

# Digest

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The NPIA Digest is a journal produced each month by the NPIA Legal Services Unit. The NPIA 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. During the production of the NPIA Digest, information is included from Governmental and quasi-governmental bodies, criminal justice organisations and research bodies. As such, the NPIA Digest should prove an invaluable guide to those responsible for strategic decision making, operational planning and police training.

This edition contains a number of articles relating to police reform and modernisation, including the Home Office PACE Review which outlines the Government's proposals for consultation and other Home Office consultations in respect of the Police Injury Compensation Scheme and the implementation of a Police Pay Review Body. The IPCC report on their research findings in relation to the use of police custody as a 'Place of safety'.

There are a number of articles relating to the criminal justice system featured in this edition, including the launch of 'The Scaled Approach Framework' which will provide bespoke interventions for young offenders. There are also details of the year-long pilot scheme to provide information to concerned families of sex offender details which begins in four divisions across England.

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

The Case law is produced in association with



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## Closing the Gap

The Government's Equalities Office published a report entitled 'Closing the Gap Final Report: Women take part' on 4 September 2008. The report shows the research findings of the Women Take Part project undertaken jointly by the Government Equalities Office and the Department for Communities and Local Government. The report indicates what is required to be done to enable more under-represented groups of women to play an active role in civic and civil life. The report states that the 'power gap' should be closed providing women from all groups with true representation to benefit all communities.

The findings of this report show that women from all walks of life remain under-represented in decision making roles. This is particularly the case for women from Black, Asian and minority ethnic backgrounds. Only 29.3% of local authority councillors in England are women and of them only 3% are of Black, Asian and minority ethnic backgrounds. Currently, less than 20% of MPs are female and only two of those are minority ethnic women. There has never been an Asian female MP.

The report can be found in full at

[http://www.equalities.gov.uk/publications/7841-TSO-women\\_Take\\_Part\\_WEB.pdf](http://www.equalities.gov.uk/publications/7841-TSO-women_Take_Part_WEB.pdf)

## Sex and Power 2008

The Equality and Human Rights Commission published its first survey results on women in positions of power and influence as part of its Sex and Power 2008 Report. The report is part of the Commission's 'Working Better Project' and is in its fifth year. This report examines the annual index of women in positions of authority and influence in Britain.

The report indicates that progress made by women towards the achievement of equality in these positions is, with only a few exceptions, either in reversal or in a state of stalled progress. There are eight areas of increased representation but in six of them by less than 1%. The report states that for women at the top things are changing 'at a snail's pace'.

The report indicates that whilst women are 'essential to our country's economic success' it would be reasonable to expect that as greater responsibility was taken on by women they would be 'rising through the ranks'. The findings do not support this expectation.

The report can be found in full at

<http://www.equalityhumanrights.com/en/projects/workingbetter/sexandpower/pages/variationsitedefault.aspx>

## Equality Bill: Regional Consultation Events

A series of regional consultation events about the new Equality Bill began on 17 September 2008 in Newcastle. The Deputy Minister for Women and Equality, Barbara Follett, provided key stakeholders from around the region with explanations of the Government's key proposals.

The new measures, announced in June 2008 by the Minister for Women and Equality, Harriet Harman, aim to:

- ◆ Streamline and strengthen existing discrimination legislation, including banning age discrimination in goods and services, to make Britain a fairer place.
- ◆ Increase focus upon the areas of society in which unfairness and discrimination persist.
- ◆ Introduce a new Equality Duty on public bodies which will cover gender reassignment, sexual orientation, age and religion or belief, as well as disability, gender and race.
- ◆ Introduce measures to increase transparency about important inequalities such as the gender pay gap.

Whilst the UK has witnessed considerable progress, inequality and discrimination still exist in our society. For example:

- ◆ Women are paid on average 12.6% less per hour than men.
- ◆ Disabled people are two and a half times more likely to be out of work.
- ◆ People from ethnic minorities a fifth less likely to find work.
- ◆ Two thirds of over-fifties feel that they are turned down for a job because they are too old.

There are further regional events to be held on 6 November in Peterborough, 20 November in Cardiff and on 2 December in Edinburgh.

The Equality Bill is expected to be introduced in the next Parliamentary session, which starts in December. 'Framework for a Fairer Future - The Equality Bill' can be downloaded at

<http://www.equalities.gov.uk/publications/Framework%20Fairer%20Future.pdf>

## Redefining the Rules of the Generation Game

A joint survey report, entitled 'Gen Up: How the generations work', was published in September 2008 by Penna and the Chartered Institute for Personnel and Development (CIPD). The report was an attempt to begin to come to terms with the reality and impact of generational diversity within the workplace.

The aim of the survey was to look for ways to benefit from the skills and motivations of different generations by obtaining an in-depth appreciation of what individuals in the workplace want from their careers. The survey also examined what employers are doing to respond to those needs and expectations.

There is a clear business case for managing generational diversity effectively offering employers the following benefits:

- ◆ Broader talent pools from which to recruit.
- ◆ Creativity and innovation fostered from generational interaction.
- ◆ The risk of not managing this diversity can be misunderstanding between members of the workforce, leading to conflict and disengagement.

As in all aspects of diversity in order to take advantage of the opportunities offered, employers must embrace generational diversity and ensure they have meaningful people strategies and practices in place.

The objectives of the report are to:

- ◆ Examine why generational diversity matters.
- ◆ Describe the four generations; Veterans, Baby boomers, Generation X and Generation Y and what organisations can do to attract and engage them.
- ◆ Discuss why the generations misunderstand each other.
- ◆ Offer the 'Top Ten Tips' for creating a winning strategy.

The full report can be found at

[http://www.cipd.co.uk/subjects/dvsequal/general/\\_genup.htm?wa\\_src=email&wa\\_pub=cipd&wa\\_crt=pmnewsaff2&wa\\_cmp=cipdupdate170908](http://www.cipd.co.uk/subjects/dvsequal/general/_genup.htm?wa_src=email&wa_pub=cipd&wa_crt=pmnewsaff2&wa_cmp=cipdupdate170908)

## New Route to Professional Recognition for Trainers

It is now possible for experienced police trainers to achieve General Professional Recognition Learning and Skills B4 (GPRLS B4) by a new pathway established by the Department for Innovation, Universities and Skills (DIUS) through Lifelong Learning UK.

This is a new route to recognition for those teachers, tutors, and trainers who are not required to comply with the current regulations, but who may be expected to gain QTLS or ATLS status by their employer, or who seek to do so voluntarily. The GPRLS B4 route has been carefully designed to take in to account the experience gained by long standing members of the workforce and so is open to those teachers, tutors, and trainers who entered the sector prior to the introduction of the regulations.

The benefits of gaining GPRLS B4 are:

- ◆ Eligibility to apply for licensed status.
- ◆ Using the recognition process as an opportunity to reflect on their own experience and develop a clear picture of competence.
- ◆ Giving confidence and reassurance.
- ◆ Institute for Learning (IfL) membership category increasing to 'Member' for those in the full teacher role, and to 'Associate' for those in the associate teacher role.

The new scheme is open to practitioners who are registered with the IfL (<http://www.ifl.ac.uk>) who have:

- ◆ Been teaching within the 24 months prior to applying for recognition, and either, were teaching in the FE incorporated sector prior 1 September 2001, or, were teaching in the learning and skills sector but NOT in the FE incorporated sector prior to 1 September 2007.

The GPRLS B4 information pack is available by email from the Recognition Team at [recognition@svuk.eu](mailto:recognition@svuk.eu) or via telephone 0113 241 0433. There is further information about the pathway at <http://www.lluk.org/documents/GPRLS-B4-Checklist-and-Information-final-version.pdf>



## ACAS: Guide Urges Establishment of Fair Pay and Grading Systems to Avoid Employment Tribunals

The Advisory, Conciliation and Arbitration Service (ACAS) has launched a new guide aimed at making employers less vulnerable to equal pay claims through the effective use of job evaluation. The guide offers advice on the benefits and risks of undertaking a job evaluation. There is also an explanation of the process of establishing and implementing a job evaluation risk analysis.

The guide and further information on job evaluation is available at <http://www.acas.org.uk>

# PACE Review: Government Proposals in Response to the Review of the Police and Criminal Evidence Act 1984 (PACE)

## Introduction

The aim of the PACE Review is to ensure that the legislation plays its part to improve the criminal justice system by provisions that are appropriate, proportionate and relevant to the criminal justice system in the 21<sup>st</sup> century.

The review has invited comments and proposals from stakeholders, practitioners and the public regarding the currency and appropriateness of the Act and its accompanying Codes of Practice. The Home Office Minister of State for Security, Counter-terrorism, Crime and Policing, Tony McNulty, acknowledged that "... there is a significant measure of respect and confidence for maintaining the structure of PACE. The feedback suggests satisfaction with the overall structure of the Act".

The Government proposals arising from the review seek to incorporate best practice and enable a degree of pro-activity to reduce the need for such future wide-ranging reviews.

## Key Proposals

The key proposals are set out in chapters 4-18 of the report and a synopsis of each chapter are provided below together with the key proposals:

### Chapter 4: PACE - The Act

The public consultation undertaken by the Home Office found a high degree of support for the existing structure of PACE and recognition of the robustness of the framework approach. There was, however, agreement that certain areas of police powers and policing powers would be better accommodated within the framework, for example, police bail. This report indicates a number of police powers that can be consolidated or rationalised.

The following proposals have been made:

- ◆ Maintain PACE and existing structure of framework powers.
- ◆ Consider development of a single code separate from but aligned to the principles of PACE on powers of entry for non-police agencies.

### Chapter 5: PACE Codes

The Codes of Practice were roundly criticised because of their legalistic nature making accessibility difficult. The proposals are that the Codes should be made available electronically and in printed format and will be subjected to an annual review by the regional custody network and the ACPO-led National Custody Forum.

The following proposals have been made:

- ◆ PACE Codes to continue to be subject to the current consultation processes and Parliamentary consideration.

- ◆ The Codes to be available electronically with appropriate search engines and navigational aids.
- ◆ Material for the public, including detainees, to be made available in condensed and more accessible formats including the use of visual aids.
- ◆ Support material for practitioners and stakeholders to be provided and complementary to national guidance.
- ◆ Improved formatting and presentation of the Codes.
- ◆ Annual review date for suggested updates to the Codes and engagement with the regional custody network on format and content proposals.
- ◆ Engagement with the National Policing Improvement Agency on Doctrine Development to complement the Codes.

### Chapter 6: Stop, Stop and Search

The review identifies two major concerns in the exercise of stop and search powers; disproportionality and bureaucracy. The issue of disproportionality relates to the operational use and not the power itself. However, in relation to bureaucracy there is concern expressed by both the person stopped and the police undertaking the stop. The form takes too long to complete.

