

2023 Updates

What's new?

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2022 Legislative Changes

1) Police Crime Sentencing and Courts Act 2022

- a) Pre-charge bail
- b) Offences against emergency workers
- c) Changes to maximum sentences
- d) Offences relating to protest/public order
- e) Cautions

1) Domestic Abuse Act 2021 (non-fatal strangulation came into force June 2022)

2) Judicial Review and Courts Act 2022

3) The Approved Premises (Substance Testing) Act 2022

Police, Crime, Sentencing and Courts Act
2022 “PCSCA”

Pre-charge Bail (S45 and Schedule 4)

- Concerns in respect of the increasing use of RUI had been growing since 2017 when pre-charge bail was last amended. There were predominantly two issues being raised:
 - 1) Suspects left in limbo – cases were dragging on for such long periods without conclusion because there are no time limits on RUI.
 - 2) Victims at risk - police did not have the power to impose conditions on suspects that were RUI'd.
 - It appears that this latter point is the focus of the changes that have been made. The Home Office calls this package of reforms 'Kay's Law' in memory of Kay Richardson who was killed by her former partner while he was RUI'd for allegedly raping her.
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Part I of Schedule 4

Net widening

- Part I lowers the level of authority required for officers to grant pre-charge bail has been widened.
- Under S30A (release of a person arrested elsewhere than at a police station), a ‘custody officer’ is able to grant bail. This has been amended from ‘a police officer of the rank of inspector or above’.
- ‘Custody officer’ is defined under S36(7C) to include any officer who is performing the functions of a custody officer of any rank who is performing the functions of a custody officer at a designated police station if a custody officer is not readily available to perform them.

Presumption against pre-charge bail removed

- Previously, when officers were not able to issue a charge within the ‘PACE Clock’ and wanted to continue their investigation, there was a presumption against using pre-charge bail. This had been in place since the last set of reforms in 2017.
 - Part I removes this presumption to establish a neutral position within the legislation.
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Part 2 of Schedule 4

- i) Part 2 creates a set of risk factors to be taken into account when considering whether to grant pre-charge bail.

 - ii) S30A(1B) has been introduced, which states that, when determining whether releasing the person on bail is necessary and proportionate in all the circumstances, the constable must have regard to the following:
 - a) the need to secure that the person surrenders to custody;
 - b) the need to prevent offending by the person;
 - c) the need to safeguard victims of crime and witnesses, taking into account any vulnerabilities of any alleged victim of, or alleged witness to, the offence for which the person was arrested where these vulnerabilities have been identified by the constable;
 - d) the need to safeguard the person, taking into account any vulnerabilities of the person where these vulnerabilities have been identified by the constable; and
 - e) the need to manage risks to the public.
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Part 3 of Schedule 4

- Part 3 establishes a new duty on police to seek the views of victims on pre-charge bail conditions which relate to their safeguarding.

Part 4 of Schedule 4

- S47 of PACE is altered through these changes. Generally, the bail time limit has been extended (both in standard and non-standard cases).
 - Standard cases (with a new initial bail period of 3 months) can be subject to two further extensions (from 3 to 6 months by an inspector, from 6 to 9 months by a superintendent) before going to the Mags for further extensions.
 - The applicable bail periods (ABPs), processes and authority levels for the FCA, SFO, NCA or HMRC cases are different.
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Part 5 of Schedule 4

- Previously, arrests for breach of bail conditions or failing to answer bail wound down the time on the PACE clock.
 - There is now a three-hour pause (s47(6A)), which means that arrests for breach of bail conditions/failing to answer bail do not affect the original clock.
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Part 6 of Schedule 4

- S50B is inserted into PACE, which adds a new power for the College of Policing to issue statutory guidance for people who have been granted pre-charge bail under Part 3 or 4 of PACE.
 - This guidance can be accessed [here](#).
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Offences Against Emergency Workers

Sections 2 and 3 PCSCA

Increase in penalty for assaults on emergency workers

- S2 amends S1 of the Assaults on Emergency Workers (Offences) Act 2018 to increase the maximum penalty for the offence of common assault and battery when committed against an emergency worker – **from 12 months to 2 years' imprisonment.**
- The definition of an 'emergency worker' is set out in S68 of the Sentencing Act 2020 and S3 of the 2018 Act. It includes police constables, others with the powers of a constable, those employed for police purposes.

