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Digest

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DIVERSITY Criminal Justice

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

This month's edition contains articles in relation to a number of provisions that have recently been, or are imminently being brought into force, they include provisions in the Road Safety Act 2006, the Mental Capacity Act 2005; the Violent Crime Reduction Act 2006, including Regulations in connection with the realistic imitation firearms; and the Racial and Religious Hatred Act 2006.

Also featured this month are articles covering: Sir Ronnie Flanagan's interim report on the review of policing; the Independent Police Complaints Commission (IPCC) study report into serious and fatal injury road traffic incidents (RTIs) involving the police; the Audit Commission and the Auditor General for Wales report on how well the police recorded information reported to them by victims and witnesses; a review of absence policies and management in the police forces of England and Wales; an article covering issues surrounding the taking and keeping of DNA samples and profiles; and a recent IPCC finding concerning the use of stop and search powers under Section 60 of the Criminal Justice and Public Order Act 1994.

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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New Guidance on Risk Assessments at Work

New guidance on health and safety risk management and disability is being launched shortly by the Disability Rights Commission and the Health and Safety Executive (HSE).

The web-based guidance has been developed to encourage employing and retaining disabled workers. It will provide expert advice on delivering the necessary workplace adjustments, to both employers and disabled people.

The guidance will also include links to relevant government agencies, which provide reliable and up to date information to help employers achieve levels of good practice and meet requirements under health and safety and disability discrimination law. It will be available via http://www.hse.gov.uk/index.htm

Guidance Document for Police on Assessment of Common National Occupational Standard AA1: Promoting Equality and Valuing Diversity

Skills for Justice has developed a guidance document to assist police forces with the assessment of AA1 as part of the Police Race and Diversity Learning and Development Strategy.

The document includes guidance on:

- The assessment process.
- Assessment methods.
- Types of evidence.
- Amount of evidence.
- Occupational competence of assessors.
- Internal quality assurance.
- Recording assessment.

Copies of the guidance document can be obtained by contacting emma.hutchinson@skillsforjustice.com

Autism

New Philanthropy Capital has published a report, 'A life less ordinary', which explores the issues surrounding autism and the lives of the people it affects. The report suggests practical ways donors can help, from funding innovative research to helping train teachers and policemen on how to work with people with autism. The report can be found in full at http://www.philanthropycapital.org/html/Research/autism.php

Consultation on Police Promotion to the Rank of Sergeant and Inspector

Following the recent reviews of the Police Promotion Trial which have been operating within Bedfordshire Police, Hertfordshire Constabulary, Merseyside Police, Metropolitan Police Service, Sussex Police, Thames Valley Police and Leicestershire Constabulary (for inspectors only), the Police Promotion Examinations Board (PPEB) has published a consultation paper on the future of police promotion to the rank of sergeant and inspector.

This consultation paper is the culmination of over three years work examining the feasibility of introducing an alternative method of promotion, based on work-based assessment, to replace the current system used in England and Wales.

Following consideration of responses to the consultation paper, the PPEB will make a recommendation to Home Office ministers on whether this alternative method of promotion should be rolled out nationally, or whether the current system remains suitable for today's police service and should be kept.

Responses to the consultation paper are requested by Monday 26 November 2007. The consultation paper can be downloaded from the NPIA website at http://www.npia.police.uk/en/8559.htm

Skills for Justice's Annual Conference

The Skills for Justice's Annual Conference, Skills Summit 2008, will take place on Tuesday 11 March 2008 at the Mere Golf & Country Club, near Manchester Airport in Cheshire. Further information on this event will be available at http://www.skillsforjustice.com/default.asp?PageID=1

Police Assessment Support Project

The Skills for Justice's Police Assessment Support Project ran from February 2006 until May 2007. It provided assessment support and advice to 40 police forces. A report containing findings from the project has been compiled and circulated to forces. Further copies can be obtained from Emma Hutchinson, Assessment Adviser, at emma.hutchinson@skillsforjustice.com

Road Safety Act 2006

The Road Safety Act 2006 (Commencement No. 2) Order 2007 brought a number of provisions in the Road Safety Act 2006 into force on 24 September 2007 (see SI 2472/2007). Those that affect the law in England and Wales are:

Section 14 - This section amends Section 45(7) of the Road Traffic Offenders Act 1988 (RTOA) by adding the offence of failing to allow a specimen to be subjected to a laboratory test (Section 7A(6) of the Road Traffic Act 1988 (RTA 1988)), so that where a person is guilty of an offence under Section 7A(6) of the RTA 1988, the endorsement will remain effective for a period of eleven years from the conviction.

Section 23 - This section amends Part 1 of Schedule 2 to the RTOA, thereby increasing the maximum fine for an offence of driving without due care or without reasonable consideration for other road users under Section 3 of the RTA, from level 4 on the standard scale (£2,500) to level 5 (£5,000).

Section 24 - This section increases the maximum fine for an offence under Section 15(4) of the RTA 1988 (driving a motor vehicle in contravention of requirements relating to seat belts where children in rear seat) from level 1 on the standard scale (£200) to level 2 (£500). This means that the penalty is now the same as that in respect of a child occupying a front seat.

Section 25 - This section amends Part 1 of Schedule 2 to the RTOA to provide for obligatory disqualification of a person convicted of using a vehicle in a dangerous condition, contrary to Section 40A of the RTA 1988, if the offence is committed within three years of a previous conviction for the same offence.

Section 27 - This section increases the penalty for the offence of failing to stop a mechanically propelled vehicle when required to do so by a constable in uniform or a traffic officer, from a fine of level 3 on the standard scale (£1,000) to level 5 (£5,000). The penalty in relation to failing to stop a cycle when so required is unaffected.

Section 28 - This section provides for discretionary disqualification for the offence of furious driving under Section 35 of the Offences against the Person Act 1861. It also provides for the offence to be subject to an obligatory endorsement where the offence is committed in relation to a mechanically propelled vehicle and sets the range of penalty points available for this offence at 3-9.

Section 29 - This section amends Part 1 of Schedule 2 to the RTOA by raising from 3 to 6 the maximum number of penalty points which can be imposed for the offence of failing to provide information about the identity of a driver, contrary to Section 112(4) of the Road Traffic Regulation Act 1984 and Schedule 2 to the RTOA.

Section 30 - This section inserts new Section 3ZA in the RTA 1988. This section includes a provision about the meaning of the phrase 'without due care and attention', so that it is clear that this means driving in a way that falls below what would be expected of a competent and careful driver. It provides that, in determining what would be expected of a careful and competent

driver, regard shall be had not only to what he could be expected to be aware of, but also to any circumstances shown to have been within the knowledge of the accused. It also provides further definition of the phrase 'without reasonable consideration', so it is clear that this means driving in a way that inconveniences other people.

NB Although Section 3ZA provides that it applies to Section 2B (causing death by careless, or inconsiderate, driving), Section 3 (careless, or inconsiderate, driving) and Section 3A (causing death by careless driving when under influence of drink or drugs), at present the Road Safety Act 2006 (Commencement No. 2) Order 2007 only brings Section 3ZA into force in respect of Sections 3 and 3A. This is due to the fact that Section 20 of the Road Safety Act 2006 is not yet in force. Section 20 inserts Section 2B (causing death by careless, or inconsiderate, driving) into the RTA 1988. As mentioned in the September *Digest*, the Ministry of Justice Minister Maria Eagle has stated that it is her intention to bring Section 20 into force this Autumn, subject to the Sentencing Guidelines Council publishing sentencing guidelines in respect of it.

Section 31 - This section extends the offence in Section 3A of the RTA 1988 (causing death by careless driving when under the influence of drink or drugs etc) to allow for a person whose blood has been taken under Section 7A (specimens of blood taken from persons incapable of consenting) to be prosecuted for the Section 3A offence where, without reasonable excuse, that person does not (when he is later able to) consent to his blood being subjected to a laboratory test.

It also provides that a prosecution for the Section 3A offence on the basis of a refusal of consent under Section 7A is only possible where the offence was committed with a motor vehicle, as opposed to any other kind of mechanically propelled vehicle.

This section also amends Section 24(1) RTOA to provide that conviction of an offence under Section 7A(6) (failing to give permission for laboratory test) may be an alternative verdict to conviction of an offence under Section 3A.

Section 33 - This section amends Section 24 of the RTOA so that where a person is found not guilty of a charge of manslaughter in connection with the driving of a mechanically propelled vehicle by him, but the allegations in the indictment amount to or include any allegation of an offence under Section 1 of the RTA 1988 (causing death by dangerous driving), Section 2 of that Act (dangerous driving), Section 3A of that Act (causing death by careless driving when under influence of drink or drugs), or Section 35 of the Offences against the Person Act 1861 (furious driving), he may be convicted of that offence.

Section 41 - This section enables the Secretary of State, by regulations, to make available information about persons providing, or giving instruction on, driver training courses.

It also substitutes a new paragraph (ff) of Section 173(2) of the RTA 1988 (forgery of documents etc.) so that it applies to a document evidencing the successful completion of a compulsory driver training course.

It also amends Section 174(1) of the RTA 1988 (false statements) so that a person who knowingly makes a false statement for the purpose of obtaining a document evidencing the successful completion of a compulsory driver training course is guilty of an offence.

Section 43 - This section inserts a new Section 162A (approved test assistants) into the RTA 1988. This gives the Secretary of State power to provide for a statutory scheme regulating the use of persons who may assist test candidates who have difficulty in hearing, understanding or responding to instructions or questions.

Section 59 - This section introduces Schedule 7 of the Act, which contains repeals and revocations (including repeals of some spent enactments). However, at present, only paragraphs 5 and 13 of Schedule 7, which contain repeals relating to the period of endorsement for failure to allow specimen to be tested and driver training, are brought into force.

The Act can be found in full at http://www.opsi.gov.uk/acts/acts2006/20060049.htm

Mental Capacity Act 2005

The Mental Capacity Act 2005 (Commencement No. 2) Order 2007 brings into force certain provisions in the Mental Capacity Act 2005 on 1 October. (See SI 1897/2007 covered in August *Digest*).

Patricia Wooding, the Legislation Manager of Thames Valley Police has prepared a briefing paper which is intended to assist officers in understanding how two of the provisions in the Act i.e. Sections 5 and 6 will impact on the police. This is set out below:

The Mental Capacity Act 2005 provides a statutory framework to empower and protect vulnerable people who are not able to make their own decisions. It makes it clear who can take decisions, in which situations, and how they should go about this. It also enables people to plan ahead for a time when they may lose capacity.

Because the Act covers a wide range of decisions in all areas of life and provides protection from legal liability for acts done in connection with care and treatment if done in the person's best interests and in keeping with the limitations of the Act, it can provide the police with an important power to act in a person's best interests as if they had the person's consent (Section 5).

Section 6 of the Act permits restraint where the person using it believes that it is necessary to prevent harm to the person they are restraining and the restraint is a proportionate response to the likelihood and seriousness of the harm (harm is not confined to physical harm).

How will a police officer, taking action to save life and limb, be protected under the "acting in best interests" provisions of the Act?

Effectively, the s. 5 and 6 provisions put what the police are already doing as common sense into principal legislation. Where a police officer is called to assist with someone who lacks capacity, if no offence has been committed, then he/she can act in that person's best interests in connection with care and treatment where he/she has used the test of capacity set out in s.5 of the Act and can then use the least restrictive force to move that person from one place to another so long as s/he acts reasonably.

What is the **test of capacity** set out in s.5?

Simply put you need to ask "Does this person have the capacity to make this decision at this time? There is a 4 stage test set out in s.5:

- Does this person understand the information relevant to this decision - including the consequences of acting/not acting?
- Can this person retain the information for long enough to make a decision?
- Can they weigh up the information (remember we all have the right to make unwise decisions)?
- Can they communicate their decision (whether by talking, sign language or any other means)?

If a person cannot complete these 4 steps then the person does not have the capacity to make this decision at this time.

The idea behind s.5 is that anyone can assess capacity.

Best interests

Once you have decided that the person lacks capacity, you can act in their best interests. This is an objective test: consider **what is the best course of action for this person? (NOT necessarily what you would want for yourself)**.

If you are deciding what is in a person's best interests you must consider 'all relevant circumstances', in particular:

- Consider whether the person is likely to regain capacity and, if so, can the decision wait?
- Encourage the person to take part in decision-making as much as possible, even if s/he lacks capacity to make the entire decision.
- Consider the person's past and present wishes and feelings if known (in particular, any document written when s/he had capacity); the beliefs and values that would probably have influenced his/her decision-making when s/he had capacity; other factors s/he would be likely to consider if s/he could.
- Take into account, **as far as is practicable and appropriate**, the views of: anyone named by the person to be consulted on this or similar matters; anyone caring for the person or interested in his/her welfare; any donee of a Legal Power of Attorney (LPA); any Deputy appointed for

the person by the Court; an Independent Mental Capacity Advocate (IMCA) if one is instructed.

Acting in connection with care and treatment, if done in the incapacitated person's best interests, will generally not incur legal liability.

The following is an example of a scenario where an officer may consider using powers under The Mental Capacity Act.

An officer comes across John who is highly intoxicated in the street and he has fallen and sustained a nasty injury. He refuses to accept help and the officer is concerned for John's welfare. The officer can consider 'the test of capacity' and if he/she decides that at that particular time John lacks capacity the officer can act in John's best interests.

Restraint

Section 6 defines restraint as the use or threat of force where P resists, and any restriction on P's liberty of movement, whether or not P resists.

Restraint is only permitted if:

- You believe that it is necessary to prevent harm to P; and
- If the restraint is a proportionate response to the likelihood and seriousness of the harm.

Harm is not restricted to physical harm.

Restriction may be allowed, but deprivation of liberty is NOT allowed - this will be a question of degree, duration, control, context, purpose etc. The word reasonable is used frequently throughout the Act.

Officers should record their decision making and if restraint has been used, document this appropriately.

WARNING!

You cannot use the Mental Capacity Act 2005 (or other 'ways and means') to bring someone from a private to a public place in order to use Mental Health Act 1983, s.136, because if you do then you haven't FOUND them in a public place.

Note the comments of Baroness Hale in the recent case of S*eal v. Chief Constable of South Wales Police* [2007] House of Lords.

Although this case was in fact about the failure to obtain leave to bring proceedings within the time limits, Baroness Hale commented on the interpretation of s.136 of the Mental Health Act 1983.

Mr. Seal had been arrested inside his mother's home by the police for a breach of the peace. Having been taken outside he was then detained under s.136(1) of the 1983 Act:

"If a constable finds in a place to which the public have access a person who appears to him to be suffering from mental disorder and to be in immediate need of care or control, the constable may, if he thinks it necessary to do so in

the interests of that person or for the protection of other persons, remove that person to a place of safety..."

Baroness Hale said:

"The police may well have an answer to Mr. Seal's claim. But their case is not without difficulty. If he was "removed" under section 136 of the Mental Health Act from his mother's home, he cannot have been "found in a place to which the public have access". If he was arrested in her home for a breach of the peace, and then "removed" under Section 136 after they had taken him outside, can it be said that they "found" him there? (To say otherwise would deprive Section 136 of much of its usefulness when an arrested person is later discovered to have a mental disorder)."

The Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007

These Regulations come into force on 1 October 2007 make provision in connection with the realistic imitation firearms provisions contained in Sections 36 to 38 and paragraphs 4 to 6 of Schedule 2 of the Violent Crime Reduction Act 2006.

Section 36(3) of the Act gives the Secretary of State a power to provide for further exceptions, exemptions or defences. This power has been exercised to make these Regulations.

Section 36 makes it an offence to manufacture, import or sell realistic imitation firearms.

Section 37 provides specific defences applying to the offences under Section 36, these include defences for the purposes of activities such as film, theatre, television and historical re-enactment.

