College of Policing

Digest

March 2014

A digest of police law, operational policing practice and criminal justice

The Digest is a primarily legal environmental scanning publication intended to capture and consolidate topical and key issues, both current and future, impacting on all areas of policing.

During the production of the Digest, information is included from 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.

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Overview

This month's edition of the Digest contains a summary of issues relating to police law, operational policing practice and criminal justice.

There are reports of cases on:

- challenges to whole life orders advanced under Article 3 of the European Convention on Human Rights
- the proper ambit of the offence of aggravated trespass
- challenges to the way in which operations to maintain public order were conducted over the Royal Wedding.

We look in detail at:

- the annual report on ending gang and youth violence 2013
- the youth justice annual statistics 2011/12
- the current covert surveillance consultation
- the Home Office review of Part 4 of the Policing and Crime Act 2009 on gang injunctions.

We also look at:

- the new definition of business crime
- circular 001/2014 on qualifications, experience, secondments and returning officers
- the Crisis Care Concordat
- the Home Office information pack on theft from the person.

The progress of proposed new legislation through parliament is examined and relevant Statutory Instruments are summarised.

Legislation

Bills before parliament 2013/14 – progress report

On **8 May 2013**, the Queen's Speech unveiled the legislative programme for the 2013-2014 parliamentary session. The progress of Bills can be found at: **http://services.parliament.uk/bills/**

Anti-Social Behaviour, Crime and Policing Bill

This Bill is divided into 13 separate parts. The Bill was returned to the House of Commons with Lords amendments. These amendments were considered on the floor of the House on **4 February 2014**. The Commons disagreed with Lords Amendment 112 and have made an amendment in lieu.

The Bill is now in ping pong. During ping pong the Bill travels back and forth between the two Houses, until both Houses agree on the text of the Bill.

Part 1 – Injunctions to prevent nuisance and annoyance

This is a purely civil injunction, available in the county court for adults and the youth court for 10 to 17-year-olds. It will allow a wide range of agencies, including the police, local councils and social landlords to deal quickly with anti-social individuals, nipping behaviour in the bud before it escalates.

Part 2 – Criminal Behaviour Orders

This will be available following a conviction for any criminal offence and can address the underlying causes of the behaviour through new, positive requirements. Breach will be a criminal offence with a maximum penalty of up to five years in prison for adults. It will demonstrate to the offender and the community the seriousness of the breach.

Part 3 – Dispersal Powers

This will enable officers to require a person who has committed, or is likely to commit, anti-social behaviour to leave a specified area and not return for up to 48 hours.

Part 4 – Community Protection Notices

This part is split into three chapters covering:

- Community Protection Notices
- Public Spaces Protection Orders
- Closure orders.

These new powers will be faster, more effective and available to more agencies to use to tackle a whole range of place-specific anti-social and criminal behaviour.

Part 5 – Recovery of possession of dwelling-houses: anti-social behaviour grounds

Anti-social behaviour can have a negative impact on neighbourhoods and communities. Social landlords have a key role in tackling anti-social behaviour. Provisions in the Bill introduce a new ground for possession to speed up the process in the most serious cases of anti-social behaviour, bringing faster relief to victims and communities.

Part 6 – Local involvement and accountability

The new Community Remedy will give victims of low-level crime and anti-social behaviour a say in the punishment of the offender out of court, while the Community Trigger will give victims of persistent anti-social behaviour the right to demand action where they feel their problems have not been dealt with.

Part 7 – Dangerous dogs

The proposals in the Bill are part of a wider package of measures to reduce dog attacks and make owners more responsible for their dogs. These powers sit alongside anti-social behaviour powers in the Bill that can be used to tackle dangerous dogs and irresponsible owners.

Part 8 – Firearms

The Bill targets those who sell or transfer prohibited weapons or ammunition by introducing a new offence and increased sentencing powers for the courts.

Part 9 – Forced marriages

The Bill makes two changes to tackle forced marriage more effectively:

- criminalising forcing someone to marry
- criminalising the breach of Forced Marriage Protection Orders.

Part 10 – Policing

The Bill builds on government reform of the policing landscape towards greater freedom for the police to take local decisions that fit the needs of the areas they serve. It will enhance the integrity and professionalism of the police by extending the powers and remit of the Independent Police Complaints Commission and the College of Policing.

The Bill will also make changes to the body that reviews police pay by abolishing the Police Negotiating Board and replacing it with an independent Police Remuneration Review Body. The new body will make evidence-based recommendations on police remuneration.

In addition, Clause 124 introduces Schedule 6, which makes amendments to the port and border security powers in Schedule 7 to the Terrorism Act 2000 and the associated Schedule 8 to that Act which governs the detention of persons detained under Schedule 7.

Part 11– Extradition

The measures on extradition proposed in the Bill are designed to improve the efficiency of the operation of the Extradition Act 2003 and follow from a review of the UK's extradition arrangements by Rt. Hon Sir Scott Baker.

Part 12 – Criminal justice and court fees

The Bill will improve the speed and efficiency of the criminal justice system's response to low level offending by enabling the police to prosecute uncontested minor offences of shoplifting. It will extend the scope of the statutory witness protection scheme to cover other vulnerable individuals. It will also ensure that offenders sentenced to custody will contribute to the costs of supporting victims by removing the power of magistrates' courts to add additional days to a sentence of imprisonment instead of the victim surcharge.

Part 13 – General

This part contains minor and consequential amendments to other enactments and general provisions including provisions in respect of the parliamentary procedure to be applied to orders and regulations made under the Bill.

Offender Rehabilitation Bill

This Bill makes a number of changes to the release arrangements set out in the Criminal Justice Act 2003 for offenders serving custodial sentences of less than 12 months and those serving sentences of between 12 months and two years. The Bill is designed to ensure that all adult offenders serving custodial sentences can be supervised on release for at least 12 months.

This Bill has now completed all its stages in the House of Commons. It will now return to the House of Lords for consideration of amendments.

In particular, the Bill:

- applies arrangements for release under licence to offenders serving fixed-term custodial sentences of more than one day but less than 12 months
- introduces new supervision arrangements for offenders released from fixed-term custodial sentences of less than two years so that all offenders are supervised in the community for at least 12 months

- creates a new court process and sanctions for breach of supervision requirements for offenders serving fixed-term custodial sentences of less than two years
- introduces a requirement that offenders sentenced to an extended determinate sentence must have an extension period of supervision of at least one year
- introduces for offenders released from custody a new drug appointments condition for the licence or supervision period, and expands the existing drug testing requirement for licences to include Class B drugs and makes it available during the supervision period
- introduces a requirement that any juvenile who reaches his or her 18th birthday before being released from the custodial element of a Detention and Training Order (DTO) should spend at least 12 months under supervision in the community.

The Bill also makes some changes to the arrangements for community orders and suspended sentence orders. In particular, it:

- creates a new 'rehabilitation activity requirement' for community orders and suspended sentence orders and in doing so abolishes the 'supervision' and 'activity' requirements
- introduces new arrangements for the designation of 'responsible officers' in relation to the supervision of offenders and makes clear that the responsibility for bringing breach action lies with the public sector
- introduces new arrangements for offenders serving community orders or suspended sentence orders to obtain permission from the responsible officer or the court before changing their place of residence.

Statutory Instruments

SI 2013/2319 The Police Reform and Social Responsibility Act 2011 (Transitional Provision) Order 2013

This Order comes into force on **31 March 2014**. It ceases to have effect on the coming into force of provision in any enactment which makes amendments to Schedules 2 and 4 to the 2011 Act with the same effect as the modifications made by article 2. In this Order 'the 2011 Act' means the Police Reform and Social Responsibility Act 2011.

Under Part 1 of the Police Reform and Social Responsibility Act 2011 (the 2011 Act) chief constables in England and Wales and the Commissioner of Police of the Metropolis (the Commissioner) were established as corporations sole with the power to employ staff to enable them to exercise their functions or otherwise to assist their police forces.

Part 3 of Schedule 15 to the 2011 Act provides for the making of transfer schemes under which existing police civilian staff are to become employees of the relevant chief constable or the Commissioner. When these transfer schemes take effect, it will be for chief constables and the Commissioner to account for the pension liabilities in relation to these staff.

This Order modifies Schedules 2 and 4 to the 2011 Act, with the effect that chief constables and the Commissioner are treated as though they were subject to various local government enactments concerning accounting practices, and particularly the charging of expenditure to a revenue account. The purpose is to ensure that staff pension liabilities are treated in accordance with accepted practices in the accounts of chief constables and the Commissioner.

The relevant local government enactments are: sections 21 and 22 of the Local Government Act 2003; Parts 6 and 7 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (SI 2003/3146) (and regulations 1 and 4(2) of those Regulations in so far as they apply for the purposes of Parts 6 and 7); Parts 5 and 6 of the Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003 (SI 2003/3239) (and regulations 1 and 4(2) of those Regulations in so far as they apply for the purposes of Parts 5 and 6).

The modifications made by this Order cease to have effect on the coming into force of amendments to the 2011 Act having the same effect. Such amendments are made by clause 122 of the Anti-Social Behaviour, Crime and Policing Bill.

SI 2014/79 The Police Pensions (Amendment) Regulations 2014

These Regulations, which extend to England and Wales, come into force on **13 March 2014**.

These Regulations amend the Police Pensions Regulations 1987 (the 1987 Regulations) and the Police (Injury Benefit) Regulations 2006 in consequence of the Marriage (Same Sex Couples) Act 2013. Section 11 of the Act provides for the law of England and Wales to apply to marriages of same sex couples as it applies to marriages of opposite sex couples. Schedule 3 includes 'glossing' provisions which require references in legislation to marriage, married couples and people who are married to be read as including references to marriages of same sex couples, and there is similar provision in relation to people who are living together as a married couple.

In the case of legislation concerning survivor benefits in public service pension schemes where people in a marriage are treated differently to people in a civil partnership, the Government's policy is to make contrary provision with the effect that survivors of marriages of same sex couples are treated in the same way as surviving civil partners, rather than survivors of marriages of opposite sex couples.

These Regulations implement this policy in the case of the 1987 Regulations and the Police (Injury Benefit) Regulations 2006 by amending the relevant references to widowers and civil partners. The reference to a widower in regulation A12(2) of the 1987 Regulations is redundant and is omitted altogether.

Regulation 4 of these Regulations amends regulation G6 of the 1987 Regulations. Widowers' benefits, along the same lines as those available to widows, were introduced into those Regulations with effect from **17 May 1990**. Regulation G6 was added in 1994 in order to give female members the opportunity to make additional payments to secure that service between **6 April 1988** and **17 May 1990** counted in the calculation of these widowers' benefits. On the introduction of civil partnerships in 2006, regulation G6 was amended so as to extend a further opportunity to make such payments to female members who had not previously elected to do so because they related only to benefits for widowers. Regulation 4 makes similar amendments to regulation G6 to reflect the introduction of marriages of same sex couples.

Regulation 5 amends regulation J1 (4B) of the 1987 Regulations. Paragraph (4B) entitles a surviving civil partner of a deceased police officer to a pension of one half of that police officer's guaranteed minimum. Regulation 5 of these Regulations amends paragraph (4B) to put a surviving spouse of the same sex as the deceased police officer in the same position as a surviving civil partner of a deceased police officer.

Regulation 6 amends paragraph 1 of Part I of Schedule C to the 1987 Regulations. Schedule C deals with widows' awards, and paragraph 1 deals with the amount of a widow's ordinary pension. Regulation 6 of these Regulations inserts wording which puts surviving spouses in the same position as widowers and surviving civil partners in relation to the calculation of pension benefits and different periods of pensionable service.

Regulation 7 amends Part III of Schedule C to the 1987 Regulations, which deals with widows' accrued pensions. Regulation 7 inserts wording to put surviving spouses of the same sex as a deceased police officer in the same position as surviving spouses of a deceased opposite sex police officer in relation to accrued pension rights. Surviving spouses are put in the same position as surviving civil partners in relation to accrued pension rights. A surviving spouse is put in the same position as a man or a surviving civil partner of a woman in relation to the limit on the amount of flat rate award under Regulation E10 of the 1987 Regulations.

Regulation 8 amends Part IV of Schedule C to the 1987 Regulations, to put surviving spouses in the same position as surviving civil partners in relation to widows' pensions in case of post-retirement marriage or civil partnership.

Regulation 9 amends Part V of Schedule C to the 1987 Regulations. In paragraph 1(a), surviving same sex spouses are put in the same position as widowers in relation to widows' or widowers' requisite benefit pensions. In paragraph 1(b), male surviving same sex spouses are put in the same position as surviving civil partners in relation to widowers' requisite benefit pensions. In paragraph 1A, female surviving same sex spouses are put in the same position as female surviving civil partners in relation to widowers' requisite benefit pensions.

These Regulations also amend regulations 7 and 13 of the Police (Injury Benefit) Regulations 2006 to put surviving same sex spouses in the position of surviving opposite sex spouses, or surviving civil partners. Schedule 5 to the Police (Injury Benefit) Regulations 2006 is amended in relation to an adult dependent relative's special pension so that same sex spouses who were members of the pension scheme are in the same position as if they were opposite sex spouses or were in a civil partnership.

SI 2014/144 The Football Spectators (2014 World Cup Control Period) Order 2014

This Order came into force on **24 February 2014**.

This Order prescribes the control period under the Football Spectators Act 1989 (the 1989 Act) for the 2014 FIFA (Fédération Internationale de Football Association) World Cup in Brazil. The control period begins on **2 June 2014**, which is ten days before the first match in the tournament, and ends when the last match in the tournament is finished or cancelled. The last match is due to be played on **13 June 2014**.

