

Chapter 21: Privilege

The privilege against self-incrimination

Statutory provisions

Statutory withdrawal of privilege

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In *R (River East Supplies Ltd) v Crown Court at Nottingham* [2017] 2 Cr App R 384 (27) the Divisional Court described as 'powerful' the arguments that prevailed with the majority in *R (Bright) v Central Criminal Court* [2001] 2 All ER 244 that, in the context of the Police and Criminal Evidence Act 1984, s 9 and sch 1, Parliament had excluded the privilege against self-incrimination, but did not find it necessary to resolve the apparent tension, in this respect, between *Bright* and *R (Malik) v Manchester Crown Court* [2008] 4 All ER 403.

Compulsory production of pre-existing documents and materials

In *R (River East Supplies Ltd) v Crown Court at Nottingham* [2017] 2 Cr App R 384 (27) the Divisional Court held that the common law privilege against self-incrimination does not extend to material that is 'independent' within the meaning of *Saunders v UK* (1997) 23 EHRR 313 and the other Strasbourg cases. The court also approved and followed the ratio of the majority of the Court of Appeal in *C plc v P* [2008] Ch 1 as confirmed and applied in *R v S* [2009] 1 All ER 716, but not the distinction drawn in *C plc v P* between things which a person was compelled to produce and things, for example drugs in a counterfeit 'Gucci' bag or an illegal weapon that was not within the strict scope of a search warrant. It declined to follow three decisions of the House of Lords - *Rio Tinto Zinc Corporation v Westinghouse Electric Corporation* [1978] AC 547, *Rank Film Distributors Ltd v Video Information Centre* [1982] AC 380 and *Istel v Tully* [1993] AC 45 - insofar as they assumed that the privilege does extend to 'independent' material. It also disagreed with the discretionary approach suggested in *R (Malik) v Manchester Crown Court* [2008] 4 All ER 403 on the basis that since the privilege does not apply to 'independent' documents, no question of the exercise of judicial discretion can arise.