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Policing and Crime Bill 2015-16

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Summary

The *Policing and Crime Bill* has its second reading on 7 March 2016. It covers a wide range of subjects. Some of the proposed changes form part of the Government's manifesto commitment to develop to the role of Police and Crime Commissioners. Others are part of the Government's response to concerns in recent years about police integrity. Other changes to police powers are in response to more specific concerns – for example over detention of people suffering mental health crises, and over the length of time people can be held on police bail before they are charged. The Bill also covers areas as diverse as firearms control; alcohol licensing; enforcement of United Nations and EU sanctions; and child sexual exploitation.

Emergency services collaboration

Part 1 of the Bill would:

- Introduce a statutory duty on police, fire and ambulance services to collaborate to improve efficiency or effectiveness
- Allow Police and Crime Commissioners (PCCs) to assume greater involvement in the provision of fire and rescue services, through three different possible models
- Bring fire and rescue services in London under the direct responsibility of the Mayor of London

Whilst the statutory collaboration duty has been broadly welcomed, the proposals to allow PCCs to assume responsibility for fire and rescue services “where there is local demand” have proved more controversial.

Police complaints and inspection

Part 2 of the Bill would implement many of the proposals in the Government's [Improving Police Integrity](#) consultation. It would reform the system of police complaints in the following ways:

- A major role for Police and Crime Commissioners (PCCs) in the handling of police complaints
- Changes to the handling of complaints aimed at making the system easier to follow and more transparent
- Changes to the role and powers of the Independent Police Complaints Commission (IPCC) to reinforce its independence from police forces
- The introduction of ‘super-complaints’ to allow certain advocacy groups and charities to raise concerns over troubling systemic issues in policing

Part 2 also increases the powers of Her Majesty's Inspectorate of Constabulary and extends the inspectors' remit, so that it covers private contractors.

Police discipline

Chapters 3 and 4 of Part 2 of the Bill would introduce the following reforms of the police discipline system, following the recommendations of the [Chapman Review](#):

- Further protection for whistle-blowers
- The introduction of a ‘barred list’ of all those dismissed from service in the police and prohibited from working in policing

- Closing the loophole that allows former officers and former special constables to avoid disciplinary proceedings for conduct during their time on the force
- Empowering the Secretary of State to issue guidance on the conduct of those serving in the police and on forces' exercise of their disciplinary functions

Police workforce and representation

Part 3 of the Bill would give chief officers more flexibility in the way they designate powers to their civilian staff, and would also allow them, for the first time, to designate police powers to civilian volunteers. Currently special constables have full police powers, but the thousands of other volunteers working in police forces have none.

Chief officers would be able to give any police powers to the new categories of police civilian and police volunteers **except** those from a list of powers which are reserved for sworn constables. This reverses the current position, where chief officers choose from a menu of powers for each category. The Bill leaves unchanged the position of contracted-out detention officers and escort officers, who currently can be designated with very limited police powers.

Part 3 also strengthens the accountability and transparency of the Police Federation in response to recent concerns.

Police powers

Part 4 chapter 1 of the Bill is the Government's response to long-standing concerns over the use by police of their powers to bail suspects prior to charge. The most significant reforms would include:

- A presumption that suspects released prior to charge would be released not on bail
- Time limits on bail and safeguards to prevent a person remaining on bail indefinitely

Part 4 would also make changes to the rules governing how the police deal with people suffering mental health crises. It would also ensure that 17 year olds detained in police custody are treated as children for all purposes. Part 4 also includes changes to extend the reach of police enforcement powers on ships at sea, when the police are in "hot pursuit" of criminals.

Other changes

Part 5 would make some minor changes concerning the term of office of Deputy Police and Crime Commissioners and gives the Home Secretary the power to change the name of a police area by order.

Part 6 of the Bill would make changes to the law on firearms as recommended by the Law Commission in a [recent report](#). These include providing a statutory definition of the terms 'lethal', 'component part' and 'antique firearm'.

Part 7 would amend the *Licensing Act 2003* to make clear that powered and vaporised alcohol are both covered by the Act.

Part 8 deals with enforcement of EU, UN and other financial sanctions. It would generally extend existing sentences for financial sanctions offences and introduces new civil penalties to be enforceable by the Treasury.

Part 9 contains miscellaneous changes, including to deal with live streaming of indecent images of children, and to require arrested people to state their nationality.