The Regulations provide further defences to the offences in Section 36. These defence provisions apply if the person charged with the offence adduces evidence to shows that his conduct was for the purpose only of making the imitation firearm in question available for one or more of the following purposes below and the contrary is not proved beyond a reasonable doubt. These purposes are:

- The organisation and holding of permitted activities for which public liability insurance is held in relation to liabilities to third parties arising from or in connection with the organisation and holding of those activities.

This defence relates particularly to the recreational activity of 'Airsoft skirmishing' which involves participants acting out military or law enforcement scenarios.

- The purposes of display at a permitted event.

This defence relates to 'permitted events' i.e. commercial events at which firearms or realistic imitation firearms (or both) are offered for sale or displayed and is intended to encourage the practice of exhibitors at arms fairs using realistic imitation firearms to advertise their products rather than risk bringing real firearms to events.

The Regulations also specify that a person/s whom seeks to use the existing defence for historical re-enactment in Section 37 are required to hold third party public liability insurance arising from or in connection with the organisation and holding of historical re-enactments. This is intended to ensure that the defence is limited to genuine, organised historical re-enactments.

Regulation 6 specifies the sizes and colours which are to be regarded as unrealistic for a real firearm.

The size of an imitation firearm is to be regarded as unrealistic for a real firearm only if the imitation firearm is less than 38 millimetres in height and 70 millimetres in length.

A colour is to be regarded as unrealistic for a real firearm only if it is:

- Bright red.
- Bright orange.
- Bright yellow.
- Bright green.
- Bright pink.
- Bright purple.
- Bright blue.
- Made of transparent material.

These Regulations were introduced by Statutory Instrument SI 2606/2007 (see SI section). See also further advice in HOC 31/2007.

HOC 31/2007
The Violent Crime Reduction Act 2006 (Commencement No3) Order 2007: Firearms Measures

This Home Office Circular advises of the commencement on 1 October 2007 of the following firearms provisions in The Violent Crime Reduction Act 2006:

- Sections 31 and 32: Sales or transfers of air weapons.
- Section 33: Age limits for purchase etc of air weapons and ammunition.
- Section 34: Firing an air weapon beyond premises.
- Sections 36 to 38: Realistic imitation firearms.
- Section 39: Specification for imitation firearms.
- Section 40: Supplying imitation firearms to minors.
- Section 41: Increase of maximum sentence for possessing an imitation firearm.

Details of these provisions have been covered in previous editions of the *Digest* and are also included in this edition in relation to realistic imitation firearms in the previous article.

The Circular also contains further guidance and advice from the Home Office in respect of these provisions and this is set out below.

Sections 31 and 32: Sales or transfers of air weapons

As with other firearms, there is no definition of a component part but the Home Office takes the view that this means the pressure bearing parts of air weapons, such as the barrel, cylinder or reservoir and the piston. As for accessories, only moderators (silencers) will need to be registered by dealers. The new provisions do not apply to ammunition for air weapons. Nor do they apply to specially dangerous air weapons, which should continue to be treated as either Section 1 or Section 5 firearms.

In cases where a dealer trades only in air weapons, chief officers will want to condition their registration accordingly. The following wording for the condition is suggested:

"The holder of this certificate is restricted to trade only in those air weapons not declared to be specially dangerous. The holder shall give prior notice in writing to the chief officer of police if at any time he/she wishes to commence trading in other firearms or ammunition."

A second condition relating to security should also be imposed. The following wording is suggested:

"Reasonable measures shall be taken to maintain the safekeeping of all firearms dealt with or kept in the course of the registered firearms dealer's business."

Home Office Circular 12/2007 (see May *Digest*) explained that it will not be necessary to register as a firearms dealer where sales or transfers involve only antique air weapons which are kept as curiosities or ornaments. The Home Office view was given that, for the purposes of Section 31, any air weapon manufactured before 1939 should normally be regarded as an antique. Attached to this Circular is a note prepared by Bill Harriman on behalf of the Historic Firearms Reference Panel, which provides police forces with some guidance on the most common types of air weapon manufactured before 1939.

Sections 36 to 38: Realistic imitation firearms

This Circular offers further advice and guidance in respect of the Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007 covered in the previous article.

It suggests that it would be advisable for manufacturers, importers and vendors who wished to avail themselves of one of the defences set out in the Act and the Regulations to help show that their conduct was for purpose of making realistic imitation firearms by keeping a record of each transaction. Further suggesting that they could ask to see, for example, a letter from the commissioning film or television company or for an importer to rely on orders from a supplier to the film industry.

In respect of re-enactments, it advises to ask to see any membership card and to check that either the individual or the re-enactment society holds the required insurance. For airsoft skirmishing, the Association of British Airsoft is putting in place arrangements to allow retailers to check that individual purchasers are members of a genuine skirmishing club or site. The key elements of these arrangements are:

- New players must play at least 3 times in a period of not less than 2 months the 2 months before being offered membership.
- Membership cards with a photograph and recognised format will be issued for production to retailers.
- A central database will be set up for retailers to cross-check a purchaser's details.
- A member's entry on the database will be deleted if unused for 12 months.

This Circular highlights the fact that the definition of realistic imitation firearm given in the VCR Act and the colours and dimensions specified in the regulations **relate only** to the new offence of manufacturing, importing, modifying or selling such items. They are not intended to affect in any way the definition of an imitation firearm in Section 57(4) of the Firearms Act 1968 or how that definition is applied elsewhere in firearms law, for example, in firearms offences such as Sections 16A, 17, 18, 19 and 20 of the 1968 Act. The fact that a bright pink imitation firearm is not regarded as being realistic under the VCR Act provisions would not in itself stop it being regarded as an imitation in the commission of one of these offences.

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

HOC 29/2007
The Racial and Religious Hatred Act 2006

This Home Office Circular has been produced in order to assist understanding of the Racial and Religious Hatred Act 2006, which received Royal Assent on 16 February 2006. The Act amends the Public Order Act 1986 by inserting a new Part 3A, which creates offences involving stirring up hatred against persons on religious grounds. This will fill the gaps in the existing legislation, which only made it illegal to threaten people on the basis of their race or ethnic background. It also amends Section 24A of the Police and Criminal Evidence Act 1984, so that the power of citizen's arrest does not apply to the offences of stirring up religious and racial hatred.

It is advised that the Circular does not form part of the Act and has not been endorsed by Parliament.

The provisions in the Act are being brought into force on 1 October 2007 by way of the Racial and Religious Hatred Act 2006 (Commencement No.1) Order 2007 (See SI 2490/2007), except for the following provisions:

- Section 29B(3) (power to arrest person suspected of offence under that section). As this provision is not consistent with the new general arrest powers in PACE, which provide that an arrest without warrant can be made where necessary for one of a number of specified purposes, Section 29B(3) shall not be commenced.
- Section 29H(2) (power of courts in Scotland to authorise entry and search) and Section 29I(2)(b) and (4) (power of courts in Scotland to order forfeiture). These provisions have application in Scotland, which was unintended; and therefore these sections shall not be commenced.

Section 1: Hatred against persons on religious grounds

This Section gives effect to the Schedule, which creates a new Part 3A of the 1986 Act to create offences involving stirring up hatred against a group of persons on religious grounds. The Act will ensure that the criminal law protects all groups of persons defined by their religious beliefs or lack of religious belief from having religious hatred intentionally stirred up against them in cases set out in Sections 29B to 29G in new Part 3A of the 1986 Act.

Section 2: Racial and religious hatred offences: powers of arrest

Section 2 amends Section 24A of the Police and Criminal Evidence Act 1984 so as to exempt the offences of stirring up racial or religious hatred (in Parts 3 and 3A of the 1986 Act) from the power of citizen's arrest. Section 24A was inserted into the Police and Criminal Evidence Act 1984 by Section 110 of the Serious Organised Crime and Police Act 2001. Section 2 ensures that only constables will have the power to arrest persons in the context of these offences.

Schedule: Hatred against persons on religious grounds

The Schedule inserts a new Part 3A into the 1986 Act, which deals with offences involving stirring up hatred against people on religious grounds.

Section 29A defines "religious hatred". The definition covers hatred against a group of persons defined by reference to their religious belief or lack of religious belief but does not seek to define what amounts to a religion or a religious belief. It will be for the courts to determine whether any particular belief is a religious belief for these purposes.

The reference to "religious belief or lack of religious belief" is a broad one, and is in line with the freedom of religion guaranteed by Article 9 of the European Convention on Human Rights. It is intended to include, although this list is not definitive, those religions widely recognised in this country, such as Christianity, Islam, Hinduism, Judaism, Buddhism, Sikhism, Rastafarianism, the Baha'i faith, Zoroastrianism and Jainism. Equally, branches or sects within a religion can be considered as religions or religious beliefs in their own right.

The offences also cover hatred directed against a group of persons defined by reference to a lack of religious belief, such as atheists and humanists. The offences extend so far as to include hatred against a group where the hatred is not based on the religious beliefs of the group or even on a lack of any religious belief, but on the fact that the group do not share the particular religious beliefs of the perpetrator.

Sections 29B to 29F create new offences of stirring up religious hatred. These offences involve the use of words or behaviour or display of written material (29B), publishing or distributing written material (29C), the public performance of a play (29D), distributing, showing or playing a recording (29E) and broadcasting or including a programme in a programme service (29F).

In relation to each offence, the words, behaviour, written material or recordings or programme must be **threatening**, and **intended** to stir up religious hatred. The offence has a significantly different threshold from the racial hatred offence, for which it is an offence to use not only words or behaviours which are threatening, but also words or behaviours which are abusive or insulting, and which are likely to incite hatred as well as those intended to incite hatred.

In the case of the offence at 29B, there is a defence where the words or behaviour are used or the written material displayed inside a private dwelling and the defendant had no reason to believe that they would be heard or seen by a person outside that or any other private dwelling.

Section 29G creates a new offence of possession of threatening written material with a view to display, publication, distribution or inclusion in a programme service intending thereby to stir up religious hatred. It also creates a new offence of possession of recorded images or sounds with a view to distribution, showing, playing or inclusion in a programme service, intending thereby to stir up religious hatred. If there are reasonable grounds for suspecting that a person is in possession of material or a recording in contravention of Section 29G, then a justice of the peace may issue a warrant authorising the police to search the premises where it is suspected the material or recording is situated.

Section 29I provides that the court will order written material or any recording shown to be related to an offence under new Section 29B (relating to the display of written material), 29C, 29E or 29G to be forfeited. This forfeiture will not be effective until any possible appeal has been decided or abandoned.

Corporations can be guilty of an offence under the new Part 3A; and new Section 29M provides that where this is the case, and it can be shown that a director, manager, secretary or other similar officer of the body consented or connived then he or she is also guilty of the offence. This provision also applies to members of the body corporate where they manage its affairs.

There is a very clear statement on the face of the Act to protect freedom of speech. Section 29J provides that:

"Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system."

Section 29K makes it clear that the Act does not apply to fair and accurate reports of anything done in the United Kingdom or Scottish Parliaments or to the fair and accurate reports of judicial proceedings made at the time of those proceedings or as soon as reasonably practicable after that time.

Section 29L provides that a prosecution for the offences of stirring up religious hatred shall only be brought by or with the consent of the Attorney General. Subsection 29L(3) states that the maximum penalty for a conviction for an offence of stirring up religious hatred is seven years in prison plus a fine.

In relation to Internet Service Providers (ISPs), the Circular advises that the police National Community Tension Team (NCTT) will act as contact point for ISPs who have had reports of websites in respect of which complaints or allegations that an offence under the Act is being committed have been made.

An email address will be provided to ISPs through which they can contact the NCTT, which will be able to offer initial advice. If there are grounds for an investigation to be carried out, the NCTT will refer the case to the relevant force. There will be a need to consider whether any other offences may have been committed, as well as or instead of an offence under the Act. ISPs should also consider whether a website which is the subject of complaints or allegations breaks their own codes of conduct/terms and conditions and whether it should be taken down for that reason. Further details of this process will be set out in a separate document.

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

Changes to Blue Badge Disabled Persons' Parking Scheme

A number of changes are being made to the Blue Badge disabled persons' parking scheme. These changes will have effect from 15 October 2007 and are being brought into force by the Disabled Persons (Badges for Motor Vehicles) (England) (Amendment) Regulations 2007 (S.I. 2531/2007) and the Disabled Persons (Badges for Motor Vehicles) (England) (Amendment No. 2) Regulations 2007 (S.I. 2600/2007).

The Disabled Persons (Badges for Motor Vehicles) (England) (Amendment) Regulations 2007 amend the Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000 (S.I. 2000/682) by:

- Introducing definitions of "organisation" and "organisational badge" to replace those of "institution" and "institutional badge". This change of nomenclature arises from an amendment to Section 21(4) of the Chronically Sick and Disabled Persons Act 1970, made by paragraph 41 of Schedule 1 to the Disability Discrimination Act 2005.
- Introducing a new category of eligibility for children under the age of two who, because of a specific medical condition, need to travel with bulky medical equipment or be able to use a vehicle for treatment or to travel to a place where treatment is available quickly. This will reverse legislation passed in 1982 which specifically excluded children under the age of two from the scheme on the basis that they do not experience greater mobility

problems than other children of this age. Badges issued under this criterion will expire on the day after the child's second birthday.

- Revoking redundant eligibility criteria relating to people supplied with a vehicle at public expense, known as the Invalid Vehicle Scheme (IVS) (or "blue trike" scheme). The IVS was officially closed on 31 March 2003 and no blue trikes remain in use.
- Facilitating the issue of badges for a period of less than three years (currently badges can only be issued for three years) to people who are awarded the Higher Rate Mobility Component of the Disability Living Allowance (HRMCDLA) or War Pensioners' Mobility Supplement (WPMS) for less than this period. The previous regulations contained an anomaly whereby an individual in receipt of HRMCDLA or WPMS for a period of less than three years was automatically entitled to a three-year Blue Badge. In future, the period of issue of the badge will be tied directly to the period of receipt of HRMCDLA or WPMS. Individuals who qualified for a badge under the previous criteria will not have their badges rescinded but will instead be re-assessed under the new criteria once their badges expire.
- Amending the current criterion for the issue of badges to people with severe disabilities in both arms who drive a vehicle regularly and are unable to operate, or have considerable difficulty operating, all or some types of parking meters or pay and display equipment. The wording of the previous criterion required an applicant to have an inability to turn a steering wheel by hand even if the wheel is fitted with a steering knob.
- Making modifications to the design of both the "individual" and "organisational" badge.

The modifications made to the badges include:

- The adding of a hologram to the front of badges, for security purposes.
- The addition of the wording ("Front - Display this side up") to badges, to clearly identify the front of the badge. This is designed to help those badge holders who are failing to display their badges correctly and incurring parking fines as a result, because of confusion over which is the front of the badge.
- The revision the out-dated form of wording shown on the front of the badges ("Parking Card for People with Disabilities") to the clearer and more commonly used wording "Parking Card for Disabled People".

The Disabled Persons (Badges for Motor Vehicles) (England) (Amendment No. 2) Regulations 2007 amends the date that the Disabled Persons (Badges for Motor Vehicles) (England) (Amendment) Regulations 2007 comes into effect (from 30 September 2007 to 15 October 2007), in order to give local authorities more time to prepare for the changes.

In addition, an independent strategic review of the scheme is currently underway and is due to report to ministers in September 2007. This review will contribute to the formulation of a Blue Badge Reform Strategy which will

be in place by April 2008. It will also address all other outstanding Disabled Persons Transport Advisory Committee (DPTAC) recommendations, such as the application fee, the issue of temporary badges, research into the mobility requirements of other groups of disabled people, and other issues including the exploitation of new technologies to assist effective enforcement.

As well as the revised guidance to issuing authorities, the Department for Transport is also intending to publicise examples of local authority good practice. A revised version of the explanatory booklet which is issued to all successful applicants for a Blue Badge will also be made available.

