It also shows that the chances of a young black male's custodial sentence at a Crown Court being 12 months or longer is nearly seven times that of a white male.
- Rates of stop and search are higher for all ethnic minority groups compared to white people.
- 71% of adult sentenced prisoners have two or more mental health problems and for young offenders the figures are higher.
- 31% of people from ethnic minority groups report that they expect to be treated worse than white people by one or more of the five criminal justice agencies.
- Ethnic minority communities continue to have less confidence that the criminal justice system respects the rights of defendants, and victims are less satisfied with the police response. (As a result, a significant proportion of ethnic minority victims actively choose not to contact the police to report a crime).

The report calls on criminal justice agencies to work harder to improve people's confidence in the criminal justice system, particularly people from ethnic minorities.

Chapter 4 sets out the reasons why inequalities still persist in Britain today.

Chapter 5 sets out ten steps to greater equality, which complement and reinforce each other, each contributing to a systematic overall framework for creating a more equal British society. These are:

Defining equality

The report recommends that the Government, the devolved administrations, the Commission for Equality and Human Rights (CEHR) and other public bodies adopt the following vision as a basis for future action on equality:

An equal society protects and promotes equal, real freedom and substantive opportunity to live in the ways people value and would choose, so that everyone can flourish.

An equal society recognises people's different needs, situations and goals, and removes the barriers that limit what people can do and can be.

Building a consensus on equality

The report recommends that the Government and the devolved administrations, supported by the CEHR, build a consensus on the benefits of equality, at every level from national to local.

Measuring progress towards equality

The report recommends that the new, comprehensive framework for measuring progress towards equality set out in Chapter 1 of the report, and which includes an 'Equalities Scorecard', is used by:

- All public bodies, to agree priorities, set targets and evaluate progress towards equality.
- The CEHR, to inform its triennial State of the Nation report.

Transparency about progress

The report states that the public sector as a whole needs to be more transparent: publishing data and analysis, in such a way that they can be readily understood and give clear answers to questions about whether greater equality is being achieved, and how quickly, or slowly.

Targeted action on persistent inequalities

To tackle the persistent inequalities (identified in Chapter 3), which the report states that government departments, the devolved administrations and public service providers must treat as immediate priorities, will, it says, require them to do four things:

- Adopt specific measures, service by service.
- Reconsider how services are designed, organised and accessed, to meet the needs of all sections of society, paying particular attention to the needs of the most disadvantaged groups.
- Empower disadvantaged groups to take action to shape, and to obtain better and fairer, public services.
- Implement balancing measures to accelerate progress where, on current projections, the inequality gap will either never be closed or is closing at far too slow a rate.

The specific measures referred to above are set out at the end of Chapter 3. Those with particular relevance to the criminal justice sector include:

- Doing more research to understand the impact of particular crimes on different groups, and into the impact and harm caused by particular crime types as they relate to gender, ethnicity, age, disability, sexual orientation and transgender, and religion and belief.
- Criminal justice agencies should introduce standard collection mechanisms that allow for comprehensive and consistent monitoring of hate crimes, for different population groups, at every stage of the criminal justice system.
- The Home Office and Department for Constitutional Affairs should undertake a review of criminal justice data gaps as they relate to equality and publish an action plan, with targets for improving data collection and publication in key areas, such as Court Service data.

A simpler legal framework

The report states that equalities legislation needs to be simpler, more coherent and more outcome-focused and calls for the introduction of a single Equality Act covering equality on the basis of sexual orientation, gender, disability, ethnicity, religion and belief, transgender, and age. It also states that a major component of this should be placing a new duty on the public sector to work towards greater equality.

More accountability for delivering equality

The report recommends the establishment of an Equalities Select Committee in the House of Commons, which would review action, across government departments and non-departmental public bodies, to narrow the gap in outcomes between different groups and to tackle the most persistent inequalities.

It calls for equality being made part of each organisation's performance management framework. It states that accountability should rest at the top of all organisations, and leaders should report on and be given a chance to explain their record on delivering equalities. That means, for example, making equalities part of:

- The performance regimes for police authorities, crime and disorder partnerships and the courts.
- Local Area Agreements and Local Service Boards.

Using public procurement and commissioning positively

The Panel believes that public agencies should require suppliers to adopt the same principles under which they themselves are required to operate.

The report also states that the new public sector duty proposed by the Panel should incorporate a specific requirement for public bodies to use procurement as a tool for achieving greater equality.

Enabling and supporting organisations in all sectors

The report recommends that the CEHR convenes a working group of advice-giving organisations, to develop and establish a coherent network of advice sources.

It also recommends to the Discrimination Law Review that it proposes:

- The repeal of existing legislation that limits positive action (to measures such as targeted advertising of posts, special training and work experience opportunities, and so forth).

- To include balancing measures in a new single Equality Act, consistent with the wider possibilities under European Union law (which would include, for example, the ability to take action in recruitment and progression).

The report does not argue the case for positive discrimination.

A more sophisticated enforcement regime

The Panel believes that the CEHR needs to play a more dynamic role in enforcement than has been possible for the equality commissions in the past, including having an overall responsibility for monitoring compliance with the new public sector duty. It sees the CEHR as overseeing enforcement, rather than undertaking all enforcement activity itself, which it believes should be the responsibility of the respective public sector inspectorates.

The report can be found in full at
http://www.theequalitiesreview.org.uk/publications.aspx

Gender Equality Duty Code of Practice England and Wales

The final text of the Code of Practice on the Gender Equality Duty for England and Wales has been laid before Parliament and will come into force by virtue of SI 741/2007 on 6 April 2007 (see SI section).

The Code is the statutory guidance to public authorities on how to meet the legal requirements of the gender equality duty. It must be used by public authorities to make sure that they are complying with the law.

The Code is admissible in evidence in any legal action under the Sex Discrimination Act 1975 or the Equal Pay Act 1970, in criminal or civil proceedings before any court or tribunal.

A court or tribunal must take into account any part of the Code that appears to them to be relevant to any question arising in the proceedings. This includes the question of whether public authorities have breached the law. A tribunal or court may draw an adverse inference that a breach of the law has occurred if a public authority has failed to follow relevant provisions in the Code. If a public authority does not follow the Code's provisions, it will need to show how it has otherwise met its legal obligations under the general duty and any specific duties.

The Code will remain in force after the Equal Opportunities Commission has been dissolved and the Commission for Equality and Human Rights (CEHR) takes over responsibility for promoting and enforcing sex equality legislation, in October 2007.

The public authorities who must meet the duties are set out in Appendix D of the Code of Practice. The Government can update this list by issuing new orders. In the criminal justice sector, this currently includes:

- The British Transport Police Authority.
- The Central Police Training and Development Authority (Centrex).
- A chief constable of a police force maintained under Section 2 of the Police Act 1996 for a police area in England.
- The Commissioner of Police for the City of London.

- The Common Council of the City of London, in its capacity as a local authority, a police authority or a port health authority.
- The Commissioner of Police for the Metropolis.
- The Independent Police Complaints Commission.
- A joint authority in England established under Part 4 of the Local Government Act 1985 (police, fire services, civil defence and transport).
- The Metropolitan Police Authority established under Section 5B of the Police Act 1996.
- A police authority established in England under Section 3 of the Police Act 1996.
- The Serious Organised Crime Agency.

There have been significant changes made to the draft duties, the most significant of which is in the design of the pay duty. This now requires public authorities to address the three causes of the pay gaps, namely: pay discrimination, caring responsibilities and occupational segregation.

The final text of the Code of Practice on the Gender Equality Duty for England and Wales can be found at **http://www.eoc.org.uk/Default.aspx?page=19689**

CPS Disability Hate Crime Policy

The Crown Prosecution Service has published a public policy statement to explain how it will prosecute cases of disability hate crime. The policy has been made in consultation with a number of disability organisations and is available in large print, in Braille and on audiotape.

The policy statement is accompanied by a legal guidance document for prosecutors which sets out in more detail some of the key areas of the policy statement, to assist prosecutors when they deal with this type of crime.

Both documents can be found in full at
http://www.cps.gov.uk/publications/prosecution/index.html

Tackling Crime Against Disabled People

The Disability Rights Commission (DRC) has published the results of a poll conducted on its behalf by Ipsos MORI among adults in England and Wales with a long-standing health condition or disability.

Findings from the survey show:

- Safety is an issue for a third of disabled adults, with 32% stating that they did not feel safe from harm when out and about in their local area. This finding rose to almost half of all adults (44%) who have a mental health problem.
- 51% found it very or fairly easy to make use of police services in their area; 24% said it was fairly or very difficult.

Further information on the poll, can be obtained from Anna Carluccio or Hannah Jackson at Ipsos MORI on 020 7347 3000.

Online Course to Help Employers Avoid Discrimination in the Workplace on the Grounds of Religion or Belief

The Advisory, Conciliation and Arbitration Service (Acas) has launched a new free online course to help employers to avoid discrimination in the workplace on the grounds of religion or belief. The new course:

- Defines religion or belief.
- Explains the legal aspects of the religion or belief regulations.
- Explains how the regulations affect recruitment and existing employees.
- Looks at the day-to-day impact the regulations might have on businesses.

New users are required to register on the Acas site at **http://www.acas.org.uk/elearning/index.asp?err=true** before being able to access the course.

Update on the Review of the National Occupational Standards for Policing and Law Enforcement

Over the last 12 months Skills for Justice, we have been reviewing the National Occupational Standards (NOS) for Policing and Law Enforcement to ensure that they are up to date and keeping pace with changes in policy and practice.

The work has focused on particular aspects of the NOS. The latest position is as follows:

- Investigation/Interviewing - further revisions are still to be made and will be progressed in 2007-08. Once a new unit is developed for 'investigating suspicions of child abuse' it will be submitted at the end of March 2007.
- Initial Police Learning and Development Programme (IPLDP) - revised NOS units have been finalised ready for submission at the end of March 2007.
- Custody - further revisions are still to be made. This will be progressed in 2007-08.
- Intelligence - three revised NOS units have been finalised for submission. The Covert Human Intelligence Source (CHIS) units are to be progressed in 2007-08.
- Promotion Review /Management - revised NOS units have been finalised and will be ready for submission at the end of March 2007.
- Surveillance - further revisions are to be made and these will be taken forward in 2007-08.

Final versions of the first set of completed NOS units will be submitted for approval by the end of March 2007. It is expected that these units will have been through the approval process, re-coded and be available for use by summer 2007.

Due to the potential impact of revisions to the existing NVQs for the sector, Skills for Justice intend to consult further on the qualifications with key stakeholders later in the year.

Update on the Integrated Competency Framework

Skills for Justice are awaiting confirmation of project funding for 2007-08 to update the Integrated Competency Framework (ICF).

Work on the ICF had been planned for 2007-08 to keep it up to date with changes in policy, practice and National Occupational Standards and to undertake a major upgrade of the whole system (introducing new functionality and basing the system on NOS rather than activities).

As from the 1 April 2007 responsibility for the funding stream will transfer from the Home Office to the National Policing Improvement Agency (NPIA).

Guidance on the Requirements of the Employment Equality (Age) Regulations 2006

The Chartered Institute of Personnel and Development (CIPD) and the Trades Union Congress (TUC) have produced a guide, 'Managing age: a guide to good employment practice', to help employers and trade unions understand how to develop good practice to meet the requirements of the Employment Equality (Age) Regulations 2006, which were introduced in October 2006.

It looks at how the new regulations apply in the areas of:

- Retirement.
- Recruitment, selection and promotion.
- Pay, benefits and pensions.
- Appraisal, performance management and training.
- Health and safety.
- Redundancy and termination.
- Harassment and victimisation.

It also includes:

- Guidance on producing an age equality policy.
- A summary of the law.
- The Acas fair retirement flowchart.
- Sources of further information.

The guide is intended to support and complement other documents published by Acas and the Department of Trade and Industry. It can be found at **http://www.tuc.org.uk/extras/managingage.pdf and http://www.cipd.co.uk/subjects/dvsequl/_mngagegd.htm?IsSrchRes=1**

The Equality Act (Sexual Orientation) Regulations 2007

The Equality Act (Sexual Orientation) Regulations 2007 have been published in draft form. They will now be subject to the affirmative resolution procedure in Parliament, going before both Houses for debate and, subject to Parliamentary approval, it is expected that they will be brought into force by way of a statutory instrument on 30 April 2007. It is also expected that Part 2 of the Equality Act 2006, which covers discrimination on grounds of religion or belief, will also be brought into force on that date.

The Regulations, which are made under Section 81 of the Equality Act 2006, make it unlawful to discriminate on the grounds of sexual orientation in the provision of goods, facilities and services, education, disposal and management of premises and exercise of public functions.

Sexual orientation is defined in Section 35 of the Equality Act 2006 as meaning an individual's sexual orientation towards persons of the same sex as himself or herself, persons of the opposite sex, or both.

Discrimination on grounds of sexual orientation is defined in Regulation 3.

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

Indirect discrimination occurs where a provision, criterion or practice, which is applied generally, puts a person of a particular sexual orientation at a disadvantage and cannot be shown to be a proportionate means of achieving a legitimate aim (Regulation 3(3)).

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

Victimisation, defined in Regulation 3(5), occurs where a person receives less favourable treatment than another by reason of the fact that he has brought (or given evidence in or provided information in connection with) proceedings, made an allegation or otherwise done anything under or by reference to the Regulations, or because he intends to do so.

Regulations 4 to 18 prohibit discrimination in the provision of goods, facilities, services, disposal and management of premises, education and the exercise of public functions.

Regulation 4 provides that it is unlawful to discriminate on grounds of sexual orientation against a person who seeks to obtain or use goods, facilities or services. It sets out a number of examples of the sorts of facilities and services that might be covered by the Regulations. These are:

- Access to and use of a place which the public are permitted to enter.
- Accommodation in a hotel, boarding house or similar establishment.
- Facilities by way of banking or insurance or for grants, loans, credit or finance.
- Facilities for entertainment, recreation or refreshment.
- Facilities for transport or travel.
- The services of a profession or trade.

Specific examples of unlawful behaviour with respect to the above would be where someone:

- Refuses a same sex couple a double room in a hotel because this might cause offence to other customers.
- Refuses to provide a gift registration service for couples planning a civil partnership where such a service was offered to couples planning a wedding.
- Refuses admission to a bar because someone was not gay.
- Refuses a child's admission to a school on the grounds of either their or their parents' sexual orientation.
- Refuses membership of a sports club to an individual on the grounds of their sexual orientation.

Regulation 5 deals with the disposal and management of premises, and Regulation 6 provides for the various exceptions that apply to Regulations 4 and 5.

The Regulations also extend the protections to those accessing education and educational facilities (Regulation 7) and to those wishing to benefit from functions performed by public authorities (Regulation 8), subject to certain exceptions in Schedule 1.

Regulation 9 makes discriminatory practices unlawful, and regulation 10 makes discriminatory advertisements unlawful.

It is unlawful to instruct or cause another person to discriminate (Regulation 11).

Regulation 12 lists the statutory requirements which these Regulations shall not render unlawful.

It will not be unlawful for a person to do anything by way of meeting the needs for education, training or welfare of persons on the grounds of their sexual orientation, or providing ancillary benefits related to these aims (Regulation 13).

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

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

The Regulations can be found in full at
http://www.opsi.gov.uk/si/si2007/draft/ukdsi_9780110759203_en.pdf

HOC 7/2007
Drugs Act 2005 (Commencement No 5) Order 2007

This Home Office Circular draws attention to the remaining provisions in Part 3 of the Drugs Act 2005 (assessment of misuse of drugs), which relate to the follow-up assessment. The provisions that come into force on 1 April 2007 in England and Wales by virtue of The Drugs Act 2005 (Commencement No. 5) Order 2007 (S.I. 562/2007) are:

- Section 10 (Follow-up assessment).
- Section 13 (Arrangements for follow-up assessment).
- Section 14 (Attendance at follow-up assessment).
- Sections 11 and 15 -17, to the extent not already in force, in relation to the follow-up assessment.

The follow-up assessment provisions will only be implemented in the same selected police stations where the provisions for testing on arrest and the required initial assessment are in operation.

The initial assessment provisions are reflected in the current edition of the Police and Criminal Evidence Act 1984 (PACE) Codes of Practice in section 17 of Code C (testing persons for the presence of specified Class A drugs). Pending formal revision of the Codes, changes in respect of the follow-up assessment provisions will be reflected in the register of changes for the PACE Codes, managed by the Home Office Police Leadership and Powers Unit.

