

November 2006

Legal Validation and Research



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November 2006

Digest

Legal Validation and Research Department

www.centrex.police.uk/digest

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

This edition of the Digest contains details of the Government's plans for new legislation in the next parliamentary session as outlined in the Queen's Speech on 15 November. These new Bills will be covered in more depth in future editions.

On the 8 November numerous Bills received Royal Assent. Updates on these new Acts, in particular the Civil Aviation Act, Police and Justice Act and the Violent Crime Reduction Act are featured this month.

Numerous other Government legislative proposals are outlined in a number of consultation papers published by the Government on several issues including Anti-Social Behaviour, Registration of species under the Wildlife and Countryside Act 1981, criminals profiting from publications about their crimes, sentencing policy, and sentencing advice for theft and dishonesty offences.

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

Case law in association with



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CONTENTS

GOVERNMENT AND PARLIAMENTARY NEWS	5
HM The Queen's Speech	5
Consultation Paper on Anti-Social Behaviour	10
Independent Review of Crime Statistics Report	12
House of Commons Transport Committee Report on Roads Policing and Technology	14
Rural Speed Campaign	15
The Road Safety Partnership Grant Scheme	16
Consultation on Registration of Species Listed on Schedule 4 of the Wildlife and Countryside Act 1981	16
Proposals to Deal with Criminals Profiting from Publications about Their Crimes	17
Disruptive Behaviour On Board UK aircraft	18
Guidance for Higher Education Establishments on Islamic Extremism	18
DIVERSITY	19
Guidance on the Racial and Religious Hatred Act 2006	19
Proposal for Financial Rights for Unmarried Couples	19
LEGISLATION	20
Bills Receiving Royal Assent	20
Animal Welfare Act 2006	20
Civil Aviation Act 2006	21
Emergency Workers (Obstruction) Act 2006	23
Fraud Act 2006	23
Legislative and Regulatory Reform Act 2006	23
Police and Justice Act 2006	23
HOC 34/2006 The Police and Justice Act 2006	26
Road Safety Act 2006	27
Safeguarding Vulnerable Groups Act 2006	27
Violent Crime Reduction Act 2006	27
HOC 33/2006 Cross-Border Provisions Relating To Sexual Offences	29
The Fraud (Trials without a Jury) Bill	30
CRIMINAL JUSTICE SYSTEM	31
Director of Public Prosecutions Guidance on Conditional Cautioning	31
Manual on Working with Intimidated Witnesses	32
New Plans for Medical Evidence Expert Witnesses	32
Independent Study into Use of ASBOs on Those Under 18	34
Consultation on Sentencing Policy	34
Consultation Paper on Sentencing Advice for Theft and Dishonesty Offences	35
POLICE NEWS	38
Review of Police Pay Arrangements	38
IPCC Report on Deaths During or Following Police Contact	38
Study of 'Date Rape Drug' Cases	40
Format of Penalty Notices for Disorder	40
Reimbursement of Police Force Restructuring Costs	41
Average Cost of a Fully-Trained Police Constable/Sergeant	42
NEWS IN BRIEF	43
Report on Protecting Children from Sex Offenders	43
Consultation on Ethical Issues of Forensic use of Bioinformation	44
Fraud Analysis Report	44
Report on Alcohol Misuse	45

CASE LAW	46
EVIDENCE AND PROCEDURE	46
Cautions for the Possession of Cannabis	46
Sexual Offences Prevention Orders	47
Courts Ability to Correct Errors Where There Was A Clear Parliamentary Intention Behind A Legislative Provision	49
GENERAL POLICE DUTIES	51
Breach Of The Peace: Lawful Force: Reasonable Force	51
CRIME	53
Mens Rea of Conspiracy to Commit Money Laundering Offences	53
TRAFFIC	55
Duty of Care: Extent Of Driver’s Duty To Other Road Users	55
Defence of Duress in Drink Drive Case	55
EMPLOYMENT AND EQUAL OPPORTUNITIES	57
Upper Age Limit of 65 - Proportion Of Men and Women not Adversely Affected	57
STATUTORY INSTRUMENTS.....	59

HM The Queen's Speech

On 15 November, HM The Queen outlined the Government's legislative plans for the coming 12 months. The following Bills were announced in the Queen's Speech or were included in the accompanying documents:

Asylum and Immigration Bill

The Asylum and Immigration Bill aims to tighten the immigration system and asylum system by taking the Immigration and Nationality Directorate (IND) outside of the Home Office and establishing it as an independent executive agency. This was announced by John Reid shortly after his appointment as Home Secretary, following the revelations that foreign national prisoners had been released without being considered for deportation.

The Bill will provide the immigration service with further powers to police borders, tackle immigration crime and protect the public, many of which were identified in the IND Review, 'Fair, Effective, Transparent and Trusted: Rebuilding Confidence in our Immigration System', published in July 2006.

These include new provisions to:

- ◆ Expand the capacity to take biometric details of foreign nationals to improve identity management.
- ◆ New powers of arrest, cash seizure and forfeiture and disposal of assets.
- ◆ Improve data-sharing arrangements with Her Majesty's Revenue and Customs (HMRC).

Child Support Bill

The Child Support Bill will replace the Child Support Agency with a new, smaller child maintenance body. It will allow for absent parents to face curfews and the suspension of their passports.

The legislation will also allow parents to keep more of their maintenance allowance before it affects their benefits.

Climate Change Bill

The Climate Change Bill will give statutory force to the Government's targets for cutting emissions by 60% by 2050. The Bill will also allow for the establishment of a Carbon Committee, to work with the Government to reduce emissions overtime and to set out improved monitoring and reporting arrangements.

Concessionary Bus Travel Bill

The Concessionary Bus Travel Bill will provide off-peak bus travel for all pensioners and disabled people by April 2008, following on from the Chancellor's Budget statement to that effect.

Consumers, Estate Agents and Redress Bill

The Consumers, Estate Agents and Redress Bill will increase regulation of estate agents by requiring them to join a redress scheme and allowing trading standards officers to inspect their records.

The Bill will also allow regulations to be made to introduce cancellation and cooling-off rights for consumers following solicited sales visits.

The National Consumer Council, Energywatch and Postwatch will be brought together to strengthen consumer representation.

Counter Terrorism Bill

The Counter Terrorism Bill will be introduced in response to identified short-comings in existing legislation. The Government introduced the Terrorism Act 2006 following the July 7 bombings in London, in order to help the police and intelligence services to protect the general public from acts of terrorism, including by making sure the services are adequately resourced.

A review of current capabilities and resources for tackling terrorism, chaired by Home Secretary John Reid, is already under way, in parallel with a second study being conducted by the Treasury. Gaps identified in these reviews will form the basis of the Bill.

Criminal Justice Bill

The Criminal Justice Bill is intended to place victims at the centre of the criminal justice system and to support the police and other criminal justice officials. The Bill will:

- ◆ Confer new powers on the police and probation services to protect the public from anti-social behaviour and from violent offenders.
- ◆ Create a new offence in relation to violent pornography.
- ◆ Tighten up trial processes for when an offender fails to appear before court without good reason.
- ◆ Introduce a generic community sentence for young offenders.

It also aims to make sentencing processes clearer and to address imbalances in the criminal justice system regarding releasing offenders and overturning convictions. It would also ensure that compensation for those wrongly convicted is in line with compensation paid to victims of crime.

Digital Switchover (Disclosure of Information) Bill

The Digital Switchover (Disclosure of Information) Bill will allow the Department for Work and Pensions to share social security information and the Ministry of Defence to share war pension information with the BBC and the operator of the digital switchover help scheme.

The Bill forms part of the Government's plan to make sure that all households can access a wider choice of television services, with a phased roll-out of digital television broadcasts, starting at the end of 2007 in Whitehaven.

Exchanges and Clearing Houses Bill

The Exchanges and Clearing Houses Bill is intended to safeguard the risk-based regulatory regime aimed at making London attractive for international business.

The Bill will introduce powers for the Financial Services Authority (FSA) to prevent UK-recognised investment exchanges and clearing houses from making regulatory changes which could endanger the UK approach.

The new power would be a right of veto to ensure that users of UK-recognised investment exchanges can be assured of the proportionality of future regulatory provision.

However, the FSA would not be involved in the daily commercial judgements of recognised investment exchanges and clearing houses. The Bill will not alter the ease or difficulty of foreign ownership and will not compromise British openness to foreign investment.

Fraud (Trials without Jury) Bill

The Fraud (Trials without Jury) Bill provides for trials without a jury in serious fraud cases in England, Wales and Northern Ireland. The Bill was introduced in the House of Commons on 16 November 2006. It takes forward proposals from the 1986 Roskill Report and the 2001 Auld Report.

See article on page 30.

Further Education and Training Bill

The Further Education and Training Bill will streamline and restructure the Learning and Skills Council (LSC) by removing Local LSCs, and creating 9 Regional Councils. The Bill will reflect the commitments made in the White Paper 'Further Education, Raising Skills, Improving Life Chances', published in March 2006.

Work-based learning schemes will be expanded, with employers given more of a say in the provision of education and training. It will also develop the management and leadership of further education by creating a power to regulate the qualifications of all college principals.

Greater London Authority Bill

The Greater London Authority Bill will increase the power of the Mayor of London, devolving to that office powers over planning and housing and elements of climate change policies.

It will allow the Mayor to set out a housing strategy, take a more strategic approach to planning in the capital lead the way in combating climate change. The Bill will also enhance the Mayor's ability to meet future challenges, including the staging of the London 2012 Olympic and Paralympic Games.

Legal Services Bill

The Legal Services Bill will create an independent body for complaints about legal services. Furthermore, a Legal Services Board would regulate legal services, following wide-ranging consultation on the issue.

Local Government Bill

The Local Government Bill will establish greater local accountability and a clearer separation of powers between Whitehall and local government. Citizen-focused services, including a greater use of citizens' juries, will be introduced. This follows on from a Government White Paper in October 2006 which promoted the need for greater local powers and accountability, with a reduction in the number of centrally controlled targets.

The Bill will also provide new powers for local Overview and Scrutiny Committees to call key public local service providers to account and will create a single inspectorate for local government.

Mental Health Bill

The Mental Health Bill will alter existing mental health legislation, in particular the Mental Health Act 1983, to ensure that adequate care is provided. In addition, changes to the Mental Capacity Act 2005 will also be introduced to safeguard those not under the legislation, but who possess a mental disorder, ensuring they are given appropriate measures to protect their liberty.

The introduction of Supervised Community Treatment would ensure that people continue with treatment whilst public safety is taken into account. A more simple definition of mental disorders will ensure that the speedy and appropriate level of treatment is delivered.

Northern Ireland (Justice and Security) Bill

The Northern Ireland (Justice and Security) Bill will put forward reform of the jury system and create the possibility for non-jury trials, creating a lesser role for the armed force in the province, retaining powers to support the police in relation to explosives and public order. Furthermore, greater regulation of private security firms, in accordance with measures imposed in England, Scotland and Wales, would be enacted. The powers of the Northern Ireland Human Rights Commission (NIHRC) will be extended, allowing it access to places of detention and to extract information as part of investigations.

Northern Ireland (St Andrews Agreement) Bill

The Northern Ireland (St Andrews Agreement) Bill provides for the restoration of the Northern Ireland Assembly and the devolved institutions on 26 March 2007 and the repeal of the Northern Ireland Act 2000. Moreover, a Transitional Assembly would operate between 24 November 2006 and the date of restoration, the powers to be devolved would be determined and the St Andrews Agreement would be put forward for endorsement by the electorate.

Northern Ireland Bill

The Northern Ireland Bill will re-establish devolved government, following the successful conclusion of talks between Sinn Fein and the Democratic Unionist Party on power-sharing. This Bill will pass through Parliament as emergency legislation in the next few weeks, assuming the Northern Ireland parties can reach an agreement.

Offender Management Bill

The Offender Management Bill aims to ensure that the National Offender Management Service (NOMS) performs to a high standard and can be held accountable. It endeavours to make sure that NOMS provides good value for money, and allows the Secretary of State to choose a public, private or voluntary sector provider to administer the scheme. In addition, the offences of bringing articles into prison will be strengthened under the Bill.

Organised Crime Bill

The Organised Crime Bill will apply to England, Wales and Northern Ireland and will:

- ◆ Establish a new Serious Crime Prevention Order to prevent organised crime by individuals or organisations, by imposing restrictions on them.
- ◆ Introduce new offences of encouraging or assisting a criminal act with intent, or encouraging or assisting a criminal act believing that an offence may be committed.
- ◆ Strengthen the recovery of criminal assets by extending powers of investigation and seizure to all accredited financial investigators.

Pensions Bill

The Pensions Bill seeks to restore, by 2012, the link between the basic state pension and average earnings, as well as aiming to simplify the rules governing entitlement, reducing the qualifying period for a full pension to 30 years for men and women alike. The legislation will also gradually increase the state pension age in line with life expectancy.

A delivery authority would be created and tasked with designing a system to provide simple, low cost personal pensions.

The Bill would simplify the State Second Pension and abolish contracting-out for private defined contribution schemes.

Statistical Reform Bill

The Statistical Reform Bill would create a statutory independent board to oversee the work of the Office for National Statistics. The board would be appointed through open competition and charged with maintaining the quality and comprehensiveness of the ONS's output.

Tribunals, Courts and Enforcement Bill

The Tribunals, Courts and Enforcement Bill will create a completely new statutory framework for tribunals and widen the eligibility rules to ensure a more diverse range of people could become judges. In addition, regulation of private sector bailiffs will be improved.

Moreover, the Bill will make it easier for creditors to enforce civil court judgments, while those in debt with no means of escape will be able to make use of new personal insolvency procedures.

The following Bills from the last Parliamentary session are also to be carried over:

Corporate Manslaughter and Corporate Homicide Bill

The Corporate Manslaughter and Corporate Homicide Bill reached Standing Committee stage in the House of Commons in the last Parliamentary session. The Bill has been covered extensively in the *Digest*, most recently in February and August this year.

Crossrail Bill

The Crossrail Bill is designed to secure the necessary powers to construct Crossrail. The Bill would provide a new fleet of trains, which would operate 24-times-an-hour peak service in both directions through central London. It aims to significantly increase the capacity of the rail network into London and provide improved East-West rail access into and across the capital. It would also enhance public transport to London Stansted and Heathrow airports.

Welfare Reform Bill

The Welfare Reform Bill was first introduced in the 2005/06 session and will replace the existing system of incapacity benefits with an 'Employment and Support Allowance' from 2008, while a new Personal Capability Assessment will be introduced to help individuals gain more relevant support, and get them into work, where appropriate.

The Bill also makes changes to Housing Benefit, speeding up administration, cutting fraud and giving tenants greater choice and responsibility. Tenants evicted for anti-social behaviour could face benefit penalties.

Draft Bills:

Road Transport Bill

A draft Road Transport Bill, to be published next year, is intended to support the Government's efforts to cut congestion and improve public transport, particularly in the major cities outside London. The draft Bill will allow councils to implement local road pricing schemes in a consistent way, allowing different projects to link up with one another. Councils would be given greater powers to improve bus travel and Passenger Transport Authorities and Executives would be reformed to make transport planning more coherent.

Local Better Regulation Office Bill

The draft Local Better Regulation Office Bill will create an independent body, the Local Better Regulation Office (LBRO), within the Department of Trade and Industry. The LBRO would have three key functions: helping environmental health and trading standards services to plan by setting out priorities to target inspections at a local level; supporting and encouraging new practices to reduce burdens on business, for example by agreeing consistent approaches to regulation for businesses across all local authorities; and improving the performance of trading standards and environmental health services by encouraging better risk-based targeting to focus resources on rogue trading.

Protection of Cultural Property During Armed Conflict Bill

The Protection of Cultural Property During Armed Conflict Bill aims to make it illegal to damage cultural property protected by the 1954 Hague Convention and to outlaw trade in cultural property which has been illegally removed from an occupied country.

The Bill is needed as part of the UK's ratification of international law and will ensure that the blue shield emblem of the 1954 Hague Convention has equivalent protection to the Red Cross emblem.

Tissues and Embryo Authority (RATE) Bill

The Draft Tissues and Embryo Authority (RATE) Bill would create the Regulatory Authority for Tissue and Embryos, replacing the current Human Fertilisation and Embryology Authority and the Human Tissue Authority.

The new authority will be charged with protecting legitimate scientific and medical research while increasing public confidence in the regulation of these fields.

