

SPICe Briefing

Named Person

08 August 2016

16/66

Camilla Kidner

In [Christian Institute and others \(Appellants\) v. The Lord Advocate \(Respondent\) \(Scotland\)](#) [2016] UKSC 51, the Supreme Court has found that the information sharing provisions of the Named Person legislation are outwith the Scottish Parliament's legislative competence. These provisions are due to come into effect on 31st August 2016.

This briefing summarises the judgement, the parliamentary passage of the legislation and looks briefly at other Scottish Parliament legislation that has been challenged in the courts.



CONTENTS

EXECUTIVE SUMMARY	3
THE NAMED PERSON	4
PASSAGE THROUGH PARLIAMENT	5
IMPLICATIONS FOR CURRENT PRACTICE	6
IMPLICATIONS FOR THE 2014 ACT	6
ARTICLE 8 EUROPEAN CONVENTION ON HUMAN RIGHTS	7
UNIVERSAL NAMED PERSON SERVICE	8
INFORMATION SHARING "NOT IN ACCORDANCE WITH THE LAW"	8
LACK OF CLARITY	8
LACK OF SAFEGUARDS	9
CONSENT	9
RISK OF BREACH IN INDIVIDUAL CASES	10
REACTION	10
PREVIOUS ATTEMPT TO LEGISLATE ON INFORMATION SHARING	11
OTHER ACTS SUBJECT TO COURT CHALLENGE	11
AGRICULTURE HOLDINGS (SCOTLAND) ACT 2003	11
CRIMINAL JUSTICE (SCOTLAND) ACT 2003	12
CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010	12
UNSUCCESSFUL CHALLENGES	12
<i>Adoption and Children (Scotland) Act 2007</i>	12
<i>Criminal Proceedings etc (Reform) (Scotland) Act 2007</i>	12
<i>Damages (Asbestos-related Conditions) (Scotland) Act 2009</i>	12
<i>Tobacco and Primary Medical Services (Scotland) Act 2010</i>	12
OUTSTANDING CHALLENGE	13
SOURCES	14
RELATED BRIEFINGS	16

EXECUTIVE SUMMARY

A Supreme Court judgement has found that the information sharing provisions in relation to the Named Person Service in Part 4 of the Children and Young People (Scotland) Act 2014 (the 2014 Act) are outwith the legislative competence of the Scottish Parliament. Part 4 of the 2014 Act is not yet in force. It is due to come into force on 31st August.

The Scottish Government has said that:

“We will start work on this immediately so we can make the necessary legislative amendments. The service will be implemented nationally at the earliest possible date.”
([Scottish Government 2016](#)) .

Many local authorities and health boards currently operate a non-statutory Named Person scheme as part of their approach to ‘Getting it right for every child.’ The court judgement does not apply to these policy-based schemes. It is the statutory scheme, not yet in force, that the court judgement applies to.

Article 8 of the European Convention on Human Rights protects children and families against unjustified interference by the state. One of the requirements relates to the clarity of the legislation – people need to know what they are allowed to do. The Court found that the information sharing provisions were not clear enough because of the complicated way that they relate to data protection law. As a result they were not ‘in accordance with the law.’

The Court found that, apart from the information sharing provisions, the Named Person statutory scheme *could* be operated in a way that met human rights requirements. However there was a risk that there might be breaches in practice in relation to information sharing.

It is not for the Court to suggest policy, but they did say that the 2014 Act needs greater clarity about how it relates to the law on data protection and that either binding guidance or subordinate legislation should be introduced to guard against human rights breaches in individual cases.

Parties were given 42 days to make written submissions to the Court. The Court may then decide whether a s.102 Order is required to suspend the effect of the judgement to give time to remedy the defects in the legislation.

Two other Acts of the Scottish Parliament have had provisions struck down by the Courts. In both cases, the relevant provisions were already in force.

- Agriculture Holdings (Scotland) Act 2003
- Criminal Justice and Licensing (Scotland) Act 2010

There is an ongoing challenge to the Alcohol (Minimum Pricing) (Scotland) Act 2012, which is currently at the Court of Session.