Currently, adults tested for specified Class A drugs on arrest or on charge under Section 63B PACE who test positive may be required by a police officer to attend an initial assessment with a suitably qualified person (as defined in section 19 of the Drugs Act 2005) and to remain for its duration. The purpose is to establish whether the individual has a dependency on, or propensity to misuse, any specified Class A drug and if it is thought so, whether they might benefit from further assessment, or from assistance or treatment or both, and, where appropriate, to provide advice and an explanation of the types of assistance/treatment available.

Section 10 provides that where a police officer requires a person to attend an initial assessment and remain for its duration (under Section 9), the officer must, at the same time, also require that person to attend a follow-up assessment and remain for its duration. The officer must also inform the person that this requirement will cease to have effect if he is informed at the initial assessment that he is no longer required to attend the follow-up assessment. The purpose of the follow-up assessment is to fulfil any purposes not fulfilled by the initial assessment and, if appropriate, to draw up a care-plan. This will set out the nature of the assistance or treatment (or both) which may be the most appropriate for that person, based on the assessment. It also provides a further statutory opportunity for drug workers to engage with drug misusing offenders to discuss their drug misuse, to provide advice relating to that misuse.

Section 11 imposes a number of obligations on police officers where they require a person to attend and remain for the duration of the initial assessment and follow-up assessment. In the case of the follow-up assessment, the police officer must also warn the person that he may be liable to prosecution if he fails without good cause to attend the follow-up assessment and remain for its duration, if so required. Confirmation of the follow-up

assessment requirement (with information about the initial assessment appointment) and a repetition of the warnings about prosecution must be given in writing before the person is released from police detention. A record must also be made in the person's custody record of the information given.

If the arrangements for the initial assessment are varied by the police or the assessor, the individual must be advised and warned in writing again of the consequences of failure to attend/remain.

Section 13 provides an obligation on the initial assessor, if he thinks that a follow-up assessment is not appropriate, to inform the person concerned that he is no longer required to attend the assessment. The requirement then ceases to have effect. Otherwise, the initial assessor must inform the person of the time and place for the follow-up assessment and warn him that he may be liable to prosecution if he fails without good cause to attend or remain for that assessment. The arrangements and warning must also be confirmed in writing before the end of the initial assessment. Written notification and repetition of the warning must also be given by the initial assessor (or another suitably qualified person), if the arrangements are changed.

Section 14 places a duty on the person conducting the follow-up assessment to inform the police if the person concerned fails to attend at the specified time and place or attends but fails to remain for the duration of the assessment.

A person who fails to attend and remain for the duration of the follow-up assessment, without good cause, commits an offence for which they are liable on summary conviction to a sentence of imprisonment (for a term not exceeding three months) or to a fine not exceeding level 4 on the standard scale, or to both.

The current term of imprisonment applies in relation to offences committed before the commencement of provisions in the Criminal Justice Act 2003 relating to the alteration of penalties for summary offences. When these come into force, the sentence will become 'a term of imprisonment not exceeding 51 weeks', in line with the new sentencing provisions.

Under Section 15, information obtained as a result of the initial assessment may not be disclosed without the written consent of the person concerned, except where it is disclosed to those involved in the conduct of the initial assessment and those who are or may be involved in the conduct of any follow-up assessment.

Information obtained as a result of the follow-up assessment may only be disclosed without the written consent of the person concerned to those involved in the conduct of that assessment.

Section 16 provides that the requirement to attend an initial or a follow-up assessment ceases if, before the assessment takes place, a further analysis of the sample taken reveals that it was negative. In addition, in those circumstances, where a person has failed to attend or remain for the duration of the assessment no proceedings may be brought in respect of that failure and any ongoing proceedings will be discontinued.

Under Section 17, as in the case of the initial assessment, the requirement to attend a follow-up assessment and remain for its duration ceases if the person is charged with the related offence and the court grants conditional bail under the 'drug users: restriction on bail' provisions in the Bail Act 1976 (RoB) to undergo a relevant assessment and participate in any relevant follow-up.

Section 17(2) and (3) of the Drugs Act 2005 specifically provides for a relevant assessment under the RoB provisions in the Bail Act 1976 to be treated as having been carried out for the purposes of the RoB provisions, where a person attends and remains for the duration of the initial assessment and the assessor is satisfied that the initial assessment fulfilled the purposes of the RoB relevant assessment.

Section 17(4) provides for the assessor who conducted the initial assessment to disclose information relating to the initial assessment, to enable the court to determine whether the person attended and remained and whether the assessment meets the requirements of RoB. However, Section 17(4) does not make specific statutory provision for the assessor who conducted the follow-up assessment to disclose information relating to that assessment. Any such information may only be disclosed with the written consent of the individual.

Nevertheless, where a court is satisfied from the information before it that any assessment which fulfils the purposes of the RoB relevant assessment has been carried out, the court, if it grants bail, must, under Section 3(6D) of the Bail Act 1976, impose as a condition of bail that the person participate in the relevant follow-up proposed. Further, if the person refuses to participate in a follow-up assessment (and the other conditions in paragraph 6B of Schedule 1 to the Bail Act are satisfied), the court may not grant bail unless it is satisfied that there is no significant risk of his committing an offence while on bail.

The previously published Home Office, 'Guidance for the implementation of the Drug Interventions Programme provisions of the Drugs Act 2005' has been revised and updated and will come into effect on 2 April 2007. It provides operational process guidance on the implementation of testing on arrest, required assessment and RoB provisions for use by all areas implementing testing on arrest and required assessment (initial and follow-up). The guidance is available from **http://www.drugs.gov.uk/drug-interventions-programme/guidance/tough-choices**

A copy of the Circular can be found at **http://www.circulars.homeoffice.gov.uk**

Section 44 of the Mental Capacity Act 2005

Section 44 of the Mental Capacity Act 2005 is being brought into force on 1 April 2007 by way of The Mental Capacity Act 2005 (Commencement No. 1)(England and Wales) Order 2007 (see SI 563/2007).

Section 44 creates a new criminal offence of ill treatment or wilful neglect of a person lacking capacity or who is reasonably believed to lack, capacity by:

- Anyone responsible for that person's care.
- Donees of a lasting power of attorney, or an enduring power of attorney (within the meaning of Schedule 4).
- Deputies appointed by the court

The penalty for a person found guilty of this offence is:

- On summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both.
- On conviction on indictment, imprisonment for a term not exceeding 5 years or a fine or both.

Bilingual Juries (Wales) Bill

This is a Private Member's Bill, which was introduced to the Commons by the Plaid Cymru MP Hywel Williams on 16 January 2007. Its main purpose is to amend Section 10 of the Juries Act 1974 to provide that, in certain cases, all members of a jury must be bilingual in Welsh and English.

In explaining the reason for introducing the Bill, Hywel Williams said that in Wales, at present, a wide variety of cases, up to and including cases of murder, are heard in Welsh. Jurors are required by Section 10 of the Juries Act 1974 to understand only English, not any other language (and the Act makes provision for their discharge if they do not). Sometimes juries in Wales are wholly bilingual, sometimes not; if they are not, simultaneous translation is widely used.

Mr Williams contended that, even though the standard of English-Welsh simultaneous translation is high, hearing evidence in translation is not the same as hearing and understanding that evidence, with all its nuances, in the original language. He also pointed out that juries are often told to judge a witness not just by what they say, but by how they say it.

The Bill, which is to be read a second time on Friday 18 May, can be found in full at **http://www.publications.parliament.uk/pa/pabills/200607/bilingual_juries_wales.htm**

Polling Stations (Regulation) Bill

This Bill was introduced to the Commons by Labour MP Roger Godsiff on 13 December 2006. Its main purpose is to make it an offence to campaign in 'prescribed areas' around polling stations on the day of certain elections.

Clause 1 of the Bill creates the offence of campaigning within a prescribed area. It states that it shall be an offence to engage in campaigning activity within a prescribed area around a polling station on the day of a relevant election at any time during the period in which the polling station is open.

A person shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

'Campaigning activity' means:

- The promotion or distribution of any literature associated with election candidates, political parties or associated organisations.
- The use of audio equipment, whether stationary or mobile, for the propagation of messages relating to an election.
- Oral communication for the purpose of eliciting voting intentions or influencing the casting of a vote.

The definition of a 'prescribed area' is a circle with a radius of 250 metres from the main entrance of a polling station.

A 'relevant election' is defined as:

- A parliamentary election.
- A European parliamentary election.

- An election to the National Assembly for Wales.
- An election to the Northern Ireland Assembly.
- A local government election in England or Northern Ireland.
- A mayoral election.
- A referendum.

At present the law is clear that campaigning cannot happen within a polling station or polling place on polling day, but is less clear on how this extends to the surrounding area. If this Bill proceeds through the parliamentary process to become an Act, it will give some clarity to this issue and could also be used to deal with 'tellers' who overstep their duties. 'Tellers' are usually volunteers who stand outside polling places and record the electoral numbers of electors who have voted. They can then identify likely supporters who have not voted and urge them to vote before the close of poll.

The Bill, which has been given a provisional date of 29 June 2007 for its Second Reading, can be found in full at
http://www.publications.parliament.uk/pa/pabills/200607/polling_stations_regulation.htm

The Trade Union Rights and Freedoms Bill

The Trade Union Rights and Freedoms Bill was introduced by Labour MP John McDonnell into the House of Commons on 13 December 2006. It concerns the law relating to the rights and freedoms of workers and of trade unions. It makes provision for the regulation of relations between employers and workers and for the protection of employment in lawful industrial action, including remedies in trade disputes. If enacted, it is proposed that the Act will come into force one month after Royal Assent.

The provisions of the Bill include:

Protection of those participating in lawful industrial action or a lawful strike

Clause 1 of the Bill makes provision to protect those participating in lawful industrial action or a lawful strike. It does this by inserting new sections into the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"). These are as follows:

Section 238A - Effect of industrial action on employment contract

This section provides that a termination of a contract of employment by an employer shall be unlawful and non effective if the reason for its termination was that the worker has participated, is participating, or proposes to participate in lawful industrial action or a lawful strike. The burden is on the employer to prove that this was not the case. If such a termination has occurred, a court (or employment tribunal) can declare the continuation of the contract and can award damages for losses suffered by the worker as a result. In addition, where a worker participates (or proposes to participate) in lawful industrial action or a lawful strike, any act or failure to act as a consequence of such participation cannot be actionable on grounds of breach of contract, breach of duty or obligation by the worker, or grounds that it causes another person to breach a duty or obligation.

Section 238AA - Unfair dismissal and the right not to suffer detriment

Employees who have been dismissed because they have participated, are participating or propose to participate in lawful industrial action or a lawful strike, shall be regarded as

having been unfairly dismissed for the purposes of Part X of the Employment Rights Act 1996. In relation to workers, they have the right not to be subjected to any detriment by an act or failure to act by an employer based on their participation. However, in the case of workers, employers are still allowed to:

- Withhold pay and benefits.
- Enforce restrictions imposed by the worker's contract concerning trade secrets and confidential information.

Section 238AB - Complaints to employment tribunals etc

This section will allow workers or former workers to bring a complaint to an employment tribunal, where they have been subjected to a detriment by their employer in contravention of section 238AA. The complaint must be brought within three months from the date of the offending act or failure to act, although if this is not possible, within such further period as the employment tribunal considers is just and equitable. The burden is placed on the employer to show the reason for the act or failure to act. If the tribunal finds that the worker's complaint is well-founded, it can make a declaration as to the rights of the worker in relation to the issues raised in the complaint and it may order the employer to pay compensation.

In relation to employees, the Bill proposes to insert a new provision into the Employment Rights Act 1996 which provides that, where an employment tribunal finds that an employee has been unfairly dismissed under section 238AA of the Trade Union and Labour Relations (Consolidation) Act 1992, and the employee wishes to be reinstated, the tribunal can order reinstatement.

Agency labour replacing those taking lawful industrial action

Clause 2 of the Bill inserts a new Regulation 7A into the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (SI 2003/3319). This new Regulation restricts people from hiring others to perform the duties of those workers who are taking part in lawful industrial action where notice of the action has been given by a trade union (it therefore does not apply to unofficial strikes).

Industrial action remedies

Clause 3 makes amendments to the Trade Union and Labour Relations (Consolidation) Act 1992 in relation to remedies for industrial actions.

Employer's duties in relation to industrial action ballots

Clause 4 outlines employer's duties in relation to industrial action ballots. Under Section 226 of the Trade Union and Labour Relations (Consolidation) Act 1992, there is a requirement to hold an industrial action ballot before any action by a trade union. The Bill inserts a new Section 226D into the 1992 Act, outlining employer's duties in relation to such a ballot. This places a duty on employers to co-operate generally with the trade union and the person appointed to conduct the ballot. This will include a duty to supply, in good time, any information reasonably requested by the trade union for the purposes of establishing the names, addresses, categories and workplaces of those whom it wishes to ballot.

Scope of the right to strike and definition of a trade dispute

Clause 5 extends the definition of a trade dispute in Section 244 of the 1992 Act to include a dispute between workers and their associated employers. A 'worker' for these purposes includes a worker employed, formerly employed, or likely to be employed by any employer or employers.

A 'dispute' would include the situation where a demand is made of an employer that the employer does something, or ceases to do something, which reates to one of the matters in Section 244 (1) (a) - (g).

The Bill also proposes that Section 127 of the Criminal Justice and Public Order Act 1994 (inducements to withold services or to indiscipline) is repealed.

Industrial action ballots

Clause 6 makes minor amendments to the wording of some of the provisions in the Trade Union and Labour Relations (Consolidation) Act 1992 relating to industrial action ballots.

Requirements as to notice

Clause 7 of the Bill makes the following provisions in relation to requirements for notice:

- Section 226A of the Trade Union and Labour Relations (Consolidation) Act 1992 (notice of ballot and sample voting papers for employers) is repealed.
- The definition of a 'relevant notice' in Section 234A(3) of the 1992 Act (notice to employers of industrial action) is amended.

A full version of the Bill can be found at
http://www.publications.parliament.uk/pa/cm200607/cmbills/032/2007032.pdf

Pedlars (Street Trading Regulation) Bill

This Private Member's Bill was introduced by Labour MP Dr Brian Iddon into the House of Commons on 21 February 2007. Its aim is to ensure that illegal pedlars do not affect the ability of genuine market traders to sell their goods. The main thrust of the Bill is to enable local authorities and the police to take action against unlawful pedlars and grant the power of seizure of an unlawful trader's goods. If passed, it is proposed that the Bill's provisions, which extend to England and Wales only, will come into force at the end of the period of two months beginning with the day on which it is passed.

The provisions in the Bill will apply where district councils have resolved that Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (street trading) applies to their district. The resolution will fix an appointed day from which the provisions will come into force. The council must publish details of the resolution in at least two local newspapers. Clause 3 of the Bill ensures that Schedule 4 of the 1982 Act covers street trading by a person acting as a pedlar.

The provisions of the Bill include:

Street trading: seizure

Clause 4 of the Bill states that where an authorised officer (an officer of the district council authorised by the council in writing to act for the purposes of the Bill) or a constable has reasonable grounds for suspecting that a person has committed a relevant offence they may seize:

- Any article in relation to which he suspects an offence has been committed and which is being offered or exposed for sale or displayed.
- Any other article which is in the possession of or under the control of any person who is offering or exposing for sale or displaying an article, and which is of a similar nature to the article being offered or exposed for sale or displayed, as the case may be.

- Any receptacle or equipment being used by that person ('equipment' means equipment used for the purposes of street trading and 'receptacle' includes any vehicle, trailer or barrow; and any basket, bag, box, vessel, stall, stand, easel, board, tray or other thing, which is used (whether or not constructed or adapted for such use) as a container for or for the display of any article).

For the purposes of Clause 4, it is a relevant offence for a person to:

- Engage in street trading in a prohibited street.
- Engage in street trading in a licence street or a consent street without authorisation.
- Contravene any of the principal terms of a street trading licence.
- Trade in a consent street from a stationary van, cart, barrow or other vehicle or from a portable stall without first having been granted permission.
- Contravene a condition in relation to their permission to trade.
- Make a false statement which he knows to be false in any material respect, or which he does not believe to be true, in connection with an application for a street trading licence or for a street trading consent.
- Aid, abet, counsel or procure the commission of any of the above offences.

However, seizure may only take place where the article, receptacle or equipment may be required to be used in evidence in any proceedings in respect of the suspected offence or where it may be forfeited. Only non-perishable articles may be seized.

Where an authorised officer is exercising these powers, he shall produce his authority if required to do so by the person having control or care over the item seized.

After seizing the item, the officer/constable must give to the person from whom it was seized a certificate stating:

- The name and address of the person whom the authorised officer/constable suspects has committed the suspected offence.
- If different from above, the name and address of the owner of the article, receptacle or equipment.
- The type of article, receptacle or equipment seized.
- Information about forfeiture of seized items.

