

September 2006

Legal Validation and Research



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September 2006

Digest

Legal Validation and Research Department

www.centrex.police.uk/digest

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

This edition contains articles explaining various pieces of legislation including The Statutory Maternity Pay, Social Security (Maternity Allowance) and Social Security (Overlapping Benefits) (Amendment) Regulations 2006 and The Police (Minimum Age for Appointment) Regulations 2006.

The recommendations of several commissions feature in articles about women in the workplace, risk management, and crime statistics.

Articles relating to driver safety and provisions in the Police and Justice Bill relating to the alteration of police areas are also covered.

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

Case law in association with



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Copyright Enquiries: Telephone +44 (0)1256) 602650

Digest Editorial Team: Telephone: +44 (0)1423 876664

CONTENTS

DIVERSITY	5
Hate Crime and Harassment against Disabled People	5
Government Action Plan: Implementing the Women and Work Commission Recommendations	5
Mental Health Resource List for Employers	6
Commission for Equality and Human Rights	6
Engaging with Muslim Women	6
EMPLOYMENT	7
The Statutory Maternity Pay, Social Security (Maternity Allowance) and Social Security (Overlapping Benefits) (Amendment) Regulations 2006	7
Risk Management	8
LEGISLATION	9
Revised Power to Alter Police Areas by Order - Police and Justice Bill.....	9
Lighting and Reflectors on Pedal Bicycles	10
GOVERNMENT AND PARLIMENTARY NEWS	11
Proposals to Introduce New Legislation to Criminalise Possession of Violent and Extreme Pornographic Material	11
HOC 25/2006 Electronic Monitoring on Bail for Adults - Procedures	12
Report by the Statistics Commission on Crime Statistics	13
HOC 27/2006 Amendments to the Misuse of Drugs Regulations 2001	14
Consultation on Modernising HM Revenue & Customs Criminal Investigation Powers	14
UK Steering Group Report on Less Lethal Weapons	15
Audit Commission Paper on the Future of Local Services Inspection	15
Public Events Safety Guidance	15
Use of Psychoactive Drugs - Including Tobacco and Alcohol - by Young People in the UK	16
Findings from Standards of Conduct in Public Life Survey	17
Pupil Absence in Schools in England: 2005/2006	18
CRIMINAL JUSTICE SYSTEM	19
Age of Criminal Responsibility	19
Criminal Justice Act 2003 - Part 10 Retrial for Serious Offences	19
Consultation on the Quashing of Convictions	21
Consultation Paper on Sentencing Advice for Offence of Theft from a Shop	21
Specialist Domestic Violence Courts	23
Prosecuting Cases Involving the Sexual Transmission of Infections which Cause Grievous Bodily Harm	23
Evaluation of Criminal Defence Service Direct Pilot	24
Phone Tap Evidence	24
POLICE NEWS	25
National Policing Improvement Agency Chair Appointed	25
The Police (Minimum Age for Appointment) Regulations 2006	25
HOC 26/2006 Forfeiture of Police Pensions	25
Report on Road Policing Operation V79	26
Implementation of Police/Family Information Sharing Protocol	28
Online Reporting of Potential Sex Offenders	28
First Joint Police Authorities Committee	29
Recruitment Campaign to Find New Police Authority Members	29
Drugs Awareness DVD	29
Ethnic Advisory Group	30

NEWS IN BRIEF	31
Investigation into the Care System	31
Anthrax Detector	31
Report on Sexual Abuse of Children by UK Nationals in Foreign Tourism Destinations	31
Pilot Scheme for Victims of Crime	32
Support Booklet for People Bereaved by Suicide	32
The BRC Retail Crime Survey	33
Report on Public Perceptions of Safety and the Risk of Crime	33
Forensic Science Service Ombudsman	34
Drink - Drive Awareness Course	34
Safety Measures for New Drivers	34
 CASE LAW	 35
 EVIDENCE AND PROCEDURE	 35
Need for Clear and Reliable Evidence of a Voluntary Admission before Administering of Formal Caution	35
Cross-examination: False Sexual Allegations	36
Defence of Self-defence to a Claim for Damages for Assault and Battery	37
Proceedings for a Closure Order Under the Anti-social Behaviour Act 2003	39
 CRIME	 41
Reasonable Grounds for Suspicion Sufficient for the Substantive Offence of Money Laundering but not for Conspiracy	41
 TRAFFIC	 43
No Reduction of Culpability for an Offence of Causing Death by Dangerous Driving	43
Police use of Documentary Evidence for Child Protection Purposes	44
Requirement of Psychological Injury to be Foreseeable	46
 STATUTORY INSTRUMENTS.....	 48

Hate Crime and Harassment against Disabled People

The Disability Rights Commission (DRC) is currently working with the Association of Chief Police Officers to address the issue of hate crime and harassment against disabled people. As part of this work, during this autumn the DRC are looking to interview people who have suffered hate crime or harassment because of their disability. During these interviews the DRC will be particularly interested in finding out about disabled people's experiences of the police, including if they had reported incidents how it was dealt with and if they hadn't reported an incident, why not?

People who have experienced harassment or hate crime and would like to speak to the DRC about it, are being asked to email the DRC at media@drc-gb.org

Government Action Plan: Implementing the Women and Work Commission Recommendations

The Department for Communities and Local Government has published an action plan which sets out how the Government is to respond to the numerous recommendations made by the Women and Work Commission in its 'Shaping a Fairer Future' report.

The action plan includes a number of practical new measures, intended to improve opportunities for women to get on at work and encourage culture change within companies and organisations to persuade them of the economic potential of their female workforce. Measures include:

- ◆ An 'Exemplar Employer Initiative' - the Government will work with employers to develop programmes such as helping women returning to work to access quality part-time work, flexible working for women and setting up job share registers. More than 80 organisations have already signed up for the scheme, ranging from high street names to small business to public sector organisations.
- ◆ The roll-out of new 'Equality Reps' across England - the scheme will step up awareness among workers of flexible working rights and discrimination issues by working alongside statutory union representatives.
- ◆ A new 'Equality Check' that will help companies spot any emerging problems with equal treatment of staff, such as determining the level of the gender pay gap.
- ◆ A national education standard in schools, to step up cultural change by making girls aware of non-traditional career opportunities. This will come into force from April 2007, to ensure all young people receive careers information, advice and guidance which is free from gender stereotyping.
- ◆ A new half a million pound fund to support companies and organisations in increasing the number of senior and quality roles available part-time.

The action plan can be found at
http://www.womenandequalityunit.gov.uk/women_work_commission/index.htm

Mental Health Resource List for Employers

The Disability Rights Commission (DRC), the Sainsbury Centre for Mental Health, the National Institute for Mental Health in England and other mental health and employment experts have compiled a list of good practice resources and useful information for employers about mental health.

The document aims to enable employers to improve their policies and practices around recruiting and retaining staff with mental health problems.

The list will be updated twice yearly in October and March. The current version can be found at http://www.drc.org.uk/docs/Mental_Health_Resource_List.doc

Commission for Equality and Human Rights

Trevor Phillips has been appointed as Chair of the Commission for Equality and Human Rights (CEHR). For the past three years he has served as Chair of the Commission for Racial Equality. Prior to this he served as Chair of the London Assembly in the Greater London Authority. Trevor Phillips will step down as Chair of the CRE as soon as the Secretary of State has had the opportunity to make arrangements to replace him. A process for appointing a new CRE chair will be put in place immediately. The process will cover arrangements for the leadership of the CRE until it is assimilated into the CEHR.

Engaging with Muslim Women

The Department for Communities and Local Government has published a report which summarises the feedback from a group of 40 Muslim mothers and grandmothers from across the UK about the issues affecting themselves, their families and their communities. At a meeting that took place at 10 Downing Street on 10 May 2006, the women were asked to discuss in groups one of the following five themes and explain how it affected them personally and their families:

- ◆ Hearing the voices of Muslim women.
- ◆ Getting involved in children's education.
- ◆ Supporting Muslim families.
- ◆ Taking steps to tackle extremism.
- ◆ Working and living in local communities.

The report can be found at <http://www.womenandequalityunit.gov.uk/news/index.htm>

The Statutory Maternity Pay, Social Security (Maternity Allowance) and Social Security (Overlapping Benefits) (Amendment) Regulations 2006

These new Regulations, which come into force on 1 October (see SI 2006/2379), amend the Social Security (Overlapping Benefits) Regulations 1979 and the Statutory Maternity Pay (General) Regulations 1986 and the Social Security (Maternity Allowance) Regulations 1987.

Regulation 2 amends the Overlapping Benefits Regulations by substituting a new regulation 14(1) to provide for adjustments of all benefits at a rate of one-seventh of the appropriate weekly rate for each day of the week.

Regulation 3(2) substitutes a new regulation 2 of the Statutory Maternity Pay Regulations, the effect of which is as follows:

- ◆ New regulation 2(1) provides that a woman's maternity pay period will begin in accordance with a notice to her employer stating the day she expects his liability to pay her Statutory Maternity Pay (SMP) to begin, if that day is 11 weeks or less before her expected week of confinement (EWC) and not later than the day after she gives birth.
- ◆ New regulation 2(2) establishes that the maternity pay period is 39 consecutive weeks.
- ◆ New regulation 2(3) provides that a woman's maternity pay period will begin the day after she gives birth if that day is before the 11th week before her EWC or, if it is after the 12th week before her EWC, and she gives birth before the day specified in a notice to her employer stating the day she expects his liability to pay her SMP to begin.
- ◆ New regulation 2(4) provides that a woman's maternity pay period will begin the day after her absence from work where she is absent because of pregnancy or confinement on a day four weeks or less before her EWC and before her actual confinement (if earlier).
- ◆ New regulation 2(5) provides that a woman's maternity pay period will begin the day after she leaves her employment where she leaves 11 weeks or less before her EWC, before the start of the maternity pay period and before her actual confinement (if earlier).

Regulation 3(3) inserts a new regulation 9A in the Statutory Maternity Pay Regulations, to provide that SMP shall be paid where a woman works for her employer for not more than 10 days within her maternity pay period.

Regulation 3(4) substitutes a new regulation 28 of the Statutory Maternity Pay Regulations, to allow payments of SMP for a week or part of a week to be rounded up to the next penny.

Regulation 4(2) amends the Maternity Allowance Regulations by substituting a new regulation 2(1)(a), to provide that a woman will be subject to disqualification from maternity allowance if she works as an employed or self-employed earner for more than 10 days in the maternity allowance period.

Regulation 4(3) amends regulation 3(2A) of the Maternity Allowance Regulations, to extend the maternity allowance period to 39 weeks and to allow the maternity allowance period to commence no earlier than the day a woman becomes entitled to maternity allowance and no later than the day after which she is confined in specified circumstances.

Risk Management

The Health and Safety Commission (HSC) has launched a set of key principles in relation to risk management which it hopes will assist people to focus on risks that cause real harm and suffering rather than what it feels is in some cases bureaucratic back-covering. The HSC is also seeking views on the principles before it produces a definitive set of principles. Comments on them are requested prior to 30 November 2006.

The HSC principles state:

Sensible risk management IS about:

- ◆ Ensuring that workers and the public are properly protected.
- ◆ Providing overall benefit to society by balancing benefits and risks, with a focus on reducing real risks – both those which arise more often and those with serious consequences.
- ◆ Enabling innovation and learning, not stifling them.
- ◆ Ensuring that those who create risks manage them responsibly and understand that failure to manage real risks responsibly is likely to lead to robust action.
- ◆ Enabling individuals to understand that as well as the right to protection, they also have to exercise responsibility.

Sensible risk management IS NOT about:

- ◆ Creating a totally risk-free society.
- ◆ Generating useless paperwork mountains.
- ◆ Scaring people by exaggerating or publicising trivial risks.
- ◆ Stopping important recreational and learning activities for individuals where the risks are managed.
- ◆ Reducing protection of people from risks that cause real harm and suffering.

Further details can be found at <http://www.hse.gov.uk/risk/principles.htm>

Revised Power to Alter Police Areas by Order - Police and Justice Bill

This article is intended to clarify certain questions that have been raised by forces, on the legislative position and powers of the Secretary of State with regard to the recently shelved Government proposals to amalgamate forces and the current plans for greater co-operation and collaboration between forces.

At present, the Secretary of State has the power to alter police areas by making an Order. The power to do this is contained in Section 32 of the Police Act 1996.