During the control period, powers under sections 21A and 21B of the 1989 Act (summary powers to detain and refer to a court with a view to making a banning order) are exercisable. An individual subject to a banning order may be required to surrender his or her passport during a control period under section 19 of the 1989 Act. In addition, bail conditions can be imposed on an individual requiring that person to surrender his or her passport during a control period under section 14A (banning orders made on conviction of an offence) and section 14B (banning orders made on complaint) of the 1989 Act.

SI 2014/220 The Football Spectators (2014 World Cup Control Period) (Amendment) Order 2014

This Order came into force on **24 February 2014**.

This Order amends the Football Spectators (2014 World Cup Control Period) Order 2014 to correct an erroneous reference to **13 June 2014** as being the date of the last match in the 2014 FIFA (Fédération Internationale de Football Association) World Cup in Brazil, when in fact the correct date is **13 July 2014**.

The effect of this Order is that the period from **2 June 2014** to **13 July 2014** is a control period under the Football Spectators Act 1989 (the Act) for the 2014 FIFA (Fédération Internationale de Football Association) World Cup in Brazil.

SI 2014/163 The Criminal Justice (Electronic Monitoring) (Responsible Person) Order 2014

This Order came into force at 0700 on **1 February 2014**.

This Order amends the Criminal Justice (Sentencing) (Programme and Electronic Monitoring Requirements) Order 2005 (SI 2005/963), the Bail (Electronic Monitoring of Requirements) (Responsible Officer) Order 2008 (SI 2008/2713), the Criminal Justice (Sentencing) (Curfew Condition) Order 2008 (SI 2008/2768) and the Youth Rehabilitation Order (Electronic Monitoring Requirement) Order 2009 (S.I. 2009/2950).

The amendments to each of these Orders made in articles 3(a), 7, 10(1) (b) and 13 name employees of Capita Business Services Limited as the persons responsible, in certain circumstances, for the electronic monitoring of persons subject to an electronic monitoring requirement as a condition of bail or under a youth rehabilitation order, curfew or community order. The changes came into force on **1 February 2014 at 0700** and reflect the contractual changes which take effect at the same time on that day.

Articles 3(b) and 5 of this Order also amend the Criminal Justice (Sentencing) (Programme and Electronic Monitoring Requirements) Order 2005 to reflect that, in certain circumstances, employees of G4S Care and Justice Services (UK) Limited are responsible for the electronic monitoring of persons subject to an electronic monitoring requirement under a community order.

Article 10(1) (a) and (2) makes an amendment to reflect that employees of G4S Monitoring Technologies Limited are the persons responsible for the electronic monitoring of persons residing in Scotland who are subject to a curfew condition imposed under the law of England and Wales where those curfew conditions include an electronic monitoring requirement.

SI 2014/198 The Protection of Freedoms Act 2012 (Guidance on the Making or Renewing of National Security Determinations) Order 2014

This Order, which came into force on **4 February 2014**, brings into force the guidance which section 22(1) of the Protection of Freedoms Act 2012 (the Act) requires the Secretary of State to give about the making or renewing of national security determinations under a provision mentioned in section 20(2) (a) of the Act. Under section 22(2) of the Act, any person authorised to make or renew a national security determination under section 20(2) (a) must have regard to this guidance.

SI 2014/239 The Police Act 1997 (Criminal Records) (Amendment) Regulations 2014

These Regulations come into force on **10 March 2014**.

These Regulations insert a new regulation in the Police Act 1997 (Criminal Records) Regulations 2002 to prescribe a fee in relation to an application for the issue of a criminal conviction certificate within the meaning of section 112 of the Police Act 1997. These Regulations also prescribe the details to be provided in relation to a conditional caution and conviction disclosed under section 112 of the Act. Finally, these Regulations prescribe the meaning of 'central records', which are the records where convictions or conditional cautions are held for the purposes of section 112 of the Act.

SI 2014/238 The Disclosure and Barring Service (Core Functions) (Amendment) Order 2014

This Order comes into force on **10 March 2014**.

This Order amends the Disclosure and Barring Service (Core Functions) Order 2012 to remove various functions relating to the issue of a criminal conviction certificate (within the meaning of section 112 of the Police Act 1997) from that Order, so that they are no longer core functions within the meaning of paragraph 8 of Schedule 8 to the Protection of Freedoms Act 2012. This will allow those functions to be delegated by the Disclosure and Barring Service under paragraph 7 of Schedule 8 to the Protection of Freedoms Act 2012.

SI 2014/237 The Police Act 1997 (Commencement No. 12) (England and Wales) Order 2014

This Order brings into force section 112 of the Police Act 1997 in respect of England and Wales on **10 March 2014**. Section 112 of that Act provides for the Disclosure and Barring Service to provide a criminal conviction certificate to an applicant who pays the prescribed fee.

SI 2014/258 The Crime and Courts Act 2013 (Commencement No. 8) Order 2014

The following provisions of the Crime and Courts Act 2013 came into force on **24 February 2014**—

(a) section 45 (deferred prosecution agreements); and

(b) schedule 17 (deferred prosecution agreements).

A deferred prosecution agreement is an agreement between a prosecutor and an organisation facing prosecution for an economic or financial offence specified in Part 2 of Schedule 17 to the Act, by virtue of which agreement the organisation agrees to comply with a range of terms and conditions and the prosecutor agrees to instigate but then defer criminal proceedings for the alleged offence on approval of the deferred prosecution agreement.

Case law

Crime

Richardson and another v Director of Public Prosecutions [2014] UKSC 8

A hearing in the Supreme Court before Lady Hale, Deputy President, Lord Kerr, Lord Hughes, Lord Toulson and Lord Hodge. The full case report can be found at **http://www.bailii.org/uk/cases/UKSC/2014/8.html**

This appeal concerns the proper scope of the offence of aggravated trespass contrary to section 68 of the Criminal Justice and Public Order Act 1994 (CJPOA). Section 68, so far as is relevant, provides:

> (1) A person commits the offence of aggravated trespass if he trespasses on land and, in relation to any lawful activity which persons are engaging in or are about to engage in on that or adjoining land, does there anything which is intended by him to have the effect—
>
> (a) of intimidating those persons or any of them so as to deter them or any of them from engaging in that activity,
>
> (b) of obstructing that activity, or
>
> (c) of disrupting that activity…
>
> (2) Activity on any occasion on the part of a person or persons on land is 'lawful' for the purposes of this section if he or they may engage in the activity on the land on that occasion without committing an offence or trespassing on the land…

In this case the defendants mounted a non-violent protest in a London shop, objecting to the shop because its merchandise was connected to an Israeli-owned business in the West Bank. The shop specialised in selling beauty products derived from Dead Sea minerals, with the vast majority of the shop's products originating from the Dead Sea. The defendants' objection was grounded in the facts that those products were produced by an Israeli company in an Israeli settlement adjacent to the Dead Sea in the West Bank, that is to say in the Occupied Palestinian Territory (OPT) and the factory was said to be staffed by Israeli people who had been encouraged by the Israeli Government to settle there.

The defendants arrived at the shop on a trading day equipped with a heavy concrete tube. With assistance from colleagues, they connected their arms through the tube anchored by a chain secured by a padlock to which they said they had no key. Their intention was to disrupt the shop's trading; the district judge found that they had no intention of buying anything.

They failed to leave when asked to do so. The manager concluded that trading was impossible, so closed the shop and called the police. Save for refusing to free themselves, the police found the defendants to be polite and cooperative. It was necessary to use tools to break through the concrete to release the defendants. Once this had been done, they were arrested and in due course charged with the offence contrary to section 68. The Crown's case was that they had intentionally disrupted the lawful activity of retail selling.

There are four elements to the offence under section 68, namely:

- the defendant must be a trespasser on the land
- there must be a person or persons lawfully on the land (that is to say not themselves trespassing), who are either engaged in or about to engage in some lawful activity
- the defendant must do an act on the land
- which is intended by him to intimidate all or some of the persons on the land out of that activity, or to obstruct or disrupt it.

The defendants did not have a defence to the first, third and fourth elements of the offence. They contested the charge on the basis that the activity being carried on in the shop was not lawful, and that it involved the commission of criminal offences for one or more of the following reasons:

- 'The company running the shop was guilty of aiding and abetting the transfer by the Israeli authorities of Israeli citizens to a territory (the OPT) under belligerent occupation; the transfer was said to be contrary to article 49 of the Fourth Geneva Convention of August 1949, and aiding and abetting it to be an act ancillary to a war crime, made a criminal offence in England and Wales by sections 51 and 52 of the International Criminal Court Act 2001.'
- 'The products sold in the shop were criminal property, as the product of this offence of aiding and abetting a war crime; accordingly the company running the shop, which at least suspected this, was guilty of the offence of using or possessing criminal property, contrary to section 329 of the Proceeds of Crime Act 2002.'
- 'The products had been imported into the UK as if covered by an EC-Israeli Association Agreement, which conferred certain tax or excise advantages. But the European Court of Justice has ruled that products originating in the OPT do not qualify for this treatment. Accordingly, it was said, the company running the shop was guilty of the offence of cheating the Revenue.'
- 'The products sold in the shop were labelled 'Made by Dead Sea Laboratories Ltd, Dead Sea, Israel.' This was said to be false or misleading labelling because the OPT is not recognised internationally or in the UK as part of Israel. Accordingly the company running the shop was guilty of one or both of two labelling offences, contrary to the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277) or the Cosmetic Products (Safety) Regulations 2008 (SI 2008/1284).'

The defendants were convicted in the magistrates' court and their appeal by case stated was dismissed by the Divisional Court of the Queen's Bench. The live issue related to the meaning of the expression 'lawful activity' and in particular to when the commission of a criminal offence by the occupant whose activity was targeted by the trespasser has the effect of making unlawful the occupant's activity. The question certified by the Divisional Court was:

> Should the words 'lawful activity' in section 68 Criminal Justice and Public Order Act 1994 be limited to acts or events that are 'integral' to the activities at the premises in question?

Lawful activity

The following propositions were not in dispute in argument in the present case:

- Section 68 is concerned only with a criminal offence against the law of England and Wales. Thus a defendant trespassing at a military base was not entitled to assert that the ordinary activities of the base were unlawful because the UK Government was, or might be, committing an act of international aggression in preparing to despatch military hardware to Iraq.
- In a prosecution under section 68 the Crown is not required to disprove the commission of every criminal offence which could conceivably be committed by the occupant(s) of the land. A specific offence or offences must be identified by the defendant and properly raised on the evidence. Thus a bare assertion by trespassers at military bases that the Government may have aided and abetted a war crime did not raise the issue.
- Where, however, the issue of a relevant specific criminal offence by the occupant(s) of the land is fairly raised by evidence, the onus lies upon the Crown to disprove it to the criminal standard of proof, in order for it to prove, to that standard, that the defendant trespasser has committed the offence contrary to section 68.

The court considered the question of whether any criminal offence committed by the occupants has the effect of making the activity unlawful and the cases discussed illustrated the problem posed by the wording of section 68(2). Part of the difficulty was said to arise from the use of the word 'may' in the definition of lawful activity:

> Activity…is 'lawful'…if he or they may engage in the activity…without committing an offence or trespassing on the land.

It was submitted by the Crown that this means that an activity remains lawful even if the offence is committed, providing that the activity could have been accomplished without the offence. The court stated that although this might be a possible construction on the face of the statutory language, it would deprive the defence of most of its force in that it would mean that even if the occupants were engaged in a thorough-going criminal act which represented their central purpose in being on the land, the defence would not operate if they could have altered the way they did things so as to do them lawfully. It would have the effect of treating as lawful something

which was anything but lawful, and of examining not the activity which was actually carried out, but an activity which was not. The court noted that that construction was rejected by the Divisional Court in both the case of Aycliffe v DPP [2005] EWHC 684 (Admin), [2006] QB 277 and also in the present case. The court stated that the true meaning of section 68 had to be found despite the use of the word 'may', of which it was said that this word was perhaps used because the section has to apply to activity by the occupant which has not yet commenced. It was said that the true meaning lies in examining the activity which was or was to be carried out on the land.

In the present case, neither side contended that every criminal offence committed on the land provides the defendant with an escape from the section. It was accepted by counsel for the appellants that a merely collateral offence, such as an employee in the shop being paid less than the national minimum wage, would not provide the defendants with a fortuitous defence.

The court stated that the intention of the section is clearly to add the sanction of the criminal law to a trespass where, in addition to the defendant invading the property of another where he is not entitled to be, he there disrupts an activity which the occupant is entitled to pursue. Section 68(2) was therefore said to mean that the additional criminal sanction is removed when the activity which is disrupted is, itself, unlawful, which may be either because the occupant is himself trespassing, or because his activity is criminal. It was stated that not every incidental or collateral criminal offence can properly be said to affect the lawfulness of the activity, nor to render it criminal. It will only do so when the criminal offence is integral to the core activity carried on. It will not do so when there is some incidental or collateral offence which is remote from the activity. Previous decisions in the cases of Hibberd v DPP (unreported) 27 November 1996 and Nelder v DPP The Times, 11 June 1998 were both said to be consistent with this approach. The Supreme Court stated that the certified question ought to be answered 'Yes'.

The court confirmed that section 68(2) does not arise in the case of an apparently lawful activity unless and until it is raised on the evidence, as in the case of Ayliffe. It was also said to be correct that a criminal offence, if raised on the evidence, would be relevant to section 68(2) only if it was integral to the core activity in question and if it was integral, it may involve investigation of extraneous events, such as the questions raised by the defence concerning international political events. It was stated that it does sometimes fall to magistrates to examine complex issues which are sometimes of international import. So long as the issue is not a non-justiciable one, such as the nation's foreign policy, there is no inhibition on this. Further, it was stated that the court of trial should not be inhibited from doing so, as required by the case, by consideration of the fact that a finding may be made against the occupant of the land, such as the shopkeeper here, who was not a party to the trial. The only such finding that might be made was that the Crown had not made out its case because there appeared to have been an activity on the land which was not proved to have been lawful. That would not be a conviction of the shopkeeper nor would it be a finding binding upon him.