The proposals are to reduce the paperwork involved by use of mobile data technology which saves police time and does not inconvenience the person stopped who rarely requested a written record of the stop. The use of mobile data technology is also likely to improve the quality of identification.

The following proposals have been made:

- ◆ Examine through pilot sites the ability to reduce the need to provide a record of the stop, recording only ethnicity information.
- ◆ Replace the requirement for a written record to be provided for stop and searches at the point of contact, with a receipt, provided that the person exercising the power is using mobile technology with direct input into a force computer system.

### Chapter 7: Arrest

With the introduction of the new power of arrest by the Serious Organised Crime and Police Act 2005, a number of summary offences contained in seventeen enactments previously listed as arrestable offences under PACE, no longer attract the application of the trigger powers, most notably the power of entry to arrest. The proposal is to have the power of entry for these offences reintroduced.

The review proposes to allow the power of entry for the purpose of arrest in any situation where a person is unlawfully at large without the need for a constable to be in 'immediate pursuit'.

There is recognition of the difficulties encountered where the power of arrest is exercised only by an officer in uniform. To ensure a consistent approach and remove operational barriers for the police it is proposed that the requirement for officers to be in uniform when entering premises for the purpose of an arrest be removed. The application of the necessity criteria is to be made clearer with a more direct connection between the effect of the suspect's behaviour on others and the need to arrest to prevent that effect. It is also proposed that the taking of fingerprints and DNA to carry out a speculative search and collect biometric data is not sufficient grounds on its own to make an arrest.

The following proposals have been made:

- ◆ Amend PACE so that the police have the power to enter premises to arrest for any offence subject to necessity.
- ◆ Remove the requirement for an officer to be in "immediate pursuit" in order to enter premises to arrest a person who is unlawfully at large.
- ◆ Remove the requirement for officers to be in uniform when entering premises for the purpose of an arrest.
- ◆ Clarify the status of voluntary interviews at the police station.
- ◆ Expand the current necessity criteria to deal with so-called 'ongoing offences'.

### **Chapter 8: Entry, Search and Seizure**

There is a proposal to give a statutory footing to clarify the existing common law powers on seizure and removal of vehicles and in some circumstances, where it is reasonable, this would apply to the 'entire premises'.

The following proposals have been made:

- ◆ Clarify the existing common law powers on seizure and removal of vehicles and 'entire premises'.

### **Chapter 9: Warrants - Entry & Search For Evidence**

A proposal to bring the issuing of all search warrants within the framework of PACE thereby replacing any search warrant provisions in all other enactments. There is also a proposal to merge the powers of entry and search in sections 18 and 32 of PACE to remove the inconsistencies.

In respect of missing person enquiries, there is a proposal to create a separate power for police to enter premises to search for missing persons or any information or material that could assist them in locating the person. The power could only be exercised with the prior authority of a Superintendent not involved in the missing person investigation.

The following proposals have been made:

- ◆ A single power under PACE for the issue of a warrant to search for evidence of any offences based on necessity to replace all such powers in other enactments.

- ◆ Consider ways to raise police accountability and minimise the bureaucratic burdens on the police and courts in relation to search warrants.
- ◆ Enable an endorsed redacted copy of an all premises or multiple premises search warrant to be given to the owner or occupier.
- ◆ Combine police powers under section 18 and 32 of PACE to enter premises after arrest to search for evidence of an offence.
- ◆ Enable an Inspector to authorise entry and search of a suspect's premises where no arrest takes place but grounds for arrest exist.
- ◆ Power for police to enter premises to search for missing persons or any information or material that could assist in locating the person in question.
- ◆ Await the outcome of the interdepartmental review on third party disclosure.

## Chapter 10: Detention

This section deals with making best use of the detention periods permitted under PACE and ensuring that suspects are not detained unnecessarily in custody. There are a number of proposals aimed at making the review and authorisation process easier and more accessible. There are changes proposed for review officer responsibilities that are more reflective of the detainee's needs.

The purpose of the proposals in respect of reviews of detention is three-fold:

- ◆ The custody officer would have a formal timeline to assess progress on the investigation and the continuing detention of the person.
- ◆ The Inspector's first review at 10 hours is a more appropriate period for the review officer to consider; the booking-in process and to make the assessment on the progress of the investigative process.
- ◆ The Inspector's review would not overlap with the decision to extend detention and would provide an early opportunity for the reviewing officer and investigators to consider the need for any requirement for extensions of detention.

There is a proposal to repeal the provisions of Section 45A of PACE, yet to be commenced, where technology could be used to enable custody officers to supervise the detention of detainees held in a non-designated police station. The feedback indicated that this placed undue responsibility on custody officers at the designated police station.

The review recognises the need for the police service to be able to use Short Term Holding Facilities to detain suspects for high volume low-level crime during busy periods in major urban areas or shopping areas. This facility will help to relieve pressure on police officers and reduce waiting times and their subsequent absence from frontline duties.

The following proposals have been made:

- ◆ Maintain existing periods of pre-charge detention.
- ◆ Enable authorisations of extensions of detention to be carried out remotely.
- ◆ Transfer responsibility for considering and granting extensions of detention from superintendent to inspector level.
- ◆ Repeal existing provisions enabling use of non-designated police stations for detention through the use of remote video links.
- ◆ Require custody officer formal review of detention at 6 hours and first Inspector review at 10 hours.
- ◆ Enable the use of Short Term Holding Facilities for high volume low-level crime.

### Chapter 11: Bail

This chapter sets out the aim of proposals to place bail into a single statutory vehicle in order that existing complex legislation is clarified and to provide for a common set of provisions around the consideration of bail, the granting of bail and the ability to apply conditions.

There is a proposal to create two new offences; failure to comply with conditions attached to police bail; and failure to attend a police station in respect to street bail.

The review proposes that the police should have the power to enter premises in any circumstance where reasonable suspicion exists and it is necessary for the enforcement of bail. This will enable the police to deal more effectively with failure to attend and with breach of conditions or anticipated breaches and failure to attend.

To enable the investigation to continue effectively in cases where the bailed detainee attends a different police station to answer bail the re-commencement of 'detention clock' will only begin when the investigation can continue or when the person arrives at the police station where the investigation is being conducted.

There is a proposal to extend the discretionary power to attach conditions to police bail before charge to cover bail granted by a custody officer under section 34 PACE and bail granted by a review officer (at the rank of Inspector or above) at a section 40 PACE review of detention before charge.

The following proposals have been made:

- ◆ Rationalise existing police bail provisions and combined with proposed changes below, provide a single statutory approach to police bail.
- ◆ Create two new offences of failing to comply with conditions attached to bail issued on the street or issued pre-charge at the police station.

- ◆ Enable pre-charge bail conditions to be amended following a decision to issue further bail after a suspect has been arrested for failure to answer bail or comply with conditions of bail.
- ◆ Provide the police with the power to enter premises in any circumstance where reasonable suspicion exists and it is necessary for the enforcement of bail or conditions of bail.
- ◆ Re-commencement of 'detention clock' on answering bail only when the investigation can continue or when the person arrives at the police station where the investigation is being conducted.
- ◆ New power to arrest when failure to answer police bail to attend a police station or breach of any conditions of that bail is anticipated.
- ◆ Use the postal charging process to cancel police bail and where necessary replace it with bail to attend court.
- ◆ Extend the discretionary power to attach conditions to police bail before charge.

### Chapter 12: Healthcare

This chapter comments on the improvements in healthcare provision facilitated by the police service in respect of detainees' access to healthcare whilst in the police station and help to minimise the risks associated with someone in need of physical or mental healthcare.

There is also a proposal to extend the ability of a registered healthcare professional to take blood specimens at the hospital as well as at the police station.

The following proposals have been made:

- ◆ Work with the Department of Health and key stakeholders in assessing application of PACE and health and social care needs.
- ◆ Provide the ability for a registered healthcare professional to take blood specimens at a hospital in drink/drive cases.

### Chapter 13: Community Engagement in Custody

This chapter identifies the importance of the role of appropriate adults as a vital safeguard in the custody process. Their support of juvenile and mentally vulnerable detainees ensures that the detained person understands what is happening to them and why.

The review noted that training and availability of appropriate adults were issues that impacted upon the effectiveness of the custody process and recommended the establishment of a national policy for the scheme to include development and implementation of full national guidance.

The following proposals have been made:

- ◆ The role of the appropriate adult should be limited to those who have received adequate training.

- ◆ Parents, guardians or other relatives or friends of the suspect should be invited to attend the police station but the investigation should be able to proceed in their absence.
- ◆ Extend the role of appropriate adult to act as a facilitator between the police and the parent, guardian etc.
- ◆ Strongly promote the continued use of the trained volunteer and encourage the benefits to be achieved from using professional appropriate adult agencies.
- ◆ Give a statutory role to police authorities to ensure that an effective appropriate adult scheme is operating in their police area in conjunction with maintaining the requirements under the Crime and Disorder Act 1998 which places a statutory duty on local authorities to provide youth justice services to such extent as is appropriate for their area.
- ◆ Develop local protocols with voluntary schemes on attendance and response times, with social services' departments and service level agreements with commercial companies.
- ◆ Extend access to appropriate adults for those in custody from under 17 to under 18.
- ◆ Consider the potential for appropriate adult support through the CJS process.
- ◆ Provide access to an appropriate adult during voluntary interviews.
- ◆ Scope the potential for developing a national support structure for appropriate adults and custody visitors on recruitment and retention, communications, learning the lessons and monitoring and accountability.

#### **Chapter 14: Biometric Data & Identification Procedures**

This chapter covers the range of powers and procedures that are available to enable the police to identify suspects for the purposes of investigating, detecting, and preventing crime. The powers and procedures fall into two groups; taking, comparing and retaining fingerprints, DNA, footwear impressions and photographs; and identification by witnesses.

In relation to the first group above, the Government does not intend to make any proposals at this time whilst awaiting the outcome of a case in the European Court of Human Rights (*S and Marper v United Kingdom*); which can be found at

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=829489&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

With regard to the identification by witnesses, the review is looking to promote and encourage the protections for victims and other witnesses during a video identification procedure.



The following proposals have been made:

- ◆ Require all video identification procedures to be video recorded and remove the entitlement for the suspect's legal advisor or representative to be present when the victim or witness views the images.
- ◆ Provide the ability for a court to draw adverse inferences from a person's refusal to co-operate in an ID procedure.

### Chapter 15: Questioning After Charge

This chapter confirms that an interview or further interview of a person about an offence with which that person has not been charged or informed that they may be prosecuted must cease when the officer in charge of the investigation or in the case of a detained suspect the custody officer reasonably believes there is sufficient evidence to provide a realistic prospect of conviction.

