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Digest

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DIVERSITY Criminal Justice

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

This month's edition contains articles on a number of recently passed Acts of Parliament in particular concentrating on the provisions that will impact on policing.

Also covered are provisions contained in the Violent Crime Reduction Act 2006 which have, or are shortly due to come into force, in particular, details and advice on Section 27 (Directions to individuals who represent a risk of disorder).

This edition also contains several articles in relation to terrorism which relate to the Government's overall counter-terrorism strategy.

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

Case law in association with lawtel From Sweet & Maxwell

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

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Conference on Britain's Mixed-Race Population and Mixed Families

The Commission for Racial Equality, in partnership with the Runnymede Trust, London South Bank University's Families and Social Capital Research Group, and the Department for Communities and Local Government, is hosting an online conference which will look at issues relating to Britain's mixed-race population and mixed families.

The conference entitled, 'Mixedness & mixing -New perspectives on mixed-race Britons' will take place over three days, 4-6 September. Issues that will be discussed include:

- Inequalities faced by Britain's mixed-race population, and how these may be overcome.
- The nature and characteristics of mixed relationships and families, and how members of the mixed-race population relate to, and interact with, people from other ethnic groups.
- How mixed-race people are involved in decisions about how society works, both at a national and local level, and through formal and informal structures.

Further details of the conference and how to register can be found at http://www.mixedness.org.uk/

ACAS E-learning Module on Age Discrimination

The Advisory, Conciliation and Arbitration Service (ACAS), has launched a new free e-learning course on age discrimination. The new course:

- Defines age discrimination.
- Explains the legal aspects of the age discrimination Regulations.
- Explains how the Regulations affect recruitment and existing employees.
- Explains the exception and exemptions of the Regulations.
- Describes the process for enabling a fair retirement.

The course can be accessed via http://www.acas.org.uk

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Bills Receiving Royal Assent

The following Bills have recently received Royal Assent.

- Corporate Manslaughter and Corporate Homicide Act 2007.
- Forced Marriage (Civil Protection) Act 2007.
- Offender Management Act 2007.
- Pensions Act 2007.
- Vehicle Registration Marks Act 2007.
- Mental Health Act 2007.

Updates on these Acts are covered in following articles.

Corporate Manslaughter and Corporate Homicide Act 2007

The Corporate Manslaughter and Corporate Homicide Act 2007 received Royal Assent on 26 July following intense debate between the House of Commons and the House of Lords, in particular on the provision in respect of the 'relevant duty of care' owed to a person in custody.

The Ministry of Justice has announced that the Act will be brought into force on 6 April 2008, except for the provision in respect of the 'duty of care' owed to a person in custody, the implementation date of which the Government intend to keep under review. It has however intimated that that date of implementation of this duty will be three years from the date of commencement of the Act.

The Ministry of Justice has also announced that it will issue further guidance for organisations affected by the Act in the autumn.

Under the Act, an organisation is guilty of an offence of corporate manslaughter (corporate homicide in Scotland) if the way in which its activities are managed or organised causes a person's death **and** amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.

This offence applies to corporations, Government departments and other Crown bodies (listed in Schedule 1 of the Act), police forces, and partnerships, trade unions and employers associations that are employers.

Under the Act a corporation would include a police authority.

A 'relevant duty of care' means any of the following duties owed by an organisation under the law of negligence:

- A duty owed to its employees or to other persons working for the organisation or performing services for it.
- A duty owed as occupier of premises.

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- A duty owed in connection with: the supply by the organisation of goods or services (whether for consideration or not); the carrying on by the organisation of any construction or maintenance operations; the carrying on by the organisation of any other activity on a commercial basis; or the use or keeping by the organisation of any plant, vehicle or other thing.

It also includes, as referred to above, a 'duty of care' owed to a person in custody, i.e. to a person:

- Detained at a custodial institution or in a custody area at a court or police station.
- Detained at a removal centre or short-term holding facility.
- Being transported in a vehicle, or being held in any premises, in pursuance of prison escort arrangements or immigration escort arrangements.
- Living in secure accommodation in which he has been placed.
- Being a detained patient.

In relation to policing and law enforcement in the Act there are some exceptions to the relevant duty of care, these are:

- Operations for dealing with terrorism, civil unrest or serious disorder, that involve the carrying on of policing or law-enforcement activities where officers or employees of the public authority in question come under attack, or face the threat of attack or violent resistance, in the course of the operations.
- Activities carried on in preparation for, or directly in support of, such operations above.
- Training of a hazardous nature, or training carried out in a hazardous way, which it is considered needs to be carried out, or carried out in that way, in order to improve or maintain the effectiveness of officers or employees of the public authority with respect to such operations as above.

For an organisation to be guilty of this offence it will have to be shown that the way in which its activities were managed or organised by its senior management was a substantial element in the breach of the relevant duty of care.

Proceedings for an offence of corporate manslaughter may not be instituted in England and Wales without the consent of the Director of Public Prosecutions and is triable on indictment. An organisation that is guilty of corporate manslaughter or corporate homicide is liable on conviction on indictment to a fine.

It will normally be the responsibility of the police to conduct investigations into this offence, however in many cases such investigations will be conducted as joint investigations with agencies such as the Health and Safety Executive, local authorities etc.

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Although police officers are not usually classed as employees, for the purposes of this Act police officers, special constables and police cadets are to be treated as employees as employed by their force. The Act also makes specific reference to members of police forces who are seconded to the Serious Organised Crime Agency or the National Policing Improvement Agency stating that whilst on secondment they are to be treated as being employed by that Agency.

Although the Act does not specifically mention anything about police officers and members of a police force on secondment to other places, they appear to be covered under the duty owed by an organisation under the law of negligence to persons working for the organisation or performing services for it, as set out above.

The Act can be found in full at http://www.opsi.gov.uk/acts/acts2007/ukpga_20070019_en.pdf

Forced Marriage (Civil Protection) Act 2007

The Forced Marriage (Civil Protection) Act 2007 received Royal Assent on 26 July 2007. Since it was initially introduced as a private members Bill in November 2006 the Act has undergone many amendments (originally covered in the December 2006 *Digest*).

Section 1 of the Act inserts a new Part into the Family Law Act 1996. This new part, Part 4A, allows the court to make a forced marriage protection order for the purposes of protecting a person:

- From being forced into a marriage or from any attempt to be forced into a marriage.

Or

- Who has been forced into a marriage.

For the purposes of this Part a person ("A") is forced into a marriage if another person ("B") forces A to enter into a marriage (whether with B or another person) without A's free and full consent. It does not matter whether the conduct of B which forces A to enter into a marriage is directed against A, B or another person.

'Force' includes coerce by threats or other psychological means.

The court can include any prohibitions, restrictions or requirements or other such terms it considers appropriate for the purposes of the order.

When making a forced marriage protection order (other than an order made ex parte) the court **must** attach a power of arrest to one or more provisions of the order **unless** it considers that, in all the circumstances of the case, there will be adequate protection without such a power.

If an order is made ex parte the court **may** attach a power of arrest to one or more provisions of the order if it considers that there is a risk of significant harm to a person, attributable to conduct of the respondent, if the power of arrest is not attached to the provisions immediately.

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A constable may arrest without warrant a person whom he has reasonable cause for suspecting to be in breach of any such provision or otherwise in contempt of court in relation to the order.

When arrested under this provision the person must be brought before the relevant judge within the period of 24 hours beginning at the time of the person's arrest. For the purposes of calculating this period of 24 hours, Christmas Day, Good Friday and any Sunday are to be ignored.

Where the court has made a forced marriage protection order and either:

- No power of arrest is attached to any provision of the order.
- Such a power is attached only to certain provisions of the order.
- Such a power was attached for a shorter period than other provisions of the order and that period has expired.

If an interested party considers that the person has failed to comply with the order or is otherwise in contempt of court in relation to the order he may make an application on oath to the relevant judge for the issue of a warrant for the arrest of a person.

In this section 'interested party', in relation to a forced marriage protection order, means:

- The person being protected by the order.
- (If a different person) the person who applied for the order.
- Any other person (with the leave of the relevant judge).

The Act can be found in full at http://www.opsi.gov.uk/acts/acts2007/20070020.htm

Pensions Act 2007

The Pensions Act 2007 received Royal Assent on 26 July 2007. The Act makes provision about pensions and other benefits payable to persons in connection with bereavement or by reference to pensionable age and provision about the establishment and functions of the Personal Accounts Delivery Authority.

Provisions in the Act mean that:

- For people reaching state pension age from 6 April 2010, the existing contribution conditions for Category A and B pensions will be replaced with a single contribution condition.
- The same new condition will apply to the spouse or civil partner of a claimant of a Category B pension where the spouse or civil partner reaches state pension age on or after 6 April 2010 (or dies on or after that date without having reached that age).
- For people reaching state pension age before 6 April 2010, and for those claiming bereavement benefits (whether before or after 6 April 2010), existing contribution conditions will continue to apply.

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- For those reaching state pension age from 6 April 2010, the number of years needed to qualify for a full Category A or B pension is to be reduced from the current 44 years for a man and 39 years for a woman to 30 qualifying years for men and women alike.
- A person who has less than 30 qualifying years will be entitled to a proportion of the full basic state pension for each qualifying year they have built up.
- With effect from 6 April 2010 the restriction on a person's entitlement to a Category B pension that their spouse or civil partner must have made a claim for their Category A pension is removed. As a result, where one member of a married couple or civil partnership has deferred his or her Category A pension and the other member has reached pension age, the other member will have the choice of claiming a Category B pension (and where applicable any Category A pension based on their own contributions) or deferring their Category B pension (and any Category A pension to which they are also entitled) in order to accrue either increments or a lump sum.
- The basic state pension will be uprated annually in line with earnings rather than prices, and will cover the uprating of Category A, Category B, Category C and Category D pensions.

The Act can be found in full at http://www.opsi.gov.uk/acts/acts2007/20070022.htm#aofs

Vehicle Registration Marks Act 2007

The Vehicle Registration Marks Act 2007 received Royal Assent on 19 July 2007. The Act amends the Vehicle Excise and Registration Act 1994 (VERA) to simplify the process of buying and selling, or otherwise transferring, registration numbers for both dealers and individuals.

In particular it allows provision to be made enabling the registered keeper of a vehicle to transfer entitlement to the vehicle's registration mark to the purchaser at the point at which the application for a right of retention is made. Such provision removes the necessity for the registered keeper to be involved in the process beyond making the initial application for a right of retention to be granted in favour of their desired purchaser.

The Act came into force on Royal Assent. The Act can be found in full at http://www.opsi.gov.uk/acts/acts2007/20070014.htm

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Mental Health Act 2007

The Mental Health Act 2007 received Royal Assent on 26 July 2007. The provisions contained within the Act were covered in the December 2006 *Digest*.

Provisions worthy of particular note in relation to policing are:

Section 42 - Offence of ill-treatment: increase in maximum penalty on conviction on indictment

This Section amends the penalty on conviction on indictment for the offence of ill-treatment or wilful neglect of patients under Section 127 of the Mental Health Act 1983 from two years imprisonment to five years.

Section 44 - Places of safety

This Section amends Sections 135 and 136 of the Mental Health Act 1983 to enable a person detained at a place of safety to be transferred to another one, subject to the overall time limit for detention of 72 hours. A place of safety for this purpose is defined in Section 135(6) of the 1983 Act and includes a hospital, a care home and a police station.

Section 135(1) of the 1983 Act allows the police, on the authority of a magistrate, to enter premises and remove to a place of safety a person who is thought to have a mental disorder and who has been or is being ill-treated or neglected or, if living alone, is unable to care for himself.

Section 136 of the 1983 Act allows the police to remove from a public place to a place of safety a person who appears to have a mental disorder and need immediate help.

The Act can be found in full at http://www.opsi.gov.uk/acts/acts2007/20070012.htm

Violent Crime Reduction Act 2006

The Violent Crime Reduction Act 2006 (Commencement No. 3) Order 2007 brings into force certain provisions of the Violent Crime Reduction Act 2006 (see SI 2180/2007).

Section 27 (Directions to individuals who represent a risk of disorder)

Section 27 of the Act came into force on 22 August. It allows a constable in uniform to issue a direction to an individual aged at least 16 who is in a public place, requiring him to leave the locality of that place and prohibiting the individual from returning to that locality for such period from the giving of the direction as the constable may specify. The period specified by a constable cannot exceed 48 hours.

A constable can only issue such a direction if he is satisfied that:

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- The presence of the individual in that locality is likely, in all the circumstances, to cause or to contribute to the occurrence of alcohol-related crime or disorder in that locality, or to cause or to contribute to a repetition or continuance there of such crime or disorder.

And

- That the giving of a direction to that individual is necessary for the purpose of removing or reducing the likelihood of there being such crime or disorder in that locality during the period for which the direction has effect or of there being a repetition or continuance in that locality during that period of such crime or disorder.

Such directions **must**:

- Be given in writing.
- Clearly identify the locality to which it relates.
- Specify the period for which the individual is prohibited from returning to that locality.

Such directions **may**:

- Require the individual to leave the locality in question either immediately or by such time as the constable giving the direction may specify.
- Impose requirements as to the manner in which that individual leaves the locality, including his route.
- Be withdrawn or varied (but not extended so as to apply for a period of more than 48 hours) by a constable.

Such directions **may not** be given if it would prevent the individual to whom it is given from:

- Having access to a place where he resides.
- Attending at any place which he is required to attend for the purposes of any employment of his or of any contract of services to which he is a party.
- Attending at any place which he is expected to attend during the period to which the direction applies for the purposes of education or training or for the purpose of receiving medical treatment.
- Attending at any place which he is required to attend by any obligation imposed on him by or under an enactment or by the order of a court or tribunal.