THE NAMED PERSON

Following around ten years of policy development as part of 'Getting it Right for Every Child' (GIRFEC¹), a statutory, universal Named Person service is due to be introduced under Part 4 of the Children and Young People (Scotland) Act 2014 (the 2014 Act). Generally this service will be provided by the health board (for pre-school children) and the local authority otherwise, up to the age of 18, or beyond if still in school.²

Part 4 of the 2014 Act has not yet been brought into force. To date therefore, the GIRFEC approach, including provision for a Named Person, has been operating as policy in many local authorities and health boards.

Under Part 4 of the 2014 Act, an identified individual, known as the Named Person, is to be made available to every child or young person in Scotland from birth to age 18, or beyond if still in school. The Named Person will exercise various functions, where they consider it appropriate, in order to promote, support or safeguard the 'wellbeing' of a child or young person. These functions are: providing advice, information and support to children, young people and their parents; helping them to access appropriate services; and discussing or raising a matter about the child or young person with various specified public authorities and service providers (for example, health boards, local authorities, NHS services, the police etc).

The Named Person has no new legal powers to compel anyone to accept advice or support.

To assist the Named Person carry out their functions under the 2014 Act, various specified public authorities³ and the Named Person service provider are under a duty to share information that the information holder considers:

- is likely to be relevant to the exercise of the Named Person functions, or to the functions of the service provider or public authority which affects or may affect the wellbeing of the child or young person, and
- ought to be provided for the purpose of the exercise of Named Person functions

In considering whether information 'ought to be provided', the information holder must seek and 'have regard' to the views of children and young people 'so far as reasonably practicable.' The information holder must also consider whether the likely benefit to the child or young person outweighs any likely adverse effect that could result from sharing the information.

There is also a power to share information where the information holder considers it is necessary or expedient for the purpose of the exercise of any of the Named Person functions.

Revised draft statutory guidance (RDSG) (Scottish Government 2015) includes guidance on information sharing, and the Court took this guidance into account in its decision.

The RDSG explains that it is routine good practice to seek the views of parents (para 10.7.4), but this is not a statutory requirement on the face of the 2014 Act. Nor is there a requirement on the face of the 2014 Act to seek consent of the child or the parent before sharing information.

¹ For background on GIRFEC see: <http://www.gov.scot/Topics/People/Young-People/gettingitright>

² Other organisations, like independent or grant-aided schools, secure accommodation services and the Scottish Prison Service (for the small number of young people held in custody), have a duty to make sure a Named Person is available to children and young people in their care. Generally the Named Person will be a health visitor for pre-school children and a headteacher, guidance teacher or promoted member of staff for school aged children and young people.

³ and those performing a function on behalf of local authorities, such as third sector, independent or grant aided contractors.

However, the information sharing provisions of the 2014 Act require to be interpreted in conjunction with the Data Protection Act 1998 (the DPA), with Article 8 of the European Convention on Human Rights on respect for family and private life as well as EU legislation on data protection. The complications arising from this formed the main issue for the Supreme Court in its consideration of the 2014 Act.

The 'information sharing provisions' of the Named Person Service, which the Court have declared to be out with the legislative competence of the Scottish Parliament, are contained in Part 4 of the 2014 Act, at sections 23, 26 and 27. An Order, [SSI 2016/60⁴](#), was laid in January 2016 that provided for Part 4 to come into force on 31 August 2016.

PASSAGE THROUGH PARLIAMENT

The 2014 Act was passed on 19 February 2014 by 103 votes to 0, with 15 abstaining. The abstentions were from the Scottish Conservative Party (Scottish Parliament, 2016).

The Named Person provisions were amongst the most controversial aspects of the Bill.

At Stage 1, with the exception of one member (Liz Smith, MSP) the Education and Culture Committee approved the principle of the Named Person. The Committee did however note concerns about information sharing and expected any necessary safeguards to be introduced at Stage 2 (Education and Culture Committee 2013).

At Stage 2 the information sharing provisions were amended so that:

- Information is shared if it is 'likely to be' relevant (rather than if it 'might' be)
- The views of the child must be considered where there is a duty to share information,
- Information is shared only if to do so would benefit the child's wellbeing.