1. Introduction

The *Policing and Crime Bill* was introduced on 10 February 2016 and will have its second reading on 7 March 2016. The Bill's progress can be followed on the [Parliament website](#). The Home Office has published very helpful [explanatory notes](#), which give policy and legal background as well as detailed explanations of each clause. There is also a series of other [documents](#) on the gov.uk website, including:

- [An overview](#) from the Government's perspective
 - [An overarching impact assessment](#)
 - [A delegated powers memorandum](#)
 - [An ECHR memorandum](#)
- A range of factsheets, including on:
- [Emergency services collaboration](#)
 - [Police complaints and discipline](#)
 - [Police workforce and representation](#)
 - [Police powers](#)
 - [Firearms and alcohol licensing](#)
 - [Financial sanctions](#)

Box 1: Where in the UK does the Bill extend to (and apply)?

Policing is generally devolved in Scotland and Northern Ireland. According to the [explanatory notes](#), most of the Bill extends and applies to England and Wales. The main exceptions (according to the Government) are:

England only

- **Part 1** – Emergency Services Collaboration – this *extends* to England and Wales (because there is no legal jurisdiction of Wales) but only *applies* to England (see for example clause 1(2) and paragraph 5 of Schedule 1 (new section 4A(3)))

England, Scotland and Wales

- Part 3, **paragraph 17 of Schedule 9** (exercise of powers by civilian staff of the British Transport Police)
- **Part 6** on firearms

The whole UK

- Part 2 (on police discipline) extends to England and Wales but
 - **clause 24(7)** on appeals to the Police Appeals Tribunal in the case of Ministry of Defence Police extends and applies to the whole UK
 - **clause 26(6)** (duty of the Director General of the National Crime Agency to respond to an HMIC inspection report) extends and applies to the whole UK
- Part 4, Chapter 4 **clauses 62** (in part) **64 to 73** on Police Maritime Powers also apply to Scotland and Northern Ireland insofar as they provide for hot pursuit of vessels in Scottish and Northern Ireland waters
- **Part 8** on financial sanctions applies to the whole UK except clause 95 (on deferred prosecution agreements) which extends only the England and Wales.
- Part 9, **clause 103** on National Crime Agency powers extends and applies to the whole UK
- **Clauses 104 and 105** on requirements to confirm nationality extends and applies to the whole UK

Information on legislative consent motions for which the Government intends to seek approval are given on [page 41](#) of the explanatory notes.

The Speaker has yet to issue certificates for the purposes of the new English Votes for English Laws procedures. When he does so, these will be available from the [All Bill Documents](#) page for this Bill on the Parliamentary Website. Background on EVEL is in [Commons Briefing Paper 7339](#).

2. Collaboration between emergency services in England

Summary

Part 1 of the Bill would:

- Introduce a statutory duty on police, fire and ambulance services to collaborate to improve efficiency or effectiveness
- Allow Police and Crime Commissioners (PCCs) to assume greater involvement in the provision of fire and rescue services, through three possible different models
- Bring fire and rescue services in London under the direct responsibility of the Mayor of London

Whilst the statutory collaboration duty has been broadly welcomed, the proposals to allow PCCs to assume responsibility for fire and rescue services “where there is local demand” have proved more controversial.

Library Briefing Paper 7494, [Police and fire reforms 2016: The Government's proposals for England](#) provides more detailed background on these reform proposals and Library Briefing Paper 7482, [Fire service funding in England](#) provides more information on current funding mechanisms and governance structures.

2.1 Background

The right of centre think tank *Reform* advocated integrating criminal justice and emergency services through Police and Crime Commissioners in 2012. They argued for this in the light of the “tight fiscal future for criminal justice services” and case studies where services were already working well together.¹

The 2015 Conservative manifesto promised ‘to enable fire and police services to work more closely together’² and the [2015 spending review](#) also promised legislation for a duty to collaborate, and to enable PCCs to take over police and fire services “subject to a clear business case and local support.”