At present Section 32 states:

- (1) The Secretary of State may by Order make alterations in police areas in England and Wales other than the City of London police area.
- (2) The alterations that may be made by an Order under this section include alterations that result in a reduction or an increase in the number of police areas, but not alterations that result in the abolition of the Metropolitan Police District.
- (3) The Secretary of State shall not exercise his power under this section to make alterations unless **either**:
 - (a) he has received a request to make the alterations from the police authority for each of the areas affected by them, **or**
 - (b) it appears to him to be expedient to make the alterations in the interests of efficiency or effectiveness.
- (4) The Secretary of State shall exercise his power to make Orders under this section in such a way as to ensure that none of the following areas:
 - (a) a county in which there are no district councils,
 - (b) a district in any other county,
 - (c) a county borough in Wales, or
 - (d) a London borough,

is divided between two or more police areas.

The recently shelved proposals to merge police forces were in certain cases purely being done under the existing Section 32(3)(b).

Provisions that are presently included in Part 1 Clause 2 of the Police and Justice Bill amends the above by removing the word **either** and in paragraph (a) substituting **or** with "and".

This obviously means that if this provision is introduced, the Secretary of State, prior to making an Order to alter a police area, would have to have received a request from the police authorities of the areas affected and himself agree to it on the grounds that it would be in the interests of efficiency or effectiveness.

Schedule 2 of the Police and Justice Bill lists a number of amendments to be made to the Police Act 1996. At paragraph 10 it states that a new section is to be added after Section 6: this is Section 6ZA, Power to confer particular functions on police authorities (previously covered in February *Digest*)

Section 6ZA allows the Secretary of State, subject to certain conditions (i.e. that he consults with the forces and police authorities concerned as well as others whom he deems necessary), to make an Order conferring particular functions on police authorities. One of the provisions he may require of a police authority is to ensure that arrangements are made for that force to cooperate with other police forces whenever necessary or expedient. Such an Order could be revoked by Parliament following a vote on the issue.

The Police and Justice Bill as it presently stands can be found at http://www.publications.parliament.uk/pa/pabills/200506/police_and_justice.htm

Lighting and Reflectors on Pedal Bicycles

The Department for Transport has issued guidance on the use of lighting and reflectors on pedal bicycles. The guidance has been issued following the amendments to the Road Vehicles Lighting Regulations 1989, which were brought into force in October 2005 by virtue of SI 2005/2559 (covered in October 2005 *Digest*). Enforcement of these Regulations is a matter for the police.

The main effect of the new Regulations was to permit flashing lights on pedal cycles. The flashing lights do, however, have to conform to certain requirements, which are:

Obligatory lighting and reflectors

- ◆ Any cycle which is used during the hours of darkness or during periods of poor visibility **must** be fitted with a white front light, a red rear light, a red rear reflector and amber/yellow pedal reflectors on the front and rear on each pedal.
- ◆ The lamps may be steady or flashing, or a mixture, e.g. steady at the front and flashing at the rear. A steady light is recommended at the front when the cycle is used in areas without good street lighting.
- ◆ If either of the lights is capable of emitting a steady light, then it must conform to BS 6102-3 and be marked accordingly, even if used in flashing mode.
- ◆ Purely flashing lights are not required to conform to BS6102-3, but the flash rate must be between 60 and 240 equal flashes per minute (1-4 per second) and the luminous intensity must be at least 4 candela. (This should be advised by the manufacturer).
- ◆ The pedal reflectors and rear reflector must conform to BS 6102-2.
- ◆ Lights and reflectors not conforming to the BS, but conforming to a corresponding standard of another EC country and marked accordingly, are considered to comply as long as that standard provides an equivalent level of safety.
- ◆ Lights are **not** required to be fitted on a bicycle at the point of sale, but if they are fitted, then they must comply with these regulations.

In addition to the obligatory lights and reflectors, other lighting is permitted to be fitted to a pedal cycle providing that:

- ◆ It does not dazzle other road users.
- ◆ It is the correct colour, i.e. white to front, red to rear.
- ◆ If it flashes it must conform to the required flash rate (1-4 equal flashes per second).

The only exemption from these regulations is for cycles which are used only in good visibility during daytime. These cycles are not required to be fitted with lights.

The advice can be found in full at http://www.dft.gov.uk/stellent/groups/dft_roads/documents/page/dft_roads_612441.hcsp

Proposals to Introduce New Legislation to Criminalise Possession of Violent and Extreme Pornographic Material

The Government has published a document which sets out the responses it received to its consultation on the possession of violent and extreme pornographic material, which was launched last September (covered in the September 2005 *Digest*) as well as proposals on how it intends to take the matter forward.

The Government's main proposal is to introduce legislation to make it an offence to possess violent or extreme pornographic images. The paper sets out the proposed criteria for the offence.

The material covered by the offence would be:

- ◆ Intercourse or oral sex with an animal.
- ◆ Sexual interference with a human corpse.
- ◆ Serious sexual violence (i.e. acts that appear to be life threatening or are likely to result in serious, disabling injury).

The first threshold for the offence itself would be an objective test for the jury that the material was pornographic, i.e. that it has been produced solely or primarily for the purpose of sexual arousal. It would be for the prosecution to prove that the material was pornographic.

The second threshold would be an objective test for the jury in respect of actual scenes or depictions which appear to be real acts. This is aimed at covering activity which can be clearly seen, leaves little to the imagination, and is not hidden or disguised (e.g. by pixilation). The inclusion of the words, 'actual scenes or depictions which appear to be real acts' are intended to cover material which either is genuinely violent or conveys a realistic impression of fear, violence and harm.

Defences to the offence are likely to mirror the defences provided for the possession of indecent photographs of children in Section 160 of the Criminal Justice Act 1988, which are that the defendant can prove he had a legitimate reason for having the image; or that he had not seen it and did not know or suspect it to be illegal; or that it was sent to him unsolicited and he did not keep it for an unreasonable time.

It is also likely that a further defence will be included to cover having an unaltered version of a work classified by a designated organisation. Such designation would be by Order and it is envisaged that the British Board of Film Classification (BBFC) would be one such organisation.

The paper proposes a maximum penalty of three years' imprisonment for possession of material depicting serious violence and a lesser maximum penalty for possession of material in the other categories, to reflect the seriousness of the offences shown or depicted in the material.

It is also the Government's intention to raise the maximum penalty for offences of publication, distribution and possession for gain, committed under the 1959 and 1964 Obscene Publications Acts, to five years' imprisonment.

The Government intends to commence the necessary legislative process in respect of its proposals as soon as the Parliamentary timetable allows.

HOC 25/2006

Electronic Monitoring on Bail for Adults - Procedures

Home Office Circular 25/2006 contains detailed advice for the courts, police, CPS, probation and prisons on the procedures to be followed when an adult defendant is subject to electronic monitoring or 'tagging' whilst on bail.

The current Government policy is that electronic monitoring or 'tagging' of adults whilst on bail should be made more widely available and used as an alternative to remand in custody.

Tagging is available as a condition of bail under the provisions of Section 3(6) of the Bail Act 1976, which says that a person granted bail in criminal proceedings may be required to comply, before release on bail or later, with such requirements as appear to the court to be necessary to ensure that he surrenders to custody, he does not commit an offence while on bail, and he does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person.

Tagging of adults can be applied for any offence, not just 'imprisonable' offences. It is not available for police bail.

The Circular also advises that, where courts impose a 'tagging' condition on the Bail Order, they also impose as conditions of bail:

- ◆ A requirement that the defendant cooperates with the arrangements for installing the tag and equipment, whenever this is to take place.
- ◆ A condition requiring the defendant to present himself or herself to a police officer who calls at the curfew address during the period of curfew.

Prosecutors and police are asked to consider the option of a tagging condition in deciding whether or not to oppose bail, or to continue to oppose bail.

Violation of the electronic monitoring aspect of the bail tagging conditions will be reported by the supplier by fax or e-mail to the agreed police contact point for the force. Police are also asked to ensure that arrangements for responding to reported non-compliances by bailees are adequate in terms of speed of response and effectiveness, bearing in mind the risk posed by the individual.

Violations include:

- ◆ Being absent for a total of 15 minutes or more during any curfew period.
- ◆ Intentional or reckless damage to any part of the monitoring equipment, removal of the equipment or allowing others to damage or remove the equipment.
- ◆ The threat or use of violence by the defendant against the supplier's staff.
- ◆ Refusal to allow installation of equipment, or to induct.

After an absence breach has been reported to the police, the supplier will continue to monitor the curfew address until advised in writing that the defendant has been arrested and detained in custody. If the monitoring shows that the defendant has returned to the curfew address during curfew hours, the supplier will inform the police control room immediately. Following a report of breach, a witness statement (Section 9 Criminal Justice Act 1967) will be sent by the supplier to the police as soon as possible. Where an arrest takes place outside of court hours the statement should be provided by no later than 8 a.m. of the next available court date. If the arrest is made within court hours and there are no other offences to deal with, the statement should be provided as quickly as possible so that the defendant can be returned to court that day. In any event it will be provided within 24 hours.

The Circular highlights the fact that CPS and ACPO have given assurances that they will take vigorous action in respect of anyone who breaches conditions whilst tagged on bail. It states that where breaches are reported, that the police will apprehend the defendant as soon as possible, inform the supplier when a defendant is arrested and will normally return the defendant to court. In cases where a defendant is not located and arrested quickly, the police will record on PNC that the defendant is wanted and a 'wanted file' including evidence of the breach will be held in the Warrants Office. The local intelligence unit will alert officers, and efforts to track down the defendant will be made. The CPS/CJU will be informed and provided with a copy of the breach statement.

In respect of tagging of juveniles on bail, guidance previously issued by the Home Office should still be followed. These documents are:

- ◆ "Criminal Justice and Police Act 2001: Electronic Monitoring of 12-16 year olds on Bail and on Remand to Local Authority Accommodation," issued on 17 April 2002.
- ◆ "Electronic Tagging of 17 year olds on Bail" issued on 12 December 2003.

However, the contact details for suppliers and others contained within these documents should be replaced with the updated details contained at Annex A of HOC 25/2006.

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

Report by the Statistics Commission on Crime Statistics

The Statistics Commission has published its review of crime statistics. The report looks at official statistics on crime and considers who uses the statistics, for what purposes, whether the available statistics meet those purposes, and whether further statistical sources or outputs might need to be developed.

It makes a number of recommendations which the Commission will now be pursuing with the Home Office and others as appropriate. The recommendations are:

- ◆ Responsibility for the compilation and publication of crime statistics should be located at arm's length from Home Office policy functions and with clear accountability within the evolving framework of the government statistical service.
- ◆ Treasury and Home Office Ministers should consider together a fully developed business case for moving responsibility for the British Crime Survey to the Office for National Statistics and should publish their agreed view with supporting arguments.
- ◆ The Home Office, and others as appropriate, should make changes to the presentation of the recorded crime figures in order to communicate better the main messages. These steps include:

- ◆ Changing the definition of violent crime.
- ◆ Greater distinction between British Crime Survey results and police recorded crime data and the uses for which each source is appropriate.
- ◆ Ensuring regular reviews of statistical classifications.
- ◆ Existing local data should be better used to improve the quality and range of statistics on crime. This could be achieved through police forces agreeing to publish, in a co-ordinated way, standardised comparable analyses at a local level. These analyses need not necessarily be drawn together and published as official statistics by the Home Office but must be consistent with those that are.
- ◆ Comparability of crime statistics between the various countries within the UK should be improved, identifying and addressing areas of statistics where there are problems.
- ◆ Technical research should be carried out (to a published timetable) to develop a set of weighted index measures of 'total crime' and promote debate on which, if any, of these measures should be adopted alongside the current basic count.

The report can be found at

http://www.statscom.org.uk/media_pdfs/reports/Crime_Statistics_Review-final.pdf

HOC 27/2006

Amendments to the Misuse of Drugs Regulations 2001

This Circular has been published to draw attention to Statutory Instrument 2006/2178 (covered in the August *Digest*), which brought into force, on 1 September 2006, the Misuse of Drugs (Amendment No 3) Regulations 2006 (except for Regulation 4 which will come into force in Wales on 1 January 2007).