The court went on to state that the application of these principles in the present case demonstrated that the conclusions of the district judge and the Divisional Court were correct and that the defendants were rightly convicted.

The war crime argument

Having regard the International Criminal Court Act 2001, the court stated if a person, including the shopkeeper company, had aided and abetted the transfer of Israeli civilians into the OPT it might have committed an offence against the provisions. However, it was said that there was no evidence beyond that a different company, namely the manufacturing company, had employed Israeli citizens at a factory in the West Bank and that the local community, which has a minority shareholding in that company, had advertised its locality to prospective Israeli settlers. It was said that it was very doubtful that to employ such people could amount to counselling or procuring or aiding or abetting the Government of Israel in any unlawful transfer of population. Even if the two companies had been the same, such a crime of assistance was said to not be an integral part of the activity carried on at the shop, namely retail selling, which was perfectly lawful. The defendants trespassed, staged a sit-in which was intended to, and did, stop that lawful activity. As such they committed the offence under section 68.

With regard to the argument concerning money laundering, the court stated that if there was no aiding and abetting of the unlawful movement of population, the products of the factory could not be property obtained 'by or in return for' criminal conduct. Even if there had been aiding and abetting, and assuming the shopkeeping company suspected this to be the case, the criminal property offence could not be said to be integral to the activity of selling; it was a collateral matter which did not render selling unlawful.

The cheating the Revenue argument

It was said to be clear that even if the stock in the shop had been imported into the UK under favourable terms reserved for goods properly deriving from Israel as distinct from those produced in the OPT (there was no evidence of this), this could not render the subsequent sale of such goods as unlawful. At most, this would mean that the importer was liable to repay the Revenue any unpaid duty. This was said to be a classic example of a collateral offence which does not affect the lawfulness of the core activity of the shop. On the assumption that this offence was committed by the shop company, it would provide no defence to the defendants.

The argument from labelling offences

With regard to the Consumer Protection from Unfair Trading Regulations 2008, it was said that regulation 5 does not make the selling of mislabelled goods an offence. If the offence is committed, the seller is guilty but the sale itself is not an offence, rather it is the application of the misleading description. The court stated that this suggested that the offence is collateral to the activity of selling rather than integral to it. However, it was noted that of all the offences postulated by the defendants, this one came the closest to the core activity of selling undertaken by the shop when the defendants trespassed. This was not resolved further on the basis that the district judge had found that even if all the other elements of the offence were made out, the condition required by regulation 5(2) (b) could not be established because there was no basis

for saying that the average consumer would be misled into buying the product when he otherwise would not have done so simply because the source was described as being Israel when it was the OPT; the source was correctly labelled as the Dead Sea.

Conclusion

All of the postulated offences were either not demonstrated to have been committed by the occupants of the shop at the time of the trespass or were at most collateral to the core activity of selling rather than integral to the activity. As such, the occupants of the shop were engaged in the lawful activity of selling at the time and section 68(2) provided no defence to the defendants. The Supreme Court found that the certified question should be answered 'yes' and the appeal was therefore dismissed.

Human rights

Regina and Ian McLoughlin and Regina and Lee William Newell [2014] EWCA Crim 188

A hearing in the Court of Appeal (Criminal Division) on appeal from the Crown Court at Leamington Spa and in the matter of a Reference under Section 36 of the Criminal Justice Act 1988 before the Lord Chief Justice of England and Wales, the President of the Queen's Bench Division, the Vice President of the Court of Appeal Criminal Division, Lord Justice Treacy and Mr Justice Burnett. The full case report can be found at **http://www.bailii.org/ew/cases/EWCA/Crim/2014/188.html**

Introduction

The statutory scheme for sentencing an adult guilty of murder is set out in the Murder (Abolition of Death Penalty) Act 1965 (the 1965 Act), the Criminal Justice Act 2003 (the 2003 Act) and Crime (Sentences) Act 1997 (the 1997 Act):

- Under section 1 of the 1965 Act, a trial judge must impose a life sentence for murder. Under section 269 of the 2003 Act, the judge must decide whether to make a minimum term of a fixed number of years or a whole life order.
- If a fixed minimum term order is made, the Parole Board has the power under the provisions of section 28 of the 1997 Act, commonly called the early release provisions, to direct release of the offender after the expiry of any minimum term set by the trial judge; it considers in essence the risk to the public if release is ordered. However, the Parole Board has no such power where a whole life order is made.
- A power of release is provided to the Secretary of State by section 30 of the 1997 Act, if there are exceptional circumstances which justify release on compassionate grounds.

The present cases challenged this scheme. This challenge was advanced under Article 3 of the European Convention on Human Rights and founded on decisions of the European Court of Human Rights in Strasbourg:

- On **12 February 2008**, the Grand Chamber of the court in Strasbourg decided in Kafkaris v Cyprus [2008] ECHR 143 that whilst a sentence of life imprisonment did not violate Article 3, there would be a violation if such a sentence was irreducible, ie, a sentence for the duration of the offender's life with no 'possibility' or 'hope' or 'prospect' of release from the sentence.
- In R v Bieber [2009] 1 WLR 223, the Court of Appeal held, in the light of the decision in Kafkaris that, as the Secretary of State had a power of release under section 30 of the 1997 Act, a sentence with a whole life order was not irreducible and thus not in violation of Article 3.

- On **17 January 2012** the Fourth Chamber of the Strasbourg Court in Vinter v UK [2012] 55 EHRR 34 held that there was no violation of Article 3. On **9 July 2012**, the Grand Chamber decided to hear the case.
- Prior to the hearing by the Grand Chamber, a special constitution of the Court of Appeal considered appeals where of the five appellants, four had received whole life orders and one a minimum term of 30 years. In its decision given in **November 2012**, R v David Oakes and others [2012] EWCA Crim 2435, [2013] 2 Cr App R (S) 22, the Court of Appeal concluded that whole life orders were not incompatible with Article 3 of the Convention.
- On **9 July 2013**, the Grand Chamber of the European Court of Human Rights gave its decision in Vinter v United Kingdom. It held that there had been a violation of Article 3 in relation to the whole life orders imposed on the basis that they were not reducible. This case was summarised in the **August 2013** edition of the Digest.

As such the Court of Appeal was specially constituted to consider, in the light of that decision, three appeals by defendants on whom a whole life order had been imposed and a reference by the Attorney General under section 36 of the CJA 1988 in a case where it was contended that the trial judge had been mistaken in his view that he was not able to impose a whole life order due to the decision in Vinter.

The hearing proceeded as an appeal by Newell on whom a whole life order had been imposed, and a reference by the Attorney General in the case of McLoughlin on the basis that the judge had made an error of law as to his powers and that the consequent failure to make a whole life order had resulted in an unduly lenient sentence.

The development of the legislative scheme

The fixing of the tariff and its reconsideration in exceptional circumstances

The Court of Appeal felt it important to summarise one aspect of the development of the legislative scheme and its practical operation due to the assistance it provided in understanding the submissions made.

On 30 November 1983 a scheme was introduced by the then Home Secretary that formalised the practice that had developed following the introduction of the mandatory life sentence for murder. Under that scheme a formal distinction was drawn between the penal element of a sentence (punishment, retribution and deterrence) and the element that protected the public from risk. This initially operated on the basis of a recommendation to the Home Secretary by the trial judge as to term required to reflect the penal element. This recommendation was not binding on the Home Secretary, who made his own determination of that period which was commonly known as the tariff period. Some whole life tariffs were imposed, though the vast majority of tariffs were for a determinate period. At the conclusion of a determinate tariff period, the Parole Board would review whether the offender should be released, having regard to the risk that he posed to the public. The decision on release was then made by the Home Secretary.

With regard to whole life tariffs, a policy was announced on 7 December 1994 by the then Home Secretary, creating an additional ministerial review when the prisoner had been in custody for 25 years, the purpose being to solely consider whether the whole life tariff should be converted to a tariff of a determinate period. The review would be confined to the considerations of retribution and deterrence. Where appropriate, further ministerial reviews would normally take place at five-yearly intervals thereafter.

That policy was modified by a different Home Secretary on 10 November 1997 whereby so far as the potential for a reduction in tariff was concerned the Home Secretary was open to the possibility that, in exceptional circumstances, including for example exceptional progress by the prisoner whilst in custody, a review and reduction of the tariff may be appropriate. This was considered when reviewing cases at the 25-year point of prisoners given a whole life tariff and in that regard consideration would be given to issues beyond the sole criteria of retribution and deterrence.

In R v Home Secretary ex p Hindley [1998] QB 751, a challenge by Myra Hindley to the whole life tariff imposed on her, the Divisional Court held that the modification in 1997 had the effect of correcting the previously unlawful policy set out in 1994. In the appeal to the House of Lords, counsel for the Home Secretary made clear that the Home Secretary was prepared to review any whole life tariff, even in the absence of exceptional circumstances.

Following successive decisions of the Strasbourg Court and of the House of Lords and an acceptance that such decisions on the liberty of an individual are properly decisions for the judicial branch of the state as opposed to the executive, policy and legislative changes were made. These had the effect of bringing both the fixing of the tariff period to reflect the penal element and the decision on the prisoner's safety for release under judicial control within the scheme summarised at the outset.

The duty of the judge under the Criminal Justice Act 2003

In order to set the penal element of the sentence of mandatory life imprisonment, the trial judge must determine the seriousness of the offence in accordance with the principles set out in Schedule 21 and any applicable guidelines of the Sentencing Council. The judge is not concerned with risk to the public on release. Paragraph 4 of Schedule 21 provides that the appropriate starting point where the seriousness of the offence or offences is exceptionally high should be a whole life order. The types of case that would normally fall within this category are:

- the murder of two or more persons, where each murder involves any of the following—
  - a substantial degree of premeditation or planning,
  - the abduction of the victim, or
  - sexual or sadistic conduct,
- the murder of a child which involves the abduction of the child or sexual or sadistic motivation,
- a murder done for the purpose of advancing a political, religious, racial or ideological cause, or
- a murder by an offender previously convicted of murder.

The power of release under section 30 of the Crime (Sentences) Act 1997

The power of the Secretary of State to release a prisoner is set out in section 30 of the 1997 Act:

> (1) The Secretary of State may at any time release a life prisoner on licence if he is satisfied that exceptional circumstances exist which justify the prisoner's release on compassionate grounds.
>
> (2) Before releasing a life prisoner under subsection (1) above, the Secretary of State shall consult the Parole Board, unless the circumstances are such as to render such consultation impracticable.

The criteria with regard to release on compassionate grounds are set out in the Indeterminate Sentence Manual (the Lifer Manual):

> the prisoner is suffering from a terminal illness and death is likely to occur very shortly (although there are no set time limits, 3 months may be considered to be an appropriate period for an application to be made to Public Protection Casework Section [PPCS]), or the ISP is bedridden or similarly incapacitated, for example, those paralysed or suffering from a severe stoke; and
>
> the risk of re-offending (particularly of a sexual or violent nature) is minimal; and
>
> further imprisonment would reduce the prisoner's life expectancy; and
>
> there are adequate arrangements for the prisoner's care and treatment outside prison; and
>
> early release will bring some significant benefit to the prisoner or his/her family

The contentions of the parties

Counsel for the Attorney General and the Crown submitted that the decision of the Grand Chamber did not hold that the statutory regime relating to the imposition of a whole life order under section 269 of the CJA 2003 violated Article 3. The Grand Chamber had drawn a clear distinction between the regime which governed the imposition of the sentence and the regime for the reducibility of that sentence through review and release. He asserted that the imposition of a whole life order was just punishment and was compatible with the Convention.

Further, he submitted that the Grand Chamber were mistaken in concluding that the statutory regime for the reducibility of the sentence by review and release was insufficiently certain, and that that uncertainty gave rise to a breach of Article 3. He asserted that the Human Rights Act 1998 required the Secretary of State to act compatibly with Convention Rights and when the Secretary of State considered review and release, the exercise of his powers under section 30 of

the 1997 Act had to be done compatibly with Convention Rights. In addition, the policy set out in the Lifer Manual did not represent the whole of the circumstances in which the power of release might be exercised.

It was also asserted that even if the statutory scheme for imposing the sentence and the legal regime for review and release had to considered as a single regime, and there had to be a regime which provided for reducibility compatible with Article 3 at the time the whole life order was imposed, and the current regime was not compatible, then the court could not read the terms of section 269 down in accordance with section 3 of the Human Rights Act. That was said to be because section 269(4) states that the court 'must' impose a whole life order and the effect of any attempt to read down the section would require it to be read as 'must not'. Furthermore, whilst the court is a public body enjoined by section 6(1) to act compatibly with the Convention, section 6(2) has the effect of disapplying that provision where a public body acts in accordance with primary legislation which cannot be read down.

The offender McLoughlin had expressly instructed his counsel and solicitors not to oppose the Attorney General's reference. The only submission made in response by counsel for the appellant Newell was that the Grand Chamber had made it clear that there must be a regime for review of the sentence at the time the sentence was passed, which must provide for the realistic possibility of reducibility to be compatible with Article 3. He asserted that the current regime did not and the whole life order was therefore incompatible with Article 3.

Compatibility of the statutory regime established by Parliament with Article 3

The power to impose a whole life order as just punishment

In Vinter the Grand Chamber set out its view that it was obvious that a person could not be detained unless there were 'legitimate penological grounds' for detention, such as punishment, deterrence, public protection and rehabilitation.

The Court of Appeal stated that it was evident, as reflected in Schedule 21, that there are some crimes that are so heinous that Parliament was entitled to proscribe, compatibly with the Convention, that the requirements of just punishment mean passing a sentence which includes a whole life order.