The Government intend to retain the requirement that all questioning must cease when the threshold of a realistic prospect of conviction has been reached. At that point, the case must be referred to the prosecutor. The person may be detained pending a decision of the prosecutor but such detention must be on the expectation that a decision 'soon' i.e. no longer than 3 hours but within the current authorised detention time limits. Otherwise the person should be bailed pending a decision or, when not suitable for bail, consideration given by the prosecutor for a charging decision on the threshold of sufficient evidence to charge.

There are two proposals regarding any questioning after charge or following a decision to refer to a prosecutor for a charging decision. The first proposal is to enable questioning of the detainee/suspect to take place at any time from the decision to refer the case to the prosecutor for a charging decision or when a charging decision has been taken. Such questioning will be determined by the prosecutor in consultation with the investigator and where the person is already in police detention, with the custody officer.

A second proposal relates to circumstances where the person is already in police detention, any period of detention for further questioning 'post charge or decision to refer' would be subject to a maximum period of 24 hours on the authority of an Inspector or above. As questioning will take place in a police station, the person will remain entitled to the full range of safeguards under PACE. Any requirement to detain beyond 24 hours for questioning would require the authority of a magistrate.

There is also a proposal in this chapter to amend the caution post charge to allow inferences to be drawn.

The following proposals have been made:

- ◆ Allow questioning after the decision to refer a case to the prosecutor for a decision on charging.

- ◆ Any period of detention for the purpose of questioning up to a maximum period of 24 hours to be subject to authorisation by an Inspector or above; and thereafter, on application to a magistrate.
- ◆ Introduce a police bail condition enabling a requirement to return to the police station for further questioning following a decision to refer the case to a prosecutor for a charging decision.
- ◆ Amend the caution post charge to allow inferences to be drawn.

### **Chapter 16: Workforce Modernisation**

This chapter recognises that a process of workforce modernisation has seen the policing family develop enabling Chief Officers to decide on the right mix of staff with appropriate skills and knowledge to deliver high quality services to the public. This has led to considerable numbers of police officers freed up from largely administrative roles for front line duty. The review encourages further consideration for other roles to be performed by designated staff.

The following proposals have been made:

- ◆ Enable Chief Officers to employ Designated Identification Officers to undertake the Identification Officer role.
- ◆ Create Designated Crime Scene Investigator under Schedule 4 to the Police Reform Act 2002.
- ◆ Remove Vehicle and Operator Services Agency (VOSA) staff from the police accreditation process and place responsibility with the Chief Executive of VOSA acting on behalf of the Secretary of State for Transport; and extend the provision to VOSA staff in Scotland.
- ◆ Extension of designated staff powers beyond the home force.
- ◆ Administrative arrest within a police station by Investigating Officers.
- ◆ Investigating Officers to be given the power to issue a PND in cases where a person has been arrested and interviewed in custody for an offence of retail theft.
- ◆ Designated staff to manage certain Registered Sex Offenders (RSO).

### **Chapter 17: Foreign National Prisoners in Transit**

This chapter identifies the lack of police powers in respect of persons being transited through the UK following; an extradition request, prisoner transfer or immigration removal. The report sets out the problems that can result from these types of cases. The review is particularly interested in comments relating to the establishment of effective legislation in this particular area.

The following proposal has been made to:

- ◆ Provide a police power of supervision and where required, detention of persons in the custody of a foreign jurisdiction travelling in transit through the United Kingdom.

## Chapter 18: Cross Border Provisions

It is essential to the security of our borders that the police service is able to effectively handle offenders and have sufficient powers to investigate crime in adjacent jurisdictions. These are key requirements in dealing with suspects who reside or are located outside England or Wales. There are proposals to provide a constable with the necessary powers to help achieve these outcomes in relation to cross border powers with Scotland and Northern Ireland and the Control Zones at the Channel Tunnel French terminal of Coquelles as well as other Control Zones at Calais, Dunkirk and Brussels.

The aim of these proposed measures are to enhance the effectiveness of officers from all these jurisdictions in tackling crime.

The following proposals have been made to:

- ◆ Improve the effectiveness of cross border powers to enable:
  - An officer to arrest without warrant in any jurisdiction for an offence committed in one of the other jurisdictions.
  - The suspect to be transferred to an appropriate location in the jurisdiction where the offence was committed.
  - Enable the detention and questioning of a suspect in another jurisdiction for an offence committed in the officer's own jurisdiction.
  - The police to grant bail to a detainee to appear at a police station or court in another jurisdiction.
- ◆ Enable police to issue bail to suspects arrested at Coquelles.

## Chapter 19: How to Respond

There is an invitation to take part in this consultative stage of the PACE review by making responses to the proposals set out in this report. The deadline for responses to this report is 28 November 2008.

The paper is available on the Home Office PACE Review webpage at <http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/PACE-Review/>

## Road Safety Act 2006: New Provisions Introduced

Some new important changes in the Road Traffic Act 1988 were introduced by a commencement order for the Road Safety Act 2006. From 18 August 2008, the following provisions have now been brought into force:

- ◆ Section 2B - this subsection creates an offence of causing the death of another person by driving a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable for other persons using the road or place.
- ◆ Section 3ZB - this subsection creates an offence of causing the death of another person by driving a motor vehicle on a road and, at the time whilst driving was not licensed for that class of vehicle (no driving licence), disqualified or had no insurance.
- ◆ Section 3ZA - this subsection provides an explanation of when a person is to be regarded as driving without due care and attention, or without reasonable consideration for other persons.

These provisions were covered by the NPIA *Digest* in the September 2008 edition on pages 56-57. The statutory instrument (SI 1918/2008) can be viewed in full at

[http://www.opsi.gov.uk/si/si2008/pdf/uksi\\_20081918\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20081918_en.pdf)

## Proposed New Powers for Traffic Officers (Highways Agency) to Remove Vehicles

Following a consultation the Government have set out new regulations, that were laid before Parliament on 9 September 2008, allowing the Highways Agency's Traffic Officer Service to authorise the removal of certain broken down and abandoned vehicles from the strategic road network, including England's motorways and major A roads. The proposed regulations will give Traffic Officers powers similar to those currently exercised by the police.

The key points of the regulations are:

- ◆ To provide Traffic Officers with similar powers to the police to authorise the removal of broken down vehicles and vehicles that are permitted to remain at the rest in contravention of certain statutory restrictions or prohibitions, or to authorise the removal of such vehicles that are causing an obstruction or danger to other road users and vehicles that have been abandoned on the strategic road network.
- ◆ To provide the Secretary of State with powers to store and dispose of abandoned vehicles removed by Traffic Officers.

The police will retain their powers to remove and dispose of vehicles but the extension of similar powers to Traffic Officers will help to free up police time. These regulations will help keep carriageways and hard shoulders clear of vehicles which appear to have been abandoned or broken down or

are permitted to remain at rest in contravention of certain statutory restrictions or prohibitions and cause obstruction or danger to other road users as well as keeping traffic moving safely.

There is more information about the regulations on the last page of this edition of the NPIA *Digest* and on the Highways Agency's website at <http://www.highways.gov.uk/vehiclerecovery>

## Suicide and the Internet

The Justice Minister, Maria Eagle, has announced that the offence of assisting suicide is to be reworded to simplify the law and to reassure the public that it applies to the internet.

Suicide ceased to be a crime in 1961 but under Section 2 of the Suicide Act 1961, it remains an offence to 'aid, abet, counsel or procure' a suicide or a suicide attempt. The law applies equally to online and off-line actions. The precise proposals on how the language of the legislation is to be updated are to be published as soon as parliamentary time allows. The scope of the law will, however, remain unchanged.

British Internet Service Providers (ISPs) already take down any websites under their control when notified that they contain illegal material and are free to restrict access to harmful or tasteless material in accordance with their 'acceptable use' policies. The Government believes that simplifying the law should help internet service providers to police the sites they host.

The announcement followed concerns about websites that appear to promote suicide. Child Psychologist, Dr. Tanya Byron's report for the government, 'Safer Children in a Digital World', identified websites promoting suicide as an area where there is some confusion about the application of the law to online activity.

The Byron Report also recommended the set up of the UK Council on Child Internet Safety. The Council which is to be formally launched on 29 September 2008 will focus on the protection of children. The Government will work with the Council to consider the practicalities of restricting access to websites that are not in accordance with UK law and how enforcement mechanisms can and should be applied to online activity.

The recommendations in the report have been accepted in full by the Government. The Law Commission had also proposed in its report 'Inchoate Liability for Assisting and Encouraging Crime' that the language of Section 2 of the Suicide Act 1961 be updated.

The Law Commission Report published in July 2006 can be found at <http://www.lawcom.gov.uk/docs/lc300.pdf>

The Report of the Byron Review, 'Safer Children in a Digital World' by Dr Tanya Byron published in March 2008 can be found at <http://www.dcsf.gov.uk/byronreview/pdfs/Final%20Report%20Bookmarked.pdf>

## Home Office Launches Parental Guidance to Prevent Children Becoming Involved in Gangs

The Home Office published new advice for parents on how to prevent their children from becoming involved in gangs on 2 September 2008.

The guide was developed in collaboration with the Association of Chief Police Officers, local authorities, parenting organisations like the Family and Parenting Institute and community groups such as Mothers against Violence. It offers advice to parents on how to identify the signs of gang involvement and provides practical steps to be taken including lists of contacts that are able to offer help and support.

This guidance booklet, "Gangs: You and Your Child", can be downloaded at <http://www.direct.gov.uk/gangs>

## £56.5m to Tackle Youth Crime Across England

The Home Secretary has provided extra funding to enable forces to increase the number of after-school patrols and street-based teams to prevent and tackle youth crime. The initiative is backed by a cash injection of almost £60 million to be delivered in 69 local authority areas in England as part of the Youth Crime Action Plan which was launched in July.

The measures to be introduced will include:

- ◆ Using safeguarding laws to remove young people at risk from the streets at night.
- ◆ Street-based teams of youth workers and ex-gang members to tackle groups of young people involved in crime and disorder.
- ◆ Increased visible police patrols during after-school hours.
- ◆ Expanding Family Intervention Projects to respond more effectively to families at risk.
- ◆ Providing positive activities for young people.
- ◆ Placing youth offending team workers in police stations so that young offenders can be dealt with and directed to the most appropriate service at the earliest opportunity.

The Youth Crime Action Plan was published by the Department for Children, Schools and Families, Home Office and Ministry of Justice on 15 July 2008 and can be found at

<http://www.homeoffice.gov.uk/documents/youth-crime-action-plan/>

## HOC 18/2008 - Guidance for Police Authorities and Forces on Acting Up, Temporary Promotion, CRTP and Pension Arrangements

The Home Office issued Circular 18/2008 on 28 August 2008 providing details of a Police Negotiating Board (PNB) agreement relating to guidance for Police Authorities and Forces on Acting Up, Temporary Promotion, CRTP and Pensions (for Police Officers) which were implemented from 1 July 2008.

