CENTREX
HELPING TO DEVELOP POLICING

Digest

October 2006

Legal Validation and Research

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

Included in this edition is an article covering a recent employment tribunal case the result of which is likely to impact on how forces justify the payment of additional allowances to officers, both male and female, in the future.

Also included is explanation of the new MG17 Form which is intended to encourage the use of the Proceeds of Crime Act 2002 against offenders; updated advice on how to deal with foreign passports and identity cards that are handed in to the police, guidance on dealing with munitions in marine aggregates, and guidance on identifying suicide 'hotspots'.

This edition also contains numerous articles on statistical reports that have been released during the last month. In relation to crime figures these include, the Crime in England and Wales: Quarterly Update to June 2006, and other specific reports on the subjects of; Anti-Social Behaviour; Drug Misuse; Black and Minority Ethnic Groups' Experiences and Perceptions of Crime, Racially Motivated Crime and the Police; and Statistics on Football-Related Arrests and Banning Orders Season 2005-06.

Other reports covered include the Annual Police Performance Assessments; MAPPA Annual Reports; the Electronic Monitoring of Adult Offenders; findings from Domestic Violence Enforcement Campaigns 2006; and the Emergency Response to London Bombings.

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

Case law in association with lawtel from Sweet & Maxwell

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This document is intended as a guide to inform organisations and individuals of current and forthcoming issues in the policing environment and Centrex cannot guarantee its suitability for any other purpose. Whilst every effort has been made to ensure that the information is accurate, Centrex cannot accept responsibility for the complete accuracy of the material. As such, organisations and individuals should not base strategic and operational decisions solely on the basis of the information supplied.

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Equal Pay Case

In a recent employment tribunal hearing, the tribunal ruled in favour of two Police Constables from the West Midlands in what is believed to be the first successful equal-pay case against the Police in 36 years of the legislation being enacted.

The dispute concerned Special Priority Payments, an annual type of allowance which can be paid to officers who perform demanding roles. The decision as to which posts will receive such payments is left to the discretion of each police force.

West Midlands Police made these payments to officers in a number of posts including frontline Police Constables, but only paid the allowance to those officers who were available to work 24 hours a day, 7 days a week, what the Force termed the '24/7' requirement.

The two female West Midlands officers were in frontline police posts but did not work overnight due to childcare responsibilities. They claimed they should still be entitled to the allowance as their job was no less demanding than that of officers who performed the same role but who worked the night shift. They were supported in their claim by the Police Federation and represented by the legal firm Russell Jones and Walker.

The Chief Constable of West Midlands disagreed, claiming that the role was more demanding for officers who were available to work at night.

Ruling in the two officers favour, the tribunal found that there was no material difference between the work carried out at night and the work carried out during the day, and hence the Force could not justify treating the officers differently. The tribunal ruled that the female officers were entitled to the same rate of pay as their male colleagues, including the Special Priority Payments.

The Police Federation and the solicitor Juliette Franklin from Russell Jones & Walker who acted for the officers have stated that the decision will have an impact on how forces justify the payment of additional allowances to officers, both male and female, in the future.

Website addresses for Russell Jones & Walker and the Police Federation are **http://www.rjw.co.uk/** and **http://www.polfed.org/**

Black and Minority Ethnic Groups' Experiences and Perceptions of Crime, Racially Motivated Crime and the Police: Findings from the 2004/05 British Crime Survey

The Research, Development and Statistics Department of the Home Office, has published a report the focus of which is to examine Black and Minority Ethnic (BME) groups' experiences of crime and racially motivated crimes and to compare these with the White population based on information from the 2004/05 British Crime Survey.

Some of the main findings include:

- That there were no differences in the overall prevalence risk of victimisation between ethnic groups, with the exception of people from a Mixed ethnic group (29%) being at higher risk of victimisation than White people (24%).

- People from a Mixed ethnic group (11%) were also at higher risk of becoming a victim of a personal crime than people from Asian (6%) and White (6%) ethnic groups.
- In terms of overall violent incidents people from a Mixed (7%) ethnic group were at higher risk of victimisation than people from all other ethnic groups (White 4%, Asian 3%, Black 4% and Chinese and Other 4%).
- The risk of becoming a victim of a racially motivated crime was low across the groups, 2% of people from the BME groups, and 1% of people from White and Chinese and other ethnic groups, had been a victim of a racially motivated crime in the last 12 months.
- A larger proportion of respondents from BME groups (11%) perceived incidents as having been racially motivated compared with White respondents (1%).
- The most common reasons mentioned for why incidents had been perceived as racially motivated were that racist language had been used during the incident, because of the offender's/victim's race or country of origin, and because the incident had happened before.
- People from all BME groups had higher levels of confidence in the police compared with the White group, with the exception of respondents from the Mixed ethnic group.
- People from Mixed (16%), Asian (13%) and Black (15%) ethnic groups were more likely to have been stopped in a vehicle by the police compared with people from White (9%) and Chinese and Other (6%) ethnic groups. There were no differences in the likelihood of being stopped on foot between the groups. Of those who had been stopped, respondents from BME groups were more likely to be searched.

The report can be found in full at
http://www.homeoffice.gov.uk/rds/notes/october06_summaries.html

DCA Human Rights Guidance for Public Sector Managers

The Department for Constitutional Affairs (DCA) has issued guidance for public sector staff on how human rights apply to their work. The information is aimed at and is relevant to people working at all levels within any public authority.

The guidance comes in the form of a handbook entitled, 'Human Rights: Human Lives: A Handbook for Pubic Authorities' and also a short introduction to human rights called, 'Making Sense of Human Rights'.

The guidance covers:

- The background on where the Human Rights Act 1998 originated and what rights it covers.
- Explanations of each of these rights and how they may be relevant to different public authorities.
- Real-life examples and case studies that show the practical aspects of human rights.
- A jargon-buster and answers to what are frequently asked questions.
- The guidance also offers details on how to find further information and useful contacts.

The guidance provides a very detailed yet clear explanation of how the Act affects public authorities. The main points of guidance which are offered in relation to public authorities are that:

- They have an obligation to treat people in accordance with their Convention rights. If someone thinks that their rights have been infringed by a public authority then these people can take their complaint to a UK court or tribunal.
- If possible, existing legislation must be applied in a way which is compatible with rights set out in the Act. Therefore legislation which public officials operate under may have to be interpreted and applied in another way than before the Act came into force.
- Public authorities are obliged to act in accordance with the Convention rights. Thus, public authority staff need to understand human rights and take these rights into account in their work from day to day. This will apply whether officials are delivering a service directly to the public or are making new public procedures and policies.
- In decision making, the rights of one person may have to be balanced against the rights of another. If one person's rights have to be restricted they must not be restricted more than is needed to achieve the objective. This concept is classed as proportionality.
- Some Convention rights are absolute and cannot be interfered with, for example the right not to be subjected to torture or inhumane or degrading treatment or punishment.

Copies of the documents can be found at
http://www.dca.gov.uk/peoples-rights/human-rights/pdf/hr-handbook-public-authorities.pdf

Office for National Statistics Report - Focus on Gender

The Office for National Statistics has published its latest 'Focus on Gender' report. The report provides an overview of the lives of men and women in contemporary UK society. It includes information on their characteristics, experiences and lifestyles, placing particular emphasis on the differences between males and females.

On the issue of crime, the report finds that:

- Men commit more crimes than women. In 2004, male offenders in England and Wales outnumbered female offenders by more than four to one.
- In 2004, the peak age of offending was 17 for males and 15 for females.
- Men outnumber women across all major crime categories. Between 83% and 94% of offenders found guilty of burglary, robbery, drug offences, criminal damage or violence against the person were male.
- The risk of being involved in a violent incident caused by a stranger remains substantially greater for men than for women, with men being three times more likely than women to suffer this form of attack.
- Despite being more likely to be the victim of violent crime (4% of men compared with 3% of women), a greater proportion of women had a high level of worry about violent crime (24% of women compared with 9% of men).

- Roughly equal proportions of men and women had a high level of worry about car crime, whereas women were more likely to be very worried about burglary than men (15% and 10% respectively).

The report can be found in full at
http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=10923&Pos=1&ColRank=1&Rank=128

OSPRE® Assessors and Role Actors

Centrex is currently seeking individuals who would like to become OSPRE® (Objective Structured Performance Related Examination) assessors and role actors.

Women and individuals from ethnic minority groups are encouraged to apply to become assessors and role actors on this occasion in order to address the current under-representation among assessors and reflect the community that our police officers serve.

Successful applicants will be required to attend an OSPRE® Assessor Course during one of the weeks commencing February 19, March 12 or March 26, 2007, and pass the assessments during this five day classroom based programme. If successful, applicants will subsequently be invited to attend an OSPRE® Assessment Centre and display their competence over a period of five days. If competence is demonstrated in assessing and role acting at the Assessment Centre, a Certificate of Competence will then be awarded.

Initially there are 42 places available however, dependent on the number of applicants who meet the criteria, more places and courses may be made available later in the year. The course will be delivered free of charge, there will be no payment made for attending. However, meals, refreshments, travelling expenses and overnight accommodation will be provided. Individuals must be able to give a commitment to attending an assessment centre for a minimum of 1 week. Payment for the role at the assessment centres is currently £100 per day plus travel expenses.

Closing date for completed application forms is Friday 17 November, 2006.

To apply and for more details, please contact: Centrex Examinations & Assessment, Consultancy Team Administration, Yew Tree Lane, Pannal Ash, Harrogate, North Yorkshire, HG2 9JZ or email **consultancyteam@centrex.pnn.police.uk** or telephone 01423 876614.

Police Race and Diversity Learning and Development Programme

There have been two recent changes made in respect of the Police Race and Diversity Learning and Development Programme (PRDLDP).

The first is that on 1 October the PRDLDP board introduced a new minimum assessor requirement on an interim basis of 12 months. Under this new requirement, assessors will still have to be trained to the A1 standard but now do not have to be Qualified as A1 assessors. The reason for the interim change is to allow time for more assessors to become qualified. It is hoped that in 12 months time, if sufficient numbers of assessors have qualified, it may be possible to revert to the original requirement.

In answer to the question, “What does ‘trained to the A1 standard’ actually look like then?”, the PRDLDP board answer is that the important overarching objective is to ensure that every assessor has the necessary skill, knowledge and understanding to:

- Assess competence in the work place against an agreed standard, using a range of assessment methods.
- Give feedback on assessment decisions.
- Contribute to internal quality assurance processes.

Assessor training will need to provide individuals with the underpinning knowledge to meet the A1 requirements, covering such issues as assessment planning, judging evidence, giving feedback and making assessment decisions.

The second change is that the National Occupational Standards (NOS) 1A4 and 1A5 have been replaced with two new NOS: AA1 (Promote equality and value diversity) and AA2 (Develop a culture and systems that promote equality and value diversity).

These new NOS are designed to be more relevant to people in the justice sector. The previous 1A4 and 1A5 were originally developed for the care sector and people in the justice sector were finding them difficult to understand and apply to their work because of the terminology used.

Those working to the old standards can continue to do so and have until 31 March 2007 to complete them. If 1A4 and 1A5 are integral to an accredited programme of study, students are requested to contact the owner of that programme for information about transfer to the new standards.

Anyone assessed as competent against the old units does not need to be assessed again. However, once deemed competent, people will be expected to maintain their competence, so they will need to be assessed again as part of the yearly PDR process against the new NOS. In time, everyone will be assessed against the new NOS.

A detailed breakdown of the new Standards can be found at
http://www.skillsforjustice.com/category.php?ID=284

For any queries on the new standards contact Sue Hunter: 0114 231 7379 or email
sue.hunter@skillsforjustice.com
Simon Leckie: 07917 326573 or email **simon.leckie@skillsforjustice.com**

For information about the PRDLDP contact the Home Office:
Julia Wortley telephone 020 7035 0882 or Ed Barnard telephone 020 7035 0910

Review of NOS and NVQs for Policing and Law Enforcement

Skills for justice is currently reviewing the original National Occupational Standards (NOS) units which were developed for Policing and Law Enforcement in 2002 and is seeking views on proposed changes in relation to:

- Investigation/Interviewing.
- IPLDP.
- Promotion Review/Management.

And in addition over the next few weeks the following specialist areas will also be available for consultation:

- Custody.
- CHIS/Intelligence.
- Surveillance.

The deadline for consultation feedback is 8 December 2006. Feedback will then be collated during December and the working groups will meet again in January to agree final versions of the units and these final versions will be submitted for approval by 28 February 2007. The final revised NOS and NVQs are expected to be in the public arena by early Summer 2007.

Further information can be found at
http://www.skillsforjustice.net/template01.asp?PageID=258

HSE Legislation Webzone

The Health and Safety Executive (HSE) has launched a new webzone containing information on health and safety law, including existing laws enforced by HSE and updates on forthcoming legislation. The aim of the site is to raise awareness of the range of health and safety legislation that applies to workplaces in Great Britain. It can be found at **http://www.hse.gov.uk/legislation/index.htm**

HSE REACH Helpdesk

The Health and Safety Executive has launched a support helpdesk to UK businesses in anticipation of the Registration, Evaluation and Authorisation of Chemicals (REACH) regulations. Currently, the regulations are before the European Parliament, and are expected to enter into force around April 2007.

REACH is the new European regime for the regulation of chemicals for which the HSE will be the Competent Authority (CA). Once the regime is operational, the CA, in addition to providing the helpdesk, will monitor compliance, evaluate substances, take appropriate regulatory action and co-ordinate UK enforcement.

More information is available at http://www.hse.gov.uk and the helpdesk can be contacted on **ukreachca@hse.gsi.gov.uk**

Natural Environment and Rural Communities Act 2006

Several further provisions in the Natural Environment and Rural Communities Act 2006 are being brought into force on 1 October 2006 (see SI 2541/2006 for full list of provisions). From this date English Nature and the Countryside Agency are dissolved and their functions are (subject to the provisions of this Act) transferred to Natural England.