Debate continued at Stage 3, with the Bill amended to include a complaints process (s.30). There were unsuccessful amendments proposing that confidential information is only shared with informed and explicit consent (unless to do so would adversely affect the wellbeing of the child).

At Stage 3 Liz Smith said: "We believe that the policy is wrong in principle, that it does not have conclusive supporting evidence and that it has not been properly costed." (col 27791). Liam McArthur noted that: "this in an area that is crying out for post legislative scrutiny" (col 27797).

Documentation on the parliamentary passage of the bill is available at:
<http://www.parliament.scot/parliamentarybusiness/Bills/62233.aspx>

The Named Person provisions were challenged in a high profile campaign, No2NamedPerson, and at judicial review on the grounds that:

- They relate to reserved matters.
- They breach Article 8 of the European Convention on Human Rights.
- They breach EU law on data protection.

⁴ Children and Young People (Scotland) Act 2014 (Commencement No. 11) Order 2016 (SSI 2016/60).

After losing in the Outer and Inner House of the Court of Session, the Supreme Court unanimously allowed the appeal on the basis of the ECHR challenge and the EU law challenge (to the extent that it mirrored the ECHR challenge).

For more information on judicial review as a legal remedy, see the SPICE briefing '[Judicial Review](#)' (Harvie-Clark, S 2016).

IMPLICATIONS FOR CURRENT PRACTICE

Because Part 4 has not been brought into force, the Supreme Court ruling does not apply to the existing, non-statutory, Named Person schemes. These operate under existing information-sharing powers.

As has always been the case, any information sharing under these current non-statutory schemes must be done within the framework of data protection and human rights legislation.

In a letter to the Education and Skills Committee, John Swinney said that it was necessary to continue current practice and share information in accordance with the relevant current legislation.

“It is important that public authorities continue to share information appropriately and in accordance with the requirements of the legislation such as the Data Protection Act and the Human Rights Act, when providing services to children and families.

Officials are working with the Information Commissioner’s Office provide further guidance on current practice in relation to sharing information.” (Swinney, 2016)

IMPLICATIONS FOR THE 2014 ACT

Section 29 of the Scotland Act 1998 provides that:

“An Act of the Scottish Parliament is not law so far as any provision of the Act is outside the legislative competence of the Parliament.”

The Supreme Court found that:

“The information sharing provisions of Part 4 of the Act are not within the legislative competence of the Scottish Parliament” (para 107).

Therefore it is only sections 23, 26 and 27 on information sharing that have been found not to be within legislative competence. It follows that these sections are not law in terms of section 29 of the Scotland Act 1998.

A commencement order (SSI 2016/60) has been made setting a date of 31st August 2016 for Part 4 to come into force. If no further action is taken, then Part 4 (including these provisions) will come into force on that date. This will be the case unless the Scottish Government takes steps to stop commencement, for example, by laying an order before the Scottish Parliament amending the previous commencement order.

The Court invited both parties to make written submissions within 42 days on whether an order under s.102 of the Scotland Act 1998 would be appropriate and how to remedy the defects in the legislation. Under s.102 of the 1998 Act, where a Court decides that:

“an Act of the Scottish Parliament or any provision of such an Act is not within the legislative competence of the Parliament”

Then the Court can make an order:

“suspending the effect of the decision for any period and on any conditions to allow the defect to be corrected.”

The decision that would be suspended is that sections 23, 26 and 27 are ‘not law.’ At the time of writing it is not known whether or not the Court will make a s.102 order and, if it did, what conditions may be attached to it. A section 102 order is not laid in the Scottish Parliament.

While it is not for the Court to set out the policy solution, it did suggest (para 107) that the 2014 Act needs to have:

- clarity about how it relates to the Data Protection Act 1998 (the DPA)
- legally binding guidance or subordinate legislation on:
 - when people should be told that information is being shared
 - when consent should be sought

in order to minimise the risk of disproportionate interference in practice

The Scottish Government has said:

“We will start work on this immediately so we can make the necessary legislative amendments. The service will be implemented nationally at the earliest possible date.”
([Scottish Government 2016](#))

John Swinney wrote to the Education and Skills Committee noting the need to amend the information sharing provisions, saying that:

“The Scottish Government is working to assess what that means for the timescale for implementation and further legislation” (Swinney, 2016)

The BBC reported that amendments could be introduced by the end of the year:

“the government is hopeful the legislation can be relatively easily redrafted to make it fully compliant with the ECHR, and that it could potentially be introduced before the end of the year assuming the changes are approved by the Scottish Parliament” (BBC 28 July 2016).