Consultation Paper on Anti-Social Behaviour

A consultation paper, entitled 'Strengthening Powers to Tackle Anti-Social Behaviour', has been published by the Home Office. The paper sets out the measures that have been introduced over the last few years and looks how these could be strengthened through the use of pre-court disposals, in particular via interventions such as fixed penalties or cautions issued by police. Proposals made in the in this document are based on feedback the Home Office has received from practitioners, including front-line police officers and their professional leaders, and are intended to be applied to both adult and juvenile perpetrators of anti-social behaviour (ASB), unless otherwise stated.

The main proposals are to introduce:

- ◆ Deferred Penalty Notices for Disorder.
- ◆ New powers to close premises causing persistent anti-social behaviour.
- ◆ New powers for frontline police to disrupt and prevent ASB.

It is proposed that a Deferred PND would be used in circumstances in which an officer has established sufficient evidence to issue an immediate PND, but where it is felt that the local community would obtain greater benefit from an offender adhering to the conditions of an Acceptable Behaviour Contract (ABC) that prevents further anti-social behaviour. The police will then assess suitability for a preventative agreement, based on prior knowledge and involvement in the case, and consultation with other partners, such as social services and the local Youth Offending Team (YOT). A set of conditions will then be agreed with the offender. An agreement will last for three to six months and payment of the PND for the original offence will be deferred for the period of the agreement.

If the offender fulfils the agreement then the original offence can be discharged after the end of the relevant period with no payment required.

Should an offender not fulfil the agreement, it is proposed that the PND will be 'reactivated' and the offender will have 21 days in which to pay. The paper contains an alternative to this, which is that if a PND is reactivated following a breach of an agreement if it is paid within 7 days the amount of the PND will remain the same, if not paid within 7 days the value is doubled, and if it is not paid after 14 days the value is trebled.

In cases where the offender is a child or young person it is proposed that the following would also apply:

- ◆ The police will have to draw the incident to the attention of the parent(s) or guardian and agree the ABC in their presence.
- ◆ The police officer will have to inform local agencies concerned with prevention, including, as appropriate, the local YOT and targeted youth support services commissioned by local authorities.
- ◆ That the agreement includes, where youths are aged between 10 and 15 years, that the adult is liable for payment of the PND in case of a breach.

The paper does comment that this process will take up police time for administration and processing and that the cost of this is currently difficult to estimate. It does, however, put forward the view that these costs will be offset by time savings resulting from fewer further instances of ASB.

The introduction of a new Premises Closure Order is being proposed to more swiftly and decisively deal with properties at the centre of serious and persistent anti-social behaviour. A similar power already exists in Scotland, where it has been used on 20 occasions since implementation in October 2004. The process will work in a very similar way to the current procedures in respect of crack houses. The Premises Closure Order will operate in two parts, firstly with the issuing of a Closure Notice, followed by a Premises Closure Order from the court.

Before the issue of a Closure Notice, a police officer, not below the rank of superintendent, before authorising its issue will have to have reasonable grounds for believing the following:

- ◆ At any time in the preceding three months a person has engaged in anti-social behaviour on the premises.
- ◆ The use of the premises is associated with the occurrence of relevant harm (defined as significant and persistent disorder or significant, persistent and serious nuisance to members of the public).
- ◆ Other interventions have been pursued.

In addition, the police and local authority must consult and consider views and must consider the impact of the possible closure on any vulnerable people (such as children) living in the property, before issuing a Premises Closure Notice.

When applied, the notice prohibits access to the premises by any person other than a person who habitually resides there or the owner of the premises. It indicates that a Closure Order is to be sought from the court.

Following the issue of a Premises Closure Notice, the police within 48 hours will then have to apply to the court for a Closure Order. They will be required to demonstrate to the court that persistent and serious disorder or serious nuisance is associated with the use of the premises, and that the making of the order is necessary to prevent the occurrence of such relevant harm for the period of the order.

If granted, the order will allow for the property to be sealed, closed and removed from public use by any person, even those with rights of residence or ownership (except where expressly allowed to do so by the police or court) for the period of the order. Orders will come in to force immediately after the court makes the order and be in place for 12 weeks. In exceptional circumstances, agencies will be able to apply to the court for a possible 12-week extension. The police will have the power to use reasonable force to enter and seal a property if it proves to be necessary.

Appeal procedures would apply to the issuing or the extension of the order and must be made within 21 days of the day when the order or decision appealed against was made.

In addition, the Government is also seeking views on the need for and suggestions of other new powers for frontline police to disrupt and prevent ASB. One such power mentioned in the paper is the power for a police officer to require an individual to keep away from a particular area for a certain period of time, providing that an officer had reasonable grounds for believing that an individual's presence or behaviour had resulted in (or was likely to result in) a member of the public being harassed, intimidated, alarmed or distressed, and that the disposal was necessary to prevent such behaviour from recurring.

Other proposals being implemented to strengthen existing powers to tackle anti-social behaviour, but not being consulted on, include raising the top rate PND financial penalty from £80 to £100, increasing parents' responsibility for such financial penalties incurred by under 16s and removing conflicting police targets that hinder the appropriate issuing of penalty notices.

The closing date of the consultation is 6 February 2007. The paper can be found in full at <http://www.homeoffice.gov.uk/about-us/haveyoursay/>

Independent Review of Crime Statistics Report

The cross-party review group that was asked by the Home Secretary to carry out a review of crime statistics has published its report. The results of the review (whose establishment was covered in an article in the February *Digest*) have come out shortly after a report by the Statistics Commission, which also looked at crime statistics and made recommendations on improving the system (see September *Digest*).

Chapter 2 of the report considers the national perspective, detailing the various rationales for the provision of statistics at a national level. It provides an assessment of the strengths and weaknesses of current provision of national statistics; and makes a number of recommendations relating to coverage and communication, aimed at improving and enhancing current provision. These include:

- ◆ Extending the British Crime Survey (BCS) sample frame to include those under 16 and those living in group residences.
- ◆ That every two years the Home Office should carry out a survey of commercial and industrial victimisation.
- ◆ Within 12 months, the Home Office should publish an action plan for what it proposes to do to measure those crimes which are either not included in the present crime statistics or are poorly measured by them.
- ◆ That the framework for data recording in police forces using the force crime registrars must be protected and HMIC should ensure this is strengthened. The framework for reporting data to the Home Office should also be protected and strengthened.
- ◆ The use of periodic independent audits of the police recording of crime should become a permanent feature.

- ◆ The Home Office should continue to publish police-recorded crime data and the BCS together.
- ◆ That national crime statistics should be published annually and include a full commentary on the state of crime, drawing on all appropriate data sources.
- ◆ The Home Office should ensure that the release and statistical commentary on national crime statistics are quite clearly separated from political judgements or ministerial comments and should ensure the accuracy of any statements made about the statistics, whether in press releases or ministerial comments.
- ◆ The Home Office should redefine violent crime in crime statistics to include only those crimes which actually cause physical injury or where the threat to inflict such injury is likely to frighten a reasonable person.

Chapter 3 considers the local perspective. It concludes that it is fundamentally important to shift the focus and emphasis of the crime statistics debate from the national to the local perspective; and that more and better crime information has to be available at a sufficiently local level and communicated in a form that relates to the individual member of the public's day-to-day experience of living or working in an area. Many of the recommendations in this area will directly impact local policing teams; they include:

- ◆ The Home Office should ensure that investment in strategies and technology for the provision of appropriate local crime information is an integral part of the development of neighbourhood policing teams and a key means by which they are held accountable to their neighbourhoods.
- ◆ Local crime information, including all crime data (not just notifiable offences) and all incident data, should be made available on the same geographic basis as the neighbourhood policing teams and be available in all areas within three years.
- ◆ Police forces should have geo-coded crime and incident data as part of the roll out of neighbourhood policing teams; and they should put in place the requirements to use this mapped data as a key means of sharing information with the public, including on a force website, within three years.
- ◆ Police forces should work with their partner local service providers to produce relevant information in mapped form on the same websites.
- ◆ The police should have a duty to provide local crime information as soon as possible or as necessary to respond to events.

Chapter 4 considers organisational and governance issues relating to crime statistics. It makes a number of recommendations that are intended to enhance the perceived independence and integrity of national crime statistics, the main recommendation being:

- ◆ That the Home Secretary put in place a regulatory environment which ensures that there is an actual and perceived separation between those who produce statistical data and commentary on crime (a 'back office' function) and those who are responsible for policy advice and will be judged on the basis of the data (the 'front office') be they in a police force, the Home Office or elsewhere.

The report can be found in full at

<http://www.homeoffice.gov.uk/rds/pdfs06/crime-statistics-independent-review-06.pdf>

House of Commons Transport Committee Report on Roads Policing and Technology

The House of Commons Transport Committee has published a report on roads policing and technology entitled, 'Roads policing and technology: getting the right balance'.

The report congratulates the Department for Transport, the police, local authorities and road safety professionals for the good progress that has been made on the Public Service Agreement casualty reduction targets to be achieved by 2010. However, with figures showing that, in Great Britain, over 3,000 people continue to be killed each year and almost 30,000 seriously injured, and despite these figures demonstrating that Great Britain has one of the safest road environments in the world, the number of deaths and injuries remains far too high.

The Committee found that roads policing has been under-resourced and under-prioritised at both local and national level for many years, as evidenced by the falling numbers of dedicated roads police officers, its absence from strategic policing plans, and the deteriorating levels of training.

It suggests that a more significant level of enforcement of road traffic laws is likely to have a deterrent effect and to persuade potential offenders to observe traffic laws, particularly because statistics show that up to 95% of road collisions are attributable to human error, a considerable element of this being down to illegal or irresponsible driving behaviour.

It also finds that in some forces there has been a tendency to see technology as 'freeing up' police officers to be deployed on duties other than roads policing. It comments that this approach is short-sighted, as there are numerous serious traffic offences which technology cannot yet detect and that technology cannot perform the educative role that police officers carry out. One particular example which highlights this problem are statistics showing that the fall in the number of road traffic officers has led to fewer breath tests being conducted and the fact that the numbers of casualties because of drink-driving is rising.

The impact that Automatic Number Plate Recognition (ANPR) technology had had on policing was welcomed. But, the Committee found it worrying that the police are not able to maximise the impact of ANPR technology because they do not have the resources to respond to all positive identifications.

The Committee makes a number of recommendations in the report, including:

- ◆ The adoption of the 2010 road casualty reduction targets by the Home Office as part of its Public Service Agreement with the Treasury and as a key priority in its future National Policing Plans.
- ◆ The Government and chief constables make it a priority and make a significant investment to provide higher profile and visible traffic enforcement.
- ◆ The police should periodically monitor 'real world' compliance with traffic law in order to give an indication of the scale of violations and to help to target police enforcement efforts where they will have maximum impact.
- ◆ Initial and refresher training for police officers must be improved. It is imperative that officers engaged in roads policing understand how to manage and protect the scene of a serious road collision, both for their own safety and for the quality of the crash investigation.
- ◆ The Home Office and individual forces should properly invest in both roads police officers and technologies to enhance the impact of police enforcement.

- ◆ The Government and manufacturers work together to expedite the availability and roll-out of new equipment, e.g. time-distance (average speed) cameras and roadside evidential breath testing equipment.
- ◆ The lifting of the casualty criteria in the existing Department for Transport guidelines, that require potentially preventable deaths and injuries to have occurred in a location before cameras can be installed.
- ◆ Future guidance from the Department for Transport should emphasise the importance of local decisions about the siting of cameras; and there should be more flexibility for rural roads with casualty problems which do not meet speed criteria and for urban roads which cannot fulfil the visibility requirements.
- ◆ The Government and the police should work towards harmonizing threshold speeds and reducing these to nearer the actual speed limit, in order to improve the effectiveness of speed cameras and to better protect pedestrians and cyclists.
- ◆ The possibility of using time-distance cameras to enforce 20 miles per hour limits on residential roads should be explored by the Department for Transport.
- ◆ The Home Office must prioritise the development of drug screening equipment and police officers must have access to this technology at the earliest possible opportunity. Until this technology is available, the deterrent effect of enforcement will be minimal.
- ◆ There should be effective co-operation between roads police officers and forensic scientists to ensure that prosecutions for drug-driving offences are pursued wherever possible.
- ◆ The Home Office and the Association of Chief Police Officers should work together to ensure that the Field Impairment Test procedure is harmonised and fully applied across police forces.
- ◆ The Government should be bold in enabling the use of technologies which actually prevent offences being committed: for example, Intelligent Speed Adaptation and 'alcolocks' should be introduced as soon as possible.

The report can be found in full at
<http://www.publications.parliament.uk/pa/cm/cmtran.htm>

Rural Speed Campaign

A rural speed advertising campaign, which is part of the THINK! speed campaign, has been launched by the Department for Transport, to remind motorists to drive carefully on rural roads and to communicate to them that the problem isn't just speeding, but driving too fast for the conditions.

The primary target audience of the campaign are males aged between 17-39 years who research has shown are less inclined than women to consider road conditions when driving on rural roads and are more likely to drive at speed and take dangerous risks.

In 2005, 1,336 car drivers and passengers were killed on rural roads compared with 339 on urban roads, of which the vast majority (71%) were men.

Details on the campaign can be found at
<http://www.thinkroadsafety.gov.uk/campaigns/slowdown/slowdown.htm>

The Road Safety Partnership Grant Scheme

The Department for Transport has set up a new grant scheme to encourage partnerships between traditional road safety professionals and other service providers (including the education sector, the health sector, the fire service, the youth service and the voluntary sector) in setting up road safety schemes, in particular ones which will also produce environmental and regeneration benefits.

It is anticipated that the £4 million provided by the scheme will provide funding to approximately 20 local highway authorities. Applicants who wish to bid for funding are invited to apply before 2 January 2007. Applications will be assessed in relation to the following core criteria:

- ◆ Evidence of the road safety issue to be addressed.
- ◆ Proposed objectives.
- ◆ Value for money.
- ◆ Monitoring/evaluation arrangements.
- ◆ Evidence of the contribution of partners.
- ◆ Sustainability.

Application details can be obtained from the Road Safety Partnership Grant Scheme, Department for Transport, Zone 2/09, Great Minster House, London SW1P 4DR. Telephone: 020 7944 2629.

Consultation on Registration of Species Listed on Schedule 4 of the Wildlife and Countryside Act 1981

Section 7 of the Wildlife and Countryside Act makes it a requirement that if certain species of bird are kept in captivity they must be ringed and registered with the Department for Environment, Food and Rural Affairs (Defra). The objective of Section 7 is to support the conservation of our native wild birds and to implement the UK's obligations under the EU Birds Directive of 1979. Schedule 4 to the Act lists the species which must be registered: it currently contains 59 species, of which 38 are birds of prey. There are currently around 8,500 registered birds and 2,000 keepers.

In 2000, the Scottish Executive and the Welsh Assembly Government became responsible for the legislation governing bird registration in their respective administrations. Many of the birds listed on Schedule 4 to the Wildlife and Countryside Act are also protected by the Convention on International Trade in Endangered Species (CITES), which controls the import, export and commercial use of certain endangered species.

As a result of these separate registration and CITES controls, keepers often have to complete several pieces of paperwork for Defra, duplicating information already supplied for one specimen.

This consultation is being undertaken by (Defra), the Scottish Executive and the Welsh Assembly Government, and aims to explore whether the current bird registration scheme is the most appropriate to effect controls on the birds listed on Schedule 4 and also to look at which species should be included on the Schedule based on a report by the Joint Nature Conservation Committee (JNCC).

The main options under consideration include:

- ◆ Revise the Schedule as outlined in the JNCC's report.
- ◆ Revise the Schedule as outlined in the JNCC's report, plus remove the requirement to register captive bred birds.
- ◆ Revise the Schedule as outlined in the JNCC's report, plus remove the requirement to register hybrids and any species not naturally occurring in the wild within the European territory of the EU.
- ◆ Revise the Schedule as outlined in the JNCC's report, plus remove the requirement to register birds already covered by CITES documentation.
- ◆ Remove all species from Schedule 4.

The closing date for responses is 16 February 2007. The consultation document can be found in full at

<http://www.defra.gov.uk/corporate/consult/birdreg-schedule4/index.htm>

Proposals to Deal with Criminals Profiting from Publications about Their Crimes

The Home Office has published a consultation paper, entitled 'Making Sure That Crime Doesn't Pay', which sets out a number of proposals intended to deal with the issue of convicted criminals profiting from published accounts of their crimes.

The current Government position is that it is unacceptable for criminals to profit in this way. It does recognise that whether and how they can be prevented from exploiting their crimes for commercial gain raises some extraordinarily difficult issues, in terms of both defining the problem and framing any new legislation in a way that will tackle it effectively.