The provisions being brought into force on 1 October that are particularly relevant to the staff of police forces are:

- Section 40 - Replaces and extends a duty from Section 74 of the Countryside and Rights Of Way Act 2000 and requires all public sector bodies, including police forces to consider biodiversity in the work they do.
- Section 43 - Makes it an offence to possess a pesticide containing a prescribed ingredient unless certain criteria are met. The ingredients will be listed on an Order made by the Secretary of State for Environment, Food and Rural Affairs, following full consultation. Sections 44 and 45 confirm that Rural Development Service wildlife inspectors will enforce this offence.
- Section 48 - Substitutes a new Section 1(6) into the Wildlife and Countryside Act 1981, to extend the protection afforded to wild birds to those which have been lawfully released as part of re-population or re-introduction programme. It also extends the sales offences in Section 6 of the 1981 Act to these released birds.
- Section 49 - Makes it an offence to keep or have in one's possession any bird listed in Schedule 4 of the 1981 Act within 5 years of having been convicted of an offence under Section 7(1) (that is to possess any Schedule 4 bird which has not been registered and ringed or marked in accordance with regulations made by the Secretary of State).
- Section 50 - Amends the 1981 Act to provide for an Order to be made to prohibit the sale of certain species. The species to which this provision applies will be determined following consultation.
- Section 55 - Introduces two new offences into the 1981 Act in relation to sites of special scientific interest (SSSIs). It is already an offence for public bodies or statutory undertakers (Section 28G authorities) to carry out operations which are likely to damage an SSSI without following the various requirements in Section 28H. It will now also be an offence where they have permitted operations likely to cause damage without following the various requirements in Section 28I. The second new offence builds on the existing third party offence in Section 28P(6) of intentional or reckless destruction or damage to the listed features of an SSSI or disturbance of its listed fauna, without reasonable excuse, but removes the requirement to prove knowledge that the land affected is an SSSI. Accordingly it carries a lower penalty.
- Section 58 – Inserts a new Section 28S into the 1981 Act which empowers Natural England and the Countryside Council for Wales to erect, maintain and remove signs or notices on SSSIs. It also creates an offence of intentionally or recklessly take down, damage destroy or obscure such signs or notices.

Defra, in partnership with the Local Government Association, the Association of Local Government Ecologists, English Nature, the Countryside Council for Wales, Welsh Assembly and Wildlife and Countryside Link are working on developing guidance to assist those affected in fulfilling their responsibilities.

It is expected that two types of guidance document will be produced. These will be specific guidance aimed at the needs and requirements of local authorities and a more generic guidance aimed at all public bodies affected.

It is anticipated that the guidance documents will published in early 2007.

Copies of the Act can be downloaded from
http://www.defra.gov.uk/rural/ruraldelivery/bill/default.htm

or

http://www.opsi.gov.uk/acts/acts2006/20060016.htm

Thresholds of Prescribed Amounts of Controlled Drug for Proof of Intention to Supply

The Government has announced that, following the responses it received to a consultation earlier this year to set a threshold for the amount of drugs a person can possess without being charged with dealing (see February *Digest*), it has decided that it will not be introducing the provision which is contained in Section 2 of the Drugs Act 2005 at the present time.

Road Safety Bill Amendments

There have been more amendments to the Road Safety Bill since our article in the August 2006 *Digest* (pages 14-15). As stated previously, the Bill includes amendments to the previous road traffic legislation.

The Bill has returned from the Commons with the addition of major new clauses concerning:

Compulsory surrender of old-form licences

After Clause 38 there is a new clause dealing with the compulsory surrender of old-form licences. This amends the Road Traffic Act 1988 and inserts a Section 98A into it. This Section will mean that the Secretary of State may by order require the holders of licences of a specific description, or any specified description of the holders of such licences, to surrender the licences to the Secretary of State. The licences which could be specified to surrender are:

- Licences which are not in photocard form, or
- Licences in photocard form of a description which is no longer specified by the Secretary of State as a form in which the licences are granted.

The order must specify a date by which they have to be surrendered and there can be different dates for different descriptions of licence holders. A new licence will be granted to every holder of a licence surrendered if they pay a fee, if required, and provide the Secretary of State with evidence required (for example possibly a photograph of current likeness).

An offence will also be created in relation to this. It will be an offence for a person, without reasonable excuse, to fail to comply with any requirement to surrender the licence and counterpart imposed by an order. The Clause would also alter the Road Traffic Offenders Act 1988 so that the penalty for this offence, on conviction summarily, is a fine up to level 3 on the standard scale.

Prohibition on driving: immobilisation, removal and disposal of vehicles

A new Schedule has been inserted into the Bill after Schedule 3, dealing with prohibition on driving: immobilisation, removal and disposal of vehicles. This means that the Secretary of State will be able to make regulations with respect to any case where, on or after a date that may have been prescribed, the driving of a vehicle has been prohibited under:

- Section 99A(1) of the Transport Act 1968 (powers to prohibit driving of vehicles in connection with contravention of provisions about drivers' hours).
- Section 1 of the Road Traffic (Foreign Vehicles) Act 1972 (powers to prohibit driving of foreign goods vehicles and foreign public service vehicles).
- Sections 69 or 70 of the Road Traffic Act 1988 (powers to prohibit driving of unfit or overloaded vehicles).
- Section 90D of the Road Traffic Offenders Act 1988 (power to prohibit driving of vehicle on failure to make payment in compliance with financial penalty deposit requirement).

The regulations which the Secretary of State can issue may provide that an authorised person (or person acting under their direction) may:

- Fix an immobilisation device to the vehicle, and/or
- Move the vehicle, or direct it to be moved, for the purpose of enabling the fitting of the above device.

An 'authorised person' is defined as a constable or an examiner appointed by the Secretary of State under Section 66A of the Road Traffic Act 1988.

In carrying out the above, an authorised person (or person acting under their direction) must affix a notice to the vehicle stating that the device has been fixed to the vehicle, with a warning that they should not attempt to drive the vehicle until the device has been taken off. The notice will also be required to contain information specifying the steps to be taken to secure the release of the device and also any other information as may be prescribed.

The regulations can also include the creation of a number of offences, including:

- Removing or interfering with an immobilisation notice except by or with the authority prescribed. The penalty for this offence would be on summary conviction to a fine not exceeding level 2 on the standard scale.
- Without being authorised to do so, removing or attempting to remove an immobilisation device fixed to a vehicle in accordance with the regulations. The penalty on summary conviction would be a fine not exceeding level 3 on the standard scale.
- Making a false, or in any material respect misleading, declaration with a view to securing the release of a vehicle from an immobilisation device fixed in accordance with the regulations. The penalty, on summary conviction, would be a fine not exceeding the statutory maximum or, on indictment, would be imprisonment for a term not exceeding two years or a fine or both.

- Failing to comply within a reasonable time with a direction made by an authorised person (or a person acting under his direction) made under the regulations to remove the vehicle or deliver it into the custody of a specified person. Penalty on summary conviction would be a fine not exceeding level 5 on the standard scale.

The Schedule also states that the regulations could make provision for the application of any or all of Sections 1, 6, 11 and 12(1) of the Road Traffic Offenders Act 1988 to an offence for which provision is made by the regulations.

For a copy of the amendments to the Bill go to
http://www.publications.parliament.uk/pa/ld200506/ldbills/150/2006150.pdf

Reclassification of Methylamphetamine to Class A Drug

The Government has laid a draft order before Parliament which, subject to approval there, will reclassify methylamphetamine (known as 'crystal-meth') from a Class B drug to a Class A drug, by moving it from Part 2 of Schedule 2 to the Misuse of Drugs Act 1971 to Part 1 of that Schedule.

Ban on Commercial Sale of Animals at Pet Fairs

The Department for Environment, Food and Rural Affairs (DEFRA) has proposed new measures, to be introduced in the Animal Welfare Bill, banning the commercial sale of animals at pet fairs.

The move comes as a result of a judicial ruling in the case of Haynes v Stafford Borough Council (2006) which confirmed that commercial pet fairs are already illegal under the Pet Animals Act 1951 (which makes it an offence for a business to sell pets in any temporary market).

However, there will be exemptions to the new measures in the cases of koi carp, racing pigeons and poultry, but these will need to be licensed by the local authority.

Pet fairs which do not involve the sale of animals, or that do involve the sale of animals but not in the course of a business, can continue without the need for a licence.

A full consultation on the proposals will take place before they are put forward to Parliament.

Drinking Vessels (Toughened Plastic) Bill

MP Mr Mark Lancaster has presented a Bill to Parliament to require that toughened plastic be used for drinking vessels in late night bars, public houses and clubs; and for connected purposes. On 24 October the Bill was read the first time, ordered to be read a second time on Friday 17 November and to be printed.

Reports on the Emergency Response to London Bombings

Two reports have recently been published on the emergency response to the London bombings on 7 July 2005.

The first, published by the Home Secretary John Reid, entitled, 'Addressing Lessons from the Emergency Response to the 7 July 2005 London Bombings', examines the actions of the emergency services in response to the July 7 bombings in London last year. It concludes that the response to the bombings was sound and led to significant acts of bravery from the emergency services, voluntary groups and public alike.

The report does highlight a number of shortcomings, and sets out a number of areas where the response could have been better, particularly in relation to the support of victims. The report describes the work in hand to address these problems.

The main findings of the report are:

- The response to the bombings demonstrated strength and flexibility of the emergency response arrangements.
- The need to improve on sharing information and provide practical support to bereaved and survivors.
- The importance of establishing reception and assistance centres quickly.
- Telecommunications systems used by the emergency services worked well, although there were problems with the older systems

The second report published by the London Regional Resilience Forum, entitled, 'Looking Back, Moving Forward: The Multi–Agency Debrief:

Lessons identified and progress since the terrorist events of 7 July 2005' summarises the main findings and lessons learned from the emergency services and other key agencies in response to the bombings and sets out the progress made.

The reports are available via the following links
http://security.homeoffice.gov.uk/lessons-learned

and

http://www.londonprepared.gov.uk/

HOC 29/2006 Intervention Orders

This Circular provides guidance on intervention orders which can be made to accompany anti-social behaviour orders. They are provided for by Sections 1G and 1H of the Crime and Disorder Act 1998 (as inserted by Section 20 of the Drugs Act 2005). These provisions came into force on 1 October 2006, by virtue of the Drugs Act 2005 (Commencement No 4) Order 2006 (SI 2006/2163).

Intervention orders are civil orders designed to tackle drug-related anti-social behaviour. They are aimed at drug users who become a nuisance to those around them.

From 1 October 2006, an authority which is applying for an anti-social behaviour order can also apply for an intervention order. Such an order will require individuals who act anti-socially as a result of their drugs misuse to comply with positive requirements to tackle their behaviour. The court will only make an order if it is satisfied that the drugs misuse is responsible for the perpetrator's anti-social behaviour (to be assessed using a report from an appropriately qualified individual) and where appropriate treatment is available. However, the court cannot make an intervention order if:

- The perpetrator is already subject to another intervention order.
- The perpetrator is undergoing any other treatment in relation to their anti-social behaviour.
- The court has not been notified by the Secretary of State that arrangements are in place for implementing the order.

The order, which can only be made in respect of individuals who are aged 18 or over, can compel the recipient to undergo drug treatment or face a fine. It can last for up to 6 months.

The punishment for non-compliance of an order is a level 4 fine. Officers responsible for supervising the order must report any breaches to the applying agency.

In addition to providing guidance on intervention orders, Home Office Circular 29/2006 also draws attention to the fact that, from 1 September 2006, the Environment Agency and Transport for London are added to the list of 'relevant authorities' which can apply for:

- Anti-social behaviour orders under Section 1 of the Crime and Disorder Act 1998.
- Similar orders under Section 1B - orders in county court proceedings.
- Variation or discharge of similar orders made on conviction in criminal proceedings or to individuals who are subject to certain consultation requirements prior to making such applications.

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

Consultation on Proposed Amendments to List 99 and the Day Care and Child Minding (Disqualification) (England) Regulations 2005

The Department for Education and Skills has published a consultation document about amendments it proposes to make to the Education (Prohibition from Teaching or Working with Children) Regulations 2003 and to the Day Care and Child Minding (Disqualification) (England) Regulations 2005. The purpose of the amendments is to tighten up the current barring regime until it is replaced by a new vetting and barring system which will be introduced by the Safeguarding Vulnerable Groups Bill, currently going through Parliament (see article on these provisions in the April 2006 *Digest*).

The proposed changes to the Education (Prohibition from Teaching or Working with Children) Regulations 2003 will mean that individuals cautioned, as well as convicted, for sexual offences against children will automatically be entered on List 99 and barred from working in schools and other education settings.

It is proposed that there will be three ways a person can be added to List 99:

- Automatic barring - Individuals over 18 who are cautioned or convicted for a specified sexual offence against a child will be automatically entered on List 99, with no ability to make representations against their entry for at least 10 years.
- Automatic inclusion - Individuals over 18 who are cautioned or convicted for a specified sexual offence against a child or an adult will be automatically entered on List 99; while they would be able to make representations against their entry, they would remain on List 99 during that process, and it would be unlikely that such representations would be successful where an offence had occurred.
- Discretionary barring – This provision will remain the same as it is at present meaning, that anyone convicted of, or cautioned for, offences which are not specified will be considered under this provision.

In relation to the Day Care and Child Minding (Disqualification) (England) Regulations 2005, the intention is to strengthen these Regulations further and align the Regulations more closely with the changes proposed to the List 99 amendment regulations.

The closing date for comments on the proposals is 2 January 2007. It is anticipated that the new regulations will be brought into force early in 2007.

The consultation paper can be found at **http://www.dfes.gov.uk/consultations/**

Statistics on Football-Related Arrests and Banning Orders Season 2005-06

The Home Office has released a report on football-related arrests and banning orders for the 2005-06 football seasons. The statistics cover all domestic and international games played in England and Wales from August 2005 to June 2006. The report shows that:

- Overall, arrests for football-related offences decreased by 7% in 2005/06 to 3,462. This is the third consecutive season of a decrease in arrests.
- There were a total of 1,221 arrests at Premier League games (a rise from 984 in 2004-05).
- There were 877 arrests at Championship matches (a decrease of 170 on the previous season).
- 43% of all matches were police-free.
- The clubs with the highest number of arrests were: Tottenham Hotspur (169), Manchester United (147), Chelsea (126), Sheffield Wednesday (89), Coventry City (88) and Leeds United (76).
- A total of 995 new banning orders were imposed in the 2005/06 season.
- On 10 October 2006 there were 3,387 banning orders in existence.
- The clubs with the most banning orders in existence are Leeds United (115), Portsmouth (110), Cardiff City (109), Stoke City (108) and Manchester United (106).
- Stoke City gained the largest number of orders in the year (58).

The report is available on the Home Office website via
http://www.homeoffice.gov.uk/documents/football-arrests-0506

Freedom of Information Requests

Following the House of Commons Constitutional Affairs Select Committee's (CASC) Report, 'Freedom of Information – one year on', which contained a number of conclusions and recommendations regarding the operation of the Freedom of Information Act 2000 (FOI Act), the Government has now published its response to the Committee's report.

One of the CASC recommendations was that it could not see a need to change the FOI fee regulations. However, in its response the Government has stated that it is minded to bring about changes to:

- Include reading time, consideration time and consultation time in the calculation of the appropriate limit (£600 for central government and £450 for other public bodies), above which requests could be refused on cost grounds;

and

- Aggregate requests made by any legal person (or persons apparently acting in concert) to each public authority (e.g. government department) for the purposes of calculating the appropriate limit.