Selected parts of the PNB agreement took effect from 1 July 2008 as specified in the Circular. Further parts of the agreement will be implemented once necessary amendments are made to the Police Regulations 2003 and the Police Pensions Regulations 1987 and 2006. Amendments to these Regulations will be set out in drafts which are due to be sent to the PNB as soon as possible.

A PNB Circular attached to HOC 18/2008 covers the joint agreement agreed by the PNB which was submitted for approval of the Secretaries of State in the Home Office, the Scottish Government and Northern Ireland. This includes details of the guidance as it relates to acting up, temporary promotion, CRTP and Police Pensions.

The Home Office Circular 18/2008 is available at the Home Office website <http://www.knowledgenetwork.gov.uk/HO/circular.nsf/ViewTemplate%20For%20HOCircularsWeb?OpenForm&Start=1&Count=30&Expand=1&Seq=1>

## Launch of Review of Traffic Signs

The Department for Transport (DfT) launched a consultation review of traffic signs to determine how our streets will look in the future. The first meeting of the traffic signs policy review steering group is expected to take place in September 2008. The steering group is expected to deliver an action plan, for the review itself, by the middle of next year. DfT will then work directly with specialist working groups to develop policy proposals for consultation.

The review aims to ensure that traffic signs keep pace with the latest technology, help to cut congestion and emissions and keep traffic moving safely and efficiently without cluttering our streets.

The review's aims include:

- ◆ To consider new powers to reduce street clutter and ensure out of date signs are removed.
- ◆ Look at using new traffic sign technologies that can provide new ways of managing traffic flow.
- ◆ Provide better road information such as up-to-date travel news to give motorists informed choices about their journeys.
- ◆ Demonstrate how effective signing can provide safer roads and reduce accidents.
- ◆ Improve road users' understanding of traffic signs and signals.



The consultation process and further information will be posted as available on the DfT website at <http://www.dft.gov.uk>

## Home Office Consultation: Proposals to Increase Penalties for Failure to Wear a Seat Belt and Misrepresentation of Vehicle Registration Marks

A consultation was launched by the Home Office Minister Vernon Coaker to determine whether the fixed penalty for the failure to wear a seat belt should be increased. It is hoped that the proposal to increase the fixed penalty will deter those who still risk injury or death to themselves and others by not wearing one.

The consultation seeks views on increasing the fixed penalty from £30 to £60 for failure to comply with seat belt legislation. Whilst educational campaigns and publicity have made considerable differences in behaviour, some drivers and passengers are still ignoring the risks. In a crash from 30 to 0 mph, seat belts reduce the risk of dying by 60 per cent.

Views are also being sought on increasing the fixed penalty for the misrepresentation of vehicle registration marks from £30 to £60. The use of illegal number plates can have a significant impact on criminal investigations and crime detection especially the effective use of Automatic Number Plate Recognition cameras in helping the police fight crime.

The consultation closes on 8 December 2008 and the document can be found at <http://www.homeoffice.gov.uk/consultations>

## Reoffending Statistics

Ministry of Justice figures have been published showing reoffending rates amongst both adult and juvenile offenders in the first quarter of 2006. According to the statistics reoffending frequency rates fell amongst both adult and juvenile offenders in 2006.

The statistics, published on 4 September 2008, show that adult reoffending fell 13%, from 167.9 offences per 100 offenders in 2005 to 146.1 in 2006. Between 2000 and 2006, the frequency of adult reoffending fell 22.9%.

There was a 1.5% fall in the frequency of juvenile offences committed from 2005 to 2006, from 125.0 to 123.1 offences per 100 offenders. Between 2000 and 2006, the frequency of juvenile reoffending fell 18.7%.

The number of offences classified as serious remains less than 1 per 100 offenders. Adult offences classified as serious fell from 0.88 per 100 offenders in 2005 to 0.69 in 2006. Juvenile offences classified as serious fell from 0.9 serious offences per 100 offenders in 2005 to 0.83 serious offenders in 2006.

In 2006, the three most frequent types of offences committed by juveniles were violence (non serious), criminal or malicious damage and theft, making up 19.8%, 13.8% and 13.6% of all offences committed respectively. The three most frequent types of offences committed by adults were theft, other motoring offences and violence (non serious), making up 25.4%, 16.0% and 10.8% of all offences committed respectively.

The statistics also present reoffending rates broken down by disposal. For offenders receiving a court order under probation supervision, the frequency rate reduced by 23.4% between 2000 and 2006. For offenders discharged from custody, frequency of reoffending fell 15.1% over the same period. The frequency of reoffending amongst those serving sentence lengths of over 12 months fell over 40%.

The published statistics relate to the reoffending of adults released from custody or starting a community sentence in England and Wales in the first quarter of a particular year. The statistics also show the reoffending of juveniles (those aged 10 to 17) released from custody or commencing out-of-court or non-custodial court disposals in England and Wales. The statistics also measure progress on government targets to reduce reoffending.

Minister of State for Justice David Hanson MP said that considerable progress had been made on reducing re-offending but that more work needed to be done.

Full details of the statistics can be found at <http://www.justice.gov.uk/docs/re-offending-adults-2006.pdf>

## UK 'Passive Against Crime'

A report published by the independent think tank 'Reform' entitles 'Robocop Britain: The most expensive justice system in the world' found that the British public have become "passive bystanders", uninformed about crime and unlikely to participate in maintaining justice. Reform calls for more open, participatory and accountable justice including online offender databases, a radical devolution of power to local Justice Commissioners and the establishment of a national police force.

The report found that most Britons believe that anti social behaviour is a matter for the police, whereas other countries see it as the role of parents, teachers and the community. Britons are the least likely in Europe to intervene when a crime is taking place and they receive less information about crime, offenders and punishment than their European counterparts. The report also said 66% of Britons want to play a role in tackling or preventing crime but instead they are "passive bystanders" reduced to calling for "something to be done".

The report criticises the policing and criminal justice system for being over-centralised and argues "the result is a criminal justice system that is a one size fits all system". The UK spends the largest amount on law and order as a percentage of GDP out of all the countries in the Organisation for Economic Cooperation and Development (OECD).

The report can be found in full at  
[http://www.reform.co.uk/thelawfulsociety\\_376.php](http://www.reform.co.uk/thelawfulsociety_376.php)

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## Summary Justice: Fast but Fair?

A new study published by the Centre for Crime and Justice Studies at King's College, London states that Government policies aimed at diverting minor offences from the courts have led to a widening of the criminal justice system to include individuals who were previously ignored or dealt with informally. The study, 'Summary Justice: Fast but Fair?', highlights the Government drive to speed up the criminal justice process to reduce the time and costs involved by use of cautions, Fixed Penalty Notices and Penalty Notices for Disorder.

This study is the latest publication from the Whose Justice? Project. It is a strategic project offering critical and innovative perspectives on the scope and purpose of 'justice' shedding new light on old problems. The aim of 'Whose Justice?' is to explore, develop and promote an understanding of the role and limits of 'justice' in the context of current debates and practices surrounding criminal justice.

'Summary Justice: Fast but Fair?' indicates that there is a risk that individuals will be dealt with by the criminal justice system but at a cost to public interest when common sense might suggest that informal control systems and sanctions would deliver better outcomes. A call is made to review the use and impact of the practices as it considers that they are being used unfairly and ineffectively with 'an accountability deficit'.

The study can be accessed at  
<http://www.crimeandjustice.org.uk/summaryjusticefastbutfair.html>

## Youth Justice: The Scaled Approach

The Youth Justice Board has published a framework to support youth offending teams as they prepare for the biggest improvements to youth justice in almost a decade. 'Youth Justice: The Scaled Approach', accommodates the changes brought about by the Criminal Justice and Immigration Act 2008, in particular the Youth Rehabilitation Order, which is likely to be rolled out in October next year. The revised framework takes into account the consultation responses that were provided on the initial proposal and represents what is expected to be the Youth Justice Board's final model for interventions.

The framework aims to ensure that interventions are tailored to the individual and are based on an assessment of their risks and needs. The key benefits of this are that the interventions can be better targeted, and that ultimately offending and the risk of serious harm can be reduced. It will be used by the Youth Offending Teams to determine the level of intervention that is required when a child or young person is subject to a referral through a Referral Order contract, a Youth Rehabilitation Order or during the community element of a custodial sentence.

As the intention is to implement the model in conjunction with the Youth Rehabilitation Order, it will only be finalised and distributed once statutory guidance and sentencing guidelines are completed in relation to the youth justice provisions of the Criminal Justice and Immigration Act 2008.

'Youth Justice: The Scaled Approach' can be accessed via the Youth Justice Board website <http://www.yjb.gov.uk/en-gb/>

## Tougher Community Work for Offenders

The Government has announced plans to further toughen the physical work undertaken by offenders as part of their community payback sentence. The plans, announced by Justice Minister David Hanson, follow recent announcements by the Prime Minister that community payback would be tough, visible and effective.

From 1 September 2008 anyone convicted of a knife-related offence that is unemployed and sentenced to the maximum 300 hours of community payback, will complete their sentence in intensive blocks of up to five days a week. This intensive labour will apply across all 42 probation areas. Members of the offender's community will be invited to suggest projects they might work on, through the establishment of community panels, in a bid to restore public confidence and increase accountability in the criminal justice system.

A pilot will also run alongside the plan to establish whether this type of intensive work should be introduced to all types of offenders on community payback sentences. West Yorkshire Police will undertake a trial programme

for all offenders receiving 200 hours of work, during which they will complete their community payback sentence within a 6 week timescale.

In the last year there have been 55,771 completions of community payback across England and Wales, which has provided over six million hours of free labour for communities. As well as providing a tough form of punishment for offenders and a constructive way to pay back communities, community sentences can in some situations be more effective than short-term imprisonment with regard to rehabilitating offenders. Recent statistics from the Ministry of Justice show that the frequency of re-offending following community sentences has fallen by 13%, with the re-offending rate at 37.9%, compared with 59.7% following a short custodial sentence.

Further information can be found at

<http://www.justice.gov.uk/news/newsrelease010908a.htm>

## Government Proposals: Review of Police Injury Compensation Scheme

The Home Office Minister of State for Security, Counter-terrorism, Crime and Policing, Tony McNulty, announced on 25 August 2008, that the Home Office launched a consultation regarding the review of the police injury compensation scheme. It is intended that the new scheme is in place as early as possible in 2009.

The review aims to establish better targeted benefits and making the scheme both fair and clear. The review's objective is to create a compensation system with criteria suitable for police injury benefits to be managed effectively with transparency.

The key proposals include:

- ◆ Introduction of lifelong adult survivor benefits and extended to nominated unmarried and unregistered partners.
- ◆ Simplifying injury and survivor awards.
- ◆ Making injury and death payments fairer.
- ◆ Revision of eligibility criteria and clarification of the definition for injuries received in the line of duty.

