Police (Detention and Bail) Bill

Report

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The Police (Detention and Bail) Bill

1. The Police (Detention and Bail) Bill is being fast-tracked through both Houses of Parliament in order to “reverse” the effect of a High Court judgment dated 19 May 2011 but published only on 17 June: namely, R (Chief Constable of Greater Manchester Police) v Salford Magistrates’ Court and Hookway.¹

2. The ruling of the High Court in the Hookway case has been appealed to the United Kingdom Supreme Court. A hearing has been set down for 25 July 2011. On 5 July the Supreme Court dismissed an application filed by Greater Manchester Police to stay the effect of the High Court’s judgment. In a short statement, the Court gave the following reasons: that the Government had announced that they proposed to introduce emergency legislation on the matter, that the application was unusual, and that it was questionable whether it was open to the Court to grant a stay.²

3. The subject matter of the case—and of the Bill—is whether the “detention clock” provided for by the Police and Criminal Evidence Act 1984, section 41, continues to run once a suspect has been released on police bail. For 25 years the understanding has been that it does not. This means that the police may re-arrest a suspect released on bail, and detain and question him or her further, as long as the maximum period of pre-charge detention (that is, 96 hours) is not exceeded. The ruling in Hookway appears to reverse this understanding. In a compelling analysis the acknowledged academic expert on the Police and Criminal Evidence Act, Professor Michael Zander, has argued that Parliament’s intention in passing the Act was that the detention clock would not run while a suspect was on police bail (as had been the accepted practice until the Hookway decision).³

4. The Bill seeks to “reverse” the effect of the High Court judgment retrospectively. While understandable in the context of this Bill, retrospectivity is in principle always to be guarded against. As JUSTICE have observed, retrospectivity in statute “offends against the principle of legal certainty and weakens the rule of law”.⁴ Having Parliament legislate retrospectively and having the Supreme Court adjudicate on what may well then be moot is an unusual prospect.

5. In 2009 we published a report on fast-track legislation in which we recommended, among other matters, that a Government introducing fast-track legislation into Parliament should be expected to comply with certain requirements.⁵ In particular, we recommended that the Government should fully explain and justify why, in their opinion, it was necessary for legislation to be fast-tracked.⁶ The then Government accepted our recommendations,

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³ Professor Michael Zander QC, The Detention Clock: An Unhelpful Decision which is Surely Wrong 175 Criminal Law and Justice Weekly 365 (18 June 2011).
⁴ JUSTICE, Briefing on the Police (Detention and Bail) Bill, July 2011, para 7.
⁶ Ibid, para 186.
and they have since been complied with. \(^7\) We are pleased to note that in this instance, too, the explanatory notes accompanying the Bill explain why fast-tracking is, in the Government’s opinion, necessary.

6. We note that there appears to be cross-party support for the Bill. We note also that the police have made plain, including in evidence to Parliament, that there is a strong public interest in swift action. \(^8\) We further note that human rights and civil liberties campaigners, such as Liberty and JUSTICE, have not raised objections to the substance of the Bill.

7. Notwithstanding all of the above, however, there is one feature of the Bill which touches upon an issue of constitutional principle which we draw to the attention of the House. As noted above, the High Court judgment which this Bill seeks effectively to “reverse” is itself under appeal to the UK Supreme Court in litigation which remains ongoing. **We are concerned that asking Parliament to legislate in these highly unusual circumstances raises difficult issues of constitutional principle as regards both the separation of powers and the rule of law. We have noted the constitutionally important distinction between legislative and adjudicative functions before.** \(^9\) We are concerned that, in the understandable rush to rectify a problem which the police have identified as being serious and urgent, insufficient time has been allowed for Parliament fully to consider the constitutional implications of what it is being asked to do.

8. It is not for us to say what the effect of Parliament legislating in advance of the Supreme Court hearing may be on the Court when it hears the case on 25 July. It may be that we will need to return to this matter later in the year.

9. In this respect, the circumstances of the Police (Detention and Bail) Bill are markedly different from those of the Terrorist Asset-Freezing (Temporary Provisions) Bill in 2010. That legislation was introduced in response to a judgment of the Supreme Court. Parliament had the advantage, when considering the legislation, of a considered Supreme Court judgment to assist it in its deliberations. \(^10\)

10. We note also that several campaigners and commentators have argued that practices of police bail need more broadly to be revised. \(^11\) Owing to its being fast-tracked, this Bill is not the ideal occasion for these matters to be addressed, but it may be that we will wish to return to them when, for example, the Protection of Freedoms Bill is brought to this House later in the year.

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8 The House of Commons Home Affairs Committee took evidence from Jim Barker-McCardle, Chief Constable of Essex and Commander Steve Bloomfield, Metropolitan Police on 5 July 2011. The transcript will be available on the Committee’s website http://www.parliament.uk/homeaffairscom.


10 See JUSTICE, Briefing on the Police (Detention and Bail) Bill, July 2011, para 6.