The Disabled Persons (Badges for Motor Vehicles) (England) (Amendment) Regulations 2007 and the Disabled Persons (Badges for Motor Vehicles) (England) (Amendment No. 2) Regulations 2007 can be found at http://www.opsi.gov.uk/si/si2007/20072531.htm and http://www.opsi.gov.uk/si/si2007/20072600.htm

Offender Management Act 2007

The Ministry of Justice has published some explanatory notes in relation to the Offender Management Act 2007. The aim of the Act is to improve the delivery of probation services so as to reduce re-offending and better protect the public. It allows for the establishment of probation trusts (the first wave of which are planned for April 2008), supports the development of the commissioning of probation services and enables greater partnership working with providers in the voluntary, charitable and private sectors.

Currently the 42 probation boards are managed directly from the centre; under the Act local lead providers will work under contract to Regional Offender Managers (ROMs) for the delivery of services in a probation area. Provided their performance meets the requirements, the lead provider in a probation area will be the probation trust. The lead provider will concentrate on the delivery of offender management, while commissioning much of their interventions work from other providers, based on what is most effective, and who is best placed to deliver, in their local community.

The explanatory notes can be found at http://www.opsi.gov.uk/acts/en2007/ukpgaen_20070021_en_1.htm

Forced Marriage (Civil Protection) Act 2007

The Ministry of Justice has published some explanatory notes in relation to the Forced Marriage (Civil Protection) Act 2007, which received Royal Assent on 26 July 2007 (covered in September *Digest*). They can be found at http://www.opsi.gov.uk/acts/en2007/ukpgaen_20070020_en_1.htm

HOC 30/2007
Violent Crime Reduction Act 2006: Sale of Knives and Crossbows

This Home Office Circular advises on Section 43 and 44 of the Violent Crime Reduction Act 2006, which are due to come into force on 1 October 2007. (See SI 2180/2007 and article in September Digest).

Section 43 amends the offence of selling a knife (and certain other articles with a blade or point) to a person under the age of sixteen, under Section 141A of the Criminal Justice Act 1988, by substituting 'eighteen' for 'sixteen'.

Section 44 amends the offences under the Crossbows Act 1987 of:

- Selling or hiring a crossbow to a person under the age of seventeen years.
- Purchasing or hiring a crossbow when under seventeen years of age.
- Possessing a crossbow if under the age of seventeen years unless under the supervision of a person aged 21 or over

by substituting "eighteen" for "seventeen".

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

Green Paper on Police Reform Announced

Whilst speaking at the Police Superintendents' Association of England and Wales annual conference, the Home Secretary announced plans for a Green Paper on police reform. Ms Smith said that the paper would give forces the structure and coherence for policing reforms to deliver a more efficient and responsive service, in which all officers could have confidence.

During the speech, Ms Smith also stated that cutting bureaucracy and red tape within police forces is essential and that the independent review of policing by Sir Ronnie Flanagan outlined a number of ways in how this could be achieved.

She mentioned one key area that needed to be given greater consideration is how the police 'stop and search' power could be better administered, and that the 25 minutes to conduct the procedure was disproportionate.

Referring to national police targets, Ms Smith said that the Association had voiced its views on scrapping such targets, and whilst recording crime wasn't an 'end in itself', they did play a key role in motivating forces and reassuring the public.

She stressed that targets could work, but that the Government was keen to lower the number of targets to give greater freedom at a local level to address the individual problems that were unique to different areas, and had set this out in its crime strategy published in July.

Consultation on De-Prescribing the Penalty Notice Form

As first mentioned in the August *Digest*, the Ministry of Justice has now launched a consultation on its proposal to de-prescribe the penalty notice form.

Section 3 of the Criminal Justice and Police Act 2001 governs the form of a penalty notice for disorder (PND). The Government intends to make amendments to Section 3 by removing subsections 3(3)(a) and 3(4), which require that the PND form must be in the prescribed form. This would allow police services to design the format of their own fixed penalty notices and remove obstacles relating to the issue of electronic tickets. The Government is particularly keen on police forces using hand-held equipment for the issue of PNDs and also developing electronic ways of processing the forms.

It is intended that certain information would still be required to be on a ticket, including: details of the offence and reasonable information about it, the amount of the penalty and how to pay it, and the right to be tried for the offence. A specimen ticket will also continue to be included in operational guidance to forces.

The proposed changes are intended to be made through a Legislative Reform Order under the Legislative and Regulatory Reform Act 2006. It is expected that the changes will, subject to feedback from the consultation, be implemented from December 2007.

The consultation ends on 3 October 2007. The consultation paper can be found in full at http://www.cabinetoffice.gov.uk/regulation/documents/reform/orders/de_prescribing_consultation_0807.pdf

Home Affairs Committee Inquiry into Domestic Violence

The Home Affairs Committee is to hold an inquiry on domestic violence, including the issues of forced marriages and 'honour killings'. It will look into the effectiveness of action across different areas, including:

- Public education and awareness-raising.
- Police powers and legal protections for victims.
- Criminal and civil justice processes, including the Specialist Domestic Violence Court Programme.
- Support for victims, including finance and refuge services.
- Perpetrator programmes.
- Multi-agency approaches and what barriers exist to their effective operation.

Oral evidence sessions will be held in late 2007 or early 2008.

Government Proposals to Tackle Gang and Gun Crime

The Home Secretary has announced the creation of cross-departmental Ministerial Taskforce. The intended purpose of the taskforce, which will be chaired by the Home Secretary, is to deliver support to neighbourhoods being damaged by the activities of gangs and gun crime.

A group of professionals from central government, local authorities and frontline agencies, led by DCC Jon Murphy, who is the ACPO Organised Crime Co-ordinator and DCC of Merseyside Police, will also be established to run a 'Tackling Gangs Action Programme'. The programme is to be given an initial sum of £1m to set up and will focus on the areas where the problems are worst, including areas in London, Liverpool, Manchester and Birmingham, which account for more than half of all gun crimes in England and Wales.

Key actions to tackle gun and gang crime will include:

- Covert operations and surveillance targeting gangs.
- High-visibility police presence on the streets in troubled areas, especially around schools.
- Use of civil orders to restrict the activities of known gang members.
- Greater witness protection, including safe houses for victims and witnesses.
- Mediation services for gang members.

- Crackdown on illegal gun imports.
- Enhanced local community forums to improve communication between police and residents.
- Extra activities at local schools to keep children off the streets.

Borders and Immigration Agency Business Plan for the Transition Year 2007-2008

The new Borders and Immigration Agency (BIA) has published its Business Plan for the transition year 2007-2008. The plan outlines the first year of operation for the BIA, during its transition from the Immigration and Nationality Directorate (IND) into a fully operational Agency. It details the BIA's four strategic objectives:

- Strategic Objective 1 - Border control and UK visas - "Strengthen our borders; use tougher checks abroad so that only those with permission can travel to the UK and ensure that we know who leaves so that we can take action against those who break the rules."
- Strategic Objective 2 - Asylum - "We will fast-track asylum decisions, remove those whose claims fail and integrate those who need our protection."
- Strategic Objective 3 - Enforcement - "To ensure and enforce compliance with our immigration laws, removing the most harmful people first and denying the privileges of the UK to those here illegally."
- Strategic Objective 4 - Managed migration and UK visas - "Boost Britain's economy by bringing the right skills here from around the world, and ensuring that this country is easy to visit legally."

Strategic Objective 3 is probably of most relevance to the police service. Within this Strategic Objective there are five key priorities:

- Creating immigration partnerships.
- Transforming the collection, analysis and dissemination of information and intelligence about immigration crime.
- Shutting down the privileges of the UK to those here illegally.
- Making it easier to obey the rules.
- Providing constant feedback to the public.

Some of the measures it intends to take during 2007/08 to achieve these priorities include:

- Developing new partnerships with the police and others to deliver harm reduction, and where possible, to share targets.
- Remodelling its operational processes and introducing more efficient and effective means of delivering its services, in partnership with the police and other enforcement agencies.

- Sharing data about illegal migrants more consistently with other Government agencies and partners.
- Significantly boosting its workforce with extra immigration and seconded police officers.

The business plan can be found in full at http://www.ind.homeoffice.gov.uk/6353/aboutus/businessplan0708.pdf

Proposals on Planning for Managing Deaths during a Pandemic Influenza Outbreak

The Home Office has commenced a consultation period on draft guidance it has produced on planning for the management of potentially large numbers of deaths during a pandemic influenza outbreak. The draft framework is aimed at local planners in the preparation of contingency plans for such an event.

The closing date for the consultation is 30 November 2007. Details can be found in full at
http://www.ukresilience.info/news/manage_deaths_guidance.aspx

Consultation on 2007 Annual Review of Defra's Contingency Plan for Exotic Animal Diseases

In accordance with its legislative obligations under Section 14a of the Animal Health Act 1981, the Department for Environment, Food and Rural Affairs (Defra) is inviting comments on the 2007 version of its Contingency Plan for Exotic Animal Diseases.

The plan covers arrangements for response to an outbreak of Foot and Mouth Disease (FMD), Avian Influenza (AI), Newcastle Disease (ND), Classical Swine Fever (CSF), African Swine Fever (ASF), Swine Vesicular Disease (SVD), Rabies, Bluetongue (BT), and certain specified types of equine exotic diseases (e.g. Glanders, Dourine, Infectious Anaemia and Equine encephalitis / encephalomyelitis of all types including West Nile Virus).

The Contingency Plan incorporates two separate documents; a Framework Response Plan, outlining roles and responsibilities together with systems and structures in place for responding to an outbreak of exotic animal disease; and an Overview of Emergency Preparedness, which provides more detailed information relating to our emergency preparedness work and operational arrangements for response.

It sets ACPO's role during an outbreak of exotic animal disease, stating that they will:

- Provide representation within the Joint Coordination Centre of the National Disease Control Centre (NDCC) in London and attend NDCC Birdtable meetings.
- Advise on strategic policing issues arising from disease control operations and provide a link to chief constables in affected police forces.

- Attend at Civil Contingencies Committee (Officials) meetings, if necessary.

It also sets out a number of specific roles to be fulfilled in relation to an animal disease outbreak by individual police forces, in addition to their wider role in maintaining order and protecting the public. However, it does clarify that these roles will be dependent upon the severity and nature of other requirements being placed upon them.

These other specific roles include:

- Working closely with local authorities to enforce movement controls and the policing of various control zones.
- Providing assistance to Animal Health through the provision of specialist knowledge in the area of management and co-ordination of major incidents.
- Policing surveillance zones and enforcing movement controls.
- Providing general co-ordination of emergencies support, particularly in pursuing legal entry to premises.
- Working in partnership with local authorities and Animal Health to consider local intelligence.

The closing date for responses to this consultation is 11 October 2007. The documents can be found in full at http://www.defra.gov.uk/corporate/consult/animaldisease-plan2007/index.htm

Flood Review Website Launched

As part of the Government's review into this summer's floods, which is being led by the Cabinet Office, a website has been set up to allow the public to submit their comments.

The specific objectives for the review are:

- To understand why the flooding was so extensive.
- To learn lessons on how in future we can best predict, prevent or mitigate the scale and impact of flooding incidents in a potentially changing environment.
- To look at how best to co-ordinate the response to flooding in future, including the significant social implications for communities.
- To establish what access to support, equipment, facilities and information is needed by those involved in the response at local, regional and national levels.
- To ensure the public has as much access as possible to information on the risk of flooding to allow them to take appropriate precautions, be adequately informed on developments as an emergency unfolds, and be looked after properly in the immediate aftermath.

- To establish how the transition from response to recovery is best managed.
- To identify those aspects of the response that worked well and should be promoted and reinforced.
- To make recommendations in each of these areas to improve the UK's preparedness for flooding events in the future.

The website address is http://www.cabinetoffice.gov.uk/floodingreview

Guidance for Social Landlords on Tackling Anti-Social Behaviour

The Department for Communities and Local Government has published a toolkit guidance document, developed by HouseMark and the Social Landlords' Crime and Nuisance Group (SLCNG), to enable social landlords to develop a sound evidence base from which to plan the development and improvement of their anti-social behaviour (ASB) services.

The toolkit explains, in easy to understand terms, the information that landlords should collect on anti-social behaviour in order to target their staff time and resources effectively.

The toolkit can be found at http://www.communities.gov.uk/publications/housing/landlordtoolkit

HouseMark and the SLCNG are running ten workshops focusing on the outcomes of action to tackle ASB from October to December 2007. More information on these can be found at http://www.housemark.co.uk

Review of Implementation of Guidance on Handling Allegations of Abuse against Those who Work with Children and Young People

The Department for Children, Schools and Families (DCSF) has published a consultation paper as part of a review of implementation of guidance on handling allegations of abuse against those working with children and young people. The review covers guidance contained within Chapter 5 of 'Safeguarding Children and Safer Recruitment in Education' and paragraphs 6.20-6.30 and Appendix 5 of 'Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children'.

The purpose of the consultation document is to seek evidence on how effective implementation of the guidance has been and the impact this has had, and on areas of less good practice, non-compliance and/or issues with the guidance itself. It also asks questions on more specific areas such as confidentiality, online allegations, and false or malicious allegations.

The consultation period will run until 23 October 2007. Results of the consultation are expected to be published on the DCSF website in early 2008.

The consultation paper can be found in full at http://www.dcsf.gov.uk/consultations

Consultation on the Requirement for Children under 14 years to Wear Seat Belt on Buses and Coaches

The Department for Transport has published a consultation paper on how to implement the requirement in the European Directive 2003/20/EC that Member States shall require children aged three and over to use the safety systems provided while they are seated in a bus or coach.

Directive 2003/20/EC amends an earlier Directive 91/671/EEC on the approximation of the laws of Member States relating to compulsory use of seat belts. It inserts a new Article 2 in the original Directive, paragraph 2(a) of which says:

- Member States shall require that all occupants aged three and over of M2 and M3 vehicles in use shall use the safety systems provided while they are seated.

M2 vehicles are buses and coaches having a maximum gross weight not exceeding 5,000 kg. These include 'minibuses', which are M2 vehicles that are up to 2.54 tonnes unladen weight (equivalent to a gross weight of 3,500kgs - typically up to 16 passenger seats).

M3 vehicles are buses and coaches over 5,000 kg. The main legal difference between a bus and a coach is that a bus is governed to a maximum speed of 60mph.

Respondents are asked to contribute relevant evidence about children travelling as passengers on buses and coaches; and to suggest how any requirement for them to wear seat belts on vehicles where they are provided could be made effective. They are asked in particular for evidence about the costs and other resource issues attached to any possible solution.

The closing date of the consultation is 30 November 2007. The paper can be found in full via http://www.dft.gov.uk/consultations/open/

Civil Traffic Enforcement - Certification of Approved Devices

As a further part of its ongoing consultation about operational guidance to local authorities in England concerning parking policy and enforcement, the Department for Transport has published a consultation document on guidance prepared in relation to the certification of 'approved devices' for use by local traffic authorities who have sought and been granted civil enforcement powers.

Existing and prospective legislation makes provision for the use of 'approved devices' for civil traffic enforcement by local authorities. The detailed guidance explains how compliance with the legal requirements will be assessed and

advice on how applications for certification should be made to the Secretary of State. The procedures will apply where local authorities in England wish to exercise powers granted to undertake civil traffic enforcement by camera for:

- Bus lane enforcement under the Transport Act 2000 (and replacing certain elements of the Department's current "Provisional guidance on bus lane (including tramway) enforcement in England outside London" published in November 2005).
- Parking enforcement under the Traffic Management Act 2004 (when applicable legislation takes effect as described in the 8 August consultation).
- Bus lane and other moving contraventions under the Traffic Management Act 2004 (when applicable legislation takes effect).

As civil enforcement reduces the burden of proof for contraventions from 'beyond reasonable doubt' to 'the balance of probability', the guidance is particularly concerned with ensuring that the certification of such devices or systems meets the 'balance of probability' criterion, although some of the requirements may go beyond this and meet the 'beyond reasonable doubt' principle.