It also states that the Government is not minded to agree to:

- A flat fee for all requests (although this could not be ruled out permanently as Parliament had voted powers in the FOI Act to allow such fees).
- A reduction in the cost threshold to £400.

The Government's position is partially based on the independent review report commissioned by the Secretary of State for Constitutional Affairs to look at the impact of the FOI Act.

The terms of reference for the review set out four key objectives:

- To assess the cost of processing FOI requests across the public sector.
- To include an assessment of the pressure points in respect of the different activities that need to be undertaken in processing a request and the different levels of engagement required (e.g. senior management involvement).
- To model a system for assessing the impact of processing FOI requests in the wider public sector (i.e. in local government, police, etc).
- To analyse how different options for amending the FOI fee regime would impact on the costs of operating FOI across the different parts of the public sector.

The terms of reference identified four options for amending the fee regime for consideration:

- Option 1: the introduction of a flat fee for FOI requests.
- Option 2: allowing the aggregation of non-similar requests from the same requester for the purposes of assessing whether the costs of responding to the request were below the appropriate limit.
- Option 3: including reading, consideration and consultation time for the purposes of assessing whether the costs of responding to the request were below the appropriate limit.
- Option 4: lowering the current appropriate limit thresholds of £600 for central government and £450 for other public bodies.

The report sets out detailed analysis of each option and a brief summary and recommendations.

It shows that:

- Allowing reading, consideration and consultation time to count towards the appropriate limit, alongside aggregation, is likely to have the greatest impact on reducing the most expensive requests while at the same time preserving the right of the majority of requestors to information.
- On its own, a flat rate fee is likely to have the most substantial impact on reducing the volume of requests. However, it is likely that a large proportion of requests deterred by a flat rate fee would be the less costly one-off requests from members of the public.

Other recommendations of interest are:

- The changing of the wording of Section 14 of the FOI Act from 'vexatious request' to 'vexatious requester'.
- Introducing a charge for requesting an internal review and/or for the Information Commissioner's Office appeals process.

The Government has stated that it is to take stock of the responses to this position before bringing forward secondary legislation.

All three reports referred to in this article can be found at
http://www.dca.gov.uk/foi/reference/constitutionalAffairsCommittee.htm

Home Office Statistical Bulletin 16/06 Crime in England and Wales: Quarterly Update to June 2006

This Statistical Bulletin looks at data collected in the British Crime Survey (BCS) and recorded crime statistics as reported to the police.

The latest statistics from the BCS quarterly update to June 2006 show:

- Overall crime stable.
- Violent crime stable.
- All personal crime stable.
- Domestic burglary stable.
- Vehicle thefts down 6%.
- All vandalism stable.

The latest figures from the recorded crime statistics in the twelve months to June 2006 show:

- Total recorded crime down 2%.
- Overall violent crime stable.
- Domestic burglary down 4%.

- Other burglary down 5%.
- Firearm offences down 8%.
- Vehicle crime stable.
- Other thefts down 6%.
- Robbery up 5%.
- Drug offences up 16%.

Copies of the bulletin are available online at
http://www.homeoffice.gov.uk/rds/pdfs06/hosb1606.pdf

RDS Online Report 21/06 - Anti-Social Behaviour

The Research, Development and Statistics Department of the Home Office, has published a report which presents findings from the 2004/05 British Crime Survey on perceptions of anti-social behaviour (ASB); the level of experience of ASB; the nature of ASB incidents; the impact of experiencing ASB; and the personal, lifestyle and area characteristics associated with perceiving problems and experiencing ASB.

Some of the findings included in the report are:

- The most widely perceived ASB problems were young people hanging around and rubbish or litter, just under a third of people regarded these a 'very' or 'fairly big' problem.
- The most widely experienced behaviour was young people hanging around; two-thirds of people had seen this in the previous year. However some people who had experienced ASB did not perceive these behaviours to be a problem; this was most frequent among people who had seen young people hanging around.
- A large proportion of people who perceived problems with ASB had personally seen or experienced these behaviours in the previous 12 months, for example 85% of people who perceived problems with drunk and rowdy behaviour had experienced this in their area.
- Generally people who held positive views about their community were less likely to have experienced ASB than those who had negative views. However, it is not possible to establish whether experiencing ASB lowers community cohesion or vice versa.

The report can be found in full at
http://www.homeoffice.gov.uk/rds/notes/october06_summaries.html

Home Office Statistical Bulletin 15/06 Drug Misuse Declared: Findings from the 2005/06 British Crime Survey

The Home Office has published a statistical bulletin which considers the extent of illicit drug use among 16 to 59 year olds in England and Wales in 2005/06 and trends in drug use since 1998 (the beginning of the Government's Drug Strategy) based on data from the British Crime Survey.

It particularly focuses on young people as well as looking at demographic and geographical variations in drug use, cocaine powder use and drug use amongst former truants and excludes.

Some of the key findings include:

- Between 2000 and 2005/06 the use of Class A drugs overall has remained stable. However, there has been an increase in the use of cocaine powder in the past year whilst the use of LSD has decreased.
- 10.5% of 16 to 59 year olds have used one or more illicit drugs in the last year and 6.3% in the last month.
- 3.4% of those aged 16 to 59 have used at least one Class A drug last year and 1.6% in the last month.
- Those aged between 16 and 24 reported higher levels of drug use during 2005/06.
- Those aged 20 to 24 years had the highest user rate of Class A drugs last year and during the last month.
- Amongst 16 to 59 year olds, those living in the South West reported higher levels of any illicit drug use compared to the total for England and Wales. Those living in London reported higher levels of Class A drug use than for England and Wales as a whole.
- Use of Class A drugs in the last year amongst men aged 16 to 59 has increased from 1998 to 2005/06 while for women it has remained stable.
- The use of cocaine powder has remained stable since 2000, apart from that by the 35 to 44 age group, amongst whom it has increased.
- The factors most strongly associated with cocaine powder use (in order of strength of association) are frequency of visits to nightclubs or discos, age, frequency of visits to pubs or wine bars, gender, ACORN (A Classification Of Residential Neighbourhoods') category and highest achieved educational level.
- People who had ever truanted or had ever been excluded reported higher levels of drug use than those who had never truanted nor been excluded from school.

The report can be found in full at
http://www.homeoffice.gov.uk/rds/pdfs06/hosb1506.pdf

National Drug Treatment Monitoring System Statistics for Drug Treatment Activity in England 2005/06

The National Drug Treatment Monitoring System (NDTMS) has published a statistical report on the number of problem drug misusers in contact with drug treatment agencies and general practitioners in England in 2005/06, and the proportion of discharged clients retained in drug treatment at twelve weeks following triage.

The main finding of the report is that the Public Service Agreement target set in 1998 to increase the number of individuals in contact with structured drug treatment services by 100% between 1998 and 2008 has been achieved, latest figures revealing that between then and the year 2005/06 there has already been a 113% increase.

Other findings in the report show that:

- 181,390 individuals were recorded as in contact with structured drug treatment services in England 2005/06. This is a 13% increase on figures for 2004/05 (160,450).
- 62,097 (76.5%) of new clients remained in structured treatment for 12 weeks or more following triage assessment in 2005/06.
- 141,511 individuals (78% of those treated in the year) either successfully completed treatment in 2005/06 or were retained in treatment on 31 March 2006.
- 21,108 individuals (35% of those discharged) successfully completed treatment in 2005/06.
- 120,403 individuals (66% of those in treatment) were retained in treatment on 31/03/06.
- 102,677 individuals presented to structured drug treatment services in 2005/06.

The report shows that the most frequently reported main drugs of misuse by adult clients were:

- Heroin 66% (108,000).
- Methadone or other opiates 10% (15,900).
- Crack or cocaine 11% (17,700).
- Cannabis 7% (12,300).

The most frequently reported main drugs of misuse by clients aged under 18 years were:

- Cannabis 75% (9,500).
- Heroin or other opiates 9% (1,100).
- Crack and cocaine 5% (700).

For young people under the age of 18, data is also collected on alcohol as a primary problem substance. Data on alcohol is not collected for adults

The figures in the report do not include clients treated in prisons. The full report and statistical spreadsheets can be found at **http://www.nta.nhs.uk/**

Independent Sexual Violence Advisors

A new network consisting of 38 Independent Sexual Violence Advisors (ISVAs) has been announced by the Home Office. The ISVAs will be based in Sexual Assault Referral Centres (SARCs) or in specialist voluntary centres across England and Wales and will work alongside victims from the point of crisis, such as initial contact with the emergency services. Assistance will continue throughout the legal process and beyond. In addition, the specialists will work with victims and survivors falling outside of the criminal justice system.

For more information visit **http://press.homeoffice.gov.uk**

Section 37 Identity Cards Act 2006 - Cost Report

Section 37 of the Identity Cards Act 2006, which came into force on 1 October 2006 (see SI 2602/2006) requires the Government to lay before Parliament at least every six months an estimate of the public expenditure likely to be incurred on the Identity Cards Scheme over the following ten years.

The first cost report has been published by the Government. It explains the benefits and the approach to implementation, and provides cost estimates based on the latest business case. It estimates that the total resource costs of providing passports and ID cards to UK nationals from October 2006 to October 2016 will be £5.4 billion. This figure is broken down into set-up costs of £290m and operational costs of £5,100m.

The full report can be found at
http://www.identitycards.gov.uk/news-publications-legislative.asp

Briefing Notes on Computer Crime and Data Encryption

The Parliamentary Office of Science and Technology, an office of both Houses of Parliament, charged with providing independent and balanced analysis of public policy issues that have a basis in science and technology has recently published two briefing notes, one the subject of computer crime the other on data encryption.

The computer crime briefing note discusses the scale and nature of such crime, examines challenges faced in tackling it and looks at the technical solutions and measures taken by the government, commercial vendors, Internet Service Providers (ISPs) and individual users to tackle the problem.

The data encryption briefing note outlines encryption techniques, their applications and their reliability. It also discusses Government proposals to bring into force Sections 49 to 56 of the Regulation of Investigatory Powers Act 2000.which relate to the investigation of electronic data protected by encryption (see article in June *Digest*).

Both briefing notes can be found at
http://www.parliament.uk/parliamentary_offices/post/new.cfm

Guide on How to Identify Local Suicide 'Hotspots' and the Introduction of Preventative Measures

The Department of Health has published a guidance document which provides advice on how to identify potential hotspots and suggests measures that can be introduced at such 'hotspots', to deter people who want to kill themselves.

It discusses the pros and cons of the measures available, including Physical barriers, Signs and telephone hotlines, Suicide patrols, Training for staff of non-health agencies working at or near hotspots and Restrictions on media reporting of suicides at hotspots.

The guidance recommends the setting up of a countywide Inter-agency Forum on Self-Harm & Suicide to improve the integration of services, to share evidence on best practice and to own a portfolio of work aimed at reducing suicide and self-harm. It states that the Police and other emergency services have a key role to play and lists other agencies that may need to be involved in the local consultation process.

It suggests that when collecting information of local suicide 'hotspots' that police operational logs could be a good source of information to assist in identifying the locations of such incidents as they will contain details of some attempted or threatened suicides, where death may have been prevented by the intervention of police officers or members of the public.

New figures which have been released by the Department of Health show that the national suicide rate continued to fall last year and now stands at its lowest ever level. The three year average is now 8.5 deaths per 100,000, down from a baseline of 9.4 deaths per 100,000 in 1995. The drop in the figures is partly attributed to the introduction of legislation which reduced the size of paracetamol and aspirin packs which has led to a drop in the number of suicides involving overdoses of paracetamol or aspirin, and examples of successful projects where local agencies have worked together and successfully deterred suicides in high-risk locations.

The guide and associated documents can be found at **http://www.nimhe.csip.org.uk/**

Use of Metal Detectors in Schools

Education Secretary Alan Johnson has announced that the Department for Education and Skills (DfES) will be issuing guidance to schools on the use of metal detector-type screening devices in schools for the purpose of screening for knives or other weapons.

Before making this announcement, the DfES sought legal advice on the legality of the use of such devices on school premises, particularly on the issue of using blanket non-contact or minimal contact screening for weapons without the need for consent or grounds of suspicion to do so. The types of devices that are expected to be considered suitable for use are 'arch' and 'wand' metal detectors, currently in wide use in airports.

Mr Johnson has said that the decision as to whether to use this type of equipment will rest with head teachers, but that head teachers would be expected to consult with school governors, parents and community leaders before a decision to use it is made.

The use of this equipment is part of the current Government strategy aimed at reducing possession of knives and weapons in the school environment. New powers in the Violent Crime Reduction Bill (presently going through the parliamentary process) to carry out a hands-on search are a further part of this strategy.

We have been informed by the DfES that if/when the powers within the Violent Crime Reduction Bill are introduced the guidance will go out to full consultation and will then be published on its website.

HM Treasury Consultation on a Review of the Regulatory Regime for Money Service Businesses

The consultation outlines a package of proposals to help reduce the harm caused by crime and terrorism by combating abuse of Money Service Businesses (MSBs). The MSB sector consists of: Bureaux de Change, Money Transmitters and Cheque Cashers.

Specifically, the consultation paper puts forward a package of proposals, the majority of which would have no new regulatory burden on the sector, but would have important implications for the regulator. The proposals include:

- Replacing the current registration system with a licensing system to prevent criminal entry into the sector and enable the extraction of criminal elements already in the sector.
- Adopting a more risk-based and intelligence-led approach to assurance and enforcement visits by the supervisor, focussing attention on the highest risk operators.
- Requiring financial records to be maintained in a consistent form, and in English to establish actionable audit trails for investigators.
- Strengthening the sector's compliance culture and improving compliance with existing and forthcoming money laundering and terrorist finance requirements through.
- Tackling serious or persistent non-compliance among MSBs including through prosecution.

The consultation document can be found at **http://www.hm-treasury.gov.uk/index.cfm**

New MG17 Form

The revised Manual of Guidance is due to be published within the next few months. Included in the revised Manual will be a new form, the MG17. This form is intended to encourage the use of the Proceeds of Crime Act 2002 against offenders. The form has been designed following research that suggested that referrals for confiscation to Financial Investigation Units in some forces were not being considered and in response to Government desires that the POCA legislation should be used robustly.

The MG17 form will help officers to make an early assessment of an offender's assets at the time of arrest. MG17 forms will be completed by officers in conjunction with the CPS caseworker and then forwarded to the force Financial Investigation Unit for assessment for confiscation. When completed, forms will be classed as restricted documents. It is expected that the introduction of MG17 form will have some impact on forces' administrative processes and that police forces procedures and use of the MG17 will be part of future inspections of forces.

MAPPA Annual Reports

The Home Office has published the annual Multi-Agency Public Protection Arrangements (MAPPA) reports of the 42 Responsible Areas in England and Wales.