It explains the legislative and policy background behind the amendments. It also explains that the coming into force date of the recording requirements set out in Regulation 7(1) and the changes to the form of the Controlled Drugs Register (CDR) set out in Regulation 10 of the Misuse of Drugs Regulations have been postponed until 1 January 2008 to be more convenient and provide greater clarity for those required to maintain a CDR, predominantly the pharmacy profession.

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

Consultation on Modernising HM Revenue & Customs Criminal Investigation Powers

HM Revenue & Customs (HMRC) has published a consultation document setting out how the powers and accompanying safeguards used in the investigation of tax crime could be updated. The paper seeks views on applying the relevant provisions in the Police and Criminal Evidence Act 1984 (PACE) across all its activities. Currently, those powers and their associated safeguards are only available for specific taxes and duties. As PACE does not apply in Scotland, views are also being sought on the provisions that would provide an effective and fully integrated regime that is appropriate for Scotland's legal system.

'Criminal Investigation Powers: A Technical Consultation Document' can be found at <http://www.hmrc.gov.uk/consultations/index.htm>

UK Steering Group Report on Less Lethal Weapons

The UK Steering Group on Alternative Policing Approaches to the Management of Conflict has published its fifth report. The report, as well as looking at the developments in conflict management, includes:

- ◆ Detailed medical and technical analysis on the development of the Attenuating Energy Projectile (AEP).
- ◆ Details around the development of the Discriminating Irritant Projectile (DIP).
- ◆ The use of less lethal technologies e.g. water cannon, CS and PAVA spray, and TASER® in the UK.

The document can be found via <http://www.nio.gov.uk/index/nio-publication.htm>

Audit Commission Paper on the Future of Local Services Inspection

The Audit Commission has published a discussion paper, 'Assessment of Local Services Beyond 2008', which sets out some key questions about how a future performance assessment framework should work in local services. The document outlines the Commission's thoughts on the issues. It suggests that any new framework:

- ◆ Needs to consider individual bodies and partnerships as well as the areas they serve.
- ◆ Should take account of the increased emphasis on neighbourhoods and city regions, as appropriate.
- ◆ Should be focused on areas of risk and that rolling programmes of inspection should not feature in a future approach.

It also makes suggestions on how a more risk-based assessment framework can be achieved.

The paper can be found at <http://www.audit-commission.gov.uk/beyond2008/>

Public Events Safety Guidance

The Home Office, in collaboration with other Government departments and other organisations including ACPO, has published a good practice advice document to assist organisers of carnivals, charity and small-scale sporting events on safety matters at public events. The Guide gives general advice on how to notify an event, the responsibilities of an organiser, the risk assessment procedure, the safety measures that are available, and a planning timescale. It is not intended to take the place of existing Health and Safety Executive (HSE) guides and leaflets but to complement these documents.

The guidance is available via <http://police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/event-safety-guide.pdf>

Use of Psychoactive Drugs - Including Tobacco and Alcohol - by Young People in the UK

The Advisory Council on the Misuse of Drugs (ACMD) has published a report, 'Pathways to problems: hazardous use of tobacco, alcohol and other drugs by young people in the UK and its implications for policy'.

The report looks at the:

- ◆ Use of psychoactive drugs, how they work and why can they be harmful.
- ◆ Patterns and trends.
- ◆ Availability.
- ◆ Impact of controls, pricing and marketing.
- ◆ Key characteristics and circumstances of the young people who are most at risk.
- ◆ School and other education-based prevention initiatives.

Some of the report's findings include:

- ◆ The use of tobacco, alcohol and cannabis among 15 year olds in the UK is among the highest in Europe (with the exception of cigarette smoking by boys).
- ◆ Among the 6.8 million 16-24 year olds in the UK, almost a third are daily smokers, nearly 30% drink more than twice the recommended daily alcohol limit at least once a week, and 1 million have used an illegal drug in the past month. Young tobacco smokers are much more likely to use illegal drugs than non-smokers.
- ◆ Of all the drugs, alcohol has shown the most recent growth in use and causes the most problems among young people in the UK today. The most alarming recent development has been the growth in the number young women who are drinking frequently and to excess. In the past decade, the proportion of women drinking more than twice the recommended weekly limit has doubled.
- ◆ Many factors influence whether or not young people use tobacco, alcohol or other drugs hazardously. The most important include early life experiences, family relationships and circumstances, and parental attitudes and behaviour.
- ◆ Young people have little difficulty in obtaining tobacco, alcohol and illegal drugs. The age-of-purchase regulations for tobacco and alcohol are rarely enforced.
- ◆ Although drugs education is now part of the curriculum of most schools in the UK, available research indicates that it has little if any impact on future drug use.

Main recommendations include:

- ◆ The age of legal purchase of tobacco should be raised from 16 to 18 years, in line with alcohol, and strictly enforced.
- ◆ A much stricter code of alcohol advertising and sponsorship should be established.
- ◆ Given the higher accident rates among young drivers, consideration should be given to reducing the maximum legal blood alcohol level for drivers under the age of 25 from the present 80mg per 100ml to 50mg per 100ml.

- ◆ The current arrangements to control the supply of illegal drugs should be reviewed to determine whether any further cost-effective and politically acceptable measures can be taken to reduce their availability to young people.
- ◆ There should be a careful reassessment of the role of schools in drug misuse prevention. Universities, colleges and major training institutions should also take more responsibility for encouraging and enabling young people to minimise the hazardous use of tobacco, alcohol and other drugs.
- ◆ Accessible services for young people with serious tobacco, alcohol or other drug problems should be developed throughout the UK.

In response to the report, the Transport Minister Stephen Ladyman commented that the Government has no plans to change the drink-drive blood alcohol limit from 80mg for young drivers or anyone else.

The report can be found in full at

<http://www.drugs.gov.uk/publication-search/acmd/khat-report-20051/Pathwaystoproblems.pdf>

Findings from Standards of Conduct in Public Life Survey

The Committee on Standards in Public Life has published the results of its second national survey on public attitudes towards standards of conduct in public life.

This second survey expands on the first, published two years ago, to give a breakdown of public attitudes in Scotland and Northern Ireland also, and provides a further benchmark of public attitudes towards the conduct of our politicians and other public office-holders.

The survey confirms the findings from 2004 that the public has higher levels of trust in most 'frontline' and 'independent' public office-holders, such as doctors, head teachers, the police and judges, than in national politicians.

Only 23% of adults in Great Britain trust government ministers to tell the truth, as compared to 84% for head teachers and 93% for family doctors.

The survey also showed that the public has more trust in local area police officers (77%) telling the truth than in senior police officers (69%).

People in Northern Ireland are generally less trustful of judges and senior and local police officers than in Great Britain.

The public continues to express greater confidence in the media (81%) than in the authorities (44%) to uncover wrongdoing; and only a minority are confident that wrongdoers will be punished (40%). This is despite an increase in confidence that the authorities are committed to improving standards in public life (58%), compared to 2004 (53%).

The report can be found in full at <http://www.public-standards.gov.uk/news/index.asp>

Pupil Absence in Schools in England: 2005/2006

The Department for Education and Skills (DfES) has published a statistical first release report on Pupil Absence in England 2005/06. Analysis of the data which is collected from the absence in school returns shows that

- ◆ Unauthorised absence in schools rose slightly to 0.79% of half days missed, from 0.78% last year. Within this, primary schools rose to 0.46% from 0.43%. However, secondary schools fell to 1.22% from 1.23% last year.
- ◆ 1% of secondary school pupils accounted for more than a third of all unauthorised absence in secondary schools.

The DfES has also announced that its 'fast track' targeting of an estimated 13,000 persistent truants, in 200 schools with high numbers of such pupils, has led to a 27% drop in the number of persistent truants across these schools. Under the scheme, parents of persistent truants are placed on the Fast Track to Attendance, where an automatic court prosecution can be triggered unless their child's attendance improves over a 12-week period. The DfES is currently examining how it can be extended to more schools in the future.

The report can be found in full at

<http://www.dfes.gov.uk/rsgateway/DB/SFR/s000679/index.shtml>

Age of Criminal Responsibility

A report published by the Centre for Crime and Justice Studies has claimed that too many children in England and Wales are being prosecuted and criminalised.

The report, entitled 'From punishment to problem solving: A new approach to children in trouble' claims government policies are demonising and criminalising young people rather than addressing the reasons for their behaviour.

As part of a reform package to overhaul the youth justice system, the report proposes raising the age of criminal responsibility from 10 to 14. This proposal has been forwarded in response to the fact that children are criminalised in England and Wales at a much younger age than in many other countries, including France, Germany, Canada and Russia. However, the Home Office has no plans to raise the age.

Other proposals in the report include:

- ◆ Introducing a new sentencing framework, including a residential training order of up to two years (five years for grave crimes).
- ◆ Phasing out prison custody for 15 and 16 year olds.
- ◆ Transferring responsibility for youth justice from the Home Office to the Department of Education and Skills.
- ◆ Increased investment in services to support children who have educational and mental health problems or those in trouble or at risk.
- ◆ Increased restorative justice schemes.

The Report is available on the Centre for Crime and Justice Studies at <http://www.kcl.ac.uk/depsta/rel/ccjs/>

Criminal Justice Act 2003 - Part 10

Retrial for Serious Offences

The provisions on the retrial of serious offences (double jeopardy) under Part 10 of the Criminal Justice Act 2003 came into force on 4 April 2005.

Following a recent trial at the Old Bailey, William Dunlop became the first person to be retried under these provisions. Dunlop pleaded guilty to the murder of Julie Hogg, in Billingham, Cleveland, on 16 November 1989. Dunlop had faced two previous trials for murder and on each occasion the jury failed to reach a verdict. He was formally acquitted in October 1991 at Newcastle Crown Court.

The offences that come under the provisions of Part 10 are:

- ◆ Murder.
- ◆ Attempted murder - under Section 1 of the Criminal Attempts Act 1981.
- ◆ Soliciting murder - under Section 4 of the Offences against the Person Act 1861.
- ◆ Manslaughter.
- ◆ Kidnapping.
- ◆ Rape - under Section 1 of the Sexual Offences Act 1956 or Section 1 of the Sexual Offences Act 2003.

- ◆ Attempted rape - under Section 1 of the Criminal Attempts Act 1981.
- ◆ Intercourse with a girl under thirteen - under Section 5 of the Sexual Offences Act 1956.
- ◆ Incest by a man with a girl under thirteen - under Section 10 of the Sexual Offences Act 1956.
- ◆ Assault by penetration - under Section 2 of the Sexual Offences Act 2003.
- ◆ Causing a person to engage in sexual activity without consent - under Section 4 of the Sexual Offences Act 2003, where it is alleged that the activity caused involved penetration within Section 4(4)(a) to (d).
- ◆ Rape of a child under thirteen - under Section 5 of the Sexual Offences Act 2003.
- ◆ Attempted rape of a child under thirteen - under Section 1 of the Criminal Attempts Act 1981 of attempting to commit an offence under Section 5 of the Sexual Offences Act 2003.
- ◆ Assault of a child under thirteen by penetration - under Section 6 of the Sexual Offences Act 2003.
- ◆ Causing a child under thirteen to engage in sexual activity - under Section 8 of the Sexual Offences Act 2003, where it is alleged that an activity involving penetration within Section 8(2)(a) to (d) was caused.
- ◆ Sexual activity with a person with a mental disorder impeding choice - under Section 30 of the Sexual Offences Act 2003, where it is alleged that the touching involved penetration within Section 30(3)(a) to (d).
- ◆ Causing a person with a mental disorder impeding choice to engage in sexual activity - under Section 31 of the Sexual Offences Act 2003, where it is alleged that an activity involving penetration within Section 31(3)(a) to (d) was caused.
- ◆ Unlawful importation of Class A drug - under Section 50(2) of the Customs and Excise Management Act 1979, where it is alleged to have been committed in respect of a Class A drug (as defined by Section 2 of the Misuse of Drugs Act 1971).
- ◆ Unlawful exportation of Class A drug - under Section 68(2) of the Customs and Excise Management Act 1979, where it is alleged to have been committed in respect of a Class A drug (as defined by Section 2 of the Misuse of Drugs Act 1971).
- ◆ Fraudulent evasion in respect of Class A drug - under Section 170(1) or (2) of the Customs and Excise Management Act 1979, where it is alleged to have been committed in respect of a Class A drug (as defined by Section 2 of the Misuse of Drugs Act 1971).
- ◆ Producing or being concerned in production of Class A drug - under Section 4(2) of the Misuse of Drugs Act 1971, where it is alleged to have been committed in relation to a Class A drug (as defined by Section 2 of that Act).
- ◆ Arson endangering life - under Section 1(2) of the Criminal Damage Act 1971, where it is alleged to have been committed by destroying or damaging property by fire.
- ◆ Causing explosion likely to endanger life or property - under Section 2 of the Explosive Substances Act 1883.
- ◆ Intent or conspiracy to cause explosion likely to endanger life or property - under Section 3(1)(a) of the Explosive Substances Act 1883.
- ◆ Genocide, crimes against humanity and war crimes – under Section 51 or 52 of the International Criminal Court Act 2001.

