CENTREX
HELPING TO DEVELOP POLICING

Digest

May 2006

Legal Validation and Research

May 2006

Digest

Legal Validation and Research Department

www.centrex.police.uk/digest

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

This edition contains detailed articles looking at the provisions of the Identity Cards Act 2006 and the Criminal Defence Service Act 2006. Also covered is the Fraud Bill, which intends to abolish the existing deception offences under the Theft Acts of 1968 and 1978, the Lighter Evenings (Experiment) Bill, the Neighbourhood Policing Bill, the Trespass with a Vehicle (Offences) Bill and the Control of Internet Access (Child Pornography) Bill.

Details are provided of the new Home Office Ministerial Team following the Cabinet reshuffle. Also covered is the launch of the Child Exploitation and Online Protection Centre and a five week national knife amnesty.

Other articles report on statistics which have been published about vehicle speed, motoring offences and breath tests, traffic levels, performance of the criminal justice system and crime in England and Wales.

Also included this month are details on various consultation papers which have been issued. These include a public consultation on HM Revenue and Customs, Consultation on Security Guards at Sports and Other Events and the Private Security Industry Act 2001 and Consultation Guidelines on Domestic Violence and Breach of Protective Orders.

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 

CONTENTS

Recommendations to Tackle Elder Abuse

The group Action on Elder Abuse have issued a report entitled, 'Adult Protection Data Monitoring'. The document is a culmination of a two year Government funded project. Itlooks at and analyses adult protection intervention and in such a way aims to contribute towards social policy planning to improve protective processes. The charity has made a number of key recommendations to the Government. These main proposals are:

- That there should be a national collection of data on protection of vulnerable adult referrals.
- That a statutory framework for the protection of vulnerable adults work should be introduced; and the status of adult protection should be raised to that of the same status as child protection and domestic violence.
- That there should be an implementation of clear performance measures across the NHS and social care, which are based on the reduction and elimination of risk to vulnerable adults.

The report and a fuller explanation of the findings can be found at **http://www.elderabuse.org.uk/Useful%20downloads/AEA/AP%20Monitoring.pdf**

Keep Safe Booklet Issued for Vulnerable Adults

The Home Office has published a booklet called 'Keep Safe', for vulnerable adults and those with learning difficulties. The booklet offers people advice on how to protect themselves from crime. It offers advice on how to keep safe when at home and also when outside alone. The booklet also deals with bullying, mugging and attacks, and on where to go for help and how to report incidents to the police.

This booklet can be found at **http://www.crimereduction.gov.uk/keepsafe.pdf**

TUC Report on Dads' Flexible Working Hours

The Trades Union Congress (TUC) has produced a report called, 'Out of time: Why Britain needs a new approach to flexible working'. This report calls for a new approach to the way that work is organised in the UK. It argues for a more equitable share of work between men and women at home and work and offers recommendations to improve the way work is managed in this area.

The report suggests that bosses look more favourably on requests submitted by their female members of staff. It suggests that 10% of women and 14% of men had their flexible working requests rejected. The report also suggests that at an employment tribunal men are much less likely to be successful in their claim.

The report also suggests that there is more of a reluctance to allow men to change their hours after they become parents and that this reinforces the idea that the working mother has to reduce her hours. It suggests that women end up 'paying a part time penalty' and may be in jobs below their skills potential and also lose out when it comes to future pension payouts.

'Out of time' makes a number of recommendations which aim to improve the way that work is managed in the UK, to improve the efficiency of UK businesses and also to decrease the trend of long working hours. These recommendations are as follows:

- There should be an extension of the right to request flexible work in the UK for all workers.
- More powers should be given to employment tribunals to encourage tribunals to trial new working practices, with a greater emphasis on forms of flexible working, such as flexitime and working time accounts, which do not mean there are cuts to pay.
- There should be an end to the UK's 48 hour opt out of the Working Time Directive.
- Employers should be encouraged to give staff better notice of irregular working or shift changes.
- Employers and unions should make working time one of the central concerns of negotiations; and they should look at ways of reducing inducements to long working hours and the gender impact of pay structures which are linked to different working time practices.
- Unions, employers and the government should develop training packages for managers to help them better manage workloads and encourage them to take-up flexible working throughout their organisations.

The TUC's report is available at **http://www.tuc.org.uk/extras/outoftime.pdf**

The New Specialist Child Abuse Investigator Development Programme (SCAIDP)

In December 2005, the creation of a new Specialist Child Abuse Investigators Development Programme (SCAIDP) was announced. The programme comprises six phases, primarily aimed at the new child abuse investigator, but which can also be used as a developmental opportunity for existing child abuse investigators.

It incorporates a distance learning phase, followed by classroom-based activities, in-house development and portfolio-building, culminating in a professional registration process and continuous professional development.

Centrex has recently announced that the first part of SCAIDP, the Foundation Modules, which includes a distance learning package for students, training material for trainers and a personal development portfolio, has been launched on the NCALT Managed Learning Environment (MLE).

All who enter the NCALT website will be able to see the programme, but only those forces who have signed up to a 'License Agreement' will be allowed access to the material. This will ensure the integrity and standardisation of delivery. There is also a pre-entry requirement for students who wish to take part in this process.

Applications for those who wish to be considered for the programme will have to be made through their own force training centre/deliverer.

For more information on SCAIDP or the requirements for forces who wish to take up the Licence Agreement contact:

DS Jeffrey Boxer on **jeffery.boxer@nslec.pnn.police.uk** or
Insp. Steve Chriscoli on **steve.chriscoli@centrex.pnn.police.uk**

Time Limit for Disability Discrimination Claims

Tribunals dealing with disability discrimination claims now have discretion to hear claims brought outside the primary limitation period where it is considered reasonable.

Under the Employment Act 2002 (Section 32), an employee who wishes to make a claim must set out the details of their claim in writing and send a copy to their employer. The claim cannot be heard by the tribunal if the employee submitted the claim more than a month after the end of the 'original time limit', which is three months from the date of the act of discrimination, for example the date of dismissal.

Under the Disability Discrimination Act 1995, the time limit for presenting a claim is effectively three months from the date of the act of discrimination complained of. However, the time limit specific to this Act is subject to extension where a tribunal considers it 'just and equitable' in all of the circumstances.

The ruling came from the two recent cases of Mrs Cann versus Bupa and Mrs Spillett versus Tesco Stores Ltd. Both cases were supported by the Disability Rights Commission. In these cases it was held that the 'original time limit for making a complaint' under Section 32 of the Employment Act 2002 was the time limit provided for the Disability Discrimination Act 1995, which included the power of a tribunal to use their discretion if it considered it just and equitable to do so. Therefore, there is no strict limitation in the Employment Act 2002 for disability discrimination claims.

The details of the rulings in both cases can be found at Lawtel's website at **http://www.lawtel.com** under (1) Samantha Spillett (2) Tesco Stores Ltd. v Bupa Care Homes (BNH) Ltd (2) Dawn Cann (2002).

The Fraud Bill

As mentioned in last month's *Digest*, the Fraud Bill was introduced to the House of Commons on 29 March 2006. This article looks at the provisions for, and in connection with, criminal liability for fraud and obtaining services dishonestly contained in the Bill.

The Bill intends to abolish the existing deception offences under the Theft Acts of 1968 and 1978 with the creation of new offences, and tinkers with 'going equipped' under Section 25 of the Theft Act 1968.

For the purposes of stop and search, Section 1 of the Police and Criminal Evidence Act 1984 will also be amended, by repealing the power to stop and search for articles under Section 15 of the Theft Act 1968 and replacing it with a power to stop and search for articles in connection with fraud. 'Prohibited articles' under PACE will be up-dated to include 'any program or data held in electronic form'. The Bill contains a new offence of fraudulent trading which will apply to non-corporate traders and runs parallel with the offences under the Companies Act 1985 and the Companies (Northern Ireland) Order 1986. The Bill, when enacted, will be referred to as the Fraud Act 2006. For ease of use, and to reflect the wording of the text of the Bill, the clauses of the Bill will be referred to as Sections.

For England, the Bill mainly intends to repeal the following:

Theft Act 1968

- Section 15 (obtaining property by deception).
- Section 15A (obtaining a money transfer by deception).
- Section 15B (Section 15A: supplementary).
- Section 16 (obtaining a pecuniary advantage by deception).
- Section 20(2) (procuring the execution of a valuable security by deception).

Theft Act 1978

- Section 1 (Obtaining services by deception).
- Section 2 (evasion of liability).
- Section 4(2)(a).
- Section 5(1).

The Bill also makes numerous amendments to other Acts of Parliament in relation to fraud such as:

- Police and Criminal Evidence Act 1984.
- Criminal Justice Act 1993.
- Theft (Amendment) Act 1996.
- Terrorism Act 2000.
- Criminal Justice and Court Services Act 2000.
- Licensing Act 2003.
- Asylum and Immigration (Treatment of Claimants, etc) Act 2004.

- Serious Organised Crime and Police Act 2005.

A further amendment will be made to Section 24(4) of the Theft Act 1968, with the substitution of Section 15 of the Act to instead make reference to fraud within the meaning of the Fraud Act 2006 (when enacted). In addition, the Bill seeks to amend s.24A (dishonestly retaining a wrongful credit) by deleting subsections (3) and (4) and inserting a new subsection 2A. This basically deletes all references to Section 15 of that Act and substitutes it with references to the Fraud Bill.

The main offences that the Bill (when enacted) will introduce are as follows:

- Section 1 Fraud.
- Section 2 Fraud by false representation.
- Section 3 Fraud by failing to disclose information.
- Section 4 Fraud by abuse of position.
- Section 5 "gain or loss".
- Section 6 Possession etc. articles for use in frauds.
- Section 7 Making or supplying articles for use in frauds.
- Section 8 Article.
- Section 9 Participating in fraudulent business carried on by a sole trader etc.
- Section 10 Participating in fraudulent business carried on by company etc: penalty.
- Section 11 Obtaining services dishonestly.
- Section 12 Liability of company offences by company.
- Section 13 Evidence.

The *Digest* will focus mainly on Sections 1 -8, 11 and 13.

Section 1 Fraud

A person is guilty of fraud if he is in breach of any of the Sections listed in subsection (2) (which provide for different ways of committing the offence).

The Sections are-

- Section 2 (fraud by false representation).
- Section 3 (fraud by failing to disclose information).
- Section 4 (fraud by abuse of position).

A person who is guilty of fraud is liable, on summary conviction, to a term of imprisonment up to 12 months or to a fine or both; and on indictment, to imprisonment for a term up to 10 years or to a fine or both.

Section 2 Fraud by false representation

Section 2 of the Fraud Bill outlines a new general offence of fraud called 'Fraud by false representation'.

A person is in breach of this Section if he:

- Dishonestly makes a false representation.

and

- Intends, by making the representation to make a gain for himself or another, or to cause loss to another or to expose another to a risk of loss.

As you can see, the person must have the intention to make some gain for himself or another person, or to cause some other person a loss, or to put that person in a position where there may be a risk of some loss. Note that the gain or loss need not have taken place.

Gain and loss are defined under Section 5 of the Bill and are the same as s.34(2)(a) of the Theft Act 1968.

'Gain' includes keeping what one has, as well as a gain by getting what one does not have.

'Loss' means not getting what one might get as well as losing something that one has. The loss can be permanent or temporary.

The gain or loss extends to money or other property, whether real or personal (those items that are intangible or tangible).

'Dishonest' has been defined since 1982 in the judgement of R v Gosh ([1982] Q.B. 1053), and based upon the two tier test of whether his behaviour was regarded as being dishonest by the ordinary standards of reasonable and honest people and whether the defendant was aware that his conduct was dishonest.

Subsection 2(2) outlines what determines a false representation.

A representation is false if:

- It is untrue or misleading.

and

- The person making it knows that it is, or might be, untrue or misleading.

The term 'representation' is defined under s.2(3) of the Bill as

- Any representation as to fact or law, including a representation as to the state of mind of the person making it, or any other person.

Subsection (4) states the representation may be expressed or implied.

An example of subsection (4) would be either dishonestly misusing a credit card to pay for goods, or the sending of emails by persons purporting to have in their possession a large amount of legitimate financial funds stored in alleged financial institutions. The sender of the email requests the recipient to disclose their bank account details in order to deposit funds into their account. Of course the entire transaction is carried out with the intention of enticing the recipient to disclose their account details; the sender will subsequently proceed to empty the recipient's bank account! This is commonly referred to as 'phishing' (pronounced fishing).

Subsection (5)

For the purposes of this section, a representation may be regarded as made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention).

The explanatory notes to the Bill provide an example of subsection (5) where the person making the representation inputs a number into a machine as opposed to physically handing over a credit card to a human being for checking under the 'chip and pin' process.

Section 3 Fraud by failing to disclose information

A person is in breach of this section if he:

- Dishonestly fails to disclose to another person information which he is under a legal duty to disclose.

and

- Intends, by failing to disclose the information, to make a gain for himself or another, or to cause loss to another or to expose another to a risk of loss.

The section applies to all parties where a person is under a duty to disclose something and by not doing so could create some gain, i.e. by not disclosing an illness for medial insurance, or where the failure to disclose causes a loss or puts another at a risk of a loss. This may include verbal or written contracts. The explanatory notes state that the Law Commission's Report of Fraud on the concept of 'legal duty' is as follows:

Such a duty may derive from statute (such as the provisions governing company prospectuses), from the fact that the transaction in question is one of the utmost good faith (such as a contract of insurance), from the express or implied terms of a contract, from the customer of a particular trade or market, or from the existence of a fiduciary relationship between the parties (such as that of agent and principle).

For this purpose there is a legal duty to disclose information not only if the defendant's failure to disclose it gives the victim a cause of action for damages, but also if the law gives the victim a right to set aside any change in his or her legal position to which he or she may consent as a result of the non-disclosures. For example, a person in a fiduciary position has a duty to disclose material information when entering into a contract with his or her beneficiary, in the sense that a failure to make such disclosure will entitle the beneficiary to rescind the contract and to reclaim any property transferred under it.

Section 4 Fraud by abuse of position

A person in breach of this Section if he:

- Occupies a position, in which he is expected to safeguard, or not to act against, the financial interests of another person.
- Dishonestly abuses that position, and
- Intends, by means of the abuse of that position

  To make a gain for himself or another, or

  To cause loss to another or to expose another to a risk of loss.

S. 4(2) A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.

This offence focuses on those persons who are in elite positions of financial trust and have insight and possibly control of another's financial situation. There will be some form of relationship or agreement between both parties for the offence to operate: the relationship can be one of client, employee, family, trustee and beneficiary or simply trust. Although the offence focuses on the area of finance of the victim, it appears by the wording of the section that the actual gain to the offender may not be monetary, although invariably it is.

