NPIA
National Policing Improvement Agency

Digest

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CASELAW Police News Diversity
LEGISLATION POLICE NEWS
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DIVERSITY Criminal Justice

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

This month's edition of the Digest features a Home Office Circular which provides information on the powers which have come into force under the UK Borders Act 2007. This includes amongst other things enter and search powers for nationality documents. This month also covers the launch of the new Unified Borders Agency which coincides with the provisions of the Act coming into force.

Also contained in this month's issue are details of a Ministry of Justice Circular which gives advice on changes to the legislation in relation to the forfeiture procedures of indecent images of children, a summary of the Caddy Review on the science of low template DNA analysis and an update of the position on the 30 plus scheme for police officers which has been followed in previous issues.

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

Case law in association with lawtel From Sweet & Maxwell

Digest Editorial Team:Telephone: +44 (0)1423 876664

Improvements to Blue Badge Map Service

The Department for Work and Pensions has announced that the online Blue Badge map service has been significantly improved. The service, which makes it easier for disabled people to find places to park, is found on the Directgov website and was first launched in July 2006. By the end of April it will contain maps for 119 major towns and cities.

The new improvements to the site include:

- Extra information for Blue Badge holders on shared use bays, residents' parking bays and time restrictions for single and double yellow lines;
- Additional information on train station and airport accessibility; shop mobility sites and accessible beaches;
- Improved graphics and search facilities. Users will now be able to find out information by imputing their postcode, street name or local area.

The Department for Transport has also stated that it will develop a comprehensive Blue Badge reform strategy by summer 2008 to help make the scheme fairer, more consistent, tougher on fraud and easier to understand.

The Blue Badge map can be found at
http://www.direct.gov.uk/en/DisabledPeople/MotoringAndTransport/index.htm

Police Miss Ethnic Minority Recruitment Targets

It has been announced that almost two thirds of police forces in England and Wales will miss the ethnic minority recruitment targets they were set following the Macpherson inquiry. The 1999 Macpherson inquiry into the murder of Stephen Lawrence found that:

- Police errors had helped Lawrence's killers to escape justice;
- Institutional racism was in part to blame for the police failures;
- Police forces needed to recruit far more ethnic minority officers so that the police would more closely resemble the communities they served.

After the inquiry report was published, the Government gave police forces 10 years to ensure that each force had the same percentage of ethnic minority officers as in the populations they served.

The following forces have admitted that they will fail to meet the target:

- Metropolitan Police.
- Greater Manchester.
- West Midlands.
- West Yorkshire.

As an example, the target for the Metropolitan Police was to have 25% of its officers from ethnic minority communities; the current total is 8%.

However, 16 smaller forces have or will have met their target. These forces have an ethnic minority population of just a few per cent.

Building Professional Skills for Government

A strategy which requires the cooperation of leaders in the civil service and in the armed forces on common skills issues was launched on 1 April 2008.

Entitled "Building Professional Skills for Government - a strategy for delivery", it is based on research carried out by Government Skills, the Sector Skills Council for Central Government, during 2007. It will help departments deliver higher professional standards while improving value for money in closing skills gaps and ensuring candidates for the future workforce are better prepared for a career in the civil service.

The strategy will deliver, over a 3 year period, a new environment in which:

- Increasingly, employees at all levels will understand the professional standards they need to attain, and see the career benefits attaining them.
- Employers across government will work together to target investment on current and future common skills priorities.
- Providers will deliver higher quality, better value skills development programmes, responsive to the needs of the sector.
- Educational institutions and government employees will engage in practical dialogue to find fresh approaches to strengthening the skills within the talent pool from which we recruit our future workforce.

Government Skills will work on a number of specific proposals including creating 500 additional apprenticeships in government departments, improving training commissioning and identifying a programme of engagement with the HE and FE sectors. This final initiative will help to develop the future workforce of the civil service by ensuring the development of the skills which will be required by government employers in the years to come.

The strategy is available in full at
http://www.government-skills.gov.uk/research_and_publications/skills_strategy/index.asp.

National Facial Images Database

A new facial images database is being developed so that police forces can use face recognition technology to match CCTV images with details of offenders.

NPIA Chief Executive Peter Neyroud has informed MP's that the system, which is being developed in a pilot scheme involving Lancashire, West Yorkshire and Merseyside Constabularies, has generated a database so far of more than 750,000 facial images over the past 18 months.

Presently in the three pilot scheme forces, officers are able to search the electronic photos of offenders in their area to match them with CCTV. Some other forces have been given 'read-only' access. The technology is still at an early stage and not yet able to search on the scale needed for a national database. However the idea is that eventually all forces will store its images on

a central national database to give immediate access for intelligence and investigative purposes.

The development of a national facial images database is just one element of a technological revolution in neighbourhood policing. It is hoped that by the time of the 2012 Olympics, all beat officer will be equipped with advanced second generation hand-held computers which will be able to take and transmit fingerprints, download photos and details from the police national computer and access images from local CCTV cameras.

National Police Conference

The next National Police Conference will be held on Monday 22 and Tuesday 23 of September in Nottingham.

The keynote speech will be delivered by Lord Justice Leveson and the conference will consist of key speakers and experts in police law, presentations, discussions and workshops.

Further details can be found at
http://www.weightmans.com/news_and_events/events/national_police_conference_200.aspx

Calls for Review of the 30 Plus Scheme

The Chief Constable of Cambridgeshire Police, Julie Spence, has called for the Government to review the 30 Plus Scheme in order to retain skilled officers in the service. The 30 Plus Scheme allows officers of pensionable age to retire, collect a lump sum from their pension, take a least a day off, then return to work for the same salary.

The call comes after seven forces have already suspended/withdrawn the 30 Plus Scheme, including:

- Greater Manchester;
- Humberside;
- Lincolnshire;
- Merseyside;
- Norfolk;
- North Yorkshire;
- South Wales Police.

Julie Spence argues that most officers would be better off working in the private sector after retirement. She argues that officers do not have any incentive to stay because of the amount they are paying into their pension contributions. She has called for the Government to look at:

- Making it easier for officers to take a gap year before coming back to work;
- What it could do to retain female officers who left the service to have a family but returned later in life.

Dyslexic Officer Forced to Resign Seeks Compensation

An Employment Tribunal has found that a dyslexic police officer was forced to resign from the force after being "humiliated and intimidated". Some of the conduct mentioned by the Tribunal included:

- PC Brooking's supervisors branded him "lazy" and "lacking in motivation";
- Not being allowed on patrol;
- Endlessly being made to redo paperwork;
- Superiors encouraging him to resign because of his dyslexia.

The Tribunal found that Essex Police did not make reasonable adjustments to help PC Brooking and consequently he suffered disability related harassment and discrimination.

Mr Brooking, now a Police Community Support Officer, is seeking £500,000 in compensation. The figure reflects the loss of earnings and pension rights from

being prevented from having a possible 30 year career with the police. The application setting out the compensation figure is to go before a High Court Judge in May.

Report Line for Police Launched by IPCC

The IPCC has launched a dedicated phone line and email address for police officers and staff wishing to report any concerns of wrongdoing or malpractice within their workplace. The report line has been operational since 1 April 2008 and is available for staff who feel more comfortable reporting issues to an external body, rather than their professional standards unit.

The email address and phone number for the report line can be obtained from professional standards departments, Federation representatives or Staff Associations.

Samurai Swords Added to the Offensive Weapons Order

As of 6 April 2008, the list of weapons prohibited under section 141 of the Criminal Justice Act 1988 has been extended to include Samurai swords. The Criminal Justice Act 1988 (Offensive Weapons) (Amendment Order) 2008 amends the Order to include:

"(r) a sword with a curved blade of 50 centimetres or over in length; and for the purposes of this sub-paragraph, the length of the blade shall be the straight line distance from the top of the handle to the tip of the blade."

The ban is the result of a 12-week consultation (covered in the March 2007 *Digest*) and comes as part of the government's ongoing efforts to tackle knife crime. The Home Office estimates that there have been around 80 attacks using Samurai-style swords in recent years and while they are not the most commonly used weapons, the Association of Chief Police Officers (ACPO) said that the police have supported the government's case throughout the process.

The act recognises the interests of collectors of genuine, high-value Japenese swords with historical and cultural significance, and includes exemptions for their use in historical re-enactments and certain sporting activities. This is consistent with the aim of the ban, which is to specifically target cheap imitation swords which are widely available, rather than genuine collectors items.

The Criminal Justice Act 1988 (Offensive Weapons) (Amendment Order) 2008 can be found at
http://www.opsi.gov.uk/si/si2008/draft/ukdsi_9780110810324_en_1

Corporate Manslaughter and Corporate Homicide Act 2007

On 6 April 2008, the Corporate Manslaughter and Corporate Homicide Act 2007 (Commencement No.1) Order 2008 brought into operation the majority of the provisions of the Corporate Manslaughter and Corporate Homicide Act 2007. Under the new law companies, organisations and government bodies face criminal prosecution and larger fines if they are found to have caused death due to their gross corporate health and safety failures. Please see November's edition of *Digest* for further guidance on the act. The act is available at
http://www.opsi.gov.uk/acts/acts2007a.htm

Counter-Terrorism Bill gets Second Reading

The Counter-Terrorism Bill has passed its first hurdle in the Commons on 1 April as it received its second reading. MP's from all parties however have stated that they will oppose an extension to 42 days pre-charge detention when it returns to the Commons at report stage, possibly in May.

There has been much controversy over many areas of the Bill, most of which have been covered in previous issues of the *Digest* (in particular March 2008 issue pages 22-26). The main sticking point however has been the matter of detention without charge.

The Home Secretary defended the Bill's proposals on this point stating that it was a "wholly different model" from the 90 day limit which was rejected back in 2005. Referring to the "unprecedented scale" of the threat of terrorism, she said that the proposals were "not a blanket extension" but rather "a reserve power - not to be used lightly - that would mean a higher limit could only become available if there was a clear and exceptional need, supported by the police and CPS and approved by the Home Secretary."

She went on to clarify that the power would be subject to parliamentary approval within 30 days and a senior judge would decide whether someone was held.

The shadow home secretary David Davis however argued that the Civil Contingencies Act 2004 provided all the solutions necessary to deal with such a scenario. The Liberal Democrats stated that 42 days would be "deeply damaging to civil liberties, as well as counter-productive in the fight against terrorism by poisoning the trust that exists between minority communities and the security services."

The Equalities and Human Rights Commission has warned that it could mount a legal challenge against the government if it pressed ahead with the 42 day limit.

Introduction of Post Legislative Scrutiny Announced

Harriet Harman, Leader of the Commons has announced proposals for post legislative scrutiny of new laws by select committees. The plans, announced to MP's in a written statement, would involve Acts of Parliament undergoing a 'progress check' conducted by MP's and civil servants, three years after receiving Royal Assent. Government departments would publish a memorandum on appropriate acts and the relevant departmental select committee would then decide whether to conduct further scrutiny. They will then have the choice of either a full in-depth inquiry or shorter committee hearings.

It is hoped that the plans will provide a better understanding of how laws are working in practice and will provide an opportunity to improve the quality of legislation and policy making in the future.

For more information please see
http://www.commonsleader.gov.uk/output/page2329.asp

HOC 6/2008
Implementation of Sections 27-28 and Sections 44-47 of the UK Borders Act 2007, and Implementation of Sections 21-26 of the Immigration, Asylum and Nationality Act 2006

This circular provides information on sections 44-47 of the UK Borders Act 2007 which came into force on 31 March 2008. This circular also provides information on sections 21-26 of the Immigration, Asylum and Nationality Act 2006 and sections 27 and 28 of the UK Borders Act 2007, which came into force on 29 February 2008.

Sections 44-47: Powers related to entry and search for nationality documents and seizure and retention of nationality documents

Please note that use of the powers under sections 44-47 will initially be limited to a pilot in three London Boroughs:

- Waltham Forest.
- Hackney.
- Islington.

Sections 44-47 **should not be used** elsewhere in the UK whilst this pilot is ongoing, during which the powers will only be available to designated officers working as part of Operation Swale. Following the completion of the pilot, a Home Office circular will advise of a national roll-out.

Sections 44 and 45 enable immigration officers and police officers to enter and search certain premises for documents relating to nationality or identity where they suspect they may be found on those premises. Section 46 allows officers to seize and retain such documents. Section 47 extends these powers to designated police civilians by inserting paragraph 18A to Part 2 of Schedule 4 to the Police Reform Act 2002 (powers exercisable by police civilians: investigating officers).

Sections 21-26 of the Immigration, Asylum and Nationality Act 2006 and sections 27 and 28 of the UK Borders Act 2007

Section 21 of the 2006 Act created a new criminal offence for an employer to employ somebody knowing that the employee is an adult subject to immigration control; and

- Has not been given leave to enter or remain in the UK; or
- The leave to enter or remain in the UK is invalid, has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise); or
- Is subject to a condition preventing the employee from accepting the employment.

An officer, who believes that the employer is employing an illegal migrant worker, but does not have sufficient evidence to secure a conviction under section 21,

should report his suspicions to the UK Border Agency. Further information can be found at http://www.bia.homeoffice.gov.uk/employers/preventingillegalworking/complyingwiththelaw/post280208

A section 21 offence is only committed when the employment commenced on or after 29 February 2008. Under SI 2008/310, when employment commenced on, or after 27 January 1997, but before 29 February 2008, his employer remains liable for prosecution under section 8 of the Asylum and Immigration Act 1996.