There are three categories of offenders managed through MAPPA.

- Category 1: Registered Sex Offenders - offenders required to comply with the notification requirements (often referred to as registration) set out in the Sexual Offences Act 2003.
- Category 2: Violent or other sex offenders - violent offenders sentenced to imprisonment for 12 months or more, sex offenders not required to register, and offenders detained under hospital orders.
- Category 3: Other offenders - offenders who do not fall into categories 1 or 2, but because of the offences committed by them (wherever they have been committed) are considered to pose a risk of serious harm to the public.

Findings from the reports show that:

- Total number of MAPPA offenders in the community in 2005/06 was 47,653, an increase of 7% from last year.
- Broken down by category, there were 29,973 Category 1, 14,317 Category 2 and 3,363 Category 3 offenders.
- The increase nationally of offenders in the community that come within the remit of MAPPA has slowed from last year when it was 13%.
- During 2005/06, 33,870 (71%) of the MAPPA population were managed at Level 1, 12,505 (26%) at Level 2 and the remaining 1,278 (3%) at Level 3.
- During 2005/06, of those managed at Levels 2 or 3, 1,540 were dealt with for breach of licence (an increase of 17.92% on the previous year), 104 for breach of orders (an increase of 42.47% on previous year) and 61 were charged with a serious sexual or violent offence (a 22.78% reduction in the numbers charged the previous year).

Copies of the 42 MAPPA reports are available at
http://www.probation.homeoffice.gov.uk/output/page30.asp

Pilot Scheme for ASBO Information Sharing with County Courts

The Department for Constitutional Affairs (DCA) has commenced a pilot scheme to facilitate information-sharing between the agencies involved in anti-social behaviour orders.

From October 2006, 11 county courts will participate in a year-long scheme as part of the Respect Action Plan. The 11 county courts involved are Lambeth, Central London, Bow, Nottingham, Bristol, Manchester, Liverpool, Birmingham, Leeds, Bradford and Hull.

The scheme will involve a new anti-social behaviour co-ordinator acting as the main point of contact between the parties and the court to identify where and how communication can be strengthened, or where more training or information needs to be given. The co-ordinator will also monitor changes in legislation and new measures that could affect anti-social behaviour cases, and ensure that all relevant organisations or agencies are aware of the new changes.

It is not thought that the pilots will lead to the demand of a new IT system, but instead will involve co-ordinators in the area pulling together the information from different sources.

The pressure to extend the practice has arisen in response to the increasing use of county courts in applying for the imposition for ASBOs. The overall aim is that the co-ordinators will ensure the courts run smoothly, and the anti-social behaviour laws are in turn used effectively.

A full evaluation of the pilot will be published by the DCA in October 2007.

Report on the Crown Prosecution Service and Making Effective Use of Magistrates' Courts Hearings

The House of Commons Public Accounts Committee has published a report on the Crown Prosecution Service and making effective use of magistrates' courts hearings.

The report finds that the handling of cases in magistrates' courts has, in recent years, become complex and protracted to the extent that it no longer amounts to summary justice.

It found that, of the 3 million or so hearings in magistrates' courts during 2004-05, more than 900,000 did not go ahead as planned. It estimates the cost of these delays at £173 million. It attributes the majority (55%) of this cost to the defence, but states that the police and the Crown Prosecution Service account for another 14% (£24 million) each, plus a further £7m jointly.

The report states that the Crown Prosecution Service needs to review its organisational structure, revise its system for preparing for magistrates' court cases by adopting current best practice, and address the cultural resistance within the organisation to more modern working practices. It makes numerous recommendations on how to achieve this, including:

- Developing and implementing nationally the good local practice operating in Cardiff, so that small teams of lawyers and administrative staff are responsible for the progression of all cases from a specific police command unit.

- Nominating a member of each team to be available during working hours to respond to queries on the team's caseload.
- Introducing and developing a time recording system to identify whether the Crown Prosecution Service has the right mix of legal, caseworker and administrative staff, and to effectively manage its resources.
- Making full use of its electronic case management system (COMPASS) capabilities by requiring all Crown Prosecution Service staff to update the system when moving files.
- Working with Her Majesty's Courts Service to establish 24 hour courts as "one stop shops" in city areas, where those arrested for minor offences could be dealt with immediately.
- Marking cases requiring medical or CCTV evidence as high risk, and review them weekly to obtain the necessary evidence in time for the hearing.
- Examining the reasons for dropping cases on the day of the trial as part of its regular review of area performance, in order to identify ways in which its processes might be improved.
- Taking a risk-based approach to quality assurance, focussing on cases that are more likely to experience delays, and periodically disseminate lessons learned.
- Taking the lead in initiating discussions with the police, the Courts Service, manufacturers, trade associations, and other interested parties, to explore the scope for a national CCTV standard to provide consistency across the industry.

The full report can be found at
http://www.publications.parliament.uk/pa/cm200506/cmselect/cmpubacc/982/98202.htm

Tagged Offenders Committing Crimes

A report published by the House of Commons Committee of Public Accounts, entitled "The Electronic Monitoring of Adult Offenders", has highlighted failings with the system which allows offenders to be electronically monitored, or 'tagged'.

The system of electronic monitoring makes its possible for offenders to be released on Home Detention Curfews, with restrictions placed on their liberty. The report highlights that advantages of such curfews include:

- Aiding the rehabilitation of offenders by allowing them to have contact with their families and to work or attend education or training.
- They cost some £70 less per day on average than keeping an offender in prison.
- They help to limit the prison population.

However, the report has highlighted that, despite safeguards to prevent the release of offenders who are likely to re-offend whilst on curfew, some 1000 offenders committed serious offences whilst on curfew. These included:

- Manslaughter - 4 offences.
- Murder – 1 offence.
- Wounding (GBH) – 56 offences.

- Assault – 562 offences.
- Assault on a Police Officer – 145 offences.
- Possession of an offensive weapon – 100 offences.

The report suggests that reasons for such failings include:

- 60% of the prisons that release prisoners on Home Detention Curfews do not have access to the Police National Computer to check criminal records.
- Governors are not provided with feedback on whether prisoners whom they have released have successfully completed their curfew.
- There is insufficient evidence available to determine whether electronic monitoring helps to reduce re-offending or promote rehabilitation.

As a response it recommends that:

- The Home Office should implement a timetable for providing all prisons that release prisoners on Home Detention Curfew with access to the Police National Computer.
- Governors should be provided with information on any prisoners they released under Home Detention Curfew who have offended whilst on curfew or breached their curfew conditions. Such feedback would help them to improve their decision-making on releasing prisoners, whilst at the same time minimising the risks to public safety.
- The Home Office should carry out further research to establish the role that electronic monitoring could play in minimising re-offending. It should make the results of the research available to courts and prisons, which make decisions on whether to place offenders on curfews.

A full copy of the report can be found at **http://www.publications.parliament.uk/pa/cm200506/cmselect/cmpubacc/997/997.pdf**

Average Time from Arrest to Sentence for Persistent Young Offenders

The Department for Constitutional Affairs (DCA) has published its latest statistics on the average time from arrest to sentence of persistent young offenders (PYOs).

The figures are a result of the monitoring process following the plan to halve the arrest-to-sentence time for persistent young offenders in England and Wales from 142 days (in 1996) to 71 days.

- In England and Wales, the average time from arrest to sentence for PYOs was 71 days for the April-June 2006 period – this being 2 days less than the previous quarter.
- In magistrates' courts, the overall average time from arrest to sentence was 63 days in April-June 2006. In the Crown Court, the figure was an average of 123 days from arrest to sentence, 4 days up from the previous quarter.
- In the second quarter of 2006, in 26 of the 42 criminal justice areas, the average arrest-to-sentence time was 71 days or less. 11 areas had an average of more than 80 days.

The full text of the bulletin is available at **http://www.dca.gov.uk/statistics/statpub.htm**

Victims' Advisory Panel

A new Victims' Advisory Panel has been created to represent the needs of victims. The panel will be chaired by Kathryn Stone, who is also the chief executive of Voice UK, a national charity for people with learning difficulties who have been victims of crime. The panel includes survivors of serious violent crime and people who have suffered from crimes such as burglary, anti-social behaviour and hate crime.

The Panel will look at the treatment of victims and witnesses and the way they are dealt with by the criminal justice system; and then make formal recommendations for changes directly to Ministers. It will also be involved in the process when new policy is first being developed.

Annual Police Performance Assessments

The Home Office has published the annual police performance assessments for the year 2005-06. As in 2004/05, each police force has been assessed in seven key performance areas: Reducing Crime, Investigating Crime, Promoting Safety, Providing Assistance, Citizen Focus, Resource Use and Local Policing.

In respect of each of these areas the report finds:

Reducing Crime

That the overall performance in this area has improved on last year, with more 'excellent' and fewer 'poor' grades being awarded to forces. The report does comment that although good progress has been made in tackling crime and disorder, more recently it has seen the rate of crime reduction slow down.

Investigating Crime

In 2005/06 there was an increase in the number of forces assessed as 'excellent', up from three to five. In addition, no force had 'deteriorated' performance. Many forces have shown improvements in the HMIC baseline assessments covered by this area, but there are still a number of poor assessments, including seven forces rated 'poor' by HMIC on 'Tackling Serious and Organised Criminality'.

Promoting Safety

No forces were assessed as 'excellent' and only ten were assessed as 'good' in this area. The report states that many forces could improve their performance by prioritising improvement in particular areas such as the monitoring of sex offenders, preventing domestic violence and investigating crimes against children.

Providing Assistance

2005/06 was the first full financial year under which forces have had to operate against targets for improvements in front-line policing, as set by police authorities. The results show a slight improvement, from 62.3% in 2004/05 to 63.2% in 2005/06.

Citizen Focus

Nationally there have been significant improvements in this area, with all victim satisfaction measures moving in the right direction and many forces have improved on their results from last year.

Resource Use

All forces this year have achieved their individual targets to deliver efficiency gains of 3% of net revenue expenditure.

Local Policing

The majority of forces are well advanced in their approach to neighbourhood policing, with eight forces achieving an 'excellent' grade and 29 having improved from last year.

The below table illustrates the spread of grades awarded in each performance area:

Delivery	Excellent	Good	Fair	Poor
Reducing Crime	9	18	15	1
Investigating crime	5	23	14	1
Promoting Safety	0	10	28	5
Providing Assistance	4	31	7	1
Citizen Focus	3	13	25	2
Resource Use	4	30	9	0
Local Policing	8	14	14	7
Total	**33**	**139**	**112**	**17**

Police Performance Assessments 2005/06 are available at **http://police.homeoffice.gov.uk/performance-and-measurement/performance-assessment/assessments-2005-2006/**

Lessons Learned from the Domestic Violence Enforcement Campaigns 2006

On behalf of the Home Office and ACPO, the Home Office Police and Crime Standards Directorate has published a report based on findings from two Domestic Violence Enforcement Campaigns (DVECs), which involved 19 police forces across England and Wales and stretched across two campaigns, one that ran in February and March, and another in June and July.

The report finds that there are strong links between major football matches, alcohol consumption and domestic violence. As a result, the Government has invited football and sporting groups to join with it and 70 corporations in tackling domestic abuse as part of the UK Corporate Alliance Against Domestic Violence.

The report makes numerous recommendations based on the findings from the DVECs. These include:

Call Handling

- Control room and call-taking staff should receive effective training to ensure that they increase the level of detail recorded on control logs to ensure the best possible investigation.
- Call-takers should have ready access to a suitable set of prompts to enable them to support the victim and gather evidence, but questioning should take place after deployment through agreed local procedures. This must not delay deployment of officers to the scene where the offender is still present or the victim is still at risk.
- Where possible, call recordings should be available to investigators through an electronic system.

Evidence Gathering

- Basic Command Units (BCUs) should consider deploying a dedicated domestic violence (DV) response vehicle when local intelligence assessments indicate a likelihood for increased DV incidents, as this results in an improvement in the standard of the investigation by providing a 'premium service'. In real terms, a dedicated DV resource can be achieved by way of DV officers attending incidents or by having DV Champions trained to the same standard attached to response teams. If DV Champions are utilised, they must have primacy for attending DV incidents.
- Use of a dedicated Crime Scene Investigator (CSI) in a dedicated DV response vehicle is not a cost-effective use of resources, although there remains a clear need for CSIs to continue to attend the more serious incidents. Regular training of officers in scene preservation and recovery of exhibits proved successful and useful. If possible, all injuries should be photographed by a trained CSI.
- Digital photographic equipment should be made available to patrol staff to be used in DV offences, enabling images to be produced without delay to enhance the evidence available for first interview.
- BCUs and forces should await the completion of formal trials of body-worn digital video systems and consider the results and their evaluation when planning capital expenditure, in order to enhance evidence gathering at DV and other violent crime incidents.
- Forces should utilise a suitable investigation pack to standardise and quality-assure the process involved in DV investigations. Investigating officers must undertake prompt and thorough investigations by obtaining all available evidence from the scene, witnesses and other sources to effectively protect the victim and any children.

Targeting of prolific offenders

- Officers should undertake enquiries to ensure that outstanding offenders not present at crime scenes are arrested at the earliest opportunity. Cases must be subject to dynamic and robust, accountable management by front-line supervisors.
- BCUs should utilise the National Intelligence Model (NIM) processes to monitor local trends in DV offending patterns and to monitor and robustly manage prolific DV offenders. Where bail or ASBO conditions are utilised to control the behaviour of offenders, they must be effectively monitored through positive action.

Other Issues

- Forces should adopt and utilise the ACPO/Centrex SPECIAL CASES risk assessment model when considering the likelihood of further offending/victimisation in cases of DV. Risk assessments should be completed in all DV cases at the earliest opportunity. If an offender is arrested, a risk assessment must be completed prior to any decisions regarding bail or release. Supervisors must consider the assessed risk and take appropriate action.
- All BCUs should utilise the Multi-Agency Risk Assessment Conferences MARAC process.
- BCU specialist DV staff hours of work should mirror the peak times for DV incidents and offences, in order to provide the best possible quality of service and investigation.
- In considering policing responses to major or significant sporting events, forces and BCUs should provide additional resources to respond effectively to increased levels of DV in addition to other local policing needs.

The report also contains a number of annexed documents, which include two particularly helpful documents:

- Recommendations for the preparation of NIM problem profiles for domestic violence.
- Call-taker checklist.

The report and associated documents can be found in full at **http://www.homeoffice.gov.uk/documents/Domestic-Violence-10731.pdf**

HOC 28/2006
Police Pension Schemes – Recharging Arrangements for the Pension Costs of Seconded Police Officers and Officers in Funded Posts

This Circular updates and expands the guidance in Home Office Circular 54/2005. Its purpose is to clarify the arrangements for recharging as applicable to police officers seconded to other police forces, central units, staff associations and other bodies. It also pertains to officers in local and national posts funded by specific grant.