It is not clear what is meant by the term 'abuse' and the Bill does not seek to define the meaning. It is therefore designed to give the word a broad meaning, allowing for numerous interpretations for various situations. Examples are given of where an employee fails to take up a contract to allow a rival company to obtain the contract at the expense of the employee's company, or where someone is looking after elderly or vulnerable persons and has access to their bank account and abuses their position by removing money from the account. The explanatory notes provide the Law Commission's meaning of the word 'position' at paragraph t.38 of the Commission's Report.

- "The necessary relationship will be present between trustee and beneficiary, director and company, professional person and client, agent and principal, employer and employee, or between partners. It may arise otherwise, for example within a family, or in the context of voluntary work, or in any context where the parties are not at arm's length. In nearly all cases where it arises, it will be recognised by the civil law as importing fiduciary duties, and any relationship that is so recognised will suffice. We see no reason, however, why the existence of such duties should be essential. This does not of course mean that it would be entirely a matter for the fact-finders whether the necessary relationship exists. The question whether the particular facts alleged can properly be described as giving rise to that relationship will be an issue capable if being ruled upon by the judge and, if the case goes to the jury, of being the subject of directions".

Section 5 is explained in the outline of section 2 above.

Section 6 Possession etc. of articles for use in frauds

S.6(1) A person is guilty of an offence if he has in his possession or under his control any article for use in the course of or in connection with fraud.

A person guilty of an offence under this section is liable, on summary conviction, to term of imprisonment not exceeding 12 months or to a fine or both; on conviction on indictment, to a term of imprisonment not exceeding five years or to a fine or both.

This offence is similar to Section 25 of the Theft Act 1968 (s.24 Theft Act Northern Ireland 1969) 'going equipped'. However, you will notice the difference between the wording of s.25 and this new fraud offence. The difference is that a person can commit this offence if the article is in his possession regardless of whether or not he is at his place of abode, i.e. even if he is not at his home address. This takes into account the advantage of technology, allowing a person to conduct their crime any time and in any place. Please note that Section 25 of the Theft Act 1968 will be amended to delete any references to going equipped to cheat.

Section 7 Making or supplying articles for use in frauds

S.7(1) A person is guilty of an offence if he makes, adapts, supplies or offers to supply any article –

- Knowing that is designed or adapted for use in the course of or in connection with fraud, or
- Intending it to be used to commit, assist in the commission of, fraud

A person guilty of an offence under this Section is liable, on summary conviction, to a term of imprisonment not exceeding 12 months or to a fine or both; on conviction on indictment, to a term of imprisonment not exceeding 10 years or to a fine or both.

Section 8 Article

An 'article ' includes any program or data held in electronic form for the purposes of Sections 6 and 7 above and Section 8(2), so far as they relate to articles for use in the course of or in connection with fraud. The provisions are for the stop and search powers

laid in Section 1(7)(b) of the Police and Criminal Evidence Act 1984, Section 2(8)(b) of the Armed Forces Act 2001 and Article 3(7)(b) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I.1989/1341 (N.I.12).

For this offence, "articles" are not restricted to program or electronic forms but are inclusive and can mean anything that can be used to make, alter, remove, supply or store something by electronic means in connection with fraud.

Section 11 Obtaining services dishonestly

S.11(1) A person is guilty of an offence under this section if he obtains services for himself or another by a dishonest act and in breach os subsection 2.

A person obtains service in breach of subsection (2) of Section 11 if:

- They are made available on the basis that payment has been, is being or will be made for or in respect of them,
- He obtains them without any payment having been made for or in respect of them without payment having been made in full, and
- When he obtains them, he knows:

  i That they are being made available on the basis described in paragraph (a), or

  ii That they might be,

but intends that payment will not be made, or will not be made in full.

A person guilty of an offence under this Section is liable, on summary conviction, to a term of imprisonment not exceeding 12 months or to a fine or both; on conviction on indictment, to a term of imprisonment for a term not exceeding 5 years or to a fine or both.

This offence is designed to replace Section 1 of the Theft Act 1978 (Article 3 of the Theft (Northern Ireland) Order 1978): obtaining services by deception. However as with the previous deception offences of the Theft Act 1968, this new fraud offence removes the words 'deception' and 'reckless or deliberate' from the offence. In addition, Section 5(1) of the Theft Act 1978, which outlines the meaning of deception, will be repealed. A person must be aware that the service in particular is or might be charged for and that payment for that service would be expected.

The person must dishonestly carry out an act to obtain a service and to avoid payment in full. A service is given a new meaning as outlined in s.11(2). It is not possible to commit this offence by failing to act (i.e. omission) or by beginning to commit it; the service must have been obtained. An example is given where a person dishonestly uses false credit card details or other false personal information to obtain a service, or by climbing over a wall to watch a fee-paying football match.

Section 13 Evidence

This section is similar to Section 31(1) of the Theft Act 1968, whereby a person, their spouse or civil partner is protected from incrimination for the purposes of offences under the Fraud Bill and related fraud offences. However, under subsection (2), a person is not to be excused from answering any question put to him in proceedings relating to property, or complying with any order made in proceedings relating to property, on the ground that doing so may incriminate him or his spouse or civil partner of an offence under this Act or a related offence. The words 'proceedings relating to property' means any proceedings for:

- The recovery or administration of any property,

- The execution of a trust, or
- An account of any property or dealings with property.

"Property" means money or other property whether real or personal (including things in action and other intangible property).

"Related offence" means a conspiracy to defraud and any other offence involving any form of fraudulent conduct or purpose.

The Bill seeks to address and change the way that fraud cases will be dealt with to take into account changes in technology that allows a person to avoid conviction for crimes committed because of the wording of the current legislation. The main changes are that the words 'deception' and 'deliberate' or 'reckless' do not appear in any of the new fraud offences. The new term is 'representation'. The focus is put squarely on the offender as to his or her intentions; there is less of a focus on the interpretation made by the victim, although this will still be taken into account. It also appears that offenders can be prosecuted where their fraud is purely against a mechanical device, whereas at the moment human intervention is required. The wording in the new legislation is designed to allow for a more flexible approach to prosecuting and proving offences, by removing the obstacles of the current narrowly named and defined deception offences and by broadening the term fraud to encompass the better parts of the current tried and tested deception offences.

The Bill and explanatory notes can be examined on the Parliament website at **http://www.publications.parliament.uk/**

Identity Cards Act 2006

As covered in last month's *Digest*, the Identity Cards Bill received Royal Assent on the 30 March 2006 and is now the Identity Cards Act 2006. This article will look at the new offences created under the Act.

The Act introduces a National Identity Scheme, which will be phased in over a number of years. It is noteworthy that it is not going to be compulsory to carry an ID card. Also, there have been no police powers introduced which would enable a police officer to demand to see an ID card. However, it will be compulsory to register onto the Scheme, subject to further primary legislation, and there will be penalties for failure to register. TheAct includes an opt-out provision, meaning that until 1 January 2010 people who apply or renew a passport can choose not to get an ID card, although, either way, their details will be entered onto the National Identity Register. The information which is to be held under the Scheme is provided for in the Act.

The Act also enables organisations to verify a person's identity before providing services. This is to be done by checking the Register, with the person's consent. There are also enabling powers meaning that, in the future, access to specified public services may be conditional on identity checks.

Criminal offences

Possession of false identity documents

It is an offence under Section 25 to be in possession of false identity documents. An offence is committed under Section 25 if, with the requisite intention (as outlined below), the person has in his possession or under his control any one of the following three things:

- An identity document that is (and that he knows or believes to be) false.

- An identity document that was (and that he knows or believes to have been) improperly obtained.
- An identity document that relates to someone else.

The requisite intention here is that of using the document for establishing registrable facts about himself or the intention of allowing or inducing another to use it for establishing, ascertaining or verifying registrable facts about himself or about another person.

An offence is also committed if a person with the requisite intent to make, or have in his possession or under his control, any apparatus, article or material which, to his knowledge, is or has been specially designed or adapted for the making of false identity documents. The intent here is that the person has the intention that he or another will make false identity documents and that the document will be used by someone for establishing, ascertaining or verifying registrable facts about a person.

If either of the above two offences are committed, the person is liable, on conviction on indictment, to imprisonment up to a maximum of ten years or to a fine or both.

To cover the scenario if the intent cannot be proved, another offence has been created whereby the relevant intention for the first two offences does not need to be proved. Simply, all that needs to be shown is that the defendant had in their possession or under their control, without a reasonable excuse, any of the following:

- An identity document that is false.
- An identity document that was improperly obtained.
- An identity document that relates to someone else.
- Any apparatus, article or material which, to his knowledge, is or has been specially designed or adapted for the making of false identity documents or to be used in the making of such documents.

The penalty for this offence is, on conviction on indictment, imprisonment for up to two years or to a fine or both. On summary conviction in England and Wales, the penalty is imprisonment for up to 12 months or a fine up to the statutory maximum or both (in Scotland and Northern Ireland this is 6 months in relation to imprisonment on summary conviction).

The documents which are classed as identity documents are provided for in Section 26 and include:

- ID cards.
- Immigration documents.
- Passports.
- Driving licences.

Unauthorised disclosure of information

Section 27 creates the offence of unauthorised disclosure of information. An offence is committed under this section if someone, without lawful authority, provides any person with information that they are required to keep confidential for the purposes outlined in the section or otherwise makes a disclosure of any such information.

It is a defence for a person charged with this offence to show that at the time of the alleged offence, they believed on reasonable grounds, that they had lawful authority to disclosure the information in question.

The penalty for this offence is, on conviction on indictment, imprisonment for up to two years or to a fine or both.

Providing false information

An offence is created under Section 28 of providing false information. An offence is committed under this section if someone provides false information to any person for the purpose of securing the making or modification, or confirming the contents, of an entry in the Register or for the purpose of obtaining for himself or another the issue or modification of an ID card.

For this offence to have been committed, it must be proved that the defendant either knew or believed the information to be false, or was reckless as to whether or not the information was false.

The penalty for this offence, on conviction on indictment, is imprisonment for up to two years or to a fine or both. On summary conviction in England and Wales, the penalty is imprisonment for up to 12 months or a fine up to the statutory maximum or both (in Scotland and Northern Ireland this is 6 months in relation to imprisonment on summary conviction).

Offence of tampering with the Register

An offence is committed under Section 29 if a person engages in any conduct that causes an unauthorised modification of information recorded in the Register. The defendant must also either intend to cause a modification of information recorded in the Register; or is reckless as to whether or not his conduct will cause such a modification.

The penalty for this offence, on conviction on indictment, is imprisonment for up to two years or to a fine or both. On summary conviction in England and Wales, the penalty is imprisonment for up to 12 months or a fine up to the statutory maximum or both (in Scotland and Northern Ireland this is 6 months in relation to imprisonment on summary conviction).

Please note regarding the penalties for the offences above, if an offence is committed before the commencement of Section 154(1) of the Criminal Justice Act 2003, the reference above to twelve months imprisonment, in England and Wales, shall be read as 6 months.

Section 30 deals with certain amendments to existing offences.

The Act can be found in full at **http://www.opsi.gov.uk/acts/acts2006.htm**

Criminal Defence Service Act 2006

The Criminal Defence Service Act 2006 received Royal Assent on 30 March 2006. The Act amends the Access to Justice Act 1999, Schedule 3 (grant of right to representation in respect of criminal proceedings) and Section 17 of that Act, by the insertion of a Contribution Order under a new Section 17A. The Act introduces means testing; high income earners who are subject to criminal proceedings will not be eligible to receive criminal representation in the form of free legal aid.

The means test will be based on numerous lower and upper thresholds based upon a person's gross income. Basically, those on benefits, for example income support, those under 16 and those under 18 in full-time education, will still be eligible to receive free legal representation. The income and resources of a partner can also be taken into consideration. Taking into account children living with an individual subject to criminal proceedings, if an individual's gross income is £11,950 or less then the person is eligible;

however, if the gross income is £20,740 or more then the individual will not be eligible for free legal aid. The average wage in the UK is around £21,000, thus 90% of the population will be affected by the changes. The Government anticipates an annual saving of £35 million. The recovery of expenses by solicitors and barristers and the recovery of defence costs can be seen by reading the following Statutory Instruments: Criminal Defence Service (Recovery of Defence Cost Orders) Regulations 2001 and Criminal Defence Service (Funding) Order 2001.

Implementation of the scheme will start in the Magistrates' Courts from 2 October 2006 and in the Crown Courts by the end of 2007. The Regulations that will bring these implementations into force are currently in draft form. These are as follows:

- The Criminal Defence Service (Financial Eligibility) Regulations 2006.
- The Criminal Defence Service (General) (N0 2) (Amendment) Regulations 2006.
- The Criminal Defence Service (Representation Orders and Consequential Amendments) Regulations 2006.
- Representation Orders: Appeals etc Regulations 2006.

The draft Regulations can be seen by visiting the website of the Department for Constitutional Affairs at **http://www.dca.gov.uk**

Control of Internet Access (Child Pornography) Bill

The Control of Internet Access (Child Pornography) Bill is a Private Members Bill which has been introduced into the House of Commons. It requires internet service providers and other commercial organisation providing access to the internet to declare whether or not they have taken steps to prevent access to web sites containing indecent images of children.

Clause 1 of the Bill provides that owners of electronic communications networks that provide access to the internet are required to publicly declare every year whether they have taken 'appropriate technical steps' to block access to web sites containing child pornography. Such declarations may be assessed by government departments or agencies. These departments shall also publish guidance on what constitutes 'appropriate technical steps'.

Clause 4 states that it shall be an offence for the owner of an electronic communications network which provides access to the internet, to knowingly make a false declaration. If found guilty of this offence, owners could be liable on summary conviction to a fine not exceeding the statutory maximum.

'Child pornography' for the purposes of the Bill means any indecent or pseudo-photograph of a child, in accordance with the Protection of Children Act 1978.

Emergency Workers (Obstruction) Bill

Following amendments by Standing Committee C on the 26 April 2006, the Emergency Workers (Protection) Bill, as reported in the February 2006 *Digest*, is now known as the Emergency Workers (Obstruction) Bill.

Lighter Evenings (Experiment) Bill

The Lighter Evenings (Experiment) Bill was introduced in the House of Lords on 30 November 2005. The aim of this Bill is to advance time by one hour ahead of Greenwich Mean Time during the winter and by two hours throughout the summer. This would create lighter evenings and darker mornings. This Bill aims to do this for an experimental period. As it stands, the Bill aims for this change to come into effect on 29 October 2006 and for this to cease on 25 October 2009. Please note that these dates are for England only. In relation to Wales, Scotland and Northern Ireland, the Bill will come into force, if and when the National Assembly for Wales, Scottish Parliament and Northern Ireland Assembly respectively decide. The Bill is presently at its committee stage and therefore there may be some amendments made before and if the Bill is enacted.