The consultation will finish on 18 November 2008 and details of the full report and impact assessment can be accessed at <http://www.homeoffice.gov.uk/documents/cons-2008-police-injury-awards?view=Binary>

## IPCC Report: Police Custody as a 'Place of Safety'

The Independent Police Complaints Commission published their research findings in a report, 'Police Custody as a Place of Safety' on 10 September 2008. The report identified that almost twice as many people were detained for assessment under Section 136 of the Mental Health Act 1983 in police cells as were taken to and detained in hospital. The report researched the nature and extent of police custody as a place of safety in England and Wales.

The key findings of the report are:

- ◆ Use of Section 136 varied across forces with the average rate of detention across England and Wales 55 detentions per 10,000 people in custody.
- ◆ 61% of those detained were male.
- ◆ 78% of detainees were White, 4% Black, 3% Asian, 2% other ethnic origin and 14% ethnicity unknown. However, when these figures are compared to the general population the rate of detention for Black people is 1.7 times as high than for White people.

- ◆ 78% of detainees were in police custody for less than 12 hours and the average period spent in police custody was 9 hours 36 minutes. 10 people were detained longer than the legal limit of 72 hours.
- ◆ 65% of people detained arrived in police custody outside normal office hours (between 1880 and 0900 hours).
- ◆ The strongest factor in explaining the difference in use of police custody was the availability of alternative places of safety.
- ◆ In some forces a strong factor was the suicidal behaviour associated with high local populations of transient and deprived populations and little alternative places of safety.

The report sets out 22 recommendations aimed specifically at the Police Forces, NHS Commissioners, Ambulance Services, Social Services and the Healthcare/Care Quality Commission.

The full report is available at

[http://www.ipcc.gov.uk/news/pr100908\\_136sectionreport.htm](http://www.ipcc.gov.uk/news/pr100908_136sectionreport.htm)

## Keeping Children Safe: the Child Sexual Offender Disclosure Pilot

The Home Office launched a 12-month Child Sexual Offender Disclosure pilot in four forces. The pilot scheme provides a facility for parents, carers and guardians to formally ask the police to tell them if a person with access to their child has a record for child sexual offences. The pilot areas are Cambridgeshire (Northern Division, including Peterborough and surrounding villages); Cleveland (Stockton District); Hampshire (Southampton); and Warwickshire (force-wide).

For further information and advice there are contact details at the following website [http://www.direct.gov.uk/en/NI1/Newsroom/DG\\_171707](http://www.direct.gov.uk/en/NI1/Newsroom/DG_171707)

## NPIA Missing Persons Bureau Newsletter

The Missing Persons Bureau which is part of the National Policing Improvement Agency (NPIA) has issued its first newsletter. The aims of the newsletter are to provide regular updates on issues relating to missing persons, including latest and future developments, events, services available and contact details.

The Bureau focuses on cross-matching missing persons with unidentified persons/bodies, with the aim of getting a positive match result. They maintain a database of:

- ◆ All persons missing in the UK for over 14 days, or sooner where the force feels the case warrants more urgent attention.
- ◆ All foreign nationals reported missing in the UK.
- ◆ All UK nationals reported missing abroad.

- ◆ All unidentified bodies or persons found within the UK.
- ◆ The database is used to help match unidentified bodies/persons to reports of missing persons.

The database works with the police and related organisations to improve the services provided to missing person's investigations and to increase the effectiveness of the police response. The Bureau acts as the centre for the exchange of information connected with the search for missing persons nationally and internationally.

The newsletter is available at <http://www.npia.police.uk/en/11226.htm>  
Details of other support and services available from the Bureau can be found in the newsletter or at <http://uk.missingkids.com/missingkids/servlet/PublicHomeServlet>

## Government Consultation on Implementing a Police Officer Pay Review Body

The Home Secretary, Jacqui Smith, proposed that a new pay review body should be set up to determine police officers' pay. The new body would be established as a statutory body which would consider the pay and conditions of service for all police officers. The body would listen to evidence from interested parties prior to their reporting to the Prime Minister.

The Government wants to develop an effective pay negotiating system for police officers and state in their proposal report that this is "... an important part of supporting a modern police service which delivers high standards of community safety and security to the public". The consultation seeks views on how a Police Officer Pay Review Body should be implemented.

The review of the way police pay is determined by Sir Clive Booth was undertaken and his report was published on 6 December 2007 and recommended that a pay review body for police officer pay should be created. The Government accepted its recommendations and said that it would consult on how a pay review body should be implemented.

On 23 July 2008, the Police Negotiating Board failed to reach agreement on a multi-year deal for police officers which resulted in the Government undertaking a consultation to gather stakeholder views to inform legislative and any other changes needed to introduce the pay review body.

The consultation runs until 5 November 2008 and details can be accessed at <http://www.homeoffice.gov.uk/documents/cons-2008-police-pay-review-body>



## Mayor and Metropolitan Police Launch Crime Mapping

A new 'crime-mapping' website has been launched by the Mayor of London Boris Johnson and Deputy Police Commissioner of the Metropolitan Police, Sir Paul Stephenson. It will enable Londoners to access information about crime levels in their neighbourhoods along with local crime prevention and safety advice.

As well as providing interactive maps, the website includes links to other sites such as Safer Neighbourhood Team web pages, and shows how crime levels in local neighbourhoods compare with the London average. The maps reveal details of residential burglaries, robberies and vehicle offences and the site encourages public opinion on what other crimes should be included and how the maps should be further developed.

Neighbourhood Policing research has shown that people who feel well informed about what is happening in their local communities are more likely to have confidence in local policing, and as a result are more likely to engage and work with police and partner agencies to prevent crime. The crime maps were announced earlier this year as part of the government's commitment to get people more involved with their local police and a national roll-out is expected by the end of the year.

The maps can be accessed through the Metropolitan Police website, <http://www.met.police.uk>

## Regional Roads Policing Team Launched

The Yorkshire and Humber Regional Roads Policing Team has been set up to focus upon criminals who use the region's road network in order to prevent and detect crimes and make the road network safer for all road users.

The Regional Roads Policing Team, which is one of the first of its kind in the country, will be based at three locations:

- ◆ Central Unit based in the Wakefield area (launched on 17 September 2008).
- ◆ North Unit to be based in North Yorkshire.
- ◆ South Unit to be based South Yorkshire.

The North and South units will be launched later this year.

The key objectives of this team are:

- ◆ To tackle offenders who cross force boundaries to commit crimes.
- ◆ The team will also tackle criminals who use roads to commit serious and organised crime.
- ◆ Officers will work to reduce the risk of death and injury on the region's roads.

The Regional Roads Policing Team will use automated number plate recognition (ANPR) technology from fixed-camera sites and from cameras in vehicles. Officers will also use the Regional Intelligence Unit in Wakefield to track down travelling criminals and those involved in serious and organised crime.

The report can be found in full at

<http://www.westyorkshire.police.uk/section-item.asp?sid=12&iid=5662>

## HMIC Phase 2 Inspections of Neighbourhood Policing and Developing Citizen Focus Policing

Her Majesty's Inspectorate of Constabulary (HMIC) has completed phase 2 of their inspections of each force in England and Wales to assess their capabilities in delivering the Neighbourhood Policing and Developing Citizen Focus agendas.

The statutory performance indicators (SPIs) and key diagnostic indicator (KDI) that are most appropriate to indicate outcomes for the public and are used to inform this inspection are set out below:

Neighbourhood Policing:

- ◆ SPI 2a - the percentage of people who think that their local police do a good or excellent job.
- ◆ KDI - the percentage of people who 'agree local police are dealing with anti-social behaviour and crime that matter in this area'.
- ◆ SPI 10b - the percentage of people who think there is a high level of anti-social behaviour in their area.

Developing Citizen Focus Policing:

- ◆ SPI 1e - satisfaction of victims of domestic burglary, violent crime, vehicle crime and road traffic collisions with the overall service provided by the police.
- ◆ SPI 3b - a comparison of satisfaction rates for white users with those for users from minority ethnic groups with the overall service provided.

Forces are assessed in terms of their performance compared with the average for their most similar forces (MSF) and whether any difference is statistically significant.

The individual force reports can be viewed at

<http://inspectors.homeoffice.gov.uk/hmic/Inspections/neighbourhood-citizen-policing/>

## New Measures to Cut Red Tape in the Fight Against Knife Crime

The Home Office revealed new plans to fast-track measures to cut form-filling in the ten police forces on the Tackling Knives Action Programme (TKAP) as part of its drive to reduce bureaucracy. The Tackling Knives Action Programme was launched in June 2008.

It is hoped that the introduction of these new measures would save approximately 580,000 hours of police time over the next year which is the equivalent of 320 police officers, allowing officers to spend more time on the streets tackling knife crime.

The key measures are:

- ◆ Enabling the ten TKAP forces to withdraw the lengthy stop and account form from the end of October. The scheme is expected to roll out nationally next year.
- ◆ Airwave police radio technology will be used to record any encounter, including ethnicity and location. A card receipt setting out what to do if a person is not satisfied with the way the encounter was carried out will be issued.
- ◆ Reducing by 80% the level of form filling when recording crime in the TKAP areas by extending current pilots to these ten areas.

For more information about this programme and for latest updates on its progress visit

<http://police.homeoffice.gov.uk/news-and-events/news/knife-crime-targeted-programme>

## Government Provides an Extra £25 Million for Handheld Computers

There is to be an extra £25 million distributed to forces enabling greater numbers of officers on-the-spot access to information on patrol. The new funding comes on the back of an earlier round of £50 million that was allocated to forces in May 2008. By March 2010, there is expected to be 30,000 devices in use by frontline staff.

Handheld computers are already changing the way officers are working - officers are spending less time in the station and more time in communities and are reporting an increase in the amount of time dealing with incidents. Mobile devices are a vital development in support of neighbourhood policing and citizen focus.

The Home Office Minister of State for Security, Counter-terrorism, Crime and Policing is expected to announce how the new funding should be allocated to forces in October. The Government has said that by September 2008 there would be 10,000 handheld computers in use by frontline officers and forces are on course to deliver this.

For further information on how your force can apply please go to [http://www.pito.pnn.police.uk/microsite/mobile\\_data/index.htm](http://www.pito.pnn.police.uk/microsite/mobile_data/index.htm)

## Texting Whilst Driving 'Worse than Drink'

The RAC Foundation have published the first UK research into the effects of texting while driving using a driving simulator to study the effects of writing, reading and ignoring text messages on the driving skills of a test group of 17-24 year old motorists.

In all key measures of driving performance, young people who were texting and driving were badly affected:

- ◆ Reaction times deteriorated by over one-third (35%). This was worse than alcohol at the legal limit (12% slower) and driving under the influence of cannabis (21% slower).
- ◆ Drivers drifted out of their lane more often. Steering control was 91% worse, compared to 35% worse when under the influence of cannabis.
- ◆ The ability to maintain a safe following distance fell.