- ◆ An offence under Section 1 of the Geneva Conventions Act 1957.
- ◆ Directing terrorist organisation - under Section 56 of the Terrorism Act 2000.
- ◆ Hostage-taking - under section 1 of the Taking of Hostages Act 1982.
- ◆ Conspiracy - under Section 1 of the Criminal Law Act 1977 - conspiracy to commit any of the offences listed above.

Consultation on the Quashing of Convictions

The Office for Criminal Justice Reform has produced a consultation paper which sets out the details of a review, conducted by the Home Secretary, the Lord Chancellor and the Attorney General, into existing law that empowers the Court of Appeal to quash a conviction on purely procedural grounds, even where the judges of that Court have no doubt that the appellant is guilty.

The Government wants to ensure that, where the Court of Appeal is of the view that a conviction is, in the normal sense of the word, 'safe', it should not be possible to quash it.

The consultation paper describes the background and legal considerations surrounding these issues and sets out a number of options for consideration.

The closing date for responses to the consultation is 18 December 2006. The paper and further details of how to respond can be found at <http://www.homeoffice.gov.uk/documents/cons-2006-quashing-convictions>

Consultation Paper on Sentencing Advice for Offence of Theft from a Shop

The Sentencing Advisory Panel has issued the first of a number of proposed consultation papers relating to sentencing for dishonesty offences. This first paper focuses on the offence of theft from a shop and sentencing of adults in the context of this offence. The proposals contained in the consultation paper follow external research, commissioned by the Panel, to identify the factors that are likely to influence sentence.

Key issues raised in this paper relate to:

- ◆ The general assessment of seriousness of this type of offending behaviour.
- ◆ The relevance of the value of goods stolen and the significance of their recovery.
- ◆ The factors that might indicate that a particular type of sentence is appropriate.
- ◆ The circumstances in which previous convictions should influence sentence and the degree to which sentences should be increased.

Aggravating and mitigating factors are identified and sentencing options are discussed.

The Panel’s provisional starting points for sentencing are:

Features of Offence	Suggested Sentence
<p>1</p> <ul style="list-style-type: none"> ● Organised gang/group ● Substantial violence or threat of violence (short of robbery) 	<p>Starting point 12 months imprisonment</p> <p>Range 9 months to 4 years imprisonment</p>
<p>2</p> <ul style="list-style-type: none"> ● Significant intimidation or threats ● Physical violence resulting in <u>slight</u> injury ● Very high level of planning ● Significant related damage ● Child used in the theft 	<p>Starting point 8 weeks imprisonment</p> <p>Range High level community order to 16 weeks imprisonment</p>
<p>3</p> <ul style="list-style-type: none"> ● Low level of intimidation or threats ● Planning signifying a ‘spree’ ● Some related damage 	<p>Starting point Low level community order</p> <p>Range Fine to Medium level community order</p>
<p>4</p> <ul style="list-style-type: none"> ● Single offender ● Goods stolen valued at less than £200 	<p>Starting point Conditional discharge or fine</p>
Aggravating Factors	Mitigating Factors
<p>5</p> <ul style="list-style-type: none"> ● Professional offending (e.g. groups or gangs) ● Accompanied by a child ● Some damage ● Offender has a banning order from the store targeted ● Substantial consequential loss ● Victim particularly vulnerable e.g. small shop) ● High value of goods taken 	<ul style="list-style-type: none"> ● Offence committed out of desperation or need

The sentencing options applicable to young offenders are not covered in the paper, but will be subject to a separate consultation at a future date.

Responses to the consultation paper are required by 16 November 2006.

The consultation document and the associated research report can be found at <http://www.sentencing-guidelines.gov.uk/consultations/current/index.html>

Specialist Domestic Violence Courts

The Government has announced that it is to increase the number of specialist domestic violence courts in England and Wales, from the current 25 to 53 by April 2007. The increase has been prompted by Crown Prosecution Service figures that show a successful prosecution rate for domestic violence cases of 71% for cases heard in a specialist domestic violence court against a 59% successful prosecution rate in other courts.

Measures which specialist courts have introduced include:

- ◆ Dedicated prosecutors and police and trained magistrates and legal advisors, who specialise in the issues involved in domestic violence cases.
- ◆ Either a fast-tracking of domestic violence cases, or a clustering of cases together on a designated day each week or month, to make courts run more effectively and speed up justice for victims.
- ◆ Separate entrances, exits and waiting areas so that victims are not confronted by their attackers.

Prosecuting Cases Involving the Sexual Transmission of Infections which Cause Grievous Bodily Harm

The Crown Prosecution Service is seeking views on a public document to explain the way in which it deals with cases involving the intentional or reckless sexual transmission of infections which cause grievous bodily harm.

Following the landmark case of Dica, where the defendant was convicted of grievous bodily harm for recklessly infecting his partner with HIV, there have to date been a total of eight convictions in England and Wales under Section 20 of the Offences Against the Person Act 1861 (OAPA), all based on the reckless transmission of HIV.

The types of sexually transmitted infections covered by the policy are:

- ◆ Chlamydia.
- ◆ Genital herpes.
- ◆ Gonorrhoea.
- ◆ Hepatitis A.
- ◆ Hepatitis B.
- ◆ Hepatitis C.
- ◆ HIV and AIDS.
- ◆ LGV (lymphogranuloma venereum).
- ◆ Non-specific urethritis (NSU).
- ◆ Syphilis.

Besides seeking general views on the document, the consultation paper also asks some specific questions in respect of the relevance, if any, of the defendant's reliance on medical/clinical advice that he/she received, whether any weight should be given to their ability to ensure the use of protection, and whether the context in which the sexual behaviour occurred should be a relevant factor when determining whether it is the public interest to prosecute.

The consultation will run until 3 November 2006. A final version of the public document is expected to be published in early 2007.

The consultation paper and draft policy document can be found at <http://www.cps.gov.uk/news/consultations/index.html>

Evaluation of Criminal Defence Service Direct Pilot

The Legal Services Commission (LSC) has published an evaluation report on the Criminal Defence Service Direct (CDS Direct) pilot which has been trialled since 31 October 2005. The pilot project provided telephone advice to people detained for more minor offences at police stations, in cases where the matter could be dealt with using telephone advice only, such as a warrant or driving with excess alcohol.

The evaluation report concludes that the pilot has exceeded the targets established at the outset and estimates the annual cost savings at £5.6 million.

It recommends that the pilot should be continued in its current format for at least a further six months.

The CDS Direct pilot has also received the endorsement of Lord Carter of Coles in his review of legal aid procurement. As a result, the LSC will publish further information on the development of CDS Direct as its thinking moves forward and as a result of the current consultation on Lord Carter's proposals.

The report 'CDS Direct - Six Month Evaluation Report' is available via http://www.legalservices.gov.uk/criminal/contracting/duty_solicitor.asp#Evaluation

Phone Tap Evidence

The Attorney General, Lord Goldsmith, has made calls for the removal of the ban on using phone tap evidence in court. The proposal, which has been backed by the Director of Public Prosecutions, would establish phone tap evidence as a key tool to prosecute serious and organised crime and terrorism.

However, the security services are against the move amid worries that covert techniques would be exposed to criminals. Prosecutors have also warned against lifting the ban because of the volume of material which defendants may demand.

Despite these demands to make intercept evidence admissible in court, the proposals are not yet government policy.

National Policing Improvement Agency Chair Appointed

Peter Holland CBE DL has been appointed as the first chair of the new National Policing Improvement Agency.

He is currently the elected Vice Chair of the Association of Police Authorities, leading on IT matters, and is also on the Boards of both Centrex and the Police Information and Technology Organisation (PITO).

He will initially chair the National Policing Improvement Agency in 'shadow' form. Subject to the passage by Parliament of the Police and Justice Bill the Agency will come formally into existence in April 2007.

The Police (Minimum Age for Appointment) Regulations 2006

These Regulations, which came into force on 19 September 2006 (see SI 2006/2278) amend the Police Regulations 2003 and the Special Constables Regulations 1965 to lower the age for appointment as a police officer or as a Special Constable, from 18 years and six months to 18 years. This change has been made to comply with the Employment Equality (Age) Regulations 2006, which govern discrimination on the grounds of age and which come into force on 1 October 2006.

The change is based on a review conducted by the Police Advisory Board for England and Wales (PABEW) on the need to maintain a minimum age for recruitment for compliance with the Employment Equality (Age) Regulations 2006. The PABEW concluded that there are justifiable reasons for retaining a minimum age of recruitment of 18 years, but that the current minimum age for appointment of 18 years and six months is potentially discriminatory.

HOC 26/2006 Forfeiture of Police Pensions

This Circular draws attention to the legislation and provides guidance on the procedures relating to the forfeiture of police pensions.

Regulation K5 of the Police Pensions Regulations 1987 relates to the forfeiture of police pensions.

Under this regulation, a police authority may determine that a pension be forfeited, in whole or in part and permanently or temporarily as they may specify, if the pensioner has been convicted of an offence of treason or one or more offences under the Official Secrets Acts 1911 to 1939 and has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years.

In addition, a police authority can determine forfeiture where a member of a police force has been convicted of an offence, committed in connection with his/her service as a member of a police force, which is certified by the Secretary of State either to have been gravely injurious to the interests of the State or to be liable to lead to serious loss of confidence in the public service.

The Circular highlights that:

- ◆ The term 'pensioner' should be taken to include a person who is still a member of his force at the time of conviction.
- ◆ The courts have ruled that the pensioner need not have been a serving officer at the time of the offence in order to meet the requirement that it must be connected with his/her service. For instance, the offence may have been committed after the pensioner retired but he or she may have used police knowledge or police systems or police contacts in the commission of the offence.

In making the decision on whether to certify, the Secretary of State will attach a greater weight to the words "serious loss of confidence in the public service" than the harm inevitably caused by any police officer or former police officer who commits a crime, and will take into account:

- ◆ The seriousness with which the court viewed the offence (as demonstrated by the punishment imposed and the sentencing remarks).
- ◆ The circumstances surrounding the offence and investigation.
- ◆ The seniority of the officer or former officer (the more senior, the greater the loss of credibility and confidence).
- ◆ The extent of publicity and media coverage.
- ◆ Whether the offence involved: an organised conspiracy amongst a number of officers, active support for criminals, the perversion of the course of public justice, the betrayal of an important position of trust for personal gain, and/or the corruption or attempted corruption of junior officers.

Regulation H5 of the Police Pensions Regulations provides a right of appeal to the Crown Court against the police authority's role in the decision to forfeit the pension.

Regulation H6 provides a right of appeal to a tribunal appointed by the Secretary of State, as police authority, if the pensioner was a central police officer.

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

The Police Pensions Regulations 1987 can be found at http://www.opsi.gov.uk/si/si1987/Uksi_19870257_en_1.htm

Report on Roads Policing Operation V79

The Department for Transport (DfT), Department for Environment, Food and Rural Affairs (Defra) and the Association of Chief Police Officers have published a joint report on a Roads Policing Operation V79, a national police compliance check on motoring requirements for both drivers and vehicles supported by DfT and by Defra which was conducted on 31 March 2006.

The operation involved the random stopping of nearly 6,000 vehicles (cars, motorcycles and light goods vehicles), which police checked for compliance on driver licensing, vehicle registration, road tax, insurance and MOT. In addition, the police checked for stolen vehicles, those being driven with a SORN in force, and illegal number plates.