ARTICLE 8 EUROPEAN CONVENTION ON HUMAN RIGHTS

The Supreme Court found that the information sharing provisions of the 2014 Act breached Article 8 of the European Convention on Human Rights (ECHR) on the right to respect for private and family life. Article 8 ECHR protects family life from unjustified interference by the state. There is a well established method for establishing whether this has been breached. In general terms, this can be summarised as requiring the Court to ask itself:

1. Has there been an interference with the right in question?
2. Is that interference ‘in accordance with the law.’ This doesn’t just mean that it must be written in legislation or clear from court judgements. It has to be clear enough so that a person would know – with advice if need be – what they are allowed to do.
3. Is it necessary? i.e is the interference proportionate?

- does it pursue a legitimate aim?
- is the objective important enough to justify limiting human rights?
- is the measure rationally connected to the objective
- is there a less intrusive way of meeting the same aim?
- is the impact of the rights infringement disproportionate to the benefit to be achieved

UNIVERSAL NAMED PERSON SERVICE

The Court did not find that the Named Person service as whole breached human rights law. The provision of voluntary advice and support could be operated in a way that was compatible with human rights law:

"by themselves, the functions in section 19(5)(a)(i) and (ii) of providing advice, information and support and helping the parent, child or young person to access a service or support would not normally constitute an interference with the article 8 rights of either the child or his or her parents." (para 78)

The objection to the universal nature of the Named Person service was not upheld (para 93).

"If, as the appellants submitted in their broader challenge, a named person should be appointed in relation to a child only if the parents consented or, absent such consent, if the appointment was necessary to protect the welfare of a child who was at risk of harm, the scope for early intervention to resolve problems and for the coordination of public services in support of a child's wellbeing would be diminished."

It is the information sharing provisions and the risk that the legislation may be misapplied in practice that were the focus of concern for the Court (para 94).

INFORMATION SHARING "NOT IN ACCORDANCE WITH THE LAW"

LACK OF CLARITY

The 2014 Act has to be interpreted in the light of the DPA and EU law on data protection. The Court considered that doing so created such difficulties that the information sharing provisions of the 2014 Act "could not be taken at face value" and this lack of clarity meant that they were "not in accordance with the law."

The Court sets out examples of where information providing duties cannot be taken at face value. These include the duty at 26(3) which requires a service provider or relevant authority to provide any information that falls within 26(4). The Court states that:

"in reality no such duty exists in relation to sensitive data as defined in the DPA, unless at least one of the conditions set out in Schedule 3 to the DPA is satisfied (the conditions set out in section 26(4) and (5)-(7) of the 2014 Act not in themselves ensuring their satisfaction)". (para 83)

The Court did not provide "a comprehensive account of the requirements imposed by the DPA", referring the relationship between the DPA and the 2014 Act to be "rendered particularly obscure" in places.

The Scottish Government had published draft statutory guidance ([RDSG](#)) in 2015, but the Court considered that it gave 'very little guidance' on this issue and in any event, was not binding. Information holders only had to 'have regard' to it, they were not compelled to follow it (para 82).

The Court therefore concludes that there are:

"very serious difficulties in accessing the relevant legal rules when one has to read together and cross refer between Part 4 of the Act and the DPA and work out the relative priority of their provisions" (para 83).

LACK OF SAFEGUARDS

"Of even greater concern" to the Court were the lack of safeguards which would enable the proportionality of an interference with Article 8 to be adequately examined (para 84). There is no requirement in the Act to inform parents that information is shared. Where there is a duty to share information (s.26(1) and (3)), then the views of the child should be sought and had regard to only "so far as reasonably practicable". However, where there is a power to share information (s.26(8)), then the views of the child do not need to be sought.