However, this requirement does not apply where the authorised officer or constable is unable, after reasonable inquiry, to ascertain the name and address of the suspect or the owner. Nor does it apply where they suspect a false name and address has been supplied.

Where a certificate is issued, it must be done within 14 days from the date of the seizure.

Return, disposal and forfeiture of seized items

Following the conclusion of any proceedings in connection with the seizure, Clause 5(2) states that the article, receptacle or equipment must be returned to the person from whom it was seized, unless the court orders it to be forfeited (see below) or where the award of costs to the council by the court have not been paid within 28 days of making the order. In the latter situation, the article, receptacle or equipment may be disposed of in any way the council thinks fit and any sum obtained by the council in excess of the costs awarded by the court shall be paid to the person to whom the item belongs.

In the situation where 56 days have passed since the seizure and either no proceedings have been brought or proceedings have been discontinued; or where proceedings are discontinued after the 56 days, the article, receptacle or equipment shall be returned to the person from whom it was seized, so long as it has been possible to identify that person and their address. If it has not been possible to do this after diligent enquiry, the council or chief constable (depending on who seized the item) may apply to a magistrates' court for an order as to the manner in which it should be dealt with.

Alternatively, where a person is convicted of a relevant offence, the court may order the forfeiture of any article, receptacle or equipment which is produced to the court and which the court is satisfied is related to the offence (Clause 6). When deciding whether to make such an order, the court will have regard to both:

- The value of the article, receptacle or equipment; and
- The likely financial and other effects the order would have on the offender or the items owner.

However, the court shall not order the forfeiture if a person claiming to be the owner of the article, receptacle or equipment, or has an interest in it, applies to be heard by the court (unless he/she already has been given an opportunity to show why the order should not be made).

Compensation where seizure is unlawful

The Bill makes provision for compensation on those occasions where the court is satisfied that the seizure was unlawful. The right to recover such compensation is granted by virtue of Clause 7(2) to any person who has, or at the time of the seizure had, a legal interest in the article, receptacle or equipment seized.

The compensation can be obtained from either the council or the chief constable (depending on who carried out the seizure) for any loss suffered as a result of such seizure by way of a civil action in the county court.

However, before compensation can be recovered, one of the following must apply:

- More than six months must have passed since the date of the seizure and no information must have been laid against any person for a relevant offence in respect of the seizure.
- Proceedings for a relevant offence must have been brought and the person charged been acquitted (whether or not on appeal) and the time for appealing against or challenging the acquittal (where applicable) has expired without an appeal or challenge being brought.
- Proceedings for a relevant offence must have been brought and the proceedings (including any appeal) been withdrawn by, or have failed for want of prosecution by, the person by whom the proceedings were brought.

A full version of the Bill can be found at
http://www.publications.parliament.uk/pa/cm200607/cmbills/064/2007064.pdf

Safeguarding Runaway and Missing Children Bill

This Private Member's Bill has been introduced by Labour MP Helen Southworth. The provisions in the Bill would require the Secretary of State to establish a national strategy to safeguard runaway and missing children; to make provision for the collection and reporting of information about runaway and missing children and for related co-ordination between local authorities and other bodies.

On presenting the Bill, Helen Southworth stated that during research she had discovered that the Home Office and the Department for Education and Skills did not know how many children have gone missing over the past 12 months. She also discovered that a large number of local authority children's services, the bodies responsible under "Every Child Matters" for safeguarding young runaways, did not know how many children in their own area were reported missing to the police in 2005.

Research by the Children's Society indicates that around 100,000 children go missing each year.

The Bill can be found in full at **http://www.publications.parliament.uk/pa/pabills/200607/safeguarding_runaway_and_missing_children.htm**

Consultation on a Review of the Police and Criminal Evidence Act 1984

The Home Office is reviewing the Police and Criminal Evidence Act 1984 (PACE) and, as part of this review, has launched a public consultation seeking opinions about how PACE could be changed, amended or improved.

To assist, the consultation paper includes a response template. Respondents are asked to set out:

- Title of proposal/issue raised.
- Aim.
- Benefits of change.
- Proposed outcome.
- Consequential impact/costs/savings.

In considering whether or not a proposed change will have beneficial impact, respondents are asked to consider the whether one or more of following criteria are met:

Improving police efficiency and effectiveness through:

- Promoting strategic change for both police and the way in which the police interact with the criminal justice system.
- Reducing bureaucracy.
- Removing duplication and replication.
- Identifying workforce modernisation opportunities.
- Freeing up officers' time for operational activity on the street.
- Improving communication and raising community confidence.

Maintaining safeguards and enhancing accountability by:

- Raising public understanding and awareness.
- Ensuring powers are proportionate.
- Encompassing technology to improve recording and monitoring processes.
- Raising levels of reporting and accountability.
- Protecting the balance between the rights of the individual and the needs of the criminal justice system.

Increasing usability and accessibility by:

- Simplifying legislation and guidance.
- Providing consistency of approach on procedures and processes.
- Customising publications/materials for target groups.
- Engaging and empowering stakeholders, practitioners and training providers at development and implementation stage

The consultation will run until 31 May 2007. After that the responses will be considered as part of the Government's further discussions on the issue. New PACE codes will be issued in 2008. The consultation paper can be found at **http://www.homeoffice.gov.uk/about-us/haveyoursay/current-consultations/**

Government Anti-Money Laundering and Counter-Terrorist Finance Strategy

The Government has published a document which sets out its strategy to combat money laundering and the financing of terrorism. The document, 'The Financial Challenge to Crime and Terrorism', has been drawn up with law enforcement agencies, policy departments and the private sector, and sets out key priorities for the future, as well as a series of new measures designed to increase the use the financial system as a weapon against international crime and terrorism.

The Government's first strategic priority is to build and share knowledge of the problem.

To address this the strategy tasks the Serious Organised Crime Agency to:

- Undertake further data-mining of the existing stock of Suspicious Activity Reports (SARs).
- Examine closely trends in prosecutions for Proceeds of Crime Act (POCA) money laundering offences and task its own teams and law enforcement partners to identify criminals' own perceptions of risk, and to what extent it is increasing.
- Fulfil a National Intelligence Requirement to improve understanding of the cost of money laundering services.

In parallel, the Home Office will continue to work to improve understanding of what proportion of total money laundering is being picked up through the SAR regime.

The Government's second strategic priority is to make the best possible use of the financial tools, including those to recover criminal assets. Measures to address this include:

- Bringing forward proposals for a special advocate procedure to ensure that appeals and reviews in asset freezing cases where closed source evidence has been used can be heard on a fair and consistent basis.
- The Treasury setting up a dedicated Asset Freezing Unit, which will work closely with law enforcement and security agencies.
- Steps to ensure that Companies House data is fully utilised by law enforcement agencies, including how Companies House can make use of the SAR system.

The Government's third strategic priority is to entrench the risk-based approach. Some of the new measures to address this include:

- Consultation with the charitable sector on measures to keep it safe from terrorist exploitation. The Charity Commission will be provided with £1 million of additional funding to assist it in the identification and disruption of terrorist exploitation of charities and protect donor confidence.
- Setting up a new anti-money laundering supervisors' forum, tasked with sharing experience and driving best practice.

The Government's fourth strategic priority is to reduce the burdens on citizens and business created by crime and security measures to the minimum required to protect their security. Measures to address this include:

- A consultation on changes to the consent and tipping-off rules.
- Reforms to reduce red-tape, including measures to simplify identification and due diligence checks within revised Money Laundering Regulations.

The Government's fifth strategic priority is to maximise the effectiveness of collective action and ensure that information is properly shared within the public sector, and between public and private sectors, in order to identify and tackle financial threats. Measures include:

- Introducing legislative steps, through the Serious Crime Bill, to facilitate greater data-sharing by enabling the sharing of information on suspected frauds between the public and private sector, and putting the National Fraud Initiative on a statutory footing.

The Government's sixth strategic priority is to engage international partners to tackle international anti-money laundering and terrorist financing. It intends to address this by using its Presidency of the Financial Action Task Force (which commences for twelve months from July 2007) to identify and tackle the most serious financial threats to international security and ensure an effective international architecture.

The strategy document can be found in full at **http://www.hm-treasury.gov.uk/media/042/B2/financialchallenge_crime_280207.pdf**

The Joint Committee on Human Rights report on Counter-terrorism Policy and Human Rights

The Parliamentary Joint Committee on Human Rights has published a report, 'Counter-terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2007'.

The report seriously questions whether the control order provisions in the Prevention of Terrorism Act 2005 should be renewed without a proper opportunity for a parliamentary debate on whether derogations from Articles 5(1) and 6(1) ECHR are justifiable, that is, whether control orders are strictly required by the exigencies of the situation.

It also questions the vigour with which the Government is pursuing prosecution as its preferred counter-terrorism measure; and states that the Committee believes that the Government could do much more to overcome the main obstacles to criminal prosecution, notably by allowing use of intercept material.

The Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2007 was brought into force by way of Statutory Instrument 706/2007. It continues in force, for a period of one year from 11 March 2007, Sections 1 to 9 of the Prevention of Terrorism Act 2005, which would have otherwise expired at the end of 10 March 2007 (See SI section).

The report can be found in full at
http://www.publications.parliament.uk/pa/jt/jtrights.htm

Road Safety Strategy Review

The Department for Transport has published two road safety strategy documents.

The first is the second three-yearly review of the Government's road safety strategy, 'Tomorrow's roads - safer for everyone', and details the progress that has been made towards achieving the casualty reduction targets for 2010, identifies the priority areas for attention and sets out what the Government intends to do to make Britain's roads safer.

The review reports that overall progress against the targets has been good. Specifically, using 2005 data, it finds:

- There has been a reported reduction in killed or seriously injured (KSI) casualties on Britain's roads: now 33% below the 1994-1998 baseline, against a 40% target by 2010.
- There has been even better progress on reported child KSIs: now 49% below this baseline, against a 50% target by 2010.

However, the review found that some areas have made better progress than others.

The report highlights a number of key concerns, including:

- That there are now clusters of groups that remain particularly at risk, for example, motorcyclists, young drivers and those who drive for work.
- Young drivers are proportionally involved in more accidents that are caused by specific infractions such as speeding and drinking.
- Drink-drive deaths have increased from 460 in 1998 and 1999 to 580 in 2003 and 2004, with a small drop to 560 in 2005.
- There has been an increase in some of the types of accidents that involve bad driver behaviour, for example single-vehicle accidents.
- About a third of people dying in road accidents are not wearing their seatbelts.
- Inappropriate and excessive speed remains a significant problem.

A particular worrying issue found was the number of overlaps between these issues.

In relation to young drivers, the report shows that they are more likely to drink and drive and not wear their seatbelts. The peak age among fatally injured occupants for not wearing a seatbelt is 21-25.

The report also finds that generally, there is an inverse relationship between the number of screening breath tests and the number of drink-drive deaths. Between 1994 and 1998, the number of breath tests was increasing and the number of drink-drive deaths was falling. But between 1998 and 2003, the number of breath tests fell, and the number of drink-drive deaths increased.

The Government's future policies to deal with these issues include:

- Forming a new Road Safety Delivery Board. The Board's task will be to bring together representatives from the key delivery partners, monitor progress in delivering the Government's strategy, sort out problems/issues, assist in developing closer partnerships and to spread good practice.

- Fundamentally reforming the way people learn to drive, by introducing a system to ensure that learners can drive safely, not just master how to control a car. The system will include three main elements: a new competency and knowledge framework setting out what a candidate must know and be able to do; a modern training syllabus setting out what a candidate needs to learn; and systematic assessment criteria setting out how the testing stage will establish that a candidate has covered the syllabus properly and can demonstrate the required level of competence.
- In order to give a further insight into trends in road casualties, running a project to match individual Hospital Episode Statistics (HES) and data on personal injury road accidents collected by the police using the STATS19 form.
- Establishing new campaigns in 2007, including a driving for work campaign, aimed initially at the growing number of van drivers, and also a campaign focused specifically on young drivers.
- Promoting the further use of 20 mph limits in residential areas.

The second published document is the 'DfT Child Road Safety Strategy 2007', which updates the first such strategy published in 2002. The strategy looks at measures to improve child road safety under six different themes. These are:

- Education, training and lifelong learning.
- Publicity.
- Highway engineering, environment and planning.
- Vehicle engineering and secondary safety.
- Legislation and enforcement.
- School journeys.

It outlines 21 specific actions under the above themes for the DfT and its partners for improving child road safety between now and 2010; and describes some examples of good practice being taken forward by local authorities and others, looking at activities related to each of the themes. Those actions that include the police working with the DfT and other groups are:

- Continuing to promote good practice in the delivery of road safety education (RSE), in the light of findings from the current research projects on RSE and pre-driver education.
- DfT will look for new opportunities to deliver road safety messages to parents and guardians and will encourage local partnerships to implement them.
- DfT will revise and reissue 'Arrive Alive - A Highway Code for Young Road Users', following launch of the revised Highway Code in mid-2007.
- Road Safety Officers, police, fire and health services should work together to co-ordinate their activities in schools and elsewhere. They should ensure that officers who work with schools and other bodies are trained to do so. All should ensure that road accident prevention is considered when establishing accident prevention programmes or healthy schools schemes, as well as in the design and delivery of road safety interventions and packages.
- The Think! campaign will continue to promote child road safety, taking account of evidence-based prioritisation for targeting and marketing.

- Local agencies should work together to ensure that speed limits are observed and crack down on local problems such as disregard of the law applying to school crossing patrols and other poor driving offences.

Copies of the both documents can be found respectively at
http://www.dft.gov.uk/pgr/roadsafety/strategytargetsperformance/2ndreview/
and
http://www.dft.gov.uk/pgr/roadsafety/child/childrdsafetystrategy2007

Audit Commission Report on Road Safety

The Audit Commission has published a report, 'Changing Lanes', which is intended to help local agencies to work more effectively to reduce the number of deaths and injuries on Britain's roads.

It concludes that changing road users' behaviour is essential to maintain progress in these areas, as the scope for improvement from road engineering is reducing. It comments that this means using both the education, training and publicity element of road safety casualty reduction efforts and the enforcement element more effectively.

It contains a number of recommendations, addressed both to local public bodies and to national government.

It recommends that local authorities should:

- Review their progress against Department for Transport (DfT) casualty reduction targets, taking any action needed to achieve them and reporting clearly through local transport plan progress reports.
- Review local arrangements for taking a strategic approach to road safety, bearing in mind the imminent changes to the funding of safety camera partnerships (SCPs) and the increasing role for local strategic partnerships highlighted in the Local Government White Paper 2006.
- Work with partners to improve practice, based on the framework in this report, particularly targeting at risk groups and localities, and building on existing relationships within SCPs.
- Raise awareness among local secondary schools of road safety issues for pupils, and the resources available to them.
- Ensure local councillors have information and other support to help them to engage local people.

It recommends that police forces should:

- Work in partnership with relevant local authorities to review arrangements for taking a strategic approach to road safety and improve practice, based on the framework in this report.
- Improve the accuracy, completeness and timeliness of STATS19 data, by applying the same management processes that are applied to crime data.

Other recommendations include:

- Crime and disorder reduction partnerships should take account of road safety implications when consulting on and addressing community priorities, including anti-social vehicle use.

- NHS bodies should provide aggregated data, analysis and intelligence to partners, so they can target their activities more effectively on the people most at risk, and on where they live and work.
- Primary care trusts and fire and rescue services should work in partnership with relevant local authorities to improve practice, based on the framework in this report.

To supplement the report, the Audit Commission has developed a set of self-assessment tools which will shortly be available on the Commission's website.

The report can be found in full via
http://www.audit-commission.gov.uk/reports/product_list.asp?CategoryID=&prodType=AC-REPORTS&PageGroups=10

Consultation on International Cooperation on Driving Disqualifications

The Department for Transport has published a consultation paper which seeks views on proposals that driving disqualifications imposed in the United Kingdom (UK) and Ireland should apply in each of these two respective States within the framework of the European Convention on Driving Disqualifications of 17 June 1998.

The purpose of the Convention is to prevent drivers who are disqualified from driving in a Member State of the European Union (EU) other than their own from escaping the consequences when they return home. At present, not all EU member states have adopted the Convention and therefore it is not yet in force. However, the Convention does allow a Member State to declare to the EU authorities that it wishes to apply its terms early with other Member States that have made the same declaration. It is under this part of the Convention that both the governments of the UK and Ireland wish to move forward and implement each others' driving disqualifications. This means that:

- If a driver, resident in the UK, is disqualified from driving in Ireland, the disqualification will also apply in the UK. The driver will be informed of any remaining period of disqualification due to be served in the UK and that the driving licence will be taken away until the disqualification period has been served in full. The driver would therefore be prevented from driving lawfully.
- Likewise, if a driver resident in Ireland is disqualified in the UK, the disqualification will also be applied in Ireland by the Irish authorities.

