



Neutral Citation Number: [2016] EWHC 2186 (Admin)

Case No: CO/244/2016

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/08/2016

Before :

MRS JUSTICE NICOLA DAVIES

Between :

CIVIL NUCLEAR POLICE FEDERATION

Claimant

- and -

CIVIL NUCLEAR POLICE AUTHORITY

Defendant

- and -

SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE

Interested parties

MR MARTIN WESTGATE QC

(instructed by **PATTINSON AND BREWER SOLICITORS**) for the **Claimant**

MR JOHN CAVANAGH QC

(instructed by the **CIVIL NUCLEAR POLICE AUTHORITY**) for the **Defendant**

MR MATHEW PURCHASE

(instructed by **GOVERNMENT LEGAL DEPARTMENT**) for the **Interested Parties**

Hearing date: 24 August 2016

Approved Judgment

MRS JUSTICE NICOLA DAVIES :

1. In these judicial review proceedings the sole issue for consideration by the Court is whether the term “members of a police force” in section 10 of the Public Service Pensions Act 2013 (“the 2013 Act”) includes members of the Civil Nuclear Constabulary (“CNC”) so that any pension scheme made under or in accordance with that Act must have a normal retirement age of 60. Permission to apply for judicial review was granted by Langstaff J on 8 March 2016.
2. The 2013 Act was enacted following a review by Lord Hutton published on 10 March 2011. It makes substantial changes to public service pension schemes which include the closure of such schemes under which pension benefits are to be paid on a final salary basis. Section 10 of the 2013 Act provides that the normal pension age under the new scheme shall be the state pension age or 65 if lower. However, there is an exception in section 10(2) for, amongst others, members of a police force.
3. The claimant’s case is that when section 10 is considered in the light of its purpose, it is clear that the CNC is included as its members have all the attributes of members of a police force intended to be caught by the section. Any contrary reading would produce an irrational distinction between like classes and would discriminate against members of the CNC for the purpose of Article 14 of the ECHR taken together with Article 1 of the First Protocol. It is the case of the defendant, supported by the interested parties, that CNC officers are not “members of a police force” for the purposes of section 10 of the 2013 Act, thus section 10 requires that the new pension provision for CNC officers must provide for a normal pension age which is the state pension age or 65, whichever is higher. It is their case that the expression is limited to “territorial police forces” under the Police Act 1996 (“the 1996 Act”) in England and Wales or to Police Service of Scotland pursuant to the Police and Fire Reform (Scotland) Act 2012 .
4. The issue is one of statutory interpretation. The Court is not concerned with the exercise of a discretion or with the policy considerations in support of or against the normal retirement age of 60 for CNC officers. The defendant shares the view of the claimant that for policy and operational reasons it would be better if CNC officers could have a normal pension age of 60. Following the passing of the 2013 Act the defendant and others submitted cogent written representations to the Government in support of the proposition that members of the CNC should have a normal retirement age of 60. For the purpose of this application, the defendant has no discretion as regards the normal retirement age. The claimant understands that the defendant is not the primary decision-maker, reflected in a statement by the claimant’s Chief Executive in November 2015.

The Civil Nuclear Constabulary

5. Since 1954 special policing arrangements have been made in respect of civilian nuclear installations. Prior to the Energy Act 2004 (“the 2004 Act”) the United Kingdom Atomic Energy Authority (UKAEA) maintained an armed police force (the AEAC) under powers conferred by the Atomic Energy Authority Act 1954. Prior to 2001 the powers of AEAC constables were limited to the premises of specified nuclear operatives. Section 21 of the Anti-Terrorism Crime and Security Act 2001 extended their powers to all civil licence nuclear sites. In 2002 the Government

published a consultation paper “Managing the Legacy” which identified the UKAEA constabulary as being responsible for implementing security requirements at certain civil nuclear sites. The paper set out proposals for reconstituting the AEAC as a standalone force independent of the nuclear industry. Chapter 8 of the paper contained the following proposals for the AEAC.

8.11 The Government intends to separate AEAC from UKAEA and reconstitute it as a standalone force in order to make it independent of the nuclear industry. It also proposes to improve its governance arrangements through establishing a statutory Police Authority with an independent element, to strengthen accountability and transparency.

8.12 The key objectives of the proposed changes are:

(a) to ensure the continued efficient and effective operation of the AEAC, and in particular the effective discharge of its security role, in line with security standards and objectives set by the DCNS on behalf of the Secretary of State;

(b) to provide governance for the force through a statutory Police Authority accountable to the Secretary of State;

(c) to provide increased openness and transparency. This will be achieved both by legislative means, e.g. through a statutory requirement for both the Police Authority and Chief Constable to publish annual reports, putting current practice on a statutory basis, and administratively, through holding a number of Police Authority meetings on an open basis; and

(d) to provide a statutory framework appropriate to the needs of a modern police force.

6. The proposals were contained in the 2004 Act which established the CNC. Section 51 and schedule 10 provide for the Civil Nuclear Police Authority (CNPA). Section 52 prescribes the duty of the Authority as being “to secure the maintenance of an efficient and effective constabulary”. Section 52(2) provides that:

“The primary function of the Constabulary is –

(a) protection of licensed nuclear sites which are not used wholly or mainly for defence purposes; and

(b) safeguarding nuclear material in Great Britain and elsewhere.”