The paper considers the background to and legal considerations surrounding this issue and sets out arguments for and against the following options:

- ◆ Making receipt by and/or payment to convicted criminals of money for publications about their crimes a criminal offence.
- ◆ Introducing a new civil scheme for the recovery of profits based on the civil recovery provisions in the Proceeds of Crime Act 2002.
- ◆ Extending the self-regulatory approach governing the press to other groups such as book publishers and film-makers.
- ◆ Doing nothing.

The Government's current preferred option is for the introduction of a new civil scheme, which it believes would allow a flexible approach and be more proportionate.

The closing date for responses to the consultation is 9 February 2007. Full details can be found at

<http://www.homeoffice.gov.uk/documents/cons-ensure-crime-doesnt-pay.pdf/>

Disruptive Behaviour On Board UK aircraft

The Department for Transport has published its latest report relating to disruptive behaviour on board UK aircraft. It covers the periods April 2005 - March 2006.

The report shows:

- ◆ There were 1359 reported incidents of disruptive behaviour in this period.
- ◆ 1303 were classified as significant and 56 incidents as serious. This represents a 9% decrease in the number of significant incidents and a 6% increase on the previous year.
- ◆ No case was reported in which disruptive behaviour contributed to an aviation accident, although there was a small number of incidents where violence against cabin crew was reported.
- ◆ 80% of incidents involved male passengers (similar to previous years).
- ◆ Alcohol was identified or suspected as being a contributory cause in 35% of all incidents. Around 36% of the alcohol related incidents involved passengers drinking their own alcohol and 25% involved passengers drinking alcohol before boarding.
- ◆ Smoking, or the desire to smoke, featured in 40% of incidents, 83% of which involved smoking in the toilets.
- ◆ There were a significant number of incidents involving aggressive or threatening behaviour and/or passengers repeatedly refusing to follow instructions.
- ◆ A warning was effective in 35% of cases, but ineffective in 31% of cases (in the remainder, the degree of effectiveness of the warning was not reported).

The report can be found in full at

http://www.dft.gov.uk/stellent/groups/dft_aviation/documents/page/dft_aviation_613654.hcsp

Guidance for Higher Education Establishments on Islamic Extremism

The Department for Education and Skills has published a guidance document aimed at helping Higher Education Providers to work with students and staff to increase community cohesion and tackle violent extremism in the name of Islam on campus. The guidance is intended to build on "Promoting good campus relations: dealing with hate crimes and intolerance" a general guidance document that Universities UK with Government support circulated last year. The guidance can be found in full at <http://www.dfes.gov.uk>

Guidance on the Racial and Religious Hatred Act 2006

The Minister of State for the Home Office, Baroness Scotland of Asthal, has announced that the Home Office is currently drafting guidance which is intended to be issued by Home Office Circular when the provisions of the Racial and Religious Hatred Act 2006 are brought into force. At present this is expected to be early in 2007.

Proposal for Financial Rights for Unmarried Couples

Harriet Harman, Minister of State at the Department for Constitutional Affairs, whose responsibilities include family justice, has spoken of the introduction of a new family justice bill. Although not included in this year's Queen's Speech, its introduction could be as early as next year.

Proposals are likely to include:

- ◆ Unmarried couples who separate acquiring the same financial rights as those who are married.
- ◆ Family courts being open to the media, subject to strict rules about anonymity.

Many of the proposals in the future bill are likely to be based on the Law Commission's final recommendations, due to be published in August 2007, from its ongoing project on the financial consequences of cohabitation relationship breakdown. Further details of this can be found at <http://www.lawcom.gov.uk/cohabitation.htm>

Bills Receiving Royal Assent

The following Bills received Royal Assent on 8 November 2006 and are now Acts of the UK Parliament:

- ◆ Animal Welfare Act 2006.
- ◆ Armed Forces Act 2006.
- ◆ Charities Act 2006.
- ◆ Civil Aviation Act 2006.
- ◆ Companies Act 2006.
- ◆ Education and Inspections Act 2006.
- ◆ Emergency Workers (Obstruction) Act 2006.
- ◆ Fraud Act 2006.
- ◆ Legislative and Regulatory Reform Act 2006.
- ◆ National Health Service Act 2006.
- ◆ National Health Service (Consequential Provisions) Act 2006.
- ◆ National Health Service (Wales) Act 2006.
- ◆ NHS Redress Bill Act 2006.
- ◆ Parliamentary Costs Act 2006.
- ◆ Police and Justice Act 2006.
- ◆ Road Safety Act 2006.
- ◆ Safeguarding Vulnerable Groups Act 2006.
- ◆ Violent Crime Reduction Act 2006.
- ◆ Wireless Telegraphy Act 2006.

Many of the provisions contained within these Acts have been included in previous editions of the *Digest*. Updates on changes and additional provisions that have recently been included in the Acts are covered in following articles. All these Acts can be found at <http://www.opsi.gov.uk/acts/acts2006a.htm>

Animal Welfare Act 2006

The *Digest* reported on the proposed contents of this Act during the Bill stage in 2004. We are currently advised that the majority of the provisions in the Act that relate to England and Wales will be brought into force on 6 April 2007. A detailed article outlining the final outcome and what offences the Act has created in respect of animal welfare for both farmed and unfarmed animals will appear in the December edition of the *Digest*.

Civil Aviation Act 2006

Section 6 and Schedule 1 of the Civil Aviation Act 2006 came into force upon the Act receiving Royal Assent on 8 November 2006. These provisions amend Part 3 of the Aviation Security Act 1982 by inserting into that Act new subsections to clarify the responsibilities of airport managers and police in relation to the protection and policing of airports that have been designated by the Secretary of State under Section 25 of the Aviation Security Act 1982.

Section 25 allows the Secretary of State to designate any aerodrome used for the purposes of civil aviation if he considers that the policing of that aerodrome should, in the interests of the preservation of the peace and the prevention of crime, be undertaken by constables under the direction and control of the chief officer of police for the police area in which the aerodrome is wholly or mainly situated.

There are currently nine airports designated for policing purposes:

- ◆ Heathrow.
- ◆ Gatwick.
- ◆ Stansted.
- ◆ Birmingham.
- ◆ Manchester.
- ◆ Prestwick.
- ◆ Edinburgh.
- ◆ Glasgow.
- ◆ Aberdeen.

Under the Aviation Security Act 1982, the primary responsibility for policing activity at these airports lies with the chief constable, and the airport manager must make such payments in respect of policing the airport as the manager and the relevant authority may agree. If they cannot agree, the Secretary of State may be required to determine the amount to be paid to the police by the airport manager.

The amendments introduced by Section 6 and Schedule 1 of the Civil Aviation Act 2006 have arisen due to uncertainties about the relationship between the responsibilities of airport managers, aircraft operators and others carrying out security activities directed by the Secretary of State under Part 2 of the Act (Sections 10 to 24) and of the chief constable whose officers police a designated airport under Part 3 (Sections 25 to 31) and also because the scope of the Secretary of State's power under this part of the Act is unclear.

The new Sections to be inserted into the Aviation Security Act 1982 by Schedule 1 are:

Section 25A - Requires that before a police services agreement is entered into (under Section 25B) the manager of the aerodrome and the chief officer of police for the relevant police area, acting jointly, must carry out a consultation with a view to establishing:

- ◆ What measures are required to be taken in relation to the aerodrome for security or policing purposes in order to comply with or take account of any directions given under Sections 12, 13, 13A and 14 of the Act; any national threat assessment or relevant information; and any guidance issued by the Secretary of State which relates to the policing of the aerodrome.

- ◆ What other measures should be taken in relation to the aerodrome for policing purposes.
- ◆ The extent to which measures above are being taken by certain other persons, these being: a person (other than the manager of the aerodrome) who is required to take such measures in relation to the aerodrome; officers of HM Revenue and Customs; and immigration officers.
- ◆ In the light of the above, the level of policing that should be provided for the aerodrome, by the chief officer of police.

Section 25B - Requires that the manager of the aerodrome, the police authority and the chief officer of police enter into a police services agreement. This agreement must:

- ◆ Set out the level of police services and resources required in the year(s) ahead.
- ◆ Acknowledge that the police resources will be under the direction and control of the chief officer of police.
- ◆ Provide for the payments in respect of policing to be made and the facilities to be provided by the aerodrome manager.
- ◆ Make provision for modifications to the services to be provided by the police or to the payments to be made by the aerodrome manager as a result of changes of circumstances during the currency of the agreement.

Section 29A - Allows any of the three parties to refer the matter to the Secretary of State and ask for him/her to set up a determination should they not be able to reach an agreement because they disagree on a particular aspect such as the level of policing to be provided, or having reached an agreement are in dispute as to its terms, construction or operation.

Sections 29B, 29C and 29D - Set out the provisions that allow a matter that has been referred to the Secretary of State under Section 29 to be dealt with by independent experts.

These Sections allow the Secretary of State to set up the determination by an expert. Initially the expert will be a person appointed by the Secretary of State for the particular dispute, and agreed by the aerodrome manager on one side and the police parties for the other side. If the parties cannot agree, the Secretary of State will require each side to appoint an expert and those two experts to appoint a further panel member to act as chairman. The expert will determine the procedure to be followed in determining a dispute, but any procedure must give each party to the dispute an opportunity to make representations. The Secretary of State will also have an opportunity to make representations before the expert. Where the case is referred because the parties cannot reach an agreement, the expert will rule on the dispute and if necessary set out what the provision should be.

Where the dispute concerns a police services agreement which has already been signed, the expert may:

- ◆ Give a declaration about how a provision of an agreement is to be construed or operated.
- ◆ Vary the terms of an agreement.
- ◆ Determine that one party is obliged in accordance with an agreement to pay a specified sum, or a sum to be assessed in a specified manner, to the other party.
- ◆ Make an order about costs.

The expert's decision will be final and binding, save that a party may appeal to the High Court on a point of law.

The Civil Aviation Act 2006 can be found in full at <http://www.opsi.gov.uk/acts/acts2006a.htm>

Emergency Workers (Obstruction) Act 2006

During its Bill stage, the provisions contained in the Emergency Workers (Obstruction) Act 2006 were covered in the February and July 2006 editions of the *Digest*. Since these articles were published there have been no further changes made to the Act. Provisions in the Act will be brought into force on such day as the Secretary of State may, by order made by statutory instrument, appoint; and different days may be so appointed for different purposes.

Fraud Act 2006

During its Bill stage, the provisions contained in the Fraud Act 2006 were covered in the May 2006 edition of the *Digest*. Since this article was published there have been no further changes made to the Act. Provisions in the Act will be brought into force on such day as the Secretary of State may appoint by an order made by statutory instrument; and different days may be appointed for different purposes.

It is currently expected that the provisions in the Act may be brought into force around 15 January 2007.

Legislative and Regulatory Reform Act 2006

The Legislative and Regulatory Reform Act 2006 will come into force on 8 January 2007. It introduces provisions aimed at streamlining regulatory structures in both the public and private sectors, as well as ensuring that unnecessary regulation can be removed easily. It allows a greater number of regulatory system reforms to be delivered by a Regulatory Reform Order.

Police and Justice Act 2006

On 8 November 2006 the Police and Justice Act 2006 was given Royal Assent; however the majority of the Act will not come into force until 2007. During the months of January, February and September 2006 the *Digest* reported on the Act extensively during the Bill stage. The Act will be implemented as laid down in the articles contained in the *Digest* save for the slight alterations which have been made to the section numbers and to the items specified below.

The items which have not been included in the Act as outlined in the February and September issue of the *Digest* are:

- ◆ The insertion of Section 1A into the Police Act 1996 by Schedule 2 of the 2006 Act which focused on the Basic Command Units regarding the merging of police forces.
- ◆ The amendment to Section 32 (3) and (3) (a) Police Act 1996 which removed the word 'either' and the word 'and' from the section. The section remains as it was written below:

Section 32(3) -the Secretary of State shall not exercise his power under this section to make alterations unless **either**:

(a) he has received a request to make the alterations from the police authority for each of the areas affected by them, **or**

The following Sections of the Act came into force on 8 November 2006 upon the Act receiving Royal Assent:

- ◆ Section 2 and paragraphs 14 and 15 of Schedule 2 this gives a power for police authorities to appoint additional deputy chief constables with the consent of the Home Secretary
- ◆ Section 2 and paragraphs 24-26 of Schedule 2 which abolishes the National Policing Plan and abolishes the power of the Home Secretary to set strategic priorities for police authorities (this replaces existing power to set objectives).
- ◆ Paragraphs 34 and 39 of Schedule 14 to the Act make consequential amendments to Section 94 of the Police Act 1997 and Section 34 of the Regulation of Investigatory Powers Act 2000 in respect of the powers of deputy chief constables and assistant chief constables.

Please see the following article on Home Officer Circular 34/2006 (HOC 34/2006).

It is anticipated that the following parts of the Act will come into force on or around the specified dates.

8 January 2007

- ◆ Section 11 which clarifies the power to detain a person in order to address concerns raised in judicial review cases
- ◆ Sections 23-25 the sections extend the powers of local authorities and registered social landlords to enter into parenting contracts and apply for parenting orders
- ◆ Section 26-27 and Schedule 10 which amend the powers set out in the Anti-Social and Behaviour Act 2003 and Housing Act 1996
- ◆ Sections 42, 43 and Schedule 13 make minor amendments to Extradition Act 2003, except for the provisions on resignation of USA on forum contained in section 43 and paragraphs 4-6 of Schedule 13
- ◆ Section 44 enabling repatriation without consent of a prisoner
- ◆ Schedule 14, paragraph 59 which provides for minor technical changes to the Constitutional Reform Act 2005

April 2007

- ◆ Section 1 and Schedule 1, which establishes the National Policing Improvement Agency (NPIA), and abolishes PITO and Centrex
- ◆ Section 2 and paragraphs 7-8 of Schedule 2, the provisions which make the explicit duty of authorities to hold the chief officer of their force to account and enable other functions to be conferred by order
- ◆ Section 2 and paragraphs 16-17 of Schedule 2, with regard to civilian employees of police authorities and the removal of the Chief Constable consent to the appointment of police authority employees
- ◆ Section 2 and paragraphs 18-20 of Schedule 2 which allows for the modernisation of the title of clerk to the police authority to be renamed chief executive

- ◆ Section 2 paragraphs 21-23 of Schedule 2 which allows for the jurisdiction of special constables to be extended throughout England and Wales
- ◆ Section 2 and paragraphs 27-29 of Schedule 2, where the Act updates the powers to intervene in poor performing forces and authorities
- ◆ Section 2 and paragraph 30 of Schedule 2 which provides power to supplement by regulations a duty on police authorities to make arrangements for obtaining views of the community on policing
- ◆ Section 3 which give the power for police authorities to delegate functions to area committees and individual members
- ◆ Section 4 which removes the requirement for best value reviews and performance plans
- ◆ Section 6 and Schedule 4 which places consultation with ACPO and APA (Association of Police Authorities) by name on a statutory footing
- ◆ Sections 7, 9 and Schedule 5 which lays down the standard set of minimum powers (to be set by Regulations) for community support officers. Other powers are to remain optional at the discretion of chief constables
- ◆ Section 10 and Schedule 6 which lays down the powers to attach conditions to street bail and bail granted at a police station before charge
- ◆ Section 12 which extends the power of stop and search to designated and non designated aerodromes
- ◆ Sections 15, 16 and Schedule 7 which allows for an accreditation scheme for trading standards officers to issue penalty notices for disorder for licensing offences
- ◆ Schedules 8 and 9 which looks at further provisions and amendments to the Crime and Disorder Act 1998 in relation to reduction partnerships
- ◆ Sections 28-33 which looks at the joint working provisions for the five justice sector inspectorates
- ◆ Section 41 enables the IPCC to investigate complaints about immigration enforcement functions of immigration officers

September 2007

- ◆ Section 8 which gives a discretionary power for community support officers to take part in truancy sweeps

October 2007

- ◆ Section 14, in relation to information gathering by extending the power currently limited to international flights and voyages

April 2008

- ◆ Section 2 and paragraphs 1-6 of Schedule 2, these provisions will remove the separate category of magistrate's members and will allow the Mayor of London to appoint the chair and vice chairs of the Metropolitan Police Authority. It is also intended to use the regulation making power to rationalise and simplify the process of the appointment of independent members of police authorities
- ◆ Section 2 and paragraphs 9-13 of Schedule 2, this reforms the police authorities planning arrangements; replacing the separate annual policing plans with a single rolling 3 year plan.