Neighbourhood Policing Bill

Andrew Slaughter MP introduced the Neighbourhood Policing Bill on 3 May 2006 into the House of Commons. In Slaughter's words, the Bill aims 'to require police services to include proposals to introduce and sustain neighbourhood policing as a provision of their policing plans; and for connected purposes'.

The expected date for the second reading is 16 June 2006.

The Bill has not yet been printed; however it will soon be available from the UK Parliament website at **http://www.publications.parliament.uk/pa/pabills.htm#n**

Trespass with a Vehicle (Offences) Bill

The Trespass with a Vehicle (Offences) Bill aims to create an offence of trespass with a vehicle. The Bill proposes to amend the Criminal Justice and Public Order Act 1994 to insert a Section 62, of which the main part to note is what is currently Clause 62F(3), which states that:

'A person, without the duly given consent of the owner, shall not bring onto or place on any land any vehicle where such entry or occupation or the bringing onto or placing on the land of such vehicle is likely to:

- Substantially damage the land,
- Substantially and prejudicially affect any amenity in respect of the land,
- Prevent persons entitled to use the land or any amenity on respect of the land from making reasonable use of the land or the amenity,
- Otherwise render the land or any amenity in respect of the land, or the lawful use of the land or any amenity in respect of the land, unsanitary or unsafe, or
- Substantially interfere with the land, any amenity in respect of the land, the lawful use of the land or any amenity in respect of the land.

Clause 62F(4) says that a person who contravenes subclause (3) shall be guilty of an offence.

It also provides for police powers in Clause 62F(5). Here, where a constable in uniform has reason to believe that a person is committing or has committed an offence under subclause (3), the constable:

- May demand of the person his or her name and address,
- May direct the person to leave the land and also to remove from the land any vehicle that belongs to the person or that is under his or her control, and
- Shall inform the person of the nature of the offence in respect of which it is suspected that the person has been involved and also the statutory consequences of failing to comply with a demand or direction.

An offence will also be committed if the person in question fails to comply with the above; and a constable in uniform may arrest without warrant a person who does not comply with the above or commits an offence under subclause (3).

In Clause 62G, the Bill outlines procedures in cases where a person fails to comply with a direction to leave the land and remove any vehicle that belongs to him or is under their control.

Clause 62H provides for the penalties. The maximum penalty, on summary conviction, would be a fine not exceeding level 4 on the standard scale and a term of imprisonment not exceeding one month.

The Bill extends to England and Wales only.

Consultation on the Terrorism Act 2000 Draft Code of Practice

A Draft Code of Practice governing the detention, treatment and questioning of persons under Section 41 and Schedule 8 of the Terrorism Act 2000 has been submitted for consultation.

The Draft Code has been produced as a result of an amendment made to Schedule 8 of the Terrorism Act 2000 by Section 23 of the Terrorism Act 2006. This extends the maximum period of time that terror suspects arrested under Section 41 of the 2000 Act can be held before being charged, from 14 days to 28 days. Currently, the detention of persons arrested under Section 41 of the Terrorism Act 2000 is governed by provisions in Schedule 8 of that Act and Code C of the Police and Criminal Evidence Act 1984 Codes of Practice.

However, although the extended detention period is not yet in force, the Government are committed to producing a dedicated Code of Practice under Section 66 of PACE to specifically cover this type of detention.

The Code, which has been drafted in consultation with practitioners, will apply to persons detained under the relevant provisions in England and Wales. It will provide a guide for police officers and aims to ensure that the rights of individuals arrested on suspicion of being a terrorist are upheld, while maintaining the effectiveness of police powers to investigate terrorism. The Code is based on the existing provisions of PACE Code C, and covers:

- Scope and applicability of the Code.
- Definition of terms.
- Custody records.
- Initial action when people are arrested and brought to a police station, including special consideration for juveniles, mentally vulnerable persons or other individuals who may require special attention.

- The detainee's property – finding out what a person has in their possession on arrest and deciding what to do with it.
- The detainee's right to tell another person that they have been arrested.
- The right to legal advice.
- The right for citizens of independent Commonwealth countries and foreign nationals to confer with a representative of their country.
- Conditions of detention.
- Care and treatment of detainees.
- Cautions.
- Interviews.
- Access to interpreters.
- Review and extension of detention, including procedures to apply for extension of detention up to 28 days, and transferring detainees to a prison once a warrant has been obtained that would take the period of detention beyond 14 days.
- Annexes.

One of the consequences of producing a separate Code of Practice for the detention of terrorist suspects is that references in PACE Code C to detention under Section 41 and Schedule 8 of the Terrorism Act 2000 would need to be removed. If this Draft Code is accepted, a revised version of PACE Code C will be published to take into account the changes.

General comments on the Draft Code are invited from any organisations, groups or individuals before the 23 May 2006.

A copy of the Draft Code and information about the consultation can be found at **http://www.homeoffice.gov.uk/documents/cons-2006-tactcode/**

HOC 13/2006
Implementation of Statutory Instrument 2006 Number 1116, The Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006

This Circular explains the provisions of SI 13/2006, The Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, which came into force on 16 May.

The Order extends the range of either way offences for which the Attorney General can refer to the Court of Appeal where he considers that a sentence imposed by the Crown Court was unduly lenient. It also consolidates previous orders which listed qualifying offences. All either way offences subject to this scheme are therefore listed in SI 13/2006. The Order will apply to any sentence imposed by the Crown Court for an applicable offence on or after 16 May 2006.

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

New Home Office Ministerial Team

Dr John Reid was appointed as the new Home Secretary on 5 May 2006. The Home Secretary's ministerial team and their areas of responsibility are:

Policing, security and community safety

Tony McNulty MP is the Minister of State, supported by Under-Secretary of State Vernon Coaker MP.

Criminal justice and offender management

Baroness Patricia Scotland QC is the Minister of State, supported by Under-Secretary of State Gerry Sutcliffe MP.

Immigration, citizenship and nationality

Liam Byrne MP is the Minister of State, supported by Under-Secretary of State Joan Ryan MP.

Mental Health Bill Dropped

The Government has announced that the controversial Mental Health Bill has been dropped, and it will attempt to push through amendments to the existing Mental Health Act 1983 instead. The Government has been attempting to replace the 1983 Act for the last seven years. The Bill was prompted by the conviction of Michael Stone for the murders of Lyn and Megan Russell. Stone was regarded as a dangerous psychopath but, because his condition was untreatable, he could not be held under existing mental health legislation. The Bill would have extended powers to detain and forcibly treat people with personality disorders.

The proposed amendments to the 1983 Act will introduce supervised community treatment for suitable patients, after an initial period of detention and treatment in a hospital. This is intended to ensure that patients who have been discharged from compulsory treatment in hospital continue to comply with treatment. The law will also seek to improve safeguards for patients being treated without their consent and to introduce a simplified single definition of mental disorder, removing the 'treatability' test contained in the 1983 Act. This meant that if a person suffering from psychopathic disorder or mental impairment was to be detained for treatment under the Act, then that treatment must be "likely to alleviate or prevent a deterioration" in that condition. The hope is that the removal of this test will enable more people who require treatment to receive it.

Public Consultation on HM Revenue and Customs

HM Revenue and Customs (HMRC) has issued a public consultation document, as the second phase in a programme designed to create an accessible and efficient system to support the majority who wish to comply with their tax responsibilities and yet to effectively tackle those who are intentionally non-compliant. Both individuals and businesses are therefore asked to contribute to the review of deterrents, safeguards and powers of HMRC. The main areas which may affect the police are proposed changes in relation to the investigation of serious non-compliance and criminal investigation powers.

Offences

The HMRC has suggested an over-arching, single offence to cover making a materially false disclosure. This would mean that there would be an offence of providing false statements or information during an investigation or providing incorrect information on the Certificate of Disclosure or Statement, instead of a range of specific offences across the range of ex-Customs taxes and duties in respect of making a materially false disclosure.

Criminal investigation powers

Through the initial consultation, the question of why tax crime is to be investigated differently from other crime has been posed. There is a need for the HMRC to have the powers available to allow them to remove the disadvantages that the compliant taxpayers suffer from the criminal non-compliance of others. At present, there are gaps in these powers and also a range of different powers for ex-Customs and ex-Revenue matters which can mean that there is not an effective investigation by the HMRC. There needs to be effective and proportionate powers to apply across the whole of the HMRC.

There is a proposal that the HMRC (in England, Northern Ireland and Wales) adopt the relevant parts of PACE 1984 for all of HMRC's criminal investigations, which would mean that they would have up to date powers for investigation as these powers are regularly subject to scrutiny by Parliament. It would also mean that HMRC would be equipped throughout the breadth of their activities to investigate tax crime, money laundering and attacks by organised crime on tax and credit systems.

Again in respect of organised crime, it is noted that the HMRC has access to a variety of surveillance powers under the Regulation of Investigatory Powers Act 2000, Police Act 1997 and the Wireless and Telegraph Act 1949, which were not available to the Inland Revenue. However, the HMRC suggests it needs access to more intrusive surveillance techniques to combat criminals who act behind the scenes. There is already power available for ex-Customs matters with inherent safeguards, such as agreement has to be obtained for the use in certain circumstances and on a case by case basis and the most intrusive powers are only available in the investigation of serious crime or to protect the economic wellbeing of the UK. However, these powers are not available for routine tax matters. The HMRC welcomes views on appropriate criminal investigation and surveillance powers.

The document also sets out a summary of responses to the first stage of the consultation which was launched on 24 March 2005. The deadline for comments is 23 June 2006.

'Modernising powers, deterrents and safeguards: A consultation on the developing programme of work' is available on the HMRC website at **http://www.hmrc.gov.uk**

Government Report on the 7 July Terrorist Attacks

The Government has published the Intelligence and Security Committee's Report into the London terrorist attacks on 7 July 2005.

The report looks at whether any intelligence which may have helped prevent the attacks was missed or overlooked; why the threat level was reduced and what impact this had; and what lessons need to be learned.

The report summarises the discoveries that the police, intelligence and security agencies have made so far, including:

- What is known about those responsible.
- How and why they carried out the attacks.

The full report can be found at
http://www.homeoffice.gov.uk/documents/7-july-report.pdf?view=Binary

Consultation on Security Guards at Sports and Other Events and the Private Security Industry Act 2001

The Home Office has published a consultation paper considering the options available for applying the Private Security Industry Act 2001 to security staff at sports and other events. The paper sets out the Government's views on the options and seeks comments on issues related to implementation.

The 2001 Act provides for the licensing of a number of activities in the private security industry by the Security Industry Authority (SIA). The purpose of this is to provide reassurance to the public, and to ensure that individuals engaged in such activities are suitable. The Act currently requires that manned guards (door supervisors) at licensed premises, including sports and events, be licensed by the SIA. Some stakeholders have argued that the provisions of the Act should not extend to sporting and other events as there are already control measures in place, and these sectors are of a different nature to others such as pubs and clubs. However, the Government's view is that these sectors should remain within the licensing provisions of the Act, as otherwise, unsuitable individuals may seek out employment within these sectors.

The Government has put forward four options, in an attempt to ensure that the Act is applied to these particular sectors in a risk-based and proportionate way:

- Exemption for specific sports and events where suitable alternative arrangements exist. These alternative arrangements must be 'equivalent, for all practical purposes so far as the protection of the public is concerned, to those applying to persons applying for and granted licences'. This effectively means that applicants would have to be trained to a nationally accredited standard, subject to suitable vetting and suitably regulated and monitored.
- Exclusions for particular premises.
- Removal of specific activities of 'security guard' from the generic description of manned guarding applying to the sports and events sector.
- Introducing a specific 'event' licence by the SIA for the sports and events sector.

A combination of any of these could be adopted and the Act already allows for specific sports or events, premises or activities to be exempted or excluded through secondary legislation. The Act also enables the licensing criteria adopted by the SIA to be tailored for different descriptions of licensable conduct. The Government is seeking views on these options, including the practicality of implementing them.

The closing date for the consultation is 16 June.

The consultation document can be found in full at
http://www.homeoffice.gov.uk/documents/cons-2006-ria-security-sport

Home Office Action to Reduce the Theft of SatNav Systems

A number of forces have reported that portable satellite navigation systems (SatNav) are currently the latest 'hot property' which can be easily disposed of in the criminal markets. Further, the following points have been identified which increase the likelihood of theft of these SatNav systems:

- There is no central database against which the legitimacy of ownership can be checked, even though each SatNav unit has a serial number.
- The portable SatNav units have few security features and new security features may take up to 18 months to enter the market place.
- Developments in SatNav in the USA have seen the integration of MP3 players within them, making them even more desirable for criminals.

Due to the increase of crime in this area, the Home Office, in conjunction with ACPO, have opted in the first instance to seek to persuade vehicle owners to adopt a more responsible approach to care for this type of property. Further, a dialogue has been initiated between the Society of Motor Manufacturers and Traders and the electronics industry to try and alleviate this problem. The Home Office has also produced a crime advice poster which is available through **http://www.crimereduction.gov.uk**.

General advice on the subject can also be found at **http://www.autoglass.co.uk/cracking/spare_a_minute.asp and http://www.britishparking.co.uk**.

It is also reported that SatNav manufacturers have called for further details on the problem areas which forces have regarding these devices. Any observations regarding this are welcomed; please contact DI Russell Nyman by e-mail at **Russell.nyman@kent.pnn.police.uk**

Potential Changes to Improve Novice Driver Safety

A report by the Transport Research Laboratory has highlighted the poor competence of novice drivers immediately after they have passed their driving test, and suggests that changes could be made to the learning process in order to improve safety.

The report states that the accident rate of novice drivers decreases sharply during the first six months following the driving test, as the driver gains experience. The report suggests that the driving test itself could be modified to improve training and experience accumulated by learner drivers and to screen out drivers who have not yet reached an acceptable standard for unsupervised driving. It also suggests that, in addition to the driving test, it may be necessary to make other changes to the training/testing/licensing system so that it becomes less reliant on the driving test itself.

The main conclusions and recommendations of the report were:

- Tighten the failure criterion for 'driving faults' in the test. Currently, the test allows the driver 16 driving faults (less serious faults) before failing the test. This number could be raised to improve the standards of novice drivers.