Section 27 and 28 of the Borders Act 2007 amend Sections 28AA and 28FA of the Immigration Act 1996 respectively. Neither section of the 2007 Act will have an effect in relation to employment which commenced prior to 29 February 2008, even if employment continued after that date. In such cases, section 8 of the Asylum and Immigration Act 1996 will be effective.

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

Launch of Unified Border Agency

On 3 April Britain's new Unified Border Agency was launched, uniting border, immigration, customs and visa checks. The new agency aims to protect our borders, control migration, and prevent border tax fraud, smuggling and immigration crime.

The organisation will include more than 9,000 warranted officers with wide ranging search, seizure and detention powers. These officers will operate in local communities, at the border and across 135 countries world wide.

The UK Borders Act 2007 sets out the police-like powers of staff in England and Wales. A further 1,000 frontline staff will be conferred with both immigration and customs powers. A full merger of the roles and powers will follow in new legislation to be presented to the House in the autumn.

The agency will also link with the 3,000 police stationed at ports and airports following a new agreement with ACPO.

The new agency will create a single border intelligence service, bringing together overseas risk assessment units, airline liaison officers and customs and immigration intelligence officers based all over the world. It will also work with a new £1bn screening system for travellers to the UK.

Ministry of Justice Circular Forfeiture of Indecent Images of Children

The Ministry of Justice published a circular on 28 March 2008 concerning the implementation of Section 39 and Schedule 11 of the Police and Justice Act 2006; the forfeiture of indecent images of children.

The circular, which was addressed to all Chief Officers of Police in England and Wales, details the changes in the legislation, the new forfeiture process and

provides advice on how to achieve successful implementation of the new system.

The Legislation

Section 39 of the Police and Justice Act 2006 and Schedule 11 to the Act came into force on 1 April 2008. The legislation amends the Protection of Children Act 1978 (POCA 1978) to provide a mechanism to allow police to forfeit indecent photographs of children held by the police following any lawful seizure.

These changes will mean that:

- Once seized indecent photographs of children will not be returned in any form to anyone who does not have a legitimate reason for their possession.
- The police will be able to forfeit indecent photographs of children which are held by the police following any lawful seizure.
- The police will be able exercise the power of forfeiture under the Protection of Children Act 1978 rather than be dependent on the Courts.
- Both Police and Court time will be saved.

What has changed?

The new legislation closes a loophole in the law relating to the forfeiture of indecent images of children and the storage equipment which holds them.

Previously the seizure of articles was only allowed by the Court issuing a warrant under Section 4 of POCA 1978, authorising the police to enter premises, search and then seize any articles which they reasonably believed to be or to include indecent photographs or pseudo-photographs of children.

As long as the police applied for a warrant of seizure under Section 4 of POCA 1978 the forfeiture powers were satisfactory. However, if the articles were discovered under a warrant other than under Section 4 POCA 1978 (e.g. following a search under PACE 1984) forfeiture could not proceed under POCA 1978. The only possible action would have been to use Section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 and seek an order of forfeiture of articles used to commit an offence. Those powers however could only be used following a conviction. If the articles were found by a search other than under Section 4 POCA 1978 and a conviction did not follow, in theory the articles may have had to have been returned to the offender.

Section 39 and Schedule 11 have made the following changes:

- Gives the police the power to assume forfeiture regardless of which powers of seizure were used to obtain the articles.
- Removes the obligation to produce all items for forfeiture before the Court. The Court should now only be involved if there is a challenge to the decision of the police to forfeit.
- Allows forfeiture to apply to articles that are impossible to separate from illegal data such as legal data held alongside illegal data on a computer hard drive.

- Allows forfeiture of articles reasonably believed likely to be or to contain indecent images of children. Such as forfeiting a vast collection of discs without having to go through every single item.
- The Schedule gives the Courts, on appeal, the power to order forfeiture, return or separation of articles, including copying of legal data.
- The reforms do not affect the powers of forfeiture under Section 143 of the Powers of Criminal Courts (Sentencing) Act 2000.
- Section 40 and Schedule 12 of the Police and Justice Act 2006 amend the powers of forfeiture in Northern Ireland.

The New Forfeiture Process

- The new forfeiture process applies to any indecent photograph or pseudo-photograph of a child and any property which is not reasonably separable from that property. (Schedule 11, para. 1)
- The powers are used when an officer no longer has a legitimate reason to retain the property but is satisfied that there are reasonable grounds to believe it is forfeitable. (Schedule 11, para. 1)
- Once property is condemned as forfeited, the forfeiture is to be treated as having taken effect from the date of seizure. (Schedule 11, para. 15)
- If the officer is satisfied that the conditions set out in paragraph 1 of the Schedule are met he/she must issue a notice of intended forfeiture in line with the directions contained within the schedule. (Schedule 11, para. 4)
- The notice should contain a description of the property to be forfeited and how a person may claim against forfeiture and the timescales involved. (Schedule 11, para. 4)
- The notice should be served upon:
  - Every person whom the relevant officer believes to have been the owner or one of the owners of the property.
  - Every person believed to have been an occupier of the premises at that time.
  - Where the property was seized as a result of a search of any person, that person. (Schedule 11, para. 4)
- The notice must be delivered to a person only by:
  - Delivering it personally.
  - Addressing it to him/her and leaving it for him at the appropriate address.
  - Addressing it to him/her and sending it to him/her at that address by post. (Schedule 11, para. 4)
- A person may claim possession of the property by giving written notice to a constable at any police station in the area where the property was seized. This must be done within one month of the date of the notice of intended

forfeiture or if no such notice has been given, the date on which the property was retained. (Schedule 11, para. 5 and 6)

- Unclaimed property after one month of the date of the notice of intended forfeiture or, if no such notice has been given, the date the property was retained, it is treated as forfeited. (Schedule 11, para. 7)
- On receipt of a claim to possession, the relevant officer must decide whether to ask the court to forfeit all or part of the property. If the officer decides not to take such proceedings he/she must return the property. (Schedule 11, para. 8 and 9)
- Paragraphs 10-14 outline the Court's powers and procedures.

Debate on Reclassification of Cannabis

The debate on the reclassification of cannabis has risen again, ahead of the publication of a report by the Governments Drugs Advisory Body, the Advisory Committee on the Misuse of Drugs (ACMD).

Cannabis is currently a Class C drug. It was downgraded from a Class B drug in January 2004, reducing the maximum penalty for possession from five years to two years imprisonment.

The following people/groups have made the following remarks:

- The Superintendents' Association - The Superintendents' Association of England and Wales supports the reclassification of cannabis as a Class B drug. They have stated that downgrading to a Class C drug sent out the wrong message that cannabis was harmless and legal.
- Association of Chief Police Officers - They believe that cannabis should be restored to a Class B drug.
- Prime Minister Gordon Brown - The Prime Minister has indicated his support for re-classifying cannabis as a Class B drug. He has expressed concern at the stronger forms of the drug becoming available and the negative health effects of smoking cannabis.

The ACMD's report will be presented to the Home Secretary at the end of April, after which the government will make a decision on its classification.

New traffic management powers come into force

A new parking enforcement framework came into force on 31 March 2008, designed to implement Part 6 of the Traffic Management Act 2004.

The framework relates to the civil enforcement of parking controls by civil enforcement officers, rather than as criminal measures taken by police officers and police traffic wardens. The statutory instruments make provisions including the following:

- Differential penalty charges with higher fees for more serious contraventions and lower fees for less serious contraventions.

- Penalty charge notices can be issued by post.
- Evidence from 'approved devices' such as CCTV cameras can be used to enforce a contravention.

Statutory guidance on the new framework can be found at http://www.dft.gov.uk/pgr/roads/tpm/tmaportal/tmafeatures/tmapart6/betterprkstatutoryguid.pdf

Non-statutory operational guidance on the framework is also available at http://www.dft.gov.uk/pgr/roads/tpm/tmaportal/tmafeatures/tmapart6/betterprkoperationalguid/parkenforcepolicy.pdf

New Plans to Monitor Sex Offenders Online

The Home Office has announced new plans to monitor sex offenders online and make it harder for them to meet children online.

The first UK Social Networking Guidance provides advice for industry, parents and children about how to stay safe online. The Guidance has been developed by a Taskforce of representatives from industry, charity and law enforcement agencies including Vodafone, the Child Exploitation and Online Protection Centre (CEOP) and the NSPCC.

Among the measures recommended for industry and users are:

- Displaying reporting links to agencies including the police, NSPCC and the Samaritans on social networking websites.
- Passing the email addresses of registered child sex offenders from the police to the social networking sites to stop offenders using their sites.
- Making it more difficult for people registered over the age of 18 to search for users under the age of 18.
- Sentencing sex offenders to up to five years in prison if they fail to provide police with their email address or use a false email address.
- The introduction of a new Kitemark to set a standard for filtering software for home computers and strengthen protection of children online.

The plans to introduce the disclosure of the details of child sex offenders subject to notification requirements to social networking sites will be done through secondary legislation, subject to the Criminal Justice and Immigration Bill receiving Royal Assent later this year.

Further details about this bill can be found at
http://www.justice.gov.uk/publications/criminal-justice-bill.htm

Restraint on Children in Custody

The Ministry of Justice has produced a written statement on the review of the use of restraint in juvenile secure settings which is being conducted jointly between the Ministry for Justice and the Department for Children, Schools and Families.

The review has looked at secure training centres, young offender institutions and secure children's homes to gather the experiences and views of young people and staff. The review has shown there to be a gap in evidence concerning the use of restraint in secure children's homes. There is no central prescription of technique unlike secure training centres and young offender institutions. Instead it is the responsibility of each local authority to identify techniques (in accordance with National Minimum Standards) appropriate to the home for which they have responsibility.

This fragmentation of the evidence led to Department for Children, Schools and Families commissioning the National Children's Bureau to undertake thorough

research on restraint in secure children's homes which began in January this year. This research aims to provide a comprehensive picture of restraint methods, systems and processes in secure children's homes and see if any harm is caused to children and young people by these methods.

The chairs of the review were due to report their recommendations in April 2008 but due to the importance of the above research and the impact its findings will have on the recommendations made, publishing of the report has been delayed until June 2008.

Government Campaign on the Dangers of Driving when Tired

A new £800,000 Government THINK! campaign, fronted by actor Joseph Fiennes, has been launched to make drivers aware of the dangers of driving when tired.

The campaign coincides with the publication of a You Gov poll of 1,500 motorists which announced that only 18% of motorists always take a yawn as a sign to pull over. Other findings from the poll include:

- One in five of all crashes on major roads are caused by tired drivers.
- Only one in five motorists always plan breaks in their car journeys.
- 26% admit to having driven for up to more than four hours without a break.
- People who drive for work are particularly at risk.
- 4% have driven for more than seven hours without a break.
- 54% of motorists at least occasionally try to beat their journey time on a trip they have done before.
- 75% of motorists open a window to keep themselves awake on a long journey; 4% shake their head vigorously; and 3% slap their face.

The advice from the THINK! Campaign includes:

- Don't start a long trip if you're already tired.
- Plan your journey to include a 15 minute break every 2 hours.
- If you feel drowsy find a safe place to stop (not on the hard shoulder).
- As an emergency measure drink two cups of coffee or a high caffeine drink and have a rest for 10 to 15 minutes to allow time for the caffeine to kick in.

For more information please see http://www.dft.gov.uk/think

Consultation on the Proposal for a Regulation on the Protection of Pedestrians and Other Vulnerable Road Users

The Department for Transport launched a consultation on 17 March 2008 on the European Commission's proposal for a Regulation on the protection of pedestrians and other vulnerable road users. The objective of the proposal is to strengthen the European Community requirements aimed at improving the safety of pedestrians and other vulnerable road users in case of injuries which result from a collision with a motor vehicle. The Regulation itself lays down requirements for the construction and functioning of vehicles and frontal protection systems in order to reduce the number and severity of injuries to those who are hit by the fronts of those vehicles and in order to avoid such collisions.

These requirements are presently governed by European Directive 2003/102/EC. In accordance with Article 5, a review was undertaken as to the feasibility of certain provisions in the second phase of the Directive. This resulted in the conclusion that these requirements were not feasible.

As a result, the Commission has proposed a new Regulation which will form the basis for a combination of feasible requirements with active safety systems. The Regulation is directly applicable throughout the EU and therefore does not require transposition into national law which provides enterprises and approval authorities with a single set of rules. This further ensures the free movement of goods, persons, services and capital throughout the member states, thus avoiding any barriers to trade.

The Regulation looks at a study commissioned by the Commission which shows that the requirements for pedestrian protection can be significantly improved by the use of a combination of passive and active measures which afford a higher level of protection than previously existing provisions. The proposal seeks to replace some existing measures aimed at reducing the consequences of vehicle/pedestrian impact (passive safety) with measures that are intended to reduce the frequency of this type of accident (active safety). These measures include the use of an enhanced braking function and Collision Avoidance Systems.

Under the proposal, Member States of the European Community will be responsible for establishing penalties for any infringement by manufacturers of the provisions of the Regulation and for ensuring that these penalties are implemented. National authorities will also provide the Commission with the results of tests on vehicles on an annual basis.