Statistics in the report show that of the 5793 vehicles and drivers checked on 31 March 2006:

- ◆ 71.6% were fully compliant.
- ◆ 28.4% were found to be non-compliant in at least one area.
- ◆ 7.0% were found to be non-compliant in at least one area of serious non-compliance.
- ◆ Insurance and driving licence offences had the highest number of additional serious offences.
- ◆ 33.3% of unlicensed drivers were also uninsured for the vehicle they were driving (0.5% of all drivers stopped).
- ◆ The identity of the driver was not confirmed in 1.0% of the checks (an improvement on the 2004 check (3.1%)).
- ◆ 3.4% of driver records were found to be inaccurate (an improvement on the 2004 check (4.7%)).
- ◆ 3.7% of vehicles stopped had the wrong vehicle keeper recorded on the DVLA register (an improvement on the 2004 check (5.5%)).
- ◆ 0.3% of vehicles stopped had been declared as off-road (a decrease from the 2004 check (1.2%)).
- ◆ 84.9% of drivers were on the drivers' insurance database, the majority of which (99.3%) held the correct details.
- ◆ 92.4% of vehicles were on the insurance database.
- ◆ 5.4% of vehicles had illegal registration plates.
- ◆ Older vehicles were less likely to have a current MOT, less likely to have accurate vehicle records, less likely to be insured and more likely to be untaxed.

Findings from the operation also show that drivers/vehicles were less likely to be compliant if they were in the following groups:

- ◆ Motorcycle or light goods vehicle.
- ◆ Male.
- ◆ Driven on a motorway.
- ◆ Vehicles less than one year old.

Drivers/vehicles were more likely to be compliant if they were in the following groups:

- ◆ Cars.
- ◆ Female.
- ◆ Driven on an urban road.
- ◆ Driven between 8am-9am or 1pm-2pm.

The report recommends that a further exercise should be carried out in 18 to 24 months time, in order that levels of compliance can be compared. It also includes several other recommendations, the majority of which relate to changes to the operational procedures to be adopted in future operations.

The report can be found in full at

http://www.dft.gov.uk/stellent/groups/dft_roads/documents/divisionhomepage/612495.hcsp

Implementation of Police/Family Information Sharing Protocol

Following the publication of an evaluation report on an information-sharing pilot between the police and family courts in five areas (London, Manchester, Merseyside, Lancashire and Cumbria), conducted between December 2004 and August 2005, the Association of Chief Police Officers (ACPO) asked all police areas to implement a new national police protocol.

The objectives of the protocol are:

- ◆ To provide timely advance notice to the police of the existence of family proceedings and level of information being sought.
- ◆ To enable the police to indicate in advance what evidential material is or may be available and to highlight any difficulties with disclosure of the information required.
- ◆ To assist the court and the parties in framing workable, standard directions to the police without undue delay.
- ◆ To encourage early disclosure of full and frank information between the police, the parties and the court.

All relevant documents including the evaluation report are available at <http://www.dca.gov.uk/family/famfr7.htm>

Online Reporting of Potential Sex Offenders

The Child Exploitation and Online Protection (CEOP) Centre and Microsoft have entered into partnership and introduced a new 'safer-by-design' element to the Windows Live Messenger or MSN Messenger instant messaging systems.

A new Messenger tab which features the CEOP Centre's 'report abuse' icon has been incorporated into the systems. The tab will link users in the UK directly to online police services, so that they may report suspicious behaviour and instances of inappropriate contact of a sexual nature they have encountered whilst chatting in this virtual environment.

Through the icon and link to the CEOP web site, users from anywhere in the world can access the Virtual Global Taskforce (VGT), an international alliance of law enforcement agencies, of which the CEOP Centre is the UK's representative.

In addition, CEOP has launched a 'have fun, stay in control, know how to report' education campaign that will be going into schools, foster homes and other youth environments across England, Scotland, Wales and Northern Ireland.

The programme will be delivered in schools by over 1000 police officers, teachers and child protection teams. It will offer an interactive package that will explore online experiences, look at issues such as social networking, gaming sites and more traditional chat rooms and offer vital 'safety first' advice to children, young people and their parents. It is intended that around 1 million children will have attended specially prepared safety first sessions by March 2007. Subsequent phases will roll out on an ongoing basis.

All materials in the education pack, including online resources, have been designed by police and child protection specialists, with input from the CEOP Centre's dedicated youth panel. The pack online resources can be found at <http://www.thinkuknow.net>.

First Joint Police Authorities Committee

A Joint Committee, consisting of members of the four Yorkshire and Humberside police authorities, has been formed with the intention of supporting the respective police authorities and chief constables in their drive to improve policing throughout the region by working together on some activities, rather than as four separate bodies. It is the first such body of its kind in the country. It will initially meet monthly to consider proposals put forward by the four chief constables, who will also be meeting regularly. Plans are being formulated to improve strategic roads policing (tackling criminality across the roads network) and for dealing with serious and organised crime across the four force areas.

Cllr Mark Burns-Williamson of West Yorkshire Police Authority has been appointed as the Joint Committee's Chair; Cllr Jane Kenyon of North Yorkshire Police Authority has been appointed as the Vice-Chair.

Recruitment Campaign to Find New Police Authority Members

Police authorities across England and Wales have launched a recruitment campaign aimed at attracting new independent police authority members. The campaign is particularly seeking to persuade women, younger people and members of black and ethnic communities to apply, to enable police authorities to fully reflect the diversity of their local communities. New independent members can serve a four year term, and will normally be expected to spend at least two days a week on their police authority role in exchange for an allowance and expenses.

Further details can be found at
http://www.apa.police.uk/APA/members_section/index.htm

Drugs Awareness DVD

A new interactive DVD, entitled 'Get Real' has been developed by the Scottish Crime and Drug Enforcement Agency (SCDEA) and Scottish police forces, in partnership with the Scottish Executive's 'Know the Score' campaign.

It contains a number of video clips detailing the real life effects of drugs, alcohol and tobacco on individual users, their families, and the wider community. Information and graphics on the law, the effects of drugs on the body, and photographs of individual drugs are also included.

The DVD also forms the core of a new Scottish Police College drug education course, which will provide national training to police officers and support staff involved in drug education on how to deliver substance awareness presentations in schools.

Ethnic Advisory Group

Greater Manchester Police Authority has set up an independent advisory group to give advice and guidance on policing issues that may affect the ethnic communities in Greater Manchester.

The group is made up of members representing all ethnic groups. Their role involves raising any concerns and giving advice and suggestions to ensure that policing meets the needs of the community.

Further information about the group can be found at <http://www.gmpa.gov.uk>

Investigation into the Care System

The Centre for Policy Studies has published a report detailing how the care system is failing young people. In 2005 there were 60,900 children in care and it is estimated that around 6,000 young people leave care each year. The report, entitled 'Handle with Care: an investigation into the care system' claims that within 2 years of leaving:

- ◆ 4,500 will have no qualifications.
- ◆ One fifth will be homeless.
- ◆ Half will be unemployed.
- ◆ 2,100 will be mothers or pregnant.

The author of the report, Harriet Sergeant, claims that the failings of the care system lead to social exclusion, illiteracy, homelessness, drug and alcohol dependency, prostitution and criminality.

One of the criticisms focused on the way in which Government money is spent. Currently the Government spends around £40,000 on each child but focuses on short term care rather than long term success.

In response to the report the Department for Education and Skills is working towards a consultation document on a range of proposals designed to transform the outcomes of children in care.

Anthrax Detector

A useful tool in the fight against bio-terrorism has been developed at New Zealand's Canterbury University. The portable bacterial spore detector can identify biological samples, such as anthrax, within minutes. Prototypes have proven to be 99 per cent accurate and work on the final production is underway.

Report on Sexual Abuse of Children by UK Nationals in Foreign Tourism Destinations

A report which looks at the history of the sexual abuse of children by foreign nationals in tourism destinations has been published by the organisation ECPAT UK. This is a coalition of organisations including Anti-Slavery International, Barnardos, the Children's Society, Jubilee Campaign, NSPCC, Save the Children UK, UNICEF UK, World Vision UK and the Body Shop Foundation.

The report offers an analysis of UK nationals who commit this type of crime, and includes policy, legislative and practical recommendations to guide child protection in this area.

One of the main recommendations of the report is for the current Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, which came into force on 1 May 2004, to be replaced or amended. The current Regulations require that a relevant offender who intends to leave the United Kingdom for a period of three days or longer must give a notification under Section 86(2) Sexual Offences Act 2003 in accordance with these Regulations.

The concern voiced in the report is that there is evidence to show that paedophiles are currently travelling to locations in Europe, in particular to vulnerable communities in central and eastern Europe, to commit offences. These areas can nowadays be easily reached in a matter of hours due to the expanding budget airline market and therefore the report calls for a change in the Regulations to make notification of any period of travel abroad obligatory, regardless of the length of stay.

Section 86 of the Sexual Offences Act 2003 confers a power for the Secretary of State to make Regulations to require relevant offenders who intend to leave the United Kingdom for any period of time as stipulated in such Regulations to give a notification under Section 86(2) to the police. Such a notification must disclose the date on which the offender will leave the United Kingdom, the country (or, if there is more than one, the first country) to which he will travel and his point of arrival in that country.

The current regulations can be found at <http://www.opsi.gov.uk/si/si2004/20041220.htm>

Details on how to obtain a copy of the report can be found at http://www.ecpat.org.uk/press_01.html

Pilot Scheme for Victims of Crime

The national charity Victim Support has received extra funding from central government to run pilot schemes for victims of crime in three areas, North Yorkshire, City of Nottingham and Salford in Greater Manchester.

In these areas, the majority of victims will be initially contacted by telephone, then they will have an assessment of their needs and be offered a 'menu' of services based on their needs. The services will include practical help (e.g. the fitting of new locks or childcare), emotional support or counselling, installation of security devices and/or assistance with medical costs. Staff and volunteers will also if required establish and oversee contact with relevant agencies on the victim's behalf. An out-of-hours hotline for victims will also be available in addition to the existing Victim Supportline.

Data will be collected during the pilots to measure the demand and benefits of the new services, along with the longer term cost implications.

Support Booklet for People Bereaved by Suicide

A booklet, entitled 'Help is at Hand', designed both to support people who have lost loved ones through suicide and also to advise professionals (e.g. in prisons, hospitals, the police, funeral directors etc) who come into contact with people bereaved in this way, has been produced by the Department of Health. It contains information on practical and emotional issues, as well as sources of support for people bereaved by suicide or the other sudden, traumatic death of a friend, relative or acquaintance.

The document will be given out by Coroner's Officers to all who are bereaved by sudden traumatic deaths. The booklet can be found at http://www.dh.gov.uk/PublicationsAndStatistics/Publications/WhatsNewPublications/fs/en?CONTENT_ID=4067943&chk=MiCCpg

The BRC Retail Crime Survey

The British Retail Consortium's (BRC) annual Retail Crime Survey will be published in full on Wednesday 11 October. Early results from the survey, released by the BRC, indicate that retailers believe the Government and the police are not seriously committed to tackling retail crime.

Preliminary findings include:

- ◆ 90% believe retail crime is low on the Government's agenda.
- ◆ 86% of retailers believe the Government is failing to properly address the issue.
- ◆ 77% are dissatisfied or very dissatisfied with police response times.
- ◆ Just 5% believe police treat retail crime as anything other than a low or very low priority.

The BRC is calling on both the Government and police forces to recognise the significant negative impact that retail crime has on retailers, communities and the economy and to make it a greater priority. Its view is that a combination of weak penalties and poor enforcement has led to the proliferation of shop crime; and it is concerned about the outcome of the Sentencing Advisory Panel (SAP) consultation on proposals relating to the sentencing of adults for offences of theft from shops (see article on page 21).

Report on Public Perceptions of Safety and the Risk of Crime

The financial services company Legal and General has published its Safety Uncovered Index report, which tracks Britons' perceptions of safety by interviewing a representative sample of over 5,000 UK residents and finding out which crimes had caused them the most concern in the last three months, and comparing them with those it collected in January 2006.

Key findings from the report show:

- ◆ Over half (56%) of those surveyed have worried about crime in the last three months, and more than one in four (30%) have witnessed at least one act of anti-social behaviour in the past three months.
- ◆ More than a third of the population (38%) are worried about how the apparent declining morality of society will affect their personal safety.
- ◆ More than a third of people (34%) are fearful for their personal safety as a result of a lack of police presence in their neighbourhood - a slight increase since January (32%).
- ◆ More than a third (36%) of people who are concerned about the threat of burglary have experienced a break-in first hand, and a further 10% fear their current home security measures - locks, alarms and lighting - are inadequate.