‘Harper’s Law’

- PC Harper was killed while he was serving as a police officer. The three people responsible for his death were convicted of (unlawful act) manslaughter. On 31 July 2020:
 - i) For the manslaughter of PC Harper, Long was sentenced to an extended determinate sentence pursuant to Section 226A of the Criminal Justice Act 2003 comprising a period of detention of 16 years and an extended licence period of 3 years.
 - ii) Bowers and Cole were sentenced to 13 years’ detention in a Young Offender Institution.
 - iii) The Court of Appeal rejected an AG’s reference in 2020 that argued that their sentences were unduly lenient (*R v Long, Bowers and Cole [2020] EWCA Crim 1729*).
 - S3 PCSCA introduces a mandatory life sentence for manslaughter of emergency workers who were acting in the course of their functions.
 - This applies to 16- and 17-year-old offenders, as well as adults.
 - Judicial discretion to disapply the life sentence and impose an alternative sentence can only be used in ‘exceptional circumstances’.
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Changes to Maximum Sentences

Longer Sentences

- There have been further changes to maximum sentences. For example:
 - i) the maximum penalties for poaching have been increased from a fine to six months' imprisonment (S62);
 - ii) the maximum penalty for the offence of cruelty to children has been increased from 10 to 14 years' imprisonment (S122);
 - iii) the offence of allowing a child or vulnerable adult to die or suffer serious physical harm has increased to life (in the case of death) and 14 years' imprisonment in the case of really serious harm (S123)
 - iv) increased penalties for causing death by dangerous driving (imprisonment for life) or careless driving when under the influence of drink or drugs (imprisonment for life) (S86).
 - v) For all discretionary life sentences, the minimum term has increased significantly with the starting point raised to at least two-thirds of the notional determinate sentence, instead of the current half (S128).
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Public Order Offences/Laws Affecting Protest

S73 – S75: Public processions and public assemblies

- The PCSCA brings in provisions to allow a senior police officer to set legally binding conditions on marches and assemblies based on the prospect of noise generated by the protest causing serious disruption to an organisation nearby, or the noise causing serious unease, alarm, distress, intimidation or harassment.
 - The PCSCA also gives power to the Home Secretary to make more specific guidance about what does and doesn't meet these criteria.
 - Changes to S12 and 14 of the Public Order Act 1986 have been implemented.
 - Before the PCSCA, the Crown had to show that D knew the conditions that had been set and failed to comply with them, whereas the PCSCA changes the law so that the Crown only has to show that D ought to have known them (S75(5)).
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S76: Obstruction of vehicular access to Parliament

- There are certain things which are illegal if they're done in the 'controlled area' around Parliament, including Parliament Square.
- The PCSCA adds some roads into this controlled area that weren't in it before.
- It also adds a 'prohibited activity' of obstructing vehicular access to the Parliamentary Estate.

S78: Intentionally or recklessly causing public nuisance

- This abolishes the common law offence of public nuisance and creates a statutory offence.
- The max. sentence on conviction on indictment is 10 years or an unlimited fine or both.

(1) A person commits an offence if—

(a) the person—

(i) does an act, or

(ii) omits to do an act that they are required to do by any enactment or rule of law,

(b) the person's act or omission—

(i) creates a risk of, or causes, serious harm to the public or a section of the public, or

(ii) obstructs the public or a section of the public in the exercise or enjoyment of a right that may be exercised or enjoyed by the public at large, and

(c) the person intends that their act or omission will have a consequence mentioned in paragraph (b) or is reckless as to whether it will have such a consequence.

S79: Imposing conditions on one-person protests

- Before the PCSCA was introduced, S14 of the Public Order Act 1986 allowed the police to place conditions on a 'public assembly', which is two or more people gathered together in a public place.
 - Police can now put conditions on a one-person protest if the noise generated may result in serious disruption to the activities of nearby organisations or cause significant impact to other people in the area.
 - It's up to the senior officer what conditions to impose, but this can include prohibiting the protester from entering certain public spaces.
 - It is an offence if the person knows or ought to know about these conditions and fail to comply with them.
 - It is also an offence to incite another person to commit the offence.
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S80: Wilful obstruction of the highway

- This offence has changed in that it is no longer a defence to say that the highway was already blocked when the suspect sat down, locked on, or otherwise obstructed it. This applies even if the road is already blocked by police, traffic wardens, or anyone else.
- The max sentence has been increased to a term of imprisonment not exceeding 51 weeks.