Changing demands on the emergency services

The main driver for change is the need for efficiency. The challenges of policing in austerity, rising demand on the ambulance service and the changing nature of the risks and demands within which the fire service operates have led to calls for closer co-operation. The [explanatory notes](#) give the Government’s view of the context:

20 Crime, as measured by the independent Crime Survey for England and Wales, has fallen by more than a quarter since June 2010. However, a College of Policing analysis of demands on

¹ Reform, [Doing it justice: Integrating criminal justice services through Police and Crime Commissioners](#), October 2012

² [Conservative Party Manifesto 2015](#), p59

policing ([Estimating demand on the police service](#), College of Policing, 2015) found some evidence to suggest that an increasing amount of police time is directed towards public protection work such as managing high-risk offenders and protecting vulnerable victims. Such cases often require considerable police resource.

21 Incidents attended by fire and rescue services have been on a long-term downward trend and have fallen by 42% in England over the ten year period from 2004/5 to 2014/15. Fire-related deaths and casualties have also been on a long-term downward trend. 1 Accidental fire deaths in the home in England (which account for two-thirds of all fire fatalities) have decreased by 30% over the last 10 years. This is attributed to a range of factors including fire prevention work, public awareness campaigns, standards to reduce flammability such as furniture regulations, and the growing prevalence of working smoke alarms in homes (rising from 8% in 1998 to 88% in 2011).

22 Conversely, there is increasing demand on the ambulance service. Total calls to the ambulance switchboard have increased by 10% from just over 8 million in 2011/12 to over 9 million in 2014/15 (with nearly 1,700 more emergency calls every day) and emergency responses to the most urgent calls have increased by 24%. However, the number of emergency journeys (where patients are transported to either a type 1 or type 2 Accident and Emergency department has decreased slightly year on year. Some of the reduction may be a result of increased resolution of lower priority calls without the need for transportation.

23 This changing profile of demand has led to a greater use of, and interest in, collaboration as a way to deliver services.

The College of Policing analysis [Estimating demand on the police service](#) (referred to in paragraph 20 of the explanatory notes above) gives further detail on pressures on the police despite overall falling crime rates:

- Police recorded crime and incidents have been decreasing over the last 10 years although the trend is now slowing and some types of crime and incidents (eg, rape and 'public safety and welfare') now appear to be increasing.
- Police officer numbers have also been falling over the last 5 years. There were just under 128,000 full time equivalent officers at March 2014, a fall of 11% or around 16,000 officers since 2010. In 2014 there was one police officer for every 445 members of public, an increase of over 50 people per officer since 2010.
- Changing crime mix means that over the last 10 years, costs of crime for the police have not fallen as much as overall numbers of crimes. These costs are based on 2008 activity data and it is possible time spent on more 'costly' crime has increased, particularly with relation to complex crimes such as Child Sexual Exploitation.
- Incidents involving people with mental health issues appear to be increasing.
- Demand on the police associated with protective statutory requirements, such as Multi-Agency Public Protection Panels appears to be increasing.

Increased demand on the ambulance service, changing demands on the police and the success of fire prevention work are all factors which lead to calls for more collaboration.

The College of Policing analysis found police time is taken up with more complex crime, incidents involving public safety and mental health and statutory requirements to protect the public.

- There are two indications of emerging pressure on police resilience – decreased levels of police visibility and increasing requests for mutual aid.³

The Knight Review, *Facing the Future*

In 2012 the previous Government commissioned an independent review of efficiency in the provision of fire and rescue in England. Sir Ken Knight's report, *Facing the Future*, was published on 17 May 2013. It focuses mainly on the fire service, but [section 3.2](#) argues that, 'efficiency and quality can be driven through collaboration outside of the fire sector,' and that opportunities can be found in procurement, co-working, and co-location.⁴ Options included:⁵

- merging fire and rescue services with one or more of the other blue-light services, improving interoperability;
- sharing governance structures with other blue-light services (for example, Police and Crime Commissioners taking on the role of fire and rescue authority); and/or,
- improving join up at a government level between sponsors of the blue-light services and other departments that hold an interest in activity related to fire and rescue work.

The report notes that whilst proposals for PCCs to take responsibility for fire and rescue services would be innovative, they would complicate the current administration of fire authorities. However, the Review advocated a trial of such a model. If effective, said the report, the model could be adopted universally with clearly set out benefits and a suitable level of public scrutiny.⁶

Consultation

The Government consulted on this between 11 September 2015 and 23 October 2015.⁷ Whilst the consultation document set out proposals for PCCs taking over fire and rescue services "where a local case is made", the question on this part related to the process rather than the principle.⁸

On 5 January 2016 the Prime Minister announced that responsibility for fire and rescue services would be transferred from the Department of Communities and Local Government to the Home Office.⁹

The Government published the response document, [Enabling Closer Working Between the Emergency Services: Summary of consultation responses and next steps](#) on 26 January 2016.