- Persuade people to delay coming for the test. There should be ways to encourage people to accumulate more driving experience before coming for the test. This would reduce post-test accident liability and increase the test pass-rate.
- Broaden the test to include independent driving skills such as choosing where and how to conduct manoeuvres, dealing with missed turns, finding a route using direction signs and route planning. This could strengthen the assessment of hazard perception.
- Look into placing more reliance on the examiner's judgement of competence and placing less reliance on recording individual errors.
- Use the test as a learning opportunity for instructors. This could include encouraging more instructors to be present in the car during the test, or to listen to the examiner's feedback after the test.
- Improve consistency of test standards between centres and examiners.
- Set requirements regarding the amount of driving experience a learner must have before being allowed to drive solo.
- Place restrictions on driving at night, as this has been highlighted as a particular problem area for novice drivers.
- Introduce passenger restrictions on new drivers.
- Increase penalties for traffic violations by new drivers.
- Improve training and education.
- Reduce alcohol limits for novice drivers.
- Introduce a new probationary licence for drivers after they pass their test but before the end of their two year probationary period.

The full report, entitled 'Novice Driver Safety and the British Practical Driving Test' can be accessed at **http://www.trl.co.uk/store/report_list.asp?pid=211**

Vehicle Speed Statistics

The Department of Transport has published statistics on vehicle speeds in Great Britain during 2005. The statistics relate to the speeds at which drivers choose to drive in free-flow conditions across the road network. The figures show that the proportion of motorists exceeding the speed limit in 2005 changed little from 2004. However, driving above the speed limit remains at a high level on all roads.

On built up roads with a 30 mph speed limit:

- 50% of cars exceeded the limit and 21% travelled faster than 35 mph. This compares with 53% and 22% in 2004.
- 50% of motorcycles exceeded the limit, with 26% travelling over 35 mph.
- There is also a high level of speeding by heavy goods vehicles – 46% of two-axle HGV's exceeded the speed limit, including 18% by more than 5 mph.

On built up roads with a 40 mph speed limit:

- 25% of cars exceeded the limit, with 9% exceeding 45 mph. This constituted a reduction from 25% and 10% recorded during 2002-2004.

- 34% of motorcycles exceeded 40 mph, with 17% travelling at more than 45 mph.

On other non-built up roads:

- More than 50% of cars on motorways and 48% on dual carriageways exceeded the speed limit, with 19% travelling faster than 80 mph on motorways and 13% on dual carriageways.
- 27% of motorcycles travel at more than 80 mph on motorways and 25% on dual carriageways.
- On major, non-built up single carriageway roads, 77% of articulated HGVs exceeded their 40 mph speed limit, 27% by more than 10 mph. The average speed for articulated HGVs on these roads was 46 mph, just 3 mph less than the average speed of cars at 49 mph. The speed limit on these roads is 60 mph.

The data used to compile these statistics was collected at 36 sites where a 30 or 40 mph limit applies and at 60 other sites. The sites were selected on the basis that speeds were not seriously constrained by road layout, traffic congestion or the proximity of speed cameras. Speeds are recorded as vehicles pass over an automatic counter and do not represent speeds over a longer distance, but do provide an indication of compliance with speed limits.

The report can be found in full via **http://www.dft.gov.uk**

Motoring Offences and Breath Test Statistics

The Home Office's Research, Development and Statistical (RDS) Department has published the latest set of motoring offences and breath test statistics covering 2004. The total number of offences dealt with by official police action rose to 13.5 million, the highest number recorded. This amounts to 466 offences per 1000 licensed vehicles and a rise of 3% on 2003 figures. One of the potential reasons for the rise could be the high rate of action against drivers using a mobile phone – this represented 73,000 offences. Another factor could be the increased use of roadside cameras, which provided evidence in 2 million cases, 94% of which were for speeding and 6% for jumping red lights.

Other main points in the report included:

- The number of motoring offences dealt with using fixed penalty notices (including those issued by the police and traffic wardens) was down 2% on 2003, to 3.4 million.
- Local authority parking attendants issued 7.7 million penalty charge notices, an increase of 7% on the previous year.
- The proportion of offenders disqualified for more than one year for offences of 'driving, etc after consuming alcohol or drugs' has steadily increased from 59% in 1996 to 69% in 2004.
- 578,000 screening breath tests were carried out in 2004, an 8% increase on 2003.
- The number of refused or positive breath tests fell 3% to 103,000 in 2004.
- Almost 90% of those found guilty of the most serious offences were male. Dangerous driving, stealing a car and motorcycle offences had the highest rates of male offending.
- Women were more likely to commit offences involving obstruction, waiting and parking.

A full copy of the report can be obtained from the Home Office RDS website at **http://www.homeoffice.gov.uk/rds/pdfs06/hosb0506.pdf.**

Traffic in Great Britain

The Department for Transport has published a Transport Statistics Bulletin which looks at traffic levels in Great Britain for the first quarter of 2006.

The report states that traffic levels rose by 1.2% between the first quarter of 2005 and the first quarter of 2006. Other changes included:

- Car traffic was virtually unchanged.
- Light van traffic was 8% higher in 2006.
- Goods vehicle traffic rose by 3%.
- Other motor vehicle traffic was virtually unchanged.
- Traffic on motorways rose by 1%, and by 2% on rural A roads and minor urban roads.
- Traffic on urban A roads and on minor rural roads was virtually unchanged.

The bulletin can be found at **http://www.dft.gov.uk/transtat/roadtraff**

New Transport Minister Backs Road Charging

Douglas Alexander, the new Transport Secretary, has confirmed his support for a nationwide road charging system, which would involve satellite tracking devices being fixed to vehicles and costs levied according to distances travelled, times of day and types of roads used.

He has announced that a £10 million fund will be available to the private sector to develop the required technology, which will be piloted within five years' time in a number of UK cities.

Mr Alexander has also stressed his support for speed cameras and maintains that the Government would continue to invest in road capacity, where it was justified, and improve traffic management systems.

Consultation Guidelines on Domestic Violence and Breach of Protective Orders

The Sentencing Guidelines Council (SGC) has produced and is putting out for consultation two draft guidelines. These will deal with how sentencers should respond to violence in a domestic setting and also the issue of breaches of restraining orders and non-molestation orders.

Domestic Violence

There is no specific offence of domestic violence: conduct in this context can cover a wide range of offences. The guidelines include details of aggravating and mitigating factors to take into account when offences occur within a domestic context and make it clear that violence in a domestic setting is at least as, if not more, serious as violence elsewhere. The factors which would aggravate and influence sentence are listed as follows:

- Abuse of trust and abuse of power.
- Where the victim is particularly vulnerable.
- Impact on children.
- Using contact arrangements with a child to instigate an offence.
- A proven history of violence or threats by the offender in a domestic setting.
- A history of disobedience to court orders.
- Victim is forced to leave home.

Mitigating factors which would be taken into account are as follows:

- Positive good character.
- History of the relationship.

The courts are also instructed to take into account other circumstances such as the wishes of the victim and the interests of any children involved.

Breach of Protective Orders

A separate guideline on breach of non-molestation and restraining orders has also been released. Such orders are not solely reserved for incidents arising from domestic relationships, but are commonly used in these situations. They aim to prevent harassment or fear of violence or molestation.

Again, the SGC identifies certain aggravating and mitigating factors in a domestic violence context. These are as follows:

- The victim is particularly vulnerable.
- Impact on children.
- A proven history of violence and threats by the offender.
- Using contact arrangements with a child to instigate an offence.
- The victim is forced to leave home.
- Additional aggravating factors (this is mainly where the breach of an order is taken to be an aggravating factor to another substantive offence).

Mitigating factors which would be taken into account are as follows:

- The breach was committed after a long period of compliance.
- The victim initiated contact.

However, there has been some outcry at the proposals, especially in relation to the 'remorseful' offender who may receive a community sentence or a suspended sentence. Although the SGC states that a prison sentence will only be avoided if there is genuine remorse or the couple wish to stay together, the domestic violence charity Refuge has dismissed the plans as a 'travesty', when domestic violence kills two women per week.

Full details of the guidelines can be found at **http://www.sentencing-guidelines.gov.uk**

Compensation for Miscarriages of Justice – Proposals for Reform

On 19 April, then Home Secretary Charles Clarke announced proposals to reform the arrangements under which state compensation is paid to victims of miscarriages of justice. This announcement followed concerns that victims of miscarriages of justice sometimes receive more compensation than victims of crime. For example, the average award for a miscarriage of justice in 2005/06 was £250,000, compared to an award average of £5,000 for victims of crime.

At present compensation is paid under two schemes:

Statutory Scheme

This scheme places a duty on the Home Secretary to pay compensation where there has been a miscarriage of justice in the form of a conviction quashed at an out-of-time appeal because of a new or newly-discovered fact not previously known to the person convicted.

It is the responsibility of the Home Secretary to decide whether an individual should receive compensation.

The level of the award is decided by the Assessor.

Discretionary Scheme

This scheme offers compensation to people who were acquitted following an in-time appeal, or who were not convicted at trial, if they had spent a period in custody following a wrongful conviction or charge.

The Home Secretary has to be satisfied that the miscarriage of justice has resulted from serious default on the part of a member of the police force or other public body.

The proposed changes are intended to ensure that compensation payments paid by the state are more proportionate to the level of injustice experienced by the applicants, as well as saving £5 million a year, which it is said will be used to improve the criminal justice system and support for victims of crime. The proposed changes will:

- End the discretionary compensation scheme with immediate effect. However, those not entitled to compensation under the statutory scheme will still be free to seek redress through the civil courts.
- Continue with the statutory scheme but introduce legislation to cap payments to £500,000, bringing it into line with compensation paid to victims of crime.

- Limit compensation payments to applicants who have other serious criminal convictions and/or whose conduct contributed to the situation in which they found themselves.
- Apply time limits for all applications.

However, it is not yet clear whether the new Home Secretary will proceed with these proposals.

Report on the Release and Supervision of Anthony Rice

The Chief Inspector of Probation, Andrew Bridges, has published his report into the release and supervision of Anthony Rice. Rice had been released from prison on a life licence after a history of serious sexual attacks, including rape, attempted rape and other assaults; and in August 2005, while under probation supervision, he murdered Naomi Bryant.

The independent report identifies a number of substantial deficiencies in the way Rice was managed both before and after his release from prison. It contains a number of recommendations, these being:

- The National Offender Management Service should give special consideration to how it can provide start-to-end offender management for each prisoner on a life sentence.
- At the key decision-making points in a prisoner's sentence, there should be a separate assessment of the prisoner that is independent of their treatment and which takes into account all available evidence.
- The way in which prisoners on life sentences are managed during their time in open prisons should be reviewed, to ensure that expectations by all involved are clearly focused on public protection.
- When managing a 'high risk of harm' offender in the community, the relevant authorities should give top priority to the public protection requirements of the case, although proper attention should be given to the human rights issues. This means making use of the guidance and training materials available for MAPPA, including in particular the advice to pursue an 'investigative' approach at all times.
- A major appraisal of current policy and practice for releasing prisoners from life sentences should be undertaken.

The full report, including the Chief Inspector's detailed recommendations, can be found at **http://www.inspectorates.homeoffice.gov.uk/hmiprobation/**

Howard League Report on Re-offending by Young Men

The Howard League for Penal Reform has published a report which indicates that the Government has failed to tackle re-offending amongst young adult male offenders (18 – 20 years old).

'Out for Good: the resettlement needs of young men in prison' found that nearly 70% of young men released from prison will be reconvicted within two years. It suggests this was due to the lack of constructive work to take place in prison or on release to reduce the offending amongst young men.

The report also suggests that Government initiatives to cut crime have ignored young offenders, in spite of the fact that they have the highest rate of offending and re-offending. These problems are often compounded by the violent and abusive backgrounds of many of the prisoners, and their experiences of poverty.

86 young men took part in the research and said that the following would help them stop committing crime:

- Gaining employment (55%).
- Having stable housing (26%).
- Being in a relationship (24%).
- Having a child (20%).
- Having positive family relations (20%).
- Managing their drug use (17%).
- Managing their alcohol use (15%).

The report made several recommendations, including:

- Greater use of community sentence.
- Young adult offenders should make amends for their crimes.
- All young adult offenders should have access to an advocate.
- Family mediation should be offered to all young adult offenders.
- The Rehabilitation of Offenders Act 1974 should be repealed.
- The Government should carry out a public education campaign highlighting the problems caused by violence, both in the home and on the streets.
- There should be improved access to substance misuse services for young adults.
- The Government urgently needs to review current housing legislation in relation to single young men.
- Educational and employment opportunities should be improved for young adult offenders.
- Resettlement services for those in custody should be more widely available.

A copy of the full report can be ordered from **http://www.howardleague.org**

Criminal Justice System Performance Figures Published

The figures showing the performance of the criminal justice system in England and Wales have been published. They cover the year ending December 2005 and show:

- 1.27 million offences were brought to justice, compared to 1 million in the year ending March 2002, an increase of 27%.
- In March 2003, public confidence in the ability of the criminal justice system to bring offenders to justice was 39%. This has now improved to 44%.

- The proportion of ineffective trials in the Crown Court was 24% in 2002. This has now fallen to 13%.
- The proportion of ineffective trials in the Magistrates' Courts was 31% in 2002. This has now fallen to 21%.
- Since March 2005, the number of outstanding Failure to Appear warrants has decreased by 18%.
- The proportion of Failure to Appear warrants notified to the police within 1 working day has increased from 75% between July and September 2005 to 85% between October and December 2005, and the proportion notified within 3 working days has increased from 90% to 96% over the same period.
- The payment rate of fines issued by criminal courts was 68% in June 2003. This increased to 87% between October and December 2005.

HOC 14/2006
The Final Warning Scheme

This Circular provides additional guidance and updates to support the Final Warning Scheme: Guidance for the Police and Youth Offending Teams (published in 2002) on the reprimanding/warning of young offenders.

The Annexes in the Circular replace Annexes C and D in the 2002 Guidance (these are now cancelled).

The Guidance includes information on the following:

New Legislation

- Sex Offenders Register - Part 2 of the Sexual Offences Act 2003 imposes notification requirements on those convicted or warned for relevant sexual offences listed in Schedule 3 of the Act. These notification requirements are often known as 'registration' and are seen to create a 'sex offenders register'. The notification requirements will apply to young offenders who have been reprimanded or warned for an offence listed in Schedule 3. However, some offences have thresholds that will mean that the notification requirements will not be triggered when a warning or reprimand is received. Schedule 3 lists all the offences with thresholds. A reprimand or warning will make the offender subject to the notification requirements for a period of one year from the date of reprimand or warning. For reprimands and warnings received before 1 May 2004 the notification period will be 2 ½ years.
- Anti Social Behaviour Orders – Breach of an ASBO by a young person should be dealt with in line with normal procedures for dealing with young offenders. The police and Youth Offending Team should assess the seriousness of the breach and the young persons offending history. If the breach is a first offence, a warning may be appropriate. Where the breach was flagrant the young person would normally be changed.
- Penalty Notice for Disorder – The PND scheme offers an additional method of disposal to officers for dealing with offences which comprise low-level, anti social and nuisance behaviour. Copies of the Police Operational Guidance on youth PND's are available on the Police National Legal Database and the Home Office website.
- Discharges – the warning remains a valid disposal even after a conviction where a conditional discharge or absolute discharge is given.