The Court noted that:

"it is thus perfectly possible that information, including confidential information...could be disclosed... to a wide range of public authorities without either the child or young person or her parents being aware of the interference with their article 8 rights, and in circumstances in which there was no objectively compelling reason for the failure to ascertain and have regard to their views. (para 84)

The Court did not refer to the provision of a complaints process at s.30 of the 2014 Act, but did comment that:

"While para 10.14.2 of the RDSG advises that a record should be kept of the rationale behind a decision to share information, such a record will not assist a child, young person or parent who is not informed that the information is to be or has been shared" (para 84).

CONSENT

The Court noted that, in many circumstances, "the 2014 Act's intended overriding of the duty of confidentiality may not be achieved" since "on a proper interpretation of the legislation" the continued operation of the DPA will "in many cases...require the consent of the data subject to the sharing of the information" (para 99). However the Court found that even with these restrictions, the Act did not strike a fair balance between the rights infringement and the benefit to be achieved

"Even with the restrictions of the DPA, the Act does not point towards a fair balance in relation to the disclosure of such confidential information in the performance of duties under sections 23(2), 26(1) and 26(3). The central problems are the lack of any requirement to obtain the consent of the child, young person, or his or her parents to the disclosure, the lack of any requirement to inform them about the possibility of such disclosure at the time when the information is obtained from them, and the lack of any requirement to inform them about such disclosure after it has taken place. (para 100)

[...]

without such safeguards, the overriding of confidentiality is likely often to be disproportionate. (para 100)

The Court stated (para 101) that guidance needs to be binding and needs to cover:

- The circumstances in which consent should be obtained
- When consent can be dispensed with
- Whether people should be informed of the disclosure
- Whether the recipient of the information is subject to sufficient safeguards to prevent abuse

RISK OF BREACH IN INDIVIDUAL CASES

While the Named Person provisions, (apart from the information sharing aspects) *could* be operated in a way that meets human rights requirements, the Court found a significant risk that there may be breaches in practice. The Court identified two main problems:

- There was a risk that parents would be given the false impression that they must co-operate with the Named Person.
- Information holders are given little guidance in either the Act or the RDSG when faced with the "daunting" task of deciding whether it is proportionate to share information (para 97)

The Court was also concerned that the Act appears to "point towards a more relaxed approach to disclosure than is compatible with article 8." (para 97)

REACTION

The Scottish Government issued a statement that it remains committed to the named person policy and would start work immediately so the necessary legislative amendments could be made. (Scottish Government, 2016).

Colin Hart, Director of the Christian Institute said: "This ruling is crystal clear that the named person scheme's cavalier approach to handling private information is unlawful and must not happen." (BBC 2016a)

Ruth Davidson, MSP said: "We have consistently argued against the named person legislation on grounds of principle and practicality. I hope today's ruling will make the SNP stop and think again." (BBC 2016a)

Iain Gray, MSP said: "In light of this ruling, however, the implementation of this scheme must be paused for as long as it takes to sort it properly" (BBC 2016a)

The Scottish Green Party continue to support the named person. Ross Green, MSP said the required changes give the Scottish Government an opportunity to "build public confidence" in the legislation (Scottish Greens, online).

The Liberal Democrats have said Parliament should be recalled. Tavish Scott, MSP said: "A recall of parliament is the only way to ensure that reforms receive the scrutiny required" (BBC 2016a)

The Information Commissioner issued a statement:

“We will be working with the Scottish Government and agencies within the children’s sector to ensure that the concerns of the Supreme Court are adequately addressed. In the meantime, practitioners should be reassured that information sharing for child protection purposes is not affected by the judgment and that they should continue to share such information following best practice within the framework of the Data Protection Act and other law.” (Information Commissioner, 2016)

PREVIOUS ATTEMPT TO LEGISLATE ON INFORMATION SHARING

This is not the first attempt to legislation on information sharing for child welfare purposes. In 2006, the Protection of Vulnerable Groups (Scotland) Bill originally included provisions on information sharing (Scottish Parliament, 2006). However these were removed at Stage 2 following objections that there had not been sufficient consultation. The Stage 1 Committee report only supported the general principles of the Bill subject to the removal of Part 3 on information sharing.