The 2013 Knight Review suggested shared governance structures for blue light services.

Knight said PCCs taking responsibility for Fire and Rescue might complicate administration but he would welcome such a model being trialled.

The Government consulted on the process by which PCCs should take over fire and rescue services "where a local case is made."

³ [College of Policing analysis: Estimating demand on the police service](#), 2015

⁴ Sir Ken Knight, *Facing the future*, 17 May 2013, p52.

⁵ *Ibid*, p74.

⁶ *Ibid*, p75.

⁷ The consultation document was HM Government, [Enabling closer working between the police and fire services](#), September 2015

⁸ *Ibid*, p12

⁹ Home Office and DCLG, [Fire and rescue policy to move to the Home Office](#), 5 January 2016

The Government's response document made these proposals:

- The Government will legislate for a new statutory duty on police, fire and ambulance services to collaborate to improve efficiency and effectiveness (with local discretion over how this is done)
- Police and Crime Commissioners would take over responsibility for fire and rescue services "where a local case is made"
- The transfer of responsibility to those PCCs would be done through secondary legislation following local consultation and the case being made to the Secretary of State
- Where the parties were not in agreement about the transfer, the PCC would still be able to put the case to the Secretary of State, who would decide taking into account the local consultation and an independent assessment of the business case
- Where the PCC does take over responsibility for fire services, the Police and Crime Panel (which scrutinises PCCs) would also have their remit extended
- In areas where the PCC takes over fire services, there would be a "single employer" for fire and policing rather than a separate chief constable and chief fire officer
- The single employer would hold the rank of chief constable under existing legislation, but the current requirement for a chief constable to have previously been a constable would be dropped
- Where a single employer model is in place, the complaints and discipline systems would be the same for both; they would stay separate in other areas
- Where the PCC had not taken over responsibility for fire services, legislation would enable them to have voting rights on their local Fire and Rescue Authority or its committees if they make the case and the FRA agree
- The Government will legislate to abolish the London Fire and Emergency Planning Authority, and create a "London Fire Commissioner" to run the London Fire Brigade with the Mayor being responsible for setting budgets and strategic direction.

Part 1 and **schedules 1 and 2** of the Bill provide for those aspects that the Government intends to introduce through primary legislation.

2.2 The duty to collaborate

Chapter 1 of **part 1** of the Bill provides for collaboration agreements to be made between the ambulance service, fire and rescue and the police, and would introduce a statutory duty to collaborate.

What's already happening?

There have been many innovative local examples of joint working and asset sharing. The explanatory notes say that the Government has invested over £80 million in local blue light collaboration projects since 2010.¹⁰ The [Emergency Services Collaboration Working Group](#) (which comprises senior leaders from across the emergency services) published a report in 2014, [Emergency Services Collaboration – The Current Picture](#). It gave many examples, including Poynton Emergency Services Hub in Cheshire; and combined fire and police stations in Norfolk and Suffolk.

Research commissioned by the Working Group and [published](#) in 2015 looked at six existing collaboration projects across England and Wales:

¹⁰ [Paragraph 26](#). This funding has been made through the [Fire Transformation Fund](#), the [Transformation Challenge Award](#) and the [2015/16 Police Innovation Fund](#).

- A legal partnership in Hampshire between the County Council, the Fire and Rescue Service and the police to share corporate resources such as procurement, HR and facilities management
- Integrated back office functions in Northamptonshire for the Fire and Rescue Service, and County Council's shared services (and police back office functions shared with neighbouring forces)
- Joint responses to medical emergencies between Lincolnshire Fire and Rescue and East Midlands Ambulance Service
- The Joint Public Service Centre which merges two fire control teams in South Wales and Gwent, relocating them to South Wales Police's emergency control room
- Surrey and Sussex Fire and Rescue, Police and South East Ambulance Service, joining up police and fire control and dispatch functions, collocating with ambulance services, and providing some combined operational responses
- Greater Manchester, where ten Community Risk Intervention Teams deliver prevention services on behalf of all emergency services and respond to high volume but low priority calls on behalf of the police and ambulance service.

There are already collaboration projects between blue light services across England and Wales.