Although pedestrian casualties have fallen by a third since the mid 1990's, vulnerable road users are still a significant proportion of the UK's road casualties. In 2006 there were 30,982 pedestrian casualties and a further 16,196 pedal cycle casualties. Of these 675 pedestrians and 146 cyclists were killed, while 6,376 pedestrians and 2,296 cyclists were seriously injured. In the European Union there are approximately 8000 pedestrian and 3000 pedal cycle fatalities each year. The consultation period ended on 18 April 2008. The consultation document can be found in full at
http://www.dft.gov.uk/consultations/open/protectroadusers/

Devolution of Policing and Justice to the Northern Ireland Assembly

A written Ministerial Statement has been published by the Secretary of State for Northern Ireland Shaun Woodward, concerning the devolution of policing and justice matters to the Northern Ireland Assembly. It states that a report has been laid before the House and is ultimately an important step towards the completion of devolution in Northern Ireland.

Since the restoration of the Assembly on 8 May 2007 peace has progressed quickly and confidently and now the processes are in place for the transferring of policing and justice from Westminster to the Northern Ireland Assembly.

The statement addresses the next steps involved such as the Assembly agreeing a date to accept responsibility for the delivery of local policing and justice services and changes to the necessary legislation. Discussions are therefore underway with the Government to reach agreement on the completion of devolution at the earliest possible date.

Changes to Sponsorship of the Parole Board

Jack Straw has announced in a written ministerial statement that changes are to be made in respect of the sponsorship arrangements for the Parole Board. The Board is currently sponsored by the National Offender Management Service (NOMS).

The announcement comes following a case heard in the Court of Appeal on 1 February. In R (on the application of Brooke and Others v The Parole Board and Others [2008] EWCA Civ 29, the Court held that under its current sponsorship arrangements, the Parole Board was not sufficiently independent of the Executive to meet the requirements of Article 5 of the European Convention on Human Rights. It commented that the Board had "evolved from an advisory body into a judicial body". The Court ruled that the Secretary of State should ensure that the sponsorship responsibility for the Board should be placed in another part of the Ministry of Justice, to ensure independence.

Consequently, from 1 April, sponsorship of the Parole Board has been transferred from NOMS to the Access to Justice Group in the Ministry of Justice.

Consultation on Best Value in Probation

The Ministry of Justice have announced a consultation entitled "Best Value in Probation". The consultation will look at how the best value regime should work in relation to probation and how to provide the most cost effective route to help rehabilitate and punish offenders.

The concept of "best value" in probation was raised during the passage of the Offender Management Act 2007. The Government called for a move away from a target-based outsourcing regime in probation to a model based on best value principles. Best Value is based around the principles of:

- Comparing;
- Consulting;
- Challenging;
- Competing;
- Collaborating: probation areas working together to deliver results.

The consultation is taking place to ensure that the best value framework is properly attuned to the needs of probation and to gain views about how the best value regime in probation should work.

Minister for Justice David Hanson MP has said that the best possible systems need to be in place to manage offenders in the community, to protect the public and to reduce re-offending.

On 1 April six new Probation Trusts were established to give probation services more independence to focus their work on local communities and reduce re-offending, while providing a high level of service to the courts and oversight of offenders.

This new system would involve probation boards and trusts reviewing probation services to demonstrate and drive their economy, efficiency and effectiveness, and making appropriate amendments to the delivery of those services.

The consultation paper asks a number of questions about how the new system should work. It will close on 2 July and can be found at http://www.justice.gov.uk/publications/cp0608.htm

Increase in number of Dedicated Drugs Courts

Jack Straw has announced the expansion of Dedicated Drug Courts. The courts, designed to tackling drug misuse and related crime, are to be extended to up to four more magistrates' courts. The new courts will add to the two already in operation at West London and Leeds Magistrates' Courts.

The announcement coincides with the publication of an evaluation report which reveals that the drug court model is effective at cutting re-offending rates. The model encourages closer working across agencies and treatment providers, and introduces continuity of judiciary. This is achieved by ensuring that when an offender is referred to the dedicated drug court for sentencing, the same magistrate or district judge will sentence the offender and review the progress of offenders on community orders with a Drug Rehabilitation Requirement. The report also highlights that drugs courts can have a positive impact on reconviction rates, attendance and compliance.

The evaluation of the two existing drugs courts can be found at http://www.justice.gov.uk

CPS Roll out of Two Key Justice Initiatives

The CPS has announced that the national roll out of pre trial interviews with witnesses and conditional cautions have been completed across England and Wales.

Pre-trial interviews with witnesses

This initiative enables prosecutors to interview witnesses before a trial begins. This will enable prosecutors to make more informed decisions about criminal cases and will ensure that the right person is brought before the right court for the right offence. The interview will be used to:

- Assess the reliability of the witnesses evidence;
- Assist the prosecutor in understanding complex evidence;
- Enable prosecutors to explain court processes and procedures to witnesses.

Pre trial interviews with witnesses were trialled in Merseyside, Greater Manchester, Lancashire and Cumbria from January to December 2006.

Conditional Cautioning

The use of conditional cautions enables low-level criminal cases to be diverted away from court. They are used in cases such as criminal damage, theft and common assault and they aim to:

- Improve victim satisfaction;
- Reduce re-offending;
- Divert low-level offenders away from the courts.

The cautions can only be used when the offender admits the offence and is willing to comply with the conditions imposed upon them. These include:

- Payment of compensation;
- Writing letters of apology to the victim;
- Taking part in drugs programmes;
- Directions not to approach a particular area or person.

Failure to comply with the conditions can lead to prosecution for the original offence.

The use of the conditional caution ensures that cases are resolved more speedily. They involve a consultation with the victim, making sure that their views are taken into account when using conditional cautions.

Merger of SOCA and ARA

On 1 April 2008 the operational element of the work of the Assets Recovery Agency (ARA) merged into the Serious Organised Crime Agency (SOCA). The merger was provided for by the Serious Crime Act 2007. SOCA now has both criminal and civil powers to reduce harm caused to individuals and communities in the UK by organised crime.

Independent Safeguarding Authority to Launch in 2009

Following the implementation of the Safeguarding Vulnerable Groups Act 2006, the Independent Safeguarding Authority (ISA) was created with the overriding aim to help protect children and vulnerable adults from harm. From October 2009, the authority will have a major impact on the recruitment and monitoring practices of people working or volunteering with children or vulnerable adults. It will do this by:

- Working in partnership with the Criminal Records Bureau (CRB), which will gather information on those who want to work with vulnerable groups.
- Using that information to decide on a case-by-case basis who poses a risk of harm to vulnerable groups.
- Securely storing information about people's ISA status for employers and voluntary organisations.

Once the scheme is fully operational, it will be illegal to hire someone in regulated authority, who has not been checked by the ISA. The new scheme will affect approximately 11.3 million people across the education, care and health industries.

As an independent body, the authority will be largely self-financing and therefore anyone wishing to take a job working with vulnerable groups will pay a one-off fee of £64 to cover the work involved. There will however be no cost for those who wish to work as volunteers.

The formation of the ISA followed the outcome of the Bichard Inquiry, arising as a result of the Soham murders in 2002, when schoolgirls Jessica Chapmen and Holly Wells were murdered by Ian Huntley, their school caretaker.

Further information on the ISA can be found at http://www.isa-gov.org.uk

Government Introduces Improvements to Child Care Proceedings

Following a review of the child care proceedings system in 2006, the government has introduced the Public Law Outline which aims to reduce unnecessary delay in child care proceedings and is designed to promote better co-operation between all the parties involved. Effective from 1 April 2008, the Public Law Outline replaces the existing Protocol for Judicial Case Management in Public Law Children Act cases. It is supported by the revised statutory guidelines of the Children's Act 1989 Guidance and Regulations Volume 1, which also came into force on 1 April 2008.

The initiative looks at the importance of ensuring that the removal of a child from their parent's care remains a last resort once other options, such as care from grandparents or other family members, have been explored. It is acknowledged however that there are instances, such as cases of abuse or neglect, where such intervention is necessary to protect the welfare of the child.

Currently, around 14,000 applications for the care or supervision of a child are made each year and these cases are both time consuming and complex. This new initiative will aim to reduce the impact on the children involved.

Further information on the care proceedings reform, including the text of the new Public Law Outline, can be found at
http://www.justice.gov.uk/guidance/careproceedings.htm

More Specialist Domestic Violence Court Systems Announced

Following the publication of the Specialist Domestic Violence Courts Review, as reported in April 2008 *Digest*, the Government has announced the introduction of more than 30 new Specialist Domestic Violence Court Systems in England and Wales. This will bring the total number to 98.

A multi agency approach is taken to the work of the courts, involving the police, prosecutors, court staff, the probation service and specialist support services.

Key features of the specialist courts include:

- Specially trained magistrates in dealing with domestic violence;
- Separate entrances, exists and waiting areas so that victim's do not come into contact with their attacker;
- Tailored support and advice from Independent Domestic Violence Advisors;
- Cases clustered on a particular day or fast tracked through the system, limiting the likelihood of further incidents.

For a full list of the new court system areas please see
http://www.justice.gov.uk/news/newsrelease020408a.htm

Ban on Paedophile Hostels Criticised

A report published by the inspectorates of constabulary, probation and prisons is critical of the ban on housing paedophiles in bail hostels near to schools.

The ban was introduced in 2006 after a newspaper campaign and has affected 14 of the 100 hostels in England and Wales. The government said that ban had moved the system 'in favour of the victim' in order to maintain public confidence in the system.

However, the Inspectorates say that this has led to a shortage of places for sex offenders and reducing the capacity of the probation service to protect the public. Furthermore, plans to create new hostels, to meet the needs of the criminal justice system, had already proved impossible because of local opposition.

In some cases the Inspectorates found potentially dangerous offenders had been released from prison without adequate supervision. The report states that it is the individual who is risk-assessed and not the premises and that any decision to admit someone to a hostel has always been based on an assessment of risk of harm that included the location of the hostel.

The report goes on to state that banning 14 of the 100 available hostels from housing people convicted of sex offences against under 16's had a profound effect on the ability of managers to find appropriate places for them and public protection teams were often unwilling to accept referrals of potentially dangerous offenders from out of the area.

A copy of the report can be found at
http://www.inspectorates.homeoffice.gov.uk/hmiprobation/

Success of Child Exploitation and Online Protection Centre

The Child Exploitation and Online Protection Centre (CEOP) has published its second year results which show that there has been an increase in the number of arrests of sex offenders. Over the last twelve months the report shows that:

- 131 children have been safeguarded from sexual abuse;

- 297 offenders have been arrested;
- 6 organised paedophile rings have been dismantled;
- 1.7 million UK children are receiving "Safety First" education;
- 2,600 law enforcement and child protection professionals have attended CEOP training courses;
- 25 of the UK's highest risk offenders were located as a direct result of CEOP activity.

In addition, CEOP has processed almost 1 million images of child sex abuse. It uses each image to help build up intelligence on offenders and has lead to 18 young victims being identified.

CEOP's facility to allow the public to report abuse has also been widely used. During the past year it has received 5,812 reports of abuse. This is a 76% increase on the monthly average from 2006/07.

The Safety First education programme has also been extended over the past year.

Jim Gamble, Chief Executive of CEOP has stated that continued success will involve:

- More work to convince online operators to demonstrate their commitment to child safety;
- A drive by all organisations towards on programme of advice and guidance for young people and their families;
- More international co-operation.

For the Report in full please see
http://www.ceop.gov.uk/publications/

Inquiry into the work of the Crown Prosecution Service

The Justice Committee has launched an inquiry into the work of the Crown Prosecution Service. The inquiry will look at:

- How the CPS contributes to, and fits into the Criminal Justice System - how does it relate to and share information with the police, courts and other services, how does it work with other prosecution agencies such as the Revenue and Customs Prosecution Office, what is its role as regards Anti-Social Behaviour Orders, is there an effective balance between holding it accountable and maintaining its independence, what is the role of the Attorney General;
- How effectively does the CPS operate and serve its customers - how does it communicate with victims and witnesses, how does it relate to local communities, is it providing a timely and consistent service across the country, do the different staff functions support effective case management, is decision making on charges or whether to prosecute

effective, how is it managing key areas such as prosecuting rape and domestic violence?

Written submissions addressing the above should be sent to justicecommemo@parliament.uk by 15 May.

CPS Updated Policy on Prosecuting Racist and Religious Crime

The Crown Prosecution Service has updated its policy and guidance to prosecutors on racist and religious crime. The policy, which is available to the public, was first published by the CPS in July 2003, and has been updated in response to changes in the law and the way it deals with victims and witnesses. The main impetus for the change comes from the Racial and Religious Hatred Act 2006, which came into force on 1 October 2007 and introduced the new offence of stirring up religious hatred. Also behind the change was the introduction of Witness Care Units and the way the CPS engages with the community.

The policy has a wide remit and explains:

- What is meant by racist and religious crime.
- The offences and how the law works.
- The CPS's responsibility to victims and witnesses.
- The rights of defendants.
- How racist and religious crime is monitored.

The main changes were preceded by a six week consultation exercise in autumn 2007 with black and minority ethnic communities and faith communities. They include:

- Changes to the obligations placed on prosecutors by the Attorney-General's Guidelines on the Acceptance of Pleas and The Prosecutor's Role in The Sentencing Exercise 2005.
- The sections on victims and witnesses have been redrafted to take into account the impact of the Prosecutor's Pledge and the Code of Practice for Victims of Crime.
- Section 2 of the Policy - 'What we mean by racist and religious crime' - has been redrafted to make clearer the distinction between a racist/religious incident and a racist/religious crime.