The general principles of these recharging arrangements are as follows:

1. Police authorities should invoice forces to which police officers are seconded for the full cost of the officer. In terms of pension costs, this means:

- 100% of an officer's salary.
- Employer's pension contribution of 1.3% of salary in certain cases.

2. Where an officer is seconded to a central body or organisation other than a police force, 1.3% should be added to the standard employer contribution of 24.6%. This is to compensate the officer's home force for the risk of having to meet the cost of ill-health retirement.

   The new arrangements are aimed to be in place over a phase-in period. Short-term transitional arrangements exist, in recognition of the financial impact of the new system.

   Officers funded by a specific grant (e.g. counter terrorism grant) are subject to separate arrangements whereby the officer's home force is responsible for the payment of pension costs.

   The Circular has a table attached which sets out in detail the recharging arrangements for 2006/07 and 2007/08.

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

HOC 30/2006
The Police Pension Scheme - New Compulsory Retirement Ages for Police Officers with Effect from 1 October 2006

This Circular contains advice on HR and pensions issues in relation to:

- New Compulsory Retirement Ages (CRAs) for police officers.
- New measures which safeguard current pension ages.
- Immediate action to take with officers nearing their former or new CRA.
- Impact of the new CRAs and Employment Equality (Age) Regulations on review of injury pensions.
- Impact of new CRAs on the 30+ Scheme.

Also included in the Circular are a number of Q & A on the conditions applying to pensions from 1 October 2006. These are:

Q - Will I have to give notice of my wish still to retire on the date of my former CRA now that my new CRA is later than that?

A - You will not have to give the one month's notice (or three months if you are an ACPO rank) normally required but we will need some notice of your intention to retire so that we can make arrangements for that. You should therefore let us know as quickly as possible. You will also need to let us know as soon as possible (and certainly before your retirement date) if you wish to take a lump sum. In our letter to you we have given you the latest date you can tell us this and still retire on your former CRA.

Q - I was expecting to retire on reaching my former CRA with an immediate pension. Can I still do this even though I am no longer going to be compulsorily retired on that date?

A - Yes, you will still get your pension immediately on retirement if you leave on reaching your former CRA even if you have less than 25 years' service.

Q - I was also expecting to be able to exchange a quarter of my pension for a lump sum. Can I still do this even though I am no longer going to be compulsorily retired?

A - Yes, even though you may have less than 30 years' service you will still be able to exchange a quarter of your pension for a lump sum, rather than be limited to a lump sum of 2.25 times your pension. However you must give us notification of your wish to take a lump sum before your retirement date.

Q - I have already got an extension of service beyond my former CRA. Can I leave before the expiry of the extended period of service CRA and still get an immediate pension and a lump sum based on a quarter of that pension?

A - Yes, even though you are leaving before the date to which your former CRA has been postponed you will now be able to leave with an immediate pension provided you give one month's notice (or three months' notice if you are an ACPO rank). As well as an immediate pension you will also be able to take a lump sum based on a quarter of that pension.

The Circular reiterates that officers should be reassured that these changes do not affect their entitlement to retire with an immediate pension after 30 years' pensionable service or to retire with a pension payable from age 50 if they have at least 25 years' pensionable service but less than 30. These entitlements remain unchanged.

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

HOC 31/2006
Firearms: Civilian Target Shooting Ranges

This Home Office Circular describes the new arrangements that have been agreed between the Government, the Scottish Executive, ACPO's Firearms & Explosives Licensing Working Group, ACPO Scotland, the National Small-bore Rifle Association (NSRA) and the National Rifle Association (NRA) for the safety inspection and certification of civilian target shooting ranges.

This new agreement has been brought about as a result of the military ending its inspection and certification scheme for civilian ranges.

The responsibility will now be placed more firmly on range owners/operators to ensure that their range is constructed and maintained safely. Failure to do so will leave them liable to sanctions under a range of legislation, such as the Occupiers' Liability Act 1957, the Occupiers' Liability (Scotland) Act 1960 and the Health & Safety at Work Act 1974.

The NSRA and the NRA have established their own inspection and approval scheme for the ranges run by their member clubs. Initially at least, inspections will generally be conducted by ex-military personnel who were involved in the old military scheme. Unlike the military scheme, the NSRA and NRA will require inspections at regular intervals to check that ranges do not deteriorate.

The NSRA and NRA have prepared guidance for their members on the safe construction of ranges. That guidance will be used by the organisations as the basis for their inspections and the issue of approvals.

Although it is anticipated that most ranges will use the NSRA and NRA scheme, it is for each range owner/operator to decide what steps to take to ensure their range is safe. They might choose to obtain an assessment from elsewhere, such as an independent inspector. The NSRA and NRA are willing to make their inspection and approval service available to ranges not affiliated to either organisation.

The new arrangements will require some changes to certain areas of the police's firearms licensing function. Where part of the police function is to be satisfied that ranges used by a club are safe and have adequate insurance or other financial cover, evidence of range safety in most cases will be an old-style military safety certificate or a NSRA/NRA approval letter, together with an insurance certificate.

The Circular stresses that it is not intended that police forces will need to become expert in range construction or to have to inspect ranges. It suggests that, should a force require expert advice on range construction, the NSRA or NRA will be willing to assist or the force could engage an independent assessor of its own.

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

New Forensic DNA Technique

The Forensic Science Service (FSS) is piloting a computer-based analysis system called DNAboost, which can interpret DNA samples which were previously unintelligible.

The application consists of a piece of software along with a forensic scientist. The new technology will allow for scientists to pinpoint DNA samples where:

- More than one individual has touched a surface.
- Only small amounts of DNA were left.
- Only poor quality material was found.

It has been said that DNAboost will mean scientists can identify 40% more samples than at present and also that the technology can be used even in areas traditionally difficult to interpret, e.g. in relation to fragments of cellular submissions. It will also work in a retrospective manner, meaning that it will aid in solving 'cold cases'.

The pilot will be put into practice for three months by police forces in:

- West Yorkshire.
- South Yorkshire.
- Northumbria.
- Humberside.

After this it will be extended to the remaining police forces. More information can be found on this subject at the FFS website at http://www.forensic.gov.uk/

Human Trafficking Centre

The United Kingdom Human Trafficking Centre (UKHTC) has opened in Sheffield to help direct research, training and intelligence gathering across Britain's police forces in relation to human trafficking.

The Centre will be will be staffed by police, as well as officers from the Serious Organised Crime Agency, the Immigration and Nationality Directorate and the Crown Prosecution Service. It will focus not only on trafficking for the purposes of sexual exploitation, but also trafficking of people for domestic service and forced labour, child trafficking and other emerging trends.

It aims to stop trafficking by building a knowledge base about the crime, and directing and prioritising a national response. It will also provide specialist care for the victims of trafficking.

The facility will complement the work of Operation Pentameter, which has led to hundreds of arrests and involved raids on brothels, massage parlours and private homes across the UK and Ireland. About half of the rescued women and girls came from a range of Eastern European countries, with the other half from the Far East, Africa and South America.

Updated Advice on Foreign Passports and Identity Cards Handed in to the Police

The Identity and Passport Service (IP) has further revised its guidance in relation to the actions to be taken by police forces when non UK passports and ID cards are handed in to the police (previously covered in February *Digest*).

Previous advice required that police forces send all foreign national passports by secure means to the National Document Fraud Unit (NDFU) and did not return non-UK travel documents to the holder under any circumstances.

This updated guidance recommends that non UK passports, identity cards and other travel documents are retained for at least 24 hours before being sent to the National Document Fraud Unit.

This will allow the loser to reclaim their document from the police in the period immediately after losing it.

If a foreign national has lost their passport/identity card and they attend a police station to claim it, the passport should be returned to the person providing that the passport appears genuine and has not been interfered with.

If there are any concerns that it may have been used for any criminal activities, forces are asked to consider contacting their local IPS office for guidance.

All foreign national passports and other travel documents that are not claimed should be sent by secure means to the NDFU, which is a division of the Immigration Service.

Operation Keymer
Crackdown on Cannabis Cultivation

Operation Keymer, an ACPO- led national operation focussing on the illegal cultivation and production of 'skunk' cannabis, was carried out between 25 September and 5 October. General guidance issued under the Operation suggested that the following factors may indicate that a cannabis factory is on premises:

- Windows permanently covered from inside.
- Premises not lived in but visited, often at unusual times of day or night.
- Offenders may call daily or weekly for brief periods.
- Cannabis or related products removed in black bags or laundry bags.
- Compost bags or gardening items left outside.
- Vents protruding from window or roof.
- Pungent smell emanating from premises.
- Equipment noises from premises (such as cooling fans).

Car Crime Prevention DVD Launched

In response to an increase of car key burglaries across its force area, the West Midlands Police, with Home Office funding, has produced a crime prevention DVD on car key crime and what is termed 'carjackings'.

The DVD aims to provide people with advice, information and real-life case studies in order to reduce their risk of being a target of car key theft. The DVDs are to be hand-delivered by the police to owners of expensive cars in areas that have been identified by research as the main hotspots of such crime.

The DVD will also be made available to police forces throughout the country.

Metropolitan Police Counter Terrorism Command

The MPS has launched its new Counter Terrorism Command to replace its Special Branch and Anti-Terrorist Branch, effectively bringing together intelligence analysis and development with investigation and operational support activity.

Guidance on Dealing with Munitions in Marine Aggregates

The Crown Estate, in consultation with ACPO, the Quarry Products Association, British Marine Aggregate Products Association, Joint Services Explosives Ordnance Disposal Operations Centre, the Health and Safety Executive and the Maritime and Coastguard Agency, have produced a guidance document which provides practical guidance to operators of the options available to minimise the occurrence of munitions in marine-dredged aggregate, and the steps needed to manage any encounters that may take place.

The police service has a responsibility for co-ordinating the emergency services in the event of such incidents and this includes establishing a cordon and the evacuation of people from the area. The police will normally be the enforcing authority for the storage of explosives.

The document booklet is self explanatory and contains flow charts to assist in dealing effectively and efficiently with these issues.

The guidance document can be found at
http://www.thecrownestate.co.uk/1402_munitions_in_aggregates-2

CBI's Recommendations for Police to Engage with Private Sector Providers

The CBI (Confederation of British Industry) has produced a report entitled, 'Better policing through partnership: working together for a safer community'.

The report advocates that police forces should work in partnership with private sector providers to utilise private sector expertise and innovative techniques, particularly in streamlining administration and support services, claiming this would help free up resources, enabling them to be re-deployed to support the frontline. The report states that police forces which have already made partnerships with independent providers are giving better support to police on the frontline and are operating more effectively.

The report recommends that for good practice to spread, the following should be considered:

- Police forces should explore the possible achievements which could be made through partnership.
- The Government should look into the removal of legislative barriers that prevent the 'civilianisation' of duties, where trained staff undertake functions previously restricted to police officers.
- The NPIA should look into creating a transparent and fair market and to promote a competitive dialogue between independent providers and forces.
- Police authorities should build commissioning skills to allow for efficiency and be able to re-deploy officers to the frontline.

The report also gives examples of good practice in relation to contracts for offender transportation, database management, IT services, custody suite management and security services.

The report can be found through the CBI's website at **http://www.cbi.org.uk**

The National Wildlife Crime Unit

The National Wildlife Crime Unit (NWCU), a police-led unit to target and disrupt serious wildlife crime on a regional, national and international level has been launched.

A pilot for the NWCU was set up in 2002, and originally functioned from within the National Criminal Intelligence Service (NCIS). The new unit, which will operate from Edinburgh, will gather, analyse and co-ordinate wildlife crime intelligence and support the enforcement activities of police and HM Revenue and Customs officers in the UK. A proactive arm staffed by Investigative Support Officers will directly support Police Wildlife Crime Officers across the UK.

Further details on the unit can be found at **http://www.nwcu.police.uk/**

Child Exploitation Tracking System

The Child Exploitation Tracking System (CETS) was developed by Microsoft, the Canadian police and international law enforcement experts to help law enforcement agencies to tackle online child exploitation.

The system software enables different police forces across the country to share and analyse information on suspected offenders, thereby avoiding duplication and assisting in the coordination of a national approach that, it is hoped, will reduce the risk of offenders moving across geographic borders to avoid detection.

CETS has been running at the Child Exploitation and Online Protection Centre since April 2006. Essex, West Midlands, South Wales police forces and the Hi-tech Crime Unit of Scotland Several forces have just commenced a pilot programme of CETS.

Corruption in UK Construction Industry

A survey by the Chartered Institute of Building has revealed that corruption may be commonplace in the UK construction industry.

The survey asked 1400 construction professionals whether they thought corruption was a regular occurrence, and if so what type of corruption was commonly found.

Attitudes toward a variety of practices were questioned to ascertain how corrupt they were perceived to be. The study also looked at the areas in which respondents perceived the corruption to take place.

The survey revealed a significant level of professionals who believed, for example, that producing a fraudulent invoice or using bribery to obtain a contract was not particularly corrupt.

Main findings from the report include

- 76% of respondents regarded the employment of illegal workers as widespread in UK construction.
- 60% felt fraud was prevalent in the industry.
- 41% had been personally offered a bribe.
- In the majority of cases where fraud or corruption had been uncovered, it was not reported to police (74% of those that had uncovered it did not report it to the police).
- Three quarters of respondents did not feel that the UK government was doing enough to tackle corruption.

A full copy of the report is available at **http://www.ciob.org.uk/resources/research**

Report on Use of Intercept Evidence

JUSTICE, the UK-based human rights and law reform organisation, has published a report, 'Intercept Evidence - Lifting the ban' which looks in detail at the UK's ban on intercept evidence, and examines the arguments for and against allowing its use. It also looks at the use of intercept material in 7 other common law countries with adversarial criminal procedures similar to the UK: Australia, Canada, Hong Kong, Ireland, New Zealand, South Africa and the United States.

The report concludes that the current ban is archaic, unnecessary and counter-productive. The report can be found in full via **http://www.justice.org.uk/inthenews/index.html**

New Emergency Motorway Phones

The Highways Agency has announced that 6,500 new emergency roadside phones will be installed on motorways and trunk roads in England over the next three years.

The project, which is costing £3 million, will use the latest technology to improve communications for people experiencing problems on the motorways. Features of the new phones include:

- A loud siren and flashing light to signal that the phone is ringing on the roadside, making use easier in noisy locations and for the hearing-impaired.
- A text display which can be activated by the operator, with questions which can be answered with tick and cross buttons, benefiting those with hearing difficulties.
- Users will be given a choice of languages through a text facility with preset questions; the preset responses will be sent back in the selected language.