A record of the issue of a direction **must** be made by the constable which includes details of:

- The terms of the direction and the locality to which it relates.
- The individual to whom it is given.

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- The time at which it is given.
- The period during which that individual is required not to return to the locality.

A person who fails to comply with a direction is guilty of an offence and shall be liable, on summary conviction, to a fine not exceeding level 4 on the standard scale (currently £2,500).

Section 27 also amends Section 64A of the Police and Criminal Evidence Act 1984 to allow the police to photograph the subject of a direction, with or without his consent, elsewhere than at a police station.

The Home Office has published a practical advice guidance document on giving directions to individuals to leave a locality under this provision. See article on page 36.

Provisions that will come into force on **1 October 2007** include:

Sections 21 and 22 (licence reviews)

Section 21 inserts new Sections 53A, 53B and 53C into the Licensing Act 2003, which relate to a power of the police to require a review of a premises licence.

Section 53A enables a chief officer to apply for an expedited review of a premises licence where a senior police officer (of or above the rank of superintendent) certifies, to the relevant licensing authority, that he considers a licensed premises to be associated with serious crime and/or disorder.

'Serious crime' is defined by reference to Section 81 of the Regulation of Investigatory Powers Act 2000. In broad terms, meaning any offence that satisfies one or more of the following criteria:

- Is or would be constituted by the conduct as an offence for which a person who has attained the age eighteen in relation to England and Wales and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more.
- Involves the use of violence.
- Results in substantial financial gain.
- Is conduct by a large number of persons in pursuit of a common purpose.

Within 48 hours (not counting weekends and public holidays) of receipt of a certificate the licensing authority is required to consider whether it is necessary to take any of the interim steps set out at Section 53B pending a determination of a review of the premises licence.

Also, within 28 days after receipt of the application, the licensing authority is required to review the premises licence and reach a determination.

The interim steps listed in Section 53B are:

- Modification of the conditions of the premises licence.
- Exclusion of the sale of alcohol by retail from the scope of the licence.

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- The removal of the designated premises supervisor from the licence.
- The suspension of the licence.

The relevant licensing authority can take one or more of these interim steps without the licence holder having an opportunity to make representations. Any decision to take an interim step(s) takes effect either immediately or at a time specified by the authority. Notice of the decision must be given to the holder of the premises licence and the police.

If a licence holder makes representations against any of the interim steps and the licensing authority does not withdraw them, the licensing authority must within 48 hours of receiving them (not counting weekends and other public holidays) hold a hearing to consider them. Advance notice of the hearing must be given to the holder of the premises licence and the police.

Section 53C deals with the procedure for conducting the determination of an application for a review made under Section 53A.

Section 22 makes a number of consequential amendments to the Licensing Act 2003, including:

- Preventing functions relating to the taking of interim steps pending a review under Section 53C, or the determination itself, being sub-delegated to officers of a licensing authority.
- Providing that appeals against a determination made following an application for a review under Section 53A can be made by the same persons and in the same manner as in reviews under Section 51 of the Licensing Act 2003.

Section 32 (sales of air weapons by way of trade or business to be face to face)

Section 32 makes it an offence for a person to sell air weapons by way of trade or business other than face to face. The offence is punishable on summary conviction with 6 months imprisonment (which will increase to 51 weeks in England and Wales after the commencement of section 281(5) of the Criminal Justice Act 2003) or a £5,000 fine, or both.

Section 33 (age limits for purchase etc. of air weapons)

Section 33 makes amendments to the Firearms Act 1968 by increasing from 17 to 18 the minimum age for:

- Acquiring or possessing an air weapon.
- Purchasing or hiring an air weapon.
- Possessing ammunition for an air weapon.
- Selling an air weapon and letting one on hire.
- Making a gift of an air weapon or parting with the possession of one.

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Section 34 (firing an air weapon beyond premises)

Section 34 amends Section 23 of the Firearms Act 1968 by removing the existing offences relating to young people in Section 23(1) and 23(4) of the Firearms Act 1968 and replacing these offences with a new offence by inserting a new Section 21A into the Firearms Act 1968 which makes it an offence for a person of **any** age to fire an air weapon beyond the boundary of premises.

A defence is provided to cover the situation where the person shooting has the consent of the occupier of the land over or into which he shoots.

The additional offence under Section 23(1) of the Firearms Act 1968 committed by a person supervising someone under the age of 18 who commits the offence of firing an air weapon beyond premises is preserved. The same statutory defence is provided to cover the situation where the person shooting has the consent of the occupier of the land over or into which he shoots.

Section 36 (manufacture, import and sale of realistic imitation firearms)

Section 36 makes it an offence to manufacture, import or sell a realistic imitation firearm. It includes a power to make regulations to provide for exceptions, exemptions and defences to the new offence. Realistic imitation firearms are defined by Section 38 (see below).

Section 37 (specific defences applying to the offence under s.36)

Section 37 sets out defences to the offence under Section 36. These defences are that the manufacture, import or sale was:

- For the purposes of a museum or gallery.
- For theatre, film or television productions.
- For specified historical re-enactments.
- For Crown service.

It is also a defence to show that the conduct was in the course of carrying on any trade or business; and was for the purpose of making the imitation firearm in question available to be modified in a way which would result in its ceasing to be a realistic imitation firearm.

Section 38 (meaning of "realistic imitation firearm")

Section 38 explains what is meant by the term 'realistic imitation firearm' for the purposes of Sections 36 and 37 and means:

- An imitation firearm which has an appearance that is so realistic as to make it indistinguishable, for all practical purposes, from a real firearm and is neither a de-activated firearm nor itself an antique.

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Section 39 (specification for imitation firearms)

Section 39 itself:

- Provides a power for the Secretary of State to make regulations specifying how imitation firearms must be constructed.
- Makes it an offence to manufacture or import an imitation firearm which does not conform to those specifications.
- Makes it an offence to modify an imitation firearm so that it ceases to conform to the specifications, or to modify a real firearm to create an imitation that does not conform to the specifications.

These offences are triable summarily and on conviction a person is liable to 6 months imprisonment or a £5,000 fine, or both. The maximum term of imprisonment will increase to 51 weeks in England and Wales after commencement of the sentencing provisions in Section 281(5) of the Criminal Justice Act 2003.

Section 40 (supplying imitation firearms to minors)

Section 40 inserts a new section, Section 24A into the Firearms Act 1968 which makes it an offence to sell an imitation firearm to a person under the age of 18, or for a person under 18 to purchase one. This Section creates a defence for the vendor to show that he believed that the purchaser was 18 or over and had reasonable grounds for that belief.

Section 43(1) and (2) (sale etc. of knives and other weapons)

Only subsections 43(1) and (2) come into force on 1 October. These subsections amend Section 141A(1) of the Criminal Justice Act 1988 (prohibition of sale of knives etc. to persons under sixteen) by extending the offence of selling a knife or an article with a blade or point to a person under sixteen to persons under eighteen.

Section 44 (sale etc. of crossbows)

Section 44 amends the Crossbows Act 1987 by raising the age at which a person may be sold or hired a crossbow, and at which a person may buy, hire or possess (in the latter case without supervision by a person aged 21 or over) a crossbow, from seventeen to eighteen.

Section 47 (power to search persons in attendance centres for weapons)

Section 47 makes provision for searching persons in attendance centres equivalent to that in Section 45 for school pupils and Section 46 for further education pupils (Sections 45 and 46 came into force on 31 May 2007).

Under Section 47 a search can only be carried out by the officer in charge of the attendance centre or a person authorised by that officer and can only be carried out on the premises of the centre.

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Section 64 (expenses)

Section 64 authorises additional expenditure incurred by the Secretary of State as a result of the provisions of the Act and increases in expenditure under existing Acts.

The Act can be found in full at http://www.opsi.gov.uk/acts/acts2006/20060038.htm

Implementation of Offences Contained Within the Road Safety Act 2006

Ministry of Justice Minister MP Maria Eagle has announced that the Government intends to implement the new offence of causing death by careless driving contained in Section 20 of the Road Safety Act 2006 in autumn 2007, subject to the Sentencing Guidelines Council (SGC) publishing sentencing guidelines in respect of it.

The reason for awaiting the publication of such guidelines is to ensure consistency in sentencing.

Section 20 inserts a new section, Section 2B - Causing death by careless, or inconsiderate, driving, into the Road Traffic Act 1988 (RTA 1988). Section 2B states that:

- A person who causes 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 consideration for other persons using the road or place, is guilty of an offence.

This offence is punishable summarily in England and Wales by 12 months imprisonment (6 months in Scotland) or the statutory maximum fine or both. On indictment the offence is punishable by 5 years imprisonment or a fine or both.

It is also expected that at the same time that Section 20 is brought into force two other new offences contained in the Act, Section 21 and 22 will also be brought into force.

Section 21 inserts Section 3ZB (Causing death by driving: unlicensed, disqualified or uninsured drivers) into the Road Traffic Act 1988.

Under Section 3ZB a person is guilty of an offence if he causes the death of another person by driving a motor vehicle on a road and, at the time when he is driving, the circumstances are such that he is committing an offence under any of the following Sections of the RTA 1988:

- Section 87(1) (driving otherwise than in accordance with a licence).
- Section 103(1)(b) (driving while disqualified.
- Section 143 (using motor vehicle while uninsured or unsecured against third party risks).

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Section 22 inserts Section 144A (Offence of keeping vehicle which does not meet insurance requirements), into the Road Traffic Act 1988.

Under Section 144A if a motor vehicle registered under the Vehicle Excise and Registration Act 1994 does not meet the insurance requirements, the person in whose name the vehicle is registered is guilty of an offence.

The Road Safety Act 2006 can be found in full at http://www.opsi.gov.uk/acts/acts2006/20060049.htm

HOC 27/2007
Misuse of Drugs and Misuse of Drugs (Safe Custody) (Amendment) Regulations 2007

This Home Office Circular draws attention to the Misuse of Drugs and Misuse of Drugs (Safe Custody) (Amendment) Regulations 2007 introduced by Statutory Instrument 2154/2007 (see SI section).

The Regulations came into force on 16 August 2007, with the exception of Regulation 4(11)(b) which comes into force on 1 September 2007, Regulations 3(4), 4(6)(e), 4(8), 4(11)(a) and Regulations 4(13) to (14) which come into force on 1 January 2008 and Regulations 4(9) to (10) and Regulation 4(15)which come into force on 1 February 2008.

The Regulations amend the Misuse of Drugs Regulations 2001 (the 2001 Regulations) and the Misuse of Drugs (Safe Custody) Regulations 1973 (the 1973 Regulations) to;

- Introduce new requirements for Schedule 1-3 controlled drug requisitions (for human use) used in the community to be sent to the NHS Business Services Authority (or its equivalent in the Devolved Administrations).
- Give authority to the Accountable Officer, introduced in the Health Act 2006 as the person responsible for the safe use and management of controlled drugs in his or her healthcare area, to nominate persons to witness the destruction of controlled drugs. (Regulation 4(12)).
- Allow Operating Department Practitioners (ODPs) to possess and supply or offer to supply controlled drugs in certain settings (ward, theatre or other department); replace the term "Sister or Acting Sister" with that of "Senior Registered Nurse or Acting Senior Registered Nurse"; and extend the authority of the Senior Registered Nurse (and ODP) to supply controlled drugs in these specified settings for the purposes of administration to a patient in accordance with the directions of supplementary prescriber acting under and in accordance with the terms of a clinical management plan or, subject to what drugs are being prescribed, a nurse independent prescriber. (Regulations 4(5) to (7)).
- Re-schedule Midazolam from Schedule 4 to Schedule 3, a tighter regime of controls in respect of prescribing, requisitioning and record keeping, but allow it to continue to be used under a Patient Group Direction (PGD) and to exempt it from the storage requirements of the Misuse of Drugs

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(Safe Custody) Regulations 1973. (Regulations 3(4), 4(6)(e), 4(13), 4(14) which come into force on 1 January 2008).

- Remove the requirement to maintain a Controlled Drug Register in the prescribed format previously set out in Schedule 6 of the 2001 Regulations and replace it with the requirement to record designated fields of information underneath specified headings. (Regulations 4(9), 4(10) and 4(15) which come into force on 1 February 2008).
- Replace the term "nursing home" in the 1973 Regulations and the 2001 Regulations with that of "care home". (Regulation 4(3)).

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

HOC 28/2007 The Criminal Justice and Court Services Act 2000 (Amendment) Order 2007: Trigger Offences

This Home Office Circular supersedes HOC 42/2004. It draws attention to the changes made to Schedule 6 to the Criminal Justice and Court Services Act 2000 (CJCSA) by the Criminal Justice and Court Services Act 2000 (Amendment) Order 2007 (see S.I. 2171/2007) which came into force on 1 August 2007 and which corrects some omissions in the consequential amendments made to Schedule 6 by the Fraud Act 2006.

The trigger offences under Schedule 6 of the CJCSA with effect from 1 August 2007 are offences under:

- Section 1 Theft Act 1968 (theft).
- Section 8 Theft Act 1968 (robbery).
- Section 9 Theft Act 1968 (burglary).
- Section 10 Theft Act 1968 (aggravated burglary).
- Section 12 Theft Act 1968 (taking motor vehicle or other conveyance without authority).
- Section 12A Theft Act 1968 (aggravated vehicle-taking).
- Section 22 Theft Act 1968 (handling stolen goods).
- Section 25 Theft Act 1968 (going equipped for stealing, etc.).
- Section 1 Fraud Act 2006 (fraud).
- Section 6 Fraud Act 2006 (possession etc. of articles for use in frauds).
- Section 7 Fraud Act 2006 (making or supplying articles for use in frauds).
- Section 3 Vagrancy Act 1824 (begging).
- Section 4 Vagrancy Act 1824 (persistent begging).