Part 3 had proposed a duty on certain public authorities to share 'child protection information' defined in that Bill as:

"information relating to a child which the holder of information considers, or should reasonably consider, to be relevant for the purposes of protecting the child, or any other child, from harm"

The provisions were removed, with a view to further consultation and inclusion in planned legislation around Getting in Right for Every Child which was being consulted on at that time (Kidner, 2007). In December 2006 the Scottish Executive had published a consultation document on the proposed draft Children's Services (Scotland) Bill. The Bill was part of the implementation of the *Getting it right for every child* programme but was never introduced. This policy eventually developed into Parts 4, 5 and 18 of the Children and Young People (Scotland) Act 2014.

OTHER ACTS SUBJECT TO COURT CHALLENGE

This is the third time that part of an Act of the Scottish Parliament has been ruled outwith competence by the Courts, but it is the first time that such a ruling has been made prior to the provision being brought into force.

There have also been other challenges that have not succeeded or where the courts have been able to interpret the legislation in such a way as to enable competence. There is also one on-going challenge where a final decision has yet to be made.

AGRICULTURE HOLDINGS (SCOTLAND) ACT 2003

In [Salvesen v Riddell \[2013\] UKSC 22](#), the Supreme Court upheld a challenge to s.72 of this 2003 legislation on the grounds that it breached the ECHR right to property (Article 1 of Protocol 1, ECHR). The provision restricted a landlords right to terminate a tenant’s lease. At the time of the challenge, the relevant provision had already been in force for a number of years. The Court made an order under s.102 (2)(b) of the Scotland Act 1998, suspending the effect of the judgement for 12 months to enable the Scottish Parliament and Government to correct the defect. The Agricultural Holdings (Scotland) Act 2003 Remedial Order 2014 was issued in response. For further background see the draft remedial order and SPICe briefing in (Rural Affairs, Climate Change and Environment Committee, 2014).

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

In [Henderson v HM Advocate](#) 2011 JC 96, the Court found that the sentencing provision in section 1 of this 2003 Act must be interpreted ('read down') in such a way so as not to apply to offences under the Firearms Act 1968. Firearms are a reserved matter.

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

In *Cameron v Cottam*, [2012] HCJAC 19 the Court found that s.24 of the above 2010 Act, which amended bail conditions, breached Article 5 ECHR, and was therefore outwith the competence of the Scottish Parliament. This meant that the particular provisions were 'not law', even if they were not repealed by another piece of legislation. The Court made a section 102 order limiting the retrospective effect of its decision. The Order provided that cases and appeals which had already concluded would not be affected by the judgment. This prevented existing convictions being challenged on grounds relating to the provision in question. Thus, the decision would only affect cases which were currently going through the courts, as well as future cases.

UNSUCCESSFUL CHALLENGES

The following gives some examples of unsuccessful challenges to the competence of Scottish Parliament legislation.

Adoption and Children (Scotland) Act 2007

Section 31 of the above 2007 Act sets out the circumstances in which adoption can proceed without the natural parent's consent. In [ANS v. ML \[2012\] UKSC 30](#), the Court found that this did not breach Article 8 ECHR and so was not outwith the competence of the Scottish Parliament.

Criminal Proceedings etc (Reform) (Scotland) Act 2007

In [Martin v HM Advocate](#), [2010]UKSC 10, the issue was whether, in legislating on the sentencing for road traffic offences, the above Act strayed into reserved matters. The Court found that it did not.

Damages (Asbestos-related Conditions) (Scotland) Act 2009.

In [AXA general Insurance v the Lord Advocate and others \[2011\] UKSC 46](#), the Supreme Court found that the 2009 Act was competent. Insurance companies had sought to argue that the Act violated their right to property under ECHR Article 1 of Protocol 1. The Court found that while there was an interference with property rights, such interference was proportionate. It went no further than necessary (para 37) and was part of the risk associated with the companies' action in indemnifying the consequences of the negligence of the relevant employers (para 37).