For more information see
http://www.cps.gov.uk/news/pressreleases/121_08.html

Review of the Science of Low Template DNA Analysis - The Caddy Review

The Caddy Review - A Review of the Science of Low Template DNA Analysis has been published.

The Review was commissioned by the Forensic Science Regulator following doubts about the reliability of low template DNA testing. These were raised by the Judge in the Omagh bombings trial. He questioned the scientific validity of the technique after it wrongly linked a sample taken from a car bomb in Northern Ireland to a 14 year old boy in Nottingham.

The terms of reference of the review included:

- To examine low template DNA profiling techniques;
- To advise upon the scientific validity of those techniques;
- To comment upon the interpretation of the results and how they should be presented to the customer and to the court in any criminal proceedings;
- To advise upon the creation of a national minimum technical standard for low template DNA analysis;
- To make other relevant recommendations.

The review, lead by Professor Brian Caddy, concluded that the science behind the technique is sound and robust and confirmed that the technique is appropriately validated. The review made 21 recommendations, some of which are listed below:

- Every police officer and member of crime scene personnel must be DNA profiled as a matter of urgency to avoid them unintentionally contaminating crime scenes.
- The establishment of a programme to educate police scenes of crime and forensic officers on collecting samples for low template analysis.
- National standard for the interpretation of low template results.
- The development of an advisory panel to guide the courts on how to interpret low template DNA evidence.

ACPO have commented that the review provides a helpful explanation of the science and a basis for improving the contribution of DNA profiling to crime investigation.

The review can be found in full at
http://police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/Review_of_Low_Template_DNA_1.pdf?view=Binary

The Home Secretary's response to the Flanagan Review of Policing

Following the release of the Final Report of the Flanagan Review of Policing (covered in March 2008 *Digest*) the Home Secretary has issued a response. In a letter addressed to Sir Ronnie Flanagan, Home Secretary Jacqui Smith discusses the action that has been taken so far and introduces further proposals to implement his recommendations.

The review found a great deal of bureaucracy across many areas of the police service and the Home Secretary has expressed her support in tackling this. Work is currently underway to reduce the amount of paperwork that police officers are required to complete. This relates specifically to the lengthy forms used during Stop and Account, however this extends to the reporting of all incidents of crime. The use of improved technology will go a long way in achieving this. In February this year, a review of the Directed Surveillance and Covert Human Intelligence Codes of Practice was announced which will aim to give greater guidance to practitioners to reduce bureaucracy. This review will seek to implement the recommendations of the ACPO-led review on the Regulation of Investigatory Powers Act 2000 (RIPA).

In her response, the Home Secretary also indicated further steps that had been taken to address the findings of the report. On 1 April, new, less prescriptive Public Service Agreements were released to further reduce the amount of bureaucracy. They have fewer performance indicators and focus on a more joined-up criminal justice system. On 31 March, plans were announced to introduce a new policing pledge (see page 37 for article) which would set national consistent standards on what people can expect from the police service. This is expected to be introduced by the end of the year.

The Home Secretary has requested that Sir Ronnie Flanagan continues to monitor the progress of the programme for reform and issue a further report later in the year. The Home Office will further discuss the recommendations of the Flanagan Review and how they will be implemented in its forthcoming Green Paper on Policing.

The Home Secretary's full response to Sir Ronnie Flanagan's Review can be found at http://police.homeoffice.gov.uk/police-reform/flanagan-police-review/

CID Report - 'Losing the Detectives'

An independent study by the Joint Central Committee (JCC) of the Police Federation of England and Wales has been released highlighting the problems currently faced by the CID in recruiting officers and dealing with a shortage of detectives.

The study was commissioned after the JCC became concerned at the reports it received of the seriously diminished resilience of General Office CID (GO CID) teams, as well as a shortage of trained and experienced detectives. It was conducted by setting up 27 focus groups across nine forces in England and Wales and followed a similar project which looked at the resilience of 24/7 response teams.

It reports that while offices are typically operating with between a half and a third of their establishment of detectives, posts are remaining vacant due to serious recruitment problems. Trained detectives are unwilling to leave specialist squads for the pressured environment of GO CID and posts for trainee detective constables are unattractive to many uniformed police constables due to a perceived reduction in status of the CID and the adverse affects such a posting has on work/life balance.

The increased threat of terrorism and the promotion of the National Intelligence Model and intelligence-led policing have resulted in the "haemorrhaging of detective experience and expertise" through transfers and long-term secondments to specialist units, squads and Major Incident Teams (MITs) at force level. While detectives see resources being poured into the production of what are perceived to be spurious sanction detection rates, they struggle to find the time to investigate the more serious crimes on their case loads. The study reports that convictions are considered not to be of concern to senior management because, unlike sanction detections, they are not counted as a measure of police effectiveness under the current performance assessment regime. This failure to adequately resource GO CID comes as a direct result of the senior management's lack of experience of the criminal investigation process as well as their fixation with targets.

The consequences of under-resourcing have lead to many detectives working extra hours in order to complete their routine business raising important issues concerning the welfare of these detectives. The study also questions the quality of service that these detectives are able to provide to victims and witnesses.

The Police Federation have called on the government to specify a minimum number of fully trained detectives that each force should maintain as a proportion of its police officer composition.

The full report can be found at
http://www.polfed.org/Losing_the_Detectives_final.pdf

Court Challenge of Police Power to hold DNA

A 17 year old man has been granted the right to challenge the decision of Staffordshire Police to refuse to destroy DNA material taken from him following his arrest. If he is successful, the case could affect the right of the police to keep DNA samples.

The facts of the case are as follows. In 2006, when he was fifteen, the applicant was arrested over a disturbance on a bus and was prosecuted for obstruction and for failing to disembark from a bus when requested. He was later cleared on both charges. His lawyers requested that Staffordshire Police destroy fingerprints, photographs and DNA samples taken from him when he attended a voluntary interview. The force refused, arguing that they were acting within their reasonable discretion in retaining the evidence on the police national database, as the applicant's initial arrest was lawful. At the High Court the applicant's solicitors contended that the arrest was unlawful and that the evidence should be destroyed.

The High Court ruled that the decision to retain the DNA evidence could be the subject of a judicial review. It is hoped that the review will provide guidance on the circumstances in which samples should be retained or destroyed by the police.

The Police National Database currently holds the DNA profiles of around 900,000 children, of whom 100,000 have not been convicted of any offence.

No date has yet been set for the judicial review hearing, but it will be covered in the *Digest* when this is announced.

ACPO Report on the Impact of Immigration on Crime Rates

A new ACPO report has found that the wave of immigrants from Eastern Europe has not caused a rise in crime in England and Wales. Although immigration has created new demands on police forces, offending rates among Polish, Romanian and Bulgarian immigrants are in line with the rest of the UK population.

The report is primarily based on intelligence gathered by detectives about crime patterns in different areas of England and Wales. It concludes that despite one million people moving to Britain from countries new to the EU, police figures show that crime fell by 9% in the year to September 2007.

However, the report calls for:

- New agreements with East European Countries to share intelligence and information on less serious crimes, such as domestic violence and serial theft;
- Immigration authorities, schools and health services to share information with police about new nationalities in their areas.

The Home Secretary Jacqui Smith has announced plans for a new fund from which forces could apply for emergency cash from 2009 to cope with the new demands.

IPCC Concerns over Queue Busting in Custody Suites

The IPCC has raised concerns over a 'queue busting' policy which is used at some custody suites. The policy in question is designed to alleviate queues in custody suites at busy times by allowing people to be issued with fixed penalty notices without being taken through the full custody process laid down in the Police and Criminal Evidence Act 1984. The procedure laid down in the legislation would involve a prisoner being brought before a custody officer, processed and risk assessed.

The following concerns were raised:

- There is a risk that the full records of detainees dealt with under the policy are not accessed.
- Warning markers about possible self harm may be missed.

- The policy does not give the opportunity for a full risk assessment of a prisoner to be undertaken.

The concerns were raised following the IPCC's investigation into the death of a man who was found hanged after being released from Humberside Police custody in 2007.

Although Humberside Police were found not to be responsible for the man's death, the risks of the queue busting policy were highlighted. This included the fact that because of the policy, warning markers on police intelligence systems about the man being at risk from self harm were not seen.

The IPCC believe that the policy should be reviews to ensure that it is fit for purpose.

Police Forces to Receive £17 million to Fight Crime

Under the asset recovery scheme, the Home Office is required to invest half of all money seized from criminals back into front line agencies. Between October and December last year, a total of £34 million was recovered and as a result £17 million will be shared among the police and other public agencies.

Since the Proceeds of Crime Act 2002 was introduced to simplify the existing law in this area, the amount recovered from criminals has increased year on year, with a total of £125 million seized in the financial year 2006/2007.

Seizing assets has proven to be an effective way of tackling crime and as a result, police powers in this area are due to be expanded. These new powers will include:

- The right to seize high-value goods from offenders when they are arrested - before they have chance to disperse them.
- Widening the kind of assets liable for seizure.
- Removing the current 12 year time limit on seizures.

The Home Office has also made a commitment to recovering £250 million a year by 2009-2010.

The full press release can be accessed via http://press.homeoffice.gov.uk/

Figures on the Police Use of Taser

The Home Office has produced the latest figures on the police use of Taser in England and Wales. Taser has been available to all Authorised Firearms Officers since September 2004 for situations where a firearms authority has been granted in accordance with criteria laid down in the ACPO Manual of Guidance on Police Use of Firearms.

Since July 2007 Chief Officers throughout England and Wales were given approval by the Home Secretary to deploy Taser by Authorised Firearms Officers in operations where the criteria for the authorisation of firearms does not apply

but where officers are facing violence or threats of violence of such severity that they would need to use force to protect the public, themselves or the subject.

The Home Secretary also gave approval for a 12 month trial of the use of Taser by specially trained units who are not firearms officers but who face similar circumstances. The trial started in September 2007 and involved ten forces. Not all of the forces started the trial on that date and therefore the next set of figures is expected to be higher.

The tables cannot be reproduced in the *Digest*; however they are published on a quarterly basis on the Home Office Scientific Development Branch (HOSDB) website. Please see
http://scienceandresearch.homeoffice.gov.uk/hosdb/about-us/news/539349

IPCC - New Complaints Recording Guidance for Police

The Independent Police Complaints Commission (IPCC) has published new guidance to police forces and police authorities on the recording of complaints. The Guidance, entitled 'Guidance on the Recording of Complaints under the Police Reform Act 2002' was produced in collaboration with a team of representatives from professional standards departments and the Home Office and has applied since 1 April 2008.

The aim of the Guidance is to promote a more consistent level of complaints recording across police forces and it:

- Sets out recommended recording practice of public complaints;
- Defines a range of terms used in relation to the recording practice;
- Outlines a number of ways of measuring the timeliness of complaint activity;
- Issues guidance on recording conduct matters where no public complaint has been made.

The Guidance, which has been agreed by the ACPO Complaints and Discipline Committee, can be found at
http://statutoryguidance.ipcc.gov.uk/index.php?id=226

Confidence in the Independent Police Complaints Commission (IPCC)

The results of a survey looking into confidence in the Police Complaints System has been published by the Independent Police Complaints Commission. The BRMB interviewed 4,000 adults aged 15 and over in the survey, which was supplemented by a booster sample from minority ethnic communities. It showed that two in three people know who the IPCC are, and that it is not part of the police service. Other findings of the survey include:

Awareness

- 64% of adults in England and Wales have heard of the IPCC.

- 69% of those know that the IPCC is independent of the police service and only 26% wrongly believe that that IPCC is part of the police service.
- Black people were much less likely, than in 2004, to think that the IPCC was part of the police service.
- Awareness of the IPCC is highest in south east England and is lowest in London.

Role of IPCC

- 85% of people know that the IPCC 'definitely' or 'possibly' investigates deaths of people shot by police.
- 92% believe the IPCC decides whether the police have handled complaints properly.

Complaints

- Members of the public are most likely to complain if an officer physically assaulted them or used too much force (88%).
- 85% would complain if an officer had used racist or other offensive language.
- 82% would complain in an officer failed to investigate a burglary properly.
- 72% would complain if an officer was rude.
- Half of the adult population in England and Wales would complain if an officer stopped and searched them for no reason.
- Asian respondents were least likely to make complaints and 29% feared being harassed after making a complaint against the police.
- Black people were least likely to expect fair treatment of any complaint and feared that they might not be taken seriously.

Response to complaints

- 60% of complainants would be satisfied with an explanation if a police officer failed to investigate a reported crime.
- 57% expected a personal apology for rudeness, and 42% expected an apology for the use of racist language (although 31% felt the officer should be punished).
- 88% of people who know of the IPCC believe they would be treated fairly if they personally complained.
- 67% of people who know of the IPCC are confident that it handles complaints against the police in an impartial way.

The survey can be found in full at
http://www.ipcc.gov.uk/second_confidence_survey.pdf

Appointments at the Civil Nuclear Police Authority, The Serious Fraud Office and the IPCC

The following appointments have recently been made to the Civil Nuclear Police Authority, the Serious Fraud Office, and the Independent Police Complaints Commission respectively:

- Dame Elizabeth Neville has been reappointed as a member of the Civil Nuclear Police Authority for a further four years.
- Richard Alderman has been appointed as the Director of the Serious Fraud Office. He will take up the post on 21 April 2008.
- Nicholas Hardwick has been reappointed as Chairman of the IPCC for a further 5 years.

Extra Police to Fight Terrorism

The Home Secretary Jacqui Smith has announced extra funding to pay for 300 extra police officers to work on preventing radicalisation and terrorism.