The report concluded that policy and legislative change could be necessary:¹¹

In conclusion, whilst there is evidence of innovative collaborative partnerships happening across emergency services in England and Wales, sustained collaboration will be determined by government's and services' ability to invest in and monitor partnerships in the long-term to establish best practice. Both policy and legislative change may also be required to overcome some of the more complex structural and organisational barriers.

One of the Government's factsheets on this part of the Bill, [Emergency Services Collaboration: Background](#), gives examples of what it calls "good collaboration" on page 3 but goes on:

Although there are many good local examples of joint working between the emergency services, the overall picture remains patchy and there is much more we can do to improve taxpayer value for money and the service to communities.

While blue light collaboration is happening, the Government thinks this is "patchy" and more can be done.

¹¹ Parry et al, [Research into emergency services collaboration](#), 2015

The current law

The [Policing and Crime Act 2009](#) provided for collaboration agreements between two or more police forces,¹² and the *Fire and Rescue Services Act 2004* requires fire and rescue authorities “so far as practicable” to enter into a reinforcement (mutual assistance) scheme with other fire and rescue authorities.¹³ There is nothing to prevent collaboration schemes between the services, but there isn’t a requirement for these.

There isn’t currently a legal requirement for different blue light services to collaborate.

The Bill

Clause 1 provides for written collaboration agreements to be made between the ambulance service, fire and rescue and the police. This doesn’t prevent other organisations from participating, but the Government is not requiring them to do so.

Clause 2 contains the statutory duty on the three services to consider opportunities to collaborate and to give effect to collaboration proposals if this would be in the interests of the efficiency and effectiveness of at least two of the services.

Reactions to the consultation on the new duty

The Government’s response document found “significant support” for the new duty, although some thought it unnecessary in view of existing collaboration, and some thought it should go further and include others such as local government.¹⁴

The consultation found “significant support” for the new duty.

2.3 Police and Crime Commissioners’ involvement in fire and rescue services

How are fire and rescue services run?

There are 46 Fire and Rescue Authorities (FRAs) in England at present,¹⁵ with a mixture of governance models. There are:

- **Six stand-alone metropolitan authorities** (Greater Manchester, Merseyside, South Yorkshire, Tyne and Wear, West Midlands and West Yorkshire)
- **24 stand-alone “combined authorities”** responsible for services across combined county council and unitary authority areas
- **15 county authorities** which are part of individual county councils or unitary authorities

There are 46 Fire and Rescue Authorities and 37 PCCs in England.

In addition, in **London** the London Fire and Emergency Planning Authority (LFEPA) is part of the Greater London Authority and is responsible for the London Fire Brigade.

¹² These provisions are contained in sections 22A to 23I of the *Police Act 1996* as amended

¹³ [Sections 13 to 15](#)

¹⁴ Home Office, [Enabling Closer Working Between the Emergency Services: Summary of consultation responses and next steps](#) 26 January 2016, page 7

¹⁵ To become 45 in April 2016 when Dorset and Wiltshire merge

How is the police service run?

The *Police Reform and Social Responsibility Act 2011* replaced police authorities with directly elected Police and Crime Commissioners in England and Wales. The exception was London where the same function is performed by the Mayor's Office for Policing and Crime.¹⁶

There are 37 Police and Crime Commissioners in charge of the English forces outside London.

How well do the police force areas fit with Fire and Rescue Authority Areas?

[Annex B](#) of the Bill's explanatory notes lists police force areas and the corresponding Fire and Rescue Authorities which cover all or part of those areas. There are two police force areas which span more than one fire and rescue service and whose boundaries do not align. These are:

- Devon and Cornwall Police (Cornwall FRA, Devon and Somerset FRA)
- Avon and Somerset Police (Avon FRA and Devon and Somerset FRA)

Police force areas fit well with Fire and Rescue Authority areas except for Devon and Cornwall and Avon and Somerset.

Other force areas do align with one or more FRAs:

- 28 police force areas have coterminous boundaries with FRAs
- A further five police force areas have more than one FRA, but the boundaries are coterminous
- The remaining two police forces, Wiltshire Police and Dorset Police, will be covered by one FRA (Dorset and Wiltshire FRA) from April 2016.

The Home Office factsheet explains that if the boundaries don't align, it will be for local areas to consider how they should be changed before a PCC could take on fire and rescue responsibilities for their area.¹⁷

Three models outside London

There are three possible models for PCC involvement set out in the Bill.