Decision Making

When deciding whether to administer a reprimand or warning officers should ask the following questions:

- Is there evidence that the young person has committed an offence?
- Is the evidence such that, if prosecuted for the offence, there would be a realistic prospect of a conviction?
- Does the young person make a clear and reliable admission to all elements of the offence?
- Has the young person previously been convicted of any offence recordable or non-recordable?
- Has the young person previously been reprimanded/warned?
- How serious is the offence according to the ACPO Gravity Factor System?

Victims

The victim's views about the offence should be sought, but should not be regarded as conclusive. Where a reprimand or warning has been given and the victim requires the offenders name and address to institute civil proceedings, it should be given unless there is good reason not too.

Restorative Process

The use of Restorative Justice Principles in delivering reprimands and warnings is established best practice. The priority is to deliver reprimands and warnings in a way that will be most effective in preventing re-offending and in considering the views of victims as well as their need for restoration.

The Offenders Record

Multiple warnings must only be issued where the offender has previously been warned once, the current offence was committed more than two years after the date of the first warning and the police consider the offence to be not so serious as to require a charge to be brought. Even then, a young offender must never be considered for more than two warnings in total.

When the police are unsure as to whether a warning is suitable, the correct action would be to bail for a decision as to disposal. The police decision will then normally be to take no further action, to warn or to charge.

When issuing reprimands or warning the police officer should always check on the PNC, as well as local records, and should question the offender to check the offending history of the youth. Warnings given in error are a nullity, as is any action taken in reliance upon that warning. Warnings given in error may be cited on the PNC as part of the police record provided that it is clearly noted that the warning was given in error and has no legal effect.

Consistency

Variations exist between forces in the number of offenders who are reprimanded or warned as a proportion of those who are convicted without having the benefit of being reprimanded or warned. Forces should ensure that their force guidelines are sound and are being interpreted sensibly. In any cases of doubt, the opinion of the CPS should be sought at an early stage and if a decision is made to charge instead of issuing a reprimand/warning, the

reasons for charging should be brought to the attention of the CPS. Where the police have charged a youth and the CPS decide that it is more appropriate for the youth to be given a reprimand or a final warning, then the youth shall be given a reprimand or final warning if they qualify for one.

Recording

The accurate recording of reprimands and warning is essential. Some forces already use the Operational Support Unit computer recording systems within their Central Justice Administration Units. Existing recording systems should also be improved. It is essential that all available records should be checked before a reprimand or warning is given. Where an offender is reprimanded/warned on the same occasion for more than one offence, he should be counted as having received one warning only. If a young person who is initially suspected of a serious offence is found to have committed a less serious one for which he is then warned, it is important that the warning should be recorded as having been given for the lesser offence.

Informal Actions

Police retain their strictly limited discretion to take informal action in exceptional circumstances e.g. giving a verbal warning.

Supporting Reprimands

The details of offenders who are reprimanded should be referred to the relevant YOT for their records.

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

Tighter Controls on High Risk Offenders

The former Home Secretary announced a number of measures to deal with violent offenders, in the wake of several high profile cases in which people convicted of violent crimes have gone on to commit murders after being released on probation. John Monckton, a London financier, was murdered by Damien Hanson, who was under the supervision of the London Probation Service, and Mary-Ann Leneghan was tortured and killed by six men, four of whom were on probation.

The proposals include:

- A national register of violent offenders, modelled on the existing sex offenders register. This would contain the names of prisoners who had served their jail terms but were still considered a threat.
- Violent offender orders, which would seek to control the movements of violent offenders after they leave prison. The orders would ban high-risk offenders from certain locations and approaching named individuals (including their victims). They would also have to report regularly to police or probation officers, and conditions such as curfews could potentially be imposed. Breaching an order could result in up to five years in prison and in extreme cases an order could be imposed for the rest of the offender's life. Orders would be imposed at the sentencing stage.
- Increased numbers of face-to-face interviews with the Parole Board before a decision is made on whether a prisoner should be released.
- All released prisoners to be supervised until the end of their original sentence. Currently people who committed crimes before 5 April 2005 are only under supervision until three-quarters of their sentence has passed.

The proposals are for violent offender orders to be imposed retrospectively on offenders already in jail, and it is expected that this will result in some opposition from human rights campaigners. If the new Home Secretary adopts these proposals, further details are expected to be announced before the summer.

Launch of the Child Exploitation and Online Protection Centre

The Child Exploitation and Online Protection Centre was launched on 24 April. The purpose of the centre is to prevent child abuse both online and in the real world. The centre brings together law enforcement officers, children's charities and major corporations, including Microsoft, AOL and VISA, to improve the tracking and bringing to justice of sex offenders. The centre will provide:

- A dedicated 24/7 online resource for reporting online child sex abuse.
- Systems to track sex offenders and disseminate intelligence globally. This should result in the identification of victims and the ability to provide them with support.
- Specialist operational capability to boost domestic and international raids.
- Dedicated operators who will track and seize assets from those who trade in child abuse images.
- Work in partnership with VISA to develop greater sanctions against those using legitimate payment methods to purchase child abuse images.
- Online awareness tools and educational materials to encourage children to use the internet safely.
- Input into the technical specification of new products to ensure the incorporation of child protection features.
- International co-operation within the Virtual Global Taskforce, an alliance between law enforcement agencies in the UK, Canada, USA, Australia and Interpol.
- Specialist training services to help personnel in law enforcement, education, prisons, probationary services and child protection agencies.

The Centre is affiliated to the Serious Organised Crime Agency (SOCA) and its powers derived from the Serious Organised Crime and Police Act 2005.

Full information about the centre can be obtained from **http://www.ceop.gov.uk/**

National Police Database

The Home Office has announced plans to develop a £367 million national police database which will link police information across England and Wales.

The plans, which have been developed by the IMPACT Programme in consultation with the police service, aim to fulfil one of the Bichard Inquiry recommendations by improving the management and sharing of police operational information. They include setting up a new database by 2010 which is designed to connect information held locally and nationally by police systems, as well as information held on the Police National Computer (PNC). This will enable investigating officers to access operational information held by forces anywhere in the country and will eventually replace the PNC. The new database will be developed with the help of the Criminal Justice Information Technology (CJIT) organisation, although the Police Information Technology Organisation (PITO) will transfer the PNC onto new hardware to enable it to continue operating effectively until the new database is up and running.

Other plans of the IMPACT Programme include:

- Further roll out and development of the IMPACT Nominal Index (INI) - an index of people whose details are held on police records.
- Standardising national data format and providing direct access to information through IMPACT CRISP (Cross Regional Information Sharing Project).
- Providing common standards for police information management through the Code of Practice on the Management of Police Information and its associated guidance.

Review of the Suspicious Activity Reports (SARs) Scheme

Sir Stephen Lander, Chair of the new Serious Organised Crime Agency (SOCA), has published a review on the way in which Suspicious Activity Reports (SARS) could be best managed under SOCA.

SARs are reports submitted by regulated sectors, such as banks, estate agents, accountants and lawyers, when they suspect money laundering or terrorist financing have been or are taking place.

When SOCA was launched, it assumed most of the responsibilities of its predecessors. This included the National Criminal Intelligence Service's responsibility for the SARs regime's Financial Intelligence Unit (FIU) and its database of SARs. With this change in mind, the Review was commissioned in July 2005 to:

- Review the operation of the existing SARs regime to determine its strengths, weaknesses, costs and benefits.
- Make recommendations for the future operation of the regime under SOCA, taking account of the views and interests of the regulators, the regulated sectors and of UK law enforcement.

The Review made 24 recommendations. They included:

- SOCA should take overall responsibility for the effective functioning of the SARs regime.
- IT systems should be improved.
- Training should be improved.
- Guidance should be improved.
- Facilitating a better dialogue between the regime's participants.
- Establishing a comprehensive governance and performance management framework.
- Commitment to publishing a publicly available annual report of the regime to ministers.

A copy of the review can be found at **http://www.soca.gov.uk/downloads/SOCAtheSARsReview_FINAL_Web.pdf**

IPCC to Investigate SOCA Complaints

Following an agreement made under Schedule 2 of the Serious Organised Crime and Police Act 2005, the Independent Police Complaints Commission (IPCC) will oversee public complaints made against the new Serious Organised Crime Agency (SOCA).

Under the new agreement, the IPCC will investigate complaints made against SOCA staff. Since these members of staff may be given the powers of police officers, customs officers and immigration officers, it was thought appropriate that they should be subject to the same scrutiny as those with similar powers.

In addition, the IPCC aims to increase public confidence in the new agency and improve the way in which complaints are handled.

New ACPO Lead on Domestic Violence

ACPO has appointed Surrey Deputy Chief Constable Brian Moore as its national lead on domestic abuse and harassment issues.

He has stated that his immediate priority is ensuring that police forces are prepared for any potential increase in domestic abuse-related problems that are likely to result from the anticipated increase in alcohol consumption accompanying the World Cup football tournament in June.

Longer term aims include achieving better risk assessment and improving information sharing between partner agencies.

British Crime Survey – Crime in England and Wales: Quarterly Update to December 2005

The latest results of the British Crime Survey (BCS) have been released in Home Office Statistical Bulletin 06/06. The figures show trends in crime during the 12 months ending December 2005.

The statistics show that the risk of being a victim of crime remains the lowest recorded by the BCS since the survey began in 1981, with just over 23% of the population interviewed being victimised.

In addition, the overall level of crime recorded by the police in October to December 2005 remained stable with the same period in the previous year. Overall crime and violent crime also remains stable.

Police recorded crime figures from October to December 2005, compared with the same period from the previous year, show:

- Total recorded crime is stable.
- Overall violent crime is up 1%.
- Overall property crime is down 2%.
- Violence against the person is up 1%.

- Sexual offences are up 3%.
- Robbery is up 6%.
- Domestic burglary is down 4%.
- Vehicle thefts are stable.
- Fraud and forgery are down 22%.
- Drug offences are up by 21%.
- Other offences are up by 25%.

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

Customers of Trafficked Prostitutes Face Rape Charges

Men who have sex with a trafficked prostitute, knowing that she is there against her will, face prosecution. An initiative under 'Operation Pentameter' will target men who use prostitutes by urging them to report any contacts they have made with trafficked women. Police will also make it clear that action will be taken against men who have sex in the knowledge that the woman has been illegally trafficked. Adverts will be placed in 'lad's magazines' and on websites used by men who buy sex, bringing this to their notice.

Men visiting saunas, brothels or flats where foreign prostitutes work will be asked to ensure that the women are there of their own free will before they pay. If they suspect that a woman has been trafficked into the UK, they should contact Crimestoppers and provide information on the establishment's location.

'Operation Pentameter' is a nationwide campaign to tackle the illegal exploitation of trafficking victims. It involves the police, immigration service, Serious Organised Crime Agency, Foreign Office and representatives from the travel industry across the UK and Europe, working together to free victims of trafficking and tackle the organised criminals responsible for their trafficking and sexual exploitation.

Trafficking is becoming more common in the UK and a recent UN report stated that the UK is high on the list of destinations favoured by traffickers. Women trafficked into the UK are also likely to be internally trafficked between towns and cities. Sections 57-59 of the Sexual Offences Act 2003 provide offences of trafficking into, within and out of the UK for the purpose of sexual exploitation.

Further information on Operation Pentameter can be found at **http://www.acpo.police.uk/pressrelease.asp?PR_GUID={8BC3D9D6-43AC-4369-8724-6DCAC3656CA6}**

Integrated Competency Framework Now Available

Version 8 of the Integrated Competency Framework (ICF) for police forces is available to download from the subscribers' area of the Skills for Justice website.

Version 8 of the ICF contains the following:

- 30 amendments to existing activities.
- 7 new activities.
- 19 new role profiles.

This is available for download to subscribing organisations from **http://www.skillsforjustice.com**

Police Pension 30 + Scheme update

The *Digest* reported on the Scheme in the March 2006 issue. The Police Federation of England and Wales has issued further guidance (JBB Circular 30/2006) for officers wishing to join the scheme. The Home Office previously advised that those officers who wished to be considered for the scheme must be aged 50 or over. The JBB now reports that, after intervention from the Home Office to HM Treasury and HM Revenue & Customs, the proposed minimum age of 50 for the 30+ scheme will not be necessary. Therefore, officers who reach the age of retirement and are under 50 can now be considered for the scheme. Officers who are affected by the scheme should contact their force for verification and further details.

HOC 12/2006 Special Constabulary – Clarification of Review of Allowances

This Circular provides guidance to forces on the circumstances under which special constables are eligible to receive a refreshment, subsistence or lodging allowance. It should be read in conjunction with HOC 40/2005.

Refreshment

If a special constable has been retained on duty beyond their normal daily period of duty or has been engaged on duty away from their usual place of duty and, as a consequence of either, has been unable to obtain a meal as per usual and as a consequence, has incurred additional expenditure to obtain food they shall:

- If the relevant period is not less than two hours but does not exceed five hours, be paid a refreshment allowance of £6.87 for one meal or £9.61 for two meals.
- If the relevant period exceeds five hours, be paid a substance allowance of £9.61 between 5 and 8 hours, £13.94 between 8 and 12 hours and £22.96 between 12 and 24 hours.

A refreshment allowance may also be available to special constables who, during their normal daily period of duty, have been prevented by the exigencies of that duty from obtaining a meal in the usual way and have incurred additional expenditure as a result.

Obtaining lodging

If a special constable has been retained on duty beyond their normal daily period of duty or has been engaged on duty away from their usual place of duty and, as a consequence of either, has incurred additional expense for the purpose of obtaining lodging, they shall be paid a lodging allowance at the following rates:

- £50.67 per night outside central London.
- £63.35 per night within Central London.

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

Police Assessment Team Calls for Forces

The Police Assessment Team, a Home Office funded operation which was set up to support forces assessing police programmes, wishes to hear from a number of forces.

The police programmes which the team is dealing with are the following:

- The Initial Police Learning and Development Programme.
- Police Race and Diversity Learning and Development Programme.
- Professionalising the Investigation Programme.
- Promotion Trials Review.

The team are keen to hear from the following forces:

- Avon and Somerset.
- Cambridgeshire.
- Durham.
- Lancashire.
- Merseyside.
- Norfolk.
- Staffordshire.
- Suffolk.
- West Midlands.