7. A licensed nuclear site for these purposes is a site licensed under the Nuclear Installations Act 1965 which can be in any part of the United Kingdom (and any other territory to which that Act may be extended under Section 28) although the only sites presently so licensed are in England, Scotland and Wales. The CNC operates

throughout Great Britain (section 56). It operates in Scotland under reserved powers (Scotland Act 1988 schedule 5, section D4).

8. The Police Authority must appoint a Chief Constable and Deputy Chief Constable (section 53). The Chief Constable must have regard to the annual policing plan and three year strategy issued by the Police Authority (section 54). Members of the Constabulary are appointed by the Authority. Members of the Constabulary are employees of the Police Authority and are under the direction and control of the Chief Constable (section 55 – subject to any collaboration agreement under section 24 of the Police Act 1996).

9. As to the jurisdiction of the Constabulary, section 56 provides:

“(1) A member of the Constabulary shall have the powers and privileges of a constable –

(a) at every place comprised in a relevant nuclear site; and

(b) everywhere within 5 kilometres of such a place.

(2) A member of the Constabulary shall have the powers and privileges of a constable at every trans-shipment site where it appears to him expedient to be in order to safeguard nuclear material while it is at the site....

(5) A member of the Constabulary shall have the powers and privileges of a constable throughout Great Britain for purposes connected with –

(a) a place mentioned in subsections (1) to (4);

(b) anything that he or another member of the Constabulary is proposing to do, or has done, at such a place; or

(c) anything which he reasonably believes to have been done, or likely to be done, by another person at or in relation to such a place.”

10. Schedule 10, paragraph 6 of the 2004 Act states that employees are to be “employed by the Police Authority on such terms and conditions, including terms and conditions as to remuneration, as the Police Authority determines”. By paragraph 6(3) the Police Authority may –

“(a) pay to or in respect of its employees such pensions, allowances or gratuities, or

(b) with the approval of the Secretary of State, provide and maintain for them such pension schemes (whether contributory or not), as it determines.”

Provision as to the terms and conditions of employees who are members of the Constabulary are set out in section 58, in particular:

“(1) Where –

(a) the Police Authority makes provision about the government, administration or conditions of service of the Constabulary or its members, and

(b) the provision relates to matters which are the subject of regulations under section 50 of the Police Act 1966 (c.16) (Regulations about the government, administration and conditions of service of police forces), the provision made by the Police Authority may differ from those regulations only so far as necessary to take account of differences related to the structure and circumstances of the Constabulary...”

11. The Civil Nuclear Police Federation is provided for by section 64 of the 2004 Act. It represents members of the Constabulary, other than senior officers, in all matters affecting their welfare and efficiency (section 64 (3)).
12. Witness statements from Nigel Dennis, Chief Executive of the claimant, Philip Leigh, Head of Human Resources at the defendant Authority and Nicola Pretty, a Senior Policy Adviser in the Civil Nuclear Security Team at the Department for Energy and Climate Change (“DECC”) which at the time the statement was made had responsibility for the sponsorship of the defendant and the CNC, are before the Court. They provide information as to the CNC. It is an armed policing service whose main role is the protection of licensed nuclear sites, the safeguarding of nuclear material and the deterrence and detection of terrorists. The majority of CNC officers are accredited firearms officers, it is anticipated that all will become so. Unlike territorial forces, the CNC does not have a reserve of non-armed roles to which officers can return. CNC officers are expected to exercise all the powers available to a Metropolitan Police Officer. The exercise of the powers being at every relevant nuclear site, a five kilometre radius of the relevant nuclear sites and wherever it is necessary to exercise those powers during the transit of nuclear material. CNC officers can be and are deployed wherever necessary within the United Kingdom to deal with any national incidents, including terrorist incidents. The CNC plays a full and active part within the police service and is involved in the sharing of training and operational tactics and intelligence. It is licensed by the College of Policing and trained to the same standards as Home Office police forces. CNC members operate to a minimum level of fitness for firearms officers which will be mandatory for all officers by 1 October 2016. In addition to mandated firearms and fitness standards, CNC officers work a 12 hour shift pattern including two days and two nights consecutively. They are required to wear body armour and train with respirators, work to firearms tactic profiles that include bespoke military tactics. The CNC is recognised by the National Police Chiefs’ Council and has entered into collaborative agreements with all home forces allowing CNC members to be seconded.
13. At present the retirement age for CNC members and members of other police forces is “aligned” at 60. The CNPA considers that as a matter of policy the retirement age for members of the CNPA should be retained at 60. This position has been set out in papers which have been seen by Government departments.

Pension arrangements and pension reform

14. The present pension arrangements applicable to members of the CNC are that they are entitled to be members of the UKAEA combined pensions scheme which is a defined benefit (final salary) scheme. Schedule 10, paragraph 3 to the 2004 Act makes provision for the UKAEA pension arrangements to be applied to employees of the CNPA. The normal pension age under this scheme is 60 for CNPA members.

