



## Bulletin for the APPG on the Rule of Law

15 April 2016

This bulletin for the [APPG on the Rule of Law](#) has three sections: [Rule of Law News and Events](#), [APPG Meetings](#), and [Current Awareness](#), which provides some background reading on topics that raise rule of law issues.

### Rule of Law News and Events

#### **New Publication: Rule of Law Checklist**

The Venice Commission adopted a [Rule of Law Checklist](#) at its March 2016 session, which is intended to be used as a tool to assess the rule of law in a given country. The checklist may be used by a variety of actors, including Parliaments and other State authorities when considering legislative reform, as well as civil society and international organisations.

#### **New Publication: Rule of Law in Parliament**

The Bingham Centre has published a research report for the APPG on the Rule of Law entitled [The Rule of Law in Parliament: A Review of Sessions 2013-14 and 2014-15](#). This study examines references to the rule of law in the UK Parliament in debates, parliamentary questions and written statements for the 2013-14 and 2014-15 parliamentary sessions, with a view to understanding how and in relation to which topics parliamentarians refer to the rule of law.

#### **Lord Neuberger, 'Justice Innovation Programme Lecture for the Northern Ireland Assembly Committee for Justice'**

President of the Supreme Court The Rt Hon Lord Neuberger gave a [speech](#) at the Northern Ireland Assembly Committee for Justice on 3 March 2016, in which he discussed the rule of law in relation to the changing role of judges, accessibility of the Supreme Court, and access to justice in the age of austerity amongst other things.

#### **Lord Thomas, 'Developing commercial law through the courts: rebalancing the relationship between the courts and arbitration'**

The Right Hon. Lord Thomas of Cwmgiedd, Lord Chief Justice of England and Wales gave the 2016 [Baillii Lecture](#) on 9 March, in which he discussed courts and arbitration, identifying a need to "restore an essential part of the way in which courts are able to continue the development of the law that underpins our trade, financial system and our prosperity".

#### **Event: The Rule of Law, The European Court of Human Rights and the UK: A New Court for a New Era?**

*Bingham Centre*

Leading experts will consider how the Strasbourg Court has evolved in recent years, and reflect upon its longer-term future. Speakers will also consider how the reform process might inform debate in the UK about the European Court/Convention system and a possible British Bill of Rights.

Wednesday, 20 April 2016 14:00-18:00 followed by a drinks reception (lunch & registration from 13:00)

Bingham Centre for the Rule of Law, London

[More information](#)

## **Event: Rights Under Pressure: practising constitutional law in turbulent times**

LSE

Professor Susanne Baer, Justice on the German Constitutional Court, will give her perspective on how the dynamics of globalisation, which include mass migration, international terrorism, and global trade, as well as the rise of transnational legal regimes, put pressure on national legal systems, the essence of which is to be found in constitutional law.

Tuesday, 10 May 2016 18:30-20:00

Sheikh Zayed Theatre, New Academic Building, LSE

[More information](#)

## **APPG Meetings**

### **Next Meeting**

'Doing good business: challenges of corruption and accountability'

Tuesday 10 May, 9:00 – 10:30am

Joint meeting with the APPG on Anti-Corruption

### **2 February 2016 Meeting Report**

The report from the 2 February 2016 APPG on the Rule of Law meeting on 'The Death of the Human Rights Act, the Birth of a New Constitutional Settlement?' is now available [online](#).

## **Current Awareness**

The current awareness topics in this bulletin are:

[Panama Papers](#)

[Investigatory Powers Bill](#)

[Freedom of Information](#)

[Police](#)

[Legal Aid](#)

### **Panama Papers**

[Paul Heywood, 'Panama Papers: why we're looking at global corruption the wrong way'](#), *The Conversation* (12 April 2016)

Professor Heywood considers underlying issues that have meant that anti-corruption and efforts to address tax avoidance have been ineffective.

[Graham John Wheeler, 'The British Overseas Territories and "Direct Rule"'](#), UK Constitutional Law Association (12 April 2016)

The item considers constitutional question that arise in relation to the possibility of London imposing direct rule on some British Overseas Territories in the wake of the Panama Papers.

See also

- [David Allen Green, 'Leaks and liberty: policy and legal consequences of unauthorised big data releases'](#), *Financial Times* (12 April 2016)
- [Mary Dejevsky, 'The Panama Papers show why Britain needs to get its house in order'](#), *The Guardian* (6 April 2016)
- [David Allen Green, 'The Panama Papers: public interest disclosure v the right to private legal advice'](#) *Financial Times* (6 April 2016)

## Investigatory Powers Bill

The [Investigatory Powers Bill](#) had its second reading in the House of Commons on 15 March 2016 and is now in committee stage. The Public Bill Committee will [conclude by Thursday 5 May 2016](#).

[Owen Bowcott, 'MP calls for limit on UK surveillance powers as EU test case opens'](#), *The Guardian* (12 April 2016)

The Court of Justice of the EU (CJEU) has started to hear a case that challenges the legality of the Data Retention and Investigatory Powers Act 2014 brought by The Rt Hon David Davis MP and Tom Watson MP. The Court of Appeal has asked the CJEU to clarify the effect of the Digital Rights Ireland decision following the ruling of the High Court in London that the powers in the legislation should be disapplied being inconsistent with EU law.

[Alex Bailin QC, 'Investigatory Powers Bill, Second Reading, inadequate journalistic protection persists'](#), *Inform's Blog* (15 March 2016)

Alex Bailin QC discusses the impact of the Bill on the media, including the concern that the provisions for journalists in the Codes of Practice are not an adequate safeguard and do not meet the standard for freedom of expression in Art 10 of the European Convention on Human Rights.

