

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 13: Criminal Justice and Court Fees

Section 175: Compensation for miscarriages of justice

505. Section 133 of the Criminal Justice Act 1988 requires the Secretary of State to pay compensation where a person's conviction for a criminal offence has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice.
506. *Subsection (1)* inserts new subsection (1ZA) into section 133 of the Criminal Justice Act 1988, providing a statutory definition of "miscarriage of justice". In accordance with this new provision, the Secretary of State would only pay compensation for a "miscarriage of justice" where the new or newly discovered fact (on the basis of which the conviction was reversed) shows beyond reasonable doubt that the person did not commit the offence of which they were convicted. This will have effect for cases where the conviction took place in England and Wales, or for Northern Ireland cases where section 133(6H) of the 1988 Act applies. Section 133(6H) applies to those applications for compensation in Northern Ireland involving sensitive national security information which are determined by the Secretary of State rather than the Department of Justice in Northern Ireland.
507. *Subsection (2)(a)* specifies that the new provision will apply to the determination of any application for compensation made on or after the date on which the section comes into force.
508. *Subsection (2)(b)* provides the new provision will also apply to an application made before the date the section comes into force, but which has not been finally determined by the Secretary of State by that date. This will include applications which, though originally determined before the section comes into force, subsequently fall to be reconsidered by the Secretary of State, for example, following a successful application for judicial review.

Section 176: Low-value shoplifting

509. *Subsection (3)* inserts new section 22A into the Magistrates' Courts Act 1980, which provides that low-value shoplifting is a summary offence (new section 22A(1)). This is subject to one exception: an adult defendant is to be given the opportunity to elect Crown Court trial, and if the defendant so elects, the offence is no longer summary and will be sent to the Crown Court (new section 22A(2)). Otherwise, the effect of new section 22A is that offences of low-value shoplifting cannot be sent to the Crown Court for trial or committed there for sentence; they will attract a maximum penalty of six months' custody; and they will be brought within the procedure in section 12 of the

Magistrates' Courts Act 1980 that enables defendants in summary cases to be given the opportunity to plead guilty by post. Shoplifting is not a specific offence as such but constitutes theft under section 1 of the Theft Act 1968; accordingly new section 22A(3) defines shoplifting for the purposes of this provision, which applies if the value of the stolen goods is £200 or less. New section 22A(4) provides that for these purposes the value of the goods is to be determined by the price at which they were offered for sale rather than the intrinsic value, and also for the value involved in several shoplifting offences to be aggregated where they are charged at the same time. So, for example, where a person is charged with three counts of shoplifting, having allegedly taken £80 worth of goods from three separate shops, the new procedure would not apply in that case as the aggregate sum exceeds the £200 threshold.

510. New section 22A(5) provides that for offences of low-value shoplifting tried summarily (as they must be unless the defendant elects), the maximum penalty is six months' imprisonment or a fine. New section 22A(6) prevents appeals from being brought on the basis of disputed decisions as to whether the offence was low-value shoplifting. New section 22A(7) provides that an offence of shoplifting includes secondary offences such as aiding and abetting.
511. *Subsection (4)* amends section 143 of the Magistrates' Court Act 1980 to enable the £200 threshold to be updated in line with inflation. An order made under section 143 is subject to the negative resolution procedure.
512. *Subsection (5)* amends section 1 of the Criminal Attempts Act 1981 to provide that it is an offence to attempt to commit low-value shoplifting. That section otherwise only applies to attempts to commit offences which are indictable offences.
513. *Subsection (6)* provides that certain powers conferred by the Police and Criminal Evidence Act 1984 ("PACE") on the police and others in respect of indictable offences remain available in respect of low-value shoplifting, notwithstanding that it is reclassified as summary-only. The powers concerned include a power of arrest exercisable by a person other than a constable (for example, a store detective), powers enabling police officers to enter and search premises and vehicles in various circumstances for the purposes of searching for evidence in connection with an investigation or arresting individuals suspected of committing offences, and powers enabling a magistrate to authorise such entry and search.
514. *Subsection (7)* is a further consequential which makes a parallel amendment to the provisions which correspond to PACE for Service law.
515. *Subsection (8)* provides that the amendments do not apply to cases in which proceedings have been instituted before the date of commencement.

Section 177: Marital coercion

516. **Section 177** repeals section 47 of the Criminal Justice Act 1925 (coercion of married woman by husband) to abolish the defence of marital coercion in England and Wales.

Section 178: Protection arrangements for persons at risk

517. Chapter 4 of Part 1 of the Serious Organised Crime and Police Act 2005 ("SOCPA") makes provision for the protection of persons involved in investigations and legal proceedings. Section 82 enables a "protection provider" (usually in practice the police) to make appropriate protection arrangements for a person whose safety is at risk by virtue of being a person specified in Schedule 5 to SOCPA. Those specified in Schedule 5 include witnesses, jurors and other people who are or have been involved in legal proceedings, law enforcement officers and other persons involved in the administration of justice, and the family of such persons or others with a close personal relationship with them.