The Public Service Pensions Act 2013

15. The 2013 Act divides up public service pension schemes into two main categories: “schemes for persons in public service” and “public body pension schemes”. The first category consists of the major public service pension schemes set out in section 1. These schemes had to be closed to future accruals by 31 March 2015 (section 18) and have been replaced by new schemes which were established by statutory instrument (sections 1 and 3). Each new scheme for persons in public service has a responsible authority (a Government Minister) who is responsible for drafting scheme regulations (section 3 and schedule 2). The scheme regulations require the consent of the Treasury (section 3(5)).
16. The second category consists of other public service schemes, known as the public body pension schemes. These schemes apply to certain public service workers outside the main large categories of such workers identified in section 1. These include CNC officers (section 31(1), schedule 10, paragraph 3). These schemes must close to future accruals by a date to be fixed which is expected to be no later than 5 April 2018. Following that event the main options are for the former members of these schemes to be brought within one of the major new public service pension schemes (section 25) or for a new bespoke scheme to be made (sections 30 and 31(7)).
17. The minimum pension age requirement in section 10 applies whether or not the new scheme is one of the major section 1 schemes for persons in public service, or is a new bespoke public body pension scheme (section 10(1) and section 30 (1)(d)).
18. Section 1 provides:
 - “1 Schemes for persons in public services.
 - (1) Regulations may establish schemes for the payment of pension and other benefits to or in respect of persons specified in subsection (2).
 - (2) Those persons are -
 - (a) civil servants;
 - (b) the judiciary;
 - (c) local government workers for England, Wales and Scotland;
 - (d) teachers for England, Wales and Scotland;

- (e) health service workers for England, Wales and Scotland;
 - (f) fire and rescue workers for England, Wales and Scotland;
 - (g) members of the police forces for England, Wales and Scotland;
 - (h) the armed forces.
- (3) These terms are defined in Schedule 1...”

19. The 2013 Act retains the possibility of public bodies replacing or creating their own pension schemes. This is achieved by:

- a) Section 30. This makes provision in relation to “new public body pension schemes”. For the purposes of the 2013 Act a “public body pension scheme” means a scheme (other than an existing scheme) established by a public authority for the payment of pensions and other benefits to or in respect of members or staff of a statutory body or the holder of a statutory office. “New public body pension scheme” means a public body pension scheme established after the coming into force of this section. Such an existing scheme would include the defendant’s power pursuant to schedule 10 paragraph 6 to the 2004 Act.
- b) Section 31 which contemplates the possibility of replacement schemes being maintained by the providers of the schemes set out in schedule 10 to the 2013 Act. Schedule 10 specifically identified and includes the United Kingdom Atomic Energy Authority whose scheme, members of the CNC are currently entitled to join.

20. The 2013 Act imposes new requirements on any such new pension schemes, one such is set out in section 10 which provides:

“(1) The normal pension age of a person under section 1 must be –

- (a) the same as the person’s state pension age, or
- (b) 65, if that is higher.

(2) Subsection (1) does not apply in relation to –

- (a) fire and rescue workers who are firefighters,
- (b) members of a police force, and
- (c) members of the armed forces.

The normal pension age of such persons under a scheme under section 1 must be 60.”

21. Section 37 of the 2013 Act provides:

“Members of a police force” has the meaning given in 1 Schedule 1.”

Schedule 1, paragraph 7 provides:

“In this Act “members of a police force” –

- (a) in relation to England and Wales, includes special constables and police cadets;
- (b) in relation to Scotland, means members of the Police Service of Scotland and police cadets.”

The claimant’s case

22. As to the question for the Court namely whether the members of the CNC are “members of a police force” for the purposes of section 10 of the 2013 Act, the claimant’s case is that:
 - a) they fall within the ordinary language meaning of this term;
 - b) to bring them within it fulfils the policy behind and purpose of this part of the Act which recognises the unique work which police officers carry out in ensuring that the operational effectiveness of the forces that they serve is not impaired;
 - c) nothing in the context of the language of the 2013 Act confines section 10(2)(b) to territorial forces i.e those established for areas under the Police Act 1996 or under the Police Fire Reform (Scotland) Act 2012.
23. As to (a) the defendant accepts that the CNC is within the ordinary language meaning of the term “a police force”. That is said to be right given the history of the present CNC. The Constabulary was established with a view to giving it the same status and organisation as any other police force. The structure of the CNPA and the CNC closely mirrors that of forces established under the Police Act 1996. The Terms and Conditions replicate those contained in section 50 of the 1996 Act. At the time of the passing of the 2013 Act the constables operated under the direction and control of a Chief Constable who is appointed by the Authority. Section 59 of the 2004 Act contemplates that members of the CNC are members of a police force, it refers to arrangements with “other police forces” including forces of police areas under the 1996 Act. Members of the CNC are attested and uphold the office of constable in the same way as the constables under the 1996 Act. The claimant accepts that members of a police force under the 1996 Act are not employees but office holders. This is a distinction as between territorial police forces and members of the CNC who are employees of the Police Authority, it is a distinction which is said not to detract from the claimant’s arguments. It is accepted that the CNC operates within limited areas but this does not limit its jurisdiction when operating within a prescribed area.
24. As to (b), the Hutton Report did not draw any distinction between Home Office police forces under the 1996 Act and other police forces. The claimant relies upon Recommendation 14 of the Hutton Report which reads:

“The key design features contained in this report should apply to all public service pension schemes. The exception is in the case of the uniformed services where the Normal Pension Age should be set to reflect the unique characteristics of the work involved. The Government should therefore consider setting a new Normal Pension Age of 60 across the uniformed services, where the Normal Pension Age is currently below this level in these schemes, and keep this under regular review.”