She stated that the extra officers would be used to engage with communities which were vulnerable to extremism. They would also:

- Work to prevent people from becoming terrorists and supporting terrorists;
- Challenge the ideology that supports terrorism;
- Work with communities to make sure that mainstream voices are strengthened;
- Identifying those people who may be at risk of being drawn into terrorism and violent extremism.

Police Pay Rise Challenge - Case Update

As reported in the February 2008 *Digest*, the Police Federation have launched a High Court challenge over the Government's decision to effectively limit their pay award this year to 1.9%.

Lawyers for the Police Federation are arguing that forces around the country had a "legitimate expectation" that they would receive the full 2.5% increase as recommended by an independent arbitration tribunal. They are also claiming that the Home Secretary's decision to act against the recommendation of the tribunal was "procedurally defective" and an "abuse of the Police Negotiating Board process" because she failed to tell the federation before announcing her decision.

The Federation's legal action also claims that:

- Officers' human rights are being infringed - under the right to freedom of association - as the police force have given up the right to strike over pay;

- The Home Secretary failed to recognise the special and unique position held by the police service and she approached negotiations with a "closed mind".

Lawyers for the Home Secretary will argue that giving officers a 2.5% rise would not have been affordable and would have interfered with the service's counter terrorism initiatives. In addition, they will state that the Home Secretary was not bound to accept the decisions of the arbitration tribunal.

The hearing is being held in the High Court in London by Lord Justice Keene and Mr Justice Treacy. A decision is expected at the end of April and will be covered in the next edition of the *Digest*.

John Francis, general secretary of the Police Federation of England and Wales has said that they would consider taking the case to the European Court of Human Rights if the judges rule against them.

The arguments raised by the Home Secretary can be found in full at http://www.polfed.org/JudicialReview_homeoffice_skeletal_submissions.pdf

The arguments raised by the Police Federation can be found in full at http://www.polfed.org/JudicialReview_staffside_submissions.pdf

Policing Pledge Announced

The Prime Minister and the Home Secretary have announced a 'Policing Pledge', laying down minimum standards for police officers in England and Wales. The Government also plans to give people a greater say and influence over how their streets are policed. The announcements comes as Mr Brown revealed that the Government had successfully rolled out neighbourhood policing.

The policing pledge will set out a national standard of what people can expect from their neighbourhood policing team. Standards could include:

- Arranging to visit people at a convenient time;
- Regular reporting on the progress of detecting a crime;
- How a victim of crime is treated and supported;
- How and when local crime information is provided to the public.

The Government also pledge to give everyone the opportunity to have a say in how their streets are policed. This will involve communities working with their local neighbourhood policing team to draw up local policing pledges to tackle issues such as anti-social behaviour and drug crime.

The new measures pledged will supplement the work of 3,600 neighbourhood policing teams in place and 16,000 community support officers. Every household will have a dedicated neighbourhood policing team to solve local problems, contactable by phone or through community meetings.

Plans have also been announced by the Home Secretary to reduce central targets for police, freeing them up to spend more time on local priorities and tackling serious crime.

The pledge coincides with the start of new Public Service Agreements which set out the Government's commitment to focus policing around local priorities.

The pledge is set to be introduced later in the year.

PCSO's Will Not be Given Power of Arrest at the Moment

On 3 April, during a question and answer session on neighbourhood policing in the House of Lords, Lord West of Spithead stated that the Government did not, at the moment, intend to give PCSO's a power of arrest.

He stated that PCSO's "are an adjunct to the police. Their job is not actually to arrest people and take them to the police station, because then they would not be spending their time in building up community cohesion and problem solving". He added "At the moment I do not think that we would look at increasing those powers."

For details of the question and answer session in full please see http://www.parliament.the-stationery-office.co.uk/pa/ld200708/ldhansrd/text/80403-0001.htm

Electronic Tracking of Officers

The Metropolitan Police has announced that it will be using an Automated Personal Location System to enable supervisors to track the exact location of every on-duty officer in the force area.

Currently, forces use GPS devises on their Airwave radio headsets to track officers.

Advantages of the new system include:

- Increasing the safety of the Met's 31,000 officers - for example, if an officer is injured, locating them will be easy;
- Allowing officers to be deployed to incidents more quickly.

A pilot scheme is due to take place in two London boroughs in the autumn. If it is rolled out to all of London's 33 boroughs, the scheme would cost £2.2m.

The Force have not yet disclosed how the system will work or the sort of device that officers will wear.

National Forced Marriage Helpline

On 11 April, Home Office Minister Vernon Coaker launched a new national helpline for victims of forced marriage and honour-based violence.

The helpline called 'The Honour Network' is part funded by the Forced Marriage Unit and run by the charity Karma Nirvana. It is staffed by survivors offering emotional and practical support.

The ACPO lead on Honour Crime, Commander Steve Allen, welcomed the launch as a way of providing support and practical help to people experiencing honour based violence.

The joint Foreign and Commonwealth/Home Office Forced Marriage Unit was set up in 2005 and deals with 5000 enquiries and 400 cases per year.

The Forced Marriage (Civil Protection) Act will be implemented in the latter part of this year. The Act will provide the Courts with powers to make Forced Marriage Protection Orders to stop someone from forcing someone into marriage. Where a forced marriage has already taken place, the Act will provide Courts with the power to protect the victim and help remove them from that situation. The Act will also put guidelines produced by the Forced Marriage Unit for organisations working with forced marriage victims on a statutory footing.

For more information please see the joint Foreign and Commonwealth Office/ Home Office Forced Marriage Unit website at
http://www.fco.gov.uk/forcedmarriage

Self-Harm in Prisons

The charity Howard League for Penal Reform has reported that there has been a significant rise in self harm incidents over the last few years. Figures showed that there were 22,459 self harm incidents in jails in England and Wales last year, up from 16,393 in 2003. This is a rise of 37% in 4 years and far outweighs the overall increase in prison populations. Self-injury rates among women inmates showed the largest increase with a 48% rise.

A spokesperson for the Ministry of Justice has said that the increase is due to a new system which has enabled such incidents to be more accurately recorded. The spokesperson also said that 1% of prisoners are responsible for 25% of all self-harm incidents in prisons. The transfer or release of a number of the prolific self-harmers can affect the figures enormously.

However the charity warned that the rise stemmed from over use of the prison system and subsequent overcrowding which serves to exacerbate problems and, they say, will most likely lead to more serious and frequent reoffending on release.

As of 14 April 2008 the prison population was 82,003. The prison service's 'usable operational capacity' was said to be 82,545.

Tougher Sentencing on Gun Crime

Gordon Brown has urged for tougher sentences to be issued for those committed of firearms offences. His comments came in response to criticisms that gun crime sentences were being implemented inconsistently and in some cases not at all.

The Ministry of Justice has said that ultimately sentencing in individual cases is a matter for the courts but that the mandatory five-year sentence for possession of a firearm is a starting point. Judges must then take aggravating and mitigating factors into consideration when determining the final sentence.

The Prime Minister has now told judges that they **must** make more use of the five-year minimum jail term for possessing a firearm so that gun crime can be tackled more effectively.

The Prime Minister went on to say that tougher sentencing was central to tackling gun crime in Britain but that it needed to be used alongside other measures such as:

- More policing hotspots,
- More metal detection,
- More undercover policing,
- More stop and search powers and
- More surveillance.

'Safer Children in a Digital World'

TV child psychologist Dr Tanya Byron was requested by Gordon Brown last autumn to lead an independent review of the risks to children of potentially harmful or inappropriate material on the internet and in video games.

Dr. Byron's final report 'Safer Children in a Digital World' was published on 28 March 2008 and has been welcomed by The Secretary of State for Children, Schools and Families and The Secretary of State for Culture, Media and Sport.

The report sets out a detailed analysis of the evidence on the risks and benefits of new technologies and evaluates the work already being done to protect children online and ensure appropriate access to age-rated video games. In doing so, Dr. Byron recognises the need to develop a shared culture of responsibility with families, industry and Government all playing their part to reduce the availability of potentially harmful material, restrict access to it by children and to increase children's resilience and ability to understand and manage risk.

To achieve this, Dr. Byron recommends reforming how Government and stakeholders work to improve children's safety when using the internet through the following measures:

- The creation of a new UK Council for Child Internet Safety, established by and reporting to the Prime Minister, including representation from across Government, industry, children's charities and other key stakeholders.
- The development by the Council of a three-pronged national strategy for improving child internet safety:
  - Challenging industry to take greater responsibility in supporting families through: clearer advice; establishing independently monitored codes of practice on areas such as user generated content; improving access to high quality parental control software and safe search; and better regulation of online promotions.
  - Developing a comprehensive public information and awareness campaign on child internet safety, including an authoritative "one stop shop" on child internet safety. This is to be led by Government but using the support and expertise of all Council members.
  - Putting in place sustainable education and children's service initiatives to improve the skills of children and their parents around e-safety.

On video games, Dr. Byron recommends a range of high profile and targeted efforts to help inform parents and children of the appropriateness of different video games and to restrict inappropriate access such as:

- Lowering the statutory requirement to classify video games to 12+, that is consistent with film classification and easier for parents.
- Putting in place a classification system from BBFC, for parents to understand.
- Having clear and consistent guidance for industry on how games should be advertised.
- Challenging industry to provide sustained and high profile efforts to increase parents understanding of age ratings and improved parental controls.

The Government has made clear its intention to follow up these proposals and therefore regulatory and legislative changes look set to appear in the future.

A copy of the report, "Safer Children in a Digital World" can be found at http://www.dfes.gov.uk/byronreview/pdfs/Final%20Report%20Bookmarked.pdf

Prison Community Links Encouraged

The Lord Chancellor and Secretary of State for Justice, Jack Straw, has called for there to be greater links between prison governors and local employers, voluntary organisations, schools and community groups.

He has suggested that prison officers should give public talks to increase awareness of the work done by jails. By being a more visible presence in communities, he believes people will understand better the role and reality of prison and see the efforts being made to tackle reoffending and the steps being taken to turn those leaving prison into constructive members of society.

Directgov Website on the Move

It has been announced by the Department for Work and Pensions that it will now take responsibility for the Government's flagship digital service Directgov.

Directgov was launched in 2004 to bring together a wide range of public service information and services. The service, which attracts around 7 million visits a month, allows people to access a range of Government services available on mobile, digital television and the web. Some of the services available from Directgov include help on how to:

- Plan a journey.
- Taxing a car.
- Renewing a passport.
- Finding a local school or health centre.

The Department for Work and Pensions has stated that it is committed to improving the way that the Government communicates with citizens.

Directgov can be found at http://www.direct.gov.uk

Report on Teenage Binge Drinking

A report has been published by the Centre for Public Health at Liverpool John Moores University, Trading Standards North West and the Home Office examining the trend of binge drinking amongst teenagers. 9,833 15 to 16 year olds in the North West of England were questioned for the study. Its main findings include:

- 57,000 15 to 16 year olds (out of a total of 190,000) binge drink by taking five or more drinks in one session.
- Teenagers are drinking an average of 44 bottles of wine or 177 pints of beer a year.
- Up to 40% of teenagers in poor areas binge drink.
- Just under half of those surveyed drank at least once a week.
- 40% of girls and 42% of boys who binge drank were later involved in violence.
- Poor children were 45% more likely to be violent after drinking than children in affluent areas.
- More than a third of teenagers questioned admitted to buying their own alcohol.

The report highlights the issue of a lack of information available to the public on what is a safe amount of alcohol for children to consume or on how parents can best moderate their children's drinking. It also places responsibility for the increase in binge drinking on the low prices and increased availability of alcohol, and the increasing social tolerance of drunken behaviour.

The Department of Health have stated that tackling binge drinking is a priority for the Government. They are working with the alcohol industry to implement a strategy to tackle the problem. Initiatives include a new public information campaign, an independent review of alcohol pricing and promotion, toughened enforcement of underage sales and help for people who want to drink less.

Figures on Underage Public Drinkers

The Home Office Minister Vernon Coaker has announced figures on the amount of alcohol seized from underage drinkers.

The figures were compiled after a £760,000 campaign, funded by the Home Office, to crack down on public drinking. The campaign took place from 8-24 February in 165 police force areas across 39 forces in England and Wales. Police officers and PCSO's acted on public tip offs and local intelligence. The campaign involved officers:

- Approaching groups of young people in underage drinking hotspots.
- Confiscating alcohol wherever they found it.
- Asking how old the children were.
- Asking where they had obtained the alcohol.
- Used direction to leave powers under section 27 of the Violent Crime Reduction Act 2006 to disperse threatening groups.

The campaign produced the following findings:

- Police seized 20,945 litres of alcoholic drinks (44,265 pints) from underage drinkers.
- 25% of the 5,143 young people who surrendered alcohol to the police said they were aged 15 or under.
- 23,621 young people came into contact with the police when alcohol was confiscated.
- 3,585 directions to leave were issued.
- Of the 30% who divulged where they had sourced the alcohol, half said that they had bought it from a shop.

The Government has proposed to publish a Youth Alcohol Action plan which will focus on providing information to parents and young people to:

- Encourage them to male sensible and healthy decision about drinking.
- Reduce drinking in public.
- Reduce the sale of alcohol to those under age.

Criminalising Young People

A Report has been published by Nacro entitled "Some facts about children and young people who offend". It suggests that more children and young people are being brought into the criminal justice system in order to satisfy police targets of offences brought to justice.