Tobacco and Primary Medical Services (Scotland) Act 2010

The Act sought to prohibit the display of tobacco products. It was challenged by Imperial Tobacco Ltd on the grounds that it related to the reserved matter of sale and supply of goods to consumers and product safety. In [Imperial Tobacco Limited v the Lord Advocate \[2012\] UKSC 61](#), the Supreme Court unanimously rejected the challenge. The judgement includes useful guidance on how to interpret 'relates to a reserved matter.'

Scottish Independent (Franchise) Act 2013

In [Moohan v Lord Advocate \[2014\] UKSC 67](#) the Supreme Court rejected the argument that the above Act breached human rights legislation by not allowing convicted prisoners to vote in the Scottish independent referendum. The European Court of Human Rights had previously ruled that the UK's denial of the franchise to convicted prisoners breached their human rights (*Hirst v the United Kingdom (No2)* (2005) 42 EHRR 849). The Court found that this Strasbourg ruling did not extend to referendums (para 15). The challenge failed on all counts.

OUTSTANDING CHALLENGE

Alcohol (Minimum Pricing) (Scotland) Act 2012

In *Scotch Whisky Association and Others v. Lord Advocate*, the Scotch Whisky Association are seeking to challenge the above 2012 Act on the grounds that, by restricting trade, it is incompatible with EU law, and thus outwith the competence of the Scottish Parliament. The Court of Session referred to the European Court of Justice for advice. The ECJ issued its [ruling](#) in December 2015, and remitted the matter back to the Court of Session. A hearing was held in June 2016 ([BBC 2016b](#)), but a judgement has yet to be issued by the Court of Session. Court of Session judgements can be further appealed to the Supreme Court.

SOURCES

BBC News. (2016a) *Named Person 'will still be introduced'* [online] Available at: <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-36917726>

BBC News. (2016b) *Weekly Alcohol limit 'could cost £2.52' says Alcohol Focus Scotland.* [online] Available at: <http://www.bbc.co.uk/news/uk-scotland-36461743>

Christian Institute and others (Appellants) v. the Lord Advocate (Respondent)(Scotland) [2016] UKSC 51 on appeal from [2015] CSIH 64. Available at: <https://www.supremecourt.uk/cases/docs/uksc-2015-0216-judgment.pdf>

Court of Justice of the European Union (2015) *Press release no 155/15. 23 December 2015. Judgment in case C-333/14.* Luxembourg: ECJ. Available at: <http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-12/cp150155en.pdf>

Education Committee. (2006) *Stage 1 report on Protection of Vulnerable Groups (Scotland) Bill. 12th report 2006, Session 2.* Edinburgh: Scottish Parliament. Available at: http://www.parliament.scot/S2_EducationCommittee/Reports/edR06-12.pdf

Education and Culture Committee. (2013) *Stage 1 report on Children and Young People (Scotland) Bill. 11th Report, 2013, Session 4.* Edinburgh: Scottish Parliament. Available at: http://www.scottish.parliament.uk/S4_EducationandCultureCommittee/Reports/edR-13-11w.pdf

Harvie-Clark, S. (2016) *Judicial Review.* SB 16-62. Available at: <http://www.parliament.scot/parliamentarybusiness/100350.aspx>

Information Commissioner's Office (2016). *ICO statement on Named Person scheme. Dated 29 July 2016.* Available at: <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2016/07/ico-statement-on-named-person-scheme/>

Kidner, C. (2007) *Passage of Bill Summary: Protection of vulnerable groups (Scotland) Bill.* Edinburgh: Scottish Parliament. Available at: [http://www.parliament.scot/S2_Bills/Protection%20of%20Vulnerable%20Groups%20\(Scotland\)%20Bill/73-ProtectionofVulnerableGroupsBillsummary.pdf](http://www.parliament.scot/S2_Bills/Protection%20of%20Vulnerable%20Groups%20(Scotland)%20Bill/73-ProtectionofVulnerableGroupsBillsummary.pdf)

Kidner, C. (2014a) *Children and Young People (Scotland) Bill as amended at Stage 2.* Edinburgh: Scottish Parliament. Available at: http://www.parliament.scot/ResearchBriefingsAndFactsheets/S4/SB_14-13.pdf