The offence must have resulted from one of the six categories of conduct defined in the Convention. These are:

- Reckless or dangerous driving.
- Hit and run.
- Speeding.
- Driving under the influence of drugs/alcohol.
- Driving whilst disqualified.
- 'Other' conduct which results in disqualification.

A disqualification as a result of 'totting up' penalty points is also covered by the Convention, but only where all the points are incurred in one Member State. The arrangements do not extend to the international recognition of penalty points as such.

In Great Britain, the driver will be notified by the Secretary of State for Transport through the Driver and Vehicle Licensing Agency (DVLA) that the disqualification has been recognised and of the period of disqualification due to be served in the UK. In Northern Ireland, this will be done by the Department of the Environment through the DVL Northern Ireland.

The UK will not recognise a disqualification made by another Member State unless the right of appeal has already been exhausted in the State in which the offence was committed.

A driver will have a right of appeal in the UK against the disqualification being imposed in the UK, through the magistrates' courts in England and Wales, the court of summary jurisdiction in Northern Ireland and through sheriff courts in Scotland. The original reasons for the disqualification cannot be re-opened (since the opportunity to appeal should have already been exercised or exhausted in the State of offence) but there may be limited grounds, for example if the period of disqualification to be applied is inaccurate.

Any period of the disqualification already served in the State of offence will be taken into account.

If a driver from another Member State commits an offence within the UK which falls under the Convention's categories of conduct and is disqualified in the UK, and if the appeal process in the UK against the original disqualification has been exhausted, then the UK will be responsible for notifying the driver's State of residence (initially, Ireland).

The consultation, which closes on Tuesday 8 May 2007, can be found at **http://www.dft.gov.uk/consultations/open/drivingdisqualifications/consult**

UK Human Trafficking Action Plan

The Government has introduced an action plan to tackle human trafficking. The action plan, a joint initiative with the Scottish Executive, aims to protect the victims of human trafficking through increased support services, victim detection, and greater awareness campaigns, whilst increasing enforcement activity and knowledge of the crime.

Key measures of the Plan include:

- The introduction of a Child Trafficking Telephone Advice Line to assist and advice social workers, police and immigration staff.
- The creation of a national referral mechanism to help with the formal identification of victims.
- Provision of a single point of contact for the referral of victims onto support services.
- Establishing specialist teams at ports of entry.

The plan also highlights the increased enforcement activity that the UK Human Trafficking Centre will help drive forward and outlines proposals for a further national operation being conducted against human trafficking, Operation Pentameter 2.

In addition on 23 March the Home Secretary signed the 'Council of Europe Convention on Action Against Human Trafficking'.

The UK Human Trafficking Action Plan can be viewed online at **http://www.homeoffice.gov.uk/documents/human-traffick-action-plan**

The Council of Europe Convention on Action Against Human Trafficking can be viewed online at **http://www.coe.int/t/DG2/TRAFFICKING/campaign/default_en.asp**

Consultation on the Banning of Samurai Swords and Certain Other Weapons

The Home Office has published a consultation paper seeking views as to whether 'samurai' swords, and possibly certain other weapons, should be added to the list of offensive weapons in the Criminal Justice Act 1988 (Offensive Weapons) Order 1988.

Section 141 of the Criminal Justice Act 1988 prohibits the manufacture, import, sale, hire, offer for sale or hire, exposure or possession for the purpose of sale or hire, and the lending or giving to any other person of the weapons specified in the Criminal Justice Act 1988 (Offensive Weapons) Order 1988. There are currently 17 descriptions of weapons already listed on this Order, including butterfly knives, knuckle-dusters and batons.

If further items are added to the Offensive Weapons Order, owners of such items, who acquired the weapons before they were added to the Order, will not be committing an offence by keeping their weapons at home. However, they will not be able to do any of the things prohibited by Section 141.

The consultation sets out three options:

- Option 1 - Do nothing.
- Option 2 - Complete ban on the manufacture, import, sale, hire, offer for sale or hire, etc., on all weapons known as 'samurai swords'.
- Option 3 - Introduce a ban, but with exceptions, exemptions and defences.

Option 3 is the Government's preferred option, as Option 1 would be likely to send out the message that the Government is not committed to dealing with the criminal use of weapons in violent crime and Option 2 would penalise the law-abiding collector of genuine 'samurai swords' and those who use such weapons in martial arts.

On the issue of other weapons which appear to have no legitimate use, such as fantasy knives, the consultation is seeking ideas as to which weapons should be banned and how to best describe such weapons for the purpose of the legislation.

The consultation period will end on 28 May 2007, following which a summary of responses will be published. The consultation paper can be found at **http://www.homeoffice.gov.uk/documents/cons-ban-offensive-weapons-0307**

Sports Ground Safety Legislation

The Department for Culture, Media and Sport (DCMS) has begun a consultation about the application of sports ground safety legislation. The consultation is seeking views on whether the application of sports ground safety legislation works effectively; whether and what improvements to the process could be made; and whether the Football Licensing Authority's remit should be extended to enable it to offer, on request, specific safety advice to sports other than football.

The closing date for responses is Friday 13 April 2007. Further details can be found at **http://www.culture.gov.uk/Reference_library/Consultations/2007_current_consultations/sports_ground_safety_legislation.htm**

Cash and Valuables in Transit Robbery

In answer to a Parliamentary question on whether the Home Secretary will make it his policy to reclassify crimes involving cash and valuables in transit from business crime to a category of serious crime, Home Office Minister Vernon Coaker stated that, at present, the Home Office Classification of Offences for Criminal Statistics has no category of 'serious' and currently there are no plans to change this.

He also commented that the Government recognises the seriousness of cash and valuables in transit (CVIT) robbery and the impact these attacks have on both victims and witnesses. He announced that the Home Office is planning a national stakeholder conference in April 2007 that will address all aspects of CVIT deliveries.

Over the last 12 months, CVIT robberies have continued to cause concerns nationally and feature in the ACPO National Strategic Assessment.

Centrex's National Centre for Policing Excellence is currently preparing a problem profile document on this subject, on behalf of the ACPO lead. It is expected that this document will be circulated to police forces in early April.

New Director General of the Security Service

The Home Office has announced the appointment of the new Director General of the Security Service.

The Home Secretary has agreed with the Prime Minister on the appointment of the Deputy Director General, Jonathan Evans. He will take up the post on 8 April, when Dame Eliza Manningham Buller steps down.

Commencement of Passport Interviews

The commencement of face-to-face interviews for passport customers is to be introduced gradually from May 2007.

The requirement will apply to all customers over 16 who are applying for their first passport, which account for around 10 per cent of applications.

The interview requirement forms part of a package of anti-fraud measures introduced by the Identity and Passport Service, which also include the introduction of enhanced background checks and the switch to biometric ePassports in 2006; the introduction of secure delivery of passports in 2004; and the creation of the Lost and Stolen passport database in 2003.

HOC 9/2007
Travel Restrictions on Convicted Drug Trafficking Offenders

Sections 33 to 37 of the Criminal Justice and Police Act 2001, which were implemented with effect from 1 April 2002, enable the courts, as part of their sentencing, to impose travel restriction orders (TROs) on drug trafficking offenders who are sentenced to four years or more in prison. The lengths of the TROs vary and, in the case of UK nationals, can include the confiscation of passports for the period of the travel ban. The legislation applies to the United Kingdom.

It has recently been identified that information-sharing systems between the courts, the Identity and Passport Service (IPS) and the prisons have not been working effectively, which has resulted in a small number of offenders subject to TROs being released from custody at the end of their sentences without the proper measures being put in place to prevent them travelling abroad.

As a result, Home Office Circular (HOC) 9/2007 has been published to replace HOC 8/2002. It reproduces the legislative guidance of HOC 8/2002 with minor updating amendments, e.g. updating information on arrest powers, and revises the procedural guidance to tighten up the procedures to try and ensure they work more effectively.

The guidance for the courts, the IPS and the enforcing/prosecuting authorities as to the implementation of the above provisions is provided at Appendix A (legislative) and Appendix B (procedural) to the Circular.

In the guidance, references to 'enforcing authorities' and, within the context of court proceedings, 'prosecuting authorities', refer in England and Wales to the police, officers of HM Revenue & Customs or the Revenue and Customs Prosecutions Office (RCPO) and the Crown Prosecution Service.

The procedural guidance sets out that where a court has convicted a person of a drug trafficking offence, the sentencing disposal form should take its normal course with the following additional actions:-

Where the court has made a travel restriction order under Section 33(2)(b), this sentencing disposal (including the length of sentence for the drug trafficking offence(s) and the length of the travel restriction order imposed) will be notified by the court to:

- The prisons (copy of the order to be attached to the custodial warrant that accompanies the offender to the receiving prison).
- The Identity and Passport Service, by sending a faxed copy of the order for it to be noted on their Passport Application Support System, known as PASS.
- The police or officers of HM Revenue & Customs or the RCPO, in their cases, to ensure that details of the travel restriction order are recorded on the Police National Computer. Thus, when such an order has been imposed, it will be recorded, together with the duration of the order, on the PNC as part of the disposal history using disposal code 3078.

For consistency, the notifications must be done on the form attached as part of the Circular; this includes the full name, place and date of birth of the offender and last known address.

The Circular also draws special attention to the following points:

- Courts should note that they are under a duty to consider the appropriateness of making a travel restriction order in relation to drug trafficking offenders who are sentenced to four years or more in prison. They also have a power to confiscate any UK passport held by the offender.
- All TRO notifications from the courts and surrendered UK passports (including those held by the police and officers of HM Revenue & Customs or the RCPO when they have no further need of them for evidential purposes, including any potential appeal proceedings or reference to the Criminal Cases Review Commission) should be sent to the IPS Operational Intelligence Unit in Glasgow, rather than to the nearest passport office, as in the earlier guidance.
- Governors of prisons and directors of contracted prisons were instructed by a letter of 29 January 2007 to notify a drug trafficking offender's actual date of release to the IPS Operational Intelligence Unit as soon as it is known.

A copy of the Circular can be found at **http://www.circulars.homeoffice.gov.uk**

Service of Summonses, Witness Summonses and Other Documents in Criminal Cases

The Criminal Procedure (Amendment) Rules 2007 come into force on 2 April 2007 by virtue of Statutory Instrument 699/2007 (see SI section). Amongst other things, these Rules amend the Criminal Procedure Rules 2005 by revising the rules about the service of summonses, witness summonses and other documents in criminal cases.

Under the 2007 amendments, the new Part 4 of the Rules consolidates, revises and simplifies the rules about the service of documents in criminal cases.

Except for certain documents (details of which are set out below), a document may be served by any of the methods described below:

Service by handing over a document

A document may be served on:

- An individual, by handing it to him or her. If the document is served on an individual who is 17 or under, a copy of a document served must be handed to his or her parent, or another appropriate adult, unless no such person is readily available.
- A corporation, by handing it to a person holding a senior position in that corporation.
- An individual or corporation who is legally represented in the case, by handing it to that representative.
- The prosecution, by handing it to the prosecutor or to the prosecution representative.
- The court officer, by handing it to a court officer with authority to accept it at the relevant court office.
- The Registrar of Criminal Appeals, by handing it to a court officer with authority to accept it at the Criminal Appeal Office.

Service by leaving or posting a document

A document may be served by leaving it at the appropriate address for service or by sending it to that address by first class post or by the equivalent of first class post.

The address for service under this rule on:

- An individual, is an address where it is reasonably believed that he or she will receive it.
- A corporation, is its principal office in England and Wales; and if there is no readily identifiable principal office, then any place in England and Wales where it carries on its activities or business.
- An individual or corporation who is legally represented in the case, is that representative's office.
- The prosecution, is the prosecutor's office.
- The court officer, is the relevant court office.
- The Registrar of Criminal Appeals is the Criminal Appeal Office, Royal Courts of Justice, Strand, London WC2A 2LL.

Service through a document exchange

A document may be served by document exchange (DX) where:

- The writing paper of the person to be served gives a DX box number and that person has not refused to accept service by DX.

Service by fax, e-mail or other electronic means

A document may be served by fax, e-mail or other electronic means where:

- The person to be served has given a fax, e-mail or other electronic address and that person has not refused to accept service by that means.

Service by person in custody

A person in custody may serve a document by handing it to the custodian addressed to the person to be served. The custodian must:

- Endorse it with the time and date of receipt.
- Record its receipt.
- Forward it promptly to the addressee.

Service by another method

The court may allow service of a document by a method other than those described above. An order allowing service by another method must specify the method to be used and the date on which the document will be served.

Certain documents to be served on an individual or a corporation must only be served by handing them over, leaving or posting them. These are:

- A summons, requisition or witness summons.
- A notice of an order under Section 25 of the Road Traffic Offenders Act 1988.
- A notice of registration under Section 71(6) of the Road Traffic Offenders Act 1988.
- A notice of discontinuance under Section 23(4) of the Prosecution of Offences Act 1985.

- A notice under rule 37.3(1) of the date, time and place to which the trial of an information has been adjourned, where it was adjourned in the defendant's absence.
- A notice of fine or forfeited recognizance required by rule 52.1(1).
- A notice under Section 86 of the Magistrates' Courts Act 1980 of a revised date to attend a means inquiry.
- A notice of a hearing to review the postponement of the issue of a warrant of commitment under Section 77(6) of the Magistrates' Courts Act 1980.
- A copy of the minute of a magistrates' court order required by rule 52.7(1).
- An invitation to make observations or attend a hearing under rule 53.1(2) on the review of a compensation order under Section 133 of the Powers of Criminal Courts (Sentencing) Act 2000.
- Any notice or document served under Part 19.

Policing Values Statement

The Home Office has published a statement on the values of the police service in the 21st century, written by the Home Secretary and sent to all chief constables and chairs of police authorities. The statement sets out the challenge that the police face in managing its relationship with the public, and ensuring that it meets their expectations. It also sets out what the police should be able to expect from the Government.

It calls on the police service to commit to delivering:

- Visible, responsive and accountable local policing.
- Joint local problem-solving and the delivery of services through collaboration and partnerships.
- Local communities helping to shape services and citizens valuing their contact with the police.
- A service representative of, rooted in, and trusted by the communities it serves.
- An efficient, flexible and productive service that delivers maximum value for taxpayers' investment.
- World class capacity to deal effectively with terrorism and serious crime.
- The right people doing the right job.
- A new focus on skills and leadership development.
- Greater rewards for effective performance in the workforce.
- The latest technology in place to help deliver for the public.

In return, the Home Secretary commits himself, and the Government more generally, to delivering:

- Fewer targets and mandates from the centre - Explaining that it wants more flexibility and fewer burdens on the police service, but transparency about how well forces and Basic Command Units are doing.
- Less chopping and changing of investment priorities and new programmes - Promising that before it starts new programmes it will make sure it has the resources to finish the job and that it has fully evaluated all the likely impacts.
- Less bureaucracy - Promising to make sure that administrative demands from the centre don't distort or get in the way of frontline policing priorities and that Government departments co-ordinate their approach.

In relation to accountability, it states that the Government will continue to be accountable to Parliament for policing nationally, promising to intervene locally only as a last resort where a serious issue has arisen and other local steps have failed to have an effect.

It also states that the Government will:

- Continue to initiate legislation where necessary.
- Resource the police service.
- Be open about police performance and set a smaller number of national priorities.

- Adopt a more strategic role with less interference in the tactical issues that ought to be the business police officers, PCSOs and staff.

On the issue of police accountability, the Government expects police authorities and police forces to develop a stronger sense of accountability at the most local level to deliver the service that neighbourhoods want.

As part of the Government's commitment to reducing bureaucracy, government sources have also announced a review of the Police and Criminal Evidence Act 1984 (PACE) (see article on page 25).

The statement can be found in full at **http://police.homeoffice.gov.uk/news-and-publications/publication/police-reform/policing-values-letter?version=1**

HOC 10/2007
Annual Learning and Development Business Plans

Home Office Circular 10/2007 gives guidance on the preparation of the learning and development business plan process for 2007/08 and should be of particular interest to HR or Personnel Directors, Training Directors or Managers and BCU Commanders.

It is intended to streamline the process by simplifying the regime for the production of learning and development business plans, which police forces found highly resource intensive to maintain under the previous guidance contained in Home Office Circular 44/2005.

The guidance also supersedes the statement on HR and training plans as set out in Para 13 of Home Office Circular 04/2007.