It went on to state that it did not read the judgment of the Grand Chamber in Vinter as in any way casting doubt on the fact that there are crimes that are so heinous that just punishment may require imprisonment for life. The Court of Appeal reiterated that in Vinter the Grand Chamber accepted that States have a margin of appreciation because what constitutes a just and proportionate punishment is the subject of debate and disagreement. The court went on to note that under the constitution of this country it is for Parliament to decide whether there are such crimes and to set the framework under which the judge decides in an individual case whether a whole life order is the just punishment.

As such the court concluded that no specific passage in the judgment nor the judgment read as a whole in any way negated the provisions of the Criminal Justice Act 2003 which entitle a judge to make at the time of sentence a whole life order as a sentence reflecting just punishment.

Does the regime which provides for reducibility have to be in place at the time the whole life order is imposed?

The court noted that the Grand Chamber made clear that there is no violation of Article 3 if a prisoner in fact spends the whole of his life in prison. However, the justification for detention might shift during the course of a sentence. The Grand Chamber stated that for a life sentence to be compatible with Article 3, there must therefore be both a prospect of release and a possibility of review. It stated that where domestic law does not provide any possibility or mechanism for review of a whole life sentence, the incompatibility with Article 3 in this way would arise when the sentence is imposed and not at a later stage of incarceration. Therefore a whole life order may be just punishment but a legal regime for review during the sentence must exist when the sentence is passed.

Is the regime under section 30 a regime for reducibility which is in fact compliant with Article 3?

In R v Bieber the Court of Appeal concluded that the regime was compatible and a whole life order was reducible, because of the power of the Secretary of State under section 30 of the 1997 Act.

The Grand Chamber accepted that the interpretation of section 30 of the 1997 Act as set out in R v Bieber would in principle be consistent with the decision in Kafkaris, but concluded that section 30 did not, because of a lack of certainty, provide an appropriate and adequate avenue of redress in the event an offender sought to show that his continued imprisonment was not justified.

The Court of Appeal in the present case disagreed stating that the domestic law of England and Wales was clear as to 'possible exceptional release of whole life prisoners' and as set out in R v Bieber the Secretary of State is bound to exercise his power under section 30 in a manner compatible with principles of domestic administrative law and with Article 3.

The court determined that it was of no consequence that policy set out in the Lifer Manual had not been revised. However, it went on to clarify the law of England and Wales in this regard:

- First, the power of review under the section arises if there are exceptional circumstances under which the offender subject to the whole life order must demonstrate to the Secretary of State that although the whole life order was just punishment at the time the order was made, exceptional circumstances have since arisen. The court determined that the term 'exceptional circumstances' is sufficiently clear; it is not necessary to specify what such circumstances are or specify criteria.
- Second, the Secretary of State must then consider whether such exceptional circumstances justify the release on compassionate grounds. The policy set out in the Lifer Manual is highly restrictive and circumscribes the matters which will be considered by the Secretary of State. The court stated that the Manual cannot restrict the duty of the Secretary of State to consider all circumstances relevant to release on compassionate grounds. He cannot fetter his discretion by taking into account only the matters set out in the Lifer Manual. Similarly the provisions of section 30, require the Secretary of State to take in to account all exceptional circumstances relevant to the release of the prisoner on compassionate grounds.

- Third, the term 'compassionate grounds' must be read in a manner compatible with Article 3 and is not restricted to what is set out in the Lifer Manual.
- Fourth, the decision of the Secretary of State must be reasoned by reference to the circumstances of each case and is subject to scrutiny by way of judicial review.

The Court of Appeal determined that the law of England and Wales therefore does provide to an offender 'hope' or the 'possibility' of release in exceptional circumstances which render the just punishment originally imposed no longer justifiable.

The court stated that it is entirely consistent with the rule of law that such requests are considered on an individual basis against the criteria that circumstances have exceptionally changed so as to render the original punishment which was justifiable no longer justifiable. Whilst difficult to specify in advance what such circumstances might be, the court noted that circumstances can and do change in exceptional cases. It went on to state that the interpretation of section 30 set out provides for that possibility and hence gives to each such prisoner the possibility of exceptional release.

Conclusion

The Court of Appeal concluded that judges should continue to apply the statutory scheme in the Criminal Justice Act 2003 and in exceptional cases, likely to be rare, impose whole life orders in accordance with Schedule 21.

The court went on to consider whether in the present two cases, a whole life order ought to have been made.

The reference by the Attorney General in the case of McLoughlin

On **21 October 2013** McLoughlin pleaded guilty to murder and to robbery. He was sentenced to life imprisonment for the offence of murder. A sentence of eight years imprisonment concurrent with that sentence was passed for the robbery. The judge fixed a minimum period of 40 years under section 269(2) of the CJA 2003.

In deciding whether to impose a whole life order the judge referred to the decision in Vinter and said:

> Given that there is a duty upon the court imposed by the Human Rights Act to act in compliance with the Convention and to take into account at the least of it the decisions of the Court. And given that the 2003 Act does not require me to pass a whole life order, even though that is necessarily my starting point, I have reached the conclusion against the background that is incumbent upon me to pass a sentence which is compliant with the Convention if I can. But it is not appropriate to impose a whole life term. However, even for a man of 55 years of age the minimum term of years must be a very long one indeed.

The Court of Appeal stated that it was clear that the judge did not think he had the power to make a whole life order but this was a decision reached in error and as such the judge proceeded on the basis of a misunderstanding of the law. The Court of Appeal stated that it was their duty to exercise their judgment free from that misunderstanding.

The Court of Appeal reiterated that a court must only impose a whole life order if the seriousness is exceptionally high and the requirements of just punishment and retribution make such an order the just penalty. This was McLaughlin's second conviction for murder, and so was a case for which the starting point is normally a whole life order, with the addition of serious aggravating features. The only mitigation was his admission and plea.

The Court of Appeal determined that this was a case where the seriousness was exceptionally high and just punishment required a whole life order. A fixed minimum term of 40 years was for that reason unduly lenient. As such the minimum term of 40 years was quashed and a whole life order was imposed.

The appeal by Newell

On **19 September 2013** Newell, who had been convicted of murder and theft, was sentenced to imprisonment for life with a whole life order under section 269(4) of the CJA 2003.

The judge was satisfied there was nothing spontaneous about the murder, the killing was premeditated and Newell was heard to laugh about what occurred. There was no mitigation. The judge considered a whole life order was required.

Counsel for Mr Newell submitted that due to the fact that Mr Newell was now 45 years old, if the court were to fix a minimum term of 35 to 40 years as the appropriate fixed minimum term, he would be 80 to 85 before being considered for release. In the circumstances, it was submitted that the court should not deprive him of all hope of atonement.

The Court of Appeal stated that because this was the second murder Mr Newell had committed, the starting point would normally be a whole life order. There were many aggravating features and no mitigation. The court stated that this was a murder where the seriousness of the offence was exceptionally high and as such the judge was right in making a whole life order. This appeal was accordingly dismissed.

Conclusion

The Court of Appeal stated that these two cases were exceptional and rare cases of second murders committed by persons serving the custodial part of a life sentence. It was said that the making of a whole life order requires detailed consideration of the individual circumstances of each case. It is likely to be rare that the circumstances will be such that a whole life order is required. It was specified that the Court of Appeal's decision on each case turned on its specific facts and as such should not be seen as a guide to any similar case.

The Queen (oao) Hicks and Others and Commissioner of Police of the Metropolis [2014] EWCA Civ 3

A hearing in the Court of Appeal (Civil Division) on appeal from the High Court of Justice Divisional Court before Lord Justice Maurice Kay, Vice President of the Court of Appeal, Civil Division Lord Justice Leveson and Lord Justice Aikens. The full case report can be found at **http://www.bailii.org/ew/cases/EWCA/Civ/2014/3.html**

This case concerned several challenges to the manner in which the Metropolitan Police conducted operations to maintain public order at the time of and immediately prior to the Royal Wedding on **29 April 2011**. These were the subject of judicial review before the Divisional Court in which all the claims pursued were dismissed. Separate appeals were mounted against different parts of the judgment; with the leave of Moses LJ, this appeal concerned only the issue of whether the court erred in finding that the arrest and detention of these (and other) appellants were compatible with Article 5(1) of the European Convention on Human Rights (ECHR).

As a matter of domestic law, the Divisional Court found that the arrests and detention of each of the appellants prior to the wedding and up to its conclusion were lawful. That finding was not the subject of challenge. The present appeals were concerned with whether the deprivation of the appellants' liberty contravened Article 5 of the ECHR.

Before the Divisional Court, in addition to the four persons in whose name this appeal was brought, there were 11 others, five of whom did not appeal; they were collectively referred to as 'the Hicks claimants' to distinguish them from five others who pursued linked claims. The Hicks claimants themselves divided into four groups reflecting the fact that they were arrested in four separate incidents: these consisted of Brian Hicks, the Starbucks claimants, JMC and the Charing Cross claimants. It was agreed to focus, as test cases, on four appellants, each representing one of the four groups, on the basis that it was also agreed that there was no material difference between the circumstances of each appellant within each group although it was equally agreed that it would be in order to refer to the custody records and statements affecting all appellants. In those circumstances, the appeals of the other 11 appellants were stayed pending the outcome of the present appeal.

The facts

The Court of Appeal summarised the individual circumstances as follows:

Brian Hicks

Brian Hicks is 44 years of age and has a long-standing involvement in republican politics. He has some previous convictions for minor offences committed when he was much younger but has had no convictions for over 20 years. His account is that, on **29 April 2011**, he was intending to go via Trafalgar Square and Soho Square (at both of which he was aware that there

were demonstrations or other events were planned) to Red Lion Square, to attend the 'Not the Royal Wedding' street party organised by the campaign group Republic. He was stopped by a plain clothes police officer (who was recognisable to him because he had been at previous demonstrations but he was unaware of his name) and searched under section 1 of the Police and Criminal Evidence act 1984 (PACE) on the ground of suspicion of possession of items for use in criminal damage. Although nothing of significance was found in his possession, Mr Hicks was arrested.

At Albany Police Station, the custody sergeant was informed that Mr Hicks had been arrested to prevent a breach of the peace. Having made a telephone call, the custody sergeant appeared to be satisfied in relation to his detention. He was then subject to a strip search, during which he reports that he overheard someone outside the cell say 'They want him here till 3.00pm, when the celebrations finish.'

The police account of the circumstances in which Mr Hicks came to be arrested is provided by the arresting officer, Inspector Wakefield. He describes his concern that Mr Hicks was planning an 'individual direct action of criminal damage against the shops on Charing Cross Road' and says that he had items in his pockets that would assist him in this plan. Based on his previous experience of Mr Hicks at protests where violence had erupted, he expressed the suspicion that he was heading for Trafalgar Square to meet with others who were intent on causing disruption to the Royal Wedding, with the result that he had to arrest Mr Hicks in order to prevent a breach of the peace.

We turn to the custody record. After the recitation of the circumstances of the arrest, timed at 10.55am, the custody sergeant records (with abbreviations explained but typographical errors uncorrected):

> I explained to DP [Detained Person] that as BOP [Breach of Peace] is not a criminal offence the rules re solicitor do not apply however, we shall work within the spirit of PACE. PD requested sols [solicitors] and was called by PC Price.
>
> I explained to PD that as he was in custody to prevent a BOP he was unlikely to be released until the celebrations had finished, after speaking to Bronze Crime [ie part of the command] earlier this is anticipated to be c 3 am. I relayed this to PD and he made no representations re this. He appears resigned to his fate.

At 11.44 am, there is noted that the arresting officer, Inspector Wakeford, had been spoken to and the record continues:

> he is part of an ongoing operation in relation to the security of the Royal Wedding. He has been appraised of the need for notes in relation to this [sic] incident but unfortunatly cannot, due to urgent operational requirements do these at the moment. I am happy that there was indeed a likelihood of a BOP [Breach of Peace] and should PD be released this will be a real threat…and as such the detention of PD should be continued. Notes re arrest will be forwarded to the custody suite at the first opportunity.

Finally, at 14.34, there is a further note which brought the detention of Mr Hicks to an end:

> I have just received information from DS Annette MASLIN, Who is from Op Malone (Bronze Crime Support). As the wedding itself is now over and the immediate celebrations have finished, there is no longer a likelihood of a BOP and PD may be released.

Deborah Scordo-Mackie

Deborah Scordo-Mackie is the representative of the 'Starbucks' claimants, all of whom are of good character, with no previous convictions or cautions and with no previous adverse interaction with the police. They do not describe themselves as particularly anti-monarchist, and their evidence is that none was intending to participate in any form of anti-Royal Wedding demonstration on **29 April**.

They arrived in Soho Square between 10.00am and 11.00am, their intention being to take part in the 'zombie picnic' organised by the campaign group Queer Resistance, which publicises the impact of Government spending cuts on lesbian, gay, bisexual and transgender communities. All four were dressed in some element of zombie fancy dress and wore make-up accordingly. Shortly after meeting in Soho Square, the group observed a scuffle between some plain clothes police officers and a protester who had been singing protest songs. They then noticed a large number of police officers blocking three of the four routes out of Soho Square and decided to leave by the unblocked exit not wishing to encounter any trouble. They intended to go for a drink together at Starbucks in Oxford Street before going their separate ways.

Having been in Starbucks for a few minutes, police officers entered and asked them to accompany them outside. They were then searched under s.60 of the Criminal Justice and Public Order Act 1994 ('the 1994 Act'), which, under s.60AA, gives power to require the removal of disguises. Nothing of significance was found. The female officer who had been dealing with them took a call on her radio and then informed them that she had to arrest them. She apparently apologised for this and said that it had been ordered by someone higher up. The officers told the group that the view had been taken that their costumes suggested that they might cause trouble later in the day. In fact, the police had obtained intelligence to the effect that there had been a plan for protesters to dress as zombies, meet at Westminster Abbey at 11am, throw maggots at the wedding procession leaving the church and to cause other disruptions. The officers were therefore told that the group were intending to breach the peace and should be arrested.