Kidner, C. (2014b) *Children and Young People (Scotland) Bill: Summary of passage of Bill.* Edinburgh: Scottish Parliament. Available at: http://www.parliament.scot/S4_Bills/childrenyoungpeoplebillsummary.pdf

McHarg, A. (2012) *The dog that finally barked: constitutional review under the Scotland Act 1998.* [online] Accessed 29 July 2016. Available at: <https://ukconstitutionallaw.org/2012/06/26/aileen-mcharg-dog-that-finally-barked-constitutional-review-under-the-scotland-act/>

Scottish Executive. (2006) *Draft Children's Services (Scotland) Bill Consultation.* Edinburgh: Scottish Executive. Available at: <http://www.gov.scot/Resource/Doc/161343/0043786.pdf>

Scottish Government. (2015) *Revised draft statutory guidance*. Edinburgh: Scottish Government. Available at: <http://www.gov.scot/Resource/0049/00490013.pdf>

Scottish Government. (2016) *Supreme Court rules on 'named person.'* News release 28 July 2016. Edinburgh: Scottish Government. Available at: <http://news.scotland.gov.uk/News/Supreme-Court-rules-on-named-person-279f.aspx>

Scottish Government. (2016) *Named Person Plans Progress*. News Release 31 July 2016. Edinburgh: Scottish Government. Available at: <http://news.scotland.gov.uk/News/Named-person-plans-progress-27c2.aspx>

Scottish Parliament. (2006) *Protection of Vulnerable Groups (Scotland) Bill [as introduced]*. Edinburgh: Scottish Parliament. Available at: [http://www.parliament.scot/S2_Bills/Protection%20of%20Vulnerable%20Groups%20\(Scotland\)%20Bill/b73s2-introd.pdf](http://www.parliament.scot/S2_Bills/Protection%20of%20Vulnerable%20Groups%20(Scotland)%20Bill/b73s2-introd.pdf)

Scottish Parliament. (2014) *Minutes of Proceedings vol. 3, no.79, Session 4. Meeting of the Parliament Wednesday 19 February 2014*. Edinburgh: Scottish Parliament. Available at: http://www.scottish.parliament.uk/S4_BusinessTeam/pm-v3n79-s4.pdf

Rural Affairs, Climate Change and Environment Committee. (2014) *Papers for meeting of Wednesday 4th December 2014*. Edinburgh: Scottish Parliament. Available at: http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/Meeting%20Papers/Meeting_Papers_2013_12_04.pdf

Simpson Caird, J. (2016) *The Supreme Court on Devolution*. London: House of Commons. Available at: <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7670>

Swinney, J. (2016) *Letter from John Swinney, MSP. Deputy First Minister and Cabinet Secretary for Education and Skills to James Dornan, MSP, Convener, Education and Skills Committee. Letter dated 28 July 2016*. Edinburgh: Scottish Parliament. Available at: <http://www.parliament.scot/General%20Documents/20160728CabSecNamedPersons.pdf>

RELATED BRIEFINGS

[SB13-38 Children and Young People \(Scotland\) Bill](#)

[SB 14-13 Children and Young People \(Scotland\) Bill as amended at Stage 2](#)

[Passage of Bill Summary. Children and Young People \(Scotland\) Bill](#)

[SB 14-52 Tenant Farming](#)

[SB 12-34 Alcohol \(Minimum Pricing\) \(Scotland\) Bill at stage 3](#)

Scottish Parliament Information Centre (SPICe) Briefings are compiled for the benefit of the Members of the Parliament and their personal staff. Authors are available to discuss the contents of these papers with MSPs and their staff who should contact Camilla Kidner on extension 85087 or email Camilla.kidner@parliament.scot Members of the public or external organisations may comment on this briefing by emailing us at SPICe@parliament.scot. However, researchers are unable to enter into personal discussion in relation to SPICe Briefing Papers. If you have any general questions about the work of the Parliament you can email the Parliament's Public Information Service at sp.info@parliament.scot.

Every effort is made to ensure that the information contained in SPICe briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH 99 1SP

www.parliament.scot