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- Section 4 Misuse of Drugs Act 1971 (restriction on production and supply of controlled drugs). **NB** Only if committed in respect of a specified Class A drug.
- Section 5(2) Misuse of Drugs Act 1971 (possession of controlled drug). **NB** Only if committed in respect of a specified Class A drug.
- Section 5(3) Misuse of Drugs Act 1971 (possession of controlled drug with intent to supply). **NB** Only if committed in respect of a specified Class A drug.

In addition an offence under Section 1(1) of the Criminal Attempts Act 1981 is a trigger offence, if committed in respect of an offence under:

- Section 1 Theft Act 1968 (theft).
- Section 8 Theft Act 1968 (robbery).
- Section 9 Theft Act 1968 (burglary).
- Section 22 Theft Act 1968 (handling stolen goods).
- Section 1 of the Fraud Act 2006 (fraud).

The Circular clarifies that in respect of the trigger offences that relate to attempted offences that the inclusion of attempted fraud as a trigger offence ensures that offending which previously could have constituted an attempt of obtaining property by deception, and which will now be prosecuted as attempted fraud, continues to be captured by a trigger offence.

With effect from 1 August 2007, persons in police detention following arrest or charge with attempted fraud may be tested for specified Class A drugs on the basis of it being a trigger offence. Similarly persons released from a custodial sentence on or after that date for an offence of attempted fraud may have a drug testing requirement imposed as part of the conditions of their licence or notice of supervision.

The offence of obtaining property by deception (and by virtue of the repeal of that offence, the attempt of that offence) ceased to be a trigger offence on 15 January 2007. Although a person may still be arrested, charged and convicted for those offences under the transitional provisions set out in Schedule 2 to the Fraud Act 2006 (i.e. where the offence was committed wholly or in part before 15 January 2007), it remains the case that, with effect from 15 January 2007, a drug testing requirement may not be imposed in the case of a person released from a custodial sentence for those offences and persons arrested for or charged with those offences on or after 15 January 2007 can only be tested where the criteria are met enabling testing on the basis of a non trigger offence.

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

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The Review of PACE

The Policing Powers and Protection Unit of the Home Office has published the results of the consultation on the review of the Police and Criminal Evidence Act 1984 (PACE) launched on 16 March 2007 (see March *Digest*) which formed phase 1 of the review process.

Phase 2 of the consultation process will consist of a series of regional seminars with stakeholders and practitioners and a programme of bilateral meetings with key stakeholders. The aim is to establish the evidence for and practical benefits of change and to look at the impact of implementation and delivery. The seminars will be held from September to November, with a national conference in December 2007. Invitations to attend will be sent out in early August. The Government Response to the consultation is expected to be published in March 2008. The contents of that will be subject to a final phase of consultation in spring 2008 to consider the final proposals for legislative and administrative change.

The responses received in phase 1 and a summary of them can be found at http://www.police.homeoffice.gov.uk/operational-policing/powers-pace-codes/PACE-Review.

Counter Terrorism Measures

The Government has announced the publication of four documents in relation to its overall counter terrorism strategy, these are:

- Possible measures for inclusion in a future Counter Terrorism Bill.
- Options paper for pre charge detention in Terrorist Cases.
- Crown Prosecution Service paper on judicial scrutiny of current pre charge detention limits.
- Terrorist investigations and the French examining magistrates system.

Possible Measures for Inclusion in a Future Counter Terrorism Bill

This paper contains a number of measures intended to enhance information sharing between agencies involved in combating terrorism, measures to deal with terrorist suspects after they have been charged, and others considered to be operationally valuable or to make existing legislation clear. These include:

- Closing the gap (if it is considered to exist) so that Section 19(1)(b) of the Terrorism Act 2000 (disclosure of suspicious financial activity observed during the course of employment, trade, business or profession) covers those carrying out unpaid or voluntary work, for example trustees or those who do voluntary work in the finance department of a charity.
- Putting the police counter terrorism DNA database on a proper statutory footing, including the necessary oversight mechanisms.

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- Ensuring that DNA samples and fingerprints obtained under the Terrorism Act 2000 can be loaded on to the national DNA database and national fingerprint database.
- Allowing the security services to cross reference material they obtain with the National DNA database for purposes of national security.
- Providing equivalent powers relating to DNA and fingerprints after a control order is served, as currently applies when arrests are made under the Terrorism Act 2000 or the Police and Criminal Evidence Act 1984.
- Giving the intelligence agencies data sharing powers similar to those of the Serious and Organised Crime Agency in respect of their ability to acquire and disclose information.
- Introducing new legislation so that in terrorist cases suspects can be questioned after charge on any aspect of the offence for which they have been charged.
- Applying enhanced sentencing in non-terrorist specific offences where it is in relation to a terrorist case.
- Introducing terrorist notification requirements on those convicted of terrorist or terrorist related offences (where they are given a sentence of 12 months or more) which would work in a similar way to the sex offender notification requirements.
- Introducing powers to ensure that those convicted of a terrorist offence overseas are made subject to the terrorist notification requirements if they come to the UK.
- Allowing temporary seizure of travel documents to enable further investigations where an individual stopped at a port is suspected, on the basis of the examination undertaken and/or other intelligence, of wanting to travel abroad for terrorism-related purposes.
- Introducing a new foreign travel order (similar to sex offender foreign travel orders) to place limitations on travel for convicted terrorists.
- Tightening up bail conditions in cases that are linked to terrorism but which do not involve specific terrorist activity.
- Extending the current legislation of forfeiture of terrorist assets to those who are convicted of a non-terrorist offence in relation to a terrorism case.
- Amending the control orders system to allow police officers to have self-standing powers of entry and search of premises and seizure of items to enforce and monitor the control order effectively.
- Extending the powers, currently available to the police in Northern Ireland under Part VII of the Terrorism Act 2000 e.g. to remove a vehicle in order to facilitate easier searching and the power to take documents away to decide whether they are of evidential value, to UK-wide.

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- Putting funding of dedicated extra policing for security at key gas sites onto a clear legal footing.

Options for Pre-Charge Detention in Terrorist Cases

This paper analyses the case for extending the current pre-charge detention limits, which the Government feels is necessary in exceptional circumstances.

It sets out four options on which it invites comment, (option one is the Government's preferred option):

Option 1 - Legislation would be introduced to extend the current limit on pre-charge detention. How far that limit would be extended will be subject to further consultation. Additional safeguards for any period of pre-charge detention over 28 days would also be introduced, including:

- Any application for each period of 7 days beyond 28 days to be approved by the Director of Public Prosecutions before being decided by a High Court Judge.
- The Home Secretary to notify Parliament of any extension beyond 28 days as soon as practicable after the extension has been granted, with a requirement to provide a further statement to Parliament on the individual case, and an option for the House to scrutinise and debate this.
- The Independent Reviewer of Terrorism Legislation to report on the operation of the pre-charge detention powers in any case going beyond 28 days as an individual case, in addition to his general annual review.
- An annual Parliamentary debate, with the powers being subject to annual renewal, as now.

Option 2 - Similar to Option 1, with similar safeguards, but each extension would be subject to an affirmative resolution in Parliament (i.e. a vote in both houses).

Option 3 - Using the provisions contained in the Civil Contingencies Act 2004 which allows the Government to take emergency powers with immediate effect if a series of criteria are satisfied. This could allow pre-charge detention to last for 28 days plus 30 days, but it would require the declaration of a state of emergency.

Option 4 - Introducing judge-managed investigations (similar to the examining magistrates' model in some other countries, such as France and Spain). This might involve specialist circuit judges being assigned to cases after 48 hours detention to oversee the investigation to its conclusion.

Terrorist investigations and the French examining magistrates system

This paper sets out the findings of a Home Office-led study into the French examining magistrate system in relation to the investigation and prosecution of terrorist suspects.

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Crown Prosecution Service paper on judicial scrutiny of current pre charge detention limits

This paper deals with the scrutiny of applications for a warrant of further detention between 14 days and 28 days. These are made by the Crown Prosecution Service's Counter Terrorism Division, which thoroughly scrutinises any request to make such an application before deciding whether it is necessary or appropriate to commence the process.

All the above documents can be accessed via
http://security.homeoffice.gov.uk/legislation/proposed-new-legislation/

Review of Intercept as Evidence

The Prime Minister has announced that he has ordered a Review of Intercept as Evidence in order to advise the Government on whether a regime to allow the use of intercepted material in court can be devised that facilitates bringing cases to trial while meeting the overriding imperative to safeguard national security.

The review is to be conducted by the right hon. the Lord Archer of Sandwell, the right hon. the Lord Hurd of Westwell, the right hon. Member for Berwick-upon-Tweed (Alan Beith) and the right hon. Sir John Chilcot, who will also act as the chair.

In particular the review team have been asked to consider:

- The benefits that might reasonably be expected to result from such use (in terms, for example, of increases in the number of successful prosecutions in serious organised crime and terrorism cases).
- The risks, including from exposure of interception capabilities and techniques.
- The resource implications of any change in the law.
- The implications of new communications technology.
- The experiences of other countries and their relevance to the UK.

It is expected that the review team will endeavour to report their conclusions by the start of the next parliamentary session in November.

Consultation on the Prescribed Form and Manner for Reporting Suspicious Activity under Section 339 of the Proceeds of Crime Act 2002

Section 339 of PoCA (as amended by the Serious Organised Crime and Police Act 2005 makes provision for the form and manner of reporting suspicions of money laundering to be prescribed by Order by the Secretary of State. At present this power has not be used by the Secretary of State which in effect means that persons making such reports are allowed to use any form and manner they choose.

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The Home Office has published a consultation paper seeking views on Government proposals to prescribe the form and manner for reporting suspicious activity under Section 339 of the Proceeds of Crime Act 2002 (PoCA) and in particular whether these proposals will cause a significant burden to industry.

It is proposed that:

- The prescribed form will contain the fields currently used in the existing Serious Organised Crime Agency Suspicious Activity Report Form.
- The prescribed manner of reporting is one of the five manners currently in use by SOCA, these being: the Internet site - "SAR Online"; the Extranet site - "Money.Web"; Secure (encrypted) e-mail; The use of data on CD Roms and/or computer disks; or a hardcopy submission. Any other manners that may be created in the future could also be included subject to approval.
- Hardcopy paper reports must be typed.

The paper also proposes:

- Reinforcing awareness throughout the reporting sector (including the anticipated additions to the regulated sector under the Money Laundering Regulations 2007 (ML Regs)) of the requirements of Sections 330-332 of PoCA as regards a required disclosure.
- Increasing awareness of SOCA guidance on completing a SAR; in particular, the completion of the relevant information in the correct fields.

The closing date for comments is 22 October 2007. Subject to the outcome of this consultation, the Government proposes to lay an Order under Section 339 of POCA to prescribe the form and manner of reporting.

The consultation document can be found in full at http://www.homeoffice.gov.uk/documents/Suspicious_Activity_Reports1.pdf?view=Binary

Reports on the Operation and Experience of Multi-Agency Public Protection Arrangements

The Home Office has published two reports following a small-scale qualitative research study which examined operational practices for sex offenders managed at Levels 2 and 3 within the Multi-Agency Public Protection Arrangements (MAPPA). It also explored the experience of MAPPA and its perceived impact on offending-related behaviour of sex offenders convicted of offences against children.

Key findings from the study showed:

- Areas routinely used external controls to restrict offenders, including licence conditions, restrictions on behaviours and contacts, and police home visits.

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- The impact of external controls varied. When clearly rationalised by supervision staff, offenders indicated a greater readiness to comply.
- Supervision and treatment programmes were used to enhance an offender's internal controls. These were used by the offender to limit problematic behaviour and avoid key offending triggers and risky situations. Successful supervision relationships were reported as key to understanding and developing these controls.
- Areas reported using discretionary powers to disclose information to third parties, using the MAPPA Guidance to inform decision making. This was perceived to enhance child protection and disclosures had been made to a range of agencies and members of the public, if they or their children were considered to be potentially at risk. (See following article on further study on discretionary disclosure under MAPPA).

The report contains a number of recommendations, these are:

- Ensure supervision practice of registered sex offenders post-licence is consistent nationally. This should include consistency about the circumstances required for Sexual Offences Prevention Order applications and arrangements for offender supervision.
- Expand availability of longer-term intervention strategies, e.g. Circles of Support and Accountability.
- Disseminate best practice on discretionary disclosure.
- Explore ways of ensuring national consistency for police contact/visits with sex offenders managed at both Levels 2 and 3.
- Promote greater integration of individual supervision and treatment work. This should include increased attention to relapse-prevention work in individual supervision. Further guidance on case management of sex offenders subject to MAPPA could address this.
- Extend the use of voluntary supervision and disclosure 'contracts' for offenders nationally and encourage their use in the MAPPA Guidance.
- Develop information leaflets for offenders subject to MAPPA to better enable them to understand the rationale.
- Develop key performance indicators to enable areas to measure the effectiveness of MAPPA work.

The two reports Home Office Online Report 12/07 and Home Office Findings 285 can both be found at http://www.homeoffice.gov.uk/rds/whatsnew1.html

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Reports on Discretionary Disclosure under the Multi-Agency Public Protection Arrangements

The Home Office has published two reports in relation to the extent of discretionary disclosure under the Multi-Agency Public Protection Arrangements (MAPPA) following returns it received from 40 police forces to a questionnaire it sent out exploring the use of disclosure within the first six months of 2006.