Ms Scordo-Mackie was taken to Belgravia Police Station, the reasons for her arrest being recorded on the custody record as being 'To prevent the detained person committing an offence against public decency. To prevent the detained person causing physical injury to self or any other persons.' The circumstances were that 'PD part of a group seen earlier and fear that PD and others would cause a BOP by attending Royal Wedding Route'. The disposal is initially recorded

as: 'Bind over after complaint – breach of the peace likely' but marked at 15.54 'No Further Action', the relevant entry reading:

> Following consultation with officers in charge of the Royal Wedding Operation, it is now clear that no further threat is posed by any of the persons concerned, therefore the PD is to be released forthwith with no further action. The PD is out of cell, the above explained. Agrees earlier action not appropriate. Released and record closed.

JMC

JMC identifies as 'genderqueer' and falls outside the generally recognised gender distinctions of male and female: whilst born male, for legal purposes she is female. She has no criminal convictions or cautions and no previous adverse interaction with the police. On **29 April 2011**, she attended the Queer Resistance zombie picnic in Soho Square with a friend who also identifies as 'genderqueer'. The purpose of their attendance was to demonstrate against the public spending cuts in a social setting. Arriving at 10.00am, wearing white face paint and fake blood, they discovered that the planned events did not appear to be taking place and they were confronted instead with a large police presence and a number of journalists with cameras. They decided to leave, as they anticipated that arrests might take place and they did not wish to be involved.

They left Soho Square with the intention of going home. As they were walking down Frith Street they were confronted by a number of cameramen who were taking photographs of them; they covered their faces with a scarf and a bandana until they had passed the photographers. Moments later, they were approached by a group of police officers from the Territorial Support Group ('TSG') who asked them why they had masked their faces. JMC explained why. The officers then said that they would be searched pursuant to section 60 of the 1994 Act.

The officers found on JMC a leaflet for the zombie picnic that she had intended to attend, and also some make-up. She and her friend were told that they were going to be arrested because they were in possession of the leaflet and they had no reason to be in that location at that time. When they arrived at West End Central police station, at around 11.00am, JMC recollects that the custody sergeant said to them words along the lines of 'You'll be kept in until the kiss on the balcony, then we will let you go'.

The reason for arrest recorded on the custody record was 'to allow the prompt and effective investigation of the offence or of the conduct of the detained person'. The circumstances were described in these terms:

> Subject stopped wearing masks at location where a s.60 power was in force. When asked about the masks stated going to the pub and found to be in possession of an 'anti-royal' leaflet advertising a gathering today. Officers believed that they had an intent to cause disruption of the wedding.

The reason for detention was recorded as 'to prevent breach of peace' and the grounds as 'to charge'. As for disposal, there was recorded:

> Matter of complaint – bind over – apprehension of breach of the peace – disposal at 13:53 29/4/2011 – No Further Action NFA –

Callum Hurley

> Mr Hurley is representative of nine claimants before the Divisional Court who were known as the Charing Cross claimants. Save in relation to one claimant (who had been cautioned for possession of cannabis), all are of good character, with no previous convictions, cautions or interactions with the police.

The nine claimants (and another man) arrived at Charing Cross railway station at about 10.30am on **29 April 2011**. Their evidence is that it was initially their intention to attend a republican protest in Trafalgar Square but it became clear that that would not be possible, so, instead, they decided to attend the 'Not the Royal Wedding' street party in Red Lion Square. However, before they left the railway station forecourt they were approached by officers of British Transport Police ('BTP') and were then searched pursuant to section 60 of the 1994 Act. They were found to be in possession of a number of placards, an example of one read 'Democracy now: it is right and fitting to die for one's country.' They were also found to be in possession of a megaphone, a cycling scarf and a helmet which was described by the claimants as a cycling helmet but by the police as a climbing helmet.

Shortly thereafter a large number of officers from the TSG surrounded the group and held them in containment. They were told that they were being held in order to prevent a breach of the peace. They were then handcuffed, arrested and taken to Sutton police station, where they were held until about 3.30pm. Only three of them were formally booked into custody; the rest were detained in the police yard. They remained in handcuffs throughout. On release, the claimants were not given any paperwork. No further action was taken in respect of any of them.

The police record is not inconsistent with this account. A custody record was not fully completed although the circumstances of Mr Hurley's arrest are described in these terms:

> DP was stopped with a group of others carrying anti-royalist banners and signs, some had helmets and climbing gear and officers feared they would disrupt the Royal Wedding arrested to prevent violence and damage.

The record also explains that, at 15.36, detention was not authorised in these circumstances (with typographical errors included):

> Reason detention not authorised. Prior to the d/p being booked in, informed that that DCS Horne had decided the likeleyhood of a Breach of the peace was now over, so d/p released from station yard.

> The reason for delay in opening the Custody record was because booking in other detainees. The reason for delay in arrival was because travelling from central London.

The provisions of the ECHR

The appellants' case was that their arrests and detentions were unlawful because they were contrary to their rights contained in Article 5(1) of the ECHR. The police asserted that they did not act unlawfully because they were entitled to rely on Article 5(1) (c) or (b). The relevant parts of Article 5 read as follows:

> 1. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:…
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so…
>
> 3. Everyone arrested and detained in accordance with the provision of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to a trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

Although the police relied on both Article 5(1) (b) and (c), the primary focus was on subsection (c).

The judgment of the Divisional Court

The Divisional Court concluded that the arrests and detentions were lawful pursuant to Article 5(1) (c), which it considered 'far better suited' to cover the situation than Article 5(1) (b). The main issue in relation to Article 5(1) (c) was whether the words 'for the purpose of bringing him before the competent legal authority', which were said to plainly qualify an arrest or detention on reasonable suspicion of 'having committed an offence', also qualify an arrest or detention 'to prevent his committing an offence'. The Divisional Court found it:

> tolerably clear that detention 'for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence' is distinct from detention 'reasonably considered necessary to prevent his committing an offence': they are separate bases for detention under art.5 (1) (c) and the latter basis is not qualified by the words 'for the purpose of bringing him before the competent legal authority'

The present appeal

Following submissions made on the present appeal, the Court of Appeal was alerted to the judgment of the Strasbourg court in Ostendorf v Germany [2013] ECHR 197. This judgment contained a firm endorsement of Lawless v Ireland (1961) 1 EHRR 15 with regard to Article 5(1) (c) and also included consideration of Article 5(1) (b) in the context of arrest and detention as preventative powers in the face of a public order threat. As such, the court invited further written submissions and a further hearing was held. This caused the Court of Appeal to reassess the entire development of Strasbourg jurisprudence. The court noted its duty to take into account Strasbourg decisions when construing the ECHR but its reassessment gave rise to a further issue on the extent to which a national court must follow the most recent interpretation of a Convention provision where, in the view of the national court, this was inconsistent with earlier interpretations but the differences have not been acknowledged by the ECHR.

Ostendorf v Germany [2013] ECHR 197

The applicant in Ostendorf was registered on a German database as a person prepared to use violence in the context of sports events. He travelled in a group from Bremen to Frankfurt to attend a football match. They were kept under police surveillance. Some group members (not the applicant) were searched and found to be in possession of things associated with the perpetration of crowd violence. The applicant was arrested at a pub. He was taken to a police station close to the stadium where he was detained until one hour after the match had ended. In all, he was under arrest and in detention for about four hours. He was not charged at any stage. The German courts rejected his complaints of unlawful arrest and detention. The Strasbourg court held that the arrest and detention were lawful pursuant to Article 5 (1) (b) but not in relation to Article 5(1) (c). It was with Article 5(1) (c) that the Court of Appeal in the present case was concerned.

The relevant passages of the judgment in relation to Article 5(1) (c) were quoted as follows:

> 66. Under the second alternative of subparagraph (c) of Article 5 (1), the detention of a person may be justified 'when it is reasonably considered necessary to prevent his committing an offence'. Article 5(1) (c) does not, thereby, permit a policy of general prevention directed against an individual or a category of individuals who are perceived by the authorities, rightly or wrongly, as being dangerous or having propensity to unlawful acts. That ground of detention does no more than afford the Contracting States a means of preventing a concrete and specific offence…
>
> 67. Under the Court's well established case law, detention to prevent a person from committing an offence must, in addition, be 'effected for the purpose of bringing him before the competent legal authority', a requirement which qualifies every category of detention referred to in Article 5(1) (c) (see Lawless v Ireland (No3)…
>
> 68. Subparagraph (c) thus permits deprivation of liberty only in connection with criminal proceedings…It governs pre-trial detention…This is apparent from its wording, which must be read in conjunction both with subparagraph (a) and with

paragraph 3, which form a whole with it…Paragraph 3 of Article 5 states that everyone arrested or detained in accordance with the provisions of paragraph 1(c) of Article 5 shall be brought promptly before a judge – in any of the circumstances contemplated by the provisions of that paragraph – and shall be entitled to a trial within a reasonable time…

82. The Court…recalls that under paragraphs 1(c) and 3 of Article 5, detention to prevent a person from committing an offence must, in addition, be 'effected for the purpose of bringing him before the competent legal authority' and that the person is 'entitled to trial within a reasonable time'. Under its long established case law, the second alternative of Article 5 (1) (c) therefore only governs pre-trial detention and not custody for preventive purposes without the person concerned being suspected of having already committed a criminal offence…

83. …It is, however, clear that the aim of his detention was purely preventive from the outset. As noted above, it is indeed uncontested that the applicant in the present case was not suspected of having committed a criminal offence as his preparatory acts were not punishable under German law. His police custody only served the (preventive) purpose of ensuring that he would not commit offences in an imminent hooligan altercation. He was to be released once the risk of such an altercation had ceased to exist and his detention was thus not aimed at bringing him before a judge in the context of a pre-trial detention and at committing him to a criminal trial.

84. The Court notes that the Government advocated a revision of the Court's case-law on the scope of Article 5 § 1 (c) in this respect. It agrees with the Government that the wording of the second alternative of sub-paragraph (c) of Article 5 § 1, in so far as it permits detention 'when it is reasonably considered necessary to prevent his committing an offence', would cover purely preventive police custody in order to avert imminent specific serious offences which is here at issue.

85. However, that interpretation could neither be reconciled with the entire wording of sub-paragraph (c) of Article 5 § 1 nor with the system of protection set up by Article 5 as a whole. Sub-paragraph (c) of Article 5 § 1 requires that the detention of the person concerned is 'effected for the purpose of bringing him before the competent legal authority' and under Article 5 § 3 that person is 'entitled to trial within a reasonable time'. As the Court has confirmed in its case-law on many occasions, the second alternative of Article 5 § 1 (c) is consequently only covering deprivation of liberty in connection with criminal proceedings. In particular, contrary to the Government's submission, the term 'trial' does not refer to a judicial decision on the lawfulness of the preventive police custody. Those proceedings are addressed in paragraph 4 of Article 5.

86. The Court further observes that, contrary to the Government's view, the second alternative of Article 5 § 1 cannot be considered as superfluous in addition to the first alternative of that provision (detention 'on reasonable suspicion of having committed an offence'). A detention under sub-paragraph (c) of Article 5 § 1

> may be ordered, in particular, against a person having carried out punishable preparatory acts to an offence in order to prevent his committing that latter offence. That person may then be brought before a judge and be put on a criminal trial, for the purposes of Article 5 § 3, in respect of the punishable preparatory acts to the offence.'

As well as advocating a revision of the Court's case law on Article 5(1) (c), the German government had made the Court aware of the importance, in the German legal system, of preventative police custody 'in order to avert dangers to the life and limb of potential victims or significant material damage' especially in situations involving policing of large groups of people at mass events. The court rejected these submissions, stating that it had decided to follow its 'longstanding interpretation of Article 5(1) (c)'. However, it went on to conclude that the arrest and detention were lawful under Article 5(1) (b).

In the present case, counsel for the appellants submitted that, having taken Ostendorf into account, the Court of Appeal should conclude that the Divisional Court was wrong to find the arrest and detention in the present case to be lawful under Article 5(1) (c). The Court of Appeal stated that such a submission would be irresistible if it was to mechanistically to follow Ostendorf, because that case rejected the very construction of Article 5(1) (c) adopted by the Divisional Court. Counsel for the Commissioner of Police submitted such an approach should be resisted, submitting that the Strasbourg authorities are neither clear nor constant in their interpretation of Article 5(1) (c). As such, the Court of Appeal found it necessary to consider the development of the Strasbourg jurisprudence, as well as the wording of Article 5(1) (c) so that it could put Ostendorf properly into context.

Construction of Article 5(1) (c): examination of the wording

Article 5(1) begins with the general principle that everyone has the right to 'liberty and security of person' and then goes on to set out the circumstances in which that right can be derogated from, so that any deprivation must fall within one of the six sub-paragraphs (a) to (f) of Article 5(1). The deprivation must also be 'in accordance with a procedure prescribed by law' and must be both ascertainable and certain. The English law on arrest and detention on suspicion of a breach of the peace was held to be such for Convention purposes in Steel v UK (1998) 28 EHRR 603.

The Court of Appeal stated that Article 5(1) (c) describes several situations in which a person may be deprived of his right to liberty, so long as what is done is in accordance with the law.