To find out more about the project, or request a visit to your police force, please contact Emma Hutchinson or Dave Foster on 0114 2611499 or by e-mail at **emma.hutchinson@skillsforjustice.com or dave.foster@skillsforjustice.com**

National Hi Tech Crime Conference

ACPO's National High Tech Crime Conference will be held at the Robinson Executive Centre, Wyboston, from 5 to 7 July.

The event is open to all UK police forces, law enforcement, public sector agencies and government organisations. It will explore the latest hi tech crime developments and will include presentations on:

- SOCA e-crime.
- ACPO's response to Hi Tech Crime replacing the NHTCU.
- The new Child Exploitation On-line Protection Centre.
- E-crime national occupational standards.
- Council for the Registration of Forensic Practitioners.
- Update on legislation.

For more information, email the Centrex Event Team at **events@centrex.pnn.police.uk**

Police Stun Gun Use in the USA

Amnesty International (AI) issued its most recent report on Taser stun gun use in the USA on 28 March 2006. This report is entitled, 'USA Amnesty International's Continuing Concerns About Taser Use'. It follows the report published at the end of November 2004 entitled, 'United States of America Excessive and Lethal Force? Amnesty International's Concerns About Deaths and Ill-treatment Involving Police Use of Tasers'.

The latest report highlights AI's concern about the use of Tasers by law enforcement agencies in the USA leading to the death of suspects. After a review of the 152 cases of people who have died in the USA since 2001 following the use of stun guns, AI reiterates its call for the transfer and use of Tasers to be suspended pending an impartial, independent and comprehensive inquiry into the effects of the guns' use. AI acknowledges that there has been research commissioned or completed since 2004, but this research has not met the criteria of the investigation called for in AI's earlier report. The new report also highlighted that Tasers are being used as a routine force tool and not as a weapon of last resort. AI is also concerned about the use of Tasers on vulnerable groups such as children, the disabled, people with mental illnesses and pregnant women and believes that the use of Tasers in these circumstances is an excessive use of force which violates international standards of using the minimum necessary force. AI also believes that in some cases the use of Tasers amounts to cruel, inhuman or degrading treatment and torture.

The two reports can be found at **http://www.amnesty.org.uk/**

Report on Anti-Social Behaviour in Europe

A report on the findings of a survey which examined views on anti-social behaviour in six European countries has been published by the company ADT Europe.

In an online survey, more than 7,000 people in France, Germany, Great Britain, Italy, the Netherlands and Spain were questioned on their attitudes towards anti-social behaviour in their respective countries and across Europe.

Results from the survey indicate that Great Britain has the worst anti-social behaviour problem in Europe. It found:

- The booze culture is fuelling anti-social behaviour in Great Britain, with 68% of people questioned feeling alcohol was a key contributor to the problem.
- A breakdown of discipline in homes and schools is also seen by 79% to be a major influencing factor in anti-social behaviour.
- Nearly half of those questioned (49%) thought stricter sentencing would help reduce the problem.
- Six out of ten people would be unlikely to challenge a group of 14 year old boys vandalising a bus shelter.

Three-quarters said young people aged 14 to 25 were most associated with anti-social behaviour.

The full research results for all the countries involved in this study can be found at **http://www.adteurope.com**

New Mediation Service from Patent Office

The UK Patent Office has launched a new mediation service to help organisations and individuals involved in intellectual property (IP) disputes. The service has been introduced to encourage more use of alternative dispute resolution and will cover the full range of IP rights, i.e. copyright, patents, design and trade marks. The Patent Office is attempting to raise awareness of the service by providing guidance on its website and producing a range of leaflets to encourage parties to engage in mediation before reaching the litigation stage.

The Office also now has a Mediation Service team, including staff with IP hearings experience who have received mediation training and accreditation with the Centre for Effective Dispute Resolution. They will be available to mediate at the Patent Office's premises in London and Newport, and can deal with disputes before or during litigation. It is generally thought that many IP disputes could be resolved in this way, rather than taking the expensive and time consuming litigation route.

Further information on the mediation service can be obtained at the Patent Office website, at **http://www.patent.gov.uk/about/ippd/mediation/index.htm**

Alcohol Misuse Enforcement Campaign

The Government and ACPO have launched the fourth Alcohol Misuse Enforcement Campaign (AMEC) to tackle alcohol related disorder. It will run from 8 May until 8 June and complements a range of initiatives introduced by the Government to tackle problem drinking.

The campaign will clearly set out what the police and the public see as acceptable drinking behaviour during the summer months. Police forces will be able to use their new powers under the Licensing Act 2003 to combat disorder. Trading standards and licensing officers will be involved, taking action against shops, stores, pubs and clubs selling alcohol to under 18's, as well as bars and clubs that actively promote excessive drinking.

All 43 police forces in England and Wales are taking part in the AMEC and Home Office funding of £2.5 million is available to help them to fund specific police activities. The campaign will also reinforce ongoing police operations, such as:

- Using tough new powers in the Licensing Act 2003 to close premises acting irresponsibly.
- Issuing fixed penalty notices for alcohol related disorder.
- Test purchasing activity to target underage sales.
- Early intervention using CCTV to diffuse potential disorder.
- Joined-up enforcement action against problem retailers and premises.

A poster campaign has also been jointly produced by the Home Office and ACPO which will raise public awareness of the £80 on-the-spot fines for drunken violent or anti social behaviour.

Criminals Abusing Freedom of Information Act

The Home Office has reported that convicted criminals have been making requests under the Freedom of Information Act, in an attempt to identify informants who helped to jail them. They are also seeking details on how the authorities caught them. The criminals have used aliases or friends and family to make the requests to try to disguise the real reason why they want information to be released.

The type of information requested has included details on undercover police operations, forensic science techniques used to recover DNA and steps used to finally trace and apprehend criminals. Police suspect that more than 100 convicted criminals have requested information from public bodies including the Home Office, and this could present a risk to informants if their identities are released. Police also believe that criminals may be trying to learn from their mistakes to prevent being caught in the future.

Under the Act, public bodies are not allowed to release information that could be deemed sensitive, such as data relating to police informants and criminal investigations (past and present). These requests should therefore be identified at an early stage so that the information is not passed on to the person requesting it.

For information on the Home Office's Freedom of Information scheme go to **http://www.homeoffice.gov.uk/about-us/freedom-of-information/**

Knife Amnesty

A five week national knife amnesty has been launched in a bid to tackle knife crime across Britain.

From 24 May until 30 June people will be able to hand in knives at police stations without facing further action. The amnesty involves all legal knives, such as kitchen knives, and offensive weapons, such as flick knives, butterfly knives and swords. All offending blades should be wrapped in card or paper, before being placed in secure bins which will be placed in public reception areas at police stations. Some forces may also leave bins in churches, supermarkets, schools and youth clubs.

Over 44,000 weapons were handed in during a similar initiative for firearms held three years ago.

Every police force in England and Wales is taking part in the amnesty, with Scotland organising its own amnesty.

Privy Council Overrules Lords on Provocation

Following on from various articles in the *Digest* covering consultation and draft guidelines on provocation and manslaughter, final guidance was published in December 2005 and this was covered on page 17 of December's issue.

However, a landmark decision in the courts on the issue of provocation has thrown up a result more bizarre than anyone would have imagined, by overturning one of the key doctrines of English law.

The doctrine of precedent says that no other court can overrule the House of Lords, the highest court in the land. The Lords can overrule itself but only when a suitable case comes along.

When the case of Morgan Smith, who killed his friend while clinically depressed, went to the Lords in 2000, action groups and civil liberties groups became interested parties as they argued that the result would have a huge impact on future prosecutions of battered women who kill.

The Law Lords ruled that juries could take into account that the defendant was suffering from clinical depression or another condition making the defendant particularly susceptible to losing their self control, thus making it easier for a provocation defence to succeed in a murder charge.

For the next few years the decision is criticised as legally wrong, but no other case involving provocation went to the Lords in that time for the decision to be overruled. With a consultation on guidelines on manslaughter by reason of provocation having already been published and final guidelines due to come out that year, the Law Lords seized upon a case from Jersey going to the Privy Council in 2005.

The Privy Council hears appeals from the courts of the Channel Islands and some of the Commonwealth countries, and its judges are mainly the same Law Lords who sit in the House of Lords. Their rulings, however, cannot set precedent for the Courts of England and Wales and cannot overrule the House of Lords.

Nine of the twelve Law Lords sat on the Privy Council in the case of Dennis Holley, who killed his girlfriend with an axe after she had told him she had been unfaithful. On appeal, his conviction had been reduced to manslaughter, on the basis that the jury should have been able to take into account the defendant's chronic alcoholism, using the Morgan Smith case as precedent. The Privy Council, however, ruled that the Morgan Smith case was wrong.

More bizarrely, in early January 2006, a special five-judge panel of the English Appeal Court (instead of the usual three) which was considering two murder appeals, ruled that the Privy Council's decision in the Jersey case was now the law in England and Wales.

The House of Lords has therefore effectively had a ruling overturned by a different court, the Privy Council, which may well have a huge impact on House of Lords decisions in the future and has, furthermore, left the issue of provocation in murder on an uncertain footing despite the guidelines.

No Extension of Time Limit for Damages Claim against Lottery Winning Rapist

A retired teacher who was the victim of a brutal sex attack eighteen years ago has been told that she cannot make a claim for damages against the perpetrator who won £7m in the lottery in 2004 whilst on weekend leave. He was released on parole in March 2005.

The woman, Mrs A, brought her case to the Appeal Court to ask for the High Court ruling that barred her from claiming damages to be overturned. Her case was one of three test cases considered together, aiming to highlight that the strict six-year time limit for launching compensation claims for deliberate assaults is a denial of human rights.

The Court of Appeal held on 12 April 2006 that it was bound by the decision of the House of Lords in Stubbings v Webb (1993) AC 498, namely that claims for damages arising out of an intentional sexual assault had a non-extendable six-year limitation period from the date of the assault. The appellants' claims therefore were statute barred.

In Mrs A's case, she did not sue earlier because the defendant did not have any money or property. This is a relatively exceptional case in terms of the lottery win by the respondent. The time limit is an issue that causes problems more commonly in child abuse cases, where it may be many years before the victim appreciates the devastating effects of the abuse on their lives.

The six-year time limit for claiming compensation for a deliberate assault begins when the act happens or if the victim is a child, from the age of eighteen. For negligent acts such as road accidents, the time limit is three years, which begins when the victim knew or should have known the facts giving rise to the claim. Judges have discretion to extend the three-year limit if it is reasonable to do so. They do not, however, have this discretion with the six-year limit.

In 2001 the Law Commission recommended that the law should be reformed to give judges discretion with the six-year limit and prevent further injustices. Although it has been accepted that there is a case for change, there has yet to be any proposals for change to the legislation.

The details of the ruling in the case can be found at Lawtel's website at **http://www.lawtel.com under A (Appellant) v Iorworth Hoare (Respondent) [2006] EWCA Civ 395.**

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.

A Woman Who Suffered From a Mental Disorder Was Unable To Give Consent

HULME v DIRECTOR OF PUBLIC PROSECUTIONS (2006)

DC (Richards LJ, Toulson J) 19/5/2006

CRIMINAL LAW - CRIMINAL EVIDENCE

Consent:Evidentiary Facts:Mental Capacity:Sexual Offences Against Mentally Disordered Person:Sufficiency Of Evidence:Ability To Communicate Consent:S.30 Sexual Offences Act 2003

A magistrates' court was entitled to conclude on the evidence before it that a woman who suffered from a mental disorder was unable to refuse to be touched sexually for the purposes of the Sexual Offences Act 2003 s.30.

The appellant (H) appealed by way of case stated against his conviction under the Sexual Offences Act 2003 s.30 of sexually touching a female with a mental disorder. At the time of the alleged offence H was 73 years old and of good character. The complainant (C) suffered from cerebral palsy and had a mental age well below her actual age of 27 years. C lived with her parents who were the licensees of a pub in which H drank. H allegedly touched C over her clothing in the area of her vagina and pressed down hard with his hand. He had his trouser zip open and placed her hand on his soft penis which was out of his underpants and trousers. H was charged with intentionally touching a woman who was unable to refuse because of a mental disorder when he knew or could reasonably have been expected to have known that she had such a disorder and that because of that disorder or for a reason related to it she was likely to be unable to refuse and that the touching was sexual. At trial C gave evidence that H touched her "private parts", that she did not know what to do or say but that the touching made her feel sad, hurt and upset. H accepted that C suffered from a mental disorder but contended that the prosecution had failed to show that C lacked the capacity to choose whether to agree to the touching. The magistrates' court was told by its legal adviser that the relevant question under s.30 of the Act was not whether C understood what sexual relations were but whether, at the time of the alleged assault, she was able to understand that she could choose to agree or not to what took place and that if the magistrates were of the view that she did not have the capacity to do that, whether that was for a reason related to her mental disorder. The magistrates' court was of the opinion that C understood the nature of sexual relations but did not have the capacity to understand that when placed in the situation of being touched sexually she could choose not to agree to it. The magistrates' court held that C was not capable of stopping H from carrying out sexual activity with her due to her mental disorder although she was clearly upset by his actions. It found that H was aware that C had a mental disorder and that C was likely to be unable to refuse the touching, which was sexual. Accordingly, H was found guilty. The question posed for the opinion of the High Court was whether there was evidence on which the magistrates could conclude that C was unable to refuse to be touched sexually. H contended that the advice given to the magistrates' court was incomplete and vitiated its decision.

HELD

There was evidence on which the magistrates' court could conclude that C was unable to refuse to be touched sexually. The advice given to the magistrates' court was unsound as it only related to the first limb of s.30(2) of the Act and not the second limb, which dealt with the inability to communicate to the other person. However, the fact that the advice was incomplete did not constitute a ground of appeal if the reasons given by the magistrates' court were sound in law and based on the evidence. It was apparent from the reasons given by the magistrates' court that it had considered whether C had been able to communicate her lack of consent and concluded that she had not. There was evidence before it to support that conclusion as C had stated that she did not know what to do when H had touched her "private parts" and that it had made her sad and upset. Therefore, the magistrates' court could properly conclude that C had been unable to effectively communicate her wishes to H by reason of her mental condition.