This study highlighted that disclosure was used in a range of circumstances as part of community management of child sex offenders, although methods of initiation and procedures followed varied.

Twelve areas reported negative consequences of disclosure with some suggesting that extending discretionary disclosure is unnecessary and could threaten working relationships with offenders and co-operation with existing supervision and management strategies.

The report makes a number of recommendations, these being:

- To revise the MAPPA Guidance to include disclosures with Level 1 offenders.
- To develop the Guidance to include processes for disclosure via child protection procedures. Practice should be consistent across areas, although the current flexibility of disclosure should not be compromised.
- When initiating disclosure, areas should record the decision and to whom information is disclosed. The means for undertaking this should be straightforward and consistent across areas and should include retrospective recording of spontaneous disclosures. Revisions to the Guidance should include relevant guidelines, and figures collated nationally.

The two reports Home Office Online Report 13/07 and Home Office Findings 286 can both be found at http://www.homeoffice.gov.uk/rds/whatsnew1.html

HOC 26/2007 Commencement of Section 27 of the Violent Crime Reduction Act 2007

This Home Office Circular has been published to alert people, in particular Chief Executives of Police Authorities, The National Policing Improvement Agency and The Association of Chief Police Officers that the provisions contained in Section 27 of the Violent Crime Reduction Act 2006 came into force on 22 August 2007. See article on page 11 and SI 2180/2007.

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House of Lords Science and Technology Committee Report on Personal Internet Security

The House of Lords Science and Technology Committee has published a report following its inquiry into personal internet security, which focussed primarily on issues pertaining to the theft of personal data and business security issues, insofar as these affect the security of the data of individual customers.

During its inquiry the Committee found there to be a lack of reliable data, for use in assessing e-crime, to which it apportioned some blame on the Government. It recommends that the Government establish a cross-departmental group, bringing in experts from industry and academia, to develop a more co-ordinated approach to data collection in future. It suggests that this should include a classification scheme for recording the incidence of all forms of e-crime.

Of particular interest is Chapter 7 of the report which deals with policing the internet. During the inquiry the Committee heard considerable scepticism over the capacity of the police and the criminal justice system in the UK to enforce the law. It states that in order for this perception to be corrected a number of fundamental problems, legal, technical and administrative, will have to be overcome. The report makes a number of recommendations along these lines including:

- That the Government, in partnership with the Association of Chief Police Officers and the Serious Organised Crime Agency, develop a unified, web-based reporting system for e-crime.

It goes on to suggest that the public face of such a system should be designed to facilitate public and business reporting of incidents, with the back-end software having the capacity to collect and collate reports of e-crime, identify patterns, and generate data on the incidence of criminality.

- That the Home Office, without delay, provide the necessary funds to kick-start the establishment of the Police Central e-crime Unit, without waiting for the private sector to come forward with funding. (The ACPO proposal to establish a national e-crime unit to support individual police forces has been approved but the funding of it is currently still under discussion between ACPO and the Home Office).
- The establishment of a network of computer forensic laboratories, under the aegis of the proposed ACPO national e-crime unit, but with significant central funding.
- That the Government to review as a matter of urgency their decision to require online frauds to be reported to the banks in the first instance (see article on Home Office Counting Rules in May *Digest*).
- That the Government review the procedures for offering mutual legal assistance in response to requests for help from other countries in investigating or prosecuting e-crime.

The report can be found in full at http://www.publications.parliament.uk/pa/ld200607/ldselect/ldsctech/165/16510.htm

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Consultation on the Consolidation and Modernisation of the Cremation Regulations

The Ministry of Justice has published a consultation paper which sets out a draft set of consolidated Cremation Regulations which are intended to replace the 1930 Regulations which are now regarded as out of date and confusing.

There are two main policy changes. Firstly, that the bereaved will have a right to inspect the medical forms before cremation. This will allow for them to discuss any concerns they may have about the death with the medical referee. Only then will the medical referee authorise cremation. This new right is contained in new regulation 17.

Secondly, the regulation on the handling of contagious disease cases, which allows certain regulations to be dispensed with or for the Regulations to be temporarily modified or suspended, will no longer be required. In the event of a pandemic, the Regulations would be amended to allow for a simpler procedure for the cremation of bodies.

The Government is still considering what further changes might be required to death certification legislation in the light of the activities of Harold Shipman, who signed more than 200 false cremation forms in order to disguise the murders of his patients. This work is being taken forward at present by the Department of Health (See following article).

This consultation which will end on 22 October can be found at
http://www.justice.gov.uk/docs/cp1107.pdf

Consultation on Improving the Process of Death Certification

The Department of Health has published a consultation paper which seeks views on Government proposals to address weaknesses in the current system for certifying death which were identified by the Shipman Inquiry, in particular the different arrangements for death certification between cremations and burials.

The main changes to the current system include:

- New independent medical scrutiny and analysis of deaths.
- Common process for both burial and cremation.
- Burial or cremation authorised by Medical Examiner (or Coroner).
- Removal of cremation certification processes and associated forms.
- Removal of the role of Cremation Referee.

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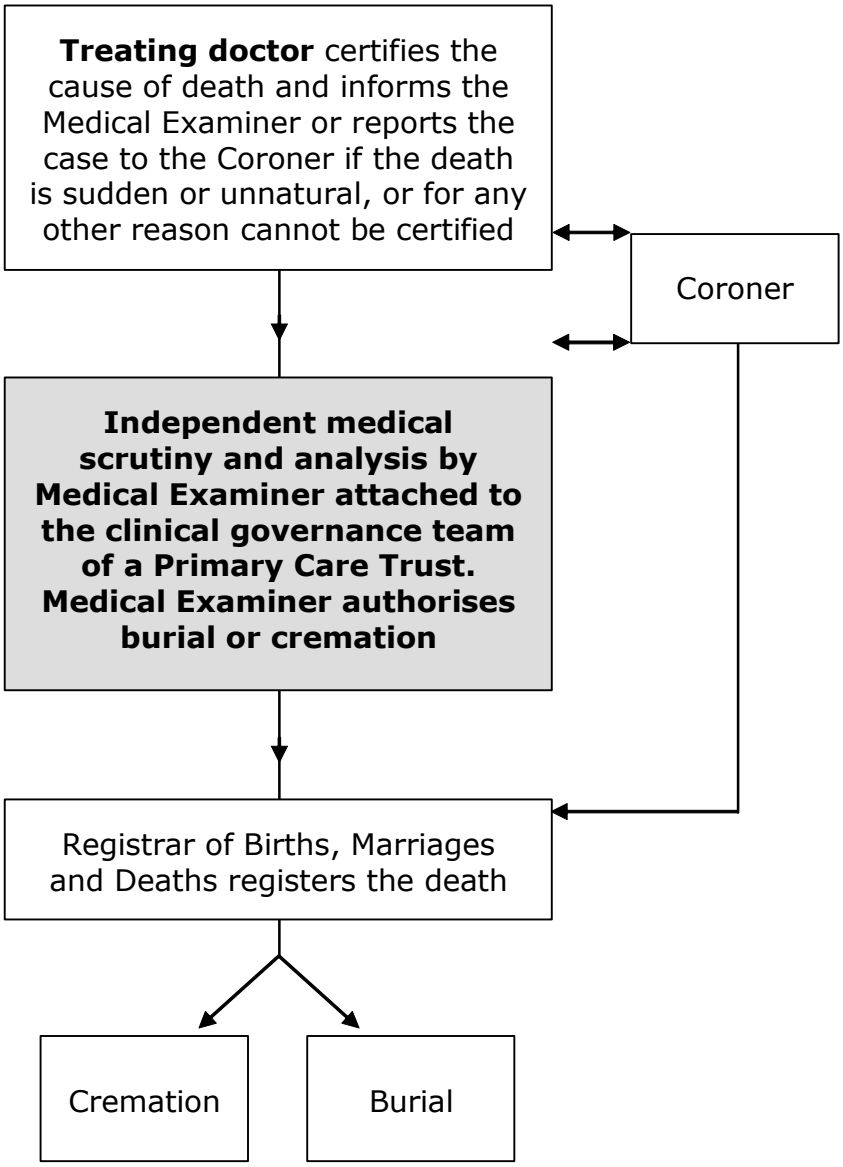
Below is a process map illustrating the proposed death certification system.



The closing date for the consultation is 24 October 2007. Implementation of the proposed changes will inevitably require significant legislative change, e.g. to the Birth and Deaths Registration Act 1953, Cremation Regulations and legislation governing access to health records of the deceased (Access to Health Records Act 1990). It is expected that any new legislation is likely to broadly mirror that for introducing the Government's reforms of the Coroners' system.

The consultation paper can be found in full at http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH_076971

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House of Commons Transport Committee Report on Passengers' Experiences of Air Travel

The House of Commons Transport Committee has published its report on passengers' experiences of air travel. On the issue of security the report recognises that the stringent security requirements that were introduced in 2006 have resulted in lengthy queues in check-in areas which in themselves present a significant security threat. It recommends that airports and airlines should make the speeding up of check-in times and reducing security queues a priority to help reduce this threat.

The report also raises concerns about the number of people breaching the carry-on restrictions for liquids and questions whether this means that people are not 'buying in' to national security policies. It recommends that the Department for Transport gather figures from all UK airports of the numbers of passengers attempting to breach the carry-on restrictions to allow clearer understanding of the problem.

Although the Committee found that the numbers of disruptive incidents on board aircraft are going down, the report comments that they still remain too high. Whilst recognising that there is no easy solution to this problem it recommends that the airlines and the Government continue pressing for the maximum penalties and complete bans on further air travel for those who disrupt flights with violence, abuse and poor behaviour.

The report can be found in full at http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/435/43502.htm

GB Road Casualty Figures - First Quarter 2007

The Department of Transport has published a statistical bulletin which includes the number of road casualties in accidents reported to the police in Great Britain in the first quarter of 2007.

The provisional estimates show the number of fatalities in road accidents were at about the same level in the twelve months ending March 2007 compared with the previous twelve months. Total casualties were down 4 per cent, and killed and seriously injured casualties are at the same level, compared with the previous 12 months.

The bulletin can be found at http://www.dft.gov.uk/pgr/statistics/datatablespublications/accidents/

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Consultation on the Draft Cycling Infrastructure Design Document

The Department for Transport has published a consultation paper which is seeking views on the contents of a draft Cycling Infrastructure Design document. The intention of Cycling Infrastructure Design document is to bring together into one document the current Government guidance and advice on providing and planning for cycle friendly infrastructure that is already publicly available.

The draft document contains chapters covering:

- General Design Parameters.
- Demand Management Measures and Cycling.
- Reducing Vehicle Speeds on Cycle Routes.
- Reallocating Road Space.
- Cycle Lanes.
- Off-Road Cycle Routes.
- Junctions.
- Cycle Track Crossings.

Following the consultation period which lasts until 5 November 2007, a revised version of the guidance document is expected to be published in early 2008.

Full details of the consultation paper and the draft document can be found via http://www.dft.gov.uk/consultations/open/infrastructuredesign/

Consultation on the Amendments to the Speed Limiter Regulations (36a & 36b) of the Road Vehicles (Construction and Use) Regulations 1986

The Department for Transport has published a consultation paper which seeks views on the proposed changes to the regulations covering speed limiters under Regulations 36A and 36B of the Road Vehicles (Construction and Use) Regulations 1986. Two amendments are proposed.

The first will remove a time-expired 'savings-provision' in the regulations affecting goods vehicles registered between October 2001 and December 2004 with a maximum laden weight of 7.5 tonnes - 12 tonnes.

The second will introduce a permanent exemption, from the requirement to have a speed limiter fitted, for the benefit of HM Prison Service (HMPS) vans. These are vehicles that are used exclusively by HMPS in the transport of high risk (Category A) prisoners, usually under police convoy escort.

The consultation will run until 17 October. Further details can be found at http://www.dft.gov.uk/consultations/open/speedlimiterconsult/speedlimiterconsultation

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Law Society Practice Note on the Conflicting Duties of Maintaining Client Confidentiality and Reporting Terrorism

The Law Society has issued a practice note on the conflicting duties of maintaining client confidentiality and reporting terrorism which is aimed at assisting solicitors with respect to the conflict that can occur between a client's right to consult a solicitor in confidence and with the interests of the public as a whole, particularly in relation to suspected terrorists and the prevention of future acts that could result in serious harm to others.

It covers three provisions in the Terrorism Act 2000, which create offences of failing to disclose varying degrees of knowledge, belief or suspicion of the commission by others of terrorist offences. These are:

- Section 19 - 'Disclosure of information: duty'.
- Section 21 - 'Failure to disclose: regulated sector'.
- Section 38B - 'Information about acts of terrorism'.

Under Section 19 it is an offence for a person not to "disclose to a constable as soon as reasonably practicable" his or her belief or suspicion, and the information on which it is based, that another person has committed an offence under Sections 15 to 18 of the Act when that belief or suspicion is based on information coming to him or her in the course of a trade, profession, business or employment.

Under Section 21 if a person knows or suspects, or has reasonable grounds for knowing or suspecting, that another person has committed an offence under Sections 15 to 18 of the Act and the information, or other matter upon which that knowledge, suspicion, reasonable belief is based, came to him or her during the course of business in the regulated sector, the person commits an offence if he or she does not disclose the information or other matter to a constable (or nominated officer) as soon as practicable after it comes to him or her.