The Court of Appeal set out the wording of Article 5(1) (c) with its own additions in bold and its own emphasis in upper case letters:

> the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority (i) on reasonable suspicion of having committed an offence OR (ii) when IT is reasonably considered necessary to prevent his committing an offence OR (iii) fleeing after having done so

The court stated that two things are not clear from this wording. The first was said to be whether the arrested/detained person has actually to be brought before the competent legal authority. Secondly it was said that it is not clear from the wording itself what it is contemplated the competent legal authority has to do if and when the arrested/detained person is brought before it. The two possible purposes for bringing the arrested/detained person before the competent legal authority were identified as either to authorise the further detention or to require the release of the detained person; or, alternatively, to try the person for any alleged offence.

It was said to be noticeable that the purpose is to bring the arrested/detained person before the competent legal authority when he is only subject to a reasonable suspicion of having committed an offence, not that he is alleged actually to have committed 'an offence'. The Court of Appeal stated that this reinforced its view that Article 5(1) (c) contemplates that when the arrested/detained person is brought before the competent legal authority, that authority is not necessarily going to deal with the merits of an offence because at that stage there may be insufficient evidence to charge the person. It was said that in such a case the purpose of bringing the detained person before the judicial authority must be limited to the question of whether authorisation will be given for further detention or to release the person.

The Court of Appeal considered the second category it highlighted within the wording of Article 5(1) (c) to be the most important for the purpose of this appeal. It was said that the 'or' demonstrated that that is a different situation from the first one referred to above. The court considered the meaning of 'it' in this part of Article 5(1) (c). It stated that the first possible construction is that 'it' simply refers to 'the lawful arrest or detention of a person…' It was said that if that was the case, then at the point at which the person is arrested/detained he would not have committed an offence nor would he have been arrested on suspicion of having done so.

The second possible construction was stated as 'it' referring to 'the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on suspicion of having committed an offence'. In such a case the person would either already have committed an offence or he may have already reasonably been suspected of having done so and the arresting/detaining authority wished to arrest/detain him in order to prevent him from committing further offences. However, it was said that on this second construction, this part of the wording of Article 5(1) (c) would not be needed because if a person had already arguably committed an offence, then he would have been arrested/detained under the first situation, making the second superfluous. As such, the Court of Appeal stated that in its view, the second situation exists to deal with the case where a person has not yet (even arguably) committed an offence, but it is considered necessary to prevent him from committing one.

The court went on to state that if its construction of the second of the three categories covered by Article 5(1) (c) was correct, there are three safeguards against internment:

- the purpose, at the time of the arrest/detention, of bringing the person before the competent legal authority

- the process of arrest/detention must be in accordance with domestic law, which must itself be ECHR compliant. Thus, in the present context, English law requires that the arresting person has a 'reasonable belief' that a breach of the peace is 'imminent'
- under Article 5(3) the person who has been arrested on the reasonable belief that a breach of the peace is imminent must be brought before a magistrate as soon as possible.

The court went on to consider how the European Court of Human Rights has construed Article 5(1) (c) in its decisions.

The earlier Strasbourg cases

The Court of Appeal first considered Lawless v Ireland (No 3) (1961) 1 EHRR 15. The applicant was a member of the Irish Republican Army who was detained without trial for five months by order of the Minister of Justice pursuant to an Irish statute. The European Court of Human Rights stated:

> It is evident that the expression 'effected for the purpose of bringing him before the competent legal authority' qualifies every category of cases of arrest or detention referred to in that subparagraph. It follows that the said clause permits deprivation of liberty only when such deprivation is effected for the purpose of bringing the person arrested or detained before the competent judicial authority, irrespective of whether such person is a person who is reasonably suspected of having committed an offence, or a person whom it is reasonably considered necessary to restrain from committing an offence, or a person whom it is reasonably considered necessary to restrain from absconding after having committed an offence.

In Brogan v United Kingdom (1989) 11 EHRR 117 the four applicants were arrested and detained under section 12 of the Prevention of Terrorism Act. They were released after between four and six days respectively without having been charged with any offence or brought before a magistrate. The court found that there had been no violation of Article 5(1) but there had been a violation of Article 5(3).

Brogan is further authority for the proposition that the purpose of an arrest or detention must be to bring the person concerned before the competent legal authority. The Court of Appeal noted the following important additional factors: firstly, that the court contemplated that there could be arrest and detention before there was enough evidence to bring a charge; and secondly, the mere fact that neither criminal charges nor a court appearance ensue before detention comes to an end does not necessarily negate the existence of the purpose at the time of arrest or detention. It was said to be quite possible for the police, acting in good faith, to arrest and detain but then to release without judicial intervention once their initial 'concrete suspicions' yielded no further significant material.

In Steel v UK (1998) 28 EHRR 603 the European Court of Human Rights stated that each of the applicants was arrested and detained 'for the purpose of bringing him or her before the competent legal authority on suspicion of having committed an offence or because it was necessary to prevent the commission of an offence', thereby indicating that the court treated the first two categories of Article 5(1) (c) as being alternative circumstances when a person could be arrested and detained for the purpose of bringing him before the competent legal authority.

The Court of Appeal stated that the case of Nicol and Selvanayagam v United Kingdom (Application No32213/96) 11 Jan 2001 concerned a factual situation more akin to the present case. The applicants were protesting at an anti-fishing protest on 28 May. When the applicants refused to desist they were arrested for 'breach of the peace'. They were taken to the police station and detained, to 'allow a period of calming and to determine method of processing'. They were charged three and a half hours later with 'conduct whereby a breach of the peace was likely to be occasioned'. They were kept in detention 'to prevent the prisoner from disrupting the fishing event tomorrow …' They appeared before the magistrates' court on 30 May, having been in detention for 48 hours, where the case was adjourned and they were released on bail. Subsequently the magistrates found the charge proved but the protesters refused to be bound over so they were given short terms of imprisonment. An appeal by way of case stated failed.

The European Court of Human Rights declared the case inadmissible. The court divided the period of detention into two parts. It stated:

> The initial detention was to prevent the applicants from committing an offence; as regards the period of detention after the fishing match on the following day – or throughout the period subsequent to the initial fishing competition if there was none on the second day – the applicants were clearly being detained for the purpose of bringing them before the competent legal authority on suspicion of having committed an offence. It follows that the applicants' initial arrest and detention were compatible with Article 5(1) (c)…

The Court of Appeal found this to be not an entirely satisfactory decision, stating that with regard to 'the initial detention', it did not face up to the Lawless ruling, that is to say even if the detention was to prevent the applicants from committing an offence, it must still have been for the purpose for bringing the detainee before the competent legal authority. On the other hand, the court noted that the decision (which was not referred to in Ostendorf) accepted the lawfulness of 'the initial detention' even though, at that time, the purpose recorded was in preventative terms – 'to allow a period of calming and to determine method of processing'. Counsel for the Police Commissioner relied strongly on this decision for the proposition that where the arrest and detention was preventative only, there was no need to have (at the time of arrest/detention) the purpose of bringing the detainee before the competent legal authority.

Ostendorf considered the case of Jecius v Lithuania (2002) 35 EHRR 16, in which the applicant challenged three periods of detention, the first of which was effected as a preventative measure pursuant to a domestic statute and lasted for about five weeks. That challenge was successful.

The Court stated:

> 50. The Court observes that a person may be deprived of his liberty only for the purposes specified in Article 5(1). A person may be detained under Article 5(1) (c) only in the context of criminal proceedings for the purpose of bringing him before the competent legal authority on suspicion of his having committed an offence.
>
> 51. The Court considers therefore that preventive detention of the kind found in the present case is not permitted by Article 5(1) (c).

Paragraph 50 was said to be based on Lawless. However, the Court of Appeal stated that the court in Jecius appears to have given Article 5(1) (c) a more restricted scope than it did in Lawless, by appearing to limit it to a case where the person is detained for the purpose of bringing him before the competent legal authority 'on suspicion of his having committed an offence'. There is no mention of the preventative category. This was said to be important because it is clear that the court in Ostendorf paid particular attention to paragraph 50 of the judgment in Jecius.

The cases of A v United Kingdom and Al-Jedda v United Kingdom were both said to contain general statements about internment and preventative detention being 'incompatible with the fundamental right to liberty under Article 5(1)' (A, paragraph 171) and permissible detention under Article 5(1) not including 'internment or preventive detention where there is no intention to bring criminal charges within a reasonable time'.

Analysis of Ostendorf in the light of the earlier Strasbourg decisions on Article 5(1) (c)

The Court of Appeal concluded that, following Ostendorf, there is a measure of 'clear and constant' Strasbourg authority on the specific effect of Article 5(1) (c). First, Article 5(1) (c) deals with three distinct 'categories'. Secondly, there is a requirement that arrest and detention has to be (at the time of the arrest/detention) 'with the purpose of bringing him before the competent legal authority' regardless of which category of Article 5(1) (c) a person is arrested and detained under. To that extent, the Court of Appeal disagreed with the Divisional Court's conclusion which, although it followed Nicol, was not justified in marginalising Lawless on this point on the ground of its relative antiquity.

The Court of Appeal stated that it was wholly unconvinced that there is 'clear and constant' authority for the proposition that Article 5(1) (c) only permits arrest and detention where there is, from the outset, an intention to bring the detainee before a court on suspicion of his having committed a criminal offence, as suggested by Jecius and Ostendorf. Such a proposition was said by the court to be manifestly inconsistent with Lawless and Nicol. It was also said to rest uneasily with Brogan and Steel. For these reasons the court stated that it would be inclined not to follow Ostendorf on this point unless compelled to do so. The court considered that it appeared to have been decided on the basis of a somewhat limited and selective consideration of previous decisions of the court, and that, if followed, it would effectively excise lawful arrest and detention when 'it is reasonably considered necessary to prevent his committing an offence' from Article 5(1) (c).

The status of Ostendorf: did the Court of Appeal have to follow it?

On considering the domestic case law on how English courts should deal with Strasbourg decisions on the interpretation of the ambit of a provision of the Convention itself, as opposed to a decision of the court in Strasbourg on how a provision in the Convention is to apply to particular factual circumstances, the Court of Appeal stated that the following principles are clear:

- It is the duty of the national courts to enforce domestically enacted Convention rights.
- The European Court of Human Rights is the court that, ultimately, must interpret the meaning of the Convention.
- The UK courts will be bound to follow an interpretation of a provision of the Convention if given by the Grand Chamber as authoritative, unless it is apparent that it has misunderstood or overlooked some significant feature of English law or practice which, properly explained, would lead to that interpretation being reviewed by the European Court of Human Rights when its interpretation was being applied to English circumstances.
- The same principle and qualification applies to a 'clear and constant' line of decisions of the European Court of Human Rights other than one of the Grand Chamber.
- Convention rights have to be given effect in the light of the domestic law which implements in detail the 'high level' rights set out in the ECHR.
- Where there are 'mixed messages' in the existing Strasbourg case law, a 'real judicial choice' will have to be made about the scope and application of the relevant provision of the Convention. The Court of Appeal noted that in Ostendorf, the Strasbourg court was plainly not concerned with the English domestic processes of arrest and detention; however, it was concerned with them in Steel, Brogan and Nicol.

With these principles in mind and having noted that Ostendorf was neither a decision of the Grand Chamber, nor was it indicative of 'clear and constant' Strasbourg jurisprudence, save that the arrest or detention must, in all three categories set out in Article 5(1) (c) be 'effected for the purpose of bringing him before the competent legal authority', the Court of Appeal decided that it was not bound to follow that decision of the European Court of Human Rights. It stated that it would adopt the interpretation of the wording of Article 5(1) (c) that it reached without regard to the Strasbourg case law, which, in its view, was supported by and was consistent with the Strasbourg decisions in Lawless, Brogan and Steel and (save for the 'purpose' requirement) Nicol.

Article 5(1) (c) in the context of this appeal

From this interpretation of Article 5(1) (c) the Court of Appeal stated that there were two issues to consider:

- Were the arrests and detentions in the present case permissible on the ground that it was 'reasonably considered necessary to prevent [the appellants from] committing an offence'?

- At the outset of deprivation of liberty, were the relevant police officers effecting the arrests for the purpose of bringing the persons in question before the competent legal authority when it was considered reasonably necessary in order to prevent them from committing an offence?

The Divisional Court was justifiably satisfied that the arresting officers had reasonable grounds for believing that a breach of the peace was imminent. In the context of the second category of Article 5(1) (c), the effect of that conclusion by the Divisional Court was said to be that all the arrests and detentions must also have been 'reasonably considered necessary to prevent [the appellants from] committing an offence'.

As such the Court of Appeal stated that the critical question was whether the deprivations of liberty were 'effected for the purpose of bringing [those arrested] before the competent legal authority', namely the magistrates' court. The Divisional Court did not make an unequivocal finding about that because it did not consider that the words applied to a preventative deprivation of liberty.

In the Court of Appeal's view, the fact that none of the appellants were taken before the magistrates' court and all were released a few hours later did not necessarily resolve these appeals in their favour. Moreover, it was said to be a proper inference that the officers who arrested and detained the appellants appreciated that, if only by reference to domestic law, the appellants could not be lawfully detained beyond the point at which it was reasonably practicable to take them before the magistrates' court.

The court identified two further inferences as justified. Firstly, given the dynamics on the ground in central London on **29 April 2011**, it would not have been reasonably practicable to have taken the appellants before the magistrates' court before they were in fact released. Secondly, if events surrounding the Royal Wedding had deteriorated badly it could have become necessary to detain the appellants for longer, up to the point where it would have become necessary to take them before the magistrates' court. In the event, that did not happen. However, the court concluded, applying the approach in Brogan to the circumstances of this case, that the appellants were arrested and detained 'for the purpose of bringing [them] before the competent legal authority', if that were to become necessary, so as to prolong detention on a lawful basis.