Model 1 – "The Governance Model"

Clause 6 and **schedule 1** would insert a new **section 4A** into the *Fire and Rescue Services Act 2004*. ("the 2004 Act"). This would allow the Secretary of State to make an order for a PCC to take over governance of their local Fire and Rescue Authority.

The Bill offers three models of involvement for PCCs.

¹⁶ Arrangements are different for the City of London Police

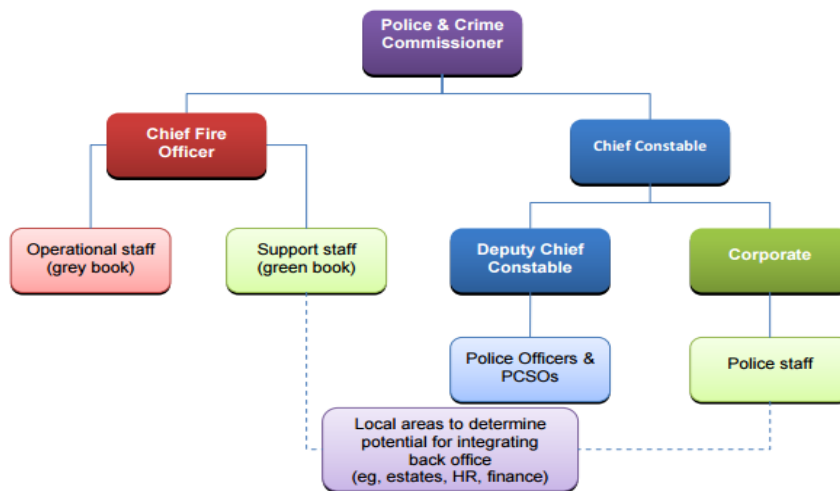
¹⁷ Home Office, [Emergency Services Collaboration: Overview of Part 1 of the Bill](#), p4

Such a “section 4A order” could only be made if:

- The PCC has consulted each relevant local authority and sought views of local people
- The PCC has submitted a proposal to the Secretary of State
- The Secretary of State thinks it is in the interests of economy, efficiency and effectiveness or public safety for the order to be made¹⁸

A section 4A order would be subject to negative resolution procedure.¹⁹ An order could not be made unless the boundaries or the PCC’s area align with the FRA area (or areas). As mentioned above, local areas would have to decide how boundaries should be changed before the PCC could take responsibility for fire and rescue services.

The Government’s consultation document represented this model as follows:²⁰



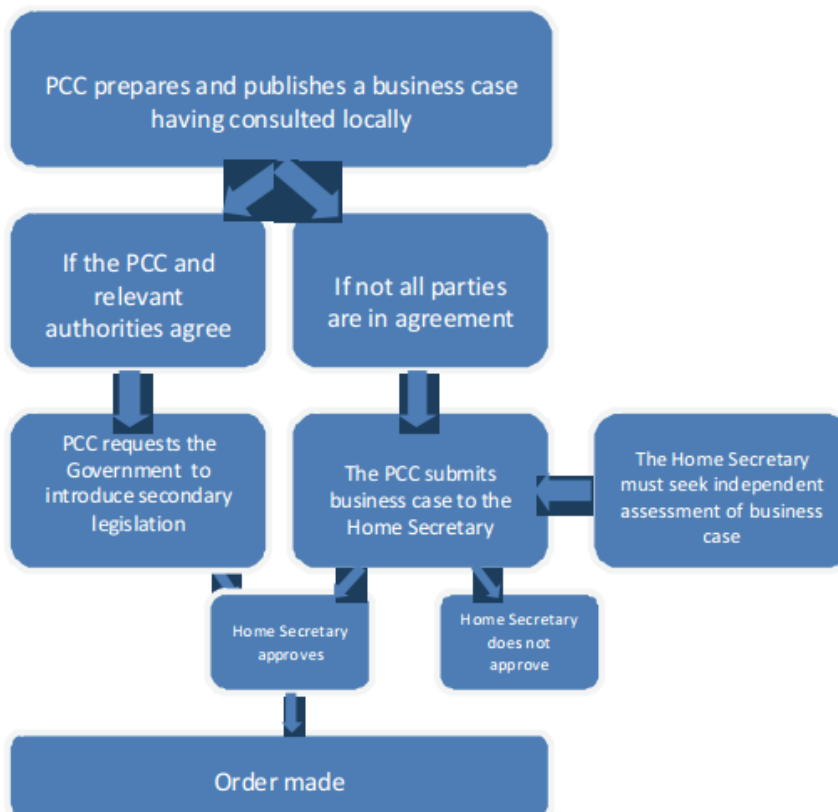
Under the first model, PCCs could take responsibility for fire and rescue services through a “section 4A order” following consultation and with the approval of the Home Secretary.