The new phones, which will be powered partly by solar energy, will be connected to one of the Highway Agency's seven regional control centres. Fewer inspections of the phones will be required because the phones have been designed to check themselves for faults and to report them.

The new phones, which will be manufactured by GAI-TRONICS, have already been installed on roads in Kent, Essex and Nottinghamshire.

Safety Barriers for Motorcyclists

The Highways Agency has installed a new safety barrier to sites in Southern England with a high risk of motorcycle accidents.

The device is fitted to existing barrier support posts, thereby smoothing the surface. This reduces the chances of death or serious injury by contact with exposed posts in the event of an accident.

At present the device is fitted to small stretches of motorway in Portsmouth and Slough. Investigations into potential new sites for the new barrier are being carried out.

The increased safety measures are in accordance with the Highways Agency's Road Restraints Standard. This dictates that in high risk sites, such as on tight external bends, consideration must be paid to ensure safety for motorcyclists.

For more information visit **http://www.highways.gov.uk/**

New Biosynthetic DNA Tagging for Petrol Station Crimes

Texaco petrol stations in Hertfordshire, Essex and London have launched a new initiative to install a system which sprays and marks offenders with a bright red staining dye containing a non-washable unique DNA code.

This is aimed to provide the police with irrefutable evidence to identify criminals and to prove their presence at the crime scene.

Texaco have also installed window displays in relation to the biosynthetic DNA tagging system to act as deterrents.

Garage Watch (an organisation which acts on behalf of independent petrol stations) intend to monitor the results of this initiative and will publish the results of its findings. The Garage Watch website is **http://www.garage-watch.co.uk/default.aspx**

Mobile Phone Theft Prevention Device

A new mobile phone theft prevention device called the Remote XT has been launched. This device will, when stolen, trigger a high-pitched screeching sound. It is also designed to stop thieves from using mobile phones and accessing the data which is contained on them.

The Remote XT allows for a signal to be sent to the mobile, once it has been reported lost or stolen, which emits the sound and also a message reading 'This phone is stolen'. The phone is also automatically disabled, meaning that contact numbers, text messages, images and emails are removed. This will happen even if the SIM card is removed.

The device is backed by the Mobile Industry Crime Action Forum and it is thought that the device will decrease the number of mobile phone thefts. The cost of this service will be nearly £10 a month.

Digital Map Show the Weight, Width and Height Restrictions of Bridges Launched

Ordnance Survey is launching a digital map, the first of its kind, showing the weight, width and height restrictions applicable to road bridges in the UK.

The information will be available on the Road Routing Information theme of Ordnance Survey's digital road data project, OS MasterMap Integrated Transport Network.

The data will help both delivery and freight companies, and providers of navigation solutions, and aims to support local authority freight plans.

More information on the proposals is available on the Ordnance Survey website at the following address
http://www.ordnancesurvey.co.uk/oswebsite/media/news/2006/oct/itnhgvattibutes.html

Optag Project - Electronic Tagging of Air-Passengers

In a bid to increase security and efficiency of airports, new plans have been proposed to fit passengers with electronic tags, in a project called Optag. If plans go ahead, airports will be fitted with panoramic cameras and Radio Frequency ID tag readers. Each passenger would be issued with a tag at check-in, which would give off a unique radio signal, the details of which would be stored on a computer along with the passenger's name and flight number, but no other personal information. This would monitor the movement of passengers around the terminal. Security would then use the cameras around the place where the tag had been located, allowing them to identify the location of a passenger quickly and easily.

The project aims to help airports in three main ways:

- Monitor the movements of certain individuals who pose a risk of any kind.
- Make evacuation of an airport quicker and easier in an emergency situation.
- Help to find passengers lost in the terminal, particularly children and passengers who have checked in but have not arrived at the departure gate.

One of the main causes of delay within airports occurs when passengers do not arrive to board their flights, despite having checked in. Detailed security checks must be carried out and the passenger's belongings removed from the plane, using up valuable time and resources and causing delays. The Optag project hopes to solve this problem, as it will be possible to locate passengers anywhere in the terminal.

Research into the project is currently taking place within the Geomatic Engineering department at University College, London. If prototype technology is successful, this type of tagging could become a reality within two years.

More information about the project is available on the website for UCL at the following address
http://www.ge.ucl.ac.uk/research/industrial_metrology_close_range_photogrammetry_and_laser_scanning/op_tag

Research Report on the 'Problems of Modern Youth'

Institute for Public Policy Research (ippr) is due to publish a report in November entitled, 'Freedom's Orphans: Raising Youth in a Changing World'.

The 200 page report analyses evidence from across the world and concludes that both the frequent condemnation of teenagers and recent attempts to absolve them from blame are misplaced. The report says that changes in the family, local communities and the economy have combined to cause deep inequalities in the transition to modern adult life and leave increasing numbers of young people incapable of growing up safely and successfully.

The report finds:

- That a lack of adult supervision of teenagers, in communities where adults do not know their neighbours and where teenage groups go unsupervised on the street, has increased the risk of youth crime and violence.
- It shows that young people who claim not to spend time with their parents commit more antisocial behaviour.
- Participation in structured youth activities is better for young people than unstructured youth clubs.

It recommends that every secondary school pupil (from 11-16 years old) should participate in at least two hours a week of structured and purposeful extracurricular activities – like martial arts, drama clubs, sports, Scouts, and so on. This would take place through extended school hours of between 8am-6pm and would involve a legal extension of the school day. Parents who did not ensure their child attended two hours a week of activities could be fined, in the same way as parents are punished for their child's persistent truancy.

Other findings from the report show:

- Last year more than 1.5 million Britons thought about moving away from their local area due to young people hanging around and 1.7 million avoided going out after dark as a direct result.
- Last year Britons were three times more likely to cite young people hanging around as a problem than they were to complain about noisy neighbours. In 1992 it was just 1.75 times more likely.
- Britons are more likely than other Europeans to say that young people are predominantly responsible for antisocial behaviour, and they are also more likely to cite 'lack of discipline' as the root cause.

The statistics also show that British adults are less likely than those in other European countries to stop teenagers committing anti-social behaviour. The percentage varied according to the type of anti-social behaviour being committed. The main reason for an unwillingness to intervene was the fear of being physically attacked, next was the fear of later reprisals and thirdly the fear of being verbally abused.

Further details of the publication will be available at **http://www.ippr.org.uk/**

Case Law

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

Errors in Accuracy of Transcript of Police Interview

R v GEORGE MUKAILA LASSISI (2006)

CA (Crim Div) (Sir Igor Judge (President QB), Holland J, Goldring J) 11/10/2006

CRIMINAL EVIDENCE

Adverse Inferences: Audiotape Recordings: Conspiracy: False Instruments: Jury Directions: Police Interviews: Inaccurate Police Interview Transcripts: Effect On Safety Of Conviction

A conviction had not been rendered unsafe by inaccuracies in the written transcript of the defendant's police interviews as the errors were minor and the case against him was overwhelming.

The appellant (L) appealed against convictions for conspiracy to make false instruments, having a false instrument with intent and having a false instrument. Airport customs officers intercepted a parcel from South Africa going to a delivery company. It had a contact number written on the outside of the packaging and it contained two magazines stuck together, inside which were concealed 10 false South African passports and 12 false credit cards. Police officers instructed the delivery company to follow usual procedures and telephone the contact number. L arrived to collect the parcel, was arrested and searched. He was found to have a false passport on his person and a further three were recovered from a bag in his car. A facial-mapping expert examined the photographs within the four passports found in L's possession and concluded that they were all photographs of L. He claimed that he had merely collected the parcel on behalf of a friend and knew nothing of the bag in the car. At trial, L represented himself and chose not to give evidence. L submitted that the judge had failed to direct the jury in any way regarding his decision not to give evidence and in fact went on to treat recordings and written transcripts of his police interviews as though they were his evidence. He argued that there was a real possibility that the jury may have held his failure to give evidence against him. L also submitted that inaccuracies in the transcript of his first police interview rendered his conviction unsafe as the words "passport" and "parcel" had been mistranscribed and significantly altered the emphasis of his responses to various lines of questioning.

HELD

(1) The judge had plainly treated the recordings and transcripts of L's police interviews as though they were his evidence and had failed to direct the jury appropriately on the required safeguards in drawing an adverse inference from his decision not to give evidence. However, the remainder of the summing up had been careful and considered, and the omission had not prejudiced L.

(2) L had a strong accent and was difficult to understand, and the inaccuracies in the transcript were frequent. However, it was clear that L must have been aware of the errors in the transcript as the recordings were played to the jury in full at his request. Although he was a litigant in person at trial, he should have been able to realise that errors existed. Further, the fact that he was a litigant in person had allowed the jury to become accustomed to his accent, particularly as he cross-examined police officers at length. The case against L was overwhelming and his submissions about the inaccuracies were a makeweight, without significance, and the jury would have been bound to convict in any event.

APPEAL DISMISSED

Discontinuance of Police Investigations

R (on the application of C) v (1) CHIEF CONSTABLE OF A (2) A MAGISTRATES' COURT (2006)

QBD (Admin) (Underhill J) 26/9/2006

ADMINISTRATIVE LAW - ADMINISTRATION OF JUSTICE - POLICE

Arrest Warrants: Child Pornography Offences: Criminal Investigations: Judicial Review: Public Authorities: Reviews: Search Warrants: Unlawful Arrest: Judicial Review Of Police Decisions: Judicial Review Of Criminal Investigations: Amenability To Judicial Review

Whilst it was possibly open to the court by way of judicial review to order that a police criminal investigation be discontinued on the basis that there was no prospect of an eventual prosecution, such relief would only be granted in exceptional cases. In the circumstances, a police investigation was reasonable and justifiable.

The claimant banker (C) applied for judicial review of the decisions of the first defendant chief constable to seek a search warrant and the second defendant magistrates' court to issue the warrant in respect of allegations of possession of child pornography. C also sought judicial review of his arrest on child pornography charges and the continuance of a police investigation into those charges. The police had executed the search warrant at C's home. The search was part of a national investigation into child pornography and focused on offences by persons thought to have visited child pornography websites operated in the United States. C's credit card details were recorded as having been used to purchase access to the sites on two occasions. C was arrested on suspicion of downloading indecent images of children. No indecent images were found on the computers that were seized from C's home. C denied having ever accessed the relevant websites. C contended that the likeliest explanation for his credit card details having been found on the websites was 'identity theft' and that the indications that he was a victim of identity theft were known by the police or could have been ascertained by them before the decision to seek a warrant was made. C argued that even if there were good grounds to believe that the websites were accessed by someone at his home, all the signs clearly pointed to his teenage son who was living at home and who had authority from C to use his credit card. In addition, C contended that it was essential that the police should, as a matter of urgency, formally acknowledge that there was no case against him because apart from the personal stress that the ongoing investigation was causing, he faced acute professional and employment difficulties as he frequently had to make 'fit and proper person' returns to various regulatory authorities.

HELD

(1) The substantive decisions on the part of the police to seek a search warrant, and on the part of the magistrates' court to grant one, were entirely reasonable on the material available.

(2) There was no precedent for the court intervening to close down an ongoing investigation on the basis that there was no prospect of an eventual prosecution. However, that did not mean that such relief could never be granted but indicated that such a relief would only be appropriate, if at all, in the most exceptional cases. Where, as in the instant case, there were unquestionably reasonable grounds initially to suspect a person under investigation, the court should be very slow to second-guess the police in deciding at what point he could be dismissed from the enquiry. In order that it could do so safely the court would have to be put in possession of all the material that was before the investigators and be given a good understanding of all the many factors that would legitimately be taken into account in making a decision of that kind. That would be highly laborious and would also involve an unwelcome blurring of the separate roles of court and prosecutor and/or investigator. Moreover it was not clear exactly what form of relief would be appropriate. The continuance of an investigation was a factual rather than a legal state of affairs; it has no formal status and until proceedings were commenced by a charge there was no public action taken. Investigations might continue at various levels of intensity and might for good reason be shelved without prejudice to the possibility of being later revived in different circumstances; investigations did not therefore necessarily have a defined conclusion. It would be highly undesirable to put the police in the position where they had to issue public declarations of innocence. In the instant case, the continued police investigation of C was reasonable and justifiable. The refusal of the police to formally close their investigation was not so inexplicable as to be characterised as irrational. The evidence fell far short of establishing that the police were bound to conclude that C was the victim of identity theft or that the evidence of identity theft was sufficiently compelling to render a prosecution impossible. Whilst it was acknowledged that C's son was the prime suspect, it was nevertheless reasonable for the police to wish to interview him before reaching any final conclusion. It was impossible to know what he may say and it would be premature to exclude C from the enquiry at this stage. Whilst the continuance of the investigation would cause serious difficulties for C, those difficulties were unavoidable.

APPLICATION REFUSED

Effect of Media Coverage

R v DAVID BIEBER (AKA DAVID COLEMAN) (2006)

CA (Crim Div) (Lord Philips, Pitchford J, Calvert-Smith J) 24/10/2006

CRIMINAL EVIDENCE - CRIMINAL PROCEDURE

Firearms Offences: Media: Murder: Prejudice: Prosecution Disclosure: Publicity: Right To Fair Trial: Security Precautions: Witness Coaching: Level Of Security Adversely Prejudicial: S.4(2) Contempt Of Court Act 1981

Wide-scale media coverage of an offence was insufficient to render a conviction unsafe where the case against a defendant was overwhelming.

The applicant (B) renewed his application for leave to appeal against convictions for murder, two counts of attempted murder, possession of a firearm with intent to endanger life, possession of ammunition with intent to endanger life and possession of ammunition without a firearms certificate. Two police officers (F and G) had asked B to sit in their vehicle whilst they made background checks on a vehicle he had been sitting in as they believed the tax disc not to be genuine. The checks revealed B's vehicle to have been stolen. A third officer (P) attended the incident and moved to the nearside door of the police vehicle in order to arrest and handcuff B. Without warning, B produced a handgun and discharged five rounds of ammunition within eight seconds. The first shot hit F in the chest, the second shot hit G in the back, the third and fourth shots hit G and P as they ran from the scene. F was then shot in the head whilst lying on the ground. B then proceeded to hijack another vehicle that was later found abandoned outside an address rented by him under a false name. B was eventually arrested several days later in a hotel and was in possession of the murder weapon. DNA evidence matching B's profile was recovered from the stolen vehicle and a chocolate wrapper left inside the police vehicle. B was also found to have booked a flight to Paris using another false name in an attempt to flee the jurisdiction. B's defence was that he had not been the shooter and that it had in fact been a friend of his visiting from the United States who had then deposited the hand gun with B. The prosecution adduced expert evidence based on a recording from the police vehicle of the shooter's voice that the voice on the recording matched that of B. B submitted that:

(1) The judge had erred in failing to stay the indictment on the basis that no fair trial was possible as a result of the media publicity that the shooting had received and that the judge had failed to direct the jury adequately to disregard it. He argued that the breach of a contemporaneous reporting order under the Contempt of Court Act 1981 s.4(2) by a television news channel and the publication of B's identity the day after the trial started adversely prejudiced his case;

(2) The unprecedented and highly visible level of security surrounding the trial was never justified by the prosecution, was unnecessary and was extremely prejudicial;

(3) The prosecution failed to disclose material tending to support B's account of events and which substantially affected the fairness of the trial. B argued that the prison service supplied information to the prosecution that B had criminal associates and that this information would have made his account of events more likely;

(4) Prosecution witnesses may have been coached as part of a television documentary about the shootings. B argued that witnesses were interviewed for the documentary prior to B's trial which constituted coaching.