The report suggests that:

- Offences which would previously have been considered minor and dealt with informally by the police, school or young person's family, are now being dealt with through formal sanctions;
- Younger children, girls, and those who commit less serious offences have all been targeted;
- Analysis of crime statistics (comparing 2003 to 2006) reveals that there have been disproportionate rises in the number of recorded offences committed by younger children and by girls, and a disproportionate rise in less serious offending.

The report reveals the following information:

Age

While the number of young people aged 15 to 17 who received a reprimand, final warning or conviction for an indictable offence rose by 15.8% between 2003 and 2006, the equivalent increase for 10 to 14 year olds was 25.6%.

Gender

In 2006, girls' detected offending was 31.7% higher than in 2003; the equivalent rise for boys was 16%, indicating a reduced use of informal warnings and measures in responding to girls' misbehaviour.

Seriousness

Comparing the rate of increase for indictable (more serious) offences and summary (the least serious) offences between 2003 and 2006 reveals that indictable offences rose by a massive 38.9%, compared to a 19% rise for summary offences.

The Chief Executive of Nacro has raised concerns that whilst the Government is pledging to reduce the number of children coming into the criminal justice system, in reality more children are receiving formal sanctions that result in a criminal record.

Further details can be found at
http://www.nacro.org.uk/templates/news/newsItem.cfm/2008040300.htm

Report on Gun and Knife Crime

A report has been published by the children's charity NCH into what children think about gun and knife crime. The report, entitled "Step Inside Our Shoes: young people's views on gun and knife crime" was produced to allow children the chance to have their views heard, to highlight their experiences and to suggest solutions.

A nationwide consultation was used to gain the views and experiences of children and young people about gun and knife crime. During a 6 month period, the views of 800 children were heard and the findings include:

- 63% of young people and children who gave their views believe image is directly linked to gun and knife crime;
- 61% think gun and knife crime is about revenge and reprisals;
- 63% believe that peer pressure is a main reason for gun and knife crime;
- Almost half of those consulted thought certain types of music and violent computer games could be an influential factor.

The report also reveals levels of knowledge and experience of gun and knife crime among young people:

- 41% of those asked knew somebody who had been personally affected by gun or knife crime;
- 29% of respondents had been affected by gun or knife crime;
- 36% were worried about gangs in their area;
- Only 28% felt "very safe" in their community.

As a result of the consultation NCH has called for the following action:

- Children under the age of 16 must be included in official Crime Survey data across the UK to help understand the true extent of the issue;
- Children and young people should have real choices and access to structured activities each week, with guaranteed access available to all;
- Involvement of young people in designing and developing safe community based youth services that enable them to play a role in tackling weapons crime;
- Funding of sustainable services that reach out to the most vulnerable young people and communities to enable them to face challenges and reach their full potential.

The report can be found in full at
http://www.nch.org.uk/uploads/documents/step-inside-our-shoes.pdf

Highways Agency Business Plan 2008-2009

The Highways Agency has published its Business Plan for 2008-2009. The plan sets out how the agency will create a more sustainable, reliable and safer strategic network.

Included in the Business Plan is the completion of 15 major road schemes and awarding a 30 year private finance contract to design, build, finance and operate more than 63 miles of the M25. Another proposal is to develop solutions to manage trunk road journeys and assessing the impact of plans on the environment.

Other key measures in the business plan include:

- Introducing new technology to help keep traffic moving and cut delays building on the successful trial of Active Traffic Management.
- Developing the Highways Agency Traffic Officer Service, including a new contract to remove abandoned and broken down vehicles more quickly.
- Developing information systems, including further roll out of Traffic Radio, wider use of CCTV and displaying travel and delay times on more variable message signs on the network.
- Making best use of the network by using existing and new technology to tackle congestion and improve road safety.
- Covering an additional 124 miles of the network with automatic queue protection equipment to warn drivers of queues ahead.
- Researching the feasibility of introducing laser and radar technology to enhance our ability to detect incidents.
- Introducing technology at 13 sites across the network to detect overweight lorries, as part of a partnership with VOSA and the police.
- Introducing more HGV overtaking restrictions on appropriate stretches of the network over the next three years. This follows a successful trial on the M42, where the ban helped to keep traffic moving and reduced accidents.

The Business Plan can be found at http://www.highways.gov.uk

Report on Business Crime

The British Chamber of Commerce has published a report, entitled "Invisible Crime: A Business Crime Survey". The last survey was commissioned in 2004 and since then it has been found that confidence in the police and its ability to deal with business crime is worryingly low. The British Chamber of Commerce estimates the cost of crime against business has risen by 20% since 2004 with the total cost now standing at £12.6 billion.

The study looked at 3,900 businesses nationwide. It asked a series of questions about the effects of criminal activity on companies. It found that:

- 94% of businesses surveyed had suffered from spam in the last 3 months.
- 31% of businesses claimed to have been the victim of phishing.
- 23% of businesses suffered from spyware infection.
- 19% of businesses experience equipment failure or data loss following virus infection.
- Credit card fraud had risen from 6% in 2004 to 11% in 2008.

In light of the findings, the report recommends the following:

- A separate national statistic for crime against business should be collated so that police can properly understand the true nature of crimes committed against businesses.
- Crime against business should become a Key Performance Indicator for police - over 85% of businesses polled stated that this was crucial - so that the problem is prioritised by local police forces.
- Local police forces should have dedicated Police Business Crime Advisers, supported by nearly 90% of respondents, whose priority would be to liaise with the business community. Such a position within local police forces would go a long way to restoring the business community's faith in their local police forces.
- The business community and Chambers of Commerce should be granted a greater role in local crime and policing partnerships.

The report can be found in full at
http://www.britishchambers.org.uk/6798219243804080059/publications.html

Drink Drive Limit Should be Lowered

The results of a survey carried out by the Automobile Association (AA) populus panel have indicated calls for a cut in the drink drive limit. The survey was completed by 17,500 AA members and some of the findings include:

- 66% of people were in favour of lowering the drink drive limit, but 20% opposed this.
- Women were more likely to support the stricter limit - 75% were in favour, compared to 62% of men.
- Only 42% of younger drivers (18-24) supported a reduction, whereas 50% of older drivers (35-54) were in support.
- There was greatest support for a reduction in the limit in Wales and Scotland (72%) and least support in London (61%).
- 30% of people were in favour of a zero limit.

The current limit is 80 milligrammes of alcohol per 100 millilitres of blood. A change to a 50 milligramme limit would ensure that England and Wales was in line with the law in most European countries. Such a move could, according to

research, save 65 lives per year. The AA would recommend that for 6-12 months prior to the introduction of a lower limit the police should issue advisory letters to those found to be between 50 and 80 milligrammes.

The findings are to be presented to the House of Commons Transport Select Committee as part of an investigation into road safety.

The Department for Transport is expected to publish a consultation paper on a drink driving crackdown later this year.

More details can be found at
http://www.theaa.com/public_affairs/aa-populus-panel/drink-drive-limits.html

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Good Practice for Full Details of Previous Convictions to be made Available when Relying on Bad Character Evidence

R v (1) MERVYN LAMALETIE (2) KAREN ROYCE (2008)

CA (Crim Div) (Hooper LJ, Silber J, Underhill J) 28/2/2008

Criminal Evidence - Criminal Law

Admissibility: Bad Character: Credibility: Previous Convictions: Propensity: Use of Previous Convictions as Evidence of Propensity to Violence: Level of Detail Required: s.101(1)(g) Criminal Justice Act 2003: s.101(1)(d) Criminal Justice Act 2003: Criminal Evidence Act 1898

Where the Crown wished to rely, pursuant to the Criminal Justice Act 2003 s.101(1)(d), on previous convictions as evidence of a person's propensity to violence, it was good practice for details of the convictions to be made available, but full details were not required in every case. A mere list of convictions was sufficient for the purposes of s.101(1)(g) of the Act because what was relevant was "character" in a broad general sense.

The appellants (L and R) appealed against their convictions for inflicting grievous bodily harm on the victim (V), a minicab driver. V had driven the appellants to R's house and a row had developed when R revealed that she had no money to pay the fare. The row had become violent and V received several blows to the face, resulting in fractures to both sides of his jaw. L and R both maintained that V had been the principal aggressor, but the Crown's case was that R had first hit V, and L had then struck the heavy blows that caused the injuries. The Crown's case had been put on the basis of joint enterprise. L had an extensive criminal record, which included six convictions for offences of violence. However, the Crown had asserted in the pre-trial period that it had no intention of relying on L's bad character, partly because it could not access any details of the convictions. It had, however, applied on the second day of the trial for admission of evidence of L's bad character under the Criminal Justice Act 2003 s.101(1)(g), relying on his assertion that V had initiated an unprovoked attack. Although the detailed facts underlying the previous convictions were unavailable, the recorder had allowed them to be put in evidence on the express basis that he would direct the jury that they should only be taken into account in assessing L's credibility. L made a number of submissions around the issue that the recorder had been wrong to admit the evidence of his previous convictions, the principal argument being that the evidence of bad character was bound, in

practice, to be regarded by the jury as evidence of a propensity on the part of L to commit violent offences and that the Crown was being permitted to adduce propensity evidence in inappropriate circumstances.

HELD

(1) The fact that character evidence might incidentally demonstrate a propensity to commit the offences charged was not enough to preclude its admission, R v McLeod (Hartgeald) (1994) 1 WLR 1500 CA (Crim Div) applied. Had details of the previous convictions been available, it would have been wholly unobjectionable for the jury to regard them as evidence of propensity, R v Highton (Edward Paul) (2005) EWCA Crim 1985, (2005) 1 WLR 3472 applied. The recorder's concession that the relevance of the evidence was limited to credibility had been in L's favour because the Crown had lost its chance to invite the jury to rely on it as evidence of a propensity to violence. The fact that the direction to the jury might not have been fully effective did not give L any cause for complaint. The recorder's ruling had recreated the regime that had applied under the Criminal Evidence Act 1898, but even under that Act, the fact that character evidence incidentally demonstrated propensity was not enough to preclude its admission.

(2) It was unlikely that more details of the convictions would have been required in order for them to have been admissible under s.101(1)(d) of the 2003 Act. There was no rule that full details were necessary in every case where the Crown sought to rely on previous convictions as demonstrating propensity. It was good practice for such details to be made available, but necessity depended on the facts of the particular case. In the instant case, it was arguable that the jury could draw a relevant conclusion from the simple fact that L had six convictions for offences of violence over a period of as many years.

(3) A mere list of convictions was sufficient for the purposes of s.101(1)(g) of the 2003 Act because what was relevant was "character" in a broad general sense; detail was unnecessary and potentially distracting, R v Meyer (2006) EWCA Crim 1126 and R v Campbell (Kenneth George) (2007) EWCA Crim 1472, (2007) 1 WLR 2798 considered.

(4) The Crown's consistent position up to the start of trial that it would not make an application under s.101 of the 2003 Act had not been sufficient to create a legitimate expectation that evidence of bad character would not be adduced.

(5) L's appeal was dismissed and R's appeal was allowed on the basis that directions given to the jury in her case had not been appropriate.

APPEAL ALLOWED IN PART

Power to make Special Measures Direction

R v R (2008)

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

Criminal Evidence - Administration Of Justice

Admissibility: Jurisdiction: Special Measures For Witnesses: Video Evidence: Vulnerable And Intimidated Witnesses: Power Of Crown Court To Make Special Measures Direction: Requirement For Crown Court To Be Notified Of Availability Of Special Measures: Youth Justice And Criminal Evidence Act 1999: S.17 Youth Justice And Criminal Evidence Act 1999: S.27 Youth Justice And Criminal Evidence Act 1999: Youth Justice And Criminal Evidence Act 1999 (Commencement No. 7) Order 2002: S.18 Youth Justice And Criminal Evidence Act 1999: S.18(2) Youth Justice And Criminal Evidence Act 1999

Once the Youth Justice and Criminal Evidence Act 1999 (Commencement No. 7) Order 2002 was brought in to force, Crown Courts throughout England and Wales had the power to make special measures directions pursuant to the Youth Justice and Criminal Evidence Act 1999 s.27, notwithstanding that they had not received notification from the relevant secretary of state of the availability of special measures in their area.

The appellant (R) appealed against his conviction for rape and assault occasioning actual bodily harm. At R's trial a pre-recorded video containing the evidence in chief of the complainant, R's wife, had been admitted under the special measures provisions of the Youth Justice and Criminal Evidence Act 1999. Pursuant to s.17 of the Act, witnesses whose evidence was likely to be affected by fear or distress in giving evidence were eligible for special measures. One of the special measures available was a provision pursuant to s.27 of the Act for a video recording of an interview of a witness to be admitted as evidence in chief. That section was brought into force by the Youth Justice and Criminal Evidence Act 1999 (Commencement No. 7) Order 2002. However, s.18 of the Act provided that special measures were not to be taken by a court as available until it had received notification from the relevant secretary of state that special measures were available in the area in which a trial would take place. In the event the Crown Court at which R was tried did not receive such a notification from the secretary of state until almost three years after R's trial; and then it was given only in respect of sexual offences where the investigation commenced after the date of notification. R contended that as no notification of the availability of a special measure under s.27 for a witness within s.17 was given until after his trial by the relevant secretary of state, there was no statutory power at the Crown Court at which he was tried to admit the evidence in chief of the complainant by playing the video recording and that evidence was therefore inadmissible.