- ◆ Schedules 19 and 20 which outlines the mechanism to trigger action on crime and disorder matters

To be determined

- ◆ Section 5 and Schedule 3, provisions to enable merger of police pension schemes in England, Wales, Scotland and Northern Ireland
- ◆ Section 13 in relation to the supply of information from registers of death to police and others for the prevention of fraud
- ◆ Section 17 which enable punitive conditions to be attached to conditional cautions
- ◆ Section 18 which enable arrests for offenders that breach their conditions
- ◆ Section 34 sentences for bail offences
- ◆ Sections 35 to 38 regarding the increase of penalties for computer misuse offences and all forms of computer misuse is criminalised
- ◆ Sections 34 to 40 and Schedule 11 and 12 in regard tot the forfeiture of indecent photographs of children, which ensures that computers with indecent photographs of children cannot be returned once seized by the police
- ◆ Sections 45-48 which enables live links at preliminary, sentencing and appeal hearings

The Act can be found in full at <http://www.opsi.gov.uk/legislation/uk.htm>

HOC 34/2006

The Police and Justice Act 2006

This Home Office Circular provides details of those provisions of the Police and Justice Act 2006 (PJA) which came into force on Royal Assent on 8 November 2006.

The relevant provisions are those that abolish the statutory National Policing Plan with the issuing of strategic priorities and those which enable police authorities to appoint one or more additional Deputy Chief Constables with the approval of the Secretary of State.

Abolition of the National Policing Plan and the setting of strategic priorities for police authorities

Paragraphs 7(3)(a) and 24 to 26 of Schedule 2 of the PJA 2006 repeals Section 36A of the Police Act 1996, which placed a duty on the Home Secretary to issue an annual national policing plan, and Section 37, under which the Home Secretary determines objectives for police authorities.

It inserts a new section, Section 37A into the 1996 Act which allows the Home Secretary to determine strategic priorities for policing in England and Wales (as opposed to 'objectives' determined under the repealed Section 37) and to publish these in such a manner as he considers appropriate. The intention is to publish the strategic priorities in the non-statutory National Community Safety Plan.

Appointment of additional Deputy Chief Constables

Paragraph 14 of Schedule 2, which amends Section 11A of the 1996 Act, enables police authorities to appoint more than one Deputy Chief Constable, after consultation with the Chief Constable and subject to the approval of the Secretary of State. The Government brought forward this provision in the context of the then proposals for force mergers. The provision responded to concerns that some large strategic forces would not have sufficient

command resilience with a single Deputy Chief Constable. In the absence of force mergers, while the ability to appoint a second Deputy Chief Constable remains a legislative possibility, the Home Secretary will need to be convinced of a very compelling operational imperative before he would approve such a step.

Paragraph 15 of Schedule 2 amends Section 12A of the 1996 Act which relates to the power of a Deputy Chief Constable or Assistant Chief Constable to exercise the functions of the Chief Constable in his or her absence. Should there be more than one Deputy Chief Constable, the Chief Constable shall, following consultation with the police authority, designate the Deputy Chief Constables in his or her force in order of seniority to exercise the functions of the Chief Constable in his or her absence. Under the new Section 12A(2) it is now the responsibility of the Chief Constable, following consultation with the police authority, to designate an Assistant Chief Constable in the force to exercise the powers and duties of the Chief Constable in the absence of (including by virtue of a vacancy in the office of) the Chief Constable and Deputy Chief Constable(s).

Paragraphs 34 and 39 of Schedule 14 to the Act make consequential amendments to Section 94 of the Police Act 1997 and Section 34 of the Regulation of Investigatory Powers Act 2000.

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

Road Safety Act 2006

The provisions in this Act have been covered in several previous editions of the *Digest*, the latest articles being in the August and October editions. Since these articles were published there have been no further changes made to the Act.

The following provisions of the Act will come into force on 8 January 2007:

- ◆ Section 1 - Road safety grants.
- ◆ Section 49 - Disclosure to foreign authorities of licensing and registration information.

The remaining provisions of this Act come into force on such day as the Secretary of State may by order, made by statutory instrument, appoint.

Safeguarding Vulnerable Groups Act 2006

This Act has not yet been published. During its Bill stage it was covered in the April 2006 *Digest*. An update on the Act will be published when the Act is available.

Violent Crime Reduction Act 2006

During its Bill stage, the Violent Crime Reduction Act 2006 was covered in several editions of the *Digest* (July, October, December 2005). This article aims to set out provisions in the Act which have been amended since they were last covered in the *Digest*, as well as new provisions that have not thus far been covered.

The following provisions in the Act came into force on the Act receiving Royal Assent on 8 November.

- ◆ Section 25 - Mandatory premises licence condition: door supervision. (See below).
- ◆ Section 56 - Cross-border provisions relating to sexual offences. (See article re HOC 33/2006).

- ◆ Section 60 - Parenting orders.
- ◆ Section 63 - Removal of sports grounds etc. from private security industry regulation. (See below).
- ◆ Section 66 - Short title, commencement and extent.

The other provisions in the Act, as we are informed, are likely to be introduced between March and October 2007.

Section 25 - Mandatory premises licence condition: door supervision

This Section amends Section 21 of the Licensing Act 2003. Its purpose is to correct an unforeseen consequence of Section 21 of the Licensing Act 2003. At present, where a premises licence issued under the Act requires one or more persons to be at the premises at any time to undertake security activities, it must also, subject to several exceptions, require such persons to be licensed by the Security Industry Authority, even if the Private Security Industry Act 2001 does not require them to be licensed. Subject to certain exceptions, Section 21 of the 2003 Act catches all persons performing these activities, whether they are required to be licensed by the SIA or not.

In effect this means that when the wording of a premises licence requires security staff to be present at an event to carry out a security activity, there are cases where they have to be SIA-licensed, even if they are not required to be licensed by the 2001 Act. That includes volunteers and other groups that have been exempted, including those who are working legally under a licence dispensation notice. This amendment will correct that anomaly.

Section 26 - Designated public places

This Section amends Section 14 of the Criminal Justice and Police Act 2001, thereby resolving an unintended problem associated with the licensing of public spaces under the Licensing Act 2003, and the use of designated public places orders (DPPOs) under the Criminal Justice and Police Act 2001.

The effect of this amendment is that where a local authority holds a premises licence, occupies a premises subject to a premises licence or has managed on its behalf a premises subject to a premises licence, a DPPO will be excluded from applying to those premises only at times when alcohol is being sold or supplied and for 30 minutes thereafter. At all other times, the premises will be able to be the subject of a DPPO.

Section 42 - Increase of maximum sentences for offences of having knives etc

This Section increases the maximum penalty from two to four years for the offences under:

- ◆ Section 139 Criminal Justice Act 1988 - Offence of having article with blade or point in public place.
- ◆ Section 139A Criminal Justice Act 1988 - Offence of having article with blade or point (or offensive weapon) on school premises

These increases will only apply to offences committed after this Section has been brought into force.

Sections 45, 46, 47 - Power of members of staff to search school pupils, further education students, persons in attendance centres, for weapons

These powers have been covered before in a previous *Digest* article; however, since that article, amendments were made to these Sections and the grounds for a search have been changed from 'reasonable grounds for believing' to 'reasonable grounds for suspecting'.

This change is intended to have the effect of broadening the scope of searches to include a wider range of people and also to help to counter any possible accusation that staff, have performed a search without sufficient grounds.

Section 48 - Amendment of police power to search schools etc. for weapons

This Section amends the wording of Section 139B of the Criminal Justice Act 1988, which gives a constable a power of entry to school premises to search for knives etc, and offensive weapons.

Currently an officer can exercise those powers provided that he or she has 'reasonable grounds' for believing that a person on the school premises has a knife or offensive weapon with them. Section 48 changes that wording, in line with the changes made by Sections 45, 46, and 47 above, from 'reasonable grounds for believing' to 'reasonable grounds for suspecting', thereby ensuring that the police power to search in schools is consistent with that of school staff.

Section 63 - Removal of sports grounds etc. from private security industry regulation

This Section removes from the remit of the Private Security Industry Act 2001 in-house personnel who undertake the activities of a security operative on any part of premises that is covered by a safety certificate under either the Safety of Sports Grounds Act 1975 or the Fire Safety and Safety of Places of Sport Act 1987.

The reason for the introduction of this provision is due to the Private Security Industry Act 2001 being inadvertently applied to stewards employed by governing bodies of clubs at sporting grounds and venues such as Twickenham, Lords or the Wimbledon championships. This was not the original intention of the Act and hence the amendment.

The Home Office is also developing draft frameworks that will set out the approach that the Secretary of State will take when considering applications for removing activities from the scope of the 2001 Act under the various routes. Those will be published later this year. The organisers of other events that do not take place in sports grounds covered by the amendment will then be able to make applications against those frameworks.

The Violent Crime Reduction Act 2006 can be found in full at <http://www.opsi.gov.uk/acts/acts2006a.htm>

HOC 33/2006

Cross-Border Provisions Relating To Sexual Offences

This Home Office Circular relates to Section 56 of the Violent Crime Reduction Act 2006 which came into force on 8 November 2006. Section 56 amends the Sexual Offences Act 2003 to take account of changes that were introduced in the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 and ensures that the new law in Scotland correlates with the law in England, Wales and Northern Ireland. It provides that:

- ◆ An offender convicted in Scotland of one of the new offences under the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 and who subsequently becomes subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (the sex offenders register) in Scotland will also become subject to the notification requirements any time they are in any other part of the United Kingdom.

- ◆ It is an offence in England and Wales and Northern Ireland to contravene a sexual offences prevention order (SOPO) made under the Scottish Act.
- ◆ Persons subject to such SOPOs are also subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 when in any other part of the United Kingdom.
- ◆ Contravention of a risk of sexual harm order (RoSHO) made under the Scottish Act is an offence in England and Wales and Northern Ireland.
- ◆ Persons convicted of the offence of contravention of a RoSHO are also subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 when in any other part of the United Kingdom.

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

The Fraud (Trials without a Jury) Bill

The Fraud (Trials without a Jury) Bill was introduced in the House of Commons on 16 November 2006. It makes amendments of and in relation to Section 43 of the Criminal Justice Act 2003, which provides for the prosecution to apply for a trial of a serious and complex fraud case to proceed in the absence of a jury.

Section 43 of the Criminal Justice Act 2003 is not currently in force. Section 330(5)(b) of that Act provides that the commencement of Section 43 is to be subject to an affirmative resolution of both Houses of Parliament.

Clause 1 of the Fraud (Trials without a Jury) Bill repeals Section 330(5)(b) of the Criminal Justice Act 2003, meaning that Section 43 will be able to be implemented by means of a commencement order made by the Secretary of State without further parliamentary procedure.

Clause 2 of the Bill amends Sections 43(2) and 48 of the Criminal Justice Act 2003 to require that applications for non-jury trial under Section 43, and any non-jury trials resulting from such applications, will be heard by a High Court judge (sitting as a judge of the Crown Court).

The Bill will come into force two months after it receives Royal Assent. It can be found in full at <http://www.publications.parliament.uk/pa/pabills.htm>

Director of Public Prosecutions Guidance on Conditional Cautioning

The Director of Public Prosecutions (DPP) guidance on Conditional Cautioning has been amended. The effect of the amendment is that certain offences have been removed with immediate effect from the list of offences for which a conditional caution can be a disposal option. The decision to remove these offences has been made by the DPP to reflect the public mood.

The offences that have been removed are:

- ◆ Affray, Section 3, Public Order Act 1986
- ◆ Assault Occasioning Actual Bodily Harm, Section 47, Offences Against the Person Act 1861
- ◆ Bladed or Pointed Article in Public Place, Section 139, Criminal Justice Act 1988
- ◆ Carrying an Offensive Weapon in a Public Place, Section 1, Prevention of Crime Act 1953

The following are the offences that can be dealt with by way of a conditional caution:

Either way offences

- ◆ Criminal Damage, Section 1(1), Criminal Damage Act 1971.
- ◆ Unlawful Possession of Class B or Class C drugs, (commensurate with personal use only), Section 5, Misuse of Drugs Act 1971.
- ◆ Unlawful possession of Class A drugs (small quantities commensurate with personal use only) Section 5 Misuse of Drugs Act.
- ◆ Burglary other than commercial premises and residential property, Section 9 Theft Act 1968.
- ◆ Any offence under the Theft Acts 1968 & 1978, except; Burglary (other than as provided for above); Aggravated Burglary; Robbery and Blackmail.

Any **summary offence**, but excluding offences under the Road Traffic Acts or any offence arising from the presence of a motor vehicle, trailer or pedal cycle on a road or other public place, except the following offences:

- ◆ Unlawful taking of motor vehicle.
- ◆ Using Driving Licence or Insurance with intent to deceive.
- ◆ Fraudulent use of a vehicle excise licence.

Conditional Cautioning may not be considered in any indictable only case.

It is expected that conditional cautioning will be rolled out nationally in the near future. The guidance document can be found in full via <http://www.cps.gov.uk/>

Manual on Working with Intimidated Witnesses

A manual designed for use by the police, Witness Care Units, the Crown Prosecution Service and voluntary support organisations to help to bring more cases to justice and improve confidence in the criminal justice system has been published. The production of this manual was first reported in the February 2006 *Digest*.

The manual outlines strategies for effectively identifying, managing and supporting intimidated witnesses through the criminal justice system, taking into account the Victims' Code and the forthcoming Witness Charter.

It is primarily concerned with identifying and supporting witnesses experiencing the more common forms of intimidation included in category 3 that officers are likely to come across on a daily basis, in particular those in the 3A and 3B categories. 'Witnesses' are both witnesses and victims of crime.

Category 3A witnesses are those witnesses experiencing low-level harassment, threats and anti-social behaviour by the offender or his/her family or associates.

Category 3B witnesses are those who are afraid that they might be threatened or harassed at some point in the future as a result of speaking to the police or giving evidence in court.

Witnesses in both 3A and 3B may be eligible for Special Measures.

Category 3C witnesses are those who are simply intimidated by the criminal justice system.

The manual can be found via <http://www.cjsonline.gov.uk/index.html>

New Plans for Medical Evidence Expert Witnesses

The Chief Medical Officer, Sir Liam Donaldson, has published a report which focuses on the use of experts in the family courts, in particular public law childcare proceedings (i.e. those brought under Section 31 of the Children Act 1989). It describes the role of the medical expert witness in these proceedings, analyses the key issues in the system of provision to the courts and makes the case for change, setting out proposals as to how improvement can be made.

The issues covered in the report, such as the quality of expert witnesses, apply to medical evidence in all the different court settings, i.e. in the criminal courts (when someone is being tried for a criminal offence) and in the civil courts (in cases of medical negligence).

The report makes several proposals, which include:

- ◆ The establishment of teams of specialist doctors and other professionals within local NHS organisations, to improve the quality of the medical expert witness service by introducing mentoring, supervision and peer review.
- ◆ A National Knowledge Service to support the medical expert witness programme.
- ◆ The costs for the NHS in taking on this additional workload and in training and development to deliver a quality supply of medical witness expertise in the future should be fully met (currently the cost of experts is shared by the Legal Services Commission and local authorities).

- ◆ The Law Society, in consultation with the Academy of Medical Royal Colleges and the General Medical Council, should consider how the quality of instructions to medical experts might be improved and should disseminate information to their members.
- ◆ The knowledge and skills needed in all court settings should be taught as part of basic and continuing medical education. Relevant educational and standard-setting bodies should develop a competence-based syllabus for court skills. Within this development, priority should be given to medical expert work in child protection cases.
- ◆ Under the Joint Memorandum between the Academy of Medical Royal Colleges and the Department of Health, collaboration should be extended by the Academy to other relevant professional bodies, e.g. the British Psychology Society and the Council for the Registration of Forensic Practitioners, to develop accreditation for teams of medical expert witnesses based on ISO 9000.
- ◆ The General Medical Council should review its supplementary guidance, 'Giving Expert Advice', to widen its scope and bring it up to date in relation to recent developments and issues in this area.

The report also contains a checklist of questions which it suggests should be used by solicitors, magistrates and judges to establish the credentials of prospective medical expert witnesses. These are:

- ◆ Do you have a contract with the NHS?
- ◆ Do you work alone as medical expert witness or with a team?
- ◆ What is your area of practice?
- ◆ To what extent are you an expert in the subject on which you are being asked to testify?
- ◆ To what extent is your view in relation to the subject on which you are being asked to testify widely held by your colleagues and peers?
- ◆ Do you see similar cases to this one as part of your day-to-day work?
- ◆ When did you last see such a case in your own clinical practice?
- ◆ Are you a member of your Royal College/professional organisation?
- ◆ Are you up to date with continuing professional development?
- ◆ Have you had specific training to act as an expert witness? Was that in the last five years?
- ◆ Have you provided expert evidence for the court before? If so, when and where was that?
- ◆ Are you being helped or supervised by someone else in this work?