The guidance sets out that in respect of Learning and Development Business Plans for 2007/08, as in previous years, police forces should conduct a formal training needs analysis. The results should be incorporated in an annual business plan which supports Forces' strategic objectives. The plan should identify the resources required to achieve the agreed and prioritised learning and development. This plan should be scrutinised and endorsed by Chief Officers and Police Authority members.

It advises that the format of the plan is not mandated and that forces can use the template and process as set out in HOC 44/2005 or alternatively, they can develop their own template. The learning and development business plan should include:

- A statement of the Force's priorities for learning and development during the year linked to the local policing plan.
- A training delivery plan, with clear evidence of the prioritisation process used to identify these priorities.
- A statement of the costs of delivery of the plan, using the National Training Costing Model.
- Resource required to deliver against the plan.
- A description of indicators and measures for monitoring the delivery of the plan.
- An evaluation of the impact the training will have on local policing objectives.
- A copy of the learning function's improvement plan.

In respect of monitoring and inspection:

- Forces are no longer required to send completed annual business plans to the Home Office.
- HMIC will continue to inspect plans as part of its inspection activity.
- Policy on learning and development plans will pass from the Home Office to the National Policing Improvement Agency from 1 April 2007.

A copy of the Circular can be found at **http://www.circulars.homeoffice.gov.uk**

Audit Commission - Police Services' Use of Financial Resources Assessment

The Audit Commission has published the first national assessment of the police services' use of financial resources. The Commission conducted an extensive financial management evaluation of all 43 police forces and their authorities on the themes of financial reporting, financial management, internal control, financial standing, and value for money.

Results from the process have shown that two-thirds are performing well in their use of financial resources, which compares favourably against other parts of the public sector. Only one force has been assessed as performing below the minimum requirements.

The actual assessment report has not been published publicly on the Audit Commission's website, but has been forwarded to each police force.

HOC 8/2007 Guidance on Police Unsatisfactory Performance, Complaints and Misconduct Procedures

This Circular provides details of two paragraphs in Section 3 of the Home Office Guidance on Police Unsatisfactory Performance, Complaints and Misconduct Procedures, which have recently been amended by the Home Office following consultation with the Police Advisory Board of England and Wales and the Independent Police Complaints Commission. This newly-amended guidance takes effect immediately.

The two amended paragraphs are designed to provide clearer guidance as to how the standard of proof in police officer misconduct cases, which changed in 1999 from the criminal standard of 'beyond reasonable doubt' to the civil standard of 'the balance of probabilities', should be applied.

Paragraph 3.40 provides guidance on dealing with misconduct matters where a police officer has been acquitted of a criminal offence. It now reads:

Paragraph 3.40 - A previous acquittal in criminal proceedings in respect of an allegation which is the subject of disciplinary proceedings is a relevant factor which should be taken into account in deciding whether to continue with those proceedings.

Relevant factors in deciding whether to proceed with disciplinary proceedings include the following, non-exhaustive, list:

- Whether the allegation is in substance the same as that which was determined during criminal proceedings.
- Whether the acquittal was the result of a substantive decision on the merits of the charge (whether by the judge or jury) after the hearing of evidence.
- Whether significant further evidence is available to the tribunal, either because it was excluded from consideration in criminal proceedings or because it has become available since.

Each case will fall to be determined on its merits and an overly-prescriptive formula should not be adopted.

It may further be unfair to proceed with disciplinary proceedings in circumstances where there has been a substantial delay in hearing disciplinary proceedings by virtue of the prior criminal proceedings. Regard should be had in this respect to such factors as:

- The impact of the delay on the officer (including the impact on his health and his career).
- Whether the delay has prejudiced his defence in any disciplinary proceedings.
- Whether there will be a further substantial delay whilst disciplinary proceedings are heard (including the impact on that delay).

The amended paragraph 3.81 now states:

In deciding matters of fact the burden of proof lies with the presenting officer and the misconduct hearing/tribunal must apply the standard of proof required in civil cases, that is, the balance of probabilities. Conduct will be proved on the balance of probabilities if the adjudicator is satisfied by the evidence that it is more likely than not that the conduct occurred. The more serious the allegation of misconduct that is made or the more serious the consequences for the individual which flow from a finding against them, the more persuasive (cogent) the evidence will need to be in order to meet that standard.

A copy of the Circular can be found at **http://www.circulars.homeoffice.gov.uk**

First Public Police Misconduct Hearing

The Independent Police Complaints Commission (IPCC) has, for the first time, used the powers granted to it under the Police Reform Act 2002 to direct a force to hold a misconduct hearing in public.

Regulation 30(5) of the Police (Conduct) Regulations 2004 states:

Where a case arises from a complaint or conduct matter which has been investigated under paragraph 19 of Schedule 3 to the 2002 Act and the Commission considers that because of its gravity or other exceptional circumstances it would be in the public interest to do so, the Commission may, having consulted the appropriate authority, the officer concerned, the complainant and any witnesses, direct that the whole or part of the hearing will be held in public.

In August 2006, the IPCC published the findings of its investigation into Warwickshire Police; and, subsequently, all interested parties were consulted by the Commissioner responsible for Warwickshire Police, John Crawley, upon his proposal that the misconduct hearing for two police officers concerned should be held in public. The Commissioner also

consulted the Chair of the IPCC, as provided for in its published guidelines. John Crawley has now confirmed his decision that the hearing will be held in public, stating that he has given the most careful consideration to the representations made by those opposed to the public hearing and those in favour of it.

The IPCC has set out certain criteria which need to be met in order for a decision to be made to hold a discipline hearing in public. These criteria are:

A hearing in public should be ordered only if it is in the public interest to do so because:

- Of the matter's gravity, i.e. the alleged disciplinary breach(es) is (are) serious. Seriousness is understood as a breach so serious that it might for a single occurrence lead to dismissal.

AND/OR

- A hearing is required because of some other exceptional circumstances.

In considering whether it is in the public interest to hold a hearing in public, one of the factors the Commissioner shall consider is whether not to hold the hearing in public is likely to have an adverse effect on public confidence in the transparency and effectiveness of the complaints system.

Relevant factors for determining the potential effect on public confidence may include (but are not confined to):

- The number of complainants involved.
- The extent and nature of the media coverage of the incident/issues at stake in the matter.
- A substantial expression of interest in the case (either directly to the IPCC or through the media) by public representatives, community groups, public bodies etc.
- Extant evidence of the need to sustain and enhance public confidence in the complaints system by a significant section of the local, regional or national community.

Such factors would be considered in light of all the relevant circumstances.

Although the Commissioner may determine, on the basis of the above considerations, that a hearing should properly be held in public, the Commissioner shall also take into account any possible harm to relevant parties in doing so. He or she may decide on the basis of such harm that the hearing should not be held in public, that only part(s) of the hearing be held in public or that anonymity should be granted to specified participants.

Factors which would suggest that all or part of a hearing should be held in private include (but are not confined to) the following:

- There are vulnerable witnesses (including minors) or other witnesses whose interests would be damaged by their evidence/involvement being heard in public.
- Operational security and factors which might be compromised by a public hearing.
- Any considerations in relation to the police officers involved in the proceedings which suggest that a public hearing would have a disproportionately adverse impact on their interests, e.g. the Commissioner is satisfied by a welfare report from the officer's force.

If some of these factors are present but the case raises particularly significant public interest concerns, the Commission may direct that sensitive parts of the hearing be held in private or that the anonymity of witnesses and/or accused officers be preserved.

Factors determining that all or part of an otherwise public hearing should be held in private could develop up to and including the day on which the public hearing was set to take place. It may be necessary in such circumstances for the Commissioner to make an order excluding the public from all or part of the hearing.

The full IPCC criteria for directing a public hearing can be found at **http://www.ipcc.gov.uk/criteria_for_website.pdf**

Consultation on the Draft Police (Conduct) Regulations 2008 and the Draft Police Performance Regulations 2008

The Home Office has commenced a limited consultation with a number of agencies, including police forces and staff associations, on the Draft Police (Conduct) Regulations 2008 and the Draft Police Performance Regulations 2008.

The new misconduct procedure for police officers and the new procedures to deal with the unsatisfactory performance and attendance of police officers were drawn up by a working party of the Police Advisory Board of England and Wales and the Independent Police Complaints Commission.

The Home Office invites views on the Regulations (not on the policy underpinning the regulations, which have already been consulted on).

It is currently expected that both sets of regulations will be brought into force in the spring of 2008.

Elections 2007 Guidance

On 3 May 2007, there will be local government elections in England and National Assembly elections in Wales.

The local elections in England will take place across 312 local authorities. The elections in Wales are being held in 40 Assembly constituencies and five Assembly regions.

In preparation for this, the Electoral Commission has updated a number of comprehensive guidance documents to assist those involved in the elections, including one produced together with the Association of Chief Police Officers (ACPO).

The documents produced for the elections in England consist of:

- List of the 312 councils holding elections on 3 May 2007.
- Timetable for the local government elections on 3 May 2007.
- Guidance for potential candidates and agents at the local elections in 2007.
- Managing a local government election in England: guidance for Returning Officers.
- Training resources for temporary staff supporting the election for the elections on 3 May 2007.
- Joint ACPO-Electoral Commission guidance on fraud prevention and detection for use at May 2007 elections in England and Wales.
- Postal vote code of conduct for England.

The documents produced for the elections in Wales consist of:

- The Conduct Order - National Assembly for Wales (Representation of the People) Order 2007 - which governs the conduct and administration of elections to the National Assembly for Wales.
- The Order listing the county and borough constituencies in Wales.
- A timetable of the key dates underpinning elections to the National Assembly for Wales.
- Guidance for candidates and agents contesting the elections to the National Assembly for Wales.
- How to register a political party guidance and forms.
- Party campaign expenditure guidance.
- Hustings guidance on including public meeting costs in election expenses.
- Royal Mail and Freepost guidance.
- Information Commissioner's Guidance on Promotion of a Political Party and Telephone Marketing.

It has also been announced that pocket guides for police officers in England, Scotland and Wales will also be published and distributed to forces.

The Joint ACPO-Electoral Commission guidance document is designed to alert police forces to issues that may arise in the run-up to the elections in May 2007, on polling day itself (3 May), and at related events, and offers guidance on factors to take into consideration when carrying out a force risk assessment.

It highlights that, particularly in England, the temptation to attempt electoral fraud in May may be significant for two reasons:

- There is a greater opportunity to influence the outcome of local elections compared with UK Parliamentary elections, as fewer votes are needed to win each seat.
- Many of these elections will take place in areas in England where there are people who do not have English as a first language and there is a more transient population.

The guidance provides an explanation of:

- Electoral registration procedures.
- Voting and counting procedures.
- The role of different participants.
- Potential offences.
- Protocols about who does what.
- Powers of arrest, maximum penalties and time limits for prosecution.
- Access to documents.
- A timetable setting out the key dates in the May 2007 election process.

It also provides a checklist of actions, developed from the experience of policing recent elections in Great Britain, that will assist forces with the development of an appropriate threat assessment and control strategy.

All the documents can be found in full via
http://www.electoralcommission.org.uk/about-us/electionspub07.cfm

National Network of Police Prostitution and Vice Tactical Advisors

A new national network of Police Prostitution and Vice Tactical Advisors (TAC advisors) has been set up. These TAC advisors will provide specialist advice and support to their own forces as well as acting as single points of contact for issues involving vice and prostitution for both ACPO and the Home Office.

National CBRN Co-ordinator

Devon & Cornwall's Assistant Chief Constable Richard Stowe has been selected as the first National Co-ordinator for Chemical, Biological, Radiological and Nuclear Terrorism.

RSA Commission Report on Illegal Drugs, Communities and Public Policy

In January 2005, the Royal Society for the Encouragement of Arts, Manufactures & Commerce (RSA) set up a Commission on Illegal Drugs, Communities and Public Policy to act as an independent body under the auspices of the RSA. The majority of its members work in areas on which the issue of illegal drug use has a bearing e.g. social care, home affairs, street outreach work, public health, the policing of organised crime, a few work directly in the drugs field.

The Commission's latest report, 'Drugs - facing facts', has been published. It calls for a substantial rethink of drugs policy. It makes a number of recommendations and suggestions founded on two core beliefs, the first being that drugs and other psychoactive substances are simply not going to go away, the second (related to the first) being that if drugs cannot be eradicated, then the principal object of public policy should be to reduce as far as is humanly possible the great harms that they may cause and often do cause.

In relation to the issue of Government drug policy and improving delivery of it, the report recommends that:

- The Home Office should no longer be the lead Whitehall department dealing with drugs policy, but that the lead department should be the Department of Communities and Local Government.
- Serious consideration should be given to making local Drug Action Teams statutory bodies and giving them enhanced status, authority and responsibilities, with the lead role within them being given to local authorities.
- The success of drugs policy should be measured, not in terms of the amounts of drugs seized or in the number of dealers imprisoned, but in terms of the amount of harms reduced.
- Drugs education should be focused more on primary schools and less on secondary schools, and that more heightening of knowledge and awareness of drugs should take place outside the formal school setting.
- Changes to the delivery of treatment, in particular, to make access for non-offenders easier and better tailoring treatment to meet the needs of women, members of ethnic minorities and families as a whole.
- The policy of universal testing on arrest should be abandoned forthwith as it is ineffective, wasteful and ultimately unsustainable.
- Greater use of specialized drug courts.
- The use of criminal sanctions should be confined to the punishment of those offences connected with drugs that cause the most harm, and only the most serious drugs-related offences should attract custodial sentences, with those sentences being long rather than short.

It recommends that the Misuse of Drugs Act 1971 and the subsequent legislation associated with it be repealed and be replaced by a comprehensive Misuse of Substances Act which:

- Extends the concept of 'drugs' to include alcohol, tobacco, solvents and a range of over-the-counter and prescription drugs.
- Focuses on the harms that drugs cause, as opposed to the existing ABC classification.
- Is flexible and capable of being adapted to take account of new drugs and new scientific findings in relation to drugs

To deal with the problem, the report's recommendations include:

- Refocusing the fight against the supply of illegal drugs to concentrate on organized criminal networks rather than on what it views as largely futile efforts to interdict supply.
- Spending a larger proportion of the criminal justice expenditure within the drugs budget on the recovery of criminal assets and investigating the financial systems that support drugs trafficking.
- Increasing the number of Financial Investigation Units within police services, using monies obtained from assets recovery at the local level.
- The more systematic use of local Prolific and Priority Offenders schemes by police forces to tackle the problems of drug supply and demand in their localities.

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

Public Interest Immunity

R v RUSSELL LESLIE DAWSON (2007)

CA (Crim Div) (Sir Igor Judge (President QB), Mackay J, Royce J) 21/3/2007

Criminal Evidence - Criminal Procedure

Abuse Of Process: Conspiracy: Discretion: Drug Offences: Entrapment: Police Sources: Prosecution Disclosure: Public Interest Immunity: Disclosure Of Police Sources: Intelligence

A judge had been correct to refuse an application to stay proceedings as an abuse of process and rule that it had been unnecessary for the Crown to disclose to a defendant the source of material protected by public interest immunity where the judge had limited himself to material in the public domain.

The appellant (D) appealed against six convictions for conspiracy to supply Class A and Class B controlled drugs. D was one of a large number of defendants who pleaded guilty to various drug related offences and associated criminal activity across five separate indictments. Police officers had carried out a surveillance operation on an industrial estate by means of two officers purporting to operate a business next door to the targeted unit. They befriended D and the other defendants, making it known that they were involved in various other businesses including drug dealing. Over a six-month period D and several co-defendants supplied the undercover officers with different quantities and types of drugs. Following his arrest, D handed officers a prepared statement and was interviewed, but provided no comment responses. Prior to pleading guilty, D made an application for proceedings to be stayed as an abuse of process on the basis of entrapment. However, the Crown was in possession of public interest immunity protected material containing police intelligence that contradicted D's claims in his prepared statement. The Crown resisted D's application, taking the view that the material should be placed before the judge on the basis of its being protected. The judge ordered that a synopsis of the information be created and disclosed to all the affected defendants without revealing its source. Following disclosure, the judge ruled that disclosure of the source of the intelligence was unnecessary, since there was sufficient evidence against the defendants in the public domain. On that basis all the defendants entered guilty pleas. D submitted that the judge was wrong to refuse the application for proceedings to be stayed as an abuse of process because the police operation had amounted to entrapment, and that he was wrong to conclude that it was unnecessary for the Crown to disclose the source of the intelligence information concerning his alleged criminality. D argued that all or a large number of the incidents specified in the synopsis were not supported by any evidence or by sufficient details for him to mount an attack on them. D also submitted that the judge erred by failing to recuse himself from ruling on a matter to which he had been made privy, having considered the protected intelligence that the Crown had not wished to disclose.