The claimant accepts that there is no definition of the uniformed services within the report. The claimant contends that the CNC falls within the rationale reflected in Recommendation 14. This is also reflected in the Explanatory Note to the Act which provides:

“Subsection (2) excepts fire and rescue workers who are firefighters, members of police forces and members of the armed forces from the requirement to link normal pension age to state pension age in subsection (1). It provides that there normal pension age should be 60. These groups historically have lower pension ages than other public servants in recognition of the unique characteristics of the work they do.”

The claimant contends that this reasoning is particularly strong in respect of members of the CNC given the high levels of fitness required of firearms officers and the absence of other roles into which members can be deployed if their fitness levels decline. On this basis it would be irrational to provide for a pension age of 60 for territorial forces and not for the CNC.

25. As to (c) it is the claimant’s case that the 2013 Act represents a “new start”. The effect of this legislation is to close old schemes and provide powers to create new schemes and regulations which apply to people who hitherto did not fall within what is now section 1 of the 2013 Act. Section 25, in particular, provides for the extension of scheme regulations to individuals who would not fall within section 1. It is open to the Secretary of State to include the CNC within such extended scheme regulations.
26. Any interpretation of the provisions of the 2013 Act has to be done in the context of the Act which is intended to cover a range of occupations and pension schemes. In so construing a particular provision and, if necessary, considering whether a contrary intention appears, it is appropriate to consider the relevant section in its setting in the legislation and to consider the substance and tenor of the legislation as a whole. *Blue Metal Industries Ltd v Dilley* [1970] AC 827.
27. As to interpretation the defendant relies upon the following provisions:

Interpretation Act 1978

Section 5:

“In any Act, unless the contrary intention appear, words and expression lifted in Schedule 1 to this Act are to be construed according to their Schedule...”

Extent

s.5: United Kingdom”

Schedule 1 to the 1978 Act provides:

“Police Area” and other expressions relating to the police have the meaning or effect described –

(a) In relation to England and Wales, by section 101 (1) of the Police Act 1996”

Police Act 1996

Section 101:

“101. – Interpretation.

(1) Except where the context otherwise requires, in this Act -...

“local policing body” means –

[(a) a police and crime commissioner (in relation to a police area listed in Schedule 1);]

(b) the Mayor’s Office for Policing Crime (in relation to the metropolitan police district);

(c) the Common Council (in relation to the City of London police area);...

“police force” means a force maintained by a [local policing body];”

28. Mr Westgate QC on behalf of the claimant submits that the definitions in the Interpretation Act 1978 are not relevant to the question for the Court because they are confined to territorial police forces in England and Wales or to a territorial police force in Scotland. The primary point upon which Mr Westgate QC places considerable reliance is that the CNC are not members of a police force for England, Wales and Scotland. The CNC is a national force which operates throughout Great Britain, in fact it does not operate in Northern Ireland. As the definitions in the Interpretation Act 1978 are confined to England and Wales, and Scotland has its own meaning, the interpretation provisions cannot assist the Court.
29. The essence of the point which I understand Mr Westgate QC to make on behalf of the claimant is that the Interpretation Act 1978 is intended to cover only territorial police forces or as he put it “local police forces”, namely the separate local police forces in England and Wales and the single police force in Scotland. Given the national nature of the CNC the provisions of the Interpretation Act cannot and do not apply to the CNC. The 2013 Act encompasses the new and broader schemes, there is nothing in section 10(2)(b) of the Act which confines the wording to territorial police forces.

30. The claimant accepts that members of the CNC do not fall within section 1(2)(g). The reason being is that they are not members of a police force for England, Wales and Scotland. However, it is the claimant's contention that this does not mean that the CNC do not come within the definition of "members of a police force" for the purposes of section 10(2). This section describes a wider class to which the limiting words for England, Wales and Scotland do not apply.
31. In particular the claimant relies upon section 30 (1) of the 2013 Act which provides:
- "30 New public body pension schemes
- (1) The following provisions of this Act apply in relation to a new public body pension scheme (and any statutory pension scheme that is connected with it) as to a scheme under section 1 (and any connected scheme) –
- (a) section 31(1) and (2) and Schedule 3 (scheme regulations);
- (b) section 4 (scheme manager)
- (c) section 5 and 6 (pension board), if the scheme has more than one member;
- (d) sections 8 to 10 (scheme design);
- (e) sections 11 and 12 (cost control);
- (f) sections 14 to 16 (information and records)...
- (5) In this Act –
- "public body pension scheme" means a scheme (other than an existing scheme) established by a public authority for the payment of pensions and other benefits to or in respect of members of staff of a statutory body or the holder of a statutory office; with "new public body pension scheme" means a public body pension scheme established after the coming into force of this section."
32. Upon the claimant's construction, section 10(2) applies to a new scheme under section 30 as well as to new schemes under section 1. The section is said to contemplate that it is possible for a person to be a member of police force yet within the public body scheme (section 30) and not a scheme for persons in public service (section 1). If the defendant is correct then no new scheme for members of a police force (within section 10(2)(b)) could ever be made under section 30 because that paragraph only applies to people within section 1. There would be no need to apply section 10(2) to section 30. Given that the origin and purpose of this part of the Act is to describe the characteristics of the workforce to whom the pension age of 60 should apply, rather than the identity of the person responsible for their terms and conditions or of the historical schemes that apply to them, section 10 reflects these points and is

unaffected by the limitation namely “for England, Wales and Scotland” contained in section 1(2)(g).