S50: Criminal damage to a memorial

- Although not explicitly a public order offence, this section targets a form of protest.
- Criminal damage to a memorial has become triable either-way even when damage is less than £5,000.
- S50 notes the meaning of 'memorial' can also 'any moveable thing' including a bunch of flowers left for a commemorative purpose. This means that removing flowers could result in proceedings in the Crown Court.

S83 – 85: Unauthorised encampments

- The PCSA creates a summary offence of residing with a vehicle on land without permission (this used to be a civil matter). A person aged 18 or over cannot reside on land without the consent of the owner if they have, or intend to have, a vehicle with them, and refuse to leave and remove their property when asked. They also need to be causing, or deemed likely to cause, significant damage (including excessive noise, smells, litter or other damage to the environment), disruption (including interference with a 'supply of water, energy or fuel') or distress (including using words or displaying any writing that is 'threatening, abusive or insulting').
 - This will affect nomadic Gypsies and Travellers most significantly. New powers in respect of vehicle seizure are introduced – this is not insignificant as generally the vehicles are also the homes of the people who will be arrested for such offences. In practice, it is the confiscation of their homes and possessions.
 - The maximum penalty is 3 months' imprisonment or a fine not exceeding level 4, or both – the major issue is that the property does not have to be returned.
 - Friends, Families & Travellers have produced a helpful pamphlet that you can access [here](#).
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CAUTIONS

Part 6: Cautions (S98 – 121)

a) Diversionary cautions

- i) These can be given to people over the age of 18.
- ii) They can be used for indictable-only offences, but only in exceptional circumstances and with consent of DPP.
- iii) These cannot be given to offences committed before this section came into force.
- iv) Conditions may include preventative conditions (e.g., geographic restrictions), positive conditions (e.g., attendance at alcohol misuse centre, unpaid work), financial penalty (no max. fine value in the legislation itself, the limit is to be set by secondary legislation), foreign offender condition requiring them to return to home country.
- v) Failure to comply with conditions may result in prosecution for the original offence.

b) Community cautions

- i) These can be given to people over the age of 18.
 - ii) They cannot be used for indictable-only offences.
 - iii) These cannot be given to offences committed before this section came into force.
 - iv) Conditions may include preventative conditions (e.g. geographic restrictions), positive conditions (e.g. attendance at alcohol misuse centre, unpaid work), or financial penalty (no max fine value, the limit is to be set by secondary legislation).
 - v) Failure to comply may result in police-issued fine (enforced by Mags).
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S70 Domestic Abuse Act 2021

Non-fatal Strangulation and Non-fatal Suffocation

- S70 Domestic Abuse Act 2021 introduced the offences of non-fatal strangulation and non-fatal suffocation.
 - The offences came into force on 7 June 2022 and are **not retrospective**.
 - These offences are applicable to to all cases, not just those involving domestic abuse.
 - These offences are triable either way. A person found guilty of this offence is liable on summary conviction to imprisonment for a term not exceeding 12 months, or a fine, or both and on conviction on indictment to imprisonment for a term not exceeding 5 years or to a fine, or both.
 - There are currently no specific Sentencing Council Guidelines.
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Definitions

NON FATAL STRANGULATION

Section 75A(1) a person (“A”) commits an offence if-

- A intentionally strangles another person (“B”), or
- A does any other act to B that –
 - affects B’s ability to breathe, and
 - constitutes a battery of B.

Stocker v Stocker [2019] UKSC 17 (a defamation case), the UKSC considered the meaning of ‘strangle’: force to the neck, which did not involve killing. Common methods of non-fatal strangulation are:

- a) Manual – one or two hands held around the neck of a person
 - b) Chokehold or head lock – external pressure applied by an arm around the neck
 - c) Ligature – for example a scarf or belt tightened around the neck
 - d) Hanging
 - e) Pressure on the neck from a foot or knee
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Definitions

NON FATAL SUFFOCATION

The legislation does not provide a definition of 'suffocation'. The word should be given its ordinary meaning which is to deprive a person of air which affects their normal breathing.

This definition is wider than that of non-fatal strangulation, which requires pressure to the neck.