The report, 'Bearing Good Witness - Proposals for reforming the delivery of medical expert evidence in family law cases', is now subject to a period of consultation, up to 28 February 2007. The report and accompanying documents can be found at <http://www.dh.gov.uk/Consultations/LiveConsultations/fs/en>

Independent Study into Use of ASBOs on Those Under 18

The results of an independent survey, commissioned by the Youth Justice Board, into how Anti-Social Behaviour Orders (ASBOs) are used on those aged under 18 have been published in a report.

Researchers interviewed professionals and sentencers, young people and their parents in 10 Youth Offending Team (YOT) areas to gain an insight into the effectiveness of ASBOs and to get the views and experiences of all involved. The report does point out that because the research was based on a purposive sampling of ten YOT areas, the findings cannot be viewed as representative of the national population of young people on ASBOs; and, also as the sample was obtained from YOTs, it may be more reflective of those young people already known to the youth justice system than the overall ASBO population.

It did find that most professionals interviewed in the study concurred that the ASBO could be an effective tool when used appropriately, but there were considerable differences of view about what this meant in practice.

YOT practitioners tended to think that ASBOs were overused and had little positive impact on behaviour. They typically viewed ASBOs as potentially counterproductive, believing that they undermine positive interventions that were either already in place, or that could have been offered as an alternative to court action.

Some judges and magistrates voiced concerns that ASBOs were being overused because they require a lower level of evidence than criminal orders.

Police and local authority staff typically considered that ASBOs were used appropriately in their locality and, for the most part, were convinced of their effectiveness.

Other findings in the report include:

- ◆ 49% of under-18s have breached their ASBOs.
- ◆ In seven out of the 10 areas examined, YOTs had little or no involvement in the decisions that led to an ASBO being imposed.
- ◆ Many young people did not understand the restrictions placed upon them, increasing the likelihood of breach.
- ◆ A considerable number of respondents alluded to the potential for the order to become 'glamorous' in the eyes of young people at risk of involvement in anti-social behaviour.

Details of how to obtain the full copy of the report can be found at <http://www.yjb.gov.uk/en-gb/>

Consultation on Sentencing Policy

The Home Office has published a consultation paper on a range of proposals aimed at simplify sentencing and strengthening the powers of judges to decide how long dangerous criminals should serve in prison.

The consultation is due to run until 9 January 2007. The consultation can be found in full at http://www.noms.homeoffice.gov.uk/news-publications-events/publications/consultations/Making_sentencing_clearer_consul

Consultation Paper on Sentencing Advice for Theft and Dishonesty Offences

This is the second paper published by the Sentencing Advisory Panel concerning theft and dishonesty offences. The first addressed the offence of theft from a shop (see September *Digest*). This paper deals with the following offences:

- ◆ Theft in breach of trust.
- ◆ Theft from the person.
- ◆ Theft in a dwelling.
- ◆ Burglary in a building other than a dwelling.
- ◆ Making off without payment.
- ◆ Abstracting electricity.

The paper is divided into two parts. The first part discusses issues of general application to the offences listed above, including the assessment of offence seriousness, common aggravating and mitigating factors, and the availability of ancillary orders. The second part addresses each offence in turn and sets out the Panel's proposals for sentencing guidelines. It does expect that, once all aggravating and mitigating factors have been taken into account, the final sentence will fall within the indicated range in the vast majority of cases, but it acknowledges that, due to exceptional aggravating or mitigating factors, some cases will fall above or below the range. The proposed sentencing guidelines for the offences above are:

Theft in breach of trust: Theft Act 1968, s.7 (maximum penalty: 7 years' imprisonment: triable either way)

Nature of offence	Starting point	Range
Theft displaying more than one of the following: <ul style="list-style-type: none"> ◆ targeting a vulnerable victim e.g. elderly person ◆ offender working in unison with others ◆ offending against more than one victim 	18 months' imprisonment	1 - 3 years' imprisonment
Theft displaying one of the features listed above	26 weeks' imprisonment	8 weeks' - 12 months' imprisonment
Isolated theft committed by single offender with no or limited planning	Medium level community order	Non-custodial penalty to 26 weeks' imprisonment

Theft from the person: Theft Act 1968, s.7 (maximum penalty: 7 years' imprisonment: triable either way)

Nature of offence	Starting point	Range
Theft of more than £125,000	3 years' imprisonment	2 - 7 years' imprisonment
Theft of more than £20,000 but less than £125,000	2 years' imprisonment	1 - 3 years' imprisonment
Theft of more than £1,000 but less than £20,000	16 weeks' imprisonment	High level community order to 1 year's imprisonment
Theft of less than £1,000	Medium level community order	Non-custodial penalty to 26 weeks' imprisonment

Theft in a dwelling: Theft Act 1968, s.7 (maximum penalty: 7 years' imprisonment: triable either way)

Nature of offence	Starting point	Range
Theft involving the use or threat of force against the victim (falling short of robbery) PLUS one of the following: <ul style="list-style-type: none"> ◆ targeting a vulnerable victim ◆ offender working in unison with others 	2 years' imprisonment	1 - 5 years' imprisonment
Theft displaying one of the following: <ul style="list-style-type: none"> ◆ targeting a vulnerable victim ◆ offender working in unison with others 	36 weeks' imprisonment	8 weeks' - 18 months' imprisonment
Isolated theft by a single offender with evidence of little or no planning	Medium level community order	Non-custodial penalty

Burglary in a building other than a dwelling: Theft Act 1968, s.9(1) (maximum penalty: 10 years' imprisonment: triable either way)

Nature of offence	Starting point	Range
Burglary targeting high value premises with evidence of professionalism in planning, organisation or execution	4 years' imprisonment	2 - 7 years' imprisonment
A planned burglary typically committed by two or more offenders working together, involving goods valued between £1,000 and £5,000	12 months' imprisonment	High level community order to 30 months' imprisonment
Burglary committed by a single offender with evidence of limited planning and organisation	Medium level community order	Low level community order to 36 weeks' imprisonment

Making off without payment: Theft Act 1978, s.3(1) (maximum penalty: 2 years' imprisonment: triable either way)

Nature of offence	Starting point	Range
Offence displaying one or more of the following: <ul style="list-style-type: none"> ◆ offender acting in unison with others ◆ evidence of planning ◆ offence part of a 'spree' ◆ intimidation of victim ◆ goods or services worth more than £200 	Medium level community order	Low level community order to 8 weeks' imprisonment
Isolated offence committed by single offender with evidence of little or no planning, goods or services worth less than £200	Fine	Non-custodial penalty

Abstracting electricity: Theft Act 1968, s.13 (maximum penalty: 5 years' imprisonment: triable either way)

Nature of offence	Starting point	Range
Offence involving evidence of planning and indication that the offending was intended to be continuing, such as using a device to interfere with the electricity meter or re-wiring to by-pass the meter	Medium level community order	Non-custodial penalty

The consultation ends on 24 January 2007. The consultation can be found in full at <http://www.sentencing-guidelines.gov.uk/consultations/current/index.html>

Review of Police Pay Arrangements

The Minister for Policing, Security and Community Safety, Tony McNulty, has announced a review of police pay arrangements in respect of both police officer pay determination and the negotiating machinery. The review will be carried out in two parts and its terms of reference are:

- ◆ Part 1 - To consider the options for replacing the current arrangements for determining changes to police officer pay for 2007 and make recommendations on this. The conclusions and recommendations in part 1 to be framed so as to inform part 2 of the review.
- ◆ Part 2 - To review the effectiveness of the negotiating machinery for the police, including the Police Negotiating Board and the Police Staff Council, and make recommendations for how police pay and other conditions of service should be determined. The review must consider the option of a pay review body for police pay and consider the impact of any proposal for determining police officer pay on the negotiating machinery for police officers.

Both parts of the review must take account of the need for arrangements to reflect and support the following:

- ◆ The future requirements of the service for the effective and efficient delivery of policing services, motivation and morale and recruitment and retention rates, and overall affordability.
- ◆ Government policy on public sector pay and the broader economic and employment context, and consistency with the achievement of the inflation target of 2%.
- ◆ The need to enable wider police workforce developments including proper reward and recognition arrangements.
- ◆ Arrangements for pay determination in other parts of the public sector.

The first part of the review will be undertaken by Sir Clive Booth. He will report his findings and recommendations to Home Office ministers in early 2007; they will then consider further how the second part of the review, looking at the police negotiating machinery, should be taken forward. Part 2 of the review is expected to be completed by the autumn of 2007.

IPCC Report on Deaths During or Following Police Contact

The Independent Police Complaints Commission (IPCC) has published a report, 'Deaths During or Following Police Contact: Statistics for England and Wales 2005/06'. The report, which is produced annually, shows that:

- ◆ 118 deaths during or following police contact were recorded in 2005/06.
- ◆ The IPCC was involved in the investigation of 95 of the 118 deaths; the others were investigated locally by the force concerned. Of the 95, 18 were independently investigated by the IPCC, 47 were IPCC-managed inquires and the remaining 30 were IPCC-supervised inquiries.
- ◆ 94 (80%) of those who died were male.
- ◆ 101 (86%) were White, 5 were Asian, 7 were Black, 4 were Mixed Race and 1 was from any other ethnic group.

- ◆ As a result of police-related road traffic incidents, there were 48 individual fatalities (compared to 44 in 2004/05).
- ◆ 5 men died in fatal shooting incidents, all of which were investigated independently by the IPCC.
- ◆ 28 people died in or after being in police custody (compared with 36 in 2004/05).
- ◆ 37 people died during or after other police contact.

In relation to the 48 deaths related to road traffic incidents, the figures show that:

- ◆ 32 died during or shortly after a police pursuit. 26 of these were either the driver of or passenger in the pursued vehicle; the remaining 6 were in other vehicles, pedestrians or cyclists. None of these deaths occurred as a result of a pursuing police vehicle colliding with another vehicle or pedestrian.
- ◆ 12 fatalities occurred during other police traffic activity, such as routine patrol.
- ◆ 4 involved a police vehicle responding to an emergency call.

The IPCC is currently conducting a study of road traffic incidents involving the police which have resulted in a fatal or serious injury. This study is due to report in early 2007.

In relation to 28 deaths that occurred in or following police custody the report shows that:

- ◆ 21 of the individuals were known to have consumed, be in possession of, or were known misusers of drugs or alcohol.
- ◆ 23 were identified as injured or unwell while in custody or during arrest and died later in hospital.
- ◆ Two people who died had been detained under Section 136 of the Mental Health Act, while a further four individuals were known to have some form of mental health needs.

Due to concern over the high number of people with mental health needs who die in or following police custody, the IPCC is conducting research into the use of Section 136 of the Mental Health Act 1983 and is expected to publish its findings in early 2007. The IPCC is also involved in research looking at 'near death' incidents in police custody. The study aims to inform policy and practice regarding the prevention and management of such incidents and intends to report in early 2007.

In relation to 37 deaths during or following other police contact, the report shows that, for the second year running, the largest number of deaths in this category is alleged murders which occurred shortly after an individual had contacted police for help following concerns about their own or another's safety. During 2005/06, nine such deaths occurred. Six of these occurred after officers had attended a potentially violent domestic incident which eventually resulted in a death. In the remaining three cases, an individual was allegedly murdered after they or a family member had contacted police regarding the threatening behaviour of a neighbour, or other known person.

The report can be found in full at

http://www.ipcc.gov.uk/index/resources/research/reports_polcustody.htm

Study of ‘Date Rape Drug’ Cases

The results of research study into the dynamics of alleged drug facilitated sexual assault (DFSA) cases have been published. Operation Matisse was a twelve-month study into the nature of DFSA in England, conducted jointly by the Association of Chief Police Officers (ACPO), the Forensic Science Service (FSS) and Sexual Assault Referral Centres (SARCs).

The report concludes that there is no evidence to suggest widespread use of the so-called ‘date rape drug’ Rohypnol, and only limited traces of gammahydroxybutyrate (GHB) were identified. The report does not doubt that the use of such drugs does occur, but stresses that there are many other drugs that may facilitate sexual assault by causing incapacity, especially when combined with alcohol, which was the commonest drug detected in the study.

The report recognises that the identification of the use of date rape drugs is often compromised by delayed incident reporting and, in the case of GHB, the rapid metabolism of the drug. It suggests that further research, which incorporates a more focussed examination of hair samples, might be advantageous in an effort to establish the extent of its usage in this type of crime.

The report suggests that by introducing a more consistent and standardised methodology to the investigation of these offences, the detection of such offences would be improved. It also suggests that by introducing improved data recording processes to identify, through modus operandi, the frequency of these allegations together with the attendant social data, police forces would be able to identify ‘hot spots’ and crime patterns to assist with both detection and prevention initiatives.

In pursuit of the improved identification of such cases and to improve investigation of such cases, the report puts forward a number of recommendations for consideration, these being that:

- ◆ ACPO introduces Operation Matisse methodology in all suspected/alleged cases of DFSA.
- ◆ Home Office considers changes to recording practices to include DFSA cases as a separate data set.
- ◆ Forensic service providers promote the use of the DFSA questionnaire as standard practice in all DFSA cases.
- ◆ Members of the public consider the effects of the combination of prescribed medication, voluntary use of recreational drugs and consumption of alcohol in determining their vulnerability of being a victim of crime.
- ◆ Where appropriate, Home Office/ACPO implement a media campaign to raise awareness of change to issue of ‘consent’ in rape cases emanating from the Sexual Offences Act (2003).

The report can be found in full at <http://www.acpo.police.uk/policies.asp>

Format of Penalty Notices for Disorder

The ACPO lead on penalty notices, Richard Brunstrom, has issued a guidance note to forces as a result of reports that several forces are considering changing the format of Penalty Notices for Disorder (PNDs) to make them more computer system-manageable.

The note draws attention to the fact that the exact format of a PND is prescribed by law, for adults under the Penalties for Disorderly Behaviour (Form of Penalty Notice) Regulations 2002 (SI 1838/2002) and for juveniles under the Penalties for Disorderly Behaviour (Form of Penalty Notice) (Amendment) Regulations 2005 (SI 630/2005). These Regulations set out the exact specified format of a PND and therefore cannot be altered without a change to the regulations.

The note recognises that the current prescribed format results in a ticket that is unnecessarily large and therefore awkward to handle. It states that negotiations are being conducted with the Home Office to change the regulations to require only the content of a PND to be specified, as is currently the case that applies to a motoring Fixed Penalty Notice, thereby allowing the format to be changed to make it more compatible with computerised systems.

Reimbursement of Police Force Restructuring Costs

The Minister for Policing, Security and Community Safety, Tony McNulty, has made a written ministerial statement which sets out the amounts that police authorities will be reimbursed for the preparatory work they had carried out in relation to the Government's police force merger plans, which were subsequently abandoned.

An upper limit of £100,000 has been applied to the amount to be paid to any single police authority with the exceptions of payments to:

- ◆ Lancashire and Cumbria Police Authorities. This is because their claims included Joint Programme Office commitments undertaken on specific advice from the Home Office, which also undertook to meet the exceptional start-up costs associated with the pioneer status of this merger group. They are to receive the full amounts that they claimed: Lancashire £725,000, Cumbria £271,000.
- ◆ Lincolnshire Police Authority. This is because their claim included premises costs on behalf of their merger group, incurred on specific advice from the Home Office. They are to receive the full amount they claimed: £287,600.
- ◆ Dorset Police Authority. This is because their claim was made on behalf of the five South-West region forces and authorities (Avon and Somerset, Devon and Cornwall, Dorset, Gloucestershire and Wiltshire). They are to receive the full amount that they claimed: £140,836.

According to the figures released, the following police authorities will receive less than they claimed:

- ◆ Cambridgeshire. Claimed £242,714, will receive £100,000.
- ◆ Cheshire. Claimed £339,767, will receive £100,000.
- ◆ Cleveland. Claimed £189,986, will receive £100,000.
- ◆ Derbyshire. Claimed £58,469, will receive £35,782.
- ◆ Dyfed-Powys. Claimed £225,891, will receive £100,000.
- ◆ Essex. Claimed £169,870, will receive £100,000.
- ◆ Hertfordshire. Claimed £144,327, will receive £100,000.
- ◆ Humberside. Claimed £119,730, will receive £100,000.