Under Section 38B if a person has information which he or she "knows or believes might be of material assistance in preventing the commission by another person of an act of terrorism or, in securing the apprehension, prosecution or conviction of another person, in the UK, for an offence involving the commission, preparation or instigation of an act of terrorism," he commits an offence if he does not disclose the information to police as soon as reasonably practicable.

In respect of these provisions the practice note states that due to the clear wording of subsections 19(5) and 21A(5) the view of the Law Society is that the provisions in Sections 19 and 21 do not override legal professional privilege (LPP) (subject to the caveat that it will not cover communications in furtherance of a criminal purpose) and therefore a solicitor would not breach these sections of the Act if he/she failed to disclose information which has come to him/her in privileged circumstances.

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In relation to the offence under Section 38B its view is that LPP is not overridden by Section 38 and that information of the kind referred to in the section, if received in privileged circumstances, cannot be disclosed without the authority of the client. It bases this on the following:

- There is no equivalent provision in the section relating to 'professional legal advisers' as in Sections 19 and 21A.
- There are no express words used overriding LPP.
- 'Necessary implication' cannot be found in the statute (based on B and others v Auckland District Law Society (2003)).

The note advises that it is crucial that a solicitor, when in receipt of such information, should be absolutely satisfied that the client's purpose in supplying that information has been for the obtaining of legal advice and is directly related to the performance by the solicitor of his or her professional duty as the legal adviser of the client, highlighting that if it is not, then it is not protected by LPP, but will remain confidential.

Having considered whether confidentiality would amount to a defence to an offence under Section 38B the Law Society's view is that a solicitor would have a clear duty to the public to disclose confidential information to prevent the client, or a third party, committing a criminal act that is reasonably believed to be likely to result in serious bodily harm and therefore confidentiality would not be likely to amount to a reasonable excuse for non-disclosure under Section 38.

The Law Society's view therefore is that the solicitor must disclose such confidential information as soon as reasonably practicable.

The practice note can be found in full at http://www.lawsociety.org.uk/productsandservices/goodpractice/antiterrorism.page

Guidance on the Use of Acceptable Behaviour Contracts

The Home Office has published new updated guidance for front line practitioners on how to make the best of acceptable behaviour contracts (ABCs) (sometimes referred to as Acceptable Behaviour Agreements (ABAs)), which replaces the previous guidance issued in 2003 which was combined with guidance on anti-social behaviour orders.

Please note that the 2003 guidance in respect of anti-social behaviour orders was superseded in August 2006 with new guidance.

The guidance contains a number of examples of good practice from practitioners, which other practitioners may wish to try. The guidance can be found in full at http://www.crimereduction.homeoffice.gov.uk/antisocialbehaviour/antisocialbehaviour058.htm

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The Youth Justice Board Annual Report

The Youth Justice Board (YJB) has published its annual report for the period 2006/07. The report shows that the YJB has failed to hit any of its key performance targets in the past 12 months.

Target 1 - To cut the number of first-time entrants to the youth justice system by 5% by 2008 - is listed as at risk. The YJB has said this is because the identification of missing data has raised the baseline figure for 2005 from 85,000 to 97,000 and therefore it is unable to report a 'comparable figure' for 2006-07. It hopes to 'establish a figure' by the autumn.

Target 2 - To cut youth re-offending by 5% by March 2008 compared with 2002-03 - is listed as at risk as the latest available data is for 2004 and only shows a reduction of 1.4% since 2000.

Target 3 - To cut the number of under-18s in custody by 10% between 2005 and 2008 - is listed as being highly unlikely as the number has gone up in both the past two years.

Target 4 - To improve assessment of young offenders and access to services to 100% - is listed as at risk.

Target 5 - To ensure youth offending teams deliver reductions in local differences by ethnicity in recorded convictions - is listed as not being able to be assessed.

Target 6 - To ensure all girls under 18 are held separately from adults - is listed as being subject to slippage but the target is expected to be met later in 2008.

The report can be found in full at
http://www.yjb.gov.uk/publications/Resources/Downloads/YJB%20Annual%20Report%20and%20Accounts%202006-07.pdf

The National Offender Management Information System (C-NOMIS)

The future of the end-to-end offender management computer system C-NOMIS is being reviewed by the Ministry of Justice following spiralling costs.

C-NOMIS was designed to give a single view of the offender at whatever stage they were in their sentence to assist both prisons and the probation service to share constantly updated information, thereby increasing efficiency and reducing risk.

It was intended to introduce it throughout the prison estate and in 42 separate probation service areas by 2008. It is now expected that it will be only adopted in a scaled-down form for the 140 prisons in England and Wales but is unlikely to be rolled out across the probation service. A decision by ministers is expected to be announced in mid-September 2007.

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Practical Advice Document on Section 27 of the Violent Crime and Reduction Act 2006

The Home Office has published a practical advice guidance document on giving directions to individuals to leave a locality under the provision in Section 27 of the Violent Crime Reduction Act 2006 (see details of this provision in article on page 11.

The document contains a number of examples (not intended to be an exhaustive list) to show circumstances where issuing a direction might be appropriate, these are:

- Where an individual, or group of individuals, is in a public place and is causing a nuisance by being loud or troublesome. While no criminal activity or disorder may have taken place, the likelihood is that their continued presence is likely to lead to the occurrence of alcohol-related crime or disorder. A direction to leave may therefore be necessary for the purpose of removing or reducing the likelihood of such crime or disorder from taking place.
- Where an individual, or group of individuals, in a public space who have been drinking alcohol are compliant but it is likely they will insist on continuing to drink and will become drunk. While no criminal activity has taken place, the likelihood of the behaviour of the individual(s) causing or contributing to the occurrence of alcohol-related crime or disorder is present. A direction to leave, provided the individual is able to understand its terms, may therefore be necessary for the purpose of removing or reducing the likelihood of such crime or disorder from taking place.
- There may be situations where a constable is asked to help expel disorderly individual(s) from a licensed premises, or to prevent individual(s) from entering such premises (refer also to section on directions to leave from licensed premises). In such circumstances, it may mean the likelihood of the behaviour of the individual(s) causing or contributing to the occurrence of alcohol-related crime or disorder is present. A direction to leave may therefore be necessary for the purpose of removing or reducing the likelihood of such crime or disorder from taking place.
- Where an individual is given a Penalty Notice for Disorder (PND) for an offence and the police officer is satisfied there is a likelihood of the individual's ongoing behaviour causing or contributing to the occurrence, repetition or continuance of alcoholrelated crime or disorder, a direction to leave may also be appropriate. A direction to leave might therefore be given in parallel with, but separate from, the PND where it may be necessary for the purpose of removing or reducing the likelihood of any repetition or continuance of the alcohol-related crime or disorder from taking place.

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- Where a group of individuals represent a likelihood of alcohol-related crime or disorder taking place. The behaviour of the lead individual(s) in the group may necessitate them being arrested or justify a PND. This may not apply to others in the group but, as their behaviour represents a likelihood of causing or contributing to the occurrence, repetition or continuance of alcohol-related crime or disorder, a direction to leave may be necessary for these other group members for the purpose of removing or reducing the likelihood of such crime or disorder taking place.

Points of advice contained within the document worthy of particular note include:

- The shortest period prohibiting the individual returning to the location that would achieve the desired aims should always be considered. The maximum 48-hour period should not be imposed as a matter of course.
- The constable should take reasonable steps to confirm the age of an individual if there is any doubt whether or not the individual is aged 16.
- In cases where the directions to leave may be given in anticipation of the likelihood of alcohol-related crime or disorder, it is recommended that a police officer with operational responsibility for the area decides on the defined parameters of the locality e.g. this could be decided by the Basic Command Unit commander, a superintendent or the duty inspector.
- To help in enforcement a constable can ask a police closed circuit television (CCTV) operator (or police mobile CCTV system, or video team) to photograph an individual who is being given a direction to leave. This may particularly be the case where photographic evidence is needed of a direction to leave being given for evidence for a prosecution.
- For areas that do not have fixed CCTV coverage, police operated mobile CCTV, 'ICEFLO' (immediate capture of evidence, for front-line officers), digital or Polaroid camera equipment may be useful. However, the individual must be informed that the photograph is being taken.
- It may assist in enforcing directions to leave if the police make reference to the directions that have been given as a standing agenda item for shift handover briefings, notice boards or intelligence bulletins.

Although under no statutory obligation, the document advises that a constable should also consider not giving a direction to leave in circumstances:

- That would prevent an individual taking a child to a place where they may receive medical treatment.
- If it prevents an individual attending their normal place of worship.
- Where it would prevent them from fulfilling any special dietary requirements.
- If it prevents them from taking their child to school.
- Where an individual has difficulty understanding English, unless it is given by a multilingual constable in their language or they are provided with a translation of the requirement to leave in their own language.

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- That could make the individual vulnerable to an assault, robbery or other crime against the person.

In relation to vulnerable individuals, the document advises that individuals in these groups could be given a direction to leave if the test is satisfied, but given their likely vulnerability it may not always be appropriate. It suggests that if a constable does decide to give the direction to leave to these individuals that extra care should be taken to make the directions as clear and easily understood as possible.

The guidance can be found in full at http://police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/directions-to-leave-locality

Disclosure of IPCC Reports to Police Authorities

The Independent Police Complaints Commission (IPCC) is reviewing its policy in relation to disclosure to police authorities. The decision to review the policy follows an IPCC investigation into the handling by Sussex police of an investigation into a crash that killed 5 young people. The subsequent IPCC investigation report was released to the families of the victims and to Sussex police, but not to the Sussex Police Authority on the grounds that it was 'not an interested party under the relevant legislation'.

This decision was successfully challenged by the authority who argued that its position as the overseers of Sussex Police and its key role in the handling of complaints against the Force made it an essential recipient of the report.

Practice Advice on Resources and the People Assets of the National Intelligence Model

Practice Advice on Resources and the People Assets of the National Intelligence Model, produced by the National Policing Improvement Agency on behalf of the Association of Chief Police Officers has been published.

The document provides advice about the functions of intelligence units and the roles of the people that work within them, building on the role descriptions provided in ACPO (2005) Guidance on the National Intelligence Model to explain in detail the roles required for intelligence units to operate effectively.

It is designed for use within forces at basic command unit (BCU) and force level. It will be of particular interest to those responsible for the running of tasking and coordination meetings and those managing intelligence units and in addition by human resource managers and training managers.

The document can be found in full on the police Genesis extranet site.

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ACPO Practice Advice on the Policing of Roads

The Association of Chief Police Officers has published a practice advice document on the policing of roads, which was produced on its behalf by the National Policing Improvement Agency.

The document is the first version of practice advice on the policing of all roads, including motorways and replaces ACPO (2006) Guidance on Policing Motorways.

The document is intended for a wide audience and contains nationally identified good practice and provides the basis for how the police and partner agencies should operate on the road network.

The main aims of this practice advice are to:

- Raise awareness in the Police Service and its partners of the opportunities to tackle criminality, including road crime, on the road network.
- Raise awareness in the Police Service and its partners of the opportunities to reduce and deter the use of the road network by criminals.
- Identify safe working practices to reduce the significant risks to road users, police officers and partner staff while operating on the road.
- Improve the way in which incidents are dealt with and reduce congestion in this environment.
- Provide a basis for instructing and training police officers.
- Provide partner organisations with a single point of reference detailing how the policing of roads should be undertaken by practitioners across the country.

The document can be found in full at http://www.acpo.police.uk/asp/policies/Data/Policing_of_Roads.pdf

HOC 25/2007
Police Pension Scheme - Miscellaneous

This Home Office Circular consolidates recent advice on a number of issues relating to police pensions that have been previously circulated and covered in the *Digest*, as well as some new information or advice.

Areas covered in the Circular that have been previously circulated are:

- Civil partnerships: amendments to the Police Pensions Regulations 1987.
- Police (Injury Benefit) Regulations 2006.
- Updated Police Medical Appeal Board Guidance.
- Corrections to the Police Pensions Regulations 2006.
- Report on the options exercise.

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- 2006 scheme: guidance on transfer values and pension sharing.
- Transfer value underpin.
- 2006 scheme: added years factors.
- 1987 scheme: pensioner divorce factors from age 86 to 94.
- New Stakeholder arrangement.
- Unauthorised payments: £250 de minimis.

The Circular states that work is currently being conducted on a number of other amendments to the Police Pensions Regulations 1987, including ones to:

- Reflect tax law changes from 6 April 2006.
- Take account of new compulsory retirement ages introduced in October 2006.
- Correct anomalies.
- Bring some minor aspects into line with the new scheme where a difference cannot be justified (e.g. the use of qualifying service for certain benefits in the 2006 scheme and reckonable service for the corresponding benefits in the 1987 scheme).

Changes relating to the new compulsory retirement ages introduced in October 2006 are classed as urgent and have been included in draft regulations relating to pension arrangements for SOCA (in respect of England and Wales), which will be covered in a separate Circular.

Other changes which the Home Office has classed as less urgent are expected in September or October. Remaining changes will be covered in the planned consolidated UK-wide regulations for the 1987 scheme, planned for 2008.

The Circular also clarifies, presuming that contributions have been made as usual, that both the gratuity provided for by E3 of the 1987 Regulations and the lump-sum death grant provided for by Regulation E3A of the 1987 Regulations should be paid to the estate of an unmarried (or divorced) officer with no dependants who dies in service.

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

Guide to Out-of-Court Disposals for Adults

The Office for Criminal Justice Reform has published a booklet which summarises the substantial body of guidance on out-of-court disposals. It is intended to be used by police officers as a quick reference to assist them in choosing the most effective response to tackle lower-level offending. It sets out the consequences of the different disposals for the offender including:

- Cannabis Warning.
- Simple Caution.
- Conditional Caution.