HELD

(1) D's prosecution alongside his co-defendants had taken place after a complex police investigation via a carefully structured operation that involved undercover police officers pretending that they themselves were criminals to those already believed to be involved in serious criminality. Although the appeal concerned D alone, the operation had not been founded on the suspected criminality of a single individual, and a central feature of the Crown's case had been that the criminal conspiracy was already in existence prior to the commencement of the undercover operation. There was an abundance of evidence against D in the public domain including covert recordings, photographs and mobile phone conversations between the defendants, and the case against him had been a formidable one. The material before the judge included a very substantial body of material produced as a result of the police operation including the synopsis of the material protected by public interest immunity. The protected intelligence included 21 specific references to D's involvement in the conspiracy, and much of the intelligence was considered to be of a high level of accuracy. There was force in D's submission that the incidents referred to in the synopsis were insufficient in detail for him to mount an attack on them. However, the way the synopsis had been prepared meant that some details had to be kept out to avoid revealing the source of the intelligence material. It was clear from the judge's express language that he had limited himself to considering the issues on the basis of the matters that were in the public domain and that he had been entitled to conclude that, had the undercover officers not engaged D in criminal activity, D would have so engaged with others in any event. Further, there was nothing in the protected material that served to exculpate D, and there was no doubt that, had there been such information, the judge would have required it to be disclosed to defence counsel.

(2) The judge had been required to keep undisclosed material under review and would not have known that the defence would suddenly collapse into guilty pleas. Had the trial proceeded, the defendants and the jury would not have been entitled to see, or even know of, the protected material. It was not surprising that the judge, having viewed the material, continued to sit in the case. It was invariably a principle that applied across the land on a weekly basis. Further, there had been no application at the time for the judge to recuse himself; that was a matter of discretion for the judge to consider in the interests of justice, and that had not arisen in the instant case.

Enhanced Criminal Record Certificate - Inclusion of Information Other Than Information about Criminal Activity

R (on the application of L) (Appellant) v COMMISSIONER OF POLICE FOR THE METROPOLIS (Respondent) & SECRETARY OF STATE FOR THE HOME DEPARTMENT (Intervenor) (2007)

[2007] EWCA Civ 168

CA (Civ Div) (Longmore LJ, Smith LJ, Moore-Bick LJ) 1/3/2007

Police

Children: Disclosure: Enhanced Criminal Record Certificates: Disclosing Non-Criminal Information: Neglect: Child Protection Register: Criminal Activity: Criminal Propensity: S.115 Police Act 1997: S.142 Education Act 2002: Protection Of Children Act 1999: S.115(7) Police Act 1997: S.115(2) Police Act 1997.

The relevant information disclosed by the police under the Police Act 1997 s.115(7) for inclusion in an enhanced criminal record certificate was not restricted to information about actual or potential criminal activity or propensity to commit crime.

The appellant (L) appealed against the decision ((2006) EWHC 482 (Admin)) that the police were entitled to disclose for inclusion in an enhanced criminal record certificate information about conduct that, if proved, would not constitute a criminal offence or reveal a risk that a criminal offence would be committed. L's son had been placed on the child protection register under the category of neglect. His name had been removed from the register after he had been found guilty of robbery and had received a custodial sentence. L had then been employed by an agency that provided staff to schools and had worked as a midday assistant at a secondary school, supervising children in the lunchtime break in the canteen and in the playground. Because of the nature of L's job, the agency had applied for an enhanced criminal record certificate in accordance with the Police Act 1997 s.115. The certificate recorded that L had no criminal convictions and that no information on her was recorded either on the list held under the Education Act 2002 s.142 or on the list held under the Protection of Children Act 1999. However, under the heading "Other relevant information disclosed at the chief police officer's discretion" it gave details about L's son. L challenged the decision to disclose that information in the certificate, but the judge held that the legislation permitted the police to make the disclosure. L submitted that relevant information for the purpose of s.115(7) of the 1997 Act did not include information that, even if proved, would not constitute a criminal offence or reveal a risk that a criminal offence would be committed.

HELD

(1) As a matter of construction of s.115(7) of the 1997 Act, the fact that an application for an enhanced certificate had to be accompanied by a statement that the certificate was required for the purpose of an exempted question asked in the course of considering an applicant's suitability for a position caring for or supervising children, did not mean that the information could only relate to matters that only an exempted question could be expected to answer. That would be an unduly restrictive interpretation. If information could only be provided for the purpose of answering a question about spent convictions, there would be no ability to provide information about possible criminal activity or propensity to commit crimes in the future. The statement required

by s.115(2) of the 1997 Act was the trigger for the provision of the information in that the information could only be provided in circumstances where the application was accompanied by a statement that the certificate was required for the purpose of an exempted question. Once that trigger existed, the only restriction was that the chief officer of police had to think that the information might be relevant for the purpose for which the statement was made, and that the information ought to be included in the certificate.

(2) There was nothing in the Green or White Papers preceding the 1997 Act, or in its long title or in official guidance that controverted the view that relevant information was not confined to criminal activity or propensity. The provision was not ambiguous and therefore Hansard could not be referred to.

APPEAL DISMISSED

Sentencing of Serving Police Officer Who Had Disclosed Information to a Known Criminal

ATTORNEY GENERAL'S REFERENCE (NO.1 OF 2007) sub nom R v JAMES ANDREW HARDY (2007)

CA (Crim Div) (Lord Phillips LCJ, Hedley J, Pitchers J) 7/3/2007

Sentencing - Criminal Law

Confidential Information: Misconduct In Public Office: Police Officers: Police Records: Undue Leniency: Provision Of Information To Known Criminals: Data Protection Act 1998

A suspended sentence had been wrong in principle in circumstances where a serving police officer had disclosed information protected by the Data Protection Act 1998 to a known criminal who had intended to seek retribution against others outside the law.

The Attorney General referred as unduly lenient a sentence of 28 weeks' imprisonment suspended for two years and a requirement to undertake 300 hours unpaid work imposed on the defendant (H) following his plea of guilty to misfeasance in public office contrary to common law. H had been a serving police officer at divisional headquarters and had received training in the use of the police national computer. He had been friends with a known criminal (J) prior to his joining the police force and had maintained that friendship. H had attended a stag weekend with J, following which he was disciplined by his employer for associating with criminals and formally reprimanded. H was told to cut his ties with J but he continued to associate with him. On two occasions, J asked H for information about various individuals that he wished to seek retribution against following an incident during which money had been stolen from his girlfriend and another incident involving an attack on J. J believed that due to his previous convictions, the authorities would not take his complaints seriously and that retribution was an appropriate course of action. H used the police database to provide the requested information to J and sought to evade detection by having his police partner photocopy the document so that his fingerprints would not be found. The Attorney General submitted that the sentence imposed failed to reflect the gravity of the offence since it had involved a gross breach of trust. He argued that H had tried to avoid detection, had provided the information to a known criminal at the risk of serious harm, had failed in his duty as a police officer to prevent crime and had committed the offence against the background of a formal reprimand for closely connected

misconduct. The Attorney General submitted that immediate imprisonment was necessary and that there had been no justification for suspending the sentence.

HELD

The court had been referred to the various relevant authorities involving the disclosure of information protected by the Data Protection Act 1998 from police databases by serving police officers. Having considered those authorities, H's misconduct required a sentence of immediate imprisonment, R v Keyte (1998) 2 Cr App R (S) 165, R v Kassim (2006) 1 Cr App R (S) 4 and R v Gellion (2006) 2 Cr App R (S) 4 considered. It was also appropriate to provide a deterrent element as it had to be made clear that there were serious and dire consequences for offending of the instant type. The minimum sentence that should have been passed was one of 18 months' imprisonment. The sentence was not only unduly lenient, but was wrong in principle. However, the court had to proceed on the basis that H had spent time in prison whilst on remand and had completed the unpaid work requirement of the sentence. There was also the issue of double jeopardy to be borne in mind. Where an offender had escaped a prison sentence through an unduly lenient sentence, it was irrelevant that they had completed an element of the sentence previously imposed. In the circumstances, there was no alternative but to quash the original sentence and impose a sentence of nine months' imprisonment less the time H had spent on remand.

REFERENCE ALLOWED

Assessing Compensation for a Miscarriage of Justice under the Criminal Justice Act 1988

O'BRIEN & ORS v Independent Assessor (2007)

HL (Lord Bingham of Cornhill, Lord Scott of Foscote, Lord Rodger of Earlsferry, Lord Carswell, Lord Brown of Eaton-under-Heywood) 14/3/2007

Criminal Procedure

Assessment: Compensation: Deductions: Living Expenses: Loss Of Earnings: Miscarriage Of Justice: Previous Convictions: Assessment Of Loss Of Earnings: Effect Of Decision Of Previous Assessor: S.133 Criminal Justice Act 1988

When assessing compensation for a miscarriage of justice under the Criminal Justice Act 1988 s.133, the assessor should, if making an award for lost earnings, make a deduction to take into account the living expenses that the prisoner would have incurred had he not been in prison. Further, when making a deduction from compensation to take into account the prisoner's "other convictions...and any punishment resulting from them", the assessor was not bound to follow the decision of a previous assessor.

The appellants (V and M) appealed against a decision of the Court of Appeal (R (on the application of O'Brien) v Independent Assessor (2004) EWCA Civ 1035, (2005) PIQR Q7) relating to the assessment of the compensation that was payable to them under the Criminal Justice Act 1988 s.133. In 1979, V and M had been convicted of murder. Their convictions were quashed in 1997, and the secretary of state decided that they were entitled to compensation under s.133 for the miscarriage of justice that had occurred. The assessor appointed by the secretary of state decided to make a deduction from V and M's lost earnings to take into account the living expenses that they would have incurred had

they not been in prison. The assessor also decided, when making a deduction from V and M's compensation to take into account their "other convictions...and any punishment resulting from them" under s.133(4A)(c), to apply a deduction of 25 per cent in V's case and 20 per cent in M's case. In doing so, he departed from a deduction of 10 per cent that had been applied by a different assessor in respect of the compensation due to another man who had been subject to the same miscarriage of justice but who had a much worse criminal record than V and M. The assessor's approach was upheld by the Court of Appeal. V and M argued that (1) no deduction should have been made from their lost earnings; (2) like cases ought to be treated alike in the absence of good reason, and the assessor had failed to give reasons for applying a higher percentage deduction from their compensation than had been applied by the previous assessor.

HELD (Lord Rodger dissenting on the first issue and Lord Scott dissenting on the second)

(1) The assessor had reached the correct conclusion on the first issue. His task, in relation to V and M's loss of earnings claim, was to assess what they had really lost. That, and that only, was the loss for which they were to be compensated. The assessment had necessarily to be hypothetical, but had to be as realistic as possible. If V and M were awarded the full amount of their notional lost earnings with no deduction save tax, they would in reality be better off than if they had earned the money as free men, since as free men they would have had to spend the minimum necessary to keep themselves alive. The deduction put them in the position in which they would in reality have been had they earned the money as free men and so compensated them for their actual loss.

(2) The assessor had also been entitled to take the approach that he had in relation to the second issue. While it was generally desirable that decision-makers, whether administrative or judicial, should act in a broadly consistent manner, the assessor's task had been to assess fair compensation for V and M. He was not entitled to award more or less than, in his considered judgment, they deserved. He was not bound, and not entitled, to follow a previous decision which he considered erroneous and which would yield what he judged to be an excessive award.

(3) (Per Lord Rodger) As to the loss of earnings claim, justice, reasonableness and public policy surely dictated that no allowance should be made for so-called savings which V and M were supposedly making while they were actually enduring the appalling wrong for which they were to be compensated.

(4) (Per Lord Scott) As to the deduction for other convictions, the public interest required at least that the assessment of the compensation should appear to be fair. In the instant case, it did not appear to be fair. Further, the whole concept of an indiscriminate deduction on account of past criminality was wrong in principle and not justified by s.133(4A).

‘Racial Group’ Includes References to Nationality and National Origins

R v ROGERS (2007)

[2007] UKHL 8

HL (Lord Hoffmann, Lord Hope of Craighead, Lord Walker of Gestingthorpe, Baroness Hale of Richmond, Lord Mance) 28/2/2007

Criminal Law

Actus Reus: Fear Or Provocation Of Violence: Racially Aggravated Offences: Statutory Interpretation: Meaning Of “Racial Group” In S.28(4) Crime And Disorder Act 1998: S.31(1)(A) Crime And Disorder Act 1998: S.28(4) Crime And Disorder Act 1998: S.28(1)(A) Crime And Disorder Act 1998: S.28(2) Crime And Disorder Act 1998: S.28(3) Crime And Disorder Act 1998.

The expression “racial group” in the Crime and Disorder Act 1998 s.28(4) was to be construed broadly. In the instant case, the appellant had rightly been convicted of using racially aggravated abusive or insulting words or behaviour with intent to cause fear or provoke violence, contrary to the Crime and Disorder Act 1998 s.31(1)(a), where he had called three young Spanish women “bloody foreigners” and told them to “go back to your own country”.

The appellant (R) appealed against a decision ((2005) EWCA Crim 2863, (2006) 1 WLR 962) upholding his conviction for using racially aggravated abusive or insulting words or behaviour with intent to cause fear or provoke violence, contrary to the Crime and Disorder Act 1998 s.31(1)(a). R had been involved in an altercation with three young Spanish women in which he called them “bloody foreigners” and told them to “go back to your own country”. The issue was the meaning of the words “racial group” in s.28(4) of the Act. R argued that hostility had to be shown towards a particular group, rather than to foreigners as a whole, and that mere xenophobia did not fall within the ordinary person’s perception of hostility to a racial group.

HELD

The definition of a racial group in s.28(4) clearly went beyond groups defined by their colour, race or ethnic origin. It encompassed both nationality (including citizenship) and national origins. That was quite deliberate. Further, there were indications that the statute intended a broad, non-technical approach, rather than a construction which invited nice distinctions. Under s.28(1)(a), hostility could be demonstrated at the time, or immediately before or after, the offence was committed. Under the same provision, the victim might be presumed by the offender to be a member of the hated group even if he was not. Under s.28(2), membership of a group included association with members of that group. And under s.28(3), the fact that the offender’s hostility was based on other factors as well as racism or xenophobia was immaterial. That flexible, non-technical approach made sense, not only as a matter of language, but also in policy terms. The mischiefs attacked by the aggravated versions of the relevant offences were racism and xenophobia. Their essence was the denial of equal respect and dignity to people who were seen as “other”. That was more deeply hurtful, damaging and disrespectful to the victims than the simple versions of the offences. It was also more damaging to the community as a whole, by denying acceptance to members of certain groups, not for their own sake, but for the sake of

something they could do nothing about. Fine distinctions depending on the particular words used would bring the law into disrepute, DPP v M (2004) EWHC 1453 (Admin) , (2004) 1 WLR 2758, Attorney-General's Reference (No4 of 2004), Re (2005) EWCA Crim 889 , (2005) 1 WLR 2810 and R v White (Anthony Delroy) (2001) EWCA Crim 216 , (2001) 1 WLR 1352 approved, and DPP v Pal (2000) Crim LR 756 considered.

APPEAL DISMISSED

'Reprehensible Behaviour' Within the Meaning of Section 112 of the Criminal Justice Act 2003

R v GARY OSBOURNE (2007)

CA (Crim Div) (Pill LJ, Henriques J, Sir Richard Curtis) 12/3/2007

Criminal Evidence

Admissibility: Bad Character: Murder: Schizophrenia: Statements: Summing Up: Reprehensible Behaviour: Evidence In Murder Trial Of Defendant's Aggressive But Not Violent Conduct Towards Partner: S.101(1)(C) Criminal Justice Act 2003: S.78 Police And Criminal Evidence Act 1984: S.112 Criminal Justice Act 2003

Evidence that the defendant, on trial for the murder of a friend, had been aggressive towards and shouted at his partner over the care of their infant was inadmissible, as that behaviour did not amount to "reprehensible behaviour" within the meaning in the Criminal Justice Act 2003 s.112.