- ◆ Kent. Claimed £152,042, will receive £100,000.
- ◆ Merseyside. Claimed £266,357, will receive £100,000.
- ◆ Norfolk. Claimed £135,729, will receive £100,000.
- ◆ North Wales. Claimed £245,020, will receive £100,000.
- ◆ North Yorkshire. Claimed £167,808, will receive £100,000.
- ◆ South Wales. Claimed £326,944, will receive £100,000.
- ◆ Surrey. Claimed £649,311, will receive £100,000.
- ◆ Sussex. Claimed £519,879, will receive £100,000.
- ◆ Warwickshire. Claimed £174,608, will receive £100,000.
- ◆ West Midlands. Claimed £117,591, will receive £100,000.
- ◆ West Yorkshire. Claimed £104,569, will receive £100,000.

All the claims submitted by the remaining police authorities were under £100,000 and will be paid in full. Although the claim submitted by Derbyshire Police Authority was under £100,000, it contained some legal costs for judicial review proceedings which the Home Office has stated it will not meet.

The Metropolitan Police Service and City of London Police did not submit claims.

Average Cost of a Fully-Trained Police Constable/Sergeant

Tony McNulty MP, the Minister of State for Policing, Security and Community Safety, recently answered a Parliamentary question as to what the average cost of a fully-trained police constable and police community support officer (PCSO) was, in the most recent year for which figures are available.

Mr McNulty stated that the average estimated cost of employing a police officer (sergeant and constable) in 2005 was approximately £45,500. This estimate includes all pay-related costs including overtime payments and employer's national insurance contributions. It also makes an allowance for notional employer's pension contributions. He also stated that the Home Office does not routinely maintain data on PCSO salaries, but that a report by Accenture on terms and conditions for PCSOs, which was published on 3 February 2006, showed that the average total cash reward (basic salary plus allowances and overtime) was £20,500.

Report on Protecting Children from Sex Offenders

The children's charity Barnado's has published a report entitled, 'A Risk Too High?', which looks at measures to protect children from sex offenders, including whether the introduction of public disclosure (sometimes referred to as Sarah's Law) would be effective. It concludes that the routine disclosure to the public of details of sex offenders, whilst probably providing some comfort to parents, would probably put children in more, not less, danger, as it would drive sex offenders away from supervision and into hiding.

The report calls on the introduction of new techniques and technologies to be used, alongside MAPPA powers, in particular:

- ◆ The mandatory use of polygraph tests to assist in managing the behaviour of sex offenders.
- ◆ Extended use of global positioning satellite (GPS) tracking.
- ◆ A strengthening of the current MAPPA powers and arrangements.

The report points out that in 2005 the Management of Offenders Bill, which was announced in the Queen's Speech but never subsequently published, outlined proposals for the mandatory use of polygraph testing as part of the licence requirements for adult sex offenders. It points to research conducted in the USA and to a UK pilot scheme, whose findings show that use of polygraph tests are effective in monitoring sex offenders' compliance with licence or registration conditions.

In relation to the issue of GPS tracking, the report refers to Home Office pilots conducted in three areas in England between September 2004 and May 2006. Although these pilots are still being evaluated and while there are some limitations, early evidence seems to be promising and indicates that satellite tracking has the potential to monitor the movements of offenders in 'real time', can assist with ensuring they keep out of specified areas and can provide added protection when used alongside other programmes and interventions.

In relation to the strengthening of the current MAPPA powers and arrangements, the report states that Barnardo's supports two particular recommendations made in a recent joint inspection by HM Inspectorate of Probation, HM Inspectorate of Constabulary and HM Inspectorate of Prisons, on public protection work by the probation, police and prison services. These are:

- ◆ Recommendation 1 - good public protection principles should take a higher priority for the police, prisons and probation service. Barnardo's would like to see child protection included as a national policing priority, enabling forces to devote more resources to the identification and apprehension of adults who commit offences against children.
- ◆ Recommendation 9 - that there should be better managed resources, proper staff training and a review of funding for MAPPAs.

The Barnado's report can be found at
http://www.barnardos.org.uk/resources/research_and_publications.htm

The joint inspection report, 'Putting Risk of Harm in Context' can be found at
http://inspectrates.homeoffice.gov.uk/hmiprobation/inspect_reports/thematic-inspections1.html/public-protection-report.pdf?version=1

Consultation on Ethical Issues of Forensic use of Bioinformation

The Nuffield Council on Bioethics has set up a working group, which includes members with expertise in law, genetics, philosophy and social science, to identify and consider the ethical, social and legal issues raised by current and potential future uses of bioinformation for forensic purposes.

To inform discussions, the working group has published a consultation paper seeking views on a number of questions on these issues, in particular whether current laws allowing police to take, store and analyse the DNA of suspects, witnesses and victims should be revised.

The deadline for responses to the consultation is 30 January 2007. The working group has announced that it will publish a discussion paper setting out its findings and recommendations in autumn 2007.

The consultation paper can be found at

http://www.nuffieldbioethics.org/go/ourwork/bioinformationuse/page_848.html

Fraud Analysis Report

APACS, the UK payments association, has issued details of its latest findings of UK card fraud losses. The main findings show that:

- ◆ Online bank fraud losses amounted to £22.5m in the first six months of 2006, a rise of 55% from the £14.5m lost in the first six months of 2005. The main cause for these losses involved phishing scams.
- ◆ Cheque fraud has continued to fall, due to the identification of most fraudulent cheques as they go through the cheque-clearing process. Losses during January to June 2006 were £16m, a decrease of 26% on the same period in 2005.
- ◆ Online, phone and mail order fraud (card not present fraud) increased to £95.3m in January to June 2006, a rise of 5% compared with the same period in 2005. Compared to the increase in the growth of this type of transaction, this shows a slowing of the increase of fraud. Also, automated cardholder address verification and the card security code system, as well as the schemes 'Verified by Visa' and 'MasterCard SecureCode', are believed to have had an impact.
- ◆ Counterfeit card fraud losses grew by 16% to £53m in the period January to June 2006 compared with the same period in 2005. The increase is believed to be mainly down to criminals using hidden miniature cameras to capture PINs at cash machines. It is hoped that a decrease of this type of fraud will be seen as UK cash machines are upgraded during 2006.
- ◆ Losses caused by the use of lost or stolen cards, have continued to decrease. In the period January to June 2006, they fell by 19% (to £36.1m) compared with the same period the previous year.
- ◆ Losses caused following the report of mail non-receipt fell by 57% (to £9.8m) in the period January to June 2006 compared with the same period the previous year.

An annual report which gives a definitive overview of plastic card, cheque and online banking fraud and measures to prevent them is produced by APACS in April each year. Details of card fraud losses for the whole of 2006 will be included in this document on its publication in April 2007. Previous such documents can be found at

<http://www.cardwatch.org.uk/default.asp>

Report on Alcohol Misuse

Alcohol Concern has published a report entitled, 'Wasted: lives lost to Alcohol'. Although the report primarily looks at the research linking alcohol misuse and premature death, it also looks at the link between violent crime and alcohol misuse. It contains a number of recommendations, including:

- ◆ That HM Treasury, the Department of Health and the Home Office sign up to a Public Service Agreement to drive up provision of and access to alcohol brief interventions and treatment.
- ◆ That the Department of Health invests in a national system of alcohol-related monitoring for all Tier-One services, such as all A&E departments and hospitals, GP surgeries, prisons, police stations, social services teams, housing teams and youth services, in order to better track the levels of problems locally and plan services accordingly.
- ◆ That the current treatment options available to drug users in prisons are extended to those with alcohol problems.
- ◆ That Government invests in alcohol arrest referral schemes in all custody suites where monitoring indicates high levels of alcohol-related arrests.

The report can be found in full at <http://www.alcoholconcern.org.uk/servlets/doc/1149>

Case Law



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Cautions for the Possession of Cannabis

R (on the application of MONDELLY) v COMMISSIONER OF POLICE OF THE METROPOLIS (2006)

[2006] EWHC 2370 (Admin)

DC (Moses LJ, Ouseley J, Walker J) 29/9/2006

POLICE - CRIMINAL PROCEDURE

Cautions: Police Powers And Duties: Possession Of Drugs: Wednesbury Unreasonableness: Cannabis As Class C Drug: Police Policy On Cannabis Possession: Propriety Of Caution For Possession: Police Policy: Police Standard Operating Procedures: S.8(D) Misuse Of Drugs Act 1971: Misuse Of Drugs Act 1971 (Modification) (No 2) Order 2003

The administration of a caution to the applicant for the possession of a Class C drug, namely cannabis, was not in breach of the respondent police's policy, as there was no clear and settled policy not to arrest or prosecute or caution individuals for simple possession of cannabis.

The claimant (M) applied for judicial review of the decision of a duty inspector employed by the respondent police commissioner to caution him for possession of cannabis. Police officers had gone by mistake to M's address and been admitted. They noticed a cannabis cigarette, a grinder, a small amount of cannabis resin and herbal cannabis, and arrested M for allowing his premises to be used contrary to the Misuse of Drugs Act 1971 s.8(d). He was not charged under that section but was cautioned for possession of a Class C drug on the basis of the cannabis found; his admission in interview; the fact that he had a previous caution for possession of cannabis; and that a particular police policy concerning arrest for such possession, which was implemented after the Misuse of Drugs Act 1971 (Modification) (No 2) Order 2003, did not state that no arrests should be made for possession of cannabis, or that once an arrest for it had been made it was inappropriate to caution the person. The policy and the relevant standard operating procedure provided that an officer, who found a person in possession of cannabis and was satisfied that the drug was intended for that person's own use, should not arrest the offender unless aggravating factors applied. M contended that the decision to caution him was in breach of police policy and standard operating procedures, and was irrational so as to be Wednesbury unreasonable.

HELD

(Walker, J dissenting) The policy did not prevent an arrest for possession of cannabis, still less a caution, and the decision to administer the latter to M was not unreasonable. The authorities were clear that courts were reluctant to intervene regarding decisions to prosecute or to administer cautions; they would not do so save where it was suggested that there was a breach of a prosecuting authority's clear and settled policy, and where the breach itself was established, R v Commissioner of Police for the Metropolis,

Ex p Blackburn (1968) 2 QB 118, R v Chief Constable of Kent Ex p L (A Minor) (1993) 1 ALL ER 756, R v Metropolitan Police Commission Ex p Thompson (1997) 1 WLR 1519 and R v Adaway (Glen) (2004) EWCA Crim 2831, Times, November 22, 2004 considered. Any suggestion that a policy might limit the power to arrest conferred on a constable by statute had to have regard to the statutory power conferred on each and every police constable. In the instant case there was no clear and settled policy not to arrest or prosecute for simple possession of cannabis, and its absence was fatal to M's case. In any event, there had been no breach of the standard operating procedures, and they did not deal with whether or not there should be any further prosecution or caution in express terms. (Per curiam) Were there to be a police or Crown Prosecution Service policy that no one should be prosecuted for simple possession of cannabis unless the offence fell within specified aggravating circumstances, and if that were said to make a decision to prosecute unlawful in such circumstances, it would be an unlawful policy itself. Parliament did not enact those aggravating factors into the offence of simple possession, and it is not for executive prosecution policy to change it. (Walker, J dissenting) The administration of the caution was in clear breach of the policy. There was a complete absence of any good reason for departing from it, and the caution had serious consequences for M. Further, if M had been prosecuted rather than cautioned he would have been able to seek a remedy against injustice by asking the courts to stay the proceedings as an abuse of process. The exceptional circumstances would have given strong grounds for the appropriate court to grant a stay. In those circumstances it was unjust that M should have received the caution and the accompanying criminal record. The just course was to act in accordance with the policy by confiscating the cannabis and giving a warning. Accordingly, it was appropriate to quash the decision to administer the caution.

APPLICATION REFUSED



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Sexual Offences Prevention Orders

R v RICHARDS (2006)

[2006] EWCA Crim 2519

CA (Crim Div) (Sir Igor Judge (President QB), Holland J, Tugendhat J) 27/10/2006

PENOLOGY AND CRIMINOLOGY - SENTENCING

Extended Sentences: Public Protection: Risk Of Reoffending: Sexual Offences Prevention Orders: Scheme Under S.104 Sexual Offences Act 2003 Distinct From Criminal Justice Act 2003: Serious Sexual Harm: S.104 Sexual Offences Act 2003: S.227 Criminal Justice Act 2003: S.224 Criminal Justice Act 2003: S.229 Criminal Justice Act 2003

It was not a pre-condition to the making of a sexual offences prevention order under the Sexual Offences Act 2003 s.104 that the judge should be satisfied that the offender would also qualify for an extended sentence under the Criminal Justice Act 2003 s.227, or that he should regard himself as deprived of the necessary justification if they did not. The schemes under the respective Acts were intended to be, and were, distinct.

The appellant (R) appealed against the imposition of an indefinite sexual offences prevention order under the Sexual Offences Act 2003 s.104 following his conviction for indecent exposure. R had a previous conviction for indecent assault and a caution for gross indecency with a child. The pre-sentence report concluded that R represented a high risk of similar offending and of harm to the public. The judge stated his belief that R's offending might escalate and imposed a sentence of six months' imprisonment and a sexual

offences prevention order. R submitted that as the judge had not imposed an extended sentence under the Criminal Justice Act 2003 s.227, it followed that he had not been satisfied that there was a significant risk to the public of serious harm occasioned by the commission by R of further specified offences, and therefore it had not been open to him to make a sexual offences prevention order under s.104.

HELD

The consequence of R's submission, if it were correct, would be that the Sexual Offences Act would be limited or controlled by a different statutory provision in a different Act, namely the Criminal Justice Act, enacted on the same day and silent about its intended effect on the new power. That would mean that, however appropriate and necessary a sexual offences protection order might appear to the court, and irrespective of its view that a case fell within the ambit of the statutory scheme in s.104, it would be precluded from imposing it without simultaneously imposing a custodial sentence of 12 months or longer under the Criminal Justice Act. That could not be correct. Sections 224 to 229 of the Criminal Justice Act identified particular circumstances in which it was obligatory for the court to impose an identical form of sentence in sexual or violent offences, and were concerned with "dangerousness" as explained in s.229. They did not contemplate a non-custodial sentence. By contrast, s.104 of the Sexual Offences Act was expressly concerned with non-custodial orders, available to the court as a matter of its discretion. Such an order could be used for a qualifying offender who had been only cautioned, or for an offender who had already been punished. The express provisions of the statutory scheme powerfully suggested that sexual offences prevention orders were not governed by or subject to the provisions relating to "dangerousness" in the Criminal Justice Act. There were differences in terminology between the two Acts. Their respective schemes were intended to be, and were, distinct. They made no reference to each other, yet it would have been easy enough for them to do so had that been the intention of the legislation. Therefore, it was not a pre-condition to the making of a sexual offences prevention order that the judge should be satisfied that the offender would also qualify for an extended sentence, or that he should regard himself as deprived of the necessary justification if they did not. Although there might well be cases in which the potential overlap between the two sentencing regimes would require close attention, the ambit of the court's broad discretion to make a sexual offences prevention order was prescribed by the provisions that created it without reference to the Criminal Justice Act.

APPEAL DISMISSED



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Courts Ability to Correct Errors Where There Was A Clear Parliamentary Intention Behind A Legislative Provision

R (on the application of CROWN PROSECUTION SERVICE) (Claimant) v BOW STREET MAGISTRATES' COURT (Defendant) & SAMUEL JAMES & 5 ORS (Interested Parties) (2006)

[2006] EWHC 1763 (Admin)

DC (May LJ, Forbes J) 18/7/2006

CRIMINAL LAW - LEGISLATION

Acts Of Parliament: Forgery Of Passports: Legislative Intention: Mistake: Repeal Schedules: Error In Drafting Repeal Schedules: Requirements On Court In Reading Words Into Legislative Provisions: S.44(2) Identity Cards Act 2006: S.25 Identity Cards Act 2006: S.26 Identity Cards Act 2006

Where there was a clear Parliamentary intention behind a legislative provision that had not been given effect due to an obvious drafting error, the court had to be able to correct such errors by reading words into the provision.