33. As to the definition in section 37 of the 2013 Act and Schedule 1 paragraph 7 namely the phrase “members of a police force”, the same as in section 10, this does not commit the claimant to argue that the phrase has two different meanings. Section 37 deals with the general term “members of a police force” and paragraph 7 of Schedule 1 defines it further. The paragraph is not intended to be an exhaustive definition. Sub-paragraphs (a) and (b) are addressed to territorial forces in England and Wales and Scotland respectively. They leave unaffected the CNC which is not a force “in relation to England, Wales and Scotland” but is a national force. This is said by Mr Westgate QC to be consistent with the Interpretation Act 1978 as Schedule 1 to that Act only applies “in relation to England and Wales”. The Schedule is said by Mr Westgate QC to operate so that an Act which refers to territorial police forces as they are organised in England and Wales does not need to set out in full or apply the terminology described in section 101(1) the 1996 Act. This provision does not apply to “expressions relating to the police” that are not territorially limited to “England and Wales”. This is because the language of this part of the Schedule has no application to that case or because this is a case where a “contrary” indication appears.
34. The claimant accepts that the review of the effect of section 10 of the 2013 Act upon the MoD Police ordered by section 36 of the 2013 Act means that the MoD Police do not fall within the provisions of section 10(2)(b). The claimant makes the point that members of this force are civil servants. It does not follow from section 36 that the CNC or the British Transport Police do not come within section 10 as no reason was given for the non-inclusion of the MoD Police in the section.

The defendant’s case

35. CNC officers are not “members of a police force” for the purpose of section 10(2) of the 2013 Act. The Interpretation Act 1978 has the effect that unless the contrary appears, CNC officers do not come within the meaning of “members of a police force” where such a phrase appears in statutory provisions. No contrary indication is contained within the 2013 Act. The only issue for the Court is one of statutory interpretation. The defendant Police Authority and Chief Constable are not happy with the statutory interpretation of section 10 as they construe it, however, they are bound by the legislation and have to comply with it. The defendant accepts there are good grounds for retiring CNC officers at the age of 60 but different policy considerations apply in respect of police officers in territorial forces.
36. The defendant accepts that in a general sense the CNC is a police force however it differs in fundamental respects from the Home Office territorial police forces. The nature and function of the police work of the CNC differs from that of the territorial forces. The CNC is not primarily engaged in crime prevention, the maintenance of public order nor the investigation of crime. Almost all the members of the CNC are armed unlike the territorial police forces. The CNC and the territorial police forces are under the supervision of a different Secretary of State, the CNC is not supervised by the Home Office. Their funding differs, the main funding for the CNC originates from site holders pursuant to section 60 of the 2004 Act, the funding for the territorial police comes from the Home Office. There is a fundamental difference in their employment status namely that officers of the CNC are employees and as such are

able to access employment rights pursuant to the relevant legislation in a manner which members of the territorial police force cannot as they are office holders.

37. CNC is one of the group of forces which are police forces in the wider, colloquial sense but which are not “police forces” for the purpose of the 1996 Act or the Interpretation Act 1978. Other examples are the Ministry of Defence Police (“the MoD Police”) and the British Transport Police. The MoD Police is a statutory police force established under section 1 of the Ministry of Defence Act 1987 and maintained by the Secretary of State for Defence. The British Transport Police Force is established under the Railways and Transport Safety Act 2003 and is maintained by the British Transport Police Authority.
38. The Interpretation Act 1978 provides a complete definition of police forces which applies to all statutes unless the contrary appears. Section 5 specifically refers to the extent of the provision as covering the United Kingdom. In Schedule 1 “police area” and “other expressions relating to the police” have the meaning or effect described in relation to England and Wales by section 101(1) of the Police Act 1996. The CNC is outside the scope of the definition of a police force for the purposes of section 101 of the 1996 Act. It is not a force maintained by a local policing body, it is maintained by the defendant. The definition in section 101 of the 1996 Act applies only to Home Office territorial forces. The 1996 Act is concerned with the creation and operation of Home Office territorial forces in England and Wales. The CNC is not such a force. The CNC is a police force constituted under the provisions of the 2004 Act section 52(1) of which provides that it is the function of the defendant to maintain the CNC as an efficient and effective constabulary.
39. Schedule 1 of the Interpretation Act does not state that it applies only to England and Wales. It contains a further definition under the heading “Construction of certain expressions relating to the police: Scotland”: “In relation to Scotland – a) references to a police force include references to the Police Service of Scotland...” This was introduced by amendment with effect from 1 April 2013. Thus the Act provides for a definition of a police force which applies in Scotland and which excludes the CNC.
40. It is clear from other statutes that a distinction is drawn between territorial police forces and the CNC. Section 59 of the 2004 Act which governs members of the CNC serving with “other forces” states

“(1) This section applies where a member of the Constabulary serves with a relevant force and arrangements made between the Chief Officer of that force and the Chief Constable of that force.”

Within the section “relevant force” means either a police force or a police area in England and Wales, the Police Service of Scotland, the Police Service of Northern Ireland, the British Transport Police force or the Ministry of Defence Police force.