The consultation closes on 5 December 2007. The consultation paper and associated guidance can be found at http://www.dft.gov.uk/consultations/open/consulciviltrafficenforcement/

Traffic Signs Manual Chapter 3 - Regulatory Signs

The Department for Transport has published a consultation paper in relation to a new Chapter 3 of the Traffic Signs Manual (TSM), intended to replace the current edition, published in 1986. Chapter 3 of the TSM deals with regulatory signs and explains to professional users, such as local authority traffic engineers and their consultants, the correct application of the signs prescribed by the Traffic Signs Regulations and General Directions (TSRGD), currently the 2002 Regulations, SI 3113/2002.

Respondents are advised that the TSM is a guidance document and not legislation. It cannot be used to amend the TSRGD.

The closing date for the consultation is 3 December 2007. It can be found at http://www.dft.gov.uk/consultations/open/trafficsigns2/

DSA Consultation on Service Improvements and Fee Increases

The Driving Standards Agency (DSA) has published a consultation paper which outlines a number of changes to the way in which it conducts its business. Proposals include:

- Modernising the standards assurance arrangements and reviewing the charging arrangements for delegated examiners employed by some fire brigades, police services and certain bus and freight logistics companies. (This proposal is one that will have a particular impact on police forces and is covered in more detail below).
- Permanently transferring responsibility for conducting Emergency Control Certificate assessments required by those persons with a disability who wish to become Approved Driving Instructors (ADIs) from MAVIS to DSA and clarifying the rules for accompanying drivers supervising learner drivers of C1and D1 vehicles.
- Introducing Approved Test Assistant arrangements to support candidates who have difficulty in hearing, understanding or responding to instructions or questions during their theory test.
- Amending regulations concerning the display of ADI Certificates and Trainee Licences whilst providing in-car tuition.

The DSA is also proposing to increase the following fees and charges for:

- Theory tests taken by learner car drivers and motorcycle/moped riders.
- Practical tests taken by learner car drivers.
- Practical tests taken by learner motorcycle and moped riders.
- Practical tests taken by learner car plus trailer drivers.
- Theory tests taken as part of the ADI qualification process.
- Practical tests taken as part of the ADI qualification process.
- The four-yearly ADI registration fee.
- Taxi and private hire car tests.
- Theory and practical tests taken as part of the qualification process for the non- statutory registration schemes operated by DSA.
- Pass Plus products.

The proposal in relation to modernising the standards assurance arrangements and reviewing the charging arrangements for delegated examiners employed by some agencies, including the police service is intended to ensure that the tests being conducted are to a fair and uniform standard and to build on the improvements to arrangements for the "in-house" theory testing service (IHTT) announced in February 2007.

The DSA is hoping to introduce the new procedures from 1 April 2008 or as soon as practicable thereafter.

The paper states that:

- Existing delegated examiners will be transferred to the new scheme automatically. However, they will need to meet the revised criteria for retaining approval.
- Existing delegated examiners who undertook the four-week initial training course and who wish to deliver Driver CPC tests will need to complete refresher training to take account of changes to the practical driving test. However, with the introduction of the 3rd Directive that requires mandatory Initial Qualification and Periodic Training for all driving examiners the four -week driving examiner training course will increase (potentially up to six-weeks).
- Persons approved to deliver Driver CPC related tests (i.e. Modules 2 and 4) will be required to attend a two-day course to enhance their skills and knowledge of the new tests.
- Examiners who wish to continue to conduct licence acquisition tests only, will be required to attend a one-day course to familiarise themselves with the requirements of eco driving.

The cost of this update training will be £250.00 for the one-day course and £500.00 for the two-day course. A series of training courses will be held at the DSA training establishment at Cardington, near Bedford.

The paper also sets out in detail new cost recovery arrangements in respect of both in-house theory tests and practical tests. Under the proposals:

- The fee for the supply of tests to unsuccessful candidates will be the same as the fee for the supply of tests to successful candidates i.e. the same as the fee for the pass certificate. Accordingly, from 1 April 2008 the fee for each car and motorcycle theory test supplied will be £18.50 and £29.00 for each lorry and bus theory test supplied.
- The existing cost-recovery arrangements for practical tests delivered by delegated examiners which rely on fees for the supply of test pass certificates will be replaced with a more equitable system extending the 'user pays' principle by dispensing with the fee for individual test pass certificates and introducing a standard annual registration fee of £950.00 for each delegated examiner.

The consultation will run until 23 November 2007 and can be found in full at http://www.dsa.gov.uk/Documents/consult/cp2007paper.pdf

Consultation on the Driver Certificate of Professional Competence

The Driving Standards Agency (DSA) has published a consultation paper in relation to the implementation arrangements of the Driver Certificate of Professional Competence (CPC).

In March 2007, the Government transposed EU Directive 2003/59, introducing the Driver Certificate of Professional Competence (CPC) for lorry, bus and coach drivers, into UK legislation. It will become effective for professional bus and coach drivers from September 2008 and for lorry drivers from September 2009.

All professional lorry, bus and coach drivers will need to take 35 hours of periodic training in each five year period, to update their knowledge and skills in light of new technologies and legislation. Those with acquired rights will need to undertake their first 35 hours of training in the five years following the relevant implementation date. Those obtaining their CPC by an initial qualification must complete their first 35 hours of training within the following five years.

The DSA consultation is seeking comments on a number of areas it has identified where it believes changes should be made.

This consultation has a closing date of 31 October 2007. It can be found at http://www.dsa.gov.uk/Documents/consult/CPC%20consultation%20paper.pdf

Forum for Preventing Deaths in Custody Annual Report 2006/2007

The Forum for Preventing Deaths in Custody has published its first annual report. The Forum, an independently chaired high level group, was established after the Joint Committee on Human Rights called for the Home Office and Department of Health to set up a multi-agency body to monitor deaths in any form of state custody. Other members include representatives from the police, Prison Service and Youth Justice Board.

The report covers the work the Forum has undertaken in its first eighteen months. It points out that approximately 600 people die each year in custody. Of these, around 400 were from natural causes, and 200 were self inflicted.

A key area of its work has been to examine how organisations share and learns lessons about deaths in custody both internally and with other sectors. From work conducted thus far the Forum reports it has found weaknesses in some of the systems.

The forum is advocating a more joined-up approach between the Prison Service and police.

One area it suggests improvements could be made are in relation to the Prisoner Escort Record (known as a PER form) which is used to record information about people in custody. It recommends that the PER form needs

to be developed to reflect the needs of both agencies so that it can offer the best possible protection for those in their charge.

Another area that the forum is keen to see further consultation between the police and Prison Service is on the issue of ensuring that the Police National Computer (PNC) is available to prison staff. The Forum's view is that access to the PNC would help prison staff make better risk assessments and that by allowing the Prison Service to enter data, the police would also be more aware of safety issues when the person concerned is next dealt with by police officers.

It does comment that from discussions it has already had in relation to this matter that the two bodies have had different expectations about how and when this can be progressed. The report can be found in full via http://www.preventingcustodydeaths.org.uk/

Not in my Neighbourhood Week

The Home Office is organising the 'Not in my Neighbourhood' week' which will run from 15-21 October. The aim is to provide local crime agencies with the opportunity to demonstrate to local people the work being carried out in their area to tackle crime, antisocial behaviour and drug and alcohol misuse.

The week is also intended to be an opportunity to celebrate local agencies and resident groups working together with the police to make their communities stronger and safer.

Further information can be found at http://www.crimereduction.gov.uk

Anti-bullying Guidance for Schools

The Department for Children, Schools and Families (DCSF), has published a number of new anti-bullying guidance measures for schools. These include new guidance in relation to dealing with online cyberbullying and a short film to help schools tackle bullies who use the internet or mobile phones to bully other children or abuse their teachers. There is also new guidance for teachers about how homophobic bullying can be addressed in schools and a summary of the Government's overall approach to bullying.

In addition the DCSF have also launched the first part of an online cyberbullying campaign. This can be viewed at http://www.deflexion.net/coi/

Information about preventing and tackling cyberbullying can be found at http://www.direct.gov.uk/cyberbullying

The full guidance can be found at http://www.teachernet.gov.uk/wholeschool/behaviour/tacklingbullying

Consultation on Sentencing for Fraud Offences

This is the third in a series of consultations on offences of theft and dishonesty and deals with sentencing for fraud offences, the Sentencing Advisory Panel having already consulted on sentencing for theft from a shop and on theft and dishonesty offences (covered in the September and November 2006 *Digest* editions).

The sentencing proposals in this paper are based on the type of fraudulent behaviour, rather than on the particular offence that might be charged. The type of fraudulent behaviour covered includes:

- 'Confidence tricks'.
- E-fraud and possessing, making or supplying articles for use in fraud.
- Fraud against HM Revenue and Customs.
- Benefit fraud.
- Payment card and bank account fraud.
- Insurance fraud.
- Obtaining credit through fraud.

The paper sets out three comprehensive sentencing guideline charts in relation to these behaviours, covering the areas of sentencing for:

- 'Confidence tricks'.
- E-fraud and possessing, making or supplying articles for use in fraud.
- Frauds against institutions.

The consultation paper also discusses whether ancillary orders should be taken into account by the sentencing court when assessing whether the overall sentence is commensurate with the seriousness of the offence.

The paper also seeks views on a number of other key issues, including the impact of culpability and harm on sentencing levels and the relevance of a number of aggravating and mitigating factors.

Responses are requested by 6 December 2007. The paper can be found in full via http://www.sentencing-guidelines.gov.uk/index.html

Consultation on Breach of an Anti-Social Behaviour Order

The Sentencing Advisory Panel has published a consultation paper on sentencing guidance for breach of an Anti-social Behaviour Order (ASBO). The guidance is intended to assist courts in their sentencing an offender for breach of an ASBO and to ensure that the approach is proportionate and consistent.

The Panel's proposals for sentencing an adult offender are set out in the table below and relate to a first-time offender pleading not guilty. The suggested

starting points are based on the assumption that the offender had the highest level of culpability, intending the breach and any resulting harm; a lower level of culpability should be reflected in a reduced starting point within the sentencing range.

Type/nature of activity	**Sentencing range**
	Custodial sentence
Breach involving serious harassment, alarm or distress **or** Series of breaches involving lesser degree of harassment, alarm or distress	Starting point – 26 weeks imprisonment Range – Custody threshold to 2 years imprisonment
Breach involving lesser degree of harassment, alarm or distress **or** Series of breaches involving no harassment, alarm or distress	Starting point – 6 weeks imprisonment Range – Community Order (MEDIUM) to 26 weeks imprisonment
	Non-custodial sentence
Breach involving no harassment, alarm or distress	Starting point – Community Order (LOW) Range – Fine Band B to Community Order (MEDIUM)

Additional aggravating factors	**Additional mitigating factors**
1. Breach of more than one prohibition of the order. 2. Offender has a history of disobedience to court orders. 3. Breach was committed immediately or shortly after the order was made. 4. Beach was committed subsequent to earlier breach proceedings. 5. Use of violence, threats or intimidation.	1. Breach occurred after a long period of compliance. 2. Breach was of the least significant of a range of prohibitions. 3. Harm caused was not foreseeable.

In relation to young offenders, the Panel proposes that:

- In most cases of breach by a young offender, the appropriate sentence will be a community order.
- The custody threshold should be set at a higher level than the threshold applicable to adult offenders.
- The custody threshold usually will be crossed where the breach involved serious harassment, alarm or distress.
- The custody threshold may also be crossed where there has been a series of breaches involving a lesser degree of harassment, alarm or distress.
- Where the court considers a custodial sentence to be unavoidable, the starting point for sentencing should be four months' detention, with a range of up to 12 months. Where a series of breaches has involved serious harassment, alarm or distress, sentence may go beyond that range.

The consultation on breach of an ASBO will close on 9 November 2007. Following the consultations, the Panel will submit its advice to the Sentencing Guidelines Council. The consultation paper can be found in full via http://www.sentencing-guidelines.gov.uk/index.html

CPS Policy on Prosecuting Road Traffic Offences

The Crown Prosecution Service has published a summary of the responses it received to its consultation paper 'Prosecuting Bad Driving - A consultation on CPS prosecution policy and practice', published in December 2006 (covered in December *Digest*).

Responses to the consultation are expected to result in changes being made to CPS policy on how driving offences are charged and prosecuted and also to the service it offers to victims and witnesses. An updated CPS policy document on road traffic offences is expected to be published later this Autumn, together with guidance for prosecutors dealing with these cases. Changes are likely to include:

- More detailed guidance for prosecutors on when it is appropriate to charge manslaughter instead of a lesser offence so that the correct charge is chosen from the start.
- A charge of dangerous driving will now be the starting point for the offence of driving while using a mobile phone, where there is clear evidence that danger has been caused by its use.
- An enhanced service to bereaved families, with prosecutors meeting families at an early stage to explain the charging decision and the court process.

The summary of the responses is available at http://www.cps.gov.uk/consultations/pbd_response_index.html

Beacon Approach

The Office for Criminal Justice Reform (OCJR) is working with 10 Local Criminal Justice Boards (LCJBs) on a project called the Beacon Approach, to develop a new way of managing the criminal justice reform programme nationally and delivering sustainable improvements locally.

The Beacon Approach will involve LCJBs implementing a Core Programme of national reform projects, such as magistrates' courts improvements and conditional cautioning, integrated with local performance improvements.

The OCJR's role will be to analyse the inputs, business changes, costs, risks and benefits of the Core Programme of reform projects to give a clear statement of the benefits it will deliver nationally. The OCJR will also give support and training to the Beacon LCJBs to help them develop their capability to manage and deliver their local reform plan.

Locally, Beacon LCJBs will analyse their criminal justice processes to identify their priorities for local process improvement. LCJBs will then develop a reform plan, combining the national Core Programme of reform projects and any local priorities for process change.

The Beacon LCJBs are:

- Cheshire
- Cumbria
- Greater Manchester
- Lancashire
- Leicestershire
- London
- Merseyside
- Staffordshire
- Suffolk
- Thames Valley

Individual milestones will be agreed with each Beacon LCJB, based on their circumstances. These will broadly fit these timescales:

- July - Sept 2007: Analysis by Beacon LCJBs of their local criminal justice processes.
- Sept - Nov 2007: Development of local reform programmes and implementation plans by Beacon LCJBs.
- November 2007 onwards: Delivery of Local Implementation Plans.
- By March 2008: Delivery of Core Programme in Beacon sites.

- March 2008: Assessment of the Beacon Approach and report to NCJB.

Further information can be obtained from aileen.almond@cjs.gsi.gov.uk or andrew.waldren@cjs.gsi.gov.uk

Review of Criminality Information

An independent review of criminality information (ROCI) to be led by Sir Ian Magee has been commissioned by the Home Office.

The review team will be looking in depth at the whole area of effective recording, use and sharing of information about criminality across the criminal justice system.

The review will be in two stages. An initial scoping phase which will seek to analyse the current situation, identify and prioritise the key issues and problems. This will be concluded around the end of October.

In the second phase, the aim will be to make practical recommendations for improving the recording and sharing of criminality information, with a focus on improving public protection, running through into early 2008.

The review team who will be based at the Home Office are interested in views from stakeholders at all levels. The review team can be contacted at reviewofcriminality@homeoffice.gsi.gov.uk

Out of Court Disposals

New guidance on out of court disposals has recently been published by the Home Office. The guidance brings together information on all the alternatives to prosecution for adults, including Notices for Disorder as well as conditional and simple cautions. Separate guidance is being developed on dealing with young offenders.

The guidance has been made available as an A4 booklet, A5 summary booklet and an A1 poster for use in custody suites and charging centres. Pdf copies can be obtained by emailing Tom.Callagher2@homeoffice.gsi.gov.uk

For hard copies of these materials, please email your request to homeoffice@prolog.uk.com clearly indicating "Out of court Disposals" in the subject line or alternatively telephone 0870 241 4680 to place your order.