The report ranks peoples main safety concerns as:

1	Anti-social behaviour in my area / yob culture	23%
2	Identity theft / fraud	9%
3	Personal safety as a result of violent crime	6%
3	Vandalism to my car	6%
5	Vandalism/graffiti in my neighbourhood	3%
5	Burglary	3%
7	Vandalism to my property	2%
7	Having bags stolen when out and about/pick pockets	2%
9	Car theft	1%
9	Crime abroad/whilst on holiday	1%

Forensic Science Service Ombudsman

The Forensic Science Service has appointed Mike Loveland as an Ombudsman to act as an independent arbitrator to deal with complaints against the organisation. Mr Loveland has forty years' experience in operational forensic science, having worked previously within the Forensic Science Service and the Metropolitan Police Laboratories.

Drink- Drive Awareness Course

Dr Karel Brookhuis, a Dutch scientist with a long history in traffic research, particularly drugs and driving, has, as part of his ongoing study into the influence of external factors on driving performance, been running a special course for young people who are learning to drive.

The course involves the young people drinking alcohol until they reach the drink-drive limit then going on to a race track where they attempt a slalom course, parking and an emergency stop. Since the courses have been running in his home town of Emmen every single person taking part has failed the test.

Dr Brookhuis says that the test shows young people that it is impossible to drive properly once they have drunk alcohol and claims that those who take the drink driving test are not likely to attempt to drink and drive in their later life.

Safety Measures for New Drivers

A road safety coalition headed by the Association of British Insurers (ABI) has announced a number of proposals relating to new drivers as part of a new road safety campaign. The proposals include:

- ◆ Requiring drivers to take lessons for a minimum of 12 months before taking their test.
- ◆ Limiting the number of passengers new drivers are allowed to carry in their vehicles during their first few months on the road.
- ◆ Encouraging young motorists to drive less frequently at night.
- ◆ Requiring learner drivers to record their driving hours and performance in a log book.

If the proposals are adopted, ABI anticipate that the number of serious injuries and deaths among UK drivers aged 17-24 will be cut by up to 1,000 each year.

Case Law



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Need for Clear and Reliable Evidence of a Voluntary Admission before Administering of Formal Caution

R (on the application of W) v CHIEF CONSTABLE OF HAMPSHIRE CONSTABULARY (2006)

[2006] EWHC 1904 (Admin)

QBD (Admin) (Silber J) 24/7/2006

Police Cautions: Confessions: Quashing Orders: Sexual Assault: Clear And Reliable Admission To Alleged Offence: S.3 Sexual Offences Act 2003

Before a formal caution could be administered there had to be clear and reliable evidence of a voluntary admission that related to all the ingredients of the alleged offence

The claimant (W) sought judicial review of the decision to administer a formal caution to him. W had been formally cautioned by the defendant chief constable's police officers for an offence of sexual assault contrary to the Sexual Offences Act 2003 s.3. It had been alleged that W had sexually assaulted a woman at a nightclub. W challenged the decision on the basis that he had not made a clear and reliable admission to the alleged offence so as to justify him receiving a formal caution. W argued that in order to be cautioned he had to have made a clear and reliable admission to the offence for which he had been cautioned, which was sexual assault, that W had not made such an admission and that accordingly the caution should be quashed.

HELD

- (1) There had not been a clear and reliable admission to the alleged offence of sexual assault, which would have justified W being formally cautioned. Although there was no statutory framework governing the police cautioning of adults in the circumstances of the instant case, it was settled law that before a caution could be administered there had to be clear and reliable evidence of a voluntary admission and the Home Office Circular 18/1994 provided guidance on the approach that the police should take to cautioning.
- (2) The admission had to relate to all the ingredients of the alleged offence. In order to ascertain whether there was evidence of such a confession it was necessary to consider all the evidence of interviews with the person cautioned. Considering W's interview with the police constable as a whole, none of the comments made by W showed an admission by him that the complainant had consented to the assault or that W had reasonably believed that she had consented, R v Commissioner for Metropolitan Police Ex p P (1995) 160 Justice of the Peace Reports 367 and R (on the application of R) v Durham Constabulary (2005) UKHL 21, (2005) 1 WLR 1184 applied. In the circumstances there had not been an appropriate admission to those ingredients of the offence and accordingly the caution was quashed.

Cross-examination: False Sexual Allegations

R v V (2006)

[2006] EWCA Crim 1901

CA (Crim Div) (Sir Igor Judge (President QB), Crane J, Dobbs J) 27/7/2006

CRIMINAL EVIDENCE

Admissibility: Assault By Penetration: Bad Character: Cross Examination: False Statements: Rape: Sexual Behaviour: Victims: Appellant Charged With Sexual Offences Against Daughter: Evidence Of Daughter's False Allegations Sought To Be Adduced: S.100(4) Criminal Justice Act 2003: Criminal Procedure Act 1865: S.41 Youth Justice And Criminal Evidence Act 1999: S.112(1) Criminal Justice Act 2003: S.98 Criminal Justice Act 2003: S.4 Criminal Procedure Act 1865

The appellant, who had been charged with sexual offences against his daughter, should have been allowed to cross-examine her about a sexual allegation that she had previously made where there was evidence to show that it was false; however, that failing did not render his convictions unsafe.

The appellant (V) appealed against his convictions of rape and assaulting a child under 13 by penetration. The complainant was V's daughter (J), who had been 14 at the time of the trial. V had applied under the Criminal Justice Act 2003 s.100(4) for leave to adduce evidence of J's bad character in relation to three incidents.

As to the first incident, J and a friend had told the police that there was a period of time that was a blank and there was some discharge in their pants as if they had been touched up. However, nothing untoward had been found when they were medically examined, and the police concluded that there had been "no crime". Refusing leave, the judge held that there was no evidence of a false allegation.

As to the second incident, J had admitted that she had falsely stated to fellow pupils that a teacher had pushed her. Refusing leave, the judge ruled that the incident did not have "substantial probative value" for the purposes of the test in s.100(1)(b) of the 2003 Act.

As to the third incident, police records disclosed that J had complained to her mother that a man had held a knife to her throat and put his fingers inside her knickers. Her mother then reported the matter to the police, but J was verbally aggressive towards her for doing so and was not prepared to assist the police in any way, causing the police to file the matter as undetected. The judge ruled that there was no evidence that the allegation was false and refused the application for leave. By the time of the trial, the defence had a video interview in which a friend of J's (C) said that J had told her that the complaint was false. V therefore renewed his application for leave before the recorder, who ruled that the Criminal Procedure Act 1865 did not permit the defence to question J about her conversation with C and, if necessary, call C to prove J's inconsistent statement. V argued that he should have been permitted to cross-examine J about what she had said previously about the three incidents and, if appropriate, to call evidence about what she had said.

HELD

The alleged significance of the first incident was that it was a false sexual allegation. The Youth Justice and Criminal Evidence Act 1999 s.41 therefore required consideration. However, although the incident had been a very odd one, there had been no proper evidential basis for asserting that it involved a false sexual allegation. Indeed, the list of proposed questions supplied to the court indicated that it would have been suggested to J that she had “imagined” the incident. In the absence of any proper evidential basis, any cross-examination fell foul of s.41(3)(a) and s.41(4) of the 1999 Act.

As to the second incident, it was doubtful whether a piece of exaggeration to fellow pupils after some everyday classroom misbehaviour on J’s part attained the level of “reprehensible” behaviour envisaged in s.112(1), read with s.98, of the 2003 Act. If it did, the judge had been justified in ruling that it did not have “substantial probative value” for the purposes of the test in s.100(1)(b) of the Act.

As to the third incident, there had by the time of the trial, in the light of the available evidence from C, been a sufficient evidential basis for asserting that the complaint made by J had been untrue.

The test for leave under s.100 of the 2003 Act had been passed. Cross-examination should have been permitted, and had J denied admitting the falsity of the allegation, V’s counsel should have been permitted to elicit that evidence from C. The recorder had been wrong to rule as he had; the instant was a classic situation for the deployment of s.4 of the 1865 Act. However, V’s convictions remained safe. The credibility of J and V had been crucial. The jury had known both that J had some sexual experience and that she did not always behave well. It could not be said that a false allegation (if that was what the jury decided it was), made to her mother and not pursued with the police, would have altered the jury’s conclusion.

Appeal Dismissed



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Defence of Self-defence to a Claim for Damages for Assault and Battery

(1) JAMES ASHLEY (JUNIOR) (2) JAMES ASHLEY (SENIOR) v CHIEF CONSTABLE OF SUSSEX (2006)

[2006] EWCA Civ 1085

CA (Civ Div) (Sir Anthony Clarke MR, Auld LJ, Arden LJ) 27/7/2006

TORTS – POLICE

Abuse Of Process: Assault: Battery: Burden Of Proof: Compensation: Disclosure: Misfeasance In Public Office: Police Powers And Duties: Public Interest: Self Defence: Torts: Burden Of Proving Self-Defence: Mistaken Belief Of Imminent Risk: Armed Police Raid: Fatal Shooting: Obstructing Investigations: Fabricating Evidence: Reasonable Force: Honestly And Reasonably Held Belief: Exemplary Damages: Summary Judgment: Collateral Purposes: Fatal Accidents Act 1976: Law Reform (Miscellaneous Provisions) Act 1934

A defendant could rely on self-defence to a claim for damages for assault and battery if he showed that he mistakenly but reasonably and honestly thought that it was necessary to defend himself against attack or an imminent risk of attack, and that the force he used was reasonable.

The appellants (X) appealed against part of an order ((2005) EWHC 415 (QB)) giving summary judgment for the respondent chief constable (S) dismissing claims for damages for assault, battery and misfeasance in public office. X were the immediate family of the victim (J) who had been fatally shot during an armed raid by the police. X brought the claims under the Fatal Accidents Act 1976 as dependants of J, and under the Law Reform (Miscellaneous Provisions) Act 1934 on behalf of J's estate. The police officer who had shot J was acquitted of murder. S admitted liability for false imprisonment and negligence in relation to the planning and execution of the armed raid, and agreed to pay compensatory damages accordingly. However, S denied misfeasance in public office in relation to the conduct of the police officers after the shooting. S also denied assault and battery and relied on self-defence, but accepted that J had been shot under the mistaken belief that there was an imminent risk of attack. X maintained that the police had deliberately released incorrect information to the press and public, obstructed an independent investigation, failed to involve J's family and fabricated evidence in circumstances in which they knew that what they were doing was unlawful or in which they were reckless as to whether it was lawful. The judge held that X had failed to discharge the burden of negating self-defence, and that there was no sufficient evidence to support X's claim for misfeasance in public office. S submitted that

- (1) a defendant had to ensure that there was sufficient evidence to give rise to an issue of self-defence, and then the claimant had the burden to disprove the defence;
- (2) the necessity to act in self-defence was to be judged on the basis of the actual state of mind of the officer who had shot J, whether reasonable or unreasonable;
- (3) a trial of the allegations of assault and battery would be an abuse of process and the public interest did not justify a trial; (4) the allegations of misfeasance in public office were not specific enough and they only supported a case in negligence.

HELD

(Auld, LJ dissenting on the issue of battery) (1) In criminal proceedings the burden of negating self-defence was on the prosecution. By contrast, in civil proceedings the burden was on the defendant to establish self-defence. *Dumbell v Roberts* (1944) 1 All ER 326, *Dallison v Caffery* (1965) 1 QB 348, (1964) 3 WLR 385 and *Bici v Ministry of Defence* (2004) EWHC 786 (QB) , Times, June 11, 2004 considered.

(2) A defendant had a defence of self-defence to a claim for damages for assault and battery if he showed that he mistakenly but reasonably and honestly thought that it was necessary to defend himself against attack or an imminent risk of attack, and that the force he used was reasonable, *Bici* considered, and *Cresswell v Sirl* (1948) 1 KB 241, (1947) 2 All ER 730 and *Cope v Sharpe (No 2)* (1912) 1 KB 496 distinguished on the facts. In judging whether the action taken in self-defence was reasonable, the court had to have regard to all the circumstances of the case, including the fact that the action may have had to be taken in the heat of the moment.

(3) As the judge had erred in her decision on burden of proof it was for the instant court to determine the issue of summary judgment. On the facts S was not entitled to summary judgment on the assault and battery claims. A short trial of the allegations of assault and battery could not properly be held to be an abuse of process simply because of the acquittal of the officer who had shot J, since at the criminal trial both the standard and burden of proof and the ingredients of the alleged offence were different from the standard and burden of proof and the ingredients of the tort of battery and assault. Moreover, there was a public interest in allowing the battery and assault claims to proceed, notwithstanding the fact that S had accepted liability for negligence.