41. The 2013 Act provides for an expansion to the definition of a “police force” which does not apply to the CNC. The expanded definition does not exhaustively define the term “members of a police force”. The fact that the 2013 Act contains an expansion which does not include CNC officers (Schedule 1, paragraph 7) reinforces the conclusion that there is no contrary intention in the 2013 Act which would oust the

standard statutory meaning of “police force” and “members of the police force” that is derived from the Interpretation Act 1978.

42. It is undisputed that the CNC are not “members of police forces for England, Wales and Scotland” for the purposes of section 1(2)(g) of the 2013 Act. It is wholly consistent with this that they should not be “members of a police force” for the purposes of section 10(2). The wording of the relevant phrase is similar. There would be no reason why such similar phrases would have different meanings in the same statute. If that was so, then the different meaning for section 10(2) purposes would have been made clear.
43. The 2013 Act provides, in respect of those groups of public service workers listed in section 1 of the Act, that their existing pension scheme had to close to future accruals by 31 March 2015 and to be replaced by a new scheme for persons in public service made pursuant to section 3. The list of existing schemes which had to close by this date is set out in Schedule 5 (section 18(i), (2) and (5)) which identifies the existing pension schemes for each of the groups of workers listed in section 1(2). Paragraphs 22 and 23 of Schedule 5 refer to police pension schemes. Paragraph 22 refers to the pension scheme for territorial police forces i.e. the Police Pension Scheme made under the Police Pensions Act 1976. Paragraph 23 refers to the pension scheme for the Police Service of Scotland made under section 48 of the Police and Fire Reform (Scotland) Act 2012. CNC officers were not and have never been members of these pension schemes. The defendant and UKAEA scheme are referred to in Schedule 10 of the 2013 Act.
44. The statutory framework of the 2013 Act only makes sense if the public service workers referred to in section 1(2) are those whose existing schemes were listed in Schedule 5 and were closed under section 18 because those are the pension schemes that will then be replaced by the new major schemes for persons in public service created by section 1(1) and section 3. Schedule 5 demonstrates that CNC officers did not count as “members of police forces” for the purposes of section 1(2).
45. The combined effect of section 1, section 18 and Schedule 5 is to make clear that CNC officers are not “members of police forces for England, Wales and Scotland” as defined in section 1(2). Section 2 and Schedule 2 specify the persons who may make scheme regulations for the category of persons in public service that are listed in section 1(2). The person who makes scheme regulations for each scheme is called the “responsible authority”. Schedule 2 provides that the responsible authorities for the purpose of making scheme regulations for members of police forces are the Secretary of State and the Scottish Ministers not the defendant.
46. Given that members of the CNC are not “members of police forces in England, Wales and Scotland” for the purposes of section 1(2) it must follow that they are not “members of a police force” for the purpose of section 10. The exclusion in section 10(2)(b) for members of a police force is intended to be co-extensive with a category of persons in public service which is set out in section 10(2)(g). This is consistent with fact that the other exclusions in section 10 namely 10(2)(a) and (c) respectively for fire and rescue workers and members of the armed forces mirror the categories of persons in public service which book-end the “members of police forces” category at section 1(2)(f) and (h) respectively.

47. The definition section, section 37, does not differentiate between “members of police forces” and “members of a police force”. It simply refers to “members of a police force”. If the two phrases had completely different meanings within the 2013 Act the definition section would have said so. The difference between “police forces” in section 1(2) and “a police force” in section 10 is explained by the unwillingness of the draftsman to repeat, unnecessarily, the reference to “England, Wales and Scotland” in section 10. The truncation of language is the same as the truncation which appears in relation to fire and rescue workers, compare section 1(2)(f) with section 10(2)(a). The reason why section 1(2)(g) refers to England, Wales and Scotland is to exclude the Police Service of Northern Ireland (the Act as a whole applies to Northern Ireland section 40).
48. Section 36 of the 2013 Act lends further support to the conclusion that section 10(2) does not cover CNC officers. It applies to the MoD Police (and to the Defence Fire and Rescue Service). It would make no sense for section 36 to have been included in the 2013 Act if the MoD police officers were “members of a police force” for the purposes of section 10(2). The reason for the requirement to conduct a review into the health, well-being and operational impact of section 10 upon the MoD Police was that, in the light of section 10(1), they would no longer be able to retire with a full pension at 60.
49. Section 30(1) of the 2013 Act does not support the claimant’s proposed interpretation. The defendant and the interested parties submit that the purpose of section 30(1) is a general function to ensure that the provisions relating to the new pension scheme extend to section 1 and section 30 schemes insofar as they are applicable. It does not follow that all individuals who come into such a scheme attract these provisions, one such category being persons who fall within the section 10(2)(b) exceptions. If the claimant was correct it would follow that fire and rescue workers who are fire fighters and the armed forces fall within section 30 and not section 1, they do not. It was not necessary for the drafter of the section to identify the exceptions, they are apparent from a reading of the relevant sections.