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- Penalty Notice for Disorder.
- Acceptable Behaviour Contracts.

The booklet does not cover motoring interventions in detail but does list those available to the police in respect of uncontested, low-level motoring offences. These being:

- Fixed Penalty Notices.
- Driver Improvement Scheme.
- Speed awareness course.
- Vehicle Defect Rectification Scheme.

The booklet can be found via http://www.crimereduction.gov.uk/workingoffenders/workingoffenders070.htm

Police Service Strength

The Home Office has published a statistical bulletin which shows details of the police service strength in the 43 police forces in England and Wales at 31 March 2007. The report shows:

- There were 232,948 full-time equivalent staff working in the 43 police forces of England and Wales. Of this number 61% were police officers, 6% were police community support officers, 0.3% were traffic wardens, 0.7% were designated officers and 32% were other police staff.
- In addition there were 14,021 special constables working in police forces and a further 482 were seconded to Central Services.
- There were 141,892 full-time equivalent police officers, an increase of 369 compared to a year earlier.
- 5,540 officers, (3.9% of the total police strength) are minority ethnic officers.
- 33,177 (23%) of the 142,374 officers in England and Wales (including central service secondments) were female.
- The total number of police community support officers was 13,497, (a 99% increase on the previous year).
- Twenty-three forces increased their total officer strength in the 12 months to 31 March 2007.
- 20 forces reported falls in officer numbers over the 12 months to 31 March 2007.

The report can be found in full at http://www.homeoffice.gov.uk/rds/pdfs07/hosb1307.pdf

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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.

Conditions Imposed on Demonstrations in the Vicinity of Parliament

DIRECTOR OF PUBLIC PROSECUTIONS v BRIAN HAW (2007)

DC (Lord Phillips LCJ, Griffith Williams J) 6/8/2007

Legislation - Human Rights

Delegated Powers: Demonstrations: Demonstrations In Vicinity Of Parliament: Police: Statutory Powers: Ultra Vires: Powers Of Commissioner Of Metropolitan Police: Imposition Of Conditions On Demonstrations: Serious Organised Crime And Police Act 2005: S.134(3) Serious Organised Crime And Police Act 2005: S.134 Serious Organised Crime And Police Act 2005: S.9a Police Act 1996: S.9f Police Act 1996: Art.10 European Convention On Human Rights: Art.11 European Convention On Human Rights

Although the statutory powers available to the Commissioner of the Metropolitan Police to impose conditions on demonstrations under the Serious Organised Crime and Police Act 2005 s.134 could be delegated, the conditions imposed on a certain demonstrator were ultra vires as they lacked clarity.

The appellant Director of Public Prosecutions appealed by way of case stated against a decision of the magistrates' court that there was no case for the respondent (H) to answer. H had been conducting a permanent demonstration in Parliament Square, London against the government's policy on Iraq. Following the enactment of the Serious Organised Crime and Police Act 2005, H sought authorisation from the Commissioner of the Metropolitan Police to continue his demonstration, mostly on his own, but from time to time with others. A superintendent of the police authorised the demonstration subject to certain conditions imposed under s.134(3) of the 2005 Act. H was subsequently summonsed for breach of the conditions. The magistrates held that the commissioner's powers could not be delegated and that the conditions imposed lacked clarity and were not workable. The questions to be determined were (i) whether the statutory power available to the commissioner to impose conditions on demonstrations under s.134 of the 2005 Act could be delegated by applying the principles in Carltona Ltd v Commissioners of Works (1943) 2 All ER 560 or only as permitted by the Police Act 1996 s.9A to s.9F, Carltona cited; (ii) whether the conditions imposed on H were ultra vires or incompatible with the European Convention on Human Rights 1950 Art.10 and Art.11, as they lacked clarity.

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HELD

(1) Where a statutory power was conferred on an officer, who was himself a creature of statute, the question of whether that officer had the power to delegate was dependent upon the interpretation of the relevant statute. Where the responsibilities of the office were such that delegation was inevitable there would be an implied power to delegate unless the statute, expressly or by implication, provided to the contrary, Carltona Ltd, R v Chief Constable of Greater Manchester Ex p Lainton (2000) ICR 1324 and R (on the application of Chief Constable of the West Midlands) v Birmingham Magistrates Court (2002) EWHC 1087 (Admin), Times, June 5, 2002 considered. The general provisions contained in s.9A to s.9F of the 1996 Act permitted delegation of the commissioner's powers and duties in circumstances where, having regard to the nature of those powers, there was no implicit power to delegate. However, those powers did not exclude the possibility of delegation to persons other than the deputy or an assistant commissioner where, having regard to the nature of the powers and duties, a power to delegate was implicit. Having regard to the statutory role of the commissioner, it was to be expected that Parliament would confer on the commissioner the powers to be exercised by the police, and leave the commissioner to delegate the exercise of those powers as appropriate.

(2) The authorisation of a demonstration under s.134 of the 2005 Act was mandatory, provided that the requisite notice had been given. The discretion conferred by s.134 of the 2005 Act was restricted to determining the conditions to be specified in the authorisation. It was clear that Parliament could not have intended that the commissioner should determine the conditions himself, given the large number of demonstration applications made. The determination of appropriate conditions was a technical matter dependent upon the precise location and nature of the demonstration planned.

(3) The conditions imposed were demonstrated to be unworkable and, as such, were plainly not reasonable and did not satisfy the test of certainty required when considering whether the restrictions on Convention rights were "according to law".

APPEAL ALLOWED IN PART

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Test for Admission of Hearsay Evidence - Would Admission be Compatible with a Fair Trial?

R v (1) KONRAD COLE (2) ROCKY KEET (2007)

CA (Crim Div) (Lord Phillips LCJ, Elias J, Griffith Williams J) 30/7/2007

Criminal Evidence - Human Rights

Hearsay Evidence: Right To Fair Trial: Witness Statements: Right To A Fair Trial: Admissibility Of Hearsay Evidence: S.116 Criminal Justice Act 2003: S.114 Criminal Justice Act 2003: Art.6 European Convention On Human Rights: S.78 Police And Criminal Evidence Act 1984

There was no absolute embargo on the admission of hearsay evidence under the European Convention on Human Rights 1950 Art.6 and no rule that a statement could not be adduced in evidence unless a defendant had the opportunity to examine the witness. In the interests of justice the trial judges had been right to allow the prosecution to adduce witness statements in evidence under the Criminal Justice Act 2003 s.116.

The appellant (K) appealed against convictions for attempting to obtain property by deception and damaging property, and the appellant (C) appealed against convictions on three counts of assault occasioning actual bodily harm. K had attended the home of an 82-year old woman (S) and offered to remove a coating of moss from her roof. S paid K various amounts of money. K informed S that further work was required as the roof was leaking. On inspection it was discovered that a tile had been removed from the roof and a piece of roofing felt cut out. K absconded and the trial was delayed. By the time K was arrested S was suffering from dementia and no longer fit to give evidence. C's girlfriend had committed suicide; a post mortem revealed that injuries on the deceased's body were not the result of her suicide. The prosecution's case, in relation to the first count, was based on the evidence of a friend of the deceased who gave evidence that she witnessed C assaulting the deceased on three separate occasions. In relation to the second count there were no eye witnesses and the prosecution case depended on statements made by the deceased to various people about C's treatment of her, and included hearsay evidence. The third count was based on inferences to be drawn from the injuries found on the deceased's body. In both cases the prosecution was granted permission to adduce the witness statements in evidence under the Criminal Justice Act 2003 s.116. K submitted that the European Convention on Human Rights 1950 Art.6 was infringed by the admission of hearsay evidence, as the case against K was essentially founded on the hearsay evidence. C contended that the judge should have excluded the hearsay evidence under the Police and Criminal Evidence Act 1984 s.78 in the interests of a fair trial on the basis that C could only controvert the hearsay evidence by giving evidence, a task for which he was mentally ill-equipped.

HELD

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(1) Under Art.6 of the Convention there was no absolute embargo on the admission of the hearsay evidence adduced by the prosecution in either case. There was no absolute rule that evidence of a statement could not be adduced in evidence unless a defendant had an opportunity to examine the witness. The only question with which Art.6 was concerned was whether the admission of the evidence was compatible with a fair trial. Hearsay evidence was not precluded even where it was the sole or decisive evidence against a defendant, Luca v Italy (33354/96) (2003) 36 EHRR 46, R v M (Witness Statement) (2003) EWCA Crim 357, (2003) 2 Cr App R 21, R v Sellick (Santino) (2005) EWCA Crim 651, (2005) 1 WLR 3257 and R v Al-Khawaja (Imad) (2005) EWCA Crim 2697, (2006) 1 WLR 1078 considered.

(2) In relation to K, the factors relevant to the interests of justice under s.114 of the Act weighed strongly in favour of the admission of S's evidence, and the judge was right to admit her witness statement.

(3) In relation to C, whilst the statements lacked detail and precision as to the date, the correct approach was not to consider each statement on its own but to consider it in its context. Each statement was part of a wider picture of a relationship between C and the deceased that was punctuated by physical violence on his part. Count one was supported by direct evidence and count three was founded on circumstantial evidence. Each of those counts lent support to the hearsay evidence on which count two was based, and that evidence lent support to counts one and three. Accordingly, it was in the interests of justice that the hearsay evidence went before the jury to give it the full picture. C had the ability to testify in his own defence, and on the expert medical evidence it was clear that he fully understood the issues he faced and was able to meet them coherently.

APPEALS DISMISSED

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Test for Anonymity for Police Officers in Public Inquiries

RE OFFICER L (Respondent) (2007)

HL (Lord Hoffmann, Lord Woolf, Lord Carswell, Lord Brown of Eaton-under-Heywood, Lord Mance) 31/7/2007

Civil Procedure

Anonymity: Common Law Rights: Northern Ireland: Police Officers: Public Inquirie: Right To Life: Terrorism: Witness Protection: Witnesses: Common Law Fairness: Appropriate Test For Determining Witness Anonymity: Robert Hamill Inquiry: Art.2 European Convention On Human Rights

In determining whether police officers giving evidence in the Robert Hamill Inquiry were entitled to have their names withheld and be screened from view while giving evidence, the tribunal had applied the correct test in posing the question whether the risk of injury or death would be materially increased if evidence was to be given without anonymity. Only if the answer to that question was in the affirmative did the question whether that increased risk would amount to a real and immediate risk to life arise.

The appellant Robert Hamill Inquiry (R) appealed against the dismissal of its appeal against a decision that the respondent police officers (L), called as witnesses in the Inquiry, were entitled to have their names withheld and be screened from view while giving evidence. Robert Hamill, a Catholic, died following an affray in Northern Ireland in 1997. His family claimed that the attack was sectarian and it was alleged that several police officers had colluded with the attackers. Nobody was convicted of the murder. R was set up to inquire into the death with a view to determining whether, and if so to what extent, the Royal Ulster Constabulary facilitated the death or obstructed the investigation into it. L had lodged an application for anonymity on the basis that if they were identified, they would become targets for terrorist attack. Taking into consideration a police service risk assessment, which stated that all serving and former police officers were at some risk of death or injury from paramilitary attacks and that the instant circumstances caused no specific threat, a tribunal had refused L's applications. Subsequent judicial review proceedings to the Northern Ireland High Court had resulted in that decision having been quashed, the court having found that the tribunal had misdirected itself in law. The Court of Appeal had upheld L's entitlement to anonymity, ruling that the tribunal had applied the incorrect test in looking to ascertain whether the pre-existing risk of death to L would be materially increased if they were required to give evidence without being afforded anonymity, and that the appropriate test was whether the requirement to give evidence gave rise to a real risk to life to the extent that the European Convention on Human Rights 1950 Art.2 was engaged.

HELD

(1) The tribunal had applied the correct test for both common law and Art.2 purposes in posing the question whether, in respect of L, the risk of injury or death would be materially increased if evidence was to be given without anonymity. The approach taken by the Court of Appeal, namely to ask

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whether there was a real risk to life rather than to ask whether there was an increased risk, had been wrong. Article 2 of the Convention imposed on contracting states a positive obligation to take steps towards the prevention of loss of life at the hands of others other than the state, Osman v United Kingdom (23452/94) (1999) 1 FLR 193 applied. That positive obligation arose when the risk to life was "real and immediate", W's Application for Judicial Review, Re applied. That criterion was one that ought not to be readily satisfied; the threshold was high and not easily reached, and the standard was constant and not variable with the type of action in contemplation, R (on the application of A) v Lord Saville of Newdigate (Bloody Sunday Inquiry) (2001) EWCA Civ 2048, (2002) 1 WLR 1249 considered. If there was not a real and immediate risk to L's life before they gave evidence then, in order to reach the required threshold, there had to be some increase in risk occasioned by giving evidence. Only if that was the case could the requirement to give evidence "give rise to" a real risk to life. The requirement that the fear had to be real meant that it had to be objectively well-founded. Assessing the subjective nature of L's fears before proceeding to assess the extent to which those fears were objectively justified was a valid approach when considering the common law duty of fairness, but was not appropriate in relation to Art.2 because there, the issue did not depend on an applicant's subjective concerns, but on the reality of the existence of the risk. In any event, even for common law purposes, if the risk had not been increased, then it was not unfair on that account to require a witness to give evidence without anonymity.