HELD

(1) The prosecution case against B was so strong that if it was made good, any prejudice from the media coverage surrounding the shooting would have been insignificant if remembered at all by the jury. B's counsel had also accepted that the publicity in itself was not sufficient to render the conviction unsafe. The publication of photographs the day after a trial began could have a prejudicial effect on a defendant where visual identification was relied upon. However, this was not such a case and the judge gave an appropriate Turnbull direction.

(2) If the jury did notice the high level of security surrounding B's trial, then it was likely that they would have assumed that it went along with trials for offences of the instant type.

(3) The idea that B's having criminal associates would strengthen his case was not persuasive. He could have given evidence immediately after his arrest, if not before, as to the identity of his associate but failed to do so and therefore did little to support his account of events.

(4) The possibility that the interviewing of prosecution witnesses involved in the making of the television documentary amounted to coaching was pure speculation. The prosecution did not rely on visual identification and it was difficult to see any possibility that the documentary had an adverse impact on the conduct of the trial.

(5) The prosecution evidence against B was overwhelming, particularly in light of the fact that B admitted to taking prescribed medication identical to that disclosed by the man sitting in the police vehicle just prior to the shots being fired. B's DNA and fingerprints were not only found in the stolen vehicle and on the chocolate wrapper, but on the handgun used in the shooting. B's account of events was adduced very late in the day and was ludicrously implausible.

APPLICATION REFUSED

Requirement for Relevant Information to be Logically Probative of a Fact in Issue

R v ANDREW BRIAN T (2006)

CA (Crim Div) (Latham LJ, Irwin J, Sir Richard Curtis) 10/8/2006

CRIMINAL EVIDENCE

Admissibility: Convictions: Indecent Assault: Prosecution Evidence: Relevance: Witness Statements: Evidence Of True Allegations Against Others: Sexual Abuse: S.114 Criminal Justice Act 2003: S.116 Criminal Justice Act 2003: S.74 Police And Criminal Evidence Act 1984: S.100 Criminal Justice Act 2003

A conviction for indecent assault was unsafe where evidence to show that the complainant had made truthful allegations of indecent assault against two other members of the family had been admitted simply to support the credibility of the complainant's allegations against the defendant. As a general principle, for evidence to be admissible as relevant it had to be logically probative of a fact in issue between the parties.

The appellant (T) appealed against his conviction for two counts of indecent assault of a child. T was the uncle of the complainant (C) who was aged between six and seven years old during the relevant period. T regularly looked after C when her mother was at work. As a result of allegations made by another family member, but not involving any allegations against T, C eventually alleged that she had been sexually abused not only by T, but by her grandfather (G) and step-grandfather (H). Video evidence in which C made detailed allegations against all three men was taken. G admitted the allegations were true in interview after his arrest. He was charged with indecent assault but died before proceedings came to court. H was convicted on four counts of indecent assault. At T's trial the judge accepted the Crown's request to admit evidence of G's interview under the Criminal Justice Act 2003 s.114 and s.116 and H's conviction under the Police and Criminal Evidence Act 1984 s.74. T submitted that the judge had been wrong in law to allow G's interview and H's conviction to be admitted in evidence and that he had failed to provide the jury with clear directions on how it should use those pieces of evidence. T argued that the evidence was not relevant to any issue in the case, which he submitted was a pre-condition to its admissibility. T further submitted that the sole reason for the inclusion of the evidence was to bolster C's credibility on the basis that the jury would be more likely to believe she was telling the truth in relation to T if she had told the truth in relation to G and H. The Crown submitted that, in any event, both pieces of evidence were admissible under s.100 of the 2003 Act as important explanatory evidence.

HELD

(1) The judge was wrong to admit both pieces of evidence under s.114 and s.116 of the 2003 Act and s.74 of the 1984 Act. The issue for the court was whether evidence that C had made allegations that were true against people other than T was relevant to the determination of any issues between C and T. As a general principle, for evidence to be admissible as relevant it had to be logically probative of a fact in issue between the parties. There was no suggestion that T was involved in the activities of G and H. The mere fact that C had told the truth on other occasions, even in the same context, was not logically probative of the facts C alleged had occurred with T.

(2) The Crown had not asked for the evidence to be admitted under s.100 of the 2003 Act at trial, therefore it would be wrong to consider the appeal on the ground that the judge would have been prepared to admit evidence on that basis.

APPEAL ALLOWED

Sentencing Guidelines for Dangerous Offenders

R v JOHNSON: R v HAMILTON: R v LAWTON: ATTORNEY GENERAL'S REFERENCE sub nom R v ANDREW JONES: R v GORDON (2006)

CA (Crim Div) (Sir Igor Judge (President QB), Goldring J, Owen J) 20/10/2006

SENTENCING

Custodial Sentences: Dangerous Offenders: Public Protection: Imprisonment For Public Protection: Guidance On Sentencing Of Dangerous Offenders Liable To Imprisonment For Public Protection: S.224 Criminal Justice Act 2003: S.229 Criminal Justice Act 2003: S.229(3) Criminal Justice Act 2003

The Court of Appeal gave guidance on the sentencing regime created by the Criminal Justice Act 2003 s.224 to s.229, and the provisions applying to offenders who might be dangerous and liable to imprisonment for public protection.

In a number of separate cases, the appellants appealed against their sentences on the grounds that they were manifestly excessive, and in one case the Attorney General referred a sentence as unduly lenient. Issues arose in relation to the sentencing regime created by the Criminal Justice Act 2003 s.224 to s.229, and the provisions that applied to offenders who might be dangerous and liable to imprisonment for public protection. The Court of Appeal decided to address some areas of potential misunderstanding arising from R v Lang (2005) EWCA Crim 2864 , (2006) 1 WLR 2509.

HELD

(1) Just as the absence of previous convictions did not preclude a finding of dangerousness, the existence of previous convictions for specified offences did not compel such a finding. There was a presumption that it did so, which might be rebutted.

(2) If a finding of dangerousness could be made against an offender without previous specified convictions, it also followed that previous offences, not in fact specified for the purposes of s.229, were not disqualified from consideration.

(3) Where the facts of the instant offence, or indeed any specified offence for the purposes of s.229(3) were examined, it might emerge that no harm actually occurred, R v McBean (Isa) (2001) EWCA Crim 1891 , (2002) 1 Cr App R 98 considered. It did not automatically follow from the absence of actual harm caused by the offender to date that the risk that he would cause serious harm in the future was negligible, R v Shaffi (Zulfiqar) (2006) EWCA Crim 418 , (2006) Crim LR 665 explained.

(4) The offender's characteristics of inadequacy, suggestibility, or vulnerability might serve to mitigate his culpability but also to produce or reinforce the conclusion that the offender was dangerous.

(5) R v Lang suggested that the prosecution should be in a position to describe the facts of previous specified offences. That was plainly desirable but not always practicable. There was no reason why the prosecutor's failure to comply with that good practice should either make an adjournment obligatory or preclude the imposition of the sentence when appropriate. Failure to comply with best practice on that point should be discouraged but did not normally preclude the imposition of the sentence.

(6) It was not obligatory for the sentencer to spell out all the details of the earlier specified offences. To the extent that a judge was minded to rely upon a disputed fact in reaching a finding of dangerousness, he should not rely on that fact unless the dispute could fairly be resolved adversely to the defendant. In the end, the requirement was that the sentencing remarks should explain the reasoning that had led the sentencer to the conclusion.

(7) The Court of Appeal would not normally interfere with the conclusions reached by a sentencer who had accurately identified the relevant principles and applied his mind to the relevant facts.

(8) These essential principles applied with equal force to references by the Attorney General. In such cases the question was whether the decision not to impose the sentence, in the circumstances, was unduly lenient. In particular, in cases to which s.229(3) applied, where the sentencer had applied the statutory assumption, to succeed the appellant should demonstrate that it was unreasonable not to disapply it. Equally, where the Attorney General had referred such a case because the sentencer had decided to disapply the assumption, the reference would not succeed unless it was shown that the decision was one that the sentencer could not properly have reached.

JUDGMENT ACCORDINGLY

Victim's Knowledge of Imitation Firearm Irrelevant

R V K (2006)

QBD (Admin) (Gage LJ, Penry-Davey J, Dame Heather Steel) 26/7/2006

CRIMINAL LAW

Firearms: Imitation Firearms: Putting People In Fear Of Violence: Knowledge Of Victim: S.57(1) Firearms Act 1968: S.16a Firearms Act 1968

The use of a ball bearing gun fell within the definition of an imitation firearm, and consequently within the Firearms Act 1968 s.16A, notwithstanding that the victim was aware that it was an imitation.

The appellant youth (K) appealed by way of case stated against a conviction for possession of an imitation firearm with intent to cause fear of violence. K and a co-accused (H) were residents of a care home and bought ball bearing guns whilst on a day trip. Care staff informed K that the guns could not be taken to the care home and, having allowed them to be dropped off on the return journey, believed that there were no such guns in the care home. When K and H verbally abused a member of staff, two other members challenged K and H who went and brought back a gun. K pointed it at the person abused and threatened to shoot him in the face. At trial, the victim admitted that he had been aware that the object had been a ball bearing gun rather than a real firearm. K argued that there was a link between the actual appearance of a firearm and the belief caused in the victim of a fear of unlawful violence. K argued that under s.16A of the Act he had committed no offence as the victim had known that the imitation firearm was in fact a ball bearing gun. The prosecution submitted that, where an object fell within the definition of an imitation firearm under s.57(1) of the Act, the victim's knowledge of that object was irrelevant. The fact that the gun was capable of firing a missile meant that there had been a real fear of unlawful violence towards the victim.

HELD

It was immaterial that the victim knew that the firearm was an imitation. Violence had been threatened and could potentially have occurred. The magistrates had concluded correctly that K was guilty. However, that the fact that the parties involved knew that the gun was an imitation should be taken into account when sentencing.

APPEAL DISMISSED

Rape – HIV cases

R v B (2006)

CA (Crim Div) (Latham LJ (VP CA Crim), Henriques J, Gloster J) 16/10/2006

CRIMINAL EVIDENCE

Consent: HIV: Jury Directions: Rape: Sexually Transmitted Diseases: Unfair Evidence: Disclosure Of Offenders' Sexually Transmittable Disease: Unfairly Prejudicial Evidence: S.78 Police And Criminal Evidence Act 1984: S.74 Sexual Offences Act 2003: S.75 Sexual Offences Act 2003: S.76 Sexual Offences Act 2003: S.20 Offences Against The Person Act 1861

A defendant's failure to disclose his status as HIV positive did not affect the issue of consent in relation to a charge of rape and should have been excluded from a jury as unfairly prejudicial under the Police and Criminal Evidence Act 1984 s.78.

The appellant (B) appealed against a conviction for rape. The victim (V) and B had sexual intercourse on the floor in a recess area of a street following their meeting outside a nightclub in the early hours of the morning. Two delivery drivers saw B and V on the floor together and asked V if she was in need of any help. V ran into the arms of one of the drivers and made a complaint of rape. B was arrested and informed the custody officer that he was HIV positive. He had not disclosed this to V prior to their having intercourse. At trial, the issue for the jury was consent. B submitted that the judge was wrong in:

(1) allowing the prosecution to adduce evidence that he was HIV positive at the time of the offence and that it ought to have been excluded as unfairly prejudicial under the Police and Criminal Evidence Act 1984 s.78;

(2) directing the jury that his HIV status was relevant to whether V had the freedom or capacity to consent to sexual intercourse in the absence of that knowledge and directing the jury to consider whether a man diagnosed as HIV positive would be more or less likely to seek consent prior to intercourse. B submitted that the effect of the judge's actions, together with the comments of prosecuting counsel in their closing speeches, was to withdraw the issue of consent from the jury.

HELD

(1) B's failure to disclose his HIV status was not relevant to the issue of consent under the Sexual Offences Act 2003 s.74 and should have been excluded under s.78 of the 1984 Act.

(2) The issue for the jury was whether or not V consented to sexual intercourse, not whether she consented to intercourse with a person suffering from a sexually transmitted disease. There were no issues arising out of s.75 or s.76 of the 2003 Act as to whether B intentionally deceived V into thinking that he was not HIV positive, as the provisions did not make reference to implied deceptions. The fact that a person had a sexually transmitted disease that was not identified to another person did not vitiate any consent that may have been given concerning sexual activity. However, the party who had the disease would have no defence to the harm created by the sexual activity merely by virtue of that consent, as the consent related to the sexual activity not to the disease. Where consent to sexual activity was established there would be sufficient harm to give rise to an offence under the Offences against the Person Act 1861 s.20, R v Dica (Mohammed) (2005) EWCA Crim 2304 , Times, September 7, 2005 considered. The conviction would be quashed and a re-trial ordered.

(3) (Obiter) The issue of consent in relation to those carrying sexually transmittable diseases required debate, not in the courts of law, but as a matter of public and social policy. This was particularly so as there were questions regarding personal autonomy and whether existing statutory offences should encompass the disclosure of diseases or whether tailor made offences ought to be created.

APPEAL ALLOWED

Breath Tests – Preliminary or Evidential?

DIRECTOR OF PUBLIC PROSECUTIONS v KARAMOUZIS (2006)

DC (Maurice Kay LJ, Bean J) 10/10/2006

CRIMINAL EVIDENCE - ROAD TRAFFIC

Breath Samples: Breath Tests: Requirement To Produce Specimen Of Breath: Type Of Breath Test Administered: S.7(6) Road Traffic Act 1988: S.6 Road Traffic Act 1988

A breath test administered to an individual amounted to a preliminary breath test under the Road Traffic Act 1988 s.6.