The interested parties

50. On behalf of the interested parties Mr Purchase informed the Court that it was Parliament’s intention that within the meaning of the 2013 Act the police forces should be confined to territorial forces, as contemplated by the 1996 Act. No final decision has been made as to what will be the terms of the future pension scheme to be applied to the CNC. The provisions of such a scheme will be subject to the constraints of legislation.
51. Mr Purchase adopted the arguments of the defendant and made a number of separate points. The claimant’s acceptance that the MoD police is not a police force within the meaning of section 10(2)(b) wholly undermines its submission that the CNC comes within this subsection. The definition of a police force is a term of art for the purpose of statutory construction. The CNC is similar in organisation, function and status to the MoD Police rather than territorial police forces. Like the MoD Police it is largely armed, it is restricted to particular areas and the defence of materials. Neither is under the supervision, of nor receives funding from, the Home Office. Members of the CNC and the MoD Police are employees unlike the territorial police forces. Their pension provision has always differed, as identified by the defendant. The closure of

the Police Pension scheme is governed by section 18, Schedule 5 paragraphs 22 and 23 of the 2013 Act whereas the closure of the pension maintained in respect of the CNC, the UKAEA pension scheme, is governed by section 31, Schedule 10 paragraph 14 of the 2013 Act.

52. The claimant's contention that the CNC is a national force and thus outwith the provisions of Schedule 1 of the 2013 Act is misconceived. The provisions of Schedule 1 paragraph 7 mean that both limbs can apply to the CNC, it does not mean that neither can. The MoD Police is also a national organisation (sections 1, 2 and 8 of the Ministry of Defence Police Act 1987) however, as section 36 of the 2013 Act makes clear, it is not a police force within the meaning of section 10(2)(b) of the 2013 Act.
53. The claimant accepts that members of the CNC are not members of a police force for the purposes of section 1(2)(g). If Parliament had intended that they should come within the provisions of section 10 it would have expressly said so. Further the 2013 Act provides for the same definition for membership of a police force for the purposes of both section 1(2)(g) and section 10(2)(b) (section 1, subsection 3 and section 37 of the 2013 Act), both of which apply the same definition set out in Schedule 1.

Conclusion

54. The sole issue for this Court is the statutory interpretation of section 10 of the 2013 Act, whether the term "members of a police force" includes members of the CNC so that any pension scheme made under or in accordance with that Act must have a normal retirement age of 60. Mr Westgate QC, in his submissions on behalf of the claimant, dealt with policy matters but they cannot and should not detract from the primary focus which is one of statutory interpretation.
55. The Interpretation Act 1978 states: "In any Act, unless the contrary intention appear, words and expressions listed in Schedule 1 to this Act are to be construed according to that Schedule." (Section 5). The section is expressed to extend to the United Kingdom. Defined in Schedule 1 are the phrases "police area" and "other expressions relating to the police". The Schedule states that those expressions have the meaning or effect described in relation to England and Wales by section 101(1) of the Police Act 1996. The definition in section 101 of the 1996 Act states that except where the context otherwise requires "police force" means a force maintained by a local policing body, and "local policing body" means, according to the relevant area, a police and crime commissioner, or the Mayor's Office for Policing and Crime or the Common Council.
56. The CNC does not come within the definition of a police force for the purpose of section 101(1) of the 1996 Act. It is not a force maintained by a local policing force, it is maintained by the defendant. The CNC is a police force which is constituted under the provisions of the 2004 Act. The 1996 Act applies to Home Office territorial forces.
57. The claimant contends that the Interpretation Act 1978 is not relevant because the definitions in the Act are confined to forces in England and Wales or a force in Scotland. The CNC are not members of such police forces, it is a national force which operates throughout Great Britain.

58. Section 5 of the Act extends to the United Kingdom. The definition in Schedule 1 does not state that it applies only to England and Wales, it states that “police area” and “other expressions relating to the police” have the meaning or effect described in relation to England and Wales by section 101(1) of the 1996 Act. Further, Schedule 1 contains the following definition under the heading “Construction of certain expressions relating to the Police Scotland”:

“In relation to Scotland –

(a) References to a police force include references to the Police Service of Scotland...”

The Act provides a definition of a “police force” which applies in Scotland and which excludes the CNC. It follows that the Act provides a complete definition of police forces for England, Wales and Scotland. It is accepted by all parties that for the purpose of these proceedings and the relevant statutory interpretation, provisions relating to Northern Ireland are wholly distinct. The definitions contained in the Interpretation Act extend to the United Kingdom. Given the identified provisions and definitions I do not accept the claimant’s submission as to the limits of the Interpretation Act 1978. Further the fact that the CNC operates both in England, Wales and Scotland means that both limbs of Schedule 1 apply.