APPEAL DISMISSED

Fresh Evidence Verses Video-Recorded Evidence of a Minor

R v K (2006)

CA (Crim Div) (Hooper LJ, Langstaff J, Sir John Blofeld) 10/3/2006

CRIMINAL EVIDENCE

Admissibility: Children:Fresh Evidence: Indecent Assault: Interviews: Video Recordings: Video-Recorded Evidence Of A Minor: Breaches Of Achieving Best Evidence: Reliability Of Evidence:Adverse Effect On Fairness Of Proceedings: Corroboration: S.78 Police And Criminal Evidence Act 1984:S.23(2) Criminal Appeal Act 1968: Youth Justice And Criminal Evidence Act 1999

The correct test for determining the admissibility of video-recorded evidence of a child was that provided for by R v Hanton (2005) EWCA Crim 2009 of whether a reasonable jury properly directed could be sure that the witness had given a credible and accurate account on the video tape, notwithstanding any breaches of the relevant guidance for conducting interviews. It was possible for a court to consider other evidence that might corroborate the videoed evidence, but such consideration should be undertaken with considerable care.

The appellant (K) appealed against his convictions for indecent assault on his child (F). During a video-recorded interview when she was just under six years old, F had accused K of touching her vaginal area. F's mother, who was to be a witness at the trial, had participated in the interview. The judge, in reaching his decision that the recording would be permitted to stand as F's evidence in chief, had considered whether the mother's presence at the interview had amounted to a significant and substantial breach of the guidelines in Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable and Intimidated Witnesses, including Children 2002 that had such an adverse effect on the fairness of the evidence being admitted that it should have been excluded. He also considered the medical evidence when applying the test set out in Archbold based upon G v DPP (1998) 2 WLR 609 that reference to corroborating material was of central importance. The judge then concluded that under the Police and Criminal Evidence Act 1984 s.78 the evidence would not have such an adverse effect on the fairness of the

proceedings that it ought not to be admitted. On appeal K relied on fresh evidence suggesting that F had played games with another child that involved the insertion of items from a toy medical kit into F's vagina. K submitted that the video-recorded interview should not have been admitted in evidence.

HELD

(1) The fresh evidence was capable of belief, would have been admissible in the proceedings and there was a reasonable explanation for the failure to adduce the evidence at the trial for the purposes of the Criminal Appeal Act 1968 s.23(2). A different jury might have reached a different conclusion with the admission of the fresh evidence and the appeal was allowed.

(2) In determining whether the video-recorded evidence should have been admitted, the starting point was the Youth Justice and Criminal Evidence Act 1999, which made it clear that there was a strong presumption in favour of the use of special measures. The judge had not specifically identified the appropriate test, namely whether a reasonable jury properly directed could be sure that the witness had given a credible and accurate account on the video tape, notwithstanding any breaches, R v Hanton (2005) EWCA Crim 2009 applied. However, he had in practice adopted the Hanton test. It was plain that what he had in mind was whether the evidence might be relied upon by a jury such that any conviction by it would be safe. It was possible for a court to consider other evidence that might corroborate the videoed evidence, but such consideration should be undertaken with considerable care, G v DPP explained. It had not been necessary for the judge to consider whether s.78 of the 1984 Act applied. Although a different conclusion might be reached on a consideration of s.78 than would be on a consideration of s.27(2) of the 1999 Act, it was difficult to imagine the circumstances in which that would be so.

APPEAL ALLOWED

This judgment has been approved for reporting. However the transcript is being withheld to protect the anonymity of the parties involved. An anonymised official transcript will be available at a later date.

Local Authorities Duty to Provide Accommodation under the Children Act 1989

R (on the application of M) v GATESHEAD METROPOLITAN BOROUGH COUNCIL (2006)

CA (Civ Div) (Thorpe LJ, Dyson LJ, Moore-Bick LJ) 14/3/2006

LOCAL GOVERNMENT - CRIMINAL PROCEDURE

Local Authorities Powers And Duties: Police Detention:Secure Accommodation: Young Offenders:Provision Of Accommodation For Children In Police Detention: Absolute Duties: Discretionary Power: Juveniles: Police Custody: Request For Accommodation: S.38(6) Police And Criminal Evidence Act 1984: S.21(2)(B) Children Act 1989: S.25 Children Act 1989.

The duty to provide accommodation under the Children Act 1989 s.21(2)(b) in response to a police custody officer's request under the Police and Criminal Evidence Act 1984 s.38(6) was imposed on the local authority that received the request. Although s.21(2)(b) of the 1989 Act imposed an absolute duty on a local authority to receive and provide accommodation for children whom they were requested to receive under s.38(6) of the 1984 Act, it did not impose an absolute duty to provide secure accommodation.

The applicant (M) applied for judicial review of the failure of the respondent local authority to provide her with secure accommodation as requested by the police under the Police and Criminal Evidence Act 1984 s.38(6). M, a juvenile, had been arrested and taken into police custody. A custody officer made a request under s.38(6) of the 1984 Act for secure accommodation at 00.20 on the basis that M would be expected to appear before the court at 10.00 on the same day. The local authority failed to provide secure accommodation and consequently M was detained at the police station overnight. M submitted that

(1) The Children Act 1989 s.21(2)(b) duty was imposed on any local authority that received a request from a police custody officer to provide accommodation for arrested juveniles under s.38(6);

(2) The local authority's duty under s.21(2)(b) was to use its best or reasonable endeavours to provide secure accommodation when requested to do so by the police pursuant to s.38(6).

HELD

(1) The language of s.21(2)(b) was clear and the words should be given their plain and ordinary meaning. The language of the section compelled the conclusion that the duty to provide accommodation in response to the custody officer's request fell on the authority that received the request. The local authority for the area in which the police station was located might not be the most suitable authority to provide accommodation under s.21(2)(a) or s.21(2)(b) and therefore Parliament might well have intended to give the police some flexibility in their choice of local authority from which to request accommodation when discharging their duties under s.38(6). The unqualified language of s.38(6) was apt to give the police a wide discretion when deciding which local authority to approach.

(2) The object of s.21(2)(b) of the 1989 Act when read with s.38(6) of the 1984 Act was that children should not be detained in police cells if at all possible. Therefore it was incumbent on all local authorities to have in place a reasonable system to enable them to respond to requests under s.38(6) for secure accommodation. It was clear that s.21(2)(b) imposed a duty on a local authority to provide accommodation for children whom they were requested to receive under s.38(6), but the section did not impose an absolute duty to provide secure accommodation. Having regard to the urgency with which such requests would usually have to be dealt with, the comparative rarity of such requests and the resource implications, it would be manifestly unreasonable to impose such a duty on local authorities. However, subject to s.25 of the 1989 Act, the local authority had a discretionary power to provide secure accommodation where it was requested, Padfield v Minister of Agriculture, Fisheries and Food (1968) AC 997 considered.

(3) It was unrealistic to expect local authorities to be able to guarantee that they would provide secure accommodation whenever a request was received under s.38(6). In the instant case, given the time when the request was made, it was wholly impracticable to consider providing accommodation and the local authority was not in breach of its duty in failing to provide secure accommodation.

APPLICATION REFUSED

Standard of Proof in the Making of a Closure Order under the Anti-Social Behaviour Act 2003 S.2(3)(A) And S.2(3)(B)

CHIEF CONSTABLE OF MERSEYSIDE v HARRISON (2006)

DC (Maurice Kay LJ, Tugendhat J) 7/4/2006

CIVIL EVIDENCE

Closure Orders: Standard Of Proof: Applicable Standard Of Proof: S.2 Anti-Social Behaviour Act 2003: Art.8 European Convention On Human Rights

The standard of proof applicable to the making of a closure order under the Anti-social Behaviour Act 2003 s.2(3)(a) and s.2(3)(b) was the civil standard of proof, namely the balance of probabilities.

The appellant chief constable appealed by way of case stated against a decision of the Crown Court that the standard of proof applicable to an application for the making of a closure order pursuant to the Anti-social Behaviour Act 2003 s.2 was the criminal standard. The respondent had appealed against the making of a closure order in respect of premises occupied by her. The Crown Court hearing her appeal determined as a preliminary matter that the applicable standard of proof under the Act was the criminal one. The principal question posed for the opinion of the High Court was, what was the standard of proof to be applied to s.2(3)(a) and s.2(3)(b) of the Act. The chief constable contended that the making of a closure order was less serious than that of an anti-social behaviour order as it did not involve the making of findings or allegations against any named individual, that a closure order was of much shorter duration than the minimum duration for an ASBO, and that the penalty for a breach of a closure order was much less severe than for a breach of an ASBO.

HELD

The standard of proof applicable for the making of a closure order under s.2(3)(a) and s.2(3)(b) of the Act was the civil standard of proof, namely the balance of probabilities. There were clear differences between a closure order and an ASBO, as a closure order did not involve specific allegations against a named person and its consequences were significantly less adverse to an individual than that of an ASBO. Further, vulnerable people displaced by a closure order had a degree of protection under the Housing Acts and the European Convention on Human Rights 1950 Art.8. There was a clear and unambiguous statement by the government minister at the time the Act passed through Parliament that the intention of the Act was that the standard of proof applicable to a closure order would be the civil standard not the criminal standard. That statement was of clear assistance to the court and had to be taken into account, Clingham v Kensington and Chelsea LBC (2002) UKHL 39 , (2003) 1 AC 787 distinguished and R (on the application of AN) v Mental Health Review Tribunal (Northern Region) (2005) EWCA Civ 1605 , Times, January 12, 2006 considered.

APPEAL ALLOWED

Powers of Seizure and Re-Seizure of Money under the Police and Criminal Evidence Act 1984 and the Proceeds of Crime Act 2002

CHIEF CONSTABLE OF MERSEYSIDE v HICKMAN & ANOR (2006)

QBD (Admin) (Mitting J) 1/3/2006

POLICE - CIVIL PROCEDURE

Forfeiture: Powers Of Seizure: Return Of Property: Time Limits: Forfeiture Of Seized Cash: Power To Re-Seize: Proceeds Of Crime Act 2002: S.19 Police And Criminal Evidence Act 1984: S.294 Proceeds Of Crime Act 2002: S.298 Proceeds Of Crime Act 2002: Police And Criminal Evidence Act 1984

Money seized under the Police and Criminal Evidence Act 1984 could be re-seized under the Proceeds of Crime Act 2002 provided that the sum of money re-seized amounted to no less than the legal minimum at the time of the re-seizure.

The appellant chief constable appealed against a judge's determination that the money seized from the respondents (H) was not lawfully seized under the Proceeds of Crime Act 2002. Under the Police and Criminal Evidence Act 1984 s.19, the police had seized a quantity of cannabis and cheques made out in H's favour to the sum of £6,756 during a search of H's home. At the relevant time the statutory minimum for the seizure of money under the 2002 Act was £10,000. Thereafter one of the respondents pleaded guilty to the possession of cannabis but no order was made for the forfeiture of the cash seized. The guilty plea meant that the police's authority, pursuant to PACE, to retain the money had lapsed and the other respondent made an application under the Police (Property) Act 1897 for the return of the money. The police made out cheques in H's favour but immediately re-seized them under s.294 of the 2002 Act as the statutory minimum for the seizure of money had reduced to £5,000. The appellant subsequently applied under s.298 of the 2002 Act for forfeiture of the seized cash but the judge decided as a preliminary matter that there had been no lawful seizure under s.294 and that there was therefore no power to proceed under s.298. The questions posed for the opinion of the High Court were:

(1) Could money seized under the provisions of PACE be re-seized under the 2002 Act;

(2) Could there be a re-seizure under the 2002 Act when at the time of the first seizure the legal minimum allowed was £10,000.

HELD

Money seized under the provisions of PACE could be re-seized under the 2002 Act provided that the money re-seized amounted to no less than the legal minimum at the time of the re-seizure. There were no time limits on the exercise of the power to seize money pursuant to s.294 of the 2002 Act and seizure could occur at any time. Further the police could seize money already in the possession of the police. The position was analogous to that of property found on an individual after he was arrested.

APPEAL ALLOWED

No Offence under S.4A Public Order Act 1986 Where a Youth Made Obscene Gestures Towards A Police Officer

R v DIRECTOR OF PUBLIC PROSECUTIONS (2006)

DC (Richards LJ, Toulson J) 17/5/2006

CRIMINAL LAW

Causing Harassment Alarm Or Distress: Criminal Intent: Mental Distress:Causing Emotional Upset: Intention To Cause Distress: Young Offenders: S.4a Public Order Act 1986

A youth court erred in concluding that a youth who made masturbatory gestures towards a police officer and called him a "wanker" was guilty of using threatening, abusive or insulting words or behaviour with intent to cause harassment, alarm or distress contrary to the Public Order Act 1986 s.4A as there was no evidence that the police officer had been caused emotional disturbance or upset by the behaviour or that the youth intended to cause distress.

The appellant (R) appealed by way of case stated against the decision of a youth court to find him guilty of using threatening, abusive or insulting words or behaviour with intent to cause harassment, alarm or distress contrary to the Public Order Act 1986 s.4A. R, then aged 12 years old and four feet nine inches in height, had been in the company of his sister when she was arrested for criminal damage in the early hours of the morning. R made masturbatory gestures towards the police and called them "wankers". One police officer, who was over six feet in height and weighed over 17 stones, arrested R for an offence under s.4A of the Act. At trial the arresting police officer stated that he was not personally annoyed by R's behaviour but that he found it distressing that a boy of R's age would be out at the time that he was and acting in the manner that he was. The youth court found that the police officer had been distressed by R's behaviour, found R guilty and sentenced him to a six month conditional discharge. The questions posed for the opinion of the High Court were whether the youth court was entitled to conclude

(1) that the offence taken by the police officer was sufficient in law to cause him harassment, alarm or distress within the meaning of s.4A of the Act;

(2) that the admitted gestures and words of R were made with intent to cause the police officer harassment, alarm or distress within the meaning of s.4A of the Act.

HELD

(1) The question for determination was whether the state of mind of the police officer amounted to distress within the meaning of s.4A. R's behaviour was truly anti-social behaviour but there was nothing to suggest that it caused the police officer emotional disturbance or upset. As such the youth court could not properly conclude on the material before it that the police officer was distressed by R's behaviour. DPP v Orum: sub nom Chief Constable of Avon & Somerset v Orum (1989) 1 WLR 88 considered.

(2) R had doubtlessly intended to insult or annoy the police officer but there was no material upon which the youth court could have found that he had intended to cause real emotional disturbance or upset to the police officer. Accordingly the youth court's findings of guilt were quashed.