(2) There was a reflection of the principle of proportionality to be found in the degree of stringency imposed upon the state authorities in the level of precautions they had to take to avoid being in breach of Art.2. The standard was based on reasonableness, which necessitated consideration of the circumstances of the case, the ease or difficulty of taking precautions and the resources available. The state was not expected to undertake an unduly burdensome obligation or to satisfy an absolute standard requiring the risk to be averted regardless of all other considerations.

(3) In balancing the relationship between consideration of anonymity under Art.2 and consideration of it under common law principles, the exercise could be a single test, achieved by applying the common law test with an excursion into the territory of Art.2 if the facts required it. The court outlined the appropriate test for future cases and remitted the application for judicial review so far as it was based on Wednesbury reasonableness to the High Court for further consideration.

APPEAL ALLOWED

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Direction Requiring a Defendant to Disclose Details of Potential Defence Witnesses was Unlawful

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

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

Criminal Procedure

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

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

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

HELD

(1) It was to be assumed that the judge had purported to make the disclosure order under r.3.5(1) of the 2005 Rules. It was clear that litigation privilege attached itself to the identity and other details of witnesses that

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

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

APPLICATION GRANTED

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Magistrates' Power to Vary Anti-social Behaviour Orders Includes Extending the Term

Leeds City Council v RG (2007)
QBD (Admin) (Latham LJ, Rafferty J) 9/7/2007

Civil Procedure - Local Government

Antisocial Behaviour Orders: Local Government: Variation: Jurisdiction To Vary Antisocial Behaviour Order By Extending Its Duration: S.1(1) Crime And Disorder Act 1998: S.1(8) Crime And Disorder Act 199: S.1(7) Crime And Disorder Act 1998

Magistrates had power under the Crime and Disorder Act 1998 s.1(8) to vary an antisocial behaviour order made under s.1(1) by extending its duration.

The appellant local authority appealed by way of case stated against a decision of the magistrates' court that it had no power to extend the length of an antisocial behaviour order. The magistrates had imposed a stand-alone ASBO on the respondent, then aged 13, pursuant to the Crime and Disorder Act 1998 s.1(1) and had set its duration at two years, the minimum length provided for in s.1(7). Just over a month before the ASBO was due to expire the local authority sought a variation to extend it for a further three years. The magistrates refused the application holding that they had no power to extend the length of the ASBO. The question on the appeal was whether the magistrates had power pursuant to s.1(8) to extend the duration of an ASBO made under s.1(1). The local authority submitted that the period of an ASBO was as much a part of the order as the other terms and could accordingly be varied under s.1(8). The respondent contended that an application to vary an ASBO by extending its duration was essentially an application for a new ASBO and that s.1(8) could not have been intended to permit such an application, which would bypass the requirements of s.1(1) of the Act.

HELD

The ordinary meaning of the word "varied" in the context, which accorded with the general purpose of the Act, entitled the magistrates to extend the period of the ASBO, DPP v Hall (2005) EWHC 2612 (Admin), (2006) 1 WLR 1000 applied. The use of the word "renewed" in relation to interim orders did not mean that the word "varied" should be given a restricted meaning. The fact that there was no appeal from any variation was insufficient to justify a departure from the clear meaning of s.1(8). The protection for a defendant was provided by the fact that an application to vary, if it imposed more stringent obligations, such as greater length, on a defendant, could only succeed if the applying authority could put before the magistrates material that justified the extension as necessary to achieve the statutory objective. Further, in the case of an application to vary length the applying authority would have to persuade the magistrates that it was appropriate to vary the length of the existing ASBO rather than apply for a new one.

APPEAL ALLOWED

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Minimum Evidence Required for a Conviction for Handling after Receiving a Stolen Credit Card

DEFAZIO v DIRECTOR OF PUBLIC PROSECUTIONS (2007)

DC (Auld LJ, Collins J) 17/7/2007

Criminal Evidence

Dishonesty: Taking Or Receiving Property: Weight Of Evidence: Sufficiency Of Evidence To Suggest Knowledge That Goods Were Stolen

Magistrates had erred in finding an individual to have been dishonest and guilty of receiving a stolen credit card as there was insufficient evidence to suggest that the card had been stolen, or that he believed it to have been stolen, by the time it came into his possession.

The appellant (D) appealed by way of case stated against his conviction for receiving stolen goods. Three weeks after the victim had realised that his credit card was missing, the police had found it in a drawer in D's house while they were conducting a search on an unrelated matter. It was D's case that he had found the card outside a cafe and had taken it with a view to handing it in but that he had then forgotten to do so. D did not at any point use the card while it was in his possession. The magistrates found that D had received the card and that he knew as a fact that it was stolen. The magistrates also found D to have been dishonest and that he had had no intention to return the card. The questions posed for the high court were whether the magistrates had been correct to find that the card had been stolen and whether they had been correct to find D to be dishonest.

HELD

The charge that D faced was that of receiving and that pre-supposed that the card had been stolen by the time it came into his possession. There was no evidence to justify that conclusion. The circumstances were more consistent with the card having been dropped than having been stolen. In any event, to suggest that D must have known as a fact that it was stolen as opposed to mislaid was placing too much against him. It was quite impossible to be sure that D knew or believed it was stolen when it came into his possession. There was insufficient evidence to entitle the magistrates to draw an inference that D was acting dishonestly and that he was guilty of receiving stolen goods. The conviction was therefore unsafe.

APPEAL ALLOWED

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Vagrancy Act 1824 - Meaning of Unlawful Purpose

L v CROWN PROSECUTION SERVICE (2007)
DC (Auld LJ, Collins J) 16/7/2007

Criminal Procedure

Burglary: Convictions: Criminal Intent: Vagrancy: Unlawful Purpose Pursuant To S.4 Vagrancy Act 1824: Safety Of Conviction: S.4 Vagrancy Act 1824

A youth who was discovered allegedly hiding from the police following a burglary did not have an unlawful purpose at the time at which he was found pursuant to the terms of the Vagrancy Act 1824 s.4 and could not therefore be convicted under that section.

The appellant youth (L) appealed by way of case stated against his conviction for an offence contrary to the Vagrancy Act 1824 s.4. L and two other youths had been found by the police crouched down in an enclosed yard moments after one of them had climbed over the wall of an adjoining property and a witness had heard the sound of glass smashing. The CPS brought its prosecution on the basis that L had been found hiding from the police after having been involved in a burglary and that that constituted an "unlawful purpose" under the terms of the Act.

HELD

(1) Hiding from the police by itself did not constitute an unlawful purpose under s.4 of the Act because the section required that the unlawful purpose had to be a criminal purpose Smith v Chief Superintendent of Woking Police Station (1983) 76 Cr App R 234 applied. It also required a defendant to have the necessary unlawful purpose at the time at which he was found, R v Goodwin (1944) KB 518 applied. A well-founded inference that there had been an unlawful purpose shortly before L was found was therefore not sufficient to bring a conviction under the Act. It was possible that L had been hiding with a view to continuing with the burglary but that was a very narrow basis for conviction and was, in any event, not the way in which the matter was presented at trial. Looking at the range of activities at which s.4 was aimed, it was plain that its purpose was preventative as it sought to prevent further, more serious conduct. Further, because of the snapshot view that courts had to take of the criminal intent of a defendant at the time at which he was found, a prosecution under the Act was to be resorted to with caution. The conviction could not stand and was therefore quashed.

(2) (obiter) It was desirable that a note should be taken of proceedings, either by the clerk to the magistrates or someone deputised by the clerk, that was capable of being used as a formal note of the evidence if there was any later dispute.

APPEAL ALLOWED

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Admissibility of Blood Sample Analysis Evidence

R (on the application of CROWN PROSECUTION SERVICE) v SEDGEMOOR JUSTICES (2007)

QBD (Admin) (Hughes LJ, Treacy J) 3/7/2007

CRIMINAL EVIDENCE - ROAD TRAFFIC

Admissibility: Blood Samples: Driving While Over The Limit: Expert Evidence: Analysis For Offence Of Driving While Over The Limit: Requirement For Analyst To Be "Authorised Analyst" Within Meaning Of S.16(1) Road Traffic Offenders Act 1988: S.16(7) Road Traffic Offenders Act 1988: S.16(1)(B) Road Traffic Offenders Act 1988: S.9 Criminal Justice Act 1967: S.16(6) Road Traffic Offenders Act 1988

In a case involving alleged driving with excess alcohol, blood sample analysis evidence by an analyst who was not an "authorised analyst" within the meaning of the Road Traffic Offenders Act 1988 s.16(7), which had been submitted by way of a witness statement and served pursuant to the Criminal Justice Act 1967 s.9, was admissible.

The claimant CPS applied for judicial review of a ruling by the defendant magistrates that blood sample analysis evidence, in a case involving alleged driving with excess alcohol, was inadmissible. The Crown had sought to rely on the evidence of a blood specimen analysis prepared by an analyst who was not an "authorised analyst" within the meaning of the Road Traffic Offenders Act 1988 s.16(7). The analyst's witness statement, which had been served under the Criminal Justice Act 1967 s.9, had provided a right for the accused to require the analyst's attendance at the court hearing. The magistrates had concluded that irrespective of whether an analyst's evidence was submitted by a certificate pursuant to s.16(1)(b) and s.16(6) of the 1988 Act, or by way of a witness statement under s.9 of the 1967 Act, s.16 of the 1988 Act required the evidence to be signed by an authorised analyst. The magistrates' court proceedings stood adjourned while the instant application was dealt with. The CPS challenged the correctness in law of the magistrates' ruling, questioning whether, given the use of the word "may" in s.16(1), the effect of s.16 was that evidence of blood analysis could only be given by an authorised analyst, or that only where an analyst was authorised could a mere certificate be relied upon as distinct from the oral or, if accepted, written evidence of the witness.

HELD

(1) Section 16(1) was a permissive rather than an exclusive stipulation as to how an analyst's evidence could be adduced, Thom v DPP (1994) 158 JP 414 applied. It did not stipulate the only manner in which evidence of analysis could be given. It provided for one means by which evidence of analysis could be adduced, namely, under s.16(1), by the mere production of a certificate, provided the analyst was authorised within the meaning of s.16(7). The analyst's evidence as advanced by the Crown, which had been by way of a statement tendered under s.9 of the 1967 Act with the witness to attend the hearing if required by the defence, was admissible.

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The magistrates' decision was wrong. The evidence was not inadmissible solely on the ground that the analyst was not authorised as defined in s.16(7). The evidence had to be considered by the magistrates on its merits, and the case was remitted back to them to continue the hearing in light of the judgment.

(2) Those who sought to rely on the evidence of a skilled but unauthorised analyst needed to be in a position to demonstrate the necessary expertise in handling the technique involved, and be equipped with the judgment in Thom and the instant case. In every case the court had to be satisfied that the evidence being tendered was expert and reliable. Providing it was, that evidence was admissible whether it was tendered by way of a certificate from an authorised analyst or by the evidence of a demonstrated expert.

(3) The instant case ought not to be taken as any encouragement to a party to a magistrates' court case to embark on a similar interlocutory challenge. If the case had been identified sooner, permission to bring judicial review would have been refused, which was what was likely to happen to such misconceived applications for judicial review at an interlocutory stage. However, as (a) the refusal of the application and the remittal of the matter back to the magistrates' court would have led to yet more expense and delay; (b) the magistrates' ruling, being in effect a terminating one, would have led to an acquittal as an inevitable result; (c) it was not a case in which it was necessary to have the facts found in order for the point to be authoritatively resolved, and (d) the magistrates' reasons were fully stated in a letter from their clerk, the hearing of the application had been justified, R v Rochford Justices Ex p Buck (1979) 68 Cr App R 114 and R (on the application of Watson) v Dartford Magistrates' Court (2005) EWHC 905 (QB) considered.

APPLICATION GRANTED

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SI 2078/2007 The Welfare of Farmed Animals (England) Regulations 2007

In force **1 October**. These Regulations are made under Section 12 of the Animal Welfare Act 2006. These Regulations apply in England only to all animals kept for farming purposes, subject to certain limited exceptions. They replace the original Welfare of Farmed Animal (England) Regulations 2000 (as amended) which were made under Section 2 of the Agriculture (Miscellaneous Provisions) Act 1968. Section 2 of the 1968 Act is to be repealed by the Animal Welfare Act 2006 on 1 October 2007.

Under Regulation 7 a person commits an offence if, without lawful authority or excuse, he:

- Contravenes, or does not comply with a duty in, Regulation 4 (Duties on persons responsible for farmed animals), Regulation 5 (Additional duties on persons responsible for poultry, laying hens, calves, cattle, pigs or rabbits) or Regulation 6 (Relevant code of practice).
- Makes an entry in a record, or gives any information for the purposes of these Regulations which he knows to be false in any material particular or, for those purposes, recklessly makes a statement or gives any information which is false in any material particular.
- Causes or permits any of the above.

The penalty on summary conviction for an offence under Regulation 7 is imprisonment for a term not exceeding 51 weeks; a fine not exceeding level 4 on the standard scale; or both.

Prosecutions may be undertaken by a local authority or the Secretary of State.

SI 2079/2007 The Working Time (Amendment) Regulations 2007

In force **1 October**. The Regulations amend the Working Time Regulations 1998. The 1988 Regulations currently confer an entitlement to four weeks' paid annual leave on all workers. Some employers include any paid leave for bank holidays within the four week entitlement, reducing the amount of annual leave that can be taken at the worker's discretion.

The amendments made by the 2007 Regulations introduce a statutory entitlement to 1.6 weeks' additional paid annual leave, in addition to the four weeks' annual leave entitlement already provided, subject to a maximum statutory entitlement of 28 days.