59. In my view the claimant’s attempt to confine the relevant provisions of the Interpretation Act 1978 to a narrow group ignores the intention and purpose of the Act which is to provide complete definitions applicable to relevant statutes. I accept the contention of the defendant and the interested parties that by reason of the provisions of the Interpretation Act 1978 the phrase “police force” has a particular meaning and is, to use their words, a “term of art”. It is moreover a term which is consistent with the purpose of the Interpretation Act namely that it applies to other statutes unless a contrary indication appears. An example of this is the distinction drawn between the CNC and other police forces in the 2004 Act. (Paragraph 40 above).
60. It follows from the above that the effect of section 5 of the Act is that the words “police force” for the purpose of section 10(2) of the 2013 Act must, unless the contrary appears, be interpreted to mean Home Office territorial police forces and thus to exclude the CNC. Unless the contrary appears, CNC officers are not “members of a police force” for section 10(2) purposes. The phrase “members of a police force” is an expression relating to the police and so takes its meaning from section 101 of the 1996 Act.
61. Within the 2013 Act no contrary indication appears. The 2013 Act expressly provides for the same definition of membership of a police force for the purposes of both section 1(2)(g) and section 10(2)(b) (section 1(3) and section 37 of the 2013 Act which apply the same definition set out in Schedule 1). It does provide for an expansion to the definition of a “police force” (Schedule 1, paragraph 7), but the expanded definition does not include the CNC. The definition is not exhaustive, however had there been an intention to include CNC officers this is the section in which it could have been done. It is of note that within this extended definition at paragraph 7(b) it is stated “in relation to Scotland, means members of the Police Service of Scotland and police cadets.” This excludes the CNC not only by the use of the word “means” but identifying the single police force of Scotland. I accept the

contention of the defendant and interested parties that the fact that the 2013 Act contains an expansion to the definition of “members of a police force” which does not include CNC officers reinforces the conclusion that there is no contrary intention in the 2013 Act which would oust the standard statutory meaning of “police force” and “members of a police force” that is derived from the Interpretation Act 1978.

62. By reason of my findings as to the applicability of and the definitions contained within the Interpretation Act 1978, the claimant’s submission as to the ordinary or general meaning of the phrase “police force” is of limited relevance. The CNC is a police force in the wider and colloquial sense of the phrase but there are distinct and distinguishing differences as between the CNC and the Home Office territorial forces. The CNC was set up by the 2004 Act unlike the territorial forces which were set up under the 1996 Act. The sources of funding are different, the supervision emanates from different sources, CNC officers are employees of the defendant, the territorial police are office holders. The CNC’s primary function is the protection of licensed nuclear sites and the safeguarding of civil nuclear material in the UK and elsewhere. Its objective is to provide armed response and to protect nuclear sites and nuclear materials in transit. Unlike the territorial forces the majority of its officers are firearms officers. Their role is different from the range of duties that may be performed by officers in a Home Office territorial force. The CNC are not members of the police pension scheme but the UKAEA pension scheme. The Police Pensions Act 1976 does not apply to CNC officers. It is a force in terms of status, organisation, funding and function which is distinct from the Home Office territorial forces. I accept the submission of the interested parties that the CNC is similar to the MoD Police rather than the territorial forces.
63. The differences as between the CNC and the territorial forces are reflected in the provisions of the 2013 Act which underpin the submission made by Mr Purchase on behalf of the interested parties as to Parliament’s intention. I regard as significant the provisions in the 2013 Act set out in paragraphs 43 - 45 above which provide for the closure of the pension schemes of the territorial forces and the CNC. They highlight the differences in pension arrangements and the distinction between the forces.
64. The provision contained in section 36 of the 2013 Act requiring a review of the effect of the section 10 provisions upon the MoD Police, reinforces my view that the intention behind the 2013 Act was to separate the territorial forces from specialist forces such as the CNC and the MoD Police. The claimant accepts that the effect of section 36 has to be that the MoD Police is not a “police force” for the purpose of section 10. It was a concession that had to be made and one which significantly weakens the claimant’s argument that members of the CNC come within the provisions of section 10.
65. The claimant finds itself in the difficult position of accepting that members of the CNC are not “members of police forces for England, Wales and Scotland” for the purpose of section 1(2)(g) of the 2013 Act, because they are members of a national force but submits that they are “members of a police force” for the purpose of section 10(2)(b). Such an argument begs the question as to why, if the definition contained in section 10 was intended to be wider than that contained in section 1, the same was not stated. The argument is not assisted by the fact the phrases are so similar.

66. The definition section, section 37, does not differentiate between “members of police forces” and “members of a police force”. It refers only to “members of a police force”. If the two phrases were to have different meanings within the 2013 Act, in my view, the definition section would have said so.
67. The similarity of the wording between section 1(2) and section 10(2) is also reflected in the groups contained in the exclusions. I accept the defendant’s contention that the exclusion in section 10(2)(b) for members of a police force is intended to be co-extensive with a category of persons in public service which is set out in section 1(2). This is consistent with the fact that the other exclusions in section 10 namely section 10(2)(a) and (c) respectively for fire and rescue workers and members of the armed forces mirror the categories of persons in public service which book-end the “members of police forces” category at section 1(2)(f) and (h) respectively.
68. I do not accept the claimant’s argument as to the effect of section 30 of the 2013 Act. It is right that pursuant to section 30, section 10 applies both to section 1 and section 30 pension schemes. Implicit in this section is that it does so when applicable. The exclusions contained in section 10(2)(b) remove these specific groups from the provisions. As the defendant has submitted, it is unnecessary to specifically refer to the exceptions as a reading of the relevant provision makes the position clear.
69. During the course of written and oral submissions the claimant referred to the Hutton report, in particular Recommendation 14. There is no evidence that the issue of the separation of the Home Office territorial forces and the specialist forces, such as the CNC and the MoD Police, was considered or addressed by the Public Service Pensions Commission chaired by Lord Hutton of Furness.
70. For the reasons given I find that the members of the CNC are not “members of a police force” for the purposes of section 10(2)(b) of the 2013 Act. Accordingly the claimant’s application is dismissed.