The claimant CPS applied for judicial review of a decision discharging the first five interested parties (S) of offences contrary to the Forgery and Counterfeiting Act 1981 s.5. During an authorised search on April 4, 2006 police officers had recovered forged passports from a flat and a car belonging to S. The next day S were each charged with an offence of possessing a false passport on April 4, 2006 contrary to s.5(2) of the 1981 Act. The magistrates declined jurisdiction in relation to each offence and a contested committal hearing took place. The district judge had concluded that the Identity Cards Act 2006 s.44(2) operated to repeal s.5(5)(f) and (fa) of the 1981 Act as of March 30, 2006, the date on which s.44 of the 2006 Act came into force; the s.5 offences did not exist on April 4, 2006 and accordingly S were discharged of each of those offences. The CPS submitted that although s.44 of the 2006 Act came into force on March 30, 2006, Sch.2, which listed the legislation to be repealed, did not and therefore s.5 had not been repealed. The CPS argued alternatively that since s.44 had not been drafted so as to give effect to the clear intention of Parliament, namely to effect a smooth transition in replacing s.5(5)(f) and (fa) of the 1981 Act with the new provisions contained in s.25 and s.26 of the 2006 Act, it was permissible for the court to use its interpretative powers to read words into s.44(3) of the 2006 Act to give effect to that intention. S submitted that the district judge's reasoning and his conclusion had been wholly correct, and that as the 2006 Act was a penal statute it had to be strictly interpreted.

HELD

- (1) The primary case of the CPS had to fail as it relied on the wording of s.44(2) of the 2006 Act being insufficient to effect the repeals contained in Sch.2. The words of that section were perfectly clear and capable of expressly effecting the repeal of the statutory provisions listed in Sch.2. The absence of Sch.2 from the excepted provisions specified in brackets in s.44(3) did not prevent s.44(2) from being construed to mean precisely what it said.
- (2) Parliament had clearly intended that the repeal of the relevant provisions of s.5 of the 1981 Act should be consequential upon the coming into force of the new provisions contained in s.25 and s.26 of the 2006 Act. Section 44(3) was intended by Parliament to achieve that purpose. As a result of an error and inadvertence on the part of the

draftsman and Parliament, the terms of s.44(3) failed to give effect to that intended purpose because s.44(2) was not excluded from the list of excepted provisions specified in brackets in s.44(3) and the exclusion of Sch.2 from the bracketed list of exceptions was insufficient to achieve the intended purpose, particularly having regard to the terms in s.44(2) itself. It was a plain case of a drafting mistake and the court had to be able to correct obvious drafting errors, *Inco Europe Ltd v First Choice Distribution (A Firm)* (2000) 1 WLR 586 applied. In *Inco Europe* it was stated that before reading words into a statute the court had to be sure of (a) the intended purpose of the statute or provision in question; (b) that by inadvertence the draftsman and Parliament had failed to give effect to that purpose; (c) the substance of the provision Parliament would have made had the error been noticed, *Inco Europe* applied. The first two conditions were clearly satisfied in the instant case. In relation to the third, the substance of the provision that Parliament would have made, had the error in the Bill been noticed, would have been to exclude s.44(2) from the excepted provisions in s.44(3). Therefore the three conditions were satisfied and it was appropriate for the court to exercise its interpretative function to correct the drafting error in s.44(3) and achieve the purpose clearly intended by Parliament.

- (3) Whilst the 2006 Act was penal in nature the required construction of s.44(3) did not inflict any hardship or greater detriment on S or anyone else. The proper construction of s.44(3) simply continued the existing law until its replacement by the new provisions, and no increase in penalty was involved at any stage.

APPLICATION GRANTED



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Breach Of The Peace: Lawful Force: Reasonable Force

COLIN TOMLINSON v COMMISSIONER OF POLICE OF THE METROPOLIS (2006)

[2006] EWHC 2810 (QB)

QBD (Simon J) 8/11/2006

POLICE - TORTS

Assault: Battery: Breach Of The Peace: False Imprisonment: Police Officers: Reasonable Force: Wrongful Arrest: Claim For Battery And False Imprisonment: Racial Abuse: S.3 Criminal Law Act 1967: S.117 Police And Criminal Evidence Act 1984

[A claim against the police for battery and false imprisonment was dismissed on grounds that there had been no assault, the force used by the officers had been reasonable and proportionate, and the detention had been lawful.](#)

The claimant (T) sought damages from the defendant police commissioner for injuries sustained by T when police officers arrested him in order to prevent a breach of the peace. T, who was Afro-Caribbean, was brought to a police station and detained but was later released without charge. During the arrest, T suffered a broken wrist, grazing to his face and bruising to his back. T claimed that the officers had thrown him to the ground, twisted his arm behind his back and racially abused him. The officers contended that T had resisted being handcuffed, they had only used reasonable and necessary force, and T had been detained for no longer than was necessary and reasonable. The incident had taken place seven years before the date of the instant hearing. The police relied on similar fact evidence of previous incidents in which T had been involved with police officers, which had occurred up to 12 years before the hearing; in relation to some of those incidents T had brought a claim against the police, which had settled before trial.

HELD

- (1) The similar fact evidence showed that there had been occasions when T had been abusive and threatening to police officers, deliberately and needlessly creating confrontation, and that he had become a persistent complainer against police officers where such complaints were not justified. Regarding the incident that gave rise to the instant claim, the evidence that T's behaviour had been truculent and threatening was overwhelming. There had been sufficient grounds for the police to conclude that T might have imminently become violent and, accordingly, T had been lawfully detained in order to prevent a breach of the peace, *R v Howell* (1981) CLR 697 considered.
- (2) T had failed to prove that he had been punched during the incident. He had knowingly invited the court to treat photographic evidence of his injuries as supporting his claim when he knew the photographs did not do so. T's claim that he had been racially abused was a calculated lie. T had not been assaulted in the manner he alleged nor had he been subjected to racial abuse.
- (3) T had not cooperated with being handcuffed and it had been appropriate to bring him to the ground in a controlled manner. If T had not resisted the handcuffing he would not have sustained injury. Under the Criminal Law Act 1967 s.3 and the Police and Criminal Evidence Act 1984 s.117 a police officer was permitted to use force in the exercise of his duties. Although the force used by the police officers to detain T may have resulted in T's injuries, it had been reasonable, no more than necessary, and proportionate to the threat that T posed, *R v Palmer* (1971) AC 814 considered. (4) Whilst in police detention, T had been in an excited state and his behaviour had not

been rational. The police had good grounds to detain him. The whole of T's detention had been lawful.

JUDGMENT FOR DEFENDANT



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Mens Rea of Conspiracy to Commit Money Laundering Offences

R v HASNAIN SUCHEDINA: R v (1) KEVIN JAMES HOSIER (2) FRANCIS GLEN LEHANEY: R v PAUL HADLEY (2006)

[2006] EWCA Crim 2543

CA (Crim Div) (Hughes LJ, Henriques J, Field J) 27/10/2006

CRIMINAL LAW

Conspiracy: Mens Rea: Money Laundering: Suspicion: Mens Rea Of Conspiracy To Commit Money Laundering Offences: Proceeds Of Crime: Reasonable Grounds For Suspicion As To Illicit Origins Of Money: S.1(1) Criminal Law Act 1977: S.49(2) Drug Trafficking Act 1994: S.93c(2) Criminal Justice Act 1988

A conviction for conspiracy to commit money laundering offences in circumstances where the jury had been directed that the offence was made, as to mens rea, by proof either of knowledge or of reasonable grounds for suspicion as to the illicit origins of the money could no longer be regarded as safe in the light of the ruling in R v Saik (Abdul Rahman) (2006) UKHL 18.

The appellant (S) appealed, and the applicants (K, L and H) applied for leave to appeal, against convictions for conspiracy to commit money laundering offences following the decision of the House of Lords in R v Saik (Abdul Rahman) (2006) UKHL 18, (2006) 2 WLR 993. The appellants had each been convicted, prior to the ruling in Saik, of "either/or" money laundering offences under the Criminal Law Act 1977 s.1(1). The relevant substantive offences were those under the Drug Trafficking Act 1994 s.49(2) or the Criminal Justice Act 1988 s.93C(2). S had been acquitted of two single Act conspiracy counts. Before the ruling in Saik the prosecution only needed to prove that a defendant either had knowledge or reasonable grounds for suspicion that money to be handled was from an illicit origin in contravention of either the 1994 Act or the 1988 Act. Following Saik, only proof of a defendant's intention or knowledge that the money was from an illicit source was sufficient and suspicion would not suffice. S submitted that in light of the decision in Saik the judge had misdirected the jury and that an either/or conspiracy was not known to the law where the question for the jury was past conduct rather than a plan of future conduct; and that in order to be convicted of a conspiracy offence a defendant had to be proved to have known from which of the two possible illicit sources the money was derived. S also argued that since he was acquitted of the two conspiracy counts, the jury could not have been satisfied that he suspected, let alone knew, from which illicit source the money was derived. K and L submitted that although their applications were out of time no grounds of appeal had arisen until the decision in R v Ali (Liaquat) (2005) EWCA Crim 87, (2006) QB 322 and that their notices of appeal were submitted promptly after that. H submitted that his conviction could no longer be considered safe and that he should be granted an extension of time to appeal.

HELD

- (1) The misdirections in S's trial were sufficient to allow his appeal and quash his conviction. However, S's submission that he should have been acquitted of the either/or conspiracy charge as a consequence of his acquittal on the two single Act counts was not well founded. Where a count was framed as an either/or conspiracy such as in S's case, the allegation was of an agreement to launder money that was of illicit origin and irrespective of which kind of illicit origin. That amounted to an allegation that the defendant was agreeing to launder money of either or both origins. Such an agreement was an offence. Section 1(1) of the 1977 Act expressly provided that a

conspiracy was an agreement to undertake a course of conduct, which if carried out would necessarily lead to the commission of an offence. The agreement, if carried out, would necessarily lead to the commission of an offence contrary to the 1994 Act or the 1988 Act. Such a count was not bad for duplicity but alleged one agreement. Saik made it clear that where a conspiracy count looked to future transactions there could be no question of having to prove that the money was of illicit origin. Where an either/or conspiracy was charged, the defendant must be proved to have agreed, at some stage, to launder money that he intended should be of one or other illicit origin, or of both. It was not enough that he had agreed to launder money that he only suspected might be of illicit origin. It did not matter if neither of the substantive offences under the 1994 Act and 1988 Act were committed as it was not essential that money handled subsequent to the making of that agreement was proved to be of illicit origin. A re-trial was ordered as there was powerful evidence of an antecedent agreement by S to launder money amounting to a conspiracy.

- (2) K or L must both have committed one or other substantive offence involving large sums of money. Neither would suffer a substantial injustice. The evidence of criminal intent was very strong. Leave to appeal was refused, R v Ramzan (2006) EWCA Crim 1974 followed.
- (3) The evidence against H and his failure to explain it clearly justified the jury inferring both an antecedent agreement and an agreement to engage in future transactions. The court was satisfied that H had committed money laundering offences and that the refusal of leave to appeal would not occasion him any substantial injustice, Saik applied and Liaquat considered.

JUDGMENT ACCORDINGLY



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Duty of Care: Extent Of Driver's Duty To Other Road Users

**JOHN WHITTLE (A PATIENT BY HIS LITIGATION FRIEND DEBORAH HERON) v
JAMES BENNETT (2006)**

[2006] EWCA Civ 1538

CA (Civ Div) (Clarke LJ MR, Sir Igor Judge (President QB), Leveson LJ) 1/11/2006

NEGLIGENCE - ROAD TRAFFIC

Drivers: Duty Of Care: Road Traffic Accidents: Extent Of Driver's Duty To Other Road
Users: Driving Too Close To Vehicle In Front

Where two drivers drove in tandem at excessive speeds a duty of care was owed by the second driver not just to the leading driver but also to those that might reasonably be affected by the second driver's actions.

The appellant (W) appealed against a decision ((2006) EWHC 116 (QB)) giving judgment in favour of the respondent (D) in a claim for personal injury arising out of a road traffic accident. W had missed a turning off a busy single carriageway A road and attempted a U-turn manoeuvre. At the point in the road where W attempted the U-turn there was limited visibility for drivers approaching behind W due to a bend in the road. The driver of the car in front of D's, with whom D was driving very closely in tandem at excessive speeds, managed to overtake W but D was unable to get past and collided with W. At the trial on liability the judge dismissed W's claim and held that even if he were wrong W had been 80 per cent contributorily negligent. W contended that the judge had been wrong on his findings that D's duty to maintain a safe distance was limited to the car in front and had erred in apportioning the blame for the accident.

HELD

The ambit of a duty of care in the circumstances was sufficiently wide to cover all those that might reasonably be affected by D driving too close to the vehicle in front. However, on the facts of the case, that was not helpful to W as he had been performing a U-turn and D would have been unable to stop even if not driving that close. On the facts of the case the judge had come to a conclusion entirely open to him.

APPEAL DISMISSED



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Defence of Duress in Drink Drive Case

DIRECTOR OF PUBLIC PROSECUTIONS v MULLALLY (2006)

DC (Latham LJ, Fulford J) 6/11/2006

CRIMINAL LAW - ROAD TRAFFIC

Driving While Over The Limit: Duress: Appropriate Test To Establish Defence Of Duress:
Imminent Threat Of Violence: Reasonableness Of Fear: S.5(1)(A) Road Traffic Act 1988

The defence of duress was excluded from a driver charged with an offence of driving over the limit contrary to the Road Traffic Act 1988 s.5(1)(a), as it was unreasonable for the driver, who had a genuine fear of violence, to continue to drive once she was aware that police had arrived to deal with the threat of violence.

The appellant Director of Public Prosecutions appealed by way of case stated against a decision of a magistrates' court to find the respondent driver (M) not guilty of driving over the limit. M had been subjected to serious violence by three of her four husbands. Fearing for her sister's safety M had driven to her sister's address in the early hours of the morning whilst only wearing pyjamas and a dressing gown. M's sister's partner assaulted M and threatened to throw her down an external iron stairway. M phoned the police but M and her daughter left in M's car before the police arrived. Shortly afterwards the police arrived and M's daughter informed M of that fact but M continued to drive to her own residence. On that journey M was followed by the police who stopped her and administered a breath test. M failed the breath test and she was charged with driving having consumed excess alcohol contrary to the Road Traffic Act 1988 s.5(1)(a). At trial the magistrates' court identified two issues namely whether (i) M was impelled to act as she did as a result of holding a reasonable belief of an imminent threat of serious physical harm; (ii) from an objective viewpoint the threat ceased to exist prior to M being required to stop by the police. The magistrates' court found that M genuinely feared imminent serious violence and that she had formed the view that driving was necessary to escape that threat; that the fear remained with her throughout the journey; and that it would not be reasonable to expect a woman and her daughter, who were in their nightwear, to seek refuge at 3am from a stranger albeit a police officer. The magistrates' court found that the DPP had failed to prove that M was not acting under duress and acquitted her. The question posed for the opinion of the High Court was whether the magistrates' court was entitled to conclude that the DPP had failed to establish that M had not been acting under duress.

HELD

The magistrates' court was not entitled to conclude that the prosecution had failed to establish that M had not been acting under duress. Once the defence of duress was raised the court had to determine two issues, with the burden of proof resting on the prosecution, namely whether: (a) the accused were driven to act because they genuinely believed death or similar injury would occur to themselves if they had not so acted; (b) a sober person of reasonable fairness would have been driven into acting as the accused did. In the circumstances of the instant case, the magistrates' court was entitled to find that M's fear was genuine but it erred in finding that M's response to that fear was reasonable. M was not justified in driving away once she was aware that police were in attendance. Once M was aware of the police presence whether or not she was in night clothes or knew the police was immaterial. The defence of necessity or duress needed to be strictly controlled, *R v Hasan* (2005) UKHL 22, (2005) 2 AC 467 considered. In the instant case there was no suggestion that M's sister's partner was armed or that the police would not have been able to handle the situation. Therefore, as the threat had been removed a reasonable person would not have responded by driving away from the scene. Accordingly the magistrates' court had erred in acquitting M, *R v Safi (Ali Ahmed)* (2003) EWCA Crim 1809, (2004) 1 Cr App R 14 applied. The matter was remitted to the magistrates' court with a direction to convict.