(4) On the facts, the judge had been wrong to hold that S was entitled to summary judgment in respect of the claim for damages for misfeasance in public office in respect of post-shooting events. However, the judge was entitled, in the exercise of her discretion, to

direct that the issue of compensatory damages be determined before the issue of liability because, unless X showed that they were entitled to compensatory damages or had suffered a relevant injury in relation to post-shooting events it would not be proportionate to permit X to proceed to a trial on the remaining issues of misfeasance.

(5) The judge had erred in principle in holding that reports relating to the shooting were irrelevant. The public interest in disclosure of the reports outweighed the public interest in continued confidentiality and the reports should be disclosed, subject to some redaction of irrelevant information and to further argument as to when they should be disclosed.

Appeal Allowed



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Proceedings for a Closure Order Under the Anti-social Behaviour Act 2003

R (on the application of CLEARY) (Claimant) v Highbury Corner Magistrates' Court (Defendant) & (1) Commissioner of Police of the Metropolis (2) Secretary of State for the Home Department (Interested Parties) (2006)

[2006] EWHC 1869 (Admin)

DC (May LJ, Langstaff J) 26/7/2006

Civil Procedure - Civil Evidence

Adjournment: Closure Orders: Disclosure: Hearsay Evidence: Magistrates Courts: Time Limits: Procedure: Guidance Given On Fair Conduct Of Proceedings: S.2 Anti-Social Behaviour Act 2003: Magistrates' Courts (Hearsay Evidence In Civil Proceedings) Rules 1999

[The court gave guidance on the fair conduct of proceedings for a closure order under the Anti-social Behaviour Act 2003 s.2.](#)

The claimant (C) applied for judicial review of the decision of the defendant magistrates' court not to adjourn proceedings brought under the Anti-social Behaviour Act 2003 s.2 for a closure order. C had applied for an adjournment so that the police could provide additional disclosure and so that guidance on the procedure to be followed in applications for closure orders could be sought by judicial review.

HELD

It would be appropriate to provide guidance on the fair conduct of proceedings for a closure order, which, because of the very short statutory timescale and the nature of the subject matter, were in danger of being unfair and oppressive. The (perhaps optimistic) statutory intention was that the first hearing, which had to take place within 48 hours of the service of the closure notice, should be an effective hearing. There might be cases where the defendant did not contest the application and where a closure order might fairly be made at the first hearing. But it was difficult to suppose that the police could fairly oppose an adjournment of the first hearing if the defendant wished to contest the matter; and it would scarcely be possible to do so, if the defendant had not been provided with the written evidence before the hearing itself. If the evidence which the police proposed to adduce was not served by the time of the first hearing, or if it was not fully served, fairness required that it should be served well in advance of the adjourned hearing. Generally, seven days before the adjourned hearing was likely to be the minimum, bearing in mind

that the police could not suppose that the first hearing would always be adjourned and that they should have served their evidence by then. As to hearsay evidence, it might too easily be supposed that people who gave information about drug dealers should not be required to come to court to give evidence. In individual cases, the witness's fear might be genuine, but an easy assumption that this would always be so and that hearsay evidence was routine in these cases risked real injustice. After all, defendants to an application for a closure order risked being dispossessed of their homes for up to six months, and the statute for obvious reasons expected both that witnesses would be identified and that they might have to attend for cross-examination. The time limits in the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999 did not accord with the statutory timetable set out in the 2003 Act. Those with responsibility for the Rules might wish to address those problems. Meanwhile, magistrates' courts should act fairly in accordance with their spirit. As to the documents that should be disclosed, the police should disclose documents on which they relied and documents which clearly and materially affected their case adversely or supported the defendant's case.

Judgment Accordingly



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Reasonable Grounds for Suspicion Sufficient for the Substantive Offence of Money Laundering but not for Conspiracy

R v ABDUL RAHMAN SAIK (2006)

[2006] UKHL 18

HL (Lord Nicholls of Birkenhead, Lord Steyn, Lord Hope of Craighead, Baroness Hale of Richmond, Lord Brown of Eaton-under-Heywood) 3/5/2006

Criminal Law

Conspiracy: Criminal Conduct: Mens Rea: Money Laundering: Proceeds Of Crime: Statutory Interpretation: Suspicion: Qualified Guilty Plea: Mental Element In Conspiracy: S.1(1) Criminal Law Act 1977: S.93c(2) Criminal Justice Act 1988: S.1(2) Criminal Law Act 1977

A defendant would not be guilty of conspiracy to commit the substantive offence of money laundering where he did not know, and therefore did not intend, that the money which he had agreed to convert would be the proceeds of crime when at a date in the future he performed his part of the agreement with his co-conspirators. Reasonable grounds for suspicion were sufficient for the substantive offence but not for conspiracy

The appellant (S) appealed against his conviction of the offence of conspiracy to launder money contrary to the Criminal Law Act 1977 s.1(1). S had operated a currency exchange office in London. The case against S was that in the course of that business he had converted a substantial amount of pounds sterling provided by others in the form of cash into foreign currency, and that the cash was or represented the proceeds of drug trafficking or other criminal activity. At trial S had pleaded guilty to the offence subject to the qualification that he had not known that the money had been the proceeds of crime; he had only suspected that that had been the case. Although reasonable grounds for suspicion were sufficient for the substantive offence of laundering money under the Criminal Justice Act 1988 s.93C(2), the issue for consideration was whether they were enough for a conspiracy to commit that offence.

HELD

S could not be guilty of conspiracy to commit the substantive offence because he did not know, and therefore did not intend, that the money which he had agreed to convert would be the proceeds of crime when at a date in the future he performed his part of the agreement. The mental element in conspiracy was distinct from and superseded the mental element in the substantive offence. By virtue of s.1(1) the mental element of the offence of criminal conspiracy lay in both making an agreement with co-conspirators and the intention to pursue a course of conduct which would necessarily involve the commission of the crime in question by one or more of the conspirators. In addition, under s.1(2) of the 1977 Act, there had to be a further mental element which was the intention or knowledge that a fact or circumstances necessary for the commission of the crime would exist. Suspicion was not sufficient. A conspiracy was an agreement about future conduct and when the agreement was made the fact or circumstances necessary for the commission of the substantive offence may not have existed. Applying that reasoning to s.93C(2) meant that, in the case of identified property, it was for the prosecution to prove that the conspirator must have been aware that the property was in fact the proceeds of crime. In the instant case, where the conspiracy applied to

unidentified property, it was for the prosecution to prove that S had intended that the property would be the proceeds of criminal conduct, R v Montila (Steven William) (2003) EWCA Crim 3082 , (2004) 1 WLR 624 applied. In accepting the qualified plea of S the prosecution had accepted a lesser mental element to that required by s.1(2) for an offence of conspiracy.

Appeal Allowed



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No Reduction of Culpability for an Offence of Causing Death by Dangerous Driving

R v DAVID WHITNALL (2006)

CA (Crim Div) (Hooper LJ, Davis J, Tugendhat J) 19/9/2006

SENTENCING

Aggravating Features: Causing Death By Dangerous Driving: Drug Abuse: Guilty Pleas: Mental Health: Sentence Length: Insight Into Mental Illness: Cannabis: S.1 Road Traffic Act 1988

A defendant could not seek to reduce culpability for an offence of death by dangerous driving where he admitted the offence and had insight into the mental illness he suffered from at the time of the commission of the offence.

The appellant (W) appealed against a sentence of six years' imprisonment and disqualification from driving for ten years following his guilty plea to death by dangerous driving contrary to the Road Traffic Act 1988 s.1. W had been driving erratically at speeds of up to 120mph on a motorway for approximately 50 miles, weaving in and out of traffic lanes. The deceased was hit in her car from behind, propelling the vehicle 170 metres down the motorway. Three other vehicles were involved in the crash and W's car came to rest in a ditch. Samples were taken from W and traces of cannabis were found in his blood stream. W had a passenger in his vehicle who stated that W had been hallucinating and claiming that cows and lorries were chasing him. The sentencing judge stated that W had been a heavy cannabis user since his teens and that his case highlighted the link between cannabis abuse and mental health problems. W was diagnosed as suffering from mania and psychosis. W submitted that the sentence was manifestly excessive and that the judge failed to take sufficient account of his plea of guilty, mitigating features and his reduction in culpability due to his mental illness. He argued that there was only one aggravating feature and he should therefore not have been sentenced as though the case represented one of the worst cases.

HELD

The basis on which the judge had sentenced W was correct and a sentence of six years' imprisonment was appropriate. W's cannabis abuse both masked and triggered his mental illness. However he could not argue that he should have reduced culpability on the basis of a lack of insight into his mental health status. He had sought help from his doctor for his mental health issues only days before the accident and his guilty plea clearly indicated that he accepted culpability. There was more than one aggravating feature, R v Cooksley (Robert Charles) (2003) EWCA Crim 996, (2003) 2 Cr App R 18 followed. W had consumed drugs, disregarded warnings from a fellow passenger, embarked on a prolonged, persistent and deliberate course of very bad driving, knew he was deprived of adequate sleep and was driving when knowingly suffering from a medical condition that severely impaired his driving skills. He also had two previous convictions for speeding.

Appeal Dismissed



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Police use of Documentary Evidence for Child Protection Purposes

A BOROUGH COUNCIL (Applicant) v (1) A (2) B (3) C & D & E (Children by their Guardian) (Respondents) & CHIEF CONSTABLE OF THAMES VALLEY (Intervener) (2006)

[2006] EWHC 1465 (Fam)

Fam Div (Sumner J) 20/6/2006

Family Law - Civil Procedure - Local Government - Police

Care Proceedings:Children:Disclosable Documents:Local Authorities:Police:Private Hearings:Disclosure Of Documents Filed In Care Proceedings:Family Proceedings (Amendment No 4) Rules 2005:R.4.23 Family Proceedings Rules 1991:Administration Of Justice Act 1960

Under the Family Proceedings (Amendment No 4) Rules 2005 once the police had information from a local authority in the form of a document, they could use it for child protection purposes. However, the document, as compared with the information therein, could not otherwise be used without the court's express permission.

The intervener chief constable applied for leave to use documents arising in care proceedings. The applicant local authority had commenced care proceedings in relation to the third respondent children. The second respondent father (B) had been interviewed by the police. During the interview B admitted using violence on one of the children. He was charged with child cruelty. At a meeting of the legal professionals and the local authority an unsigned statement from B was distributed. A social worker then delivered five documents, including medical reports and statements from B, to a police officer, who was a member of a child protection unit and was also involved with the criminal investigation relating to B. The local authority informed the police that if they wished to disclose any of the documents filed in the care proceedings they should make an application to court. The chief constable argued that the handing over of the documents to the police was lawful, that the police were entitled to use the information in the documents for the protection of the children and that the information could also be used for the purposes of any criminal investigation. The chief constable also submitted that any legal privilege attached to B's unsigned statement had been waived by him in disclosing it and that whether all or any of the information or the documents could be used in any criminal trial was a decision for the trial judge. The chief constable further argued that the documents handed over could be used in the criminal trial without further leave of the court, and if that was wrong then leave for their disclosure was sought.

HELD

The parties agreed that the handing over of the documents was lawful. It was expressly permitted under the Family Proceedings Rules 1991 r.4.23 and was not in contempt of court. There was a ban on the publication of information under the Administration of Justice Act 1960 relating to private family proceedings before the court, save when it was pursuant to the order of that court. A distinction was drawn on the question of disclosure between information that came into the possession of a local authority or another party prior to or during family court proceedings, and documents filed with the court during those proceedings. Once a document was filed, its use was subject to the control of the court. The Family Proceedings (Amendment No 4) Rules 2005 did not alter the situation nor the position of preparatory documents that contained information but were not on the court file.

They remained confidential and subject to public interest immunity. Disclosure of the information in such documents to the police was permissible. The 2005 Rules made it clear that there was no need to obtain the court's permission if the information that a local authority wished to pass to the police was already in a document filed with the family court. The 2005 Rules also permitted the communication of all the information within those documents to a child protection police officer whether they had been filed with the court or not. Once the police had information from the local authority in the form of a document, they could use it for child protection purposes. However, it was confidential and the document, as compared to the information within it, could not be used without the court's express permission. That applied to documents not filed with the court and those filed with it. The police officer who was handed the documents in the instant case could use the information but not the documents disclosed to him for both child protection and criminal investigation purposes. The court gave its permission for the use of the documents.