The appellant (O) appealed against his conviction for murder. The victim, a drug dealer with whom O, as a drug user, had been friendly for many years, had been fatally stabbed in his flat. O was charged with his murder. During the trial, the judge admitted evidence of O's statements to the doctor who had examined him following his arrest. The doctor stated that O had said he had suffered from paranoid schizophrenia for many years and referred to tablets he had previously taken. The judge also admitted the evidence of O's former partner (K) that O had been diagnosed schizophrenic and put on medication, and that if O did not take his medication he was liable to snap at any time and be aggressive towards her and their young son, and shout at her, although he was never violent. The judge found that it was evidence of O's bad character and was admissible as important explanatory evidence, under the Criminal Justice Act 2003 s.101(1)(c), without which the jury would have had difficulty properly understanding and evaluating the other evidence in the case. The judge had also rejected a submission that the evidence should be excluded under the Police and Criminal Evidence Act 1984 s.78. O contended that the admission of that evidence had rendered his conviction unsafe. He submitted that the evidence was not in law evidence of bad character and was not admissible. It was not "reprehensible behaviour", as defined in s.112 of the 2003 Act, nor was it admissible under any other rule of evidence. O argued that even if it had been, it ought to have been excluded under s.78 of the 1984 Act, as there was a real possibility that the jury might have used the evidence that O suffered from a mental illness in order to provide an explanation for an otherwise inexplicable murder, and that the jury had heard no expert evidence as to any connection between the symptoms of that illness and the act of killing, or as to the effect of O not taking medication.

HELD

(1) The evidence given by K about O's behaviour was not admissible. However, once it had been admitted, the jury should have been directed that it was not relevant to the charge before them. In the context of the instant offence, shouting at a partner in the manner described by K could not amount to reprehensible behaviour within the meaning in s.112 of the 2003 Act. Shouting between partners over the care of a young child was not to be commended but in the context of a charge of murdering a close friend, it did not cross the threshold contemplated by the words of the statute. Further, it was not "important explanatory evidence" within the meaning of s.101(1)(c) or admissible as background history relevant to the offence charged, R v Fulcher (Dominic Josef) (1995) 2 Cr App R 251 distinguished, R v Dolan (Edward George) (2002) EWCA Crim 1859, (2003) 1 Cr App R 18 considered.

(2) In the circumstances, however, the wrongful admission of that evidence did not create any doubt about the safety of the conviction. In his summing up, the judge had summarised fairly, and in a way about which there could be no complaint, K's evidence, to the extent that, short of reversing his earlier ruling, he could hardly have watered down its significance more than he had. Further, the prosecution case had been very strong and had several strands.

APPEAL DISMISSED

Special Driving Skills Relevant When Determining Whether a Driver Had Been Driving Dangerously

MARK SCOTT MILTON v CROWN PROSECUTION SERVICE (2007)

QBD (Admin) (Smith LJ, Gross J) 16/3/2007

Road Traffic - Police

Dangerous Driving: Personal Circumstances: Police Officers: Speeding: Statutory Interpretation: Advanced Police Driver: Circumstances Relevant To Dangerousness: Circumstances Favourable To Driver: S.2a(3) Road Traffic Act 1988

Whilst the test under the Road Traffic Act 1988 s.2A(3) for determining whether a driver had been driving dangerously was primarily an objective test, circumstances relevant to dangerousness that were favourable to the driver such as his special driving skills or adverse circumstances such as a complete lack of experience, could be taken into account in applying the objective test.

The appellant police officer (M) appealed by way of case stated against the decision that when applying the Road Traffic Act 1988 s.2A(3) it was not appropriate to take into account the fact that he was a grade I advanced police driver and that he was guilty of dangerous driving. In accordance with the advice he had been given during his training as an advanced driver, M had taken the opportunity during his shift to familiarise himself with a new car's handling characteristics. Early that morning he had driven on different types of roads at speeds that were grossly in excess of the speed limits and he was charged with dangerous driving and exceeding the speed limit. The district judge had approached the evidence from the perspective of the mythical, competent and careful driver, unburdened by any knowledge of the particular ability or lack of ability of M. The questions posed by way of case stated were (i) whether the judge had been correct to decide when considering s.2A of the Act that he did not need to consider M's specialised training and tested skills; (ii) whether he had been correct to rely upon a generalised reference to the White Paper which preceded the 1988 Act to support his interpretation; if so (iii) whether he had been correct in law to rely upon the White Paper although no specific reference had been made to it in submissions nor had he invited submissions as to the extent, if at all, to which he should have had regard to it. M submitted that his special driving skills should be considered as factors to which the court should have regard when assessing the dangerousness of his driving under s.2A(3). He argued that there was nothing in that subsection which limited the type of circumstances to matters adverse to drivers and therefore that matters favourable to them could also be considered. He further submitted that the district judge had been wrong to rely on the White Paper as an aid to the construction of s.2A, as the Act as passed was different from what the government had intended at the time of that paper. The Crown Prosecution Service contended that if driving ability were taken into consideration, the floodgates would open and cases would become more complex and time consuming.

HELD

In the instant case the district judge had erred by construing s.2A(3) by reference to the policy in the White Paper rather than by reference to the words of the section. By enacting s.2A(3) Parliament had directed the court to have regard to any circumstances shown to have been within the knowledge of the accused. Subjective considerations were irrelevant for that purpose but in so far as a circumstance relevant to dangerousness was capable of being established as being within the knowledge of the accused, it was

necessary to have regard to it and this applied whether the circumstance was favourable to the driver or adverse to him. Accordingly, the fact that the driver was a grade 1 advanced police driver was a circumstance which it was necessary to take into account pursuant to s.2A(3). The weight to be attached to such a circumstance was a matter for the fact finder as a means of refining the objective test by reference to existing circumstances. Only the extreme cases of a "special skill" and an "almost complete lack of experience" would be such as to affect the mind of the decision maker for this purpose and therefore allowing an advanced driver to adduce evidence of his established skills would not significantly extend the ambit of evidence received so as to cause a concern and open the floodgates. The district judge had therefore misdirected himself in concluding that M's unusual driving skills were irrelevant to the issue of the dangerousness of his driving and the matter needed to be referred back to him for reconsideration.

APPEAL ALLOWED

Belching When Giving a Specimen of Breath

O SANG NG v DIRECTOR OF PUBLIC PROSECUTIONS (2007)

QBD (Admin) (Owen J) 26/1/2007

Road Traffic - Criminal Law

Breath Samples: Breath Tests: Disqualification From Driving: Driving While Over The Limit: Special Reasons: Belching When Giving Breath Specimen: Belching: Eructation

Belching when giving a specimen of breath could amount to a special reason not to disqualify a person from driving.

The appellant (N), who had pleaded guilty to driving while over the limit, appealed by way of case stated against a decision of the district judge that there were no special reasons why he should not be disqualified from driving. N had asserted that the intoximeter reading had been affected by his having belched during the procedure and that if the reading had been artificially inflated by belching, that could amount to a special reason for not disqualifying him. The district judge posed the following questions for the court's opinion:

(i) Whether she had been bound to conclude, following the case of Zafar v DPP (2004) EWHC 2468 (QB) , (2005) RTR 18, that evidence of mouth alcohol could not amount to a special reason as there could be no distinction made between deep lung breath and any other breath or air exhaled for the purpose of the specimen;

(ii) Whether she had been right to conclude that the elevated mouth alcohol was a circumstance special to the offender and not the commission of the offence and thus not capable of amounting to a special reason.

HELD

(1) The first question should be answered in the negative, Woolfe v DPP (2006) EWHC 1497 (Admin) followed. The district judge had made the same error as had been made in Woolfe, namely in concluding that the judgment in Zafar precluded not only a defence but also a finding of special reasons, Zafar considered.

(2) The second question should also be answered in the negative. The evidence on which N had sought to rely went directly to the commission of the offence. If accepted, it could provide an explanation as to why the level of alcohol in his breath exceeded the

prescribed level, notwithstanding that on his case the alcohol that he had consumed would not have had that effect, R v Jackson (Dennis James) (1970) 1 QB 647 and Brewer (Kenneth Albert) v Commissioner of Police of the Metropolis (1969) 1 WLR 267 considered.

APPEAL ALLOWED

SI 466/2007 The Road Safety Act 2006 (Commencement No 1)(England and Wales) Order 2007

In force **16 March**. This Order extends to England and Wales only and brings into force the following provisions of the Road Safety Act 2006:

- Section 44, which amends Part 2 of the Vehicles (Crime) Act 2001 to allow for enforcement action against number plate suppliers.
- Section 52, which amends Part 2 of the Local Government (Miscellaneous Provisions) Act 1976 to allow licensing authorities in England and Wales outside London to suspend or revoke a hackney carriage or private hire vehicle driver's licence with immediate effect where it is in the interests of public safety to do so.

SI 467/2007 The Immigration, Asylum and Nationality Act 2006 (Commencement No 5) Order 2007

In force **7 March**. Article 2 of this Order brings into force:

- Paragraph 6 of Schedule 2 to the Immigration, Asylum and Nationality Act 2006.
- Section 52(7) of the Immigration, Asylum and Nationality Act 2006 in so far as it relates to that paragraph.

These provisions amend Section 42 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. Section 42 allows the Secretary of State, when prescribing a fee for certain applications or processes under Section 51 of the 2006 Act, to prescribe an amount which is intended to exceed the administrative costs in respect of that application or process and reflect benefits that the Secretary of State thinks are likely to accrue to the person who makes the application, or for whom the process is undertaken, if the application is successful or the process is completed.

SI 499/2007 The Animal Welfare Act 2006 (Commencement No 1) (England) Order 2007

This Order brought into force on **23 March** the following provisions of the Animal Welfare Act 2006, for the purpose of making regulations under them:

- Section 5(4) and (5) (mutilation);
- Section 6(4) to (6), (8)(b) and (14) (docking of dogs' tails).

Virtually all of the remaining provisions of the Act come into force on 6 April:

- Section 1 - Animals to which the Act applies.
- Section 2 - Definition of a 'protected animal'.
- Section 3 - Responsibility for animals.
- Section 4 - Unnecessary suffering.
- Sections 5 and 6 - Mutilation, docking of dogs' tails, to the extent that they are not already in force.
- Section 7 - Administration of poisons etc.
- Section 8(1), (2), (7) and (8) - Fighting etc.

- Sections 9 to 12 - Promotion of welfare.
- Section 13 and Schedule 1 - Licensing or registration of activities involving animals.
- Sections 17 to 45 - Animals in distress, enforcement powers, prosecutions, post-conviction powers.
- Sections 51 and 52 - Inspectors, conditions for grant of warrant.
- Section 53 and Schedule 2 - Powers of entry, inspection and search: supplementary.
- Sections 54 to 60 - Power to stop and detain vehicles, power to detain vessels, aircraft and hovercraft, obtaining of documents in connection with carrying out orders etc, offences by bodies corporate, scientific research, fishing, Crown application.
- Sections 62 and 63 - General interpretation, financial provisions.
- Sections 64 and Schedule 3, except in so far as they relate to paragraph 3(1) of Schedule 3;
- Section 65 and Schedule 4, except in so far as they relate to the following entries in Schedule 4: - Section 2 of the Pet Animals Act 1951; Sections 2, 3, 6, 7 and 8 of the Agriculture (Miscellaneous Provisions) Act 1968; Sections 37 to 39 of the Animal Health Act 1981 and paragraph 8 of Schedule 5 to that Act.
- Section 66.

The remaining provisions of the Act that are not brought into force by this Order relate to:

- The offence under Section 8(3) of the supplying, publishing, showing or possession with intent to supply of video recordings of animal fights.
- The making of Codes of Practice.
- Matters relating to Scotland in respect of disqualification under Section 34, Deprivation orders, Seizure orders.

SI 562/2007 The Drugs Act 2005 (Commencement No. 5) Order 2007

In force **1 April**. This Order brings into force the following provisions in the Drugs Act 2005:

- Section 4 (drug offence searches: Northern Ireland).
- Section 6 (X-rays and ultrasound scans: Northern Ireland).
- Section 10 (follow-up assessment).
- Section 13 (arrangements for follow-up assessment).
- Section 14 (attendance at follow-up assessment).
- Section 11 (requirements under Sections 9 and 10: supplemental).
- Section 15 (disclosure of information about assessments).
- Section 16 (samples submitted for further analysis).
- Section 17 (relationship with Bail Act 1976 etc).

See article on HOC 7/2007 (page 15) for explanation of the above provisions.

SI 563/2007 The Mental Capacity Act 2005 (Commencement No 1)(England and Wales) Order 2007

This Order is the second commencement order under the Mental Capacity Act 2005. It brings in to force on **1 April 2007**

- Sections 42(1), (2), (3), (6) and (7) and 43 (codes of practice).
- Section 44 (ill-treatment or neglect).

It also brings the following provisions of the Act into force on that date for purposes relating to the independent mental capacity advocate service:

- Section 1 (principles).
- Section 2 (people who lack capacity).
- Section 3 (inability to make decisions).
- Section 4 (best interests).
- Sections 42(4) and (5) (codes of practice).

These provisions also come into force on that date for the purposes of Section 44 (ill-treatment or neglect).

Section 64 (interpretation) also comes into force on **1 April** for the purposes of all the above provisions.

See article on page 17regarding details of the offence created by Section 44.

SI 602/2007 The Domestic Violence, Crime and Victims Act 2004 (Commencement No 8) Order 2007

In force **1 April**. This Order brings into force the following provisions of the Domestic Violence, Crime and Victims Act 2004:

- Section 14 (surcharge payable on conviction).
- Section 58(1) (minor and consequential amendments).
- Paragraphs 9 to 11, 30 , 49 to 53 and 63 of Schedule 10;
- Section 59 (transitional provisions).

- Paragraph 7 of Schedule 12.

SI 621/2007 The Criminal Justice and Public Order Act 1994 (Commencement No 14) Order 2007

In force **6 April**. This Order brings into force Section 165 of the Criminal Justice and Public Order Act 1994. This Section inserts Sections 107A and 198A into the Copyright, Designs and Patents Act 1988. It relates to the enforcement of certain offences relating to copyright and illicit recordings by local weights and measures authorities, allowing them to use powers under the Trade Descriptions Act 1968 in the enforcement of these offences. These powers are:

- Section 27 (power to make test purchases).
- Section 28 (power to enter premises and inspect and seize goods and documents).
- Section 29 (obstruction of authorised officers).
- Section 33 (compensation for loss, &c. of goods seized).

SI 695/2007 The Gangmasters (Licensing) Act 2004 (Commencement No 5) Order 2007

In force **6 April**. This Order brings into force the following provisions of the Gangmasters (Licensing) Act 2004 for purposes related to work falling within Section 3(1)(b) of the Act, i.e. the work of gathering shellfish:

- Section 6(1) (prohibition of unlicensed activities).
- Section 12 (offences: acting as a gangmaster, being in possession of false documents etc).
- Section 13(1), (2) and (4) (offences: entering into arrangements with gangmasters).
- Section 27 (exclusion of provisions relating to employment agencies and businesses).
- Paragraph 20 of Schedule 2.

SI 699/2007 The Criminal Procedure (Amendment) Rules 2007

In force **2 April**. These Rules amend the Criminal Procedure Rules 2005 by replacing some of the existing rules with new rules, including revised rules about the service of documents, indictments and witness summonses.

These Rules add the following new provisions to the Criminal Procedure Rules 2005:

- A new Part 4 (service of documents), in substitution for the existing Part 4, which consolidates, revises and simplifies the rules about the service of documents in criminal cases. (see article on page 36).
- A new Part 14 (indictments), in substitution for the existing Part 14, which revises and simplifies the rules about the service, form and content of indictments. In some circumstances the new rules allow more than one incident of the same offence to be charged in a single paragraph of an indictment, which was not explicitly permitted by the rules these replace.
- A new Part 28 (witness summonses, warrants and orders), in substitution for the existing Part 28, which revises and simplifies the rules about applications for witnesses to give evidence or produce documents for use in evidence. The new rules require the court to consider the rights of those to whom confidential information or documents

relate before a witness can be required to give evidence about them. They allow for applications to set aside orders that have been made.

- New rules in Part 2 (when the Rules apply) explain when the new rules in Parts 14 and 28 will apply.

In addition, the following amendments and revocations are made:

- The rules contained in the Indictment Rules 1971 are revoked (they are superseded by the new rules in Part 14).
- Part 19 (custody and bail) is amended to allow for applications under Section 47(1E) of the Police and Criminal Evidence Act 1984 to vary bail conditions before charge, and to remove some inconsistencies in the rules in that Part.
- Part 31 (restriction on cross-examination by a defendant acting in person) is amended so that the rules in that Part apply in magistrates' courts as well as in the Crown Court.
- Most of the existing rules about service of documents are revoked (they are superseded by the new consolidated rules in Part 4) and other existing rules are amended to make them consistent with the new Part 4 rules.
- The Glossary is extended to include explanations of the expressions 'requisition' and 'written charge'.