On this basis, the Court of Appeal considered that there was no significant practical difference between the application of the common law and the application of Article 5(1) (c) in relation to arrest and detention when such steps are reasonably considered necessary to prevent the commission of an offence. Both prohibit internment or anything like it in the sense in which the word is correctly used. In Austin v United Kingdom (2012) 55 EHRR 14 the Strasbourg Court stated:

> Article 5 cannot be interpreted in such a way as to make it impractical for the police to fulfil their duties of monitoring order and protecting the public, provided they comply with the principle of Article 5 which is to protect the individual from arbitrariness.

The Court of Appeal stated that it considered its analysis of the application of Article 5(1) (c) to the facts of this case to be faithful to that statement and as such the appeals had to be dismissed.

Conclusion

For the reasons given, these appeals were dismissed on the basis that the Court of Appeal was satisfied that the arrests and detentions of the appellants were lawful pursuant to Article 5(1) (c).

Policing practice

Crime

Youth justice annual statistics 2011/12 published

The Ministry of Justice has published annual statistics on the youth justice system for the years 2011/12. This looks at the youth justice system in terms of the number of young people in the system, their offences, outcomes and direction of travel over time.

Overview

The number of young people in the YJS continued to reduce in 2011/12. These reductions are evident in the number entering the system for the first time, as well as in those receiving disposals in and out of court, including those receiving custodial sentences.

Since 2008/09 there are 54% fewer young people coming into the youth justice system, 32% fewer people under the age of 18 in custody and 14% fewer re-offences by young people.

Arrests and out of court disposals

Of the 1,360,451 arrests in England and Wales in 2010/11, 210,660 were of people aged 10-17. As such those aged 10-17 accounted for 15.5% of all arrests but were 10.7% of the population of England and Wales of offending age.

There were 40,757 reprimands, final warnings and conditional cautions given to young people in England and Wales in this period, down 18% on the 49,407 given in 2010/11.

5,571 Penalty Notices for Disorder (PNDs) were given to 16-17 year olds in 2011/12 and 375 Anti Social Behaviour Orders (ASBOs) were given to young people in 2011. In the last year the number of PNDs given to young people has decreased by 26% and the number of ASBOs has decreased by 30%.

Proven offences by young people

There were 137,335 proven offences by young people in 2011/12, a decrease of 22% from 2010/11. There has been a notable reduction in the last year in offences committed by young people, in particular; criminal damage (down 28%), public order (down 27%), theft and handling (down 23%) and violence against the person offences (down 22%).

Young people receiving their first reprimand, warning or conviction (first time entrants)

In 2011/12, there were 36,677 first time entrants to the youth justice system. This number fell 20% in the last year.

Young people receiving a substantive outcome (where young people have to engage with the Youth Offending Team. This typically excluded reprimands and final warnings.)

66,430 young people received a substantive outcome in England and Wales in 2011/12. This number has decreased by 22% from 2010/11.

Court disposals given to young people

In 2011/12 there were 59,335 court disposals (sentences) given for all offences to young people aged 10-17 in England and Wales. The total number of disposals given to young people at the courts has reduced by 18% in the last year. The number of custodial sentences fell 6% from 4,182 in 2010/11 to 3,925 in 2011/12. The custody rate (defined as the proportion of custodial sentences out of all sentences given) was 6.6% in 2011/12. This has fluctuated between 5% and 8% for the last decade.

Young people in custody (under 18)

The average population of those under the age of 18 in custody in 2011/12 was 1,963. This has fallen 4% in the last year. The average custody population including 18 year olds held in the youth secure estate was 2,141.

Overall the average length of time spent in custody decreased by one day, to 77 days in 2011/12, mainly caused by reductions in the sentenced population. This decreased by four days (from 111 to 107) for Detention and Training Orders, for remand it increased by one day (from 41 to 42) and for longer sentences it decreased by 21 days (from 374 to 353).

Behaviour management in the youth secure estate

There were 8,419 incidents of restrictive physical interventions used in the youth secure estate in 2011/12, an increase of 17% since 2010/11. There were 1,725 incidents of self harm, an increase of 21% on 2010/11. Assaults by young people in custody fell by 5% on 2010/11 (3,372 assaults). Single separation was used in Secure Children's Homes or Secure Training Centres on 3,881 occasions, a fall of 13% since 2010/11.

Serious incidents in the community

In 2011, there were 20 deaths in the community, where young people under Youth Offending Team (YOT) supervision died either through murder, suicide or accidental death. Of the deaths in the community two were murdered in that period. In 2011, YOTs reported that 119 young people under their supervision attempted suicide, compared to 167 in 2010. In 2011 there were 25 other incidents reported, where the young person was the victim of an offence, compared to 21 in 2010 and 15 in 2009.

Deaths in custody

There were three deaths of young people in 2011/12 and there have been 16 deaths in the youth secure estate since 2000/01.

Re-offending by young people

The overall re-offending rate for young people was 35.8% in 2010/11, an average of 2.87 re-offences per re-offender. This is an increase in the rate from 33.3% in 2009/10. This higher rate of re-offending is against a backdrop of a smaller cohort, down 37% from 139,732 in 2008/09 to 88,357 in 2010/11.

Perceptions of youth crime and the Youth Justice System

Public perceptions from the 2011/12 Crime Survey for England and Wales emphasised the perceived importance of rehabilitation, alongside a desire generally for more stringent treatment of offenders by the police and courts.

- 48% of the public surveyed felt that 'rehabilitation through help and support' should be the main aim of the Youth Justice System.
- 65% felt that the police and courts dealt with young offenders too leniently.
- 57% were confident that youth crime and anti social behaviour is tackled effectively in their local area.

The full report can be found at **https://www.gov.uk/government/publications/youth-justice-statistics-2011-12**

ACPO and NBCF definition of business crime

A definition of business crime has been formally agreed by the Association of Chief Police Officers (ACPO) and the National Business Crime Forum (NBCF).

The term 'business crime', adopted for the purposes of national crime recording, can be defined as:

> …any criminal offence that is committed against a person or property which is associated by the connection of that person or property to a business. This can be condensed to reflect the Mayor's Office for Policing and Crime (MOPAC) definition of business crime, given that it represents any crime in, around or against a business. This is based on the perception of the victim at the time of reporting of the offence.

This is the first step towards recognising all victims of business crime, which accounts for a minimum of 15% of all crime, and ensuring, for the first time, that the impact of business crime can be accurately measured.

ACPO and NBCF hope that a consequence of accurate recording will be to allow police resources to be more appropriately and effectively allocated and deployed.

Further information can be found at **http://www.acpo.presscentre.com/Press-Releases/ACPO-and-NBCF-definition-of-business-crime-2a6.aspx**

Reforms to help reduce reoffending come into force

As part of the Government's ongoing commitment to tackling reoffending, reforms which will cut the amount of time some offenders need to disclose details of any low level convictions will come into effect on Monday **10 March 2014**.

However, all offenders will still always have to declare previous convictions when applying for jobs in sensitive workplaces such as schools and hospitals. The most serious offenders will continue to have to declare their convictions for the rest of their lives when applying for any job.

These reforms will also change the way some rehabilitation periods are set. Under the new system, rehabilitation periods for community orders and custodial sentences will include the period of the sentence plus an additional specified period, rather than all rehabilitation periods starting from the date of conviction as it is under the current regime.

Under the reforms the rehabilitation periods will change to:

For custodial sentences:

Sentence length	Current rehabilitation period (applies from date of conviction)	New rehabilitation period (period of sentence plus the 'buffer' period below which applies from the end of the sentence)
0 – 6 months	7 years	2 years
6 – 30 months	10 years	4 years
30 months – 4 years	Never spent	7 years
Over 4 years	Never spent	Never spent

For non-custodial sentences:

Sentence	Current rehabilitation period (applies from date of conviction)	Buffer period (will apply from end of sentence)
Community order (and Youth Rehabilitation Order)	5 years	1 year

Sentence length	Current period	New period
Fine	5 years	1 year (from date of conviction)
Absolute discharge	6 months	None
Conditional discharge, referral order, reparation order, action plan order, supervision order, bind over order, hospital order	Various – mostly between one year and length of the Order	Period of order

As with the current scheme, the above periods are halved for persons under 18 at the date of conviction. This is not the case for custodial sentences of up to 6 months where the buffer period will be 18 months for persons under 18 at the date of conviction.

Further information can be found at **https://www.gov.uk/government/news/reforms-to-help-reduce-reoffending-come-into-force**

Specialist teams to fight modern slavery at UK ports

Border Force-led teams will be based at major ports with the task of identifying potential victims of trafficking, disrupting organised crime gangs, and collecting intelligence on trafficked adults and children.

The first of these specialist teams will begin work on **1 April 2014** at Heathrow, and will replace and extend Operation Paladin which was set up in 2004 with the Metropolitan Police Service to provide expertise and protection for children at risk across London. These close links with Metropolitan Police and local children's services will be maintained to ensure victims are safeguarded by the relevant agencies.

The new teams will be rolled out to Gatwick and Manchester later in the year with further ports to be identified over the coming months. The specialist teams will:

- ensure a national approach
- cover safeguarding for adult victims of trafficking as well as child victims; and
- provide a higher degree of professionalism at the frontline.

The Child Exploitation and Online Protection Centre (CEOP), a National Crime Agency (NCA) command, will assist Border Force officers and will help to develop a specialist training package. The NCA will also be available to support effective local multi-agency arrangements to safeguard and protect vulnerable children including from the risks of going missing from care.

In addition, Border Intelligence Units are currently being set up to strengthen intelligence sharing with police and social services. The new system, being trialled from April, will ensure each child victim is allocated an independent specialist advocate with expertise in trafficking to act as a single point of contact providing dedicated support and guidance.

Further information can be found at **https://www.gov.uk/government/news/specialist-teams-to-fight-modern-slavery-at-uk-ports**

Diversity

The Crisis Care Concordat

A far-reaching new agreement between the police, mental health trusts and paramedics, called the Crisis Care Concordat, has been signed by more than 20 national organisations in an attempt to drive up standards of care for people experiencing crisis such as suicidal thoughts or significant anxiety.

The Concordat will help cut the numbers of people detained inappropriately in police cells and drive out the variation in standards across the country. It sets out the standards of care people should expect if they suffer a mental health crisis and details how the emergency services should respond.

In addition, it challenges local services to ensure that beds are always available for people who need them urgently and also that police custody should never be used just because mental health services are not available. It also specifies that police vehicles should not be used to transfer patients between hospitals and encourages services to improve how essential need-to-know information about patients which could help keep them and the public safe is shared.

The Crisis Care Concordat challenges local areas to make sure that:

- health-based places of safety and beds are available 24/7 in case someone experiences a mental health crisis
- police custody should not be used because mental health services are not available and police vehicles should also not be used to transfer patients
- timescales are put in place so police responding to a mental health crisis know how long they have to wait for a response from health and social care workers. This will make sure patients get suitable care as soon as possible
- people in crisis should expect that services will share essential 'need to know' information about them so they can receive the best care possible
- where figures suggest some black and minority ethnic groups are detained more frequently under the Mental Health Act, this is addressed by local services working with local communities so that the standards set out in the Concordat are met
- a 24-hour helpline is available for people with mental health problems and the crisis resolution team should be accessible 24 hours a day, 7 days a week.

Further information can be found at **https://www.gov.uk/government/news/better-care-for-mental-health-crisis**

Police

Circular 001/2014: qualifications, experience, secondments and returning officers

This circular publicises amendments to the Police Regulations 2003 and Secretary of State's determinations to implement the Police Advisory Board for England and Wales' agreement to recommendations 3, 16, 17 and 18 from the independent review of police officer and staff remuneration and conditions: final report. The implementation date is **1 March 2014**.

Amendment to regulation 10 of the 2003 regulations allows the Secretary of State to specify a list of qualifications required for appointment to a police force. The list is contained in a new Annex BA to the determinations. These are, either a level 3 qualification, a police qualification, or experience as a PCSO, special constable or in a police staff role identified by the chief officer of police as relevant. It is for the chief officer to select the applicable qualification for their force.

The Secretary of State may determine the circumstances in which police officers can be seconded to organisations outside policing by way of amendment to regulation 13. A new Annex CA specifies that secondments may be for a period not exceeding five years and require the approval of the chief officer.

A new Regulation 10B provides for officers returning within 5 years of leaving the police to return at the rank they last held, subject to a probationary period of 6 months. In exceptional circumstances the 5-year time limit may be extended by the chief officer.

The determinations can be found at **https://www.gov.uk/government/publications/circular-0012014-qualifications-experience-secondments-and-returning-officers**

Criminal justice system

Review of the operation of injunctions to prevent gang-related violence

The Home Office has prepared a memorandum providing a review of Part 4 of the Policing and Crime Act 2009 (PCA) on injunctions to prevent gang-related violence (gang injunctions).

Gang injunctions are a civil tool that enables the police or a local authority to apply to a county court or the High Court for an injunction against an individual to prevent gang-related violence. These injunctions allow courts to place a range of prohibitions and requirements on the behaviour and activities of a person involved in gang-related violence.

Key findings: overview

- The 25 Ending Gang and Youth Violence priority areas that returned data reported that, between January 2011 and January 2014, 88 gang injunctions had been put in place. Eleven of the 25 areas had used gang injunctions, but one (non-London) area accounted for over half (46) of the total number. No information is available on the use of gang injunctions more widely across England and Wales.
- All the gang injunctions reported were against male respondents, and only two were taken out against under 18 year olds.
- The most commonly reported prohibitions were geographic (ie restrictions from a place or area) and non-association (ie restriction from being with a certain individual).
- Gang injunctions were generally seen as a valuable tool in tackling gang-related violence and seemed to work most effectively in areas with strong multi-agency arrangements in place.
- Most participants in the interviews and focus groups saw gang injunctions as a potentially beneficial tool for tackling gang-related violence. However, due to early implementation issues and practical challenges, this value was not necessarily realised. While participants mentioned cases where gang injunctions had been used successfully, the qualitative evidence identified opportunities for improvements that could increase the utility of gang injunctions generally.