HELD

(1) By the date of R's trial, as s.27 of the Act had been commenced, it applied to all Crown Courts in all proceedings and it gave the trial judge power to make a special measures direction, notwithstanding the fact that no

notification of availability had been given under s.18(2) of the Act, R v Clarke (Ronald Augustus) (2008) UKHL 8, (2008) 1 WLR 338 considered. Section 18(2) was simply an administrative provision designed to help the court, but it in no way affected the power of the Crown Court to make a special measures direction under s.27 in any proceedings at any time after the provision was commenced by the Order. It could not have been Parliament's intent that the secretary of state could specify, by virtue of s.18 of the Act, whether a particular court could issue a special measures direction or to withdraw the applicability of the provision at a particular court. If Parliament had intended the secretary of state to have such a power to decide whether the substantive law in a criminal trial was to be applied or disapplied at a particular location of the Crown Court it would have used clear statutory language to that effect; s.18 did not contain such language.

(2) Even if the Crown Court that tried R was not permitted to make a special measures direction under s.27 of the Act until it was notified by the secretary of state under s.18(2) of the Act, Parliament could not have intended the consequence to be that the evidence was inadmissible as the whole purpose of the Act was to help witnesses give evidence, Clarke considered.

APPEAL DISMISSED

Requirement for Disciplinary Panel to Address Points Made on Behalf of Officer

R (on the application of PHILIP WHEELER) v ASSISTANT COMMISSIONER HOUSE OF THE METROPOLITAN POLICE (2008)

QBD (Admin) (Stanley Burnton J) 28/2/2008

Police

Chief Police Officers: Codes Of Practice: Police Powers And Duties: Reviews: Breach Of Code Of Conduct: Failure To Properly Perform Duties: Review Of Disciplinary Panel's Findings

A review of a disciplinary panel's finding that a police officer had failed to satisfy the required standard in the performance of his duties had to address the substantial points made on behalf of the officer.

The claimant police officer (W) applied for judicial review of a decision of the defendant assistant commissioner (H) that he had breached the police code of conduct. H had upheld a disciplinary panel's findings that W had failed to satisfy the required standard in the performance of his duties as a detective chief inspector with responsibilities for a child protection team. The panel found that there had been appalling deficiencies in a high proportion of the team's investigations and concluded that W was guilty of breaching the code as he had been in the line of command and had failed to intervene to improve the situation.

HELD

The assistant commissioner's review had to address the substantial points made on behalf of the person seeking review. In the instant case, H's reasons gave the impression that the charges were found proved against W by reason of his position as in-line manager without reference to his points about what was expected of him by superiors or subordinates and the competing demands on his time.

APPLICATION GRANTED

Benefit From Criminal Conduct

CROWN PROSECUTION SERVICE (NOTTINGHAMSHIRE) v KEVIN ROSE: R v GARETH LEE WHITWAM (2008)

CA (Crim Div) (Richards LJ, Openshaw J, Judge Stephens QC) 21/2/2008

Sentencing - Criminal Procedure

Benefit From Criminal Conduct: Confiscation Orders: Money Laundering: Proceeds of Crime: Valuation of Property: Calculation of Benefit: s.6(4)(c) Proceeds of Crime Act 2002: s.76 Proceeds of Crime Act 2002: s.79 Proceeds of Crime Act 2002: s.80 Proceeds of Crime Act 2002

Where a defendant had been convicted of possession of criminal property, his benefit from criminal conduct under the Proceeds of Crime Act 2002 s.6(4)(c), for the purposes of making a confiscation order, was the full value of all the items stolen. The fact that stolen property had been restored to its true owner was irrelevant. The legislation was concerned with confiscating the value of the defendant's benefit and was not limited to the actual proceeds of his crime or his profit.

The Crown appealed against a confiscation order for £8,272.50 made against the respondent (R) following his conviction for three counts of possession of criminal property contrary to the Proceeds of Crime Act 2002 s.329(1)(c). Police officers had discovered four items of stolen property at R's premises: (i) a trailer with an agreed value of £9,000, which was restored to its owner following its recovery; (ii) the stolen contents of the trailer, namely a quantity of alcohol, which was available to the brewery which owned it but was no longer usable because the brewery was not permitted by law to sell the drink once it had left its control; (iii) a horse trailer with an agreed value of £1,750, for which the owner had been paid the value under an insurance claim so that the trailer was restored to the insurance company but it had later gone missing; (iv) an agricultural vehicle with an agreed value of £10,000, which had been restored to its owner. On deciding to what extent R had benefited from his criminal conduct under s.6(4)(c) of the Act, the judge accepted R's submission that the value of the property restored to its owners should not be included in the calculation of benefit and therefore that the benefit figure was limited to the value of the drinks and horse trailer only. The judge held that there would be gross unfairness if items recovered and usable were not taken into consideration. The Crown submitted that the judge had erred and R's benefit from his criminal conduct was the full value of all the items so that the order should be for £27,252.50. The Crown argued that the legislation was concerned with confiscating the value of the defendant's benefit and was not limited to the actual proceeds of his crime or his profit. On a consideration of s.76, s.79 and s.80 of the Act, the Crown contended that the benefit to R of the property found in his possession was the economic value of that property to the losers or the amount it would have cost R to obtain the property lawfully.

HELD

On a consideration of the earlier statutes and case law before the coming into force of the 2002 Act, the Crown's submission, that the legislation was concerned with confiscating the value of the defendant's benefit and was not limited to the actual proceeds of his crime or his profit, was correct. The fact that the stolen property had been restored to its true owner was irrelevant. The judge's decision was based on what he perceived to be the unfairness of taking into account items that had been recovered and were usable. However to take such items into account was fully in line with the legislative policy and the decided cases, R v Smith (David Cadman) (2001) UKHL 68, (2002) 1 WLR 54, R v Wilkes (Gary John) (2003) EWCA Crim 848, (2003) 2 Cr App R (S) 105, R v Hussain (Manaf) (2006) EWCA Crim 621 and R v Scragg (Michael Garett) (2006) EWCA Crim 2916 applied. Accordingly the judge erred in his approach to the calculation of benefit in R's case. The benefit, properly calculated, was the agreed value of all the stolen property, namely £27,252.50. The confiscation order was varied accordingly.

APPEAL ALLOWED

Child over 10 years of age could not raise the issue of his capacity to know that criminal acts were wrong

R v T (2008)

CA (Crim Div) (Latham LJ (VP CA Crim), Forbes J, Sir Richard Curtis) 16/4/2008

Criminal Law

Causing Children To Engage In Sexual Activity: Children: Doli Incapax: Rebuttable Presumptions: Concept Of Doli Incapax As Separate From Presumption: S.34 Crime And Disorder Act 1998

The concept of doli incapax as a defence was not separate from the rebuttable presumption which was abolished by the Crime and Disorder Act 1998 s.34. Accordingly, it was not possible for a child over 10 years of age to raise the issue of his capacity to know that criminal acts were wrong.

The appellant (R) appealed against conviction for 12 counts of causing or inciting a child under 13 to engage in sexual activity. R was aged 12 at the time of committing the alleged offences. There was no dispute that he had committed the offences: the only question was whether R was entitled to raise the issue of his capacity to know that those acts were wrong. Following a preliminary ruling, the judge concluded that the Crime and Disorder Act 1998 s.34 precluded R from raising capacity as an issue. R pleaded guilty and was subsequently sentenced to a three-year supervision order. R submitted that the judge's ruling on s.34 was wrong. R contended that the common law had long since recognised the concept of doli incapax as a defence, in the same way as self defence, and that it had an existence entirely separate from the presumption that was abolished with the passing of s.34 of the Act. R argued that the

principle against doubtful penalisation could only have been abrogated by clear express words and the enactment of s.34 of the Act was only concerned with removing the rebuttable presumption, leaving the defence intact. Accordingly, if a child wished to raise the defence he would have the evidential burden of raising the issue and the prosecution would have the subsequent burden of establishing that the child knew that what he had done was wrong.

HELD

Nowhere in settled authority had the concept of doli incapax had any existence separate from the presumption, C (A Minor) v DPP (1996) AC 1 HL, H v O'Connell (1981) Crim LR 632 DC and A v DPP (1992) Crim LR 34 DC considered. Furthermore, it had been the clear expressed wish of Parliament, prior to the enactment of s.34 of the Act to abolish the concept of doli incapax as having any effect in law. Parliament had to be taken to have intended the presumption to encompass the concept of doli incapax when it was abolished in s.34. Accordingly, it was not possible for a child over the age of 10 to raise the issue of his capacity to know that his criminal acts were wrong.

APPEAL DISMISSED

Partnership Could be Criminally Liable as a Separate Entity from the Individual Partners

R v (1) W STEVENSON & SONS (A PARTNERSHIP) (2) JULIAN BICK (2008)

CA (Crim Div) (Lord Phillips LCJ, Owen J, Royce J) 25/2/2008

Criminal Law - Partnerships

Confiscation Orders: Criminal Liability: Partners' Liabilities: Partnerships: Liability as Separate Entity from Individual Partners: Criminal Justice Act 1988

Legislation could render a partnership criminally liable as a separate entity from the individual partners.

The applicant partnership (W), which was involved in the auctioning of fish, and the partners in W applied for permission to appeal against W's conviction for failing "to submit a sales note which accurately indicated the quantities and price at first sale of each fish species" contrary to the Sea Fishing (Enforcement of Community Control Measures) Order 2000 art.3(1)(d). The issues were (i) whether it was possible for legislation to render a partnership criminally liable as a separate entity from the individual partners; (ii) if so, whether the 2000 Order purported to do so; (iii) if so, whether W had been effectively indicted under the relevant indictments; (iv) if so, whether the pleas of guilty that had been entered on behalf of W were effective; (v) if so, whether W's resultant convictions exposed the individual partners to liability.

HELD

(1) The first issue envisaged legislation rendering a partnership liable as an independent entity as being legislation that would lead, in respect of a conviction for a single offence, to the imposition of a single penalty. The conviction of the partnership would not constitute the conviction of the individual partners, nor render the individual partners liable to individual penalties. The question whether or not the context permitted one to read "person" in a criminal statute as including a partnership might depend critically upon whether there was some restriction on the assets that would properly be available to meet any penalty imposed. The difficult question of whether a criminal statute or statutory instrument applied to a partnership as an independent entity and, if so, how that impacted on the potential liability of individual partners did not arise where the legislation in question provided express answers to those questions. There were no grounds for suggesting that such legislation was not permitted by law or capable of being effective in law. Inasmuch as business activities were conducted in the name of a partnership and the partnership had identifiable assets that were distinct from the personal assets of each partner, there was no reason why a partnership should not be treated for the purposes of the criminal law as a separate entity from the partners who were members of it.

(2) The 2000 Order undoubtedly rendered partnerships liable as independent entities.

(3) W had been effectively indicted under the relevant indictments.

(4) The pleas of guilty, entered as they had been with the authority of all the partners, had been effective.

(5) The effect of the Order was that proceedings could only be brought against an individual partner if that partner had been complicit in the offence committed by the partnership. It necessarily followed that, where a partnership alone was indicted, any fine imposed could only be levied against the assets of the partnership. If fines could be levied against the assets of individual partners who were not complicit in the offence committed by the partnership that would largely negate the legislative scheme under which they could not be made defendants unless complicit. If individual partners were at risk of being subject to criminal penalties in respect of offences committed by a partnership, justice would demand that the criminal process should contain provisions designed to enable them to challenge the alleged liability of the partnership.

(6) Confiscation proceedings had been brought. The relevant provisions of the Criminal Justice Act 1988 applied to "an offender". The individual partners were not "offenders" and confiscation proceedings could not properly be brought against their personal assets on the foundation of W's convictions.

(7) The individual partners had not been convicted in the proceedings and thus had no standing to appeal against conviction. Their applications for permission to do so would therefore be refused. W had been properly convicted and had shown no arguable ground for appealing against its conviction in relation to any of the indictments. Its applications for permission to appeal against conviction would therefore also be refused.

Refusal to admit an employee on restricted duties onto the 30 plus scheme - Disability Discrimination Act 1995

CHIEF CONSTABLE OF LINCOLNSHIRE v PB WEAVER (2008)

EAT (Elias J, K Bilgan, DG Smith) 19/3/2008

Employment - Discrimination - Police

Disability Discrimination: Pension Benefits: Police Officers: Re-Employment: Reasonable Adjustments: Provision, Criterion Or Practice Causing Substantial Disadvantage: Refusal To Admit Employee On Restricted Duties To Post-Retirement Retention Scheme: Disability Discrimination Act 1995

The fact that an employer had deliberately adopted a policy that operated to the disadvantage of disabled people could not be a relevant consideration when weighing up whether an adjustment was reasonable.

The appellant chief constable appealed against an employment tribunal's decision that it had subjected the respondent police officer (W) to disability discrimination. W had been moved to restricted duties after developing a motor and sensory disease, and had then obtained a post in the police authority's central ticket office, dealing with road safety offences. When W reached 30 years' service he indicated that he intended to retire and applied for admission into the "Thirty Plus Retention Scheme". The aim of the scheme was to retain the skills of officers who would otherwise have retired on a full pension after 30 years' service. Under the scheme retiring officers could be immediately re-employed but still receive their full pension. The force initially accepted his application but later told him that it could no longer support his application since his post was one which could be done by those on restricted duties, and the force needed to retain it because it did not have enough suitable posts available for those on restricted duties. W remained in his post under his normal terms and conditions, and brought a claim for disability discrimination. The tribunal found that the force had adopted a policy of refusing access to the scheme to those in posts suitable for officers on restricted duties. It concluded that the force had failed to make reasonable adjustments by not admitting W into the scheme. The force submitted that (1) the tribunal had failed to have regard to the operational considerations supporting the force's decision; (2) the tribunal was wrong to have taken into account the policy not to admit to the scheme those in posts suitable for restricted duties because the policy was irrelevant when considering the question of reasonableness; (3) the tribunal had failed to have regard to the purpose of the Disability Discrimination Act 1995, which was to ensure that W would be better able to remain in employment.