Methods of non-fatal suffocation could include:

- a) putting a hand over the mouth and nose
 - b) compressing the chest
 - c) any other force or suppression applied to a person to cause a restriction of breath
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Defences

Section 75A(2) SCA 2015 provides a **statutory defence** for A to show that B **consented** to the strangulation or other act. However, this is limited by section 75A(3) SCA 2015 which states the defence does not apply if:

- B suffers **serious harm** as a result of the strangulation or other act, and
- A either –
 - **intended** to cause B serious harm, or
 - was **reckless** as to whether B would suffer serious harm.

The legislation goes on to provide a definition of 'serious harm' in section 75A(6) SCA 2015 as:

- grievous bodily harm (GBH) within the meaning of section 18 of the Offences Against the Person Act 1861
- wounding within the meaning of section 18 of the Offences Against the Person Act 1861, or
- actual bodily harm (ABH), within the meaning of section 47 Offences Against the Person Act 1861.

This gives legislative effect to the decision in [R v Brown \[1993\] UKHL 19](#) which decided that consent by the victim to the infliction of any injury amounting to ABH, unlawful wounding or GBH did not provide a suspect or defendant with a defence.

Judicial Review and Courts Act 2022

S13: Mags Sentencing Powers

S13 amends the Sentencing Act 2020 in order to provide the power to vary the general limit on Magistrates' Court sentencing powers for a single either-way offence to **12 months**.

This section has effect only in relation to an offence for which a person is convicted **on or after the day on which the amendment came into force: 2 May 2022.**

The Approved Premises (Substance Testing) Act 2022

This allows managers of APs to test those in the residence for psychoactive substances and the misuse of prescription medication

CASE LAW

Colston Four

- You can find a link to the Court of Appeal's press summary [here](#)
 - Four defendants were acquitted by a jury at Bristol Crown Court following their trial for criminal damage to a statue of Edward Colston. The Ds ran a range of defences. The defence with which this judgment was concerned was that the damage done to the statue was lawful because it was a proportionate exercise of the right to protest
 - the Court of Appeal stated that the ability to use human rights defences in protest-related trials, as were used by the Colston Four when acquitted by a jury trial earlier this year, would now only be available in limited cases
 - This threshold would depend on the perceived level of violence and cost of damage involved. For example, human rights defences might still be extended to anyone accused of causing temporary damage, such as chalking or graffitiing slogans on buildings
 - However, the Court ruled that due to the 'high value' of the statue of Edward Colston and the manner in which it was brought down, which it described as 'violent', Ds in cases relating to similar incidents in the future would not be able to use human rights defences as the Colston Four did
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R v B [2020] EWCA Crim 643

- Although this case was decided in 2020, changes were made as a result of it to the sentencing guidelines in 2022
 - In *R v B*, the court held that it will sometimes be appropriate to treat a young person as needing further information, assistance or advice before indicating their plea, and thereby to allow the maximum level of reduction for a guilty plea that was not entered at the first stage of the proceedings, even though it would not do so in the case of an adult
 - See the relevant changes on the next slide
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Sentencing Children and Young People Guideline

5.16) Where the sentencing court is satisfied that there were particular circumstances which significantly reduced the child or young person's ability to understand what was alleged, or otherwise made it unreasonable to expect the child or young person to indicate a guilty plea sooner than was done, a reduction of one-third should still be made. **It may sometimes be appropriate to treat a child or young person as needing such information, assistance or advice, where it would not be needed in the case of an adult...**

6.46) When considering the relevant adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. In most cases when considering the appropriate reduction from the adult sentence the emotional and developmental age and maturity of the child or young person is of at least equal importance as their chronological age. **This reduction should be applied before any reduction for a plea of guilty.**

Cifci v CPS [2022] EWHC 1767 (Admin)

- A judgment in respect of the interaction between the prohibition on discrimination in the Equality Act 2010 and Article 14 ECHR and the power to stop and detain pursuant to Schedule 7 Terrorism Act 2000.
 - The Divisional Court upheld the Appellant's argument that, **to convict a person for an offence of obstructing a schedule 7 stop, the criminal court must be sure that the stop was not discriminatory.**
 - In cases where the issue of discrimination has been raised, there are two separate questions that the Court must ask:
 - 1) was the purpose of the stop the Schedule 7 statutory purpose?
 - 2) did the appellant's protected characteristic have a significant influence on the decision to stop?
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