[The Bar Council Press Release: Investigatory Powers Bill and client confidentiality](#) (15 March 2016)

The Bar Council has expressed concern that the Bill does not adequately protect legal professional privilege.

See also

- [Byron Karemba, The Investigatory Powers Bill: Introducing Judicial Authorisation of Surveillance Warrants in the United Kingdom – Putting the 'Double-Lock' in Focus \(Part I\)](#), UK Constitutional Law Association Blog (22 March 2016)
- [Owen Bowcott, 'Investigatory powers bill not fit for purpose, say 200 senior lawyers'](#) *The Guardian* (14 March 2016)
- [David Allen Green, "Privacy is Surveillance" – Part 1 of the Investigatory Powers Bill](#), Jack of Kent Blog (2 March 2016)
- [Matthey White, 'Data retention and national law: whatever the CJEU rules, data retention may still survive!'](#) *EU Law Analysis* (16 March 2016)

## Freedom of Information

The Independent Commission on Freedom of Information has made its [report](#), which the Government has responded to in a [written statement](#) (1 March 2016).

[Professor Mark Elliott, 'A postscript on the Evans case: The report of the Independent Commission on Freedom of Information and the Government's response'](#) *Public Law for Everyone* (2 March 2016)

Professor Elliott analyses the Government's indication that it will not legislate to make clear the governmental veto is to be exercised in cases where the government thinks it appropriate having formed a different view on the public interest in disclosure, in the context of the report of the Independent Commission on Freedom of Information's recommendation to so legislate and the judgment of the Supreme Court in [R \(Evans\) v Attorney-General \[2015\] UKSC 21](#). Professor Elliott suggests that constitutional principles 'operate not as hard legal constraints upon Parliament, but, ultimately, as political constraints'.

[Ben Worthy and Robert Hazell 'Disruptive or beneficial? Freedom of information in the UK'](#) *The Constitution Unit* (9 March 2016)

The authors draw on results from three research projects, to argue that the Freedom of Information Act 'has achieved its primary objectives of making British government more accountable and transparent.'

[Matt Burgess, 'Police Federation will \(finally\) be covered by FOI'](#), *FOI Directory* (10 March 2016) The Police Federation for England and Wales will be subject to the Freedom of Information Act under a reform contained in the [Policing and Crime Bill](#).

[Patrick Wintour, 'Secret court hearing to rule on Foreign Office's evaluation of human rights'](#), *The Guardian* (8 April 2016)

The information commissioner tribunal has heard a case in which the Foreign and Commonwealth Office is resisting a freedom of information request in relation to whether ministers considered human rights

questions when deciding to give financial support to Pakistan's anti-narcotics force. The case may act as a test case for using adverse international relations consequences to refuse freedom of information requests, and a judgment may be given in a month.

## Police

[Alan Travis, 'Mass stop and search by police doesn't reduce crime, says study'](#), *The Guardian* (18 March 2016)

Home office research on the mass use of stop and search by London's Metropolitan police, which was released following a Freedom of Information request, found there was no discernible effect in crime reduction.

[Home Office Press Release: Home Secretary announces reforms to IPCC](#) (7 March 2016)

Home Secretary Theresa May has announced that the Independent Police Complaints Commission (IPCC) will be renamed the 'Office for Police Conduct'. The IPCC's governance will be reformed such that a new director general will replace the current commissioners as the organisation's leader, and a board with a majority of non-executive directors will undertake corporate governance

[David Barrett, 'IPCC police complaints body to be rebranded and reformed'](#) *The Telegraph* (7 March 2016)

The reforms respond to the IPCC's losing the trust of police officers and some chief constables, and damage to public confidence from high-profile IPCC inquiries. However, some senior figures in policing have expressed doubts about whether the reforms will be sufficient.

[Policing and Crime Bill](#) had its second reading on 7 March and has been considered by the Public Bill Committee. The report stage is scheduled for 26 April. The proposed IPCC reforms (above) are in addition to the reforms to expand the role of Police and Crime Commissioners in police complaints under the Bill. Further information in the [House of Commons Briefing Paper](#).

## Legal Aid

['MOJ Agrees to Review Legal Aid in Trafficking and Labour Exploitation Cases'](#), Garden Court Chambers (21 March 2016)

The Ministry of Justice agreed to undertake an urgent review of legal aid provision for claims against human traffickers shortly before a judicial review hearing on the issue was due to take place.

The Supreme Court has granted leave to appeal in the case of [R \(on the application of The Public Law Project\) \(Appellant\) v The Lord Chancellor \(Respondent\)](#), which concerns the residence test for eligibility for legal aid.

See also

- [Oliver Carter, 'Supreme Court to Decide on 'Residence Test' for Legal Aid'](#), Huffington Post Blog (17 March 2016)

## About the APPG on the Rule of Law

The All-Party Parliamentary Group on the Rule of Law aims to promote parliamentary and public discussion on the rule of law as a practical concept. It is co-chaired by The Rt Hon Dominic Grieve QC MP and Lord Pannick QC. Secretariat support is provided by the Bingham Centre for the Rule of Law.

Join the APPG mailing list: <http://binghamcentre.biicl.org/appg-rule-of-law/members>

For enquiries concerning the APPG on the Rule of Law, please contact Swee Leng Harris at the Bingham Centre: [s.harris@binghamcentre.biicl.org](mailto:s.harris@binghamcentre.biicl.org)

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