Key findings: areas for improvement

- **Raising awareness and understanding:** there was a perception that awareness and understanding of gang injunctions was relatively low amongst police officers, local authority representatives, legal representatives and the judiciary. There was some uncertainty about the benefits of gang injunctions compared to other interventions. This may be due in part to their relatively recent introduction.

- **Easing time and resource pressures:** It was reported that gang injunctions sometimes took a substantial amount of time and effort to complete, with evidence-gathering proving particularly resource-intensive. Police officer participants in particular felt that the standard of evidence required for an injunction was disproportionately high. It was felt that the outcomes of injunctions were sometimes not commensurate with the resources invested in them. These issues reportedly discouraged participants from subsequently pursuing more gang injunctions.
- **Enabling better targeting of injunctions:** Practitioners reported some difficulty in proving an individual's gang association to meet the requirements of the legislation – with those not directly involved in violence (but potentially influencing violent activity) and those on the periphery of gangs proving difficult to target. This meant that, in these cases, the injunctions were only being applied to a subset of gang-associated individuals, and that it was difficult to use injunctions as an early intervention to divert individuals away from violence. The definition of a gang used in the legislation was seen by police officer participants to have some limitations for addressing local gang issues. In addition, courts' understanding of gangs and the harm gangs could cause was felt to be generally low, and this was seen to make it difficult to convince courts of the necessity for strict prohibitions.
- **Setting effective prohibitions and requirements:** Prohibitions and requirements were seen to work well in discouraging gang violence. However, there were several challenges with setting effective positive requirements. It was felt that where prohibitions and requirements were planned together, they were more effective. However, for practical reasons this did not always happen – with a perception that positive requirements were sometimes 'tacked on' to injunctions. The effectiveness and choice of positive requirements was limited by what was available locally, the length of the injunction, and the willingness of the respondent to engage.
- **Improving adherence and enforcement:** Ensuring injunctions were adhered to, in particular positive requirements, was felt to be difficult and quite resource-intensive and this meant that injunctions were reportedly not being enforced as strongly as many police and local authority participants would have liked. There was a particular difficulty for service providers, for example those offering mentoring support, in balancing the need to maintain a trusting relationship with respondents and informing the police of breaches. This was seen by some to limit the effectiveness of the positive requirements.

The full memorandum can be found at **https://www.gov.uk/government/publications/review-of-the-operation-of-injunctions-to-prevent-gang-related-violence**

Consultation on fees under the Licensing Act 2003

Licensing fees are intended to recover the costs that licensing authorities incur in implementing the Licensing Act 2003, within the context of the transparency and accountability mechanisms to which licensing authorities are subject. Fee levels were set nationally in 2005, but have not been adjusted since then. The Police Reform and Social Responsibility Act 2011 introduced a power for the Home Secretary to prescribe in regulations that these fee levels should instead be set by individual licensing authorities.

This consultation invites views on a number of specific aspects of the regulations that will govern locally-set fees under the 2003 Act. These include:

- the future of the current variable fee 'bands' based on the national non-domestic rateable value (NNDR) of the premises
- whether the basis on which fees are determined should include new discretionary mechanisms to apply different fee amounts depending on whether or not premises are:
  - authorised to provide licensable activities until a late terminal hour and/or
  - used exclusively or primarily for the sale of alcohol for consumption on the premises
- if licensing authorities are able to apply different fee amounts, whether they should have further discretion to exclude certain classes of premises from liability for the higher amount
- the proposed cap levels that will apply to each fee category
- what guidance will be needed on setting fees and on efficiency and the avoidance of 'gold-plating' (which means activities that go beyond the duties of the 2003 Act and are not justified by proportionality)
- whether there should be a single annual fee date
- the transition process to locally set fees.

This consultation, which applies to England and Wales, is open until **10 April 2014**.

Enquiries and responses can be sent by email to **AlcoholStrategy@homeoffice.gsi.gov.uk**

Alternatively, responses can be sent to

Alcohol team
Drugs and Alcohol Unit
Home Office
4th Floor Fry Building
2 Marsham Street
London
SW1P 4DF

Further information and the online response form can be found at **https://www.gov.uk/government/consultations/locally-set-licensing-fees**

Dedicated fund to help break the silence for male rape victims

The Government has committed £500,000 over the next financial year so that male victims of rape will receive unprecedented access to vital help and support and encourage them to come forward after experiencing such a crime.

The latest figures show there were 2,164 rape and sexual assaults against males aged 13 or over recorded by the police in the year ending September 2013. The fund will also support historic victims who were under 13 at the time of the attack.

The fund will be open to bids from all charities and support organisations who feel they can offer help specifically for male victims. This will build on the services already available for rape or sexual abuse victims and ensure victims of most serious crimes receive the highest level of support.

Further information can be found at **https://www.gov.uk/government/news/500000-to-help-break-the-silence-for-male-rape-victims**

Covert Surveillance Consultation

The Home Office has published a consultation containing proposals to update the Covert Human Intelligence Sources Code of Practice as well as the Covert Surveillance and Property Interference Code of Practice. A number of the proposed amendments are being made as a result of changes already made to the Regulation of Investigatory Powers Act 2000 (RIPA) or by way of secondary legislation whereas some provide greater clarity for those authorising or using covert techniques.

This consultation, which is open until **27 March 2014**, seeks representations from individuals and public bodies who authorise and use covert techniques under RIPA as well as from the wider public.

Additional safeguards

The codes of practice have been revised to:

- include the requirement for local authorities to get judicial approval for their use of RIPA (Protection of Freedoms Act 2012)
- restrict local authority use of directed surveillance under RIPA to offences which attract a sentence of six months imprisonment or more (Protection of Freedoms Act 2012)
- increase the authorisation levels for the use of undercover officers and introduce judicial oversight by the Office of Surveillance Commissioners (Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013)

- include a reference that when an undercover officer is deployed to build up their cover profile an authorisation should be obtained if the officer wishes to establish or maintain a covert relationship with another person who is not the subject of an operation.

Technical changes

These technical changes reflect best practice and include:

- Noise abatement – revised language to make it clear that investigation of sustained loud noise is unlikely to have privacy implications requiring a RIPA authorisation.
- Agents acting for public authorities - necessary to provide clarity on the application of RIPA to individuals and non-governmental organisations.

In addition they also:

- Reflect changes to the police landscape in Scotland.

The changes made to the draft codes on which views are sought are highlighted throughout the documents linked below.

Enquiries about and responses to the consultation should be sent to: **RIPA@homeoffice.x.gsi.gov.uk**

The consultation document can be found at **https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/276011/CovertSurveillance.pdf**

The Covert Human Intelligence Sources Code of Practice can be found at **https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/276013/CovertHumanIntelligenceSources.pdf**

The Covert Surveillance and Property Interference Code of Practice can be found at **https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/276016/CovertSurveillancePropertyInterference.pdf**

Ending gang and youth violence: annual report 2013

The Home Office has published the findings of the review of the first year of the Ending Gang and Youth Violence programme.

The review had two main questions:

- What has the programme achieved in local areas?
- Has the Home Office engagement with local areas been successful?

The evidence the review considered included:

- perceptions of key local contacts from the 29 priority areas, collected through interviews and surveys
- peer review reports for each priority area; and
- police recorded crime data for 2012-13, focusing on selected violent offences.

Key findings

Overall, the first year of the programme was considered to be a success by the local priority areas. In particular:

- areas felt that they had been able to drive the programme to a greater extent than previous Home Office initiatives, in terms of influencing both how the programme supported them locally and the national impetus of the programme
- the peer reviews, the general manner of support (which was considered flexible and responsive to local issues), and the encouragement of local cross-agency working were seen to be particular strengths of the programme
- areas felt they benefitted from being a part of the programme, and that positive changes to addressing gangs and youth violence had been made locally as a result of the programme
- positive changes felt to have been made due to the programme included:
  - improvements to the level of local strategic direction and leadership around tackling gangs and youth violence
  - increased involvement of other local agencies (for example health, Job Centre Plus) and the voluntary and community sector; and
  - new or improved approaches to specific issues (such as understanding the local context, and supporting girls and women associated with gangs).
- the reported benefits of the programme were accompanied by continued falls in overall police recorded youth violence (ie, violence affecting 10-19 year olds) in the areas taken as a whole in 2012-13 compared with 2011-12. These falls continued those seen in 2011-12 compared with 2010-11 (prior to the commencement of the programme), and occurred against the background of national falls in levels of violent crime overall. It was noted that while these reductions cannot be directly linked to the programme, the picture is positive.

The full report can be found at **https://www.gov.uk/government/publications/ending-gang-and-youth-violence-annual-report-2013**

Local alcohol action areas

Twenty areas across England and Wales have been established as local alcohol action areas. This project has been set up to tackle the harmful effects of irresponsible drinking, particularly alcohol-related crime and disorder, and health harms.

These local alcohol action areas are those in which local agencies, including licensing authorities, health bodies and the police will come together with businesses and other organisations to address problems being caused by alcohol in their area.

Work in these areas will be concentrated on the key aims of reducing alcohol-related crime and disorder and reducing the negative health impacts caused by alcohol. In addition, these will be underpinned by the objective of promoting diverse and vibrant night-time economies.

Each area has chosen to address one, two or all three of those aims.

The twenty areas are as follows:

- Blackpool
- Croydon
- Doncaster
- Gloucester City
- Gravesham
- Greater Manchester
- Halton
- Hastings
- Liverpool
- Middlesbrough
- Newham
- Northamptonshire
- Nottinghamshire County
- Pembrokeshire
- Scarborough
- Slough Borough
- Southend on Sea
- Stoke on Trent
- Swansea
- Weston Super Mare.

The list of aims chosen in each area can be found at **https://www.gov.uk/government/publications/local-alcohol-action-areas**

Talks begin over contracts to tackle reoffending

Organisations bidding for new regional rehabilitation work have been invited to begin formal contract talks, as part of the Government's reforms aimed at overhauling the management of offenders.

All bidders have been provided with detailed information on the competition process, the way in which bids will be scored and what they will need to demonstrate to win the contracts. A revised payment method has also been given to providers setting out the reductions in reoffending they will be required to achieve in order to be paid in full.

Those successful will provide targeted support to offenders across England and Wales and will help to lead a new approach that will see, for the first time, every offender released from prison receive at least 12 months supervision and rehabilitation in the community. This is seen as crucial in tackling the country's high reoffending rates that currently see more than half a million crimes committed each year by those who have broken the law before.

An updated operating model for the reforms will also be published shortly. It will include more detail on how:

- providers will start working with all prisoners on reception into custody to address their needs and set out a clear plan for resettlement into the community
- providers will be expected to work closely with a wide range of partners to crack reoffending, including the police, local authorities, the Youth Justice Board and Youth Offending Teams, and how Police and Crime Commissioners in particular will be able to commission services such as Restorative Justice from providers
- the system will be governed, including the role of the probation and prisons inspectorates and the Prisons and Probation Ombudsman in driving up standards and holding the system to account
- providers will be required to offer targeted support to meet the specific needs of female offenders.

In addition, the charity Clinks has been awarded a grant of almost £200,000 by the Justice Secretary in order that legal support can be provided to voluntary organisations who are planning to play a role in the reforms. To ensure this type of support continues after implementation of the new approach, a further £720,000 will be made available to help small organisations or those working with offenders who may need additional targeted support.

The Cabinet Office has also announced the allocation of more than £2m to support a number of charities and social enterprises who use social action to reduce reoffending in England. This fund was developed in partnership with the Ministry of Justice and the National Offender Management Service in 2013 as part of the Cabinet Office's Centre for Social Action.

Further information can be found at **https://www.gov.uk/government/news/talks-begin-over-contracts-to-tackle-reoffending**

New fund available to help victims of crime

A new £12 million fund to help victims of the most serious crimes get access to vital support has been announced by the Ministry of Justice. This will sit alongside £4.4 million dedicated to provide 78 female rape support centres across England and Wales, offering specialist services for victims such as counselling, advice and helplines.

Police and Crime Commissioners (PCCs) will be able to bid for a share of this £12 million, on top of their budgets for 2014/15, to commission further specialist services for victims of the most serious crimes. The fund will open for bids shortly, with the aim being to provide PCCs with the funding as soon as possible.

This announcement follows on from the Government's recent announcement to provide £500,000 for the first time to help male victims of rape and sexual violence.

Further information can be found at **https://www.gov.uk/government/news/more-than-16-million-to-help-victims-rebuild-their-lives**

Theft from the person information pack published

Aimed at partners and at businesses in the night-time economy, the Home Office has published an information pack providing advice on preventing theft from the person, which ranges from pick-pocketing to cycle theft.

The information pack is a collection of information that has been gathered from a range of sources including police forces, key partners and academia. It includes:

- lessons learnt
- example messages
- existing offender prevention campaigns
- advice for forces to share with businesses on reducing theft from the person crime within their establishments.

Section 1 of the pack includes background information on 'theft from the person', including where incidents tend to occur and the profile of 'at risk' groups.

Section 2 offers some lessons learned from previous communication campaigns targeting theft.

Section 3 provides some example messages, focussing on two 'at risk' groups, namely students and young women.

Section 4 presents details of existing campaigns that are being used across England and Wales, and focuses on offender prevention activity.

Section 5 concludes with messages to businesses on how to reduce 'theft from the person' within their establishments. The appendix at the end contains links to further sources of information on personal safety and crime prevention.

The information pack can be found at **https://www.gov.uk/government/publications/theft-from-the-person**

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College of Policing Limited is a company registered in England and Wales.
Registered number: 8235199
VAT registered number: 152023949
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