HELD

(1) The obligation to have regard to all the circumstances, including the benefits to the force and the consequences for other officers was self-evident, O'Hanlon v Revenue and Customs Commissioners (2007) EWCA Civ 283, (2007) ICR 1359 considered. The tribunal had assessed the reasonableness of allowing W into the scheme merely by focusing on W's position. It was obliged to engage with the force's wider operational objectives, and in particular the desire to liberate posts for restricted

officers. If W were to retire, that would liberate a further post for those in the force who were on restricted duties and would in turn enable a non-disabled officer to be recruited. A significant part of the tribunal's reasoning appeared to have been based on the premise that W would have remained in his post any way. That was an unjustified premise. At the time W applied to go into the scheme, he had indicated an intention to retire. In addition, if the scheme was properly applied, and not merely operated to give a benefit to an officer with 30 years' experience, there could be no justification for invoking it if W was going to remain in his post in any event. It was then not necessary to put him into the scheme to retain his skills.

(2) The fact that the force had deliberately adopted a policy which operated to the disadvantage of disabled people could not be a relevant consideration in terms of reasonable adjustments. In every case there would be a provision, criterion or practice adopted by the employer which created a substantial disadvantage. That was not a factor which could properly weigh with the tribunal in considering whether a reasonable adjustment could be made. That error on its own would have been sufficient to invalidate the tribunal's decision.

(3) It could not be the case that only adjustments which brought about integration into employment were required. The issue was whether an adjustment would mitigate or eliminate the substantial disadvantage and was reasonable. If the disadvantage related to the terms of employment, for example, then the question was whether a reasonable adjustment could be made to counter it, even if it did not affect the job or the way that it was carried out, Secretary of State for Work and Pensions v Macklin Unreported November 30, 2007 0, Chacon Navas v Eurest Colectividades SA (C13/05) (2007) All ER (EC) 59 ECJ and O'Hanlon considered.

(4) The case was remitted to a fresh tribunal to consider the question of reasonable adjustments.

APPEAL ALLOWED

Power to retain Seized Items was Subject to Requirement of Necessity

CHIEF CONSTABLE OF WILTSHIRE v ANN MCDONAGH (2008)

QBD (Plender J) 8/4/2008

Criminal Evidence - Human Rights

Caravans: Necessity: Pace Codes Of Practice: Right To Respect For Home: Seized Property: Power Of Seizure Under S.8(2) Pace: Requirement Of Necessity Under S.22(1) Pace: Property Retained For As Long As Necessary In All The Circumstances: Relevant Circumstance: Art.8 European Convention On Human Rights: S.8(2) Police And Criminal Evidence Act 1984: S.22 Police And Criminal Evidence Act 1984

A trial judge was justified in holding that the power under the Police and Criminal Evidence Act 1984 s.8(2) to retain items seized under a warrant was subject to the requirement of necessity imposed by the Police and Criminal Evidence Act 1984 s.22.

The appellant chief constable (W) appealed against a decision of a county court that the power under the Police and Criminal Evidence Act 1984 s.8(2) to retain and seize under a warrant property belonging to the respondent (R) was subject to the requirement of necessity imposed by the Police and Criminal Evidence Act 1984 s.22(1). The police had seized under a warrant a caravan belonging to R because they believed that it had been purchased by money gained by the sale of stolen goods. On the same day, R was arrested on suspicion of conspiracy to steal and money laundering. The caravan was not returned to R because W maintained that it was required as evidence and because police enquiries were continuing. R issued proceedings in the county court claiming recovery of the caravan, and at the hearing pleaded that its recovery was urgent because, as she was due to give birth, it was difficult for her to find alternative accommodation. The trial judge held that the power under s.8(2) of the Act to retain items seized under a warrant was subject to the requirement of necessity imposed by s.22(1). Accordingly, the caravan was returned to R. W contended that (1) the powers of retention created by s.8(2) and s.22(1) of the Act were separate powers and that the requirement of necessity imposed by s.22(1) applied only to the powers of retention conferred by s.22(1)itself; (2) W's interpretation of the Act was fully compatible with the European Convention on Human Rights 1950 art.8.

HELD

(1) Section 8 and s.22 of the Act conferred separate and complementary powers. In both instances, the power of retention was temporary and the power lapsed once the intention to bring proceedings had ceased. At the time the warrant was issued under s.8(2) of the Act, the justice of the peace was unlikely to know what goods might be seized or what interest private individuals might have in those goods. Furthermore, police enquiries would be at an early stage, and during the course of the investigation new circumstances within the meaning of s.22 could emerge so that there would be further reasons why the police would need to retain seized property,

Gough v Chief Constable of the West Midlands (2004) EWCA Civ 206, (2004) Po LR 164 considered. In the instant case, the effect of the seizure of the caravan on R was capable of constituting a relevant circumstance within the meaning of s.22(1) of the Act, which authorised the retention of the caravan in all the circumstances. The trial judge was justified in concluding that the requirement of necessity imposed by s.22(1) applied to items retained under s.8(2) of the Act. That interpretation was consistent with the scheme and structure of the Act and the Code of Practice relating to the Act.

(2) The seizure and taking away of a caravan plainly constituted interference with the right to respect for a person's home under s.8 of the Convention, and determining whether that was lawful depended on whether it struck a fair balance between the right to respect for the home on the one hand and the countervailing public interest, including the prevention of disorder or crime, on the other. Unlike s.22 of the Act, s.8 did not require the justice of the peace to assess the effects of the retention of property upon individuals who might have an interest in it so as to determine by a balancing exercise whether the retention of that property was necessary in all the circumstances. When deciding whether to issue a warrant under s.8 of the Act the justice of the peace would not know what items would be seized nor how their retention might affect the rights of individuals protected by art.8 of the Convention. To hold that art.8 applied equally to the exercise of the powers conferred by s.8 and s.22 of the Act would be to subject the issuance of warrants under s.8 to a limitation far in excess of that which was entailed by the express words of the statute.

APPEAL DISMISSED

SI 755/2008 The Serious Crime Act 2007 (Commencement No. 2 and Transitional and Transitory Provisions and Savings) Order 2008

This order brings into force provisions of the Serious Crime Act 2007.

In force **1 April 2008**. The following provisions deal with the abolition of the Assets Recovery Agency:

- Section 74(2)(a)-(e) and Schedule 8 (to the extent not already in force) (Abolition of Assets Recovery and its Director).
- Section 74(4) (definition of Serious Organised Crime Agency).
- Section 92 and parts of Schedule 14 (repeals and revocations) so far as it relates to the parts of Schedule 14.
- Section 77 (further provision about detained cash investigations), paragraphs 9(1), (5) and (6) of Schedule 10 and paragraph 107(3) of Schedule 8.

The order makes further transitional provisions relating to the transfer functions from the Assets Recovery Agency.

In force **6 April 2008**. The following provisions relating to serious crime prevention orders, data matching, miscellaneous amendments and amendments to stop and search powers are to come into force:

- Section 1 (serious crime prevention orders).
- Section 2 together with Part 1 of Schedule 1 (involvement in serious crime: England and Wales orders).
- Section 3 together with Part 2 of Schedule 1 (involvement in serious crime: Northern Ireland orders).
- Sections 4 to 23 (further provisions relating to serious crime prevention orders).
- Section 24(1) to (8), (11) and (12) (appeals from Crown Court).
- Sections 25 to 36 (enforcement, particular types of persons and proceedings in the High Court and Crown Court).
- Section 37 (to the extent not already in force) (functions of applicant authorities).
- Paragraphs 1 to 3, 5 to 17 and 19 to 21 of Schedule 2 (functions of applicant authorities under Part 1).
- Sections 38 and 39 (disclosure and compliance).
- Section 40(3) and (5) to (8) (costs in relation to authorised monitors).
- Sections 41 to 43 (retention of documents and interpretation).
- Section 91(1) (transitional and transitory provisions and savings) in so far as it relates to the provisions in paragraphs 1 to 4 of Schedule 13.

- Paragraphs 1 to 4 of Schedule 13 (transitional and transitory provisions and savings).
- Section 73 together with Schedule 7 (to the extent not already in force) (data matching).
- Section 91(1) (transitional and transitory provisions and savings) in so far as it relates to paragraph 9 of Schedule 13.
- Paragraph 9 of Schedule 13 (transitional and transitory provisions and savings).
- Section 75(1) to (3) (use of production orders for detained cash investigations).
- Section 76(1) to (3) (use of search warrants etc. for detained cash investigations).
- Section 77 (further provision about detained cash investigations) in so far as it relates to the provisions to be brought into force in Schedule 10.
- In Schedule 10 (further provisions about detained cash investigations):
  - Paragraph 1 in so far as it relates to the following paragraphs of that Schedule.
  - Paragraphs 2 to 8, 9 (to the extent not already in force), 10 to 13 and 24.
  - Paragraph 25 in so far as it does not extend to Scotland.
  - Paragraphs 26 to 28.
- Section 78 (powers to seize property to which restraint orders apply).
- Section 79 together with Schedule 11 (powers to recover cash).
- Sections 80 and 81 (powers in relation to certain investigations and supplementary provisions in relation to new powers).
- Sections 82 to 84 (miscellaneous provisions about the proceeds of crime).
- Section 87 (incidents involving serious violence: powers to stop and search).

SI 790/2008 The Police and Justice Act 2006 (Commencement No. 8) Order 2008

In force **1 April 2008**. This order brings into force the following provisions of the Police and Justice Act 2006:

- Section 2 (amendments to the Police Act 1996) in so far as it relates to paragraphs 7 and 11 to 13 of Schedule 2.
- Paragraph 7 to the extent not otherwise commenced and paragraphs 11 to 13 of Schedule 2 (amendments to the Police Act 1996).
- Section 39 (forfeiture of indecent photographs of children: England and Wales) and Schedule 11 (Schedule to be inserted into the Protection of Children Act 1978).

- Section 52 (amendments and repeals) in so far as it relates to the entries in Schedule 15 (repeals and revocations) to be brought into force.
- In Part 4 of Schedule 15 (repeals: miscellaneous) the entries relating to section 4(3) of the Protection of Children Act 1978, paragraph 62 of Schedule 15 to the Criminal Justice Act 1988, sub-paragraphs 37(4) and 38(3) and 4 of Schedule 10 to the Criminal Justice and Public Order Act 1994 and paragraphs 199(3) and 200 to Schedule 8 of the Courts Act 2003.
- Section 40 (forfeiture of indecent photographs of children: Northern Ireland) and Schedule 12 (Schedule to be inserted into the Protection of Children (Northern Ireland) Order 1978).
- Section 52 (amendments and repeals) in so far as it relates to the entries in Schedule 15 (repeals and revocations) to be brought into force.
- In Part 4 of Schedule 15 (repeals: miscellaneous) the entries relating to sub-paragraph 1(2) of Schedule 2 to the Criminal Justice (Evidence, etc.) (Northern Ireland) Order 1988, sub-paragraph 10(2)(b) and (c) of Schedule 2 to the Criminal Justice and Police Act 2001 and sub-paragraph 3(2)(a) of Schedule 4 to the Justice (Northern Ireland) Act 2002.

SI 800/2008 The Mental Health Act 2007 (Commencement No. 5 and Transitional Provisions) Order 2008

In force **30 April 2008**. This order brings into force Section 44 (places of safety) of the Mental Health Act 2007 and makes transitional provisions relating to this. Section 44 amends sections 135 and 136 of the Mental Health Act 1983, allowing a person detained at a place of safety under those sections to be moved to another place of saftey during that detention.

SI 946/2008 The Proceeds of Crime Act 2002 (Investigations in England, Wales and Northern Ireland: Code of Practice) Order 2008

In force **1 April 2008**. This order brings into force the revised Code of Practice issued under Section 377 of the Proceeds of Crime Act 2002 (POCA). This will apply to the exercise of any function under Chapter 2 of Part 8 of POCA by any person required to comply with the Code by Section 377(5).

SI 947/2008 The Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order 2008

In force **6 April 2008**. This order brings into force the revised Code of Practice issued under Section 292 of the Proceeds of Crime Act 2002 (POCA). This will apply to the exercise of the powers in Section 289 of POCA, which allows constables (amongst others) to search persons and premises for cash derived from, or intended for use in, unlawful conduct.

SI 973/2008 The Criminal Justice Act 1988 (Offensive Weapons) (Amendment) Order 2008

In force **6 April 2008**. This order amends the Criminal Justice Act 1988 (Offensive Weapons) Order 1988 which specifies offensive weapons for the purposes of Section 141 of the Criminal Justice Act 1988 (CJA).

It amends the order to add swords with a curved blade of 50 centimetres or over (measured by the straight line distance from the top of the handle to the tip of the blade) to the list of weapons to which Section 141 CJA applies. The order also creates defences relating to collectors, sport and historical re-enactment and specifies the standard of proof required for the defences.

For more information please see the article on page 10.