The key consequences found by the study were:

- ◆ Slower Reaction times: participants were asked to react to a buzzer or a visual cue which would appear on the screen of the simulator. Writing a text message had the biggest impact on reaction times, increasing them from 1.2 seconds to 1.6 seconds.
- ◆ Inability to maintain safe following distance: tailgating causes one-third of injury accidents on the motorway network.
- ◆ Inability to hold lane position: participants' tendency to drift out of their lane while trying to write a text increased by 91.4% compared to a 'control drive' where they were concentrating on the driving task.

The full report is available at

[http://www.racfoundation.org/index.php?option=com\\_content&task=view&id=577&Itemid=35](http://www.racfoundation.org/index.php?option=com_content&task=view&id=577&Itemid=35)

## Diazepam Now Street Drug of Choice

Drug information charity, DrugScope, has published the findings of its annual Street Trends Survey, undertaken by the charity's magazine Druglink. The key trend identified by the survey is the rise in the use of diazepam, particularly among heroin and crack cocaine users. The tranquilliser, more commonly known by its defunct brand name Valium, was once one of the world's most widely prescribed drugs. It is now however being used by drug addicts as a heroin substitute and is often taken alongside alcohol and methadone; a potentially lethal combination.

According to the survey, 15 out of 20 locations reported a rise in the levels of diazepam use among Class A drug users over the last 12 months. There was also evidence to show the drug was being used by problem drinkers, powder cocaine users and among some young people.

The rise is thought in part to be a result of an increase in illicit imports of both genuine and counterfeit versions of the drug. Police and customs seizures of diazepam have risen dramatically from 300,000 pills between July 2003 and June 2006, to 2 million between July 2006 and June this year. The quality and availability of street heroin has also dropped, with 5 of the 20 locations surveyed noting a complete shortage. The Serious and Organised Crime Agency has said that the shortage could be down to a rise in the wholesale price of heroin in the UK. Since the start of summer, the price has risen from around £13,000 a kilo to £17,000 a kilo and as a result some criminal groups are reportedly having difficulties getting hold of what they would regard as good quality heroin.

Martin Barnes, the chief executive of Drug Scope commented that whilst a heroin shortage might appear to be a positive development, it can bring its own problems. Users may be more inclined to inject the drug, rather than smoke it, during times of shortage or poor quality. There is also a higher risk of overdose when the market readjusts to more normal levels of supply and quality.

Further information on the survey can be found at <http://www.drugscope.org.uk/>

## Survey Reveals Public View on Prostitution

The findings of a two-part survey into the attitudes of the public towards prostitution have been published. The survey, undertaken by Ipsos-MORI on behalf of the Government Equalities Office, found that attitudes are generally mixed, although public acceptability of both buying and selling sex drops when people consider that the buyer or seller is a relation. When asked *"Please imagine that the man purchasing sex is related to you, for example your brother, son or father. In this case would it be acceptable or unacceptable?"*, only 29% thought it was acceptable, with 62% thinking it was unacceptable. In contrast, 39% think it is very or fairly acceptable for a man to purchase sex with a woman, and 52% think it's unacceptable.

The survey revealed that while 59% agree that prostitution is a perfectly reasonable choice that women should be free to make, almost the same number of people (58%) would support making it illegal to pay for sex if it would help to reduce trafficking of women and children into the UK. Harriet Harman, Minister for Women and Equality, suggested that there were double standards. Commenting on the survey, she observed that while it is known that paying for sex fuels the demand for trafficked women and children, demand cannot be tackled without more widely challenging cultural attitudes.

The results of the survey can be accessed at <http://www.ipsos-mori.com/content/news/publics-views-on-prostitution.ashx>

## The Case for Forensic Linguistics

On 1 September 2008 the Council for the Registration of Forensic Practitioners, a government based body which promotes confidence in forensic practice, recognised Forensic Linguistics as a speciality.

Forensic Linguistics is the study, analysis and measurement of language in the context of crime, judicial procedure, or disputes in law. Forensic Linguists could be used to analyse a very wide variety of documents, such as agreements relating to ancient territorial disputes, the quality of court interpreting, claims by defendants that their statements were altered by police officers, a disputed will, a suicide note, a ransom demand etc.

Forensic linguistic practitioners are concerned with testing claims about texts and language use to assist in investigations and to provide evidence to the courts. Claims about texts may include questions about their origin, including authorship and mode of production, and/or their meaning as used in a specific context. Claims about language use may include issues of a user's role or meaning, linguistic competence as well as interpretation issues.

In some criminal cases linguistic evidence of text messages has played an important role in prosecutions for murder. The cases have highlighted how individuals choose their own text language 'rules' which they tend to use throughout all of their messages. Forensic linguists have been able to show that text messages sent from the mobile phones of missing persons had a style that was more similar to that of the eventual convicted murderer.

For effective analysis of text messages, Forensic linguists rely on police evidence to constrain the number of possible authors. They are also able to build a 'sociolinguistic profile' of the author and give an idea of a texter's gender or age.

Further information about forensic linguists can be found on the website of the Institute of Forensic Linguists at <http://www.thetext.co.uk/info.html>

## Government Review of Ecstasy's Class A Drug Status

The Advisory Council on the Misuse of Drugs (ACMD) who provide advice to the Home Office will begin a review of the classification of ecstasy. This review begins amid calls for the drug to be downgraded from Class A to Class B.

The decision by the ACMD, chaired by Professor Michael Rawlins, to review the legal status of ecstasy follows a report by the Commons science and technology committee two years ago recommending urgent action.

An earlier inquiry by the Police Foundation in 2000 put forward a case for it to be moved to Class B. The inquiry found that the best estimates of the toxicity of ecstasy suggested that it was several thousand times less dangerous than heroin and was probably involved in fewer than 10 deaths a year.

Ecstasy remains the third most popular illicit drug in Britain; with 5% of young adults aged 16 to 24 saying they have used it in the last year.

Further developments regarding the review will be found at <http://drugs.homeoffice.gov.uk/drugs-laws/acmd/>

## Experiences and Perceptions of Anti-social Behaviour and Crime on Public Transport

The National Centre for Social Research Omnibus Survey to assess perceptions of safety from crime while using public transport, personal experiences of anti-social behaviour or crime on public transport and public views as to measures that would be most effective in making them feel safe when using public transport were published. The survey was conducted between January and May 2008 and had a sample of about 3100 people.

The key findings of this survey are:

- ◆ 84% felt safe travelling on public transport, though respondents were more concerned after dark than during the day.
- ◆ Only a small proportion said they did not make more use of public transport because of concerns about anti-social behaviour or crime (3 per cent did not use buses and 2 per cent did not use trains more often because of these concerns).
- ◆ The most common reason for feeling unsafe on buses and trains was anti-social behaviour of young people.
- ◆ 22% had been a victim of one or more incidents of anti-social behaviour or crime whilst on public transport in the preceding year and 76% had witnessed anti-social behaviour or crime.
- ◆ Experiences most often related to intimidating, insulting or disruptive behaviour or environmental anti-social behaviour, such as vandalism or littering.

- ◆ Less than 5% had been the victim of a theft or a violent or sexual incident.
- ◆ 43% of public transport users had felt intimidated by the behaviour of other passengers in the last year. The findings suggest that witnessing certain behaviours even if not directly targeted at the individual, can lead to feelings of intimidation.

The full report can be found at

<http://www.dft.gov.uk/pgr/statistics/datatablespublications/trsnstatsatt/antisocialcrime>

## Crime Reduction: Helping to Reduce Crime in Your Area

'Not in my Neighbourhood Week 2008' is scheduled to take place this year from 13 to 17 October 2008. This is a Home Office supported event which in 2007 involved over 500 local agencies and police forces.

The key objective of the week is to inform local people of the action that is being taken in their area to tackle crime and anti-social behaviour and to make their communities safer with the aim of:

- ◆ Increasing public confidence in their local crime reduction partnership and police, and work being done by local agencies.
- ◆ To encourage the public to play their part.
- ◆ Provide reassurance to residents.

The week provides an opportunity for local partners, including crime reduction partners, local police and residents associations to demonstrate the work that is being done to reduce crime, anti social behaviour and substance misuse in their area.

To support local areas the Home Office are organising various activities such as regional stakeholder events and ministerial visits. A handbook has also been produced which provides regions with the key messages that can be tailored for local use as well as practical advice and support on how to work with the media.

Further information about the event and how to get involved can be found at

<http://www.crimereduction.homeoffice.gov.uk/regions/regions017handbook.pdf>



## Case Law



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

### Admission of Unsuitable Voice Recognition Evidence Rendered Convictions Unsafe

**R v KRIS RONALD FLYNN: R v JOE PHILIP ST JOHN (2008)**

**CA (Crim Div) (Gage LJ, Hedley J, Sir Christopher Holland) 2/5/2008**

Criminal Evidence

Admissibility: Audiotape Recordings: Conspiracy: Exclusion: Expert Evidence: Robbery: Unfair Evidence: Voice Recognition: Admission Of Voice Recognition Evidence: Prejudicial Effect: S.78 Police And Criminal Evidence Act 1984

[Convictions for conspiracy to commit robbery were unsafe owing to the admission of voice recognition evidence of police officers, the prejudicial effect of which outweighed its probative value.](#)

The appellants (X) appealed against their convictions for conspiracy to commit robbery. The prosecution's case was that X had been part of a group of masked men who had driven a stolen van, which had been fitted with a covert recording device, into the premises of a company and had attempted to penetrate a room consisting of computer chips. In addition to circumstantial and forensic evidence, the prosecution relied on evidence of police officers who, having spoken to X during and after their arrest, purported to recognise X's voices captured by recording device. There were two transcripts of the recording. One was produced by one of the police officers and the other by an independent forensic consultant (H). H's opinion was that the quality of the recording was not suitable for speech analysis. She maintained that she was not able to differentiate one voice from another on the disputed tape. It was agreed that the equipment that she used to listen to the recording was more sophisticated than that used by the police officers. The judge ruled that none of the criticisms of the voice recognition evidence of the police officers justified the exclusion of the evidence under the Police and Criminal Evidence Act 1984 s.78. The judge directed the jury that they should not attempt to compare the voices heard on the recording with the voices of X, which they had heard when they gave evidence at the trial. X submitted that the judge

(1) should have excluded the evidence of voice recognition by the police officers;

- (2) had failed to give an appropriate jury direction in relation to that evidence.