Judgment Accordingly



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Requirement of Psychological Injury to be Foreseeable

CLARK v CHIEF CONSTABLE OF ESSEX (2006)

[2006] EWHC 2290 (QB)

QBD (Tugendhat J) 18/9/2006

Negligence - Employment - Personal Injury

Bullying:Causation:Depression:Duty Of Care:Employers' Duties:Foreseeability:Mental Disorder:Place Of Work:Police:Vicarious Liability:Police Officers:Employer's Duty Of Care To Employees:Vicarious Liability For Psychological Injury By Employees To Other Employees

Where a claim in negligence against a defendant was based upon the principle of vicarious liability for the acts and omissions of a defendant's employees, and upon alleged breaches of duties of care and other duties owed by a defendant to a claimant, and where, in that claim, it was alleged that those for whom the defendant was vicariously liable had deliberately bullied or victimised the claimant but had unintentionally inflicted psychological injury, it was necessary to the success of the claim that the injury should have been foreseeable.

The claimant former police officer (C) claimed damages for personal injuries allegedly occasioned by the actions of police officers employed by the defendant chief constable (D). C had, as a detective constable, been the officer in charge of a major police investigation, and had held the status of acting sergeant. In the course of the investigation C complained to senior officers of the conduct of a senior police officer involved (K), and of K's being oppressive to C. Thereafter, C and K made a number of complaints about each other. K then became C's line manager. A subsequent meeting involving senior police officers led, essentially, to C losing his rank of detective constable. As the trial arising from the police investigation began, a certain senior police officer (B) to whom C had made complaints about K, threatened C, advising him that K and another were considering an action for slander against C, depending on what C said at the trial. C then retired from active service on medical grounds suffering from depression, post traumatic stress disorder and related physical symptoms including shingles. He brought a claim against D for personal injuries, alleging that they had been caused by the negligence of D or by harassment, bullying and victimisation of C by his immediately senior officers for which D was vicariously liable. C contended that D owed him a duty to provide a safe place of work and to protect him from bullying, victimisation and intimidation at work including by work colleagues, that certain police officers had subjected him to bullying, harassment, intimidation, oppression and victimisation at work, and that they had deliberately acted in the course of their employment so as to punish him for his role in the police investigation. C argued that D should have brought the police officers' conduct to an end in response to complaints by C. C further contended that the meeting of senior officers was an unlawful disciplinary hearing, so that he had been unlawfully disciplined.

HELD

Where a claim in negligence against a defendant was based upon the principle of vicarious liability for the acts and omissions of a defendant's employees and upon alleged breaches of duties of care and other duties owed by a defendant to a claimant, and where, in that claim, it was alleged that those for whom the defendant was vicariously liable had deliberately bullied or victimised the claimant but had unintentionally inflicted psychological injury on the claimant, it was necessary to the success of the claim that the injury should

have been foreseeable. What was foreseeable depended on the facts of the individual case, *Waters v Commissioner of the Metropolitan Police* (2001) PIQR P81 considered and *Sutherland v Hatton* (2002) EWCA Civ 76 , (2002) PIQR P241 applied. On the evidence, D was liable in negligence for the personal injuries caused to C, whose senior officers all knew that he was unable to cope with the treatment he was receiving from K and B. The actions of K towards C, namely, humiliation, criticism and shouting were properly to be regarded as bullying. Moreover, C had been unlawfully disciplined and had suffered foreseeable physical and mental injury as a result. Further, the actions of B towards C had caused C severe stress and distress and it had been foreseeable that those actions would cause both physical and mental injury. C's personal injuries could be described as falling within the range of moderately severe, and an award of £18,000 in respect of general damages was appropriate.

Judgment for Claimant



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SI 2278/2006 The Police (Minimum Age for Appointment) Regulations 2006

In force **19 September**. These Regulations lower the age for appointment as a police officer or as a special constable from 18 years and six months to 18 years. See article on page 25.

SI 2290/2006 The Proscribed Organisations Appeal Commission (Human Rights Act 1998 Proceedings) Rules 2006

In force **20 September**. These Rules designate the Proscribed Organisations Appeal Commission (POAC) as the appropriate body to hear appeals on human rights grounds against a decision by the Home Secretary

- a) not to de-proscribe an organisation, or
- b) to refuse an application that an alternative name for an organisation should cease to be used.

These new rules have been introduced because the existing Rules (which these replace) did not cover the alternative name procedure which was introduced by the Terrorism Act 2006.

SI 2299/2006 The Proscribed Organisations (Applications for Deproscription etc.) Regulations 2006

In force **20 September**. These Regulations set out the procedures for

- a) applications to the Secretary of State for the de-proscription of organisations listed in Schedule 2 of the Terrorism Act 2000, and
- b) for applications to the Secretary of State that an alternative name for a proscribed organisation should cease to be used.

These new regulations have been introduced because the existing regulations (which they replace) did not cover applications in relation to the alternative names procedure that was introduced by Terrorism Act 2006.

SI 2304/2006 The Measuring Instruments (Taximeters) Regulations 2006

These Regulations implement Directive 2004/22/EC (the Measuring Instruments Directive) (MID) in respect of taximeters, which are instruments used to measure the distance travelled by a taxi and the fare accrued by virtue of the distance travelled or the time which has elapsed.

These Regulations apply, with certain exceptions, to taximeters intended for use for the protection of the consumers which are first placed on the market or put into use on or after 30 October 2006.

Regulations 1, 2, 7, 9 and 10 and Part 1 of Schedule 2 come into force on **29 September**.

The remaining regulations come into force on **30 October**.

SI 2309/2006 The Armed Forces Act 2001 (Commencement No 7) Order 2006

In force **25 August**. This Order brings into force Section 29 (and thereby Schedule 4) and Section 30 of the Armed Forces Act 2001. Section 29 simply gives effect to Schedule 4 to the 2001 Act. Schedule 4 brings into force amendments to the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957, which concern the circumstances in which a person may continue to be held in custody, and, where a person is released, the requirements which may be imposed on him in order to secure his attendance at any future hearing. The amendments make provision for when matters relating to custody shall be dealt with by a judicial officer or by the judge advocate in relation to a court-martial, and also when a person is released from custody after charge or during court-martial proceedings.

Section 30 enables the Secretary of State by Order to make provision for conditional release from custody pending the outcome of an appeal from a court-martial, a summary appeal court or a Standing Civilian Court hearing. This is equivalent to the award of bail pending appeal in the civilian system, but as the term 'bail' does not apply in the Service system the term 'conditional release' is used instead. Section 30 also amends Section 42 of the Courts-Martial (Appeals) Act 1968 by removing any restriction on who may be granted 'bail' pending an appeal from the Courts-Martial Appeal Court to the House of Lords. The right to be granted 'bail' was hitherto restricted to civilians subject to service law.

SI 2316/2006 The Air Navigation (Amendment) Order 2006

In force **30 September**. This Order empowers the Secretary of State for Transport to direct aircraft operators to make available certain data on passengers and crew to the authorities of a country outside the European Economic Area to which the aircraft is being flown.

Failure without reasonable excuse to comply with a direction will be an offence and will render the operator liable on summary conviction to a fine not exceeding level 4 on the standard scale.

SI 2320/2006 The Road Vehicles (Registration and Licensing) (Amendment) Regulations 2006

In force **1 October**. These Regulations require relevant vehicles meeting prescribed emissions standards to be registered before 1 October 2006 if they are to be eligible for a Reduced Pollution Certificate (RPC). Vehicles which hold a valid RPC are entitled to a reduced rate of vehicle excise duty (VED). The rate is reduced because compliance with the emission standards is voluntary and in advance of being required to do so. The relevant vehicles are goods vehicles, buses, haulage vehicles and vehicles used for carrying loads which are of exceptional size or weight. The emissions standard is known as Euro IV.

**SI 2326/2006 The Criminal Justice and Public Order Act 1994
(Application to the Armed Forces) Order 2006**

In force **26 September**. This Order applies the provisions (with some modifications) of Sections 34, 36, 37 and 38 of the Criminal Justice and Public Order Act 1994, to proceedings which govern the armed forces.

These provisions have the following effect:

- ◆ Section 34 applies when an accused fails to mention facts when questioned under caution or when he is charged.
- ◆ Section 35 makes provision for the effect of an accused's silence at trial.
- ◆ Section 36 applies when an accused is arrested and fails or refuses to account for objects, substances or marks (either on his person or clothing or footwear, or in the place where he is arrested, or otherwise in his possession).
- ◆ Section 37 applies when an accused is arrested and fails or refuses to account for his presence at a particular place.
- ◆ Section 38 is an interpretation and savings provision which relates to Sections 34 to 37.

**SI 2373/2006 The Gangmasters (Licensing Conditions) (No 2) Rules
2006**

In force **1 October**. These Rules revoke and replace the Gangmasters (Licensing Conditions) Rules 2006. They establish the new procedure for licensing gangmasters covered by the provisions of the Gangmasters (Licensing) Act 2004, and the conditions that will apply to the licences.

**SI 2379/2006 The Statutory Maternity Pay, Social Security
(Maternity Allowance) and Social Security
(Overlapping Benefits) (Amendment) Regulations 2006**

In force **1 October**. The Regulations make changes to Statutory Maternity Pay (SMP) and Maternity Allowance (MA) as a result of improvements introduced by the Work and Families Act 2006. See article on page 7.

**SI 2406/2006 The Gangmasters (Licensing) Act 2004
(Commencement No 3) Order 2006**

In force **1 October**. This Order brings into force certain provisions of the Gangmasters (Licensing) Act 2004. These are:

- ◆ Section 6(1) (prohibition of unlicensed activities) for purposes related to work falling within Section 3(1)(a) and (c).
- ◆ Section 11 (register of licences).
- ◆ Section 12 (offences: acting as a gangmaster, being in possession of false documents etc) for purposes related to work falling within Section 3(1)(a) and (c).
- ◆ Section 13(3) (power to make regulations as to what constitutes "reasonable steps").
- ◆ Section 14 (offences: supplementary provisions).

- ◆ Section 27 (exclusion of provisions relating to employment agencies and businesses) for purposes related to work falling within Section 3(1)(a) and (c).
- ◆ Section 28 (application of Act to Northern Ireland) in so far as it relates to paragraphs 12, 13, 14 and 20 of Schedule 2.
- ◆ Paragraphs 12, 13 and 14 of Schedule 2.
- ◆ Paragraph 20 of Schedule 2 for purposes related to work falling within Section 3(1)(a) and (c).

SI 2408/2006 The Employment Equality (Age) (Amendment) Regulations 2006

In force **30 September**. These Regulations postpone until 1 December 2006 the date on which certain provisions of the Age Regulations shall come into force. These provisions are:

- ◆ Regulation 7 (Applicants and Employees).
- ◆ Regulation 24 (Relationships which have come to an end) (but only in so far as they relate to the payment of contributions to a pension scheme, admission to a pension scheme and arrangements which relate to the provision of benefits from a pension scheme).
- ◆ Regulation 11 (Pension Schemes) and Schedule 2 (Pension Schemes).

SI 2491/2006 The Criminal Defence Service Act 2006 (Commencement) Order 2006

In force **2 October**. This Order brings into force Sections 1 to 4 of the Criminal Defence Service Act 2006. Section 5 of the Act came into force on Royal Assent.

SI 2494/2006 The Criminal Defence Service (Representation Orders: Appeals etc.) Regulations 2006

In force **2 October**. These Regulations provide for appeals or renewed applications, where an individual involved in criminal proceedings has been refused publicly funded representation on the grounds that the interests of justice do not require him to be granted an order giving a right to such representation.

SI 2525/2006 The Refugee or Person in Need of International Protection (Qualification) Regulations 2006

In force **9 October**. These Regulations apply to any person who is not a British citizen who makes an application for asylum on or after 9 October 2006 and to any application for asylum which has not been decided and any immigration appeal brought under the Immigration Acts which has not been finally determined.

Notes

CENTRE X

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Legal Validation and Research

Yew Tree Lane, Pannal Ash, Harrogate
North Yorkshire, HG2 9JZ
Telephone 01423 876664
www.centrex.police.uk/digest