APPEAL ALLOWED

The power of a police officer to "remove" a person under 16 under the Anti-social Behaviour Act 2003 was coercive

R (on the application of W by his parent and litigation friend PW) (Claimant) v (1) COMMISSIONER OF POLICE FOR THE METROPOLIS (2) RICHMOND-UPON-THAMES LONDON BOROUGH COUNCIL (Defendants) & SECRETARY OF STATE FOR THE HOME DEPARTMENT (Interested Party) (2006)

CA (Civ Div) (Sir Igor Judge (President QB), May LJ, Wall LJ) 11/5/2006

POLICE - LEGISLATION

Anti Social Behaviour: Dispersal: Interpretation: Police Powers And Duties: Reasonable Force: Removal:Power To Remove A Person Under 16 Pursuant To S.30(6) Anti-Social Behaviour Act 2003: Coercive Nature Of Power: S.30(6) Anti-Social Behaviour Act 2003: S.30(3) Anti-Social Behaviour Act 2003: S.46 Children Act 1989: S.15 Crime And Disorder Act 1998

The power of a police officer to "remove" a person under 16 to his place of residence pursuant to the Anti-social Behaviour Act 2003 s.30(6) was coercive. However, an officer exercising that power was not free to act for a purpose other than that for which the power was conferred.

The appellants, the commissioner of police and secretary of state, appealed against a decision ((2005) EWHC 1586, (2005) 1 WLR 3706) that the power of a police officer to "remove" a person under 16 to his place of residence pursuant to the Anti-social Behaviour Act 2003 s.30(6) was permissive and not coercive. Police officers had been authorised to exercise the powers conferred by s.30(3) to (6) of the Act in respect of a designated area close to where the respondent (W) lived with his parents. W had been in the local town centre dispersal area when he was confronted by a community police officer who told him about the effect of the police's powers to issue dispersal directions. W was distressed by the event and his family objected to the constraints that this fear imposed on the way he lived his life. He therefore sought judicial review of the authorisation given to police officers to remove persons under 16 from the designated area and that challenge was upheld. The issues for determination were

(1) Whether s.30(6) authorised the use of reasonable force;

(2) The ambit of the use of such force.

HELD

(1) Section 30(6) did carry with it a coercive power. In its context, the word "remove" naturally and compellingly meant "take away using reasonable force if necessary". That was not a matter of implication, but one of meaning. If the word "remove" did not have that meaning, the power under s.30(6) would, in its context, be meaningless. In the context of a power given to constables, "remove" denoted the use of reasonable coercion, if that was necessary. That meaning applied as much to s.30(6) as it did to the Children Act 1989 s.46 and the Crime and Disorder Act 1998 s.15 and s.16 where the power to "remove" was also coercive. Furthermore, the fact that the power was given to both constables and to community support officers, whose training and other powers were more limited, did not call for a more limited meaning.

(2) A constable exercising the power given by s.30(6) was not free to act arbitrarily. He was not free to act for a purpose other than that for which the power was conferred.

The purpose for which the power was conferred was clear and largely uncontentious. It was to protect children under the age of 16 within a designated dispersal area at night from the physical and social risks of anti-social behaviour by others. Another purpose was to prevent children from themselves participating in anti-social behaviour within a designated area at night. It did not confer an arbitrary power to remove children who were not involved in, nor at risk of exposure to, actual or imminently anticipated anti-social behaviour. It did not confer a power to remove children simply because they were in a designated area at night. In the context of the 2003 Act, children were free to go into such an area without fear of being removed provided that they did not participate in anti-social behaviour and that they avoided others who were behaving anti-socially. Furthermore, the commissioner had accepted that, to act reasonably, constables must have regard to all the relevant circumstances. It therefore followed that s.30(6) did not have the type of curfew effect about which W complained, R (on the application of Gillan) v Commissioner of Police for the Metropolis (2006) UKHL 12 , (2006) 2 WLR 537 considered.

APPEAL ALLOWED

Claims by Police Officers for Psychiatric Injuries

FRENCH & ORS v CHIEF CONSTABLE OF SUSSEX (2006)

CA (Civ Div) (Lord Phillips LCJ, Tuckey LJ, Laws LJ) 28/3/2006

NEGLIGENCE - EMPLOYMENT - POLICE

Causation: Disciplinary Procedures: Foreseeability: Police Officers: Psychiatric Harm: Remoteness: Safe Systems Of Work: Secondary Victims: Stress: Liability: Causation And Remoteness: Armed Raid: Fatal Shooting: Criminal Intelligence: Firearms Operations: Systemic Failure: Corporate Failure: Training: Stress At Work: Vulnerability To Stress: Witnessing Death: Employer's Knowledge

Claims by police officers for psychiatric injuries allegedly suffered as a result of a fatal shooting, which they had not witnessed, and which had led to criminal and disciplinary proceedings against them that had led to stress and the injuries complained of, were struck out on the basis that they were bound to fail on grounds of causation and remoteness.

The appellants (F) appealed against the decision ((2004) EWHC 3217 (QB)) to strike out claims for psychiatric injury. F were five police officers who had been involved in events leading up to an armed raid that resulted in a fatal shooting. None of the officers had witnessed the shooting. The shooting had been referred immediately to the Police Complaints Authority. F had been served with disciplinary notices and suspended. Some of the officers had been charged with criminal offences but had been acquitted. Disciplinary charges had been brought against three of the officers but had later been dropped. F brought proceedings in negligence against the respondent chief constable (C) as their employer alleging serious and systemic shortcomings in properly training them in relation to the conduct of operations of the type that ended with the shooting. F's case was supported by medical reports confirming that their symptoms began in the aftermath of the shooting and were referable to the disciplinary and criminal investigations and their consequences. The judge struck out the allegations of systemic or corporate failure on the grounds that F were not secondary victims who had witnessed the shooting and that C had

not been on notice that they were vulnerable to stress. C submitted that the allegations of corporate failure did not amount to a stress at work case because the alleged failures did not of themselves impose any stress or cause any psychiatric injury, that the claim depended upon F's involvement in the shooting and that they could not recover because they had not witnessed the death of a loved one; alternatively, if the instant case was a stress at work case, it was doomed to fail because F could not demonstrate that, to the knowledge of C, they were particularly vulnerable to the stress in question.

HELD

The instant case was not a stress at work case nor was it analogous to a stress at work case. The claim was that F had suffered psychiatric injury as a remote consequence of an untoward event caused by a failure on the part of C to give proper instruction to employees, including F, as to how they should carry out their duties. The chain of causation was that the untoward event resulted in criminal and disciplinary charges being brought against F that subjected them to stress, which in its turn caused them psychiatric injuries. F had no real prospect of establishing that it was reasonably foreseeable that the corporate failings would cause them psychiatric injury by the chain of causation that allegedly brought about that result. If police officers who had witnessed the shooting would have no claim as secondary victims, it necessarily followed that F, who were more remotely affected, could have no claim either, White v Chief Constable of South Yorkshire (1998) 3 WLR 1509 applied. Further an employer would only be liable where he knew or ought to have known that a particular employee was at risk of psychiatric injury by reason of stress, Barber v Somerset CC (2004) UKHL 13 , (2004) 2 All ER 385 applied.

APPEALS DISMISSED

SI 1117/2006 The Passenger and Goods Vehicles (Recording Equipment) (Fitting Date) Regulations 2006

In force **1 May**. The Regulations amend Section 97 of the Transport Act 1968 (Installation and use of recording equipment) to set the date from which the new digital tachograph must be fitted to a new vehicle which requires a tachograph.

The digital tachograph was introduced by Council Regulation (EC) 2135/98, which amended Regulation (EEC) 3821/85 on recording equipment in road transport, and specified the date from which vehicles first put into service were to be fitted with digital tachographs. That date has been amended to 1 May 2006 by Article 27 of Council Regulation (EC) 561/2006. This means that any vehicle first put into service on or after 1 May must have a digital tachograph.

SI 1118/2006 The London Olympic Games and Paralympic Games Act 2006 (Commencement No 1) Order 2006

In force **30 May**. The Order brings into force the following provisions of the London Olympic Games and Paralympic Games Act 2006:

- Section 2 (Alteration of Olympic documents).
- Sections 6-12 (Concerning certain powers and duties of the Olympic Delivery Authority).
- Schedule 2 (Transfer schemes providing for the transfer to the Olympic Delivery Authority of specified property, rights and liabilities).
- Section 17 (Office of Rail Regulation).
- Section 18 (Interpretation of Sections 10-17 on transport).
- Section 35(3) to (5) (Concerning the powers of the Greater London Authority).
- Section 36(1), (2), (4) and (5) (Concerning Regional Development Agencies).
- Sections 19 to 31 (Concerning advertising and trading) (except Scotland).
- Section 36(3)(b) and (c) (Concerning the purchase of land by Regional Development Agencies) (Subject to certain provisions contained in the Commencement Order)

Further information about the Act can be found in the April *Digest*.

SI 1172/2006 The Countryside and Rights of Way Act 2000 (Commencement No 11 and Savings) Order 2006

In force **2 May**. The Order brings into force, in relation to England, the following provisions of the Countryside and Rights of Way Act 2000 relating to public rights of way:

- Section 47 (Redesignation of roads used as public paths).
- Section 48 (Restricted byway rights).
- Section 49 (Provisions supplementary to Sections 47 and 48).
- Section 50 (Private rights over restricted byways).
- Section 51 (Amendments relating to definitive maps and statements and restricted byways).

- Parts of Schedules 5 and 16

The Order also contains savings in respect of certain orders relating to roads used as public paths made under Sections 53 and 54 of the Wildlife and Countryside Act 1981 (concerning definitive maps), or applications for such orders, before the coming into force of this Order.

SI 1176/2006 The Natural Environment and Rural Communities Act 2006 (Commencement No 1) Order 2006

In force **2 May**. The Order brings into force certain provisions of the Natural Environment and Rural Communities Act 2006.

Sections 1(1)-(3) and (5) and Section 2 establish and set out the purpose of a new public body – Natural England. Provisions conferring certain functions of Natural England are also brought into force. Following commencement of these provisions Natural England will operate as a skeleton body before the majority of its functions are conferred at a later date. Natural England will take on the functions currently carried out by English Nature, the Countryside Agency and DEFRA's Rural Development Service. Schedule 11 of the Act is also brought into force which adds Natural England to the Schedules of various Acts applying to public sector bodies.

Section 98 of the Act is also brought into force. This empowers the Secretary of State to give, or arrange for the giving of, financial assistance related to or connected with a DEFRA function.

Sections 66-71 are also brought into force and these change the law in relation to rights of way and mechanically propelled vehicles:

- Section 66 restricts the creation of rights of way for mechanically propelled vehicles.
- Section 67 ends certain existing but unrecorded public rights of way for mechanically propelled vehicles.
- Section 68 relates to the presumed dedication of restricted byways and the use of pedal cycles.
- Section 69 concerns presumed dedications under Section 53 of the Wildlife and Countryside Act 1981.
- Section 70 makes supplementary provisions.
- Section 71 is an interpretation provision.

The Order also brings into effect relevant repeals in Schedule 12 of the Act.

SI 1177/2006 The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006

In force **2 May**. The Regulations are made under Section 52 of the Countryside and Rights of Way Act 2000. This Section enables the Secretary of State to make regulations providing for any existing legislation applying to highways, or to highways of a particular kind (e.g. footpaths or bridleways) to apply, or be excluded from applying, to restricted byways or ways shown in a definitive map and statement as restricted byways.

A restricted byway is a new class of highway established by Sections 47 to 50 of the 2000 Act. Section 47(2) provides that every way shown in any definitive map and statement as

a road used as a public path (prior to 2 May) shall be treated instead as shown as a restricted byway. A restricted byway is defined in Section 48(4) as a highway over which the public have restricted byway rights with or without the right to drive animals. Restricted byway rights include a right of way on foot, on horseback or leading a horse, and a right of way for vehicles other than mechanically propelled vehicles.

The Schedule to the Regulations contains a list of provisions of Acts and subordinate legislation relating to highways, or highways of a particular description, that shall apply to restricted byways. The legislation contained in the list is amended as a consequence.

Section 47 of the Highways Act 1980 (Power of magistrates' court to declare unnecessary highway to be not maintainable at public expense) is amended so as not to apply to restricted byways.

SI 1185/2006 The M6 Toll (Speed Limit) Regulations 2006

In force **25 May**. The Regulations impose speed limits on the M6 Toll Motorway in order to reduce vehicle speeds in stages on the approaches to the toll booths.

The following speed limits will apply:

(i) At Great Wyrley a limit of 50 mph for approximately 460 metres from the start of the toll lane area and then a limit of 30mph for approximately 475 metres on the approach to and egress from the toll booth lanes, followed by a limit of 50mph for approximately another 405 metres; and

(ii) At Weeford Park a limit of 50mph for approximately 540 metres from the start of the toll lane area and then a limit of 30mph for approximately 615 metres on the approach to and egress from the toll booth lanes, followed by a limit of 50mph for approximately another 380 metres.

A regulatory impact assessment has not been produced for this instrument as it has no significant impact on business, charities or voluntary bodies.

A temporary Order imposing the 30mph speed limits has been in force since 17th October 2003. These Regulations will make the Order permanent and will also revoke the M6 Toll (Speed Limit) Regulations 2003, which introduced the original 50mph speed limit on the approaches to the toll booths.

SI 1197/2006 The Avian Influenza and Influenza of Avian Origin in Mammals (England) Order 2006

In force **27 April**. The Order transposes Council Directive 2005/94/EC on Community measures for the control of avian influenza into UK law (apart from Chapter IX which deals with vaccination and will be transposed by the Avian Influenza (Vaccination) (England) Regulations 2006, anticipated in June 2006).

- Part 1 contains introductory provisions.
- Part 2 sets out preventative measures to reduce the risk of the transmission of avian influenza and provides for surveillance for the disease.
- Part 3 and Schedule 1 set out measures to deal with any suspected outbreak of avian influenza at premises (other than slaughterhouses, border inspection posts and in vehicles).
- Part 4 sets out measures when highly pathogenic avian influenza is confirmed on premises. These measures may also be applied when disease is suspected. This

Part also provides for the declaration of protection zones, surveillance zones and restricted zones around infected premises.

- Part 5 contains measures when highly pathogenic avian influenza is confirmed at slaughterhouses, border inspection posts and in vehicles.
- Part 6 sets out measures where low pathogenic avian influenza is confirmed at premises other than slaughterhouses, border inspection posts and in vehicles. These include the declaration of low pathogenic avian influenza zones.
- Part 7 includes measures to reduce the risk of the spread of avian influenza viruses to pigs and other mammals.
- Part 8 sets out general measures applicable on suspicion or confirmation of avian influenza.
- Part 9 details amendments to the Diseases of Poultry Order 2003 (SI 2003/1078) and the Diseases of Animals (Approved Disinfectants) Order 1978 (SI 1978/32).

Failure to comply with this Order is an offence under Section 73 of the Animal Health Act 1981.

CENTREX

HELPING TO DEVELOP POLICING

Legal Validation and Research

Yew Tree Lane, Pannal Ash, Harrogate
North Yorkshire, HG2 9JZ
Telephone 01423 876664
www.centrex.police.uk/digest