Interim Report on the Independent Review of Policing

Sir Ronnie Flanagan has presented an interim report on the review of policing that he is conducting, on behalf of the Government, to the Home Secretary. In his introduction, Sir Ronnie comments that examination of the past decade, in policing terms, does show that the 'policing family' is rising to the performance challenges set, and shows it to be consistently delivering reductions in crime alongside improvements across a wide range of other performance targets.

He states that he believes that the context in which the police service operates will continue to change, probably at an ever faster rate, and the next ten years will be as challenging as the last, due to a number of factors, including the probability that:

- Resources will be 'tight'.
- The threat from terrorism will continue.
- The 'reassurance gap' (that even if crime falls the fear of it does not necessarily do so) will probably remain stubbornly wide.
- New communities will continue to emerge.
- Anti-social behaviour will not be completely obviated.
- Gun crime, knife crime and a gang culture amongst some of our most vulnerable young people will continue and will require a long-term, holistic response.
- Police and law enforcement agencies will need to move upstream of organised crime networks and deal with evolving technology by more effective integration and collaboration

The report includes some initial observations on improving local accountability and managing resources more effectively. It also contains a total of 26 recommendations intended to help to reduce bureaucracy and in relation to neighbourhood policing.

Recommendation 1: The Home Office, the Association of Chief Police Officers (ACPO) and the Association of Police Authorities (APA) must demonstrate clear national leadership on the issue of risk aversion and commit themselves to genuinely new ways of working, in order to foster a culture in which officers and staff can rediscover their discretion to exercise professional judgement. This should find its first practical expression in a joint Compact between the tripartite relationship and the service, to be delivered by the Summer of 2008.

The National Policing Improvement Agency (NPIA) is identified in the report as the primary body which should support the ongoing delivery of this goal.

Recommendation 2: The Government should look again at the priority given to different offences in the new performance regime for the forthcoming Comprehensive Spending Review (CSR) and, in particular, at the Public Service Agreement targets for offences brought to justice, so that more proportionate weight is given to the different levels of seriousness applied to offences.

Recommendation 3: The Home Office should re-define violent crime to include only those crimes which actually cause physical injury or where the threat to inflict such injury is likely to frighten a reasonable person.

Recommendation 4: There should be a non-party political but truly cross-party debate to inform a revision of recorded crime statistics, particularly in the areas currently designated as violent crime. In this context, a closer examination of why international police colleagues do not record anything like the same level of activity as 'violent crime' will be critical.

Recommendation 5: ACPO should work with the NPIA to produce mandatory standard forms, based on the minimum appropriate reporting requirements. This work should be completed by Summer 2008 and forces should adopt them unless there are compelling local reasons for variation.

Recommendation 6: That officials should consider whether it is possible to develop, as part of Assessments of Policing and Community Safety (APACS), a set of business indicators for police activities, which could show how effectively the police service works and act as benchmarks for good practice.

Recommendation 7: The National Policing Board should carry out an urgent and fundamental review of the Annual Data Requirement (ADR) to report by the end of the year. This should be delivered in conjunction with the Home Office's wider programme of data stream reduction which it is undertaking as part of the Government's programme to reduce bureaucracy on frontline public services.

Recommendation 8: The Home Office should initiate a revision of Activity Based Costing with stratified sampling by Autumn 2008. The NPIA should carry out an investigation of the suitability of Airwave to gather information on officers' daily activities by Summer 2008.

Recommendation 9: The Review will give urgent consideration to how stop and account/search can be better administered and the bureaucracy surrounding it significantly reduced.

Recommendation 10: ACPO and the Crown Prosecution Service (CPS) should jointly look to find ways of implementing the principles of Director's Guidance Quick Process (DGQP) in case file building nationally as soon as possible, building on the early work of the two pilots.

Recommendation 11: The Home Secretary, the Secretary of State for Justice and the Attorney General should urgently consider the creation of a shared target for the reduction of bureaucracy, shared by the CPS and the police. The target should have a clear expectation that the amount of time the police are dedicating to case preparation should be appropriately reduced, through smarter ways of working and the identification and dissemination of best practice.

Recommendation 12: Following completion of the pilot evaluation, urgent consideration should be given to rolling out virtual courts, both geographically and in terms of the categories of cases they can cover.

Recommendation 13: As part of the next phase of the Review, the Mobile Information Programme Board (MIPB) should urgently identify the costs and benefits of rolling out mobile data on a service-wide basis and recommend an appropriate way forward for doing so.

Recommendation 14: The Department for Communities and Local Government (CLG) and the Home Office should work with ACPO, NPIA, APA the voluntary and community sector, Local Government Association and the Improvement and Development Agency to draw up an action plan to integrate Neighbourhood Policing with Neighbourhood Management to be published at the end of the year (2007). A cross-departmental/multi-agency team should be created to deliver the plan.

Recommendation 15: The Home Office and CLG should give urgent consideration to establishing a pilot, to take place in 2008-09, on the pooling of budgets between local community safety partners. This would examine the benefits that can be delivered and the challenges of rolling it out more widely. These pilots are envisaged as being complementary to, and more local than, Local Area Agreements (LAAs).

Recommendation 16: The Home Office and CLG should urgently review the existing evidence on the partnership benefits which arise from embedding Neighbourhood Policing within a Neighbourhood Management approach in order to inform the forthcoming CSR. The review of evidence should work within the principles of the National Improvement and Efficiency Strategy and build on current improvement architecture to drive forward improvement.

Recommendation 17: APACS should give proper weight to Neighbourhood Policing outcomes such as partnership working, problem solving, community confidence and satisfaction, and how effectively Neighbourhood Policing teams address community concerns in addition to any measurements around crime reduction. Furthermore, APACS should continue to align with the new local government performance framework.

Recommendation 18: The Home Office and NPIA should work with CLG to ensure that the Single National Indicator Set includes measures on confidence and satisfaction that are applicable to Neighbourhood Policing.

These are due to be finalised soon and the report encourages that this work takes place as a matter of priority.

Recommendation 19: The NPIA should review all of its training, learning and development to ensure that Neighbourhood Policing and associated skills are firmly integrated within its overall programme by the end of April 2008.

Recommendation 20: Chief constables should ensure that future recruitment campaigns place a proper emphasis on Neighbourhood Policing.

Recommendation 21: Chief constables should strive to ensure that those appointed to head BCUs, and appointed to other posts within and integral to Neighbourhood Policing, should as far as possible remain in post for at least two years. This should be monitored both by HMIC and police authorities.

Recommendation 22: NPIA's Neighbourhood Policing Programme should investigate the feasibility of giving greater recognition to officers and staff who remain on Neighbourhood Policing teams for a lengthy period of time.

Recommendation 23: The Home Office should continue to ring-fence police community support officer (PCSO) funding for 2008/9, to enable the embedding of their role within Neighbourhood Policing teams.

Recommendation 24: Chief constables should ensure that the training commitment for PCSOs who successfully apply to become police officers should take into account previous training they have already been given, as well as the knowledge and skills they have acquired as a PCSO. Successful candidates could return more speedily to a Neighbourhood Policing role and this could be achieved more quickly with a reduced training commitment.

Recommendation 25: The Home Office, with the NPIA, should consider opportunities for developing the role of the PCSO and should specifically consider broader opportunities and flexible working options available within the police service.

Recommendation 26: The NPIA should research the feasibility of a volunteer PCSO scheme and report on its findings by Summer 2008.

The report suggests that such a 'PCSO volunteer' scheme would:

- Be an 'over and above' provision, designed to extend and enhance service delivery, rather than replacing existing resources.
- Possibly be modelled on that of special constables.
- Attract people who might be interested in voluntarily giving up their time to assist Neighbourhood Policing in a less 'confrontational' role than would be expected of them as a special constable.

It does, however, emphasise that such a scheme, during recruitment shortages, should not become a substitute for backfilling full-time equivalent posts.

The final report is to be produced in the New Year. Further work that is being undertaken by the Review in the meantime includes:

- A public consultation to discuss local accountability.
- Considering what can be learnt, both in terms of specific ideas and the general approach from 'Operation Quest', which is being piloted in four forces.
- Considering what scope there might be for better collaboration between forces in procurement, why previous attempts at national support have not succeeded and what future role the NPIA might play in this area.
- Examining the Workforce Modernisation programme to ascertain what can be learnt from the programme to date.

- Exploring whether people processes such as Police Regulations, efficiency regulations, setting appraisal and selection systems, learning and development and diversity processes allow for optimum efficiency and productivity.
- Considering the issues of organisational structures and overheads, particularly in the context of the relationship between headquarters and the front line.
- Considering the effectiveness of the police precept system (within the context of how the police service can manage its resources effectively to deliver on the challenges of the coming years) and whether there is a case for reform.

The interim report can be found in full at http://police.homeoffice.gov.uk/news-and-publications/publication/police-reform/The_review_of_policing_inte1.pdf

IPCC Report on Serious and Fatal Injury Road Traffic Incidents Involving the Police

The Independent Police Complaints Commission (IPCC) has published its study report into serious and fatal injury road traffic incidents (RTIs) involving the police that occurred between April 2004 and September 2006.

The study found that the vast majority of police pursuits, emergency calls and 'other' police do not end in serious injury or death and generally do not raise any concerns.

It found that the current ACPO Pursuit Guidelines provide strong and sensible boundaries, clearly stating that pursuits should be subject to a 'dynamic risk assessment'. However it did find evidence of some unnecessary risk taking where there may have been alternative resolutions available. It suggests that ACPO consider how practical the 13-point criteria are for officers to conduct within the time constraints of pursuits, and whether it might be possible to prioritise or reduce the risk assessment criteria.

It is suggested that serious consideration should be given to codifying the ACPO Guidelines in order to give them greater power as has been done in relation to deaths following police contact occur in police custody and firearms incidents. It is also suggested that codifying the guidelines would also send out the right message regarding how seriously RTIs are taken.

In the meantime it recommends that ACPO should contact all forces to establish their position with regard to the Guidelines and determine whether they have wholly or partially adopted the Guidelines, and to what extent they have implemented them.

The report includes a number of other specific recommendations intended to reinforce and strengthen the existing ACPO Guidelines. These include:

- That pursuits of motorcycles or other 'powered two-wheel vehicles' should not occur unless a serious crime has been committed.

- That the type and number of police vehicles that should be involved in a pursuit should be adhered to strictly.
- That vans and 4x4s, except where tactics require, must not pursue (currently advises 'should not' pursue).
- Clarifying the definition of an unmarked vehicle to differentiate between those with and without covert warning equipment.
- Providing advice on what to do if a vehicle seeks to evade the police by using the wrong carriageway of a dual carriageway or motorway. With reference being made to the ACPO Guidance on Policing Motorways 2006.
- Providing guidelines on pursuits arising from surveillance operations in future pursuit guidance.
- Providing greater clarity in terms of the difference between the initial and tactical pursuit phases.

The report also contains a number of specific recommendations directed at police forces in relation to training, fitting of equipment, control room policies, recording of incidents and investigation of incidents. These include:

- Ensuring that all police drivers undergo a driving assessment to identify any refresher training needs every three to five years in accordance with the Lind Report (1998).
- Control room staff and tactical advisers should be given adequate training so they can take a lead role in risk assessment, by prompting the officers in pursuit for the relevant information.
- Ensuring that officers likely to be involved in a pursuit and control room staff are aware of their roles and responsibilities with regard to a pursuit, in line with the ACPO Guidelines.
- Data recorders should be fitted to all police vehicles and should be regularly checked to ensure they are working accurately.
- Video recording cameras should be fitted to all vehicles used by traffic officers as it is they who will be conducting the tactical phase of pursuits.
- Ensuring that it is the control room supervisor who takes the decision whether or not to authorise a pursuit.
- Officers in pursuit and control room staff should consider the tactics available at the earliest opportunity, in line with the ACPO Guidelines. If no tactical options are readily available, or there is no immediate prospect of ending the incident, there should be no pursuit.
- Keeping more detailed records of pursuits that result in damage to vehicles and/or minor injuries or that result in the successful stopping of a suspect vehicle without any injuries or damage occurring. This is intended to assist future research to identify why different outcomes occur and assist in identifying further good practice.

- Recording officers' RTI histories in a way which would separate those involving fatal or serious injury from those relating to minor collisions.
- Utilising information from data recorders and including it the investigating officers' reports.

The report also includes a checklist which is recommended for use by investigating officers to ensure the quality and consistency of all investigations conducted and to aid the identification of lessons that can be drawn from the incidents.

The report can be found in full at
http://www.ipcc.gov.uk/rti_report_11_9_07.pdf

Police Data Quality 2006/07

The Audit Commission and the Auditor General for Wales has published a report, 'Police Data Quality 2006/07' which reports on how well the police recorded information reported to them by victims and witnesses.

The report shows that nine out of ten police authorities and forces in England and Wales are continuing to perform well on their recording of crime data according. For 2006/07, 88 per cent were rated good or excellent, compared to 81 per cent during the previous year and 28 per cent in 2003/04.

It highlights a number of areas where police authorities and forces need to make improvements, pointing out in particular that:

- Nearly a half of police authorities and forces have been assessed as poor in relation to recording incidents of anti-social behaviour.
- Authorities and forces have difficulty in complying with the National Crime Recording Standard in respect of racial incidents, and as a result of technical non-compliance, a fifth were assessed as poor.
- Most Crime and Disorder Reduction Partnerships (CDRP) and Community Safety Partnerships (CSP) partners are not routinely sharing incident data as part of local decision making.
- Over a quarter of police authorities and forces have not sustained previous levels of performance on crime data quality.
- It recommends that Police authorities in order ensure that forces comply with crime and incident recording standards should:
- Use their scrutiny role to hold forces to account for achieving high standards of data quality.
- Ensure that the data held by the force on crime and anti-social behaviour is reliable, up to date and easily accessible to CDRP and CSP partners.

It recommends that in order to sustain and embed high standards of data quality through effective procedures and systems which are not overly bureaucratic and burdensome, police forces need to make improvements in:

- Compliance with the National Standard for Incident Recording when recording anti-social behaviour incidents.
- Accurately recording the status of a caller as a victim, witness or third party for reported racial incidents and anti-social behaviour.
- Using data to inform performance management, resource allocation and decision making.

The report can be found in full via http://www.audit-commission.gov.uk/

Managing Sickness Absence in the Police Service: A Review of Current Practices

The Health and Safety Executive (HSE) and the Home Office commissioned a review of absence policies and management in the police forces of England and Wales as part of ongoing work to reduce the number of working days lost to ill health and/or injury in police forces.

The review was conducted by the Institute for Employment Studies for of England and Wales who conducted the review in seven police forces. They have now prepared and published their report. It presents an in-depth analysis of absence management in the case study forces and identifies the clear themes and issues which are vital for the effective management of absence.

The review highlights the need for forces to have a well documented policy available to all staff either on paper or the intranet. Also that it establishes the processes to be used and who should be responsible for their initiation and delivery. It found that the most effective policies were those that accepted that ill health was unavoidable, recognised the importance of a culture where individuals felt valued, and where suitable measures were in place to encourage and support returning to work.

It identifies the line manger as the key player in both managing attendance and encouraging attendance. In order to perform this role the report states that it is vital that managers are well trained and capable of using their discretion when applying the management tools of an absence policy.

The findings from the review are intended to be used by the Home Office and HSE to develop measures to improve current practice in line with the Ministerial Task Force (MTF) on Health, Safety and Productivity aims and the drive to improve public sector efficiency. The report can be found in full at http://www.hse.gov.uk/research/rrhtm/rr582.htm

Use of Stop and Search Powers under Section 60 of the Criminal Justice and Public Order Act 1994

A complaint that the West Midlands Police had misused the power to stop and search people under Section 60 of the Criminal Justice and Public Order Act 1994 has been upheld by the Independent Police Complaints Commission (IPCC).