APPEAL ALLOWED



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Upper Age Limit of 65 - Proportion Of Men and Women not Adversely Affected

SECRETARY OF STATE FOR TRADE AND INDUSTRY v RUTHERFORD & ANOR (FC) & ORS (2006)

[2006] UKHL 19

HL (Lord Nicholls of Birkenhead, Lord Scott of Foscote, Lord Rodger of Earlsferry, Lord Walker of Gestingthorpe, Baroness Hale of Richmond) 3/5/2006

EMPLOYMENT - DISCRIMINATION

Age: Comparators: Compensation: Equal Pay: Indirect Discrimination: Redundancy Payments: Sex Discrimination: Statistics: Statutory Provisions: Unfair Dismissal: Upper Age Limit Of 65 On Unfair Dismissal And Redundancy Claims: Proportion Of Men And Women Adversely Affected: S.109 Employment Rights Act 1996: S.156 Employment Rights Act 1996: Art.141 Treaty Establishing The European Community (Nice Version)

The Employment Rights Act 1996 s.109 and s.156, which imposed an upper age limit of 65 for claims for compensation for unfair dismissal and redundancy pay, did not have an adverse impact on a substantially higher proportion of men than women and therefore did not constitute indirect discrimination on the ground of sex.

The appellants (R) appealed against the decision that the Employment Rights Act 1996 s.109 and s.156 did not constitute indirect discrimination on the ground of sex. R were two men who had both continued to work beyond the age of 65 and were both subsequently dismissed. R wished to claim redundancy payment and compensation for unfair dismissal, but s.109 and s.156 of the Act stood in their way. Statistics showed that a higher proportion of men continued to work beyond the age of 65 compared to women. R contended that since more men than women over the age of 65 were still in employment, relatively more men than women were prevented by the statutory bar from making claims for unfair dismissal or redundancy. R argued that that disparate effect constituted indirect discrimination, contrary to the EC Treaty (Nice) Art.141. R submitted that in determining the proportions of those adversely affected it was necessary to have regard to the statistics for employees under 65 and over 65, but that particular weight should be given to statistics for those over 65. The secretary of state contended that the employment tribunal should look at all the statistics, but in a case like the instant case where the percentages of men and women under 65 who could fulfil the preconditions for having the rights to compensation and to redundancy pay were so close, there was no need to look at the figures for those over 65 who could not.

HELD

Section 109 and s.156 of the 1996 Act did not have an adverse impact on a substantially higher proportion of men than women and therefore did not constitute indirect discrimination on the ground of sex. (Per Lord Nicholls) The percentage of employees who were not adversely affected was about 98.8 per cent. In that group there was virtually no difference between men and women. The ratio of men to women who were adversely affected was 1.44:1. That ratio did not suffice to establish the necessary degree of disparate impact as between men and women. (Per Lord Scott) The only persons who would be affected by the statutory bar were those who decided to continue in employment after the age of 65. The statistical evidence that more women than men retired before the age of 65, with the consequence that relatively more men were affected by the statutory bar, did not constitute evidence that the statutory bar discriminated against men. All the evidence showed was that the statutory bar applied to relatively more men than women. A difference in treatment of individuals that was based purely on age could not be

transformed by statistics from age discrimination into sex discrimination. (Per Lord Rodger) Article 141 was designed to ensure that men and women who were in the workforce received equal pay for equal work, not to ensure that equal proportions, or indeed any particular proportion, of the men and the women in any age group would be members of that workforce. In order for R to establish indirect discrimination they would have to show that a substantially higher proportion of male workers over the age of 65 than female workers over the age of 65 were disadvantaged. (Per Lord Walker) In the consideration of R's claims the comparison of proportions produced strikingly different results depending on whether the comparison focused on proportions of "advantaged" men and women or proportions of "disadvantaged" men and women. The question as to whether statistics relating to the "disadvantaged" group could be used in a suitable case had been left open by the court in *R v Secretary of State for Employment Ex p Seymour Smith* (2000) 1 WLR 435. In the instant case the disadvantaged as a percentage of the pool contained men to women at a ratio of 1.44:1. The advantaged as a percentage of the pool contained men to women in the ratio of 1:1.004. The domestic jurisprudence provided some support for an advantage-led approach that would simply take the statistics as it found them. There would be some cases where a disadvantage-led approach would serve as an alert to the likelihood of objectionable discrimination, but the proportion of 1.44:1 was not such a significant disparity as to make it necessary to resile from the absence of any significant disparity in the two advantaged groups. The employment tribunal had erred in ignoring totally the effect of an advantage-led approach, *Seymour Smith* (2000) 1 WLR 435 and *R. v Secretary of State for Employment Ex p Seymour-Smith* (1999) ICR 447 applied.

APPEALS DISMISSED



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SI 2797/2006 The Clean Neighbourhoods and Environment Act 2005 (Commencement No 2, Transitional Provisions and Savings) (Wales) Order 2006

This Order brings into force further provisions of the Clean Neighbourhoods and Environment Act 2005 in relation to Wales.

Article 2 brought into force (either entirely or for remaining purposes), on **27 October 2006**, provisions of the 2005 Act concerning the following:

- ◆ Abandoned vehicles (Sections 11 to 13).
- ◆ Illegally parked vehicles (Sections 15 to 17).
- ◆ Advertisements (Section 34).
- ◆ Transport of waste (Section 37 (in part)).
- ◆ Local authority waste collection and disposal (Section 50).
- ◆ Controls on dogs (Sections 56, 66 and 67).
- ◆ Audible intruder alarms (Sections 80 and 81).
- ◆ Noise from premises (Sections 83 and 84).
- ◆ Statutory noise nuisances (Section 86).
- ◆ Abandoned shopping and luggage trolleys (Sections 99 and 100).

Article 3 brings into force Section 2 (gating orders) of the 2005 Act on the date on which the associated Highways Act 1980 (Gating Orders) (Wales) Regulations 2007 come into force.

Article 4 brings into force (either entirely or for remaining purposes), on the date on which the associated Environmental Offences (Fixed Penalty) (Miscellaneous Provisions) (Wales) Regulations 2006 come into force, provisions of the 2005 Act concerning the following:

- ◆ Nuisance parking offences (Sections 6 to 9).
- ◆ Abandoned vehicles (Section 10).
- ◆ Litter and refuse (Sections 19 to 25).
- ◆ Graffiti and fly-posting (Sections 28 to 31).
- ◆ Waste (Sections 38, 45, 48 and 52).
- ◆ Control on dogs (Sections 59 to 62).
- ◆ Audible intruder alarms (Sections 69 to 79).
- ◆ Noise from premises (Sections 82 and 84).
- ◆ Use of fixed penalty receipts (Sections 96 to 98).

Article 5 brings into force (either entirely or for remaining purposes), on the date on which the associated Dog Control Orders (Miscellaneous Provisions) (Wales) Regulations 2007 come into force, provisions of the 2005 Act concerning controls on dogs.

Article 6 brings into force (either entirely or for remaining purposes), on the date on which the associated Statutory Nuisance (Miscellaneous Provisions) (Wales) Regulations 2006 come into force, provisions of the 2005 Act concerning a new category of statutory nuisance comprising insects emanating from industrial, trade or business premises and being prejudicial to health or a nuisance.

Article 7 brings into force (either entirely or for remaining purposes), on the date on which the associated Statutory Nuisance (Artificial Lighting) (Designation of Relevant Sports) (Wales) Order 2006 comes into force, provisions of the 2005 Act concerning a new category of statutory nuisance comprising artificial light emitted from premises so as to be prejudicial to health or a nuisance.

Article 8 contains transitional provisions requiring that a vehicle in respect of which a local authority has given a notice under Section 3(2) of the Refuse Disposal (Amenity) Act 1978, or to which a local authority has affixed a notice under Section 3(5) of that Act, in either case before 27 October 2006, will continue to be dealt with in accordance with Sections 3 and 4 of that Act as those sections applied before the coming into force of provisions under this Order.

Article 9 contains transitional provisions requiring that a vehicle on a road in respect of which an authority has given a notice under Section 99(3) of the Road Traffic Regulation Act 1984 or a vehicle to which an authority has affixed a notice under Section 99(4) of that Act, in either case before 27 October, will continue to be dealt with in accordance with Sections 99, 101 and 103 of that Act as those sections applied before the coming into force of provisions under this Order.

Article 10 makes savings under which the Dogs (Fouling of Land) Act 1996 continues to apply in respect of land that is "designated land" under that Act immediately before the repeal of that Act by article 5(g) of this Order.

Article 11 amends article 5 of the Clean Neighbourhoods and Environment Act 2005 (Commencement No 1 and Savings) (Wales) Order 2006. The 2006 Order repealed Section 32 of, and Part 2 of Schedule 2 to, the Environmental Protection Act 1990. Article 5 of the 2006 Order contained savings continuing the effect of the repealed sections in relation to waste disposal companies under the control of waste disposal authorities at the date the repeal took effect. Article 11 of this Order limits those savings so that from 27 October 2006 only Section 32(7) and (8) of the 1990 Act will continue to have effect in relation to those companies.

SI 2811/2006 The Crime (International Co-operation) Act 2003 (Commencement No 3) Order 2006

In force **1 November**. This Order brings into force Sections 32 to 36 and 42 to 46 of the Crime (International Co-operation) Act 2003. These provisions implement the 2001 Protocol to the Convention on Mutual Assistance in Criminal Matters. The 2001 Protocol requires participating countries to respond to requests for assistance with locating bank accounts and to provide banking information relating to criminal investigations.

SI 2838/2006 The Immigration, Asylum and Nationality Act 2006 (Commencement No 3) Order 2006

Article 3 of this Order brings into force on **13 November** Section 9 (abandonment of appeal) of the Immigration, Asylum and Nationality Act 2006.

Article 4 brings into force Section 58 (acquisition of British nationality etc) of that Act on **4 December**.

The provisions commenced by Article 4 of the Order will not have effect in relation to an application for registration made before 4 December 2006.

SI 2898/2006 The Asylum and Immigration Tribunal (Fast Track Procedure) (Amendment No 2) Rules 2006

In force **27 November**. These Rules amend the Asylum and Immigration Tribunal (Fast Track Procedure) (Amendment) Rules 2006 (SI 2006/2789), which amend the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 (SI 2005/560). They are made in consequence of a defect in the Amendment Rules (SI 2006/2789) and will be issued free of charge to all known recipients of the Amendment Rules.

Rule 2 amends the Amendment Rules to provide that only Schedule 1 of the Principal Rules (SI 2005/560) is to be omitted. Schedule 2 to the Principal Rules is to remain in force.

SI 2908/2006 The Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) (Amendment) Order 2006

In force **18 November**. Article 2(a) of this Order amends article 11 of the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003 to give effect to two provisions of English law in the control zones in France.

The power to take fingerprints under Section 141 of the Immigration and Asylum Act 1999 is extended to the control zones, together with Section 143 of the 1999 Act which governs the destruction of such fingerprints.

Sections 40 and 41 of the Immigration, Asylum and Nationality Act 2006 are extended to the control zones. These sections allows the Secretary of State to authorise persons other than immigration officers to search a ship, aircraft or vehicle or other thing for the purpose of satisfying himself whether there are individuals whom an immigration officer might wish to examine for the purposes of considering whether the person should enter the UK.

The Order also makes two consequential amendments to the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003.

- ◆ Article 2(b) amends article 12 to the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003 to provide that an act or omission which would constitute an offence under section 41 of the Immigration, Asylum and Nationality Act 2006 shall also be an offence if it takes place in a control zone in France.
- ◆ Article 2(c) amends Schedule 2 to the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003 to provide that section 141 of the 1999 Act shall apply in the control zone in France as modified.

SI 2930/2006 The Sex Discrimination Act 1975 (Public Authorities) (Statutory Duties) Order 2006

In force **6 April 2007**. This Order imposes specific duties on the public authorities listed in the Schedule to the Order. Both Centrex and police authorities are included in the list.

The purpose of the specific duties is to ensure better performance by listed authorities of their duty to have due regard to the need to eliminate unlawful discrimination and harassment and to promote equality of opportunity between men and women in carrying out their functions under Section 76A(1) of the Sex Discrimination Act 1975.

Article 2 requires listed authorities to prepare and publish a Gender Equality Scheme by 30 April 2007. This article also prescribes the various components of such a Scheme.

Article 3 requires listed authorities to implement certain components of each Scheme they have published pursuant to Article 2 or Article 4. They should do this within three years beginning with the date on which they published the relevant Scheme.

Article 4 requires listed authorities to prepare and publish a revised Scheme within three years after the publication of their first Scheme at the latest, and to continue to publish a revised Scheme every three years thereafter.

Article 5 provides that a listed authority's Scheme can be published as part of one or more other documents.

Article 6 requires listed authorities to take such steps as are reasonably practicable to report annually on the actions taken to meet the overall objectives in its Scheme. These reports can be published as part of another document.

SI 2931/2006 The Employment Equality (Age) (Amendment No 2) Regulations 2006

In force **1 December**. These Regulations are made under Section 2(2) of the European Communities Act 1972 and amend regulation 11 of and Schedule 2 to the Employment Equality (Age) Regulations 2006. These Regulations and the Age Regulations implement (in Great Britain) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment so far as it relates to discrimination on grounds of age. These Regulations deal with provisions relating to pensions.

SI 2952/2006 The Al-Qaida and Taliban (United Nations Measures) Order 2006

In force **16 November**. This Order gives effect to the following resolutions adopted by the Security Council of the United Nations relating to the freezing of terrorist assets: resolutions 1267(1999) adopted on 15 October 1999; 1333(2000) adopted on 19 December 2000; 1363(2001) adopted on 30 July 2001; 1390(2002) adopted on 16 January 2002; 1452(2002) adopted on 20 December 2002; 1455(2003) adopted on 17 January 2003; 1526(2004) adopted on 30 January 2004; and 1617(2005) adopted on 29 July 2005.

The Security Council resolutions referred to above oblige all member states to freeze the assets of Usama Bin Laden, members of Al- Qaida, and the Taliban and other individuals and entities associated with them, as referred to in a list maintained by a Committee of the UN Security Council, and the assets of anyone owned or controlled or acting on behalf of or at the direction of any such persons.

Article 10 makes it a criminal offence to circumvent the prohibitions or to facilitate the commission of an offence relating to a prohibition.

SI 2964/2006 The Gambling Act 2005 (Commencement No 4) Order 2006

In force **13 November**. The Order brings into force the following provisions of the Gambling Act 2005.

- ◆ Section 154(1) and (2)(b) of the Act for the purpose of allowing a licensing authority to delegate the exercise of their functions under Section 212 of the Act to a licensing committee.

- ◆ Paragraphs 1 and 7(1) and (2) of Schedule 10, and paragraphs 1 and 8(1) and (2) of Schedule 14, to the Act. Paragraphs 7(1) and (2) of Schedule 10 and paragraph 8(1) and (2) of Schedule 14 are concerned with enabling licensing authorities to prepare statements of principles relating to the exercise of their functions under respectively Schedule 10 (family entertainment centre gaming machine permits) and Schedule 14 (prize gaming permits). Paragraph 1 of each of Schedules 10 and 14 defines terms used in the relevant Schedule.
- ◆ Paragraph 7(3) of Schedule 10, and paragraph 8(3) of Schedule 14 to the Act, but only for the purpose of enabling a licensing authority to exercise their functions under paragraphs 7(1) and (2), and 8(1) and (2) of Schedules 10 and 14 respectively. Paragraph 7(3) of Schedule 10 and 8(3) of Schedule 14 set out the matters to which a licensing authority shall and may have regard when exercising their functions under those Schedules.
- ◆ Subsection (2) of Section 247 of the Act which defines the expression “family entertainment centre”, and subsection (3) of that section to the extent that it gives effect to the provisions of Schedule 10 referred to in the preceding paragraph. The Order also brings into force subsection (2) of Section 289 of the Act which defines the expression “prize gaming permit”, and subsection (3) of that section to the extent that it gives effect to the provisions of Schedule 14 referred to in the preceding paragraph.

SI 2992/2006 The Natural Environment and Rural Communities Act 2006 (Commencement) (Wales) Order

In force **16 November**. Article 2 of this Order brings into force in Wales Sections 66 to 72 of the Natural Environment and Rural Communities Act 2005.

Sections 66 to 71 of the Act amend the law in relation to rights of way and mechanically propelled vehicles.

Section 66 restricts the creation of rights of way for mechanically propelled vehicles.

Section 67 ends certain existing but unrecorded public rights of way for mechanically propelled vehicles.

Sections 68 and 69 amend the Highways Act 1980.

Section 70 makes supplementary provision.

Section 71 is an interpretation provision.

Section 72 inserts new Sections 22BB and 22BC into the Road Traffic Regulation Act 1984, which give a National Park authority power to make traffic regulation orders and other traffic-related orders under the 1984 Act in relation to roads in the National Park that are either byways open to all traffic, footpaths or bridleways or unsealed carriageways. The new sections give the National Assembly the power to make regulations to modify the application of the 1984 Act in relation to certain orders made by National Park authorities under the new sections. The National Assembly does not propose to exercise this power at this time.

Notes

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