#### HELD

- (1) The evidence of voice recognition by the police officers should have been excluded by the judge. As H pointed out, a prerequisite for making a speaker identification was that there should be a sample of an adequate size from the disputed recording that could confidently be attributed to a single speaker. If H, using her sophisticated equipment, was unable to identify individual speakers, it was dangerous to assume that a lay listener could not only distinguish different speakers but identify accurately the voice of an individual speaker. Having compared the police officers' transcript with that of H, a number of words that he had purported to recognise as the first appellant's were not distinguished by H as words. The officers' familiarity with X's voices was gained from comparatively short periods of time. Nothing was known of the ability of any of the police officers to recognise voices and there was no evidence that any of them had undergone any training in auditory analysis. Expert evidence showed that lay listeners with considerable familiarity of a voice and listening to a clear recording could still make mistakes. The prejudicial effect of the officers' evidence outweighed its probative value and, therefore, the judge was wrong to admit it. There were other reasons for excluding the evidence under s.78, including the absence of a record of the date and time spent by the officer in compiling the transcript of the covert recording, the absence of notes of dates and times when the officers attempted to recognise the voices on the recording, and the fact that the voice recognition exercise had been conducted by the investigating officers.
- (2) The judge had misdirected the jury by instructing them that they should not attempt to compare the voices heard on the recording with the voices of X, which they had heard when X gave evidence at the trial. The jury should be permitted to make such a comparison provided that the judge directed the jury to listen to the tapes guided by the evidence of the voice recognition witnesses, whether expert or lay.
- (3) In the circumstances, X's convictions were quashed.

#### APPEALS ALLOWED



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## Bringing Witness Summons to the Attention of the Witness Gives Rise to an Obligation to Attend

**R v HARISH POPAT (2008)**

**CA (Crim Div) (Hughes LJ, Dobbs J, Judge Pert QC) 28/7/2008**

Criminal Procedure

Administration Of Justice Offences: Contempt Of Court: Failure To Attend: Service By The Court: Witness Summonses: Bringing Requirement To Attend To Attention Of Witnesses: S.3 Criminal Procedure (Attendance Of Witnesses) Act 1965: S.2 Criminal Procedure (Attendance Of Witnesses) Act 1965: R.4.7(2) Criminal Procedure Rules 2005: R.4.7 Criminal Procedure Rules 2005

A witness summons did not have to be served in accordance with the Criminal Procedure Rules 2005 r.4(7)(2) if it was brought to the attention of the witness. If the witness then failed to attend, he could be guilty of contempt of court.

The appellant witness (P) appealed against a conviction for contempt of court. P had been the complainant in summary proceedings in a magistrates' court against a defendant (K), but failed to appear to give evidence. K was convicted, but appealed against his conviction. P was an essential witness in the appeal and a witness summons was issued to P, requiring him to attend the crown court on a specified date. P failed to attend and the hearing was adjourned to a new date. The judge issued a warrant for P's arrest, but directed that it was not to be executed except at the crown court. A police officer visited P the day before the new hearing date. He showed P the warrant and informed him that he must attend court the next day. P again failed to attend and, as a result, K's appeal was allowed. P submitted that he could not be guilty of contempt as there was no summons for attendance on the new hearing date and he had not been served in accordance with the Criminal Procedure Rules 2005 r.4.7(2).

**HELD**

(1) Under the Criminal Procedure (Attendance of Witnesses) Act 1965 s.2 and s.3, a summons could be issued requiring a witness to attend, provided that the witness was likely to be able to give material evidence and would not attend voluntarily. It was on that basis that the first summons was issued against P. The offence of contempt was disobedience to a summons rather than disobedience to a warrant. A new summons did not have to be issued for the new hearing date. The original summons required P to attend court on a specified date until released. He had not attended and had not been released; the summons had therefore remained in force. Formal service of the document was not required provided its existence was distinctly brought to the attention of the witness. The police officer had made it crystal clear to P that there existed an order of the court requiring him to attend the next day, R v Abbott (Robert) (2004) EWCA Crim 91 applied. There was no doubt that the criminal procedure rules provided

for how a summons was to be served. However, it did not alter the law set out in Abbott that, in addition to service, bringing the document to the attention of the witness was sufficient to give rise to an obligation to attend so that failure to attend could be contempt of court. P had quite deliberately failed to attend, despite the summons being brought to his attention.

- (2) The direction given by the judge, for the warrant not to be executed, was designed to give the missing witness the opportunity to attend voluntarily rather than be arrested 24 hours beforehand and kept in custody until he gave evidence. However, it was not always appropriate to give such a direction as it meant that where the witness did not attend the warrant could never be executed. Other directions could have been made, including a direction that the police officer need not execute the warrant if satisfied that the witness would attend voluntarily, or the issue of a warrant backed for bail.

#### APPEAL DISMISSED



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## Meaning of 'Other Engine' for Offence of Setting a Mantrap with Intent

R v NIGEL PHILIP COCKBURN (2008)

CA (Crim Div) (Sir Igor Judge (President QB), Davis J, David Clarke J)  
28/2/2008

Criminal Law

Actual Bodily Harm: Engines: Offences Against The Person: Setting Traps:  
Meaning Of "Other Engine" In S.31 Offences Against The Person Act 1861:  
Spring Guns: Mechanical Contrivance: S.31 Offences Against The Person Act  
1861

A spiked metal object, which was wired to the roof of a shed so that when the shed door was opened it activated and the force of gravity caused it to swing down and catch the person entering through the door, was an "other engine" for the purposes of the offence of setting a mantrap with intent contrary to the Offences against the Person Act 1861 s.31.

The appellant (C) appealed against his conviction for setting a mantrap with intent contrary to the Offences against the Person Act 1861 s.31. C had set up a spiked metal object which was wired to the roof of a shed so that when the shed door was opened it activated and the force of gravity caused it to swing down and catch the person entering through the door. C submitted that the recorder was wrong to reject C's submission at trial that, as a matter of statutory construction, the contraption did not fall within the ambit of s.31 as it was not capable of being an "engine" because the power needed to work it was applied exclusively by nature and no other form of stored energy or force was involved. C argued that it was not a mechanical contrivance as specified in R v Munks (Fred) (1964) 1 QB 304 CCA.

HELD

C's conviction could only have been sustained if the contraption was an "other engine calculated to destroy human life or inflict grievous bodily harm". The precursor to s.31 was the Spring-Gun Act 1827 which provided an ample indication of the legislative purpose of the 1861 Act. The 1861 Act was not confined to objects which operated through stored energy. There was no reason to give the words "spring-gun", "man trap" or "other engine" an unduly narrow meaning. The words "mechanical contrivance" from Munks were not to be applied restrictively so as to lead to the exclusion of a contraption which fell within the ambit of the statute, Munks considered. In the instant case, using ordinary language, the contraption was a mechanical contrivance and was unquestionably an "other engine" for the purposes of s.31 of the 1861 Act.

APPEAL DISMISSED



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## Power to Detain without Warrant in Section 41 Terrorism Act 2000 is Not Incompatible with European Convention on Human Rights

R (on the application of I) (Claimant) v (1) CITY OF WESTMINSTER MAGISTRATES' COURT (2) CHIEF CONSTABLE OF MANCHESTER POLICE (Defendants) & CROWN PROSECUTION SERVICE (Interested party) (2008)

QBD (Admin) (Collins J) 28/8/2008

Criminal Procedure - Human Rights

Bail: Detention Without Charge: Right To Liberty And Security: Terrorism: Power To Release On Bail: Judicial Control Over Further Detention: Art.5 European Convention On Human Rights: Sch.8 Terrorism Act 2000: S.41 Terrorism Act 2000

The power contained in the Terrorism Act 2000 s.41 to detain without warrant was not incompatible with the European Convention on Human Rights 1950 art.5. The terrorism legislation did contain the necessary protection of the individual, without there being a question of power to release on bail. The protection of the individual lay in the judicial control over whether there should be further detention.

The applicant (C) applied for permission to seek judicial review of a decision to detain him under the Terrorism Act 2000 s.41. C had been detained under s.41 and a Senior District Judge had approved a further detention of seven days. C applied for conditional bail. It was said that the provisions of the Act precluded the district judge from releasing on conditions and that there was no power on the face of it for any court to make such an order. C submitted that there was or should be a power under the relevant provisions, particularly having regard to the European Convention on Human Rights 1950 art.5, to enable the district judge to release upon conditions before any charge, and the absence of that power was such as to render s.41 and Sch.8 of the Act incompatible with art.5.

### HELD

- (1) On the face of it there was no power in the custody officer to grant bail on any conditions in relation to a detention under s.41. The detention was properly to be regarded as falling within art.5(1)(c) of the Convention. It was not necessary within art.5(1)(c) that there should exist such reasonable suspicion to justify the initial detention. It was the purpose of the detention that mattered. Provided the law of the state in question made such an arrest lawful, then it fell properly within art.5(1)(c). There was clear compliance with the requirements of art.5, in that any detention had to be justified before a magistrate and then after a total of 14 days, if an extension was granted, before a High Court judge. The High Court judge had the power to decide, after the first 14 days, whether there should be a further extension for 7 and thereafter for a further 7 days, making a total of 28 days. There was

no power to detain beyond 28 days. The decision must then be made whether to charge or release the detainee.

- (2) The legislation did contain the necessary safeguards, without there being a question of power to release on bail. The detention would not be authorised unless, in accordance with the principles that were clearly applicable under art.5, the court was satisfied that detention was justified and needed in order to enable there to be a proper examination of the terrorist offence. The protection of the individual lay in the judicial control over whether there should be further detention, McKay v United Kingdom (543/03) (2007) 44 EHRR 41 ECHR (Grand Chamber) considered.

#### APPLICATION REFUSED



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## Conviction under Section 5 Sexual Offences Act 2003 When Offence Also Fell within Section 13 Ambit Was Not Incompatible With European Convention on Human Rights

R v G (2008)

HL (Lord Hoffmann, Lord Hope of Craighead, Baroness Hale of Richmond, Lord Carswell, Lord Mance) 18/6/2008

Criminal Law - Criminal Procedure - Human Rights

Basis Of Plea: Child Sex Offences: Criminal Charges: Justification: Presumption Of Innocence: Proportionality: Rape: Right To Fair Trial: Right To Respect For Private And Family Life: Strict Liability: Young Offenders: Conduct Falling Within Ambit Of S.5 And S.13 Sexual Offences Act 2003: Lawfulness Of Prosecutor's Decision To Prosecute Under S.5: Art.6(1) European Convention On Human Rights: Art.6(2) European Convention On Human Rights: Art.8 European Convention On Human Rights: S.13 Sexual Offences Act 2003: S.5 Sexual Offences Act 2003

[It was compatible with a child's rights under the European Convention on Human Rights 1950 art.8 to convict him of rape contrary to the Sexual Offences Act 2003 s.5 in circumstances where the agreed basis of plea established that his offence also fell properly within the ambit of s.13.](#)

The appellant (G) appealed against his conviction for the rape of a child under the age of 13 contrary to the Sexual Offences Act 2003 s.5. G was 15 at the time of the offence, and the complainant was 12. She had originally complained that he had intercourse with her against her will. G was charged with the s.5 offence. He offered to plead guilty on the basis that the complainant willingly agreed to have intercourse with him and that he believed she was 15 because she had told him so. The prosecutor was at first unwilling to accept that basis of plea, but then the complainant changed her account of the incident and decided she was content with G's basis of plea. The prosecutor was invited to drop the case altogether but declined to do so. G appealed against his conviction and sentence, but only succeeded with respect to the sentence. The Court of Appeal certified two questions as being of general public importance, namely (i) whether a criminal offence of strict liability could violate the European Convention on Human Rights 1950 art.6(1) or art.6(2); (ii) whether it was compatible with a child's rights under art.8 to convict him of rape contrary to s.5 in circumstances where the agreed basis of plea established that his offence fell properly within the ambit of s.13 of the Act. G submitted that (1) the offence created by s.5, interpreted as one of strict liability, was incompatible with art.6(2), which provided that everyone charged with a criminal offence was to be presumed innocent until proved guilty according to the law. The European Court of Human Rights in *Salabiaku v France* (A/141-A) (1991) 13 EHRR 379 ECHR had stated that art.6(2) required states to confine "within reasonable limits" presumptions of fact or law in criminal proceedings. The creation of strict criminal liability would always engage a consideration of compatibility with the presumption of innocence; (2) his right to respect for



his private life had been violated because the prosecutor did not drop the charge under s.5 and substitute one under s.13. His conviction and sentencing for the s.5 offence involved both a stigma and practical consequences which were disproportionate.