In June 2006, West Midlands Police were conducting a police operation utilising Automatic Number Plate Recognition (ANPR) technology to intercept persons suspected of Road Traffic Act or other offences. The area where this operation was being conducted was also authorised for the purposes of police powers to stop and search in anticipation of violence under Section 60 of the Criminal Justice and Public Order Act 1994.

During the operation, a 24-year-old man of Asian origin was stopped by officers and told to follow the officers to a nearby industrial estate, where formal searches of the man and his vehicle took place under Section 60.

The IPCC found that the police operation using ANPR to intercept motorists suspected of Road Traffic Act or other offences was appropriate and proportionate, and found no evidence of discrimination on grounds of race or ethnicity in the manner in which motorists were either intercepted or subsequently dealt with for the offences. These parts of the complaint were not substantiated.

However, the investigation found that the decision to combine the ANPR operation and a Section 60 order in this case was not warranted, as the decision to authorise the order appeared to be primarily informed by the ANPR operations, rather then by local intelligence concerning serious violence or the carrying of weapons in the neighbourhood, as required by the legislation and covered in the Home Office guidance on the use of the power.

Displaying No-Smoking Signs in Police Vehicles

Conservative MP Philip Dunne tabled a Parliamentary question asking whether undercover police cars are obliged to display a no-smoking sign following the introduction of the ban on smoking in public places.

Minister of State for the Department of Health, Dawn Primarolo MP, has replied that, like all vehicles used in the course of work by more than one person, police vehicles should display no-smoking signs as required under smoke-free legislation, pointing out, however, that there is no requirement for those signs to be visible from outside the vehicle.

ACPO National Strategic Assessment Update

The ACPO National Strategic Assessment Update, produced on behalf of the Association of Chief Police Officers by the National Policing Improvement Agency, has been published and circulated to forces. The document which is classified as Restricted, is based on strategic intelligence product from the UK police forces, including the British Transport Police, from partners, such as the Serious Organised Crime Agency, and from open sources, such as news reporting and Home Office research.

The update aims to identify changes of relevance to the police service since the publication of the full ACPO National Strategic Assessment (NSA) 2007, assess the development of any emerging policing issues, and review progress against policing priorities and recommendations.

The next full NSA will be published in April 2008.

Third phase of 'Operation Advance' Cold Case Review Project

Home Office Minister Tony McNulty has announced that the Government has committed a further £350,000 to 'Operation Advance', the review of unsolved rape and serious sex offence cases.

Over the next six months, the third phase of 'Operation Advance' will review around four thousand cases which date from 1991-1996. When completed, it will mean that all unsolved serious sex offence case files from 1991-1999 will have been reviewed under the project.

Police Force Interpreter Costs

There has been a lot of media coverage recently in respect of rising costs to police forces in dealing with growing diverse populations, in particular in relation to the influx of migrant workers from the European Union. One particular area this appears to be impacting on is the money being spent on interpreters.

As an example Thames Valley Police Authority has announced that it currently spends more than £1 million per year on interpreters compared with spending £80,000 ten years ago.

HM Chief Inspector of Constabulary's Appointment Extended

The Home Secretary, Jacqui Smith, has announced that Sir Ronnie Flanagan has had his appointment as HM Chief Inspector of Constabulary extended until the end of January 2009. He first took the position in February 2005.

Issue of the Taking and Keeping of DNA Samples

Issues surrounding the taking and keeping of DNA samples and profiles have regularly appeared in editions of the *Digest*. Over the last few weeks this subject has again attracted a lot of media attention. Some of the issues that have arisen lately include:

- Lord Justice Sedley's proposal that every man, woman and child in the UK should be obligated to provide DNA samples for the national database.
- The Nuffield Council on Bioethics report, 'The forensic use of bioinformation: ethical issues'.
- European judges in Strasbourg decision to fast-track a case challenging the power to keep DNA samples taken from suspects who have been cleared of any wrong-doing to the grand chamber, where all the Strasbourg justices will sit to determine the matter.

Lord Justice Sedley's proposal

Lord Justice Sedley's proposal received wide media coverage with many people and organisations voicing opinions both for and against the proposal.

The Nuffield Council on Bioethics report

This report considers whether current police powers in the UK to take and retain bioinformation are justified by the need to fight crime. The Report compiled by a working group from the Council, contains the findings of the Working Group and numerous recommendations it makes, some of which are set out below.

On the issue of a population-wide DNA database the report concludes that to implement such a policy would be disproportionate to the need to control crime; unlikely to secure public support; and impractical for the collection of samples from different categories of persons (such as visitors to the United Kingdom).

In general the report agrees that the authority to take (for impending use in criminal investigation) fingerprints and biological samples without consent from those who are arrested on suspicion of involvement in any recordable offence is proportionate to the aim of detecting and prosecuting crime, it however is against the police being permitted to take and store both fingerprints and biological samples from all arrestees without their consent, regardless of the reason for the arrest. It recommends:

- That the list of recordable offences for which fingerprints and biological samples can be taken from arrestees, should be rationalised so as to exclude all minor, non-imprisonable offences.

In relation to the retention of fingerprints, profiles and biological samples it found there to be a lack of convincing evidence that retention of profiles of those not charged with, or convicted of an offence has had a significant impact on detection rates and therefore found it difficult to accept the argument that such retention could be justified. In light of this it recommends:

- That independent research should be commissioned by the Home Office to assess the impact of retention in order that a more informed judgment could then be made.
- That in the meantime pending further research, that fingerprints, DNA profiles and subject biological samples should be retained indefinitely only for those convicted of a recordable offence. In all other cases, samples should be destroyed and the resulting profiles deleted from the National DNA Database (NDNAD).
- That the Scottish practice of allowing retention of samples and profiles, for three years, from those charged with serious violent or sexual offences, even if there is no conviction, should also be followed. Thereafter the samples and profiles should be destroyed unless a Chief Constable applies to a court for a two-year extension, showing reasonable grounds for the extension.

The report goes on to make further recommendations in respect of current practices, should its recommendation to automatically destroy samples and delete the profiles of non convicted persons from the database not be implemented. Under current practice a Chief Constable has the discretion to remove profiles and samples from forensic databases and guidance is provided in an ACPO document regarding the removal of such records. This states that records should only be removed in 'exceptional cases', which may include those where the arrest or sampling was unlawful, or where there was no offence prompting the arrest. Applicants themselves must demonstrate why their case is exceptional. The report states that this discretion too wide and the ACPO guidelines are too restrictive. It recommends that:

- There should be public guidelines explaining how to apply to have records removed from police databases, and the grounds on which removal can be required.
- The police should be required to justify the need for retention in response to a request for removal of an individual's records (with a strong presumption in favour of removal in the case of minors).
- An independent body, along the lines of an administrative tribunal, should oversee requests from individuals to have their profiles removed from bioinformation databases. The tribunal would have to balance the rights of the individual against such factors as the seriousness of the offence, previous arrests, the outcome of the arrest, the likelihood of this individual reoffending, the danger to the public and any other special circumstances.

In relation to the usefulness of bioinformation in the investigation of crime, the report recommends that:

- Expenditure for expert crime scene analysis should be given higher priority than the increased collection of subject samples.
- That because crime scene samples are unique and unrepeatable, they must be retained indefinitely.

- There should be improved recording of police data on the uses of DNA matches and the production of better statistics to inform key stakeholders and the wider public.
- More effort should also be made to ascertain 'best practice' within policing to maximise the crime control potential of bioinformation. The collation of statistics would also assist with an exploration of the cost-effectiveness of the forensic use of bioinformation and may provide evidence as to whether infringements on the liberty, privacy and autonomy of individuals are justified.

The report is critical of the practice in England and Wales of the profiles of volunteers (who may be victims, witnesses or volunteers in mass intelligence screens) being permanently loaded onto the NDNAD and suggests that consent given by a volunteer to retain their biological samples and resulting profile on the NDNAD must be revocable at any time and without any requirement to give a reason. It recommends that as a matter of policy volunteers should not be asked to consent to the permanent storage of elimination biological samples and retention of DNA profiles derived from these samples beyond the conclusion of the relevant case.

In relation to the presentation of DNA and fingerprint evidence the report makes a number of recommendations, including:

- That it be made compulsory for all fingerprint bureau or DNA laboratory results and relevant records disclosed to parties involved in the case to include details of any dispute over an identification, rather than presenting only the consensus view reached.
- That this duty of disclosure should be explicitly acknowledged in expert witness statements and reports and also state that it has been complied with.
- That fingerprint experts when presenting their opinion regarding a positive match or otherwise to the investigating officer, prosecution authority or court, should make it clear that their conclusion is always one of expert judgment, and never a matter of absolute scientific certainty.
- That professionals (including judges) working within the criminal justice system should acquire a minimum standard of understanding of statistics, particularly with regard to DNA evidence.
- That in all cases where bioinformation evidence is adduced, introductory information should be made available to jury members, to ensure some basic understanding of the capabilities, and also the limitations, of such evidence.

On the issue of familial searching, the report states that it is important that the technique is not used unless it is necessary and proportionate in a particular case. It recommends that there needs to be detailed and independent research on its operational usefulness and on the practical consequences for those affected by it, before it is more widely deployed.

The report makes further comment and recommendations in relation to the governance and ethical oversight of the taking, retention and use of bioinformation.

It comments that at present the NDNAD Custodian (a named individual who heads the NDNAD Custodian Unit within the National Policing Improvement Agency (NPIA)) who is entrusted with maintaining and safeguarding the integrity of the NDNAD and developing policy is currently establishing an Ethics Group to advise the NDNAD Strategy Board. The report recommends the development of a clear ethics and governance framework for the operation of the Ethics Group in order to establish:

- Its relationship with the NDNAD Strategic Board.
- Its remit, whether this be to monitor and/or advise or otherwise.
- Its responsibilities for reporting publicly and handling complaints;
- Its powers.
- How it is to maintain its independence.

The report can be found in full at http://www.nuffieldbioethics.org/fileLibrary/pdf/The_forensic_use_of_bioinformation_-_ethical_issues.pdf

DNA retention challenge case at the European Court of Human Rights

European judges in Strasbourg have fast-tracked a case to the ECHR grand chamber, where all the Strasbourg justices will sit to determine the matter. The case which is challenging the right to retain the DNA samples of un-convicted persons is being brought by a teenager, known as S, who was arrested and charged with attempted robbery aged 11 in 2001, and Michael Marper, from Sheffield, who was arrested on harassment charges, aged 38, in the same year. Both were cleared and have no criminal records, both persons following their acquittals asked for their DNA samples to be destroyed, but had their requests refused by South Yorkshire Police.

EU Debate on Terrorism

During the Strasbourg plenary, Members of the European Parliament (MEPs) debated the EU strategies to fight against terrorism. They discussed issues of effectiveness of data sharing and its evaluation and the appointment of a new EU anti-terrorism co-ordinator to replace Gijs de Vries, who resigned last February.

The Justice, Freedom and Security Commissioner, Franco Frattini, assured MEPs that the Commission remained committed to the fight against terrorism and was cautious of maintaining the right balance between security and human rights. He outlined a package of measures in preparation by the Commission, including:

- An EU Action Plan on the security of explosives, to be adopted in November, which would set up an EU explosives database and early warning system, e.g. for use if explosives are stolen.

- Draft legislation to make terrorist misuse of the internet, punishable EU-wide.
- Legislation for an EU system of passenger name records.
- A report evaluating the implementation by the Member States of the EU Framework Decision on terrorism.

EU Proposal for a Decision on Rules Applicable to Europol Analysis Files

The European Commission is seeking to put in place a Council Decision amending the Council Act of 3 November 1998, adopting rules applicable to Europol analysis files.

This proposal aims at adapting the implementing rules to Europol analysis files to reflect the changes introduced by the 2003 Protocol, drawn up on the basis of Article 43(1) of the Convention on the Establishment of a European Police Office (Europol Convention), which entered into force on 18 April 2007. In particular, amendments were made to Articles 10, 12, 16 and 21 of the Europol Convention, which constitute the framework for the opening of an analysis file and the collection, processing, utilization and deletion of personal data contained therein.

The proposal is subject to the consultation procedure and has the procedure reference number CNS/2007/0802.

Under the consultation procedure, the proposal requires the approval of the Council of Ministers. Before the Council can agree a common position on the proposal, however, it is obliged to seek an opinion from the European Parliament (EP).

The EP will appoint a Committee to study the proposal and the Committee will appoint a rapporteur to produce a report offering recommendations and amendments. Other Committees may also be asked for their opinions, although these will not provide the resolutions to be debated. This will then be put to the whole EP, which will give its opinion, voting to accept, reject or amend the proposal.

Under this procedure, neither the Council nor the Commission is obliged to take account of the EP's opinion. However, until the Council reaches a common position approving the proposal, the Commission is empowered to amend the proposal. The EP may be consulted again if the Council deviates too far from the initial proposal.

Case Law

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Bad Character Evidence - Possession of Violent Rap Lyrics and Violent Images

R v ZAFRAN AKHTAR SALEEM (2007)

CA (Crim Div) (Thomas LJ, Keith J, Lloyd Jones J) 27/7/2007

Criminal Evidence

Admissibility: Grievous Bodily Harm: Joint Enterprise: Jury Directions: Presence: Rebuttal Evidence: Relevance Of Evidence: Offences Against The Person Act 1861: S.98 Criminal Justice Act 2003: Criminal Justice Act 2003

Where an offender had been convicted of causing grievous bodily harm with intent contrary to the Offences against the Person Act 1861 on the basis that he had prior knowledge of an assault and had filmed it, the conviction was not unsafe despite the fact that the trial judge had failed to give the jury adequate direction in relation to the evidence as the real issue for the jury to decide was the reason for the offender's presence at the attack, and it was clear to the jury that the evidence went to disprove the offender's claim of innocent presence at the attack.

The appellant (S) appealed against his conviction for causing grievous bodily harm with intent contrary to the Offences against the Person Act 1861 s.18. S had been present at the brutal attack of the victim, along with three other defendants. S admitted that he was present at the time of the attack but denied any prior knowledge of or participation in the assault. Although S had taken no part in the attack, it was alleged that he was party to a joint enterprise to inflict serious bodily injuries on the victim with intent, and that he had gone along to photograph what happened. On searching S's bedroom, the police found photographs of victims of violent assaults on his computer, although there was nothing to prove directly that S had taken them. The file for the photographs was last accessed just a few days before the attack. It was alleged that S had taken those photographs and that he had an interest in recording violent assaults. The police also found rap lyrics that suggested that S had pre-planned a violent assault on the day of the attack. The photographs and the rap lyrics were admitted as evidence as the trial judge ruled that they were relevant to rebutting S's defence of innocent presence at the scene of the attack. In summing up, the trial judge directed the jury that they should ignore the photographs and rap lyrics if they did not find them of any

assistance. S was convicted of causing grievous bodily harm with intent. S submitted that the trial judge's directions in relation to the photographs and rap lyrics were an inadequate attempt to direct the jury as to the relevance of the evidence and how the jury should treat it. S argued that the rap lyrics were not relevant as they were composed several months before the attack at a time when the alleged instigator of the attack, one of the other defendants, was in prison, and that the photographs were only relevant to the issue of whether S had a propensity to photograph violent assaults and not merely to rebutting innocent presence.

HELD

It was important to follow the statutory scheme under the Criminal Justice Act 2003 in considering the admissibility of the evidence and the adequacy of the summing up. The photographs and rap lyrics evidence were relevant to rebutting the case of innocent presence put forward by S, however the rap lyrics were not sufficiently connected in order "to do with the alleged facts of the offence" under s.98 of the 2003 Act, as there was insufficient connection in time with the facts of the offence due to the point in time they were written. The evidence did not go to show propensity to commit the offence, but were relevant to showing that S's presence at the attack was not innocent, given the interests shown by the photographs and the rap lyrics. The real issue for the jury to decide was the reason for S's presence at the attack and it would have been clear to it that the photographs and rap lyrics evidence was relevant as it went to disprove innocent presence. Therefore, although the trial judge should have given the jury much more help than he did, such a failure did not render the conviction unsafe.