518. **Section 178** amends section 82 of SOCPA so as to enable a protection provider to make protection arrangements for anyone whose safety may be at risk by virtue of another person's possible or actual criminal conduct. The making of such arrangements will not be dependent on being a person specified in Schedule 5. In particular, this would enable arrangements to be made to prevent a person from becoming a victim of a crime where the nature of the threat is such that they do not come within any of the categories in Schedule 5 (for example, an actual or potential witness in legal proceedings) but protection arrangements are nonetheless considered to be necessary.
519. *Subsection (2)(b)* amends section 82(1) of SOCPA so as to allow protection arrangements to be made in respect of any person the protection provider reasonably believes is at risk from the criminal conduct, or possible criminal conduct, of another person. Criminal conduct is defined in new section 82(5A) (inserted by *subsection (2)(c)*) as conduct which would constitute an offence in England and Wales or Scotland (regardless of whether it was committed there).
520. New section 82(5B) (also inserted by *subsection(2)(c)*) makes clear that there is nothing to prevent arrangements being made under this provision in respect of a person who has formerly been subject to non-statutory protection arrangements. *Subsection (7)* provides that the provisions in this section will not affect protection arrangements made under section 82 of SOCPA before the coming into force of the section.
521. *Subsections (2)(b)* and *(3) to (6)* make consequential repeals to Chapter 4 of Part 1 of SOCPA, in particular they repeal Schedule 5 to SOCPA (made redundant by the wider power to make protection arrangements) and the redundant transitional provisions in sections 91 and 92 of SOCPA.

Section 179: Surcharges: imprisonment in default and remission of fines

522. Under section 82(1) of the Magistrates' Court Act 1980 ("the 1980 Act"), a magistrates' court may, at the point that it convicts a person, commit the offender to prison in a limited number of circumstances for a default in paying certain financial impositions including the Victim Surcharge payable under section 161A of the Criminal Justice Act 2003. These circumstances include, under section 82(1)(c), a case where the offender is sentenced to a term of immediate imprisonment or detention in a young offenders' institution, or is serving such a term at the time he or she is convicted.
523. *Subsection (1)* inserts a new subsection (1A) into section 82 of the 1980 Act to prevent section 82(1)(c) from applying to the Victim Surcharge. This will ensure that the Victim Surcharge may not be discharged as extra days added to an immediate sentence of imprisonment.
524. Where a fine has been imposed following conviction in either a magistrates' court or the Crown Court, they can currently use the powers in section 85 of the 1980 Act and section 165 of the Criminal Justice Act to remit the whole or any part of the fine when the court believes, for example, that a change of circumstances of the offender warrants such action. These provisions currently determine what should happen to other impositions which are dependent on the amount of a fine where it is remitted (for example, number of hours of unpaid work a person may be required to undertake to discharge an unpaid fine). However, no provision is currently made for making a corresponding reduction in the amount of the Victim Surcharge where the associated fine has been reduced or nullified in exercise of these powers to remit a fine. *Subsections (2)* and *(3)* amend section 85 of the 1980 Act and section 165 of the Criminal Justice Act respectively to address this lacuna. New section 85(3A) of the 1980 Act and new section 165(5) of the Criminal Justice Act 2003 direct the court when remitting a fine to make a consequential adjustment of the previously ordered Surcharge. Thus, for example, where the court originally ordered a fine of £500, with an accompanying Surcharge of £50, and that fine is subsequently reduced to £300, the Surcharge must be reduced by the court to £30.

Section 180: Court and tribunal fees

525. This section confers on the Lord Chancellor a power to make regulations in connection with court and tribunal fees. *Subsection (1)* provides the Lord Chancellor with a power, subject to Treasury agreement, to prescribe fees under certain enactments of an amount which is designed to exceed the cost to which those activities relate (“enhanced fees”).
526. *Subsection (2)* sets out the enactments under which the power to charge an enhanced fee applies. Its effect is that such fees can be charged for things done in the civil and family courts in England and Wales, tribunals, the Office of the Public Guardian and the Court of Protection.
527. *Subsection (3)* requires the Lord Chancellor in using this power to have regard to:
- the financial position of the courts and tribunals; and
 - the competitiveness of the legal services market.
528. *Subsections (5)* and *(6)* set out the purpose for charging enhanced fees, namely, financing the efficient and effective running of the relevant court and tribunal services and of the efficient and effective discharge of the functions of the Office of the Public Guardian.
529. *Subsections (7)* and *(8)* provide that any statutory instrument brought forward to introduce an enhanced fee is subject to the affirmative resolution procedure, except where the increase is made solely to reflect inflation, in which case the negative resolution procedure applies.