SI 700/2007 The Police Act 1997 (Criminal Records) (Amendment) Regulations 2007

In force **1 April**. The purpose of this statutory instrument is to amend the reference to the Police Information Technology Organisation (PITO) within the Police Act 1997 (Criminal Records) Regulations 2002 by substituting reference to the National Policing Improvement Agency (NPIA), in response to the take-over of the function of running the Police National Computer (PNC).

SI 706/2007 The Prevention of Terrorism Act 2005 (Continuance in force of Sections 1 to 9) Order 2007

In force **11 March**. This Order continues in force, for a period of one year beginning on 11 March 2007, sections 1 to 9 of the Prevention of Terrorism Act 2005, which would otherwise expire at the end of 10 March 2007, pursuant to Article 2 of the Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2006.

Sections 1 to 9 of that Act enable the Secretary of State to make a control order against an individual, where he has reasonable grounds for suspecting that individual is or has been involved in terrorism-related activity and it is necessary to impose obligations on that

individual for purposes connected with protecting members of the public from a risk of terrorism.

SI 709/2007 The Police and Justice Act 2006 (Commencement No 2, Transitional and Saving Provisions) Order 2007

This Order brings into force various provisions of the Police and Justice Act 2006, subject to transitional provisions and savings.

This Order brings into force Section 4 of the Police and Justice Act 2006 on **31 March 2007**. See article in February *Digest* on Home Office Circular 4/2007 which explains in detail the implications of the implementation of Section 4.

Section 4 provides that a police authority is not a best value authority for the purposes of a number of provisions in the Local Government Act 1999, including Section 6 of that Act which requires the publication by a best value authority of a best value performance plan containing various types of information. However, this is subject to Article 5 of this Order which provides that a police authority shall continue to be a best value authority for the purposes of Section 6 of the 1999 Act but only in so far as that provision requires the preparation and publication of a best value performance plan for the financial years ending 31 March 2008 and 31 March 2009 which summarises the authority's assessment of its performance in the previous financial year against a number of performance indicators set by the Secretary of State.

The following provisions of the Police and Justice Act 2006 will come into force on **1 April 2007**:

- Section 1 - National Policing Improvement Agency (NPIA).
- Schedule 1 - NPIA (other than paragraph 30(3) of Schedule 1).
- Section 2 - amendments to the Police Act 1996 in so far as it relates to Schedule 2, paragraphs 16 to 23 and 27 to 29.
- Section 6 and Schedule 4 - consultation with APA and ACPO.
- Section 7(2) - standard powers and duties of community support officers.
- Section 8 - Community support officers: power to deal with truants.
- Section 9 - exercise of police powers by civilians - in so far as it relates to paragraphs 4 and 5(2)(a) of Schedule 5.
- Section 10 and Schedule 6 - police bail.
- Section 12 - power to stop and search at aerodromes.
- Section 15 - accreditation of weights and measures inspectors.
- Schedule 7 - insertions into the Police Reform Act 2002.
- Section 16 - power to apply accreditation provisions.
- Part 4 - Inspectorates.
- Section 45 - attendance by accused at certain prelim hearings to the extent not already in force.
- Section 46 - live link bail in the local justice area of Lambeth and Southwark.
- Section 52 (amendments and repeals) in so far as it relates to the entries in Schedules 14 and 15 listed below.

- Schedule 14 - paragraphs 1, 5, 8, 11, 14, 16, 30, 31, 35, 37, 40, 42 to 46, 48, 52, 58 and 60.
- Part 1(A) of Schedule 15 - NPIA.
- Part 1(B) of Schedule 15 - other repeals relating to Part 1 - entries relating to Sections 6(4), 15(3), 30(3) and (4), 41A and 41B of the Police Act 1996; the Criminal Procedure and Investigations Act 1996; and Sections 5 and 96 of the Police Reform Act 2002.
- Part 1(B) of Schedule 15 - other repeals relating to Part 1 - entries relating to the Employment Rights Act 1996; the Greater London Authority Act 1999; the Insolvency Act 2000; Section 94 of the Police Reform Act 2002; and the Courts Act 2003.
- Part 2 of Schedule 15 - repeals: powers of police etc - entries relating to the Aviation Security Act 1982; the Police and Criminal Evidence Act 1984; and the Criminal Justice Act 2003.

However, the implementation of the above provisions is subject to the following:

- For the year beginning 1 April 2007 the obligation on the National Policing Improvement Agency to produce an annual plan before the start of the year shall be an obligation to produce such a plan by 1 June 2007 (Article 6(1)).
- Despite the abolition on 1 April 2007 of the Police Information Technology Organisation and the Central Police Training and Development Authority the annual reports and statements of accounts for each body for the financial year ending 31 March 2007 shall still be produced and that this shall be undertaken by the NPIA (Article 6(2)-(5)).
- The commencement of certain repeals relating to the repeal of Schedules 2, 2A, 3 and 3A to the Police Act 1996 shall only have effect once the repeal of those Schedules has effect (Article 7).

This Order also brings into force on **6 April 2007** the following provisions of the Police and Justice Act 2006:

- Section 26 - anti-social behaviour injunctions.
- Section 27 - injunctions in local authority proceedings: powers of arrest and remand.
- Schedule 10 - injunctions in local authority proceedings: powers to remand.
- Section 52 and Schedule 14 - amendments and repeals in relation to paragraphs 12, 13, 32 and 33 of Schedule 14 (Housing Act 1985 and Housing Act 1996).
- Part 3 of Schedule 15 - repeals: crime and anti-social behaviour - entries relating to the Anti-social Behaviour Act 2003

However, Article 8 of this Order provides that applications made under Chapter 3 (injunctions against anti-social behaviour) of Part 5 of the Housing Act 1996, Section 82A (demotion because of anti-social behaviour) and Section 121A (order suspending the right

to buy because of anti-social behaviour) of the Housing Act 1985 or injunctions under Section 222 of the Local Government Act 1972 are not affected by the coming into force of this Order.

SI 741/2007 The Sex Discrimination Code of Practice (Public Authorities) (Duty to Promote Equality) (Appointed Day) Order 2007

In force **6 April**. This Order appoints 6 April 2007 for the coming into effect of the Code of Practice on the duty to promote gender equality, entitled the 'Gender Equality Duty Code of Practice (England and Wales)'.

The Code has been prepared and issued by the Equal Opportunities Commission under Section 76E(1) of the Sex Discrimination Act 1975. It provides practical guidance to public authorities which are subject to the duties imposed by Sections 76A(1), 76B(1) and 76C(2) of the Sex Discrimination Act 1975.

Section 76A(1) imposes a general duty on public authorities to have due regard to the need to eliminate unlawful discrimination and harassment and to promote equality of opportunity between men and women.

Sections 76B(1) and 76C(2) provide powers to impose specific duties, which have been exercised in the Sex Discrimination Act 1975 (Public Authorities) (Statutory Duties) Order 2006 (S.I. 2006/2930), which imposes specific duties on listed public authorities in respect of their functions in England and Wales and their functions concerning reserved matters in Scotland.

The Order also imposes duties on listed cross-border authorities (within the meaning of section 88(5) of the Scotland Act 1998) in respect of their functions in Scotland which relate to reserved matters.

The Order does not impose duties on any public authorities all of whose functions are public functions in relation to Wales.

A further Code of Practice giving practical guidance to Scottish public authorities is to be issued by the Equal Opportunities Commission in due course.

See article on page 8.

SI 735/2006 The Fire and Rescue Services (Emergencies) (England) Order 2007

In force **6 April**. This Order gives mandatory functions to fire and rescue authorities in connection with chemical, biological, radiological or nuclear emergences (CBRN) and emergencies requiring the freeing of people from collapsed structures or non-road transport wreckages (urban search and rescue, or 'USAR emergencies').

SI 767/2007 The Children and Young Persons (Sale of Tobacco etc.) Order 2007

In force **1 October**. This Order amends the Children and Young Persons Act 1933 and the Children and Young Persons (Protection from Tobacco) Act 1991. The Order's main effects are to:

- Make it an offence for retailers to sell tobacco or cigarette papers to anyone under 18 (previously 16).
- Require notices in retail premises and on tobacco vending machines to reflect this change.

SI 773/2007 The Discharge of Fines by Unpaid Work (Pilot Schemes) (Amendment) Order 2007

In force **30 March**. This Order amends the Discharge of Fines by Unpaid Work (Pilot Schemes) Order 2004 (S.I. 2198/2004), which specifies the local justice areas in which the provisions of Schedule 6 (Discharge of Fines by Unpaid Work) to the Courts Act 2003 are to be piloted and the period of the pilot. This Order extends the period of the pilot schemes provided for in the 2004 Order for a further year, to 31 March 2008. It also adds the following local justice areas in South Wales to the pilot: Cardiff, Cynon Valley, Merthyr Tydfil, Miskin, Neath Port Talbot, Newcastle and Ogmore, Swansea County and the Vale of Glamorgan.

The specified local justice areas where the provisions may currently be piloted are:

- Peterborough, Huntingdon and Wisbech in Cambridgeshire.
- Sheffield and Barnsley in South Yorkshire.
- Halton and Warrington in Cheshire.
- Kendal and Barrow in Cumbria.
- South Devon, Central Devon, East Cornwall and West Cornwall in Devon and Cornwall.
- Gloucester, Stroud and Forest of Dean in Gloucestershire.

SI 790/2007 The Ticket Touting (Designation of Football Matches) Order 2007

In force **6 April**. This Order sets out the definition of a 'designated association football match' for the purposes of the football ticket touting legislation in the Criminal Justice and Public Order Act 1994.

A designated association football match in England and Wales is one in which one or both participating teams represents a club which is a member of the Football League, the Football Association Premier League, the Football Conference or the League of Wales, or represents a country or territory.

A designated association football match outside England and Wales is one involving a

national team of England or Wales, or a team representing a club which is a member of the Football League, the Football Association Premier League, the Football Conference or the League of Wales, or one in competitions or tournaments organised by or under the authority of FIFA or UEFA in which any of such English or Welsh domestic or national teams is eligible to participate or has participated.

SI 816/2007 The Natural Environment and Rural Communities Act 2006 (Commencement No 4) Order 2007

This Order brings into force certain provisions of the Natural Environment and Rural Communities Act 2006, relating to inland waterways and also members of National Park authorities.

The following provisions of the Act, relating to inland waterways, come into force on **1 April**:

- Part 7 of the Act (Sections 73 to 77).
- Part 2 of Schedule 11.
- Schedule 12, so far as it has not already been commenced.

Part 7 re-constitutes the Inland Waterways Amenity Advisory Council by severing its administrative connections with British Waterways and setting it up as an independent body supported by the Department for Environment, Food and Rural Affairs (or, in Scotland, by the Scottish Executive). Part 7 replaces the Council's existing statutory advisory functions with new, wider terms of reference, enabling it to advise Government, navigation authorities and other interested persons about the inland waterways generally. The Council is renamed the Inland Waterways Advisory Council to reflect its new role. The Act does not change the Council's existing functions as a statutory consultee.

Section 61 (members of National Park authorities) comes into force, so far as it has not already been commenced, on **10 May**.

SI 825/2007 The Employment Equality (Age) (Consequential Amendments) Regulations 2007

In force **6 April**. These Regulations are the fourth set of regulations containing legislative measures necessary for implementing Council Directive 2000/78/EC (which concerns equal treatment in employment) so far as it relates to discrimination on the grounds of age, and are made under Section 2(2) of the European Communities Act 1972. The effect of the amendments is to amend legislation containing age-discriminatory provisions that cannot be shown to be a proportionate means of achieving a legitimate aim.

SI 853/2007 The Road Transport (Working Time) (Amendment) Regulations 2007

In force **11 April**. These Regulations amend the Road Transport (Working Time) Regulations 2005 to ensure that they continue to apply to mobile workers operating on vehicles subject to the EU drivers' hours rules when the new EU Regulation (EC) No. 561/2006 on drivers' hours enters fully into force on 11 April 2007. This Instrument also corrects an erroneous cross-reference in the principal Regulations.

SI 858/2007 The Violent Crime Reduction Act 2006 (Commencement No 2) Order 2007

This Order brings into force certain provisions of the Violent Crime Reduction Act 2006.

In force **6 April** are:

- Sections 23 and 24 (persistently selling alcohol to children).
- Section 26 (designated public places).
- Sections 28 to 29 (dangerous weapons).
- Section 30 (minimum sentences for certain firearms offences).
- Section 31(3) (prohibition on sale or transfer of air weapons except by registered dealers) in so far as it makes provision for the interpretation of the following provisions of the Firearms Act 1968: Sections 33 to 39 and 45; Section 56 in so far as that provision applies to a notice required or authorised by Section 36 or 38 of that Act; Schedule 5; and the definition of "registered" in Section 57(4) as that term applies to the provisions in paragraphs (i) to (iii).
- Section 35 (restriction on sale and purchase of primers).
- Section 49 and Schedule 1 (consequential amendments relating to minimum sentences).
- Section 50 (supplemental provisions for Part 2) to the following extent: subsections (1), (2) and (5); subsection (3) in so far as it makes provision for Sections 46, 51(4), 52 and 58 of the Firearms Act 1968 to apply as if Sections 28, 29 and 35 of the 2006 Act were contained in that Act; and in subsection (4), paragraphs (a) and (b) and, in so far as it relates to sections 28 and 29 of the 2006 Act, paragraph (d).
- Section 51 in so far as it relates to the entries in Schedule 2 (weapons etc.: corresponding provisions for Northern Ireland) referred to in the order.
- Sections 52 and 53 and Schedule 3 (football).
- Section 62 (offering or agreeing to re-programme a mobile telephone).
- Section 65 (repeals) in so far as it relates to the entries in Schedule 5 (repeals) referred to in sub-paragraph (n) of the Order.

The Schedule 5 (repeals) mentioned above are:

- Section 51A(1)(a)(i) of the Firearms Act 1968.
- The Magistrates' Courts Act 1980.
- The Mental Health Act 1983.
- Section 36(2)(b) of the Criminal Justice Act 1988.
- The Football Spectators Act 1989.
- Section 166 of the Criminal Justice and Public Order Act 1994.
- The Data Protection Act 1998.
- Section 51A(12) of the Crime and Disorder Act 1998.
- The Football (Offences and Disorder) Act 1999.

- Paragraph 158 of Schedule 13 to the Access to Justice Act 1999.
- Section 164(3) of the Powers of Criminal Courts (Sentencing) Act 2000.
- The Football (Disorder) Act 2000.
- The Football (Disorder) (Amendment) Act 2002.
- The Mobile Telephones (Re-programming) Act 2002.
- Section 37(3) of the Anti-social Behaviour Act 2003.
- Paragraph 331 of Schedule 8 to the Courts Act 2003.
- Section 150 of, and paragraph 41 of Schedule 26 to, the Criminal Justice Act 2003.

In force on **31 May** are:

- Section 45 (power of members of staff to search school pupils for weapons) in so far as it extends to England.
- Section 46 (power to search further education students for weapons) in so far as it extends to England.
- Section 48 (amendment of police power to search schools etc. for weapons).
- Section 51 in so far as it relates to the entry at paragraph 13 in Schedule 2 (weapons etc.: corresponding provisions for Northern Ireland).
- Section 58 (power of entry and search of relevant offender's home address).

SI 929/2007 The Schedule 5 to the Anti-terrorism, Crime and Security Act 2001 (Modification) Order 2007

In force **2 April**. The Order extends the list of controlled pathogens and toxins in Schedule 5 of the Act in light of new scientific findings. The objective is to secure those substances that potentially pose the greatest risk to human life if misused by terrorists.

SI 930/2007 The Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) Order 2007

In force **1 June**. This Order designates certain sites for the purposes of Section 128 of the Serious Organised Crime and Police Act 2005. Under Section 128 if a person enters on a designated site as a trespasser he will commit an offence.

This Order applies the new offence to all or part of the following sixteen sites:

- 85 Albert Embankment, London.
- Buckingham Palace, London.
- Ministry of Defence Main Building, Whitehall, London.
- Old War Office Building, Whitehall, London.
- St James's Palace, Cleveland Row, London.
- Thames House, 11 and 12 Millbank, London.
- The Chequers estate, near Aylesbury, Buckinghamshire.

- 10 - 12 Downing Street site as well as 70 Whitehall.
- Government Communication Headquarters, Harp Hill, Cheltenham.
- Government Communication Headquarters, Hubble Road, Cheltenham.
- Government Communication Headquarters, Racecourse Road, Scarborough, North Yorkshire.
- Government Communication Headquarters, Woodford, Bude, Cornwall.
- Highgrove House, Doughton, Gloucestershire.
- Palace of Westminster and Portcullis House site.
- Sandringham House, Norfolk.
- Windsor Castle, Berkshire.

Notes