APPEAL DISMISSED

Civilian Police Employee as Juror - Possibility of Bias

R v ANDREI PINTORI (2007)

CA (Crim Div) (Dyson LJ, Forbes LJ, Judge Rogers QC) 13/7/2007

Criminal Procedure

Admissibility: Bias: Impartiality: Jurors: Jury Deliberations: Right To Fair Trial: Real Possibility Of Bias

A conviction was not safe in circumstances where a jury member employed as a civilian police communications officer had known various officers involved in the case against a defendant and where on the evidence a fair-minded and informed observer would have concluded that there was a real possibility of bias against that defendant.

The appellant (P) appealed against his conviction for possession of a class A drug. Police officers had executed a search warrant at P's home and recovered a small amount of heroin. P was convicted at a trial where the issue for the

jury was whether or not the drugs belonged to P or whether as P claimed they had been left on the premises by a friend. Following the trial it became apparent that one of the jurors (J) knew various police officers involved in the case. The Criminal Cases Review Commission investigated and discovered that J had worked as a civilian police communications officer alongside those involved in the case against P. As part of her answers to questions by the commission, J stated that she might have told other members of the jury that she was employed as a civilian by the police service. P submitted that there was a real possibility that J, and therefore the whole jury, had been biased against him in light of her association with the police officers in the case. The Crown submitted that in any event the issue at trial was whether P knew there were drugs secreted at his property and did not turn on whether or not the jury preferred the evidence of the police to that of P.

HELD

It was a clearly established common law rule that evidence of a jury's deliberations was generally inadmissible, R v Mirza (Shabbir Ali) (2004) UKHL 2, (2004) 1 AC 1118 considered. However there were exceptions to the rule where the evidence was of an extrinsic nature, R v Brandon (James Prentice) (1969) 53 Cr App R 466, R v Hood (William Patrick) (1968) 1 WLR 773 and R v Young (Stephen Andrew) (1995) QB 324 considered. Where the evidence established that the jury had been exposed to outside information or influence, that evidence was generally admissible, R v Pan (2001) 2 SCR 344 applied. On any view, the evidence of J's employment and the extent of her knowledge of the officers in the instant case was admissible. The test to be applied in bias cases such as the instant type was whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the jury was biased, Porter v Magill (2001) UKHL 67, (2002) 2 AC 357 applied. There was no doubt in the instant case that he or she would have reached that conclusion in relation to J. J knew at least three of the officers in the case reasonably well, had worked with one of them for a substantial period of time as part of the same team, and knew them well enough to initiate conversation with them outside of the work environment. That knowledge alone would have led a fair-minded observer to conclude that there was a real possibility of bias on J's part. The fair-minded observer would have concluded that J found P guilty simply because she knew the police officers and wished to support them in the prosecution. The final issue was whether or not the fair-minded observer would have concluded that J's bias affected other members of the jury. J did not recall having mentioned her employers but admitted that she might have told the other jurors. There was a real possibility of bias and the risk of contamination could not safely be excluded and as a result P had not had a fair trial.

APPEAL ALLOWED

Whether Defence can be ordered to Supply Details of Witnesses: Criminal Procedure Rules - Legal Professional and Litigation Privilege

R (on the application of KELLY) (Appellant) v WARLEY MAGISTRATES' COURT (Respondent) & LAW SOCIETY (Interveners) (2007)

QBD (Admin) (Laws LJ, Mitting J) 31/7/2007

Criminal Procedure

Bad Character: Case Management: Defence Witnesses: Directions: Disclosure: Legal Professional Privilege: Litigation Privilege: Statutory Interpretation: Criminal Trials: Validity Of Direction To Disclose Defence Witness Details: S.6c Criminal Procedure And Investigations Act 1996: Criminal Justice Act 2003: S.6c Criminal Procedure And Investigations Act 1996: Criminal Procedure Rules 2005: S.100 Criminal Justice Act 2003: R.3.5(1) Criminal Procedure Rules 2005: S.11 Criminal Procedure And Investigations Act 1996: S.69 Courts Act 2003

A direction requiring a defendant to disclose details of potential defence witnesses was unlawful since it infringed the fundamental rights of litigation privilege and legal professional privilege. The Criminal Procedure and Investigations Act 1996 s.6C had not come into force and the direction had, therefore, been either an unconditional order that infringed both types of privilege without the sanction of primary legislation, or was an order without sanction and amounted to nothing more than a request.

The appellant (K) applied for judicial review of a direction by a deputy district judge in a case management hearing that he should disclose to the Crown the names, addresses and dates of birth of all potential defence witnesses in connection with K's forthcoming trial. K was alleged to have kicked the door of a police vehicle and had been charged with criminal damage. He had pleaded not guilty. The judge had made the relevant disclosure order at a pre-trial review in order for the Crown to assess the need to make any timely applications under the bad character provisions of the Criminal Justice Act 2003. K did not comply with it and explained, at a case management hearing, that disclosure had not been made since the Criminal Procedure and Investigations Act 1996 s.6C, which would impose a requirement of such disclosure, had not come into force. The judge had reaffirmed the direction on the basis that it was in the interests of openness, fairness and good case management. Issues arose as to (i) whether the direction required K to disclose material that was subject to legal professional privilege or litigation privilege enjoyed by him; (ii) if so, whether or not the judge had the power to make such an order and whether the Criminal Procedure Rules 2005 authorised him to do so. The Crown submitted that the 2005 Rules, read together with s.100 of the 2003 Act, provided ample legal authority for the judge's direction.

HELD

(1) It was to be assumed that the judge had purported to make the disclosure order under r.3.5(1) of the 2005 Rules. It was clear that litigation privilege attached itself to the identity and other details of witnesses that a defendant intended to call in adversarial litigation. Although contemporary principles as to the proper conduct in litigation accorded

greater weight to the dictates of good case management, as demonstrated by s.6C and s.11 of the 1996 Act, they could not of themselves extract a litigants' historic right not to disclose information until he presented it from the protection of litigation privilege or legal professional privilege. The distinction between the two types of privilege was immaterial for the purposes of the instant case, since K had been represented, but in terms of adversarial litigation, the rationale of both rested in the need to protect the confidentiality enjoyed by a litigant in the materials prepared by him or his lawyer for the presentation of the case, Three Rivers DC v Bank of England (Disclosure) (No4) (2004) UKHL 48, (2005) 1 AC 610 and R v Derby Magistrates Court Ex p B (1996) AC 487 considered.

(2) Both types of privilege were fundamental rights, that could only be intruded upon by subordinate legislation if the statute providing those subordinate instruments made it plain, by express words or necessary implication, that such an authority was intended to be conveyed, R (on the application of Morgan Grenfell & Co Ltd) v Special Commissioners of Income Tax (2002) UKHL 21, (2003) 1 AC 563 and Bowman v Fels (2005) EWCA Civ 226, (2005) 1 WLR 3083 considered. Therefore, no appeal to the overriding objective of the 2005 Rules or to the good sense of a regime that might enable s.100 of the 2003 Act to be deployed without delay could vest the magistrates' court with authority to override the privileges, unless the main legislation containing the vires of the 2005 Rules conferred such authority. There was no such authority in the Courts Act 2003 s.69. The power to require disclosure of privileged material did nothing more than regulate practice and procedure if it formed part of a code having that purpose. Where such a power was not confined by proportionate procedural sanctions for breach, it was likely to be regarded by the courts as an attempt to infringe privilege. Unconditional orders for disclosure of privileged material, such as in the instant case, plainly exceeded the boundary. Part 3.5(2) of the 2005 Rules, although it permitted the court to specify the consequences of failing to comply with a direction, was an open-ended provision, which was problematic. Where an order apparently infringed litigation privilege or legal professional privilege in the absence of primary legislation, it could only be saved by a case management code, not a regime of judicial discretion. There had been no sanctions imposed in default of compliance with the direction, therefore it was either an unconditional order that infringed both types of privilege without the sanction of primary legislation or it was an order without sanction and amounted to nothing more than a request, Comfort Hotels v Wembley Stadium (1988) 1 WLR 872 considered. The direction could not be viewed as an exercise in case management undertaken within a regulatory regime limited to that purpose. Accordingly, the direction had been a request rather than an effective order and was quashed.

APPLICATION GRANTED

Elements Necessary for an Offence of Outraging Public Decency

R v SIMON AUSTIN HAMILTON (2007)

CA (Crim Div) (Thomas LJ, Aikens J, Dame Heather Steel) 16/8/2007

Criminal Law

Common Law: Obscenity: Outraging Public Decency: Public Places: Sexual Offences: Ingredients Of Offence Of Outraging Public Decency: Public Element: Lewd Act Capable Of Being Witnessed By Two Or More Persons: Common Law Offence: Public View

Convictions for committing acts outraging public decency were safe since the acts involved were lewd, obscene or disgusting and had been committed in a public place where they were capable of being seen by two or more persons actually present.

The appellant (H) appealed against five convictions for committing acts outraging public decency, contrary to common law. H had admitted that in 2001 he had engaged in a practice known as "up-skirting". He had taken video footage with a camera that had been positioned at a certain angle to enable him to take footage up the skirts of various women and a 14 year old girl at supermarkets. The acts only came to light following a police search of H's home in respect of other matters. H applied unsuccessfully to have the charges dismissed on the basis that there was no evidence of publication in the activity. The Crown's case was that the offence was made out because the filming could have been seen by people at the supermarkets. The judge ruled against H, stating that there was ample evidence for a jury to properly infer that the images had been taken in public and that the filming was capable of being seen by more than one member of the public. A further submission of no case to answer at the close of the Crown's case was also rejected. H submitted that the judge had erred in ruling that there was a case to answer since the offence of outraging public decency, as developed by nineteenth century cases, was confined to lewd acts witnessed by at least one person; and that the public element was satisfied if at least one other person witnessed the act. H argued that, since nobody had seen him filming, public decency had not been outraged and no offence had been committed.

HELD

It was clear that the offence of outraging public decency had particular elements that had to be established before a person could be convicted of that offence. Various nineteenth century cases had established that it was necessary to prove two elements: namely that the act was of such a lewd, obscene or disgusting nature as to outrage public decency and that the act took place in a public place and was capable of being seen by two or more persons, even if they had not actually seen it. Those elements had been affirmed by later cases, R v Mayling (Cyril) (1963) 2 QB 717, Knuller (Publishing, Printing and Promotions) Ltd v DPP (1973) AC 435, R v May (John) (1990) 91 Cr App R 157, R v Rowley (Michael) (1991) 1 WLR 1020, R v Walker (Steven) (1996) 1 Cr App R 111 and R v Choi (Ching) considered. As

to the first element, an obscene act was one that offended against recognised standards of propriety and that was at a higher level of impropriety than indecency, R v Stanley (Alan Basil) (1965) 2 QB 327 considered. H's conduct was capable of being judged by a jury to be lewd, obscene or disgusting and the jury was entitled to reach that conclusion, even if nobody saw him carrying out the filming. As regards the second element, namely the public element, that required the act to be done in a place that the public had access to or a place where what was done was capable of public view. H's filming in a supermarket clearly satisfied that part of the public element. However, the public element was not satisfied unless the act was capable of being seen by two or more persons who were actually present, even if they did not see it. Therefore, although nobody saw H filming, there was evidence from the videos that others were present. Accordingly, the jury had been entitled to convict H.

APPEAL DISMISSED

Meaning of an 'Approved' Roadside Breathalyser Machine

CLIVE MARTIN BRECKON v DIRECTOR OF PUBLIC PROSECUTIONS (2007)

DC (Sedley LJ, Nelson J) 22/8/2007

Road Traffic - Criminal Evidence

Breath Samples: Breath Tests: Driving While Over The Limit: Type Approval: Breathalyser Machine: S.15(2) Road Traffic Offenders Act 1988: S.7 Road Traffic Offenders Act 1988

There was no purpose in including within the approval for breathalyser machines every detail relating to the functioning of such a device and there had to be room to make sensible modifications without having to seek a new approval every time such a modification was made. The test was whether after such modification or alteration the machine remained one to which the description in the schedule to the approval document for breathalyser machines still properly applied.

The appellant (B) appealed by way of case stated against a decision of a district judge sitting in a magistrates' court to convict him for driving with alcohol concentration above the prescribed limit, contrary to the Road Traffic Act 1988 s.5(1)(a). B had been required by the police to provide a roadside breath test, which had proved positive. A further breath test at the police station by means of a breathalyser machine also proved positive. At trial B contended that the breathalyser machine used was not an approved device. In particular, B asserted that the relevant guidance relating to approved devices provided that the gas delivery system used in an approved device should comprise an automatic change-over valve whereas the device in question had a manual change-over valve. B also asserted that having regard to the Road Traffic Offenders Act 1988 s.15(2) the Crown's failure to adduce evidence of the proportion of alcohol obtained from the roadside breath test was fatal to the prosecution case. The district judge rejected those arguments and convicted B of driving over the limit. The questions posed for the opinion of the High Court were whether the district judge had erred in holding that (i) the breathalyser machine used was an approved device; (ii) the prosecutor did not have to adduce the actual amount, in figures, of the alcohol level revealed by the breath test carried out at the roadside.

HELD

(1) The breathalyser machine used was an approved device. A device that was approved was set out in the schedule to the approval document for breathalyser machines. There was no purpose in including in the approval a substantial number of details, which might be irrelevant to the essential and efficient functioning of a breathalyser machine, yet every one of which had to be complied with for the device to be properly approved. There had to be room to make sensible modifications without having to seek a new approval every time such a modification was made. The test was whether after such modification or alteration the machine remained one to

which the description in the schedule still properly applied. If it did not then the device was no longer an approved device; but if the description did still properly apply to the device it remained an approved device even though modifications or alterations had been made. Applying that test the supply of a device with a manual change-over valve, such as the device in the instant case, rather than an automatic change-over valve when the machine had two cylinders, did not render it no longer an approved device, Richardson v DPP (2003) EWHC 359 (Admin) considered.

(2) It had been established by authority that there was no statutory obligation upon the Crown to adduce material such as the actual figures recorded during the administration of a roadside breath test. Section 15(2) of the Act did not apply to preliminary tests breath tests. The purpose of the preliminary test was to obtain an indication of whether the proportion of alcohol was likely to exceed the prescribed limit. It was not to determine whether the limit had in fact been exceeded, which was the function of specimens taken for analysis under s.7 of the Act, Smith v DPP (2007) EWHC 100 (Admin), (2007) 171 JP 321 applied.

APPEAL DISMISSED

Effect of Dyslexia on a Police Officer's Application for Promotion - Disability Discrimination Act 1995

D PATERSON v COMMISSIONER OF POLICE OF THE METROPOLIS (2007)

EAT (Elias J (President), C Baelz, R Lyons) 23/7/2007

Employment - Discrimination

Disability Discrimination: Disabled Persons: Dyslexia: Ec Law: Police Officers: Promotion: Effect Of Dyslexia On Police Officer's Application For Promotion: S.1 Disability Discrimination Act 1995

A police officer who suffered from dyslexia was disabled within the meaning of the Disability Discrimination Act 1995 s.1, as the fact that he required 25 per cent extra time to carry out an assessment pursuant to the process for determining promotion to superintendent was a substantial adverse effect on normal day-to-day activities within the meaning of s.1 of the Act.