The appellant DPP appealed by way of case stated against the decision of a magistrates' court to acquit the respondent (K) of an offence of failing to provide a specimen of breath, contrary to the Road Traffic Act 1988 s.7(6). K had been stopped by a police officer who had observed her driving in an erratic manner and administered a roadside breath test that disclosed that K's breath alcohol level was three times over the prescribed limit. K was cautioned, arrested and taken to a police station where she was required to provide further specimens of breath. She refused and was charged with failing to provide a specimen of breath. At trial the police officer gave evidence that the device used to administer the roadside test to K was not accurate as a roadside test, but was reliable as an indication. K contended that the roadside breath test had been an evidential breath test for the purposes of s.7 of the Act. K argued that in those circumstances the police officer had had no power to take her to a police station for the purpose of requiring further specimens of breath because the conditions in s.7(2D) of the Act for requiring such further specimens following an evidential breath test had not been complied with. The magistrates' court acquitted K on the basis that it was not sure that the roadside breath test that had been administered to K was not an evidential breath test under s.7 of the Act. On appeal, an issue arose as to whether, in the circumstances of the instant case, the roadside test administered to K was a preliminary breath test under s.6 of the Act or a roadside evidential breath test under s.7 of the Act.

HELD

On the facts, the roadside breath test administered to K could only have been a preliminary breath test under s.6 of the Act, as the device used to administer it was not accurate as a roadside breath test device, and the whole point of s.7 of the Act was to make it unnecessary to take a suspect to a police station for further testing. The magistrates' court should have asked itself why the police officer would have bothered to take K to the police station when, if K was right, the police officer already had all the evidence required by the Act. Moreover, the roadside breath test procedure under s.7 of the Act was not yet effective, as no breath devices had been approved by the secretary of state for use in an evidential test. Accordingly, the matter was remitted to the magistrates' court with a direction to convict.

APPEAL ALLOWED

SI 2541/2006 The Natural Environment and Rural Communities Act 2006 (Commencement No 3 and Transitional Provisions) Order 2006

In force **1 October**. Article 2 of the Order brings into force the numerous provisions of the Natural Environment and Rural Communities Act 2006. Those provisions of particular relevance to police forces are included in an article on page 12. The full list of provisions is:

- Section 1(4).
- Sections 3 and 4.
- Sections 6 to 8.
- Section 10.
- Section 11, so far as it has not already been commenced.
- Section 12.
- Section 15(1).
- Sections 17 to 25 and Schedule 2.
- Sections 26 to 28 and Schedule 3.
- Section 30.
- Sections 31 to 39 and Schedule 4.
- Sections 40 to 46 (biodiversity).
- Sections 48 to 51.
- Sections 54 and 55 (offences in connection with sites of special scientific interest).
- Section 58.
- Section 60.
- Section 61, subsection (6) and subsection (1) so far as it relates to that subsection.
- Sections 62 to 65.
- Section 87 to 90 and Schedules 8 to 10.
- Sections 91 to 97.
- Section 100.
- Section 101.
- Section 105(1), so far as it has not already been commenced.
- Section 105(2), so far as it has not already been commenced.
- Schedule 12, so far as it has not already been commenced, with the exception of the entry relating to the Transport Act 1968.

The following paragraphs of Schedule 11 also came into force on 1 October:

- Paragraphs 1 to 33.
- Paragraph 34, so far as it has not already been commenced.
- Paragraphs 35 to 38.
- Paragraph 39, so far as it has not already been commenced.
- Paragraphs 40 to 57.
- Paragraph 58, so far as it has not already been commenced.
- Paragraph 59.
- Paragraphs 60 and 61, so far as they have not already been commenced.
- Paragraphs 62 to 104.
- Paragraph 105, so far as it has not already been commenced.
- Paragraphs 106 to 152.
- Paragraph 153, so far as it has not already been commenced.
- Paragraphs 154 to 173.

Also in force on 1 October are the transitional provisions laid out in the Order's Schedule.

SI 2565/2006 The Road Vehicles (Construction and Use) and Motor Vehicles (Type Approval for Goods Vehicles) (Great Britain) (Amendment) Regulations 2006

In force **9 November** in relation to Regulations 4(5), 6(10) and 6(13), and for all other purposes on **20 October**.

These Regulations:

- Amend the Road Vehicles (Construction and Use) Regulations 1986 to incorporate the requirements of Directives 2005/55/EC and 2005/78/EC (as amended by Directive 2006/51/EC) on vehicle emissions into the domestic requirements concerning the design, construction, equipment and use of vehicles.
- Amend the provisions relating to emissions requirements for end-of-series vehicles to ensure that European law is fully implemented.
- Align the calculation of the maximum number of vehicles that may enter into service under the Construction and Use Regulations and under the Motor Vehicles (Type Approval for Goods Vehicles) (Great Britain) Regulations 1982 with that used in European law and, in particular, Directive 70/156/EEC.

Regulation 4(5) replaces the reference to the Directives previously listed in item 2 in the Table in Regulation 61A of the Construction and Use Regulations with a reference to Directives 2005/55/EC, 2005/78/EC and 2006/51/EC, in order to implement these Directives.

Regulations 6(10) and 6(13) make the same substitutions with respect to the definition of "vehicle" for the purposes of the meaning of "non-type approval end-of-series vehicles" (Part III of Schedule 7XA to the Construction and Use Regulations). Under Regulation 1(2), these substitutions take place only from 9 November, which is the date from which

these Directives must be implemented by Member States, and from which the Directives previously specified in item 2 are repealed. The proviso at the end of Regulation 4(3) reflects the fact that the Directives impose new requirements and consolidate other Directives, and ensures that, when a requirement is re-enacted, the "date as is specified" in relation to that requirement remains unchanged.

Regulations 4 and 6 amend Regulation 61A and Schedule 7XA, to take into account the fact that some Directives specify more than one stage of emission limit values (or other requirements). These amendments ensure that an end-of-series vehicle can be exempted from one stage only. When this happens, the vehicle will still need to comply with the requirements of the previous stage of the same Directive, or, if it is exempted from the first stage of a Directive, the requirements of the previous Directive (if any). Finally, Regulation 6(4) ensures that end-of-series exemptions granted in other Member States and in Northern Ireland are recognised in Great Britain.

Regulation 3 and 6(3)(e) ensure that end-of-series vehicles under the Motor Vehicles (EC Type Approval) Regulations 1998 are covered by the exemptions in Regulation 61A(7) of, and Schedule 7XA to, the Construction and Use Regulations.

For vehicles not subject to type approval, the maximum number of vehicles that could enter into service under the Construction and Use Regulations was either 10% of the vehicles registered by the manufacturer in the 12 months before the date when the new set of requirements came into effect, or 50 vehicles, whichever was the greater. Regulation 6 (8) increases 50 to 100 and Regulation 6(11) increases the percentage to 30%.

Regulation 7 increases the maximum number of vehicles which may be regarded as end of series vehicles to 30% of those registered in the 12 months before the date when the new set of requirements came into effect, or 100 vehicles, whichever is the greater, in relation to vehicles subject to the Type Approval for Goods Vehicles Regulations.

SI 2602/2006 The Identity Cards Act 2006 (Commencement No 2) Order 2006

In force **30 September**. This Order brings Section 37 of the Identity Cards Act 2006 into force.

Section 37 requires the Government to lay before Parliament at least every six months an estimate of the public expenditure likely to be incurred on the Identity Cards Scheme over the following ten years. See article on page 24.

SI 2636/2006 The Criminal Procedure (Amendment No 2) Rules 2006

In force **6 November**. These Rules make the following amendments to the Criminal Procedure Rules 2005:

- Part 4 (service of documents) is extended to govern the service of a requisition issued by a public prosecutor under Section 29 of the Criminal Justice Act 2003.
- Part 7 (commencing proceedings in magistrates' courts) is extended to govern the form and content of a requisition and written charge issued by a public prosecutor under Section 29 of the Criminal Justice Act 2003. The amended Rules require that a summons or requisition must state the name of the justice or public prosecutor responsible for issuing it.
- Part 15 (preparatory hearings in cases of serious fraud and other complex or lengthy cases in the Crown Court) is extended to govern applications under Section 17 of the Domestic Violence, Crime and Victims Act 2004 for trial of some of the counts in an indictment without a jury.

- Part 68 (appeal to the Court of Appeal against conviction or sentence) is extended to govern the procedure on an appeal to the Court of Appeal under Section 74(8) of the Serious Organised Crime and Police Act 2005 against a sentence review decision.
- Rule 24.1 (requirement to disclose expert evidence) is amended to require that an expert whose findings are disclosed under the rule is made aware of that disclosure, which is relevant to the expert's duty to the court under Part 33. The amended rule requires service on the court of a statement provided to another party under that rule.
- Rule 29.8 (expert evidence in connection with special measures directions) is amended to require that an expert whose findings are disclosed under the rule is made aware of that disclosure, which is relevant to the expert's duty to the court under Part 33. The amended rule requires service on the court of a statement provided to another party under that rule.

The Rules also add three new provisions to the Criminal Procedure Rules 2005. The first is a new Part 33 which deals with expert evidence. It is a substitute for the existing Part 33, which sets out the duty of an expert to the court and the content of an expert's report. The new Part allows the court to direct that defence evidence will be given by a single joint expert. The second is a new Part 36 which revises and simplifies the rules about applications under Section 41 of the Youth Justice and Criminal Evidence Act 1999. Finally, a new Rule 2.1 explains when the new expert evidence rules in Part 33 will apply.

SI 2657/2006 The Terrorism (United Nations Measures) Order 2006

In force **12 October**. This Order replaces the Terrorism (United Nations Measures) Order 2001. It gives effect to UN Security Council Resolution 1373(2001) and provides penalties for offences under Regulation (EC) No. 2580/2001.

The Order gives the Treasury the power to stop funds reaching anyone in the UK suspected of planning terror or engagement with terror. Measures include the freezing of funds, financial assets and economic resources of such persons and ensuring that any funds, financial assets, economic resources and financial services are not made available to them.

SI 2662/2006 The Domestic Violence, Crime and Victims Act 2004 (Commencement No 6) Order 2006

In force **4 October**. This Order brings into force Section 55 of the Domestic Violence, Crime and Victims Act 2004, which creates a Victims' Advisory Panel.

SI 2663/2006 The Gaming Act 1968 (Variation of Monetary Limits) Order 2006

In force **27 October**. This Order increases the stake and prize limits for machines (commonly known as "fruit machines" or "slot machines") covered by Sections 31 and 34 of the Gaming Act 1968.

It increases the stake limits for machines covered by Section 31, commonly referred to as B3 and B4 machines, to a maximum of £1 for playing a game once. The prize limits remain the same, at £500 and £250 respectively.

In respect of machines to which Section 34 applies, it increases the stake limit that may be charged for playing a game once from 30 pence to 50 pence and increases the amount which may be offered as a prize in respect of any one game played from £25 to £35.

SI 2680/2006 The Motor Vehicles (Tests) (Amendment) (No 2) Regulations 2006

In force **7 November**. These Regulations make amendments to the Motor Vehicles (Tests) Regulations 1981, which deal with the issue of MOT certificates.

Regulation 3(2) amends Regulation 20 of the 1981 Regulations to increase the fees payable for examinations of vehicles pursuant to applications made under Regulation 12 of those Regulations. The increase in fees, other than those for testing vehicles in Classes VI or VIA, reflect the increased times taken to conduct an average MOT test, based on the findings of a timing exercise conducted in early 2006.

The fees are as follows:

Class	**Current Fee**	**Revised Fee**	**Increase @ 14 %**
I/II (solo motorbikes)	£23.80	£27.15	£3.35
II (and motorbikes with sidecar)	£30.40	£34.65	£4.25
III (3-wheel vehicles)	£30.40	£34.65	£4.25
IV (cars)	£44.15	£50.35	£6.20
IV (passenger vehicles with 9-12 passenger seats)	£46.15	£52.60	£6.45
IVA (includes seat belt installation check)	£51.55	£58.75	£7.20
V (buses with 13-16 passenger seats)	£47.95	£54.65	£6.70
V (buses with 17+ passenger seats)	£65.00	£74.10	£9.10
VA (13-16 seats with seat belt installation check)	£64.85	£73.95	£9.10
VA (17+ seats with seat belt installation check	£100.40	£114.45	£14.05
VII (goods vehicles between 3 - 3.5 tonnes)	£47.20	£53.80	£6.60

Regulation 4 increases the charge made for entering a record in the computerised system in respect of vehicles which pass the MOT test. The charge is being increased from £1.44 to £1.71 (an increase of 18.75%). There is no charge for entries in respect of vehicles which fail the MOT test.

SI 2739/2006 The Control of Asbestos Regulations 2006

In force **13 November**, except Regulation 20(4) which comes into force on **6 April 2007**. These Regulations revoke and replace the Control of Asbestos at Work Regulations 2002 (S.I. 2002/2675) and revoke and re-enact, with modifications, the Asbestos (Licensing) Regulations 1983 (S.I. 1983/1649) as amended and the Asbestos (Prohibitions) Regulations 1992 (S.I. 1992/3067) as amended. They also implement, as respects Great Britain:

- Council Directive 76/769/EEC, as amended, on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations, insofar as it relates to asbestos.
- Council Directive 83/477/EEC, as amended, on the protection of workers from the risks related to exposure to asbestos at work.
- Council Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work (sixth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), insofar as it relates to asbestos.
- Council Directive 98/24/EC on the protection of the health and safety of workers from the risks related to exposure to chemical agents at work (fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), insofar as it relates to risks to health from exposure to asbestos.

SI 2788/2006 The Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2006

These Rules, except for Rules 10 and 11, come into force on **13 November**. Rules 10 and 11 shall come into force on the day on which Section 8 of the Immigration, Asylum and Nationality Act 2006 comes into force.

These Rules amend the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Main changes include:

- De-prescribing the appeal forms and providing that the appeal must be made in a form approved for the purpose by the President of the Tribunal.
- Changing the title of Rule 9 to remove the reference to an 'invalid appeal'.
- Requiring the Tribunal to provide reasons for a decision in relation to a late notice of appeal.
- Making provision for an appeal to be treated as withdrawn, or for the Tribunal to direct that an appeal may continue, if an appellant dies before his appeal has been considered by the Tribunal.
- Amending the provision on abandonment of appeals consequential on an amendment to Section 104 of the Nationality, Immigration and Asylum Act 2002 by Section 9 of the Immigration, Asylum and Nationality Act 2006.
- Extending the time limits within which the Tribunal must fix a date for a hearing, or determine an appeal without a hearing, in asylum appeals.
- Making provision for the President of the Tribunal to review and set aside orders, notices of decision and determinations in circumstances where they are wrongly made as a result of administrative errors at the Tribunal.

SI 2789/2006 The Asylum and Immigration Tribunal (Fast Track Procedure) (Amendment) Rules 2006

In force **13 November**. These Rules amend the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 (S.I. 2005/560), to bring the Rules into line with the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230) as amended by the Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2006 (SI 2006/2788).

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