SI 2121/2007 The National Police Records (Recordable Offences) (Amendment) Regulations 2007

In force **18 August**. The Regulations amend the Schedule to the National Police Records (Recordable Offences) Regulations 2000 by adding three offences to the Schedule in the 2000 Regulations, which lists those offences which are recordable but which do not attract the possibility of a custodial sentence. The three offences added to the Schedule are:

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- Section 19(6) of the Football Spectators Act 1989: the offence of an individual subject to a football banning order failing to comply with the requirements determined by the enforcing authority and made of him by a police officer on the individual's initial reporting at the police station.
- Section 20(10) of the Football Spectators Act 1989: the offence of a banned person knowingly or recklessly providing false or misleading information in support of his application for an exemption from a reporting requirement of their banning order.
- Section 166(1) of the Criminal Justice and Public Order Act 1994: the offence of unauthorised sale or disposal of tickets for a designated football match (ticket touting).

Making the two specified offences under the Football Spectators Act 1989 recordable is intended to harmonise the approach to recording of various types of breaches of banning orders and assist the police to deal with banned individuals.

Making the offence of ticket touting under Section 166(1) of the Criminal Justice and Public Order Act 1994 a recordable offence is intended to provide local forces with immediate information (through a Police National Computer check) on repeat offenders operating in various police force areas.

SI 2123/2007 The Armed Forces, Army, Air Force and Naval Discipline Acts (Continuation) Order 2007

This Order enables the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 and the Armed Forces Act 2006 to continue in force for a further twelve months beyond 8 November 2007.

SI 2128/2007 The Secretary of State for Justice Order 2007

In force **22 August**. This Order:

- Makes provision in connection with the establishment of the Ministry of Justice.
- Provides for certain functions to be transferred to or from the Lord Chancellor and to or from named Secretaries of State.
- Makes supplementary provision in connection with both the functions transferred under the Order and functions that have already transferred by administrative means.
- Provides for the incorporation of the Secretary of State for Justice as a corporation sole.

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SI 2148/2007 The Official Secrets Act 1989 (Prescription) (Amendment) Order 2007

In force **19 August**. This Order amends The Official Secrets Act 1989 (Prescription) Order 1990 by adding, to those who are treated as Crown servants for the purposes of the Official Secrets Act 1989:

- The members and employees of the Nuclear Decommissioning Authority (NDA).
- The board members and employees of any subsidiary companies of the NDA.
- The members and employees of the Independent Police Complaints Commission.

SI 2149/2007 The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2007

In force **22 July**. This Order amends the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 by expanding the list of sensitive positions and bodies which qualify for disclosure of spent conviction information to include:

- People in the Department for Education and Skills, the Office for Standards in Education, Children's Services and Skills or in the Government Offices for the English Regions working in sensitive posts relating to children or vulnerable adults.
- Operators of ContactPoint, a database containing basic information about children in England aged up to 18 years.
- Persons giving advice to children over the telephone or other form of electronic communication including the internet and mobile telephone text messaging.
- The chairman, members, and members of staff of the Independent Barring Board. The Independent Barring Board has not yet been established at the date of coming into force of this Order, but this exception will apply to prospective appointments to the Board.
- Staff working within the Public Guardianship Office with access to data relating to children and vulnerable adults.
- Commissioner for Older People in Wales, his deputy, and any person appointed by the Commissioner to assist him or authorised to discharge his functions on his behalf.
- The Commissioners for the Gambling Commission and any office or employment in their service.
- Individuals seeking authorisation from the Secretary of State at the Home Department to become Authorised Search Officers.
- Anyone in employment where normal duties involve caring for, training, supervising, or being solely in charge of, persons aged under 18 serving in the Armed Forces and anyone in employment where normal duties include supervising personnel referred to above.

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SI 2154/2007 The Misuse of Drugs and Misuse of Drugs (Safe Custody) (Amendment) Regulations 2007

In force **16 August**, with the exception of Regulation 4(11)(b) which comes into force on **1 September**, Regulations 3(4), 4(6)(e), 4(8), 4(11)(a) and Regulations 4(13) to (14) which come into force on **1 January 2008** and Regulations 4(9) to (10) and Regulation 4(15) which come into force on **1 February 2008**.

These Regulations amend the Misuse of Drugs Regulations 2001 and the Misuse of Drugs (Safe Custody) Regulations 1973. (See article on page 18).

SI 2157/2007 The Money Laundering Regulations 2007

In force **15 December**. The Regulations provide for various steps to be taken by the financial services sector and other persons to detect and prevent money laundering and terrorist financing. The Regulations impose certain obligations on 'relevant persons' such as credit and financial institutions, auditors, accountants, tax advisers and insolvency practitioners, independent legal professionals, trust or company service providers, estate agents, high value dealers and casinos. The Regulation also set out the powers of designated authorities in respect of enforcement of the Regulations.

SI 2171/2007 The Criminal Justice and Court Services Act 2000 (Amendment) Order 2007

In force **1 August**. This Order amends Schedule 6 to the Criminal Justice and Court Services Act 2000 by substituting a new paragraph 3A for the existing paragraph 3. The new paragraph 3A omits reference to the offence under Section 15 of the Theft Act 1968 (obtaining property by deception) as this offence was repealed with effect from 15 January 2007 by the Fraud Act 2006, and it includes reference to the offence of fraud under Section 1 of the Fraud Act 2006 which was introduced on the 15 January 2007.

Schedule 6 specifies certain offences as 'trigger offences' which trigger drug testing provisions contained in:

- Section 63B of the Police and Criminal Evidence Act 1984 (testing for presence of Class A drugs).
- Section 65 of the Criminal Justice Act 1991 (supervision of young offenders after release).
- Section 42 of the Powers of Criminal Courts (Sentencing) Act 2000 (additional requirements which may be included in community rehabilitation orders).
- Section 47 of the PCC(S)A (obligations of person subject to community punishment order).
- Section 58A of the PCC(S)A (drug abstinence orders).
- Section 64 of the CJCSA (release on licence etc: drug testing requirements).

See article on HOC 28/2007 on page 19.

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SI 2180/2007 The Violent Crime Reduction Act 2006 (Commencement No 3) Order 2007

This Order brings into force certain provisions of the Violent Crime Reduction Act 2006. see article on page 11.

On **22 August**

- Section 27 of the Violent Crime Reduction Act 2006. (Directions to individuals who represent a risk of disorder).

On **1 October**

- Sections 21 and 22 (licence reviews).
- Section 32 (sales of air weapons by way of trade or business to be face to face).
- Section 33 (age limits for purchase etc. of air weapons).
- Section 34 (firing an air weapon beyond premises).
- Section 36 (manufacture, import and sale of realistic imitation firearms).
- Section 37 (specific defences applying to the offence under s.36).
- Section 38 (meaning of "realistic imitation firearm").
- Section 39 (specification for imitation firearms).
- Section 40 (supplying imitation firearms to minors).
- Section 43(1) and (2) (sale etc. of knives and other weapons).
- Section 44 (sale etc. of crossbows).
- Section 47 (power to search persons in attendance centres for weapons).
- Section 64 (expenses).

This Order also brings into force on **1 October** the following provisions to the extent that they are not already in force:

- Section 31 (prohibition on sale or transfer of air weapons except by registered dealers).
- Section 50 (supplemental provisions for Part 2).
- Section 51 (corresponding provision for Northern Ireland) in so far as it relates to paragraphs 4 to 8; and paragraphs 10, 12 and 14 in Schedule 2 (weapons etc.: corresponding provisions for Northern Ireland).
- Section 65 (repeals) in so far as it relates to the entries in Schedule 5 relating to the Firearms Act 1968 and the Anti-social Behaviour Act 2003.

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SI 2181/2007 The Terrorism Act 2006 (Disapplication of Section 25) Order 2007

This Order disapplies Section 25 of the Terrorism Act 2006 for a period of one year beginning with 25 July 2007. Section 25 modifies the Terrorism Act 2000 to reduce the maximum period of detention under Schedule 8 to the Terrorism Act 2000 from 28 days to 14 days. As a result of this Order, the maximum period of detention will remain at 28 days until 25 July 2008, unless a further Order is made.

SI 2182/2007 The Children Act 2004 Information Database (England) Regulations 2007

In force **1 August**. These Regulations make provision in respect of the establishment and operation of a database ('ContactPoint') under Section 12 of the Children Act 2004. The Regulations place a requirement on local authorities to participate in the operation of the database; specify what information will be held, who must or can provide it, and how long it can be retained; who can be granted access; and how accuracy will be maintained.

SI 2184/2007 The Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2007

In force **25 July**. This Order adds two further organisations to the list of proscribed organisations contained in Schedule 2 of the Terrorism Act 2000. These are:

- Tehrik Nefaz-e Shari'at Muhammadi.
- Jammat-ul Mujahideen Bangladesh.

Tehrik Nefaz-e Shari'at Muhammadi is suspected of regularly attacking Coalition and Afghan government forces in Afghanistan and providing direct support to Al Qaida and the Taliban. One faction of the group claimed responsibility for a suicide attack on an army training compound on 8 November 2006 in Dargai, Pakistan, in which 42 soldiers were killed.

Jammat-ul Mujahideen Bangladesh first came to prominence on 20 May 2002 when eight of its members were arrested in possession of petrol bombs. The group has claimed responsibility for numerous fatal bomb attacks across Bangladesh in recent years, including suicide bomb attacks in 2005.

SI 2195/2007 The Postal Packets (Revenue and Customs) Regulations 2007

In force **16 August**. These Regulations apply Section 105 of the Postal Services Act 2000 and consequently the legislation relating to customs and excise to international movements of goods by post, where they are consigned by a postal operator other than the Royal Mail acting in its capacity as a universal service provider in connection with the provision of universal postal services under the Postal Service Act 2000.

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SI 2196/2007 The Regulation of Investigatory Powers Act 2000 (Commencement No 4) Order 2007

In force **1 October**. This Order brings into force the following provisions of the Regulation of Investigatory Powers Act 2000:

- Sections 49 to 56, together with Schedule 2. (Investigation of Electronic Data Protected by Encryption etc).
- Section 57(2)(c) and (d)(ii).
- Section 58(1)(i).
- Section 59(2)(b) to the extent that it is not already in force.
- Section 62(1)(b) and (c).
- Section 65(3)(c), (5)(e), (8)(d) and (e), and (10).
- Section 68(7)(m) and, in respect of paragraph (m), (n).
- Sections 71 and 72, to the extent that they relate to Part 3 of the Act.

See article in August *Digest*.

SI 2197/2007 The Regulation of Investigatory Powers (Acquisition and Disclosure of Communications Data: Code of Practice) Order 2007

In force **1 October**. This Order brings into force the code of practice prepared under Section 71 of the Regulation of Investigatory Powers Act 2000 (RIPA) relating to the acquisition and disclosure of communications data under Chapter 2 of Part 1 of RIPA. Under Section 72(1) of RIPA a person exercising any power or duty in relation to which provisions may be made by a code of practice under Section 71 must, in doing so, have regard to the code's provisions (as far as applicable).

See article in August *Digest*.

SI 2199/2007 The Data Retention (EC Directive) Regulations 2007

In force **1 October**. These Regulations implement Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC.

These Regulations impose a requirement on the providers of public electronic communications services or networks to retain certain categories of data (specified in regulation 5) for a period of 12 months and in way that it can be transmitted without undue delay in response to requests.

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SI 2200/2007 The Regulation of Investigatory Powers (Investigation of Protected Electronic Information: Code of Practice) Order 2007

In force **1 October**. This Order brings into force the code of practice relating to the investigation of protected electronic information under Part 3 of the Regulation of Investigatory Powers Act 2000. See article in August *Digest*.

SI 2222/2007 The Magistrates' Courts (Parenting Orders) (Amendment) Rules 2007

In force **1 September**. These Rules amend the Magistrates' Courts (Parenting Orders) Rules 2004. The amendments to the Rules arise from the passage of further primary legislation i.e. the Education and Inspections Act 2006 and the Police and Justice Act 2006 and also following feedback from practitioners. The rules also update the relevant forms rather than making any substantial changes.

SI 2269/2007 The Employment Equality (Sexual Orientation) (Religion or Belief) (Amendment) Regulations 2007

In force **14 September**. These Regulations amend the parts of the Employment Equality (Religion or Belief) Regulations 2003 and the Employment Equality (Sexual Orientation) Regulations 2003 which deal with unlawful discrimination by qualifications bodies and providers of vocational training.

SI 2318/2007 The National Minimum Wage Regulations 1999 (Amendment) Regulations 2007

In force **1 October**. These Regulations amend the National Minimum Wage Regulations 1999. These amendments include:

- Increasing the principal (or adult) hourly rate of the national minimum wage from £5.35 to £5.52 per hour.
- Increasing the development rate (for 18-21 year olds) from £4.45 to £4.60 per hour.
- Increasing the rate to be paid to workers aged below 18 who have ceased to be of compulsory school age from £3.30 to £3.40 per hour.
- They also increase the maximum amount for living accommodation that is allowed to count towards pay for national minimum wage purposes (the 'accommodation offset'), which is applicable where an employer provides a worker with living accommodation, from £4.15 to £4.30 for each day that accommodation is provided.
- Clarification that certain classes of workers are exempt from the national minimum wage i.e. workers attending work experience whilst undertaking a course of further education and workers participating in the Government provided Programme Led Apprenticeship schemes.

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- Inserting three new classes of persons who do not qualify for the national minimum wage. These are workers who attend a period of work experience as part of a course of further education, workers participating in the latest phase of the Leonardo da Vinci Programme and workers participating in the European Community Youth in Action Programme.

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NOTES

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