The appellant police officer (P) appealed against a decision that he was not disabled within the meaning of the Disability Discrimination Act 1995. P had become a police officer in 1983, rising to the rank of chief inspector by 1999. In 2004 he discovered that he suffered from dyslexia. P's case was that he had been discriminated against for a reason relating to his disability and that his employers had failed to make reasonable adjustments, particularly in the process for determining whether he might be promoted to superintendent. The recommendation of an educational psychologist (B) that P be allowed an extra 25 per cent of time at each stage of the selection process had been followed. The tribunal had preferred B's evidence to that of a consultant psychiatrist (M) regarding the extent of any adverse effect on P. The tribunal had found that there had been no substantial disadvantage in day-to-day activities; that any adverse effects of P's impairment were minor; that there was a substantial disadvantage with respect to carrying out the promotion examination, but that was not a day-to-day activity; and that although P was disadvantaged when compared with his non-dyslexic colleagues, he was not disadvantaged with reference to the "ordinary average norm of the population as a whole". P submitted that (1) the tribunal misdirected itself in reaching the conclusion that his impairment had only a minor effect on day-to-day activities; (2) that conclusion was demanded by Chacon Navas v Eurest Colectividades SA (C13/05) (2007) All ER (EC) 59, reported after the tribunal had made its determination, as the duty to construe the law compatibly with a European Directive applied from when the Directive was adopted; (3) the tribunal erred in law in placing emphasis on his ability to carry out normal day-to-day activities in the period prior to the alleged discrimination: the relevant date for determining whether discrimination existed was the date of the alleged discrimination; (4) the fact that he had been able to cope during his career did not show that he was not substantially disadvantaged, when there was evidence that he only managed to perform certain tasks satisfactorily by adopting coping strategies; (5) the tribunal erred in improperly discounting the report of M, or, if it were not to follow the report, it was incumbent on the tribunal to say why.

HELD

(1) Carrying out an assessment or examination was properly to be described as a normal day-to-day activity, Chacon applied. Moreover, the act of reading and comprehension was itself a normal day-to-day activity. Section 1 of the Act had to be read in a way which gave effect to European Union law. That could readily be done by giving a meaning to day-to-day activities which encompassed those which were relevant to participation in professional life. Since the effect of the disability might adversely affect promotion prospects, then it had to be said to hinder participation in professional life. The only proper basis for establishing whether the disadvantage was substantial was to compare the effect on the individual of the disability, which involved considering how he in fact carried out the activity with how he would do if not suffering the impairment. If that difference was more than the kind of difference one might expect taking a cross-section of the population, then the effects would be substantial. On the facts, once the tribunal had accepted that P was disadvantaged to the extent of requiring 25 per cent extra time to do the assessment, it inevitably followed that there was a substantial adverse effect on normal day-to-day activities.

(2) Where a state had passed domestic law to give effect to a Directive, the duty to construe the law consistently with EU law applied from when the implementing statute came into force, Adeneler v Ellinikos Organismos Galaktos (ELOG) (C212/04) (2007) All ER (EC) 82 and Mangold v Helm (C144/04) (2006) All ER (EC) 383 considered.

(3) The date of the discrimination was immaterial in the instant case where the disability relied on was a form of dyslexia from which P had always suffered. In those circumstances, it was appropriate for the tribunal, when assessing the effect on normal day-to-day activities, to have regard to P's ability to cope in his job.

(4) Even if the tribunal had misunderstood or failed to appreciate the significance of evidence given by P about coping strategies, the Employment Appeal Tribunal could not assess that without the relevant evidence being before it.

(5) What constituted day-to-day activities and whether the adverse effect was substantial were matters for the tribunal, not M.

APPEAL ALLOWED

SI 2335/2007 The Countryside and Rights of Way Act 2000 (Commencement No. 13) Order 2007

In force **1 October**. This Order brings into force Paragraph 4 of Schedule 6 to the Countryside and Rights of Way Act 2000 and Section 57 (creation, diversion and stopping up of highways) of that Act in so far as it relates to that paragraph.

Paragraph 4 of Schedule 6 to the 2000 Act inserts Section 31A into the Highways Act 1980, making provision relating to registers to be kept by local authorities in relation to maps, statements and declarations deposited or lodged under Section 31(6) of the 1980 Act, concerning dedicated highways.

SI 2472/2007 The Road Safety Act 2006 (Commencement No. 2) Order 2007

In force **24 September**. This Order brings into force the following provisions in the Road Safety Act 2006:

- Section 14.
- Section 23.
- Section 24.
- Section 25.
- Section 27.
- Section 28.
- Section 29.
- Section 30 in so far as section 3ZA of the Road Traffic Act 1988 has effect for the purposes of Sections 3 and 3A of that Act.
- Section 31.
- Section 32.
- Section 33.
- Section 41.
- Section 43.
- Section 59 in so far as it relates to paragraphs 5 and 13 of Schedule 7 (and accordingly paragraphs 5 and 13 of Schedule 7).

See article on page 7for further explanation about these provisions.

SI 2490/2007 The Racial and Religious Hatred Act 2006 (Commencement No.1) Order 2007

In force on **1 October**. This Order brings into force the Racial and Religious Hatred Act 2006 except in so far as it inserts new Sections 29B(3), 29H(2) and 29I(2)(b) and 29I(4) into the Public Order Act 1986.

See article on page 15.

SI 2497/2007 The Electronic Commerce Directive (Racial and Religious Hatred Act 2006) Regulations 2007

In force **1 October**. These Regulations give effect to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000, on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) in relation to matters within the scope of the Racial and Religious Hatred Act 2006.

The Directive (which has been incorporated into the European Economic Area Agreement) seeks to contribute to the proper functioning of the internal market by ensuring the free movement of information society services between EEA states.

SI 2502/2007 The Licensing Act 2003 (Summary Review of Premises Licences) Regulations 2007

In force **1 October**. These Regulations amend various Regulations under the Licensing Act 2003, to allow for the operation of the new summary review procedure under Sections 53A to 53C of the Act in relation to premises licences. Regulations amended are:

- The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005. These are amended to provide for the making of applications, the giving of notices and the advertisement of applications under the new procedure. This includes the prescription of an application form for the initiation of the procedure by the police.
- The Licensing Act 2003 (Hearings) Regulations. These are amended to provide for hearings conducted in pursuance of the new procedure, under Section 53C of the Act.
- The Licensing Act 2003 (Licensing authority's register)(other information) Regulations 2005. These are amended to require inclusion on a licensing authority's register of the fact that an application under the new procedure has been made, and the grounds upon which it is made.

SI 2518/2007 The Violent Crime Reduction Act 2006 (Commencement No. 4) Order 2007

In force **1 October**. This Order brings into force:

- Section 41 (increase of maximum sentence for possessing an imitation firearm).

It also brings into force, to the extent that they are not already in force:

- Section 51 (corresponding provision for Northern Ireland) in so far as it relates to the entry in Schedule 2 (weapons etc.: corresponding provisions for Northern Ireland) referred to in sub-paragraph (b).
- Schedule 2, paragraph 9.
- Section 65 (repeals) in so far as it relates to the entries in Schedule 5 (repeals) relating to the Criminal Justice and Public Order Act 1994.

- Schedule 5 (repeals): the entries relating to the Criminal Justice and Public Order Act 1994.

SI 2531/2007 The Disabled Persons (Badges for Motor Vehicles) (England) (Amendment) Regulations 2007

Although shown as coming into force on 30 September, by virtue of SI 2600/2007 these Regulations will actually come into force on **15 October**.

These Regulations amend the Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000. See article on page 18.

SI 2542/2007 The National Park Authorities' Traffic Orders (Procedure) (England) Regulations 2007

In force **1 October**. These Regulations specify the procedures which National Park authorities in England must follow in order to make orders to regulate traffic on byways open to all traffic, restricted byways, bridleways, footpaths and certain unsurfaced carriageways under Sections 22BB and 22BC of the Road Traffic Regulation Act 1984.

SI 2544/2007 The Road Vehicles (Construction and Use) (Amendment) (No.2) Regulations 2007

In force **1 October**. These Regulations amend Schedule 7XA to the Road Vehicles (Construction and Use) Regulations 1986, to extend the application of that schedule.

SI 2553/2007 The Road Vehicles (Registration and Licensing) (Amendment) (No. 3) Regulations 2007

In force **1 October**. These Regulations amend Schedule 2 to the Road Vehicles (Registration and Licensing) Regulations 2002, in relation to provisions regarding reduced pollution certificates and the reduced pollution requirements.

These Regulations prescribe the emissions requirements to be met by relevant vehicles if they are to be eligible for a Reduced Pollution Certificate (RPC). Those emissions requirements equate to what is known as the "Euro V" emissions standard for type approval. Vehicles which hold a valid RPC are entitled to a reduced rate of vehicle excise duty (VED). The VED rate is reduced because compliance with the relevant emission standard is voluntary and in advance of being required to do so for type approval purposes. The relevant vehicles are goods vehicles, buses, haulage vehicles and vehicles used for carrying loads of exceptional size or weight.

Under European law, relevant vehicles that do not meet the Euro V standard cannot be registered on or after 1 October 2009.

SI 2598/2007 The Manufacture and Storage of Explosives and the Health and Safety (Enforcing Authority) (Amendment and Supplementary Provisions) Regulations 2007

In force **1 October**. These Regulations correct errors in relation to the definitions of "registration" and "local authority" for the purposes of the Manufacture and Storage of Explosives Regulations 2005. They also tie the meaning of "local authority" for the purposes of Regulation 4(7) to (10) of the Health and Safety (Enforcing Authority) Regulations 1998 to that in the 2005 Regulations. The Amending Regulations also include supplementary provisions for matters linked to the amendments.

SI 2600/2007 The Disabled Persons (Badges for Motor Vehicles) (England) (Amendment No. 2) Regulations 2007

In force **29 September**. These Regulations amend the Disabled Persons (Badges for Motor Vehicles) (England) (Amendment) Regulations 2007 by amending the date on which those Regulations are to come into force, from 30 September 2007 to 15 October 2007. See SI 2531/2007 and article on page 18.

SI 2602/2007 The Equality Act 2006 (Dissolution of Commissions and Consequential and Transitional Provisions) Order 2007

In force **1 October**. This Order dissolves:

- The Commission for Racial Equality.
- The Disability Rights Commission.
- The Equal Opportunities Commission.

It also makes certain consequential amendments and modifications necessary as a result of their dissolution and the establishment of the Commission for Equality and Human Rights (CEHR); and provides for the CEHR to exercise certain of their functions.

SI 2603/2007 The Equality Act 2006 (Commencement No.3 and Savings) Order 2007

In force **1 October**. This Order brings into force the following sections of the Equality Act 2006:

- Sections 6 to 32.
- Section 40 (in so far as it is not yet in force).
- Section 91.
- Schedules 2 to 4.

Except that they shall not have effect in relation to:

- The discharge by the Commission for Equality and Human Rights of the functions specified in Article 5(1) of the Equality Act 2006 (Dissolution of

Commissions and Consequential and Transitional Provisions) Order 2007 (discharge by the Commission of certain functions of the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission).

- Section 61 of the Sex Discrimination Act 1975 (restriction on disclosure of information).
- Section 52 of the Race Relations Act 1976 (restriction on disclosure of information).
- Paragraph 22 of Schedule 3 to the Disability Rights Commission Act 1999 (restriction on disclosure of information).

SI 2604/2007 The Equality Act 2006 (Termination of Appointments) Order 2007

In force **30 September**. This Order provides for the appointments of the Transition Commissioners (persons appointed to the Commission for Equality and Human Rights under Section 41(3) of the Equality Act 2006) to terminate on 30 September 2009. This provision gives effect to Section 41(6) of the Equality Act 2006.

SI 2605/2007 The Firearms (Amendment) Rules 2007

In force **1 October**. These Rules amend Schedule 4 to the Firearms Act 1968. They set out the particulars to be entered by a firearms dealer in the register of transactions in respect of air weapons.

These Rules also amend the Firearms Rules 1998 to set out the details of the description of air weapons that is required to be entered in the register of transactions. However, where an air weapon is sold or transferred by or from one registered dealer to another, only the class of the air weapon needs to be entered in the register as the description of the air weapon.

SI 2606/2007 The Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007

In force **1 October**. These Regulations make provision in connection with the realistic imitation firearms provisions of the Violent Crime Reduction Act 2006 (Sections 36 to 38 and Paragraphs 4 to 6 of Schedule 2). See article on page 12.

SI 2620/2007 The Protection of Children and Vulnerable Adults and Care Standards Tribunal (Review of Inclusion in the PoCA List and Review of Section 142 Directions) Regulations 2007

In force **1 October**. These Regulations make provision for the proceedings of the Tribunal established by Section 9 of the Protection of Children Act 1999 in relation to:

- Applications under Sections 4A and 4B of the 1999 Act (review of inclusion in the PoCA List).

- Applications under Regulations 10, 10A and 11 of the Education (Prohibition from Teaching or Working with Children) Regulations 2003 (review of Section 142 directions).

They apply the Protection of Children and Vulnerable Adults and Care Standards Tribunal (Review of Disqualification Orders) Regulations 2006, with modifications.

SI 2689/2007 The Gambling Act 2005 (Club Gaming and Club Machine Permits) (Amendment) Regulations 2007

In force **8 October**. These Regulations amend Schedule 1 to the Gambling Act 2005 (Club Gaming and Club Machine Permits) Regulations 2007, by substituting a new form for applications for a club gaming or club machine permit. Changes are made to Section B of the form, which relates to applications made by clubs or miners' welfare institutes which have been registered under Part 2 or Part 3 of the Gaming Act 1968. They also effect the removal of now-redundant references to applications made before 1 September 2007.

SI 2708/2007 The Spring Traps Approval (Variation) (England) Order 2007

In force **1 October**. This Order varies the Spring Traps Approval Order 1995 in relation to England only.

Under Section 8 of the Pests Act 1954, it is an offence to use or knowingly permit the use of any spring trap other than a trap that has been approved by Order. The Spring Traps Approval Order 1995 currently approves thirteen types of spring trap for use in England and Wales. This Order approves a further seven types of spring trap for use in England only.

The Order divides the Schedule to the 1995 Order into two Parts. Part 1 is entitled "England and Wales" and lists the thirteen traps currently approved. Part 2 is entitled "England" and lists the seven new traps which are approved for use in England only.

SI 2711/2007 The Animal Welfare Act 2006 (Commencement No. 2 and Saving and Transitional Provisions) (England) Order 2007

In force **1 October**. This Order brings into force the following provisions of the Animal Welfare Act 2006:

- Section 14 - Codes of practice.
- Section 15 - Making and approval of codes of practice: England.
- Section 65 and Schedule 4 - Repeals, to the extent that they relate to Sections 2, 3, 6, 7 and 8 of the Agriculture (Miscellaneous Provisions) Act 1968 and paragraph 8 of Schedule 5 to the Animal Health Act 1981.

The Order also saves codes of recommendations issued under Section 3 of the Agriculture (Miscellaneous Provisions) Act 1968 for transitional periods between the coming into force of this Order and the revocation of individual

codes using the procedure in Section 17 of the 2006 Act. Saved codes can be revised using the procedure in Sections 14 and 15 of the Animal Welfare Act 2006.

SI 2751/2007 The Police Federation (Amendment) Regulations 2007

In force **15 October**. These Regulations amend the Police Federation Regulations 1969 by substituting a new regulation 16(4). Under the previous regulation 16(4), where a branch board of the Police Federation held funds exceeding specified amounts at the end of any year, the board was required to pay the excess to the appropriate central committee and, after making such payment, it was permitted to pay such sum as it thought fit to the joint branch board.

The new regulation 16(4) revises the amounts specified in the previous regulation. It also amends the provision setting out how a branch board is to use funds it holds at the end of any year in excess of the revised specified amounts. The board may pay such amount of the excess as it thinks fit to the joint branch board and shall pay any amount remaining of the excess to the appropriate central committee.

These regulations revoke regulation 3 of the Police Federation (Amendment) Regulations 1975, which also substituted a new regulation 16(4) in the Police Federation Regulations 1969.