#### HELD

(Lords Hope and Carswell dissenting on the art.8 issue)

- (1) G's argument read far too much into the wording of art.6(2) and the court's reasoning in *Salabiaku*. Article 6 was concerned with the procedural fairness of the system for the administration of justice in the contracting states, not with the substantive content of domestic law, *Matthews v Ministry of Defence* (2003) UKHL 4, (2003) 1 AC 1163 and *R v G* (2002) EWCA Crim 1992, (2003) 3 All ER 206 applied. When art.6(2) referred to "innocent" and "guilty" it was dealing with the burden of proof regarding the elements of the offence and any defence to it; it was not dealing with what those elements were or what defences ought to be available. *Salabiaku* was not inconsistent with that analysis, *Salabiaku* considered. Section 5 was not incompatible with art.6(2).
- (2) It was compatible with a child's rights under art.8 to convict him of rape contrary to s.5 in circumstances where the agreed basis of plea established that his offence fell properly within the ambit of s.13. "Rape of a child under 13" still accurately described what G had done. Parliament had decided to use that description because children under 13 could not validly consent to sexual intercourse. G's real complaint was that he had been convicted of an offence bearing the label "rape". If that engaged G's art.8 rights at all, it was entirely justified. The state would have been open to criticism if it had not provided the complainant with adequate protection. It sought to do that by a clear rule that children under 13 were incapable of consenting to sexual activity, and treating penile penetration as a most serious form of such activity. That did not amount to a lack of respect for the private life of the penetrating male. Even if it did, it could not be an unjustified interference with that right to label the offence "rape".
- (3) (Per Lords Hope and Carswell) Where choices were left to the prosecutor they had to be exercised compatibly with the Convention rights. It was unlawful for the prosecutor to continue to prosecute G under s.5 in view of his acceptance of the basis of G's plea, namely that the complainant had consented to intercourse. As the offence fell properly within the ambit of s.13, G's conviction of rape under s.5 was disproportionate and incompatible with his rights under art.8.

#### APPEAL DISMISSED



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## Prohibition of Direct Discrimination and Harassment on Grounds of Disability is Not Limited to People Who Are Themselves Disabled

**COLEMAN v ATTRIDGE LAW (2008)**

**ECJ (Grand Chamber) 17/07/2008**

Reference for a preliminary ruling from Employment Tribunal (London South) made on 10/7/2006

Community Law - Employment

Disability Discrimination: EC Law: Equal Treatment: Harassment: Indirect Discrimination

[ECJ interpretation of Directive 2000/78 concerning the prohibition from discrimination on grounds of disability and whether the parent of a disabled child, who was discriminated against at work could rely on Community provisions.](#)

The England and Wales court asked whether:

- (1) In the context of the prohibition of discrimination on grounds of disability, the Directive only protected from direct discrimination and harassment persons who are themselves disabled;
- (2) If the answer to Question (1) above was in the negative, whether the Directive protected employees who, though they were not themselves disabled, were treated less favourably or harassed on the ground of their association with a person who was disabled;
- (3) Where an employer treated an employee less favourably than he treated or would treat other employees, and it was established that the ground for the treatment of the employee was that the employee had a disabled son for whom the employee cared, whether that treatment was direct discrimination in breach of the principle of equal treatment established by the Directive;
- (4) Where an employer harassed an employee, and it was established that the ground for the treatment of the employee was that the employee had a disabled son for whom the employee cared, whether that harassment was a breach of the principle of equal treatment established by the Directive.

### HELD

- (1) Directive 2000/78 establishing a general framework for equal treatment in employment and occupation, and, in particular, Arts 1 and 2(1) and (2)(a) thereof, had to be interpreted as meaning that the prohibition of direct discrimination laid down by those provisions was not limited only to people who were themselves disabled. Where an employer treated an employee who was not himself disabled less favourably than another employee was, had been or would be treated in a comparable

situation, and it was established that the less favourable treatment of that employee was based on the disability of his child, whose care was provided primarily by that employee, such treatment was contrary to the prohibition of direct discrimination laid down by Art.2(2)(a).

- (2) Directive 2000/78, and, in particular, Arts 1 and 2(1) and (3) thereof, had to be interpreted as meaning that the prohibition of harassment laid down by those provisions was not limited only to people who were themselves disabled. Where it was established that the unwanted conduct amounting to harassment which was suffered by an employee who was not himself disabled was related to the disability of his child, whose care was provided primarily by that employee, such conduct was contrary to the prohibition of harassment laid down by Art.2(3).



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**SI 2163/2008 The Crime and Disorder Act 1998  
(Responsible Authorities) Order 2008**

In force **12 September**. This Order forms the South Warwickshire crime and disorder partnership (CDP) from two CDPs in Warwickshire, and combines two CDPs in Northamptonshire to create the Daventry and South Northamptonshire CDP.

**SI 2177/2008 The Traffic Signs (Amendment) Regulations and  
General Directions 2008**

In force **15 September**. Part 1 of this Instrument amends the Traffic Signs Regulations 2002, by adding a new sign to Schedule 4 of those Regulations and amending various cross-references to reflect the amendments made in Part 2 of this Instrument. Part 2 amends the Traffic Signs General Directions 2002, changing the signs which may be used to notify new speed limits, allowing additional signs and road markings to be placed on the approach to enforcement cameras and clarifying the application of certain directions to enforcement cameras and new signs.

**SI 2353/2008 The Serious Crime Act 2007 (Specified Anti-fraud  
Organisations) Order 2008**

In force **1 October**. This Order specifies a number of bodies as specified anti-fraud organisations, pursuant to section 68 of the Serious Crime Act 2007. Section 68 allows a public authority to disclose information as a member of a specified anti-fraud organisation, or in accordance with arrangements made by such an organisation. The disclosure must be for the purposes of preventing fraud or a particular fraud. An 'anti-fraud organisation' means any unincorporated association, body corporate or other person which enables or facilitates any sharing of information to prevent fraud or a particular kind of fraud or which has any of these functions as its purpose or one of its purposes.

The anti-fraud organisations specified under this Order are:

- ◆ CIFAS;
- ◆ Experian Limited;
- ◆ Insurance Fraud Investigators Group;
- ◆ N Hunter Limited;
- ◆ The Insurance Fraud Bureau; and
- ◆ The Telecommunications United Kingdom Fraud Forum Limited.

**SI 2356/2008 The Wildlife and Countryside Act 1981  
(Variation of Schedule 4) (England) Order 2008**

In force **1 October**. This Order amends Schedule 4 of the Wildlife and Countryside Act 1981 (WCA 1981), which specifies the birds which must be registered and ringed if kept in captivity. The Order removes a number of birds in the list, and removes the reference to hybrids, so Schedule 4 no longer applies to hybrids of birds listed in the Schedule. When in force, the birds included in Schedule 4 will be:

- ◆ Honey Buzzard (*Pernis apivorus*);
- ◆ Golden Eagle (*Aquila chrysaetos*);
- ◆ White-tailed Eagle (*Haliaeetus alibicilla*);
- ◆ Peregrine Falcon (*Falco peregrinus*);
- ◆ Goshawk (*Accipiter gentilis*);
- ◆ Marsh Harrier (*Circus aeruginosus*);
- ◆ Montagu's Harrier (*Circus pygargus*);
- ◆ Merlin (*Falco columbarius*); and
- ◆ Osprey (*Pandion haliaetus*).

Section 7 of the WCA 1981 (together with regulations made under this section) makes provision for the registration and ringing of certain birds kept in captivity. It also provides that any person keeping or having in his possession or under his control which has not been ringed and registered in accordance with the regulations commits an offence.

#### **SI 2357/2008 The Wildlife and Countryside (Registration and Ringing of Certain Captive Birds) (Amendment) (England) Regulations 2008**

In force **1 October**. These Regulations amend the Wildlife and Countryside (Registration and Ringing of Certain Captive Birds) Regulations 1982 (the 1982 Regulations), which allow registration of certain birds in which trade is regulated. These Regulations insert a Schedule into the 1982 Regulations, and make amendments regarding when registration ceases to have effect in relation to the birds listed in that Schedule. The birds listed in that Schedule are the Merlin (*Falco columbarius*) and the Peregrine Falcon (*Falco peregrinus*).

#### **SI 2367/2008 The Removal and Disposal of Vehicles (Traffic Officers) (England) Regulations 2008**

In force **1 October**. These Regulations permit uniformed traffic officers to remove, or require the removal of, certain stationary vehicles from motorways (excluding parts of the M4 and M48) and trunk roads in England and from roads in the vicinity of, or land adjacent to, such roads.

Traffic officers will be able to require the owner, driver or other person in control or in charge of a vehicle that has broken down or been permitted to remain at rest and which is causing an obstruction, is likely to cause danger to others or is in contravention of certain statutory restrictions or prohibitions, to move the vehicle or to have it moved. They may also remove or arrange for the removal of such vehicles, and vehicles that appear to have been abandoned.

The Regulations permit a traffic officer to remove, or arrange for the removal of, any vehicle that appear to have been abandoned on any land in the open air which is adjacent to the applicable motorways, trunk roads, and make provision for the notice to be given to the occupier of this land.

In addition, requirements are made as to the method of removing vehicles, the steps to be taken to find the owner of the vehicle and the notice to be given to the apparent owner to collect the vehicle, along with the fees to do so and otherwise when and how disposal of the vehicle may take place.