The consultation and decision process for this is helpfully represented in [Annex C](#) of the explanatory notes:

¹⁸ See paragraph 5 of schedule 1

¹⁹ The Government’s [Delegated Powers Memorandum](#) on the Bill. The Bill does not state this explicitly, but it would follow from s60(5) of the *Fire and Rescue Services Act 2004*

²⁰ HM Government, [Enabling closer working between the police and fire services](#), January 2016

Box 2: Process for PCC taking on governance of a Fire and Rescue Authority:**Model 2 – The “Single Employer” Model**

Under this model, PCCs would go one step further and appoint a “single employer” (or “chief officer”) to employ all police and fire personnel (under **new section 4F** which schedule 1 would insert into the 2004 Act).

Once again, the PCC would have had to make a proposal, and the Secretary of State would have to consider that this would be in the interests of economy, efficiency and effectiveness or public safety.

The **section 4F order** could also provide for the chief officer to appoint a senior fire officer to lead fire operations and a deputy chief constable to lead police operations, under their command.

A section 4F order would also be subject to negative resolution procedure.²¹

Using the second model, PCCs could go further and appoint a single chief officer to run both the police and fire services.

This would require a “section 4F order”.

²¹ The Government’s [Delegated Powers Memorandum](#) on the Bill. The Bill does not state this explicitly, but it would follow from s60(5) of the *Fire and Rescue Services Act 2004*

Paragraph 23 of schedule 1 would remove the requirement for a chief officer to have held the office of constable where a section 4F order is made. He or she would have to have had senior experience in the fire services and undertaken specified training.

Where a chief officer is appointed following a "section 4F order", he or she would not have to have served previously as a constable.

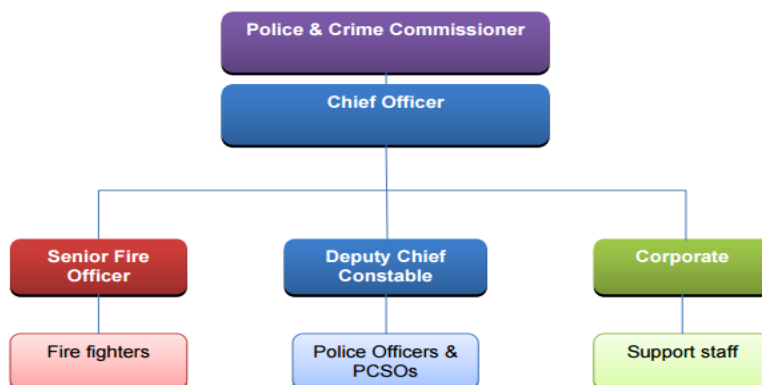
Another Home Office factsheet on this part of the Bill explains:²²

14. The chief officer would be appointed by and be accountable to the PCC for both fire and policing. Both senior police officers and senior fire officers would be eligible for applying for the post, so the requirement to have held the position of constable will be removed for senior fire officer applicants. We will work to ensure that senior fire and police officers have access to the necessary training that would allow them to apply for chief officer posts and all applicants would have to meet the standards set out by the College of Policing.

Under this "single employer" model the same complaints procedure would apply to police and fire and rescue personnel.

The Government's consultation document represented the "Single Employer model" like this:²³

Under this second model, fire and rescue staff would come under the same complaints procedures as police officers and staff.



Model 3 – The "Representation" model

Clause 7 would apply where a PCC has not adopted either of the other two models. It would enable the PCC to be represented on the FRA with voting rights, where the FRA agrees.

The third model would allow the PCC to be represented on the FRA.

²² Home Office, [Factsheet: emergency services collaboration - part 1 overview](#), February 2016

²³ HM Government, [Enabling closer working between the police and fire services](#), January 2016

London

Chapter 3 of this part of the Bill would abolish the London Fire and Emergency Planning Authority, and give the Mayor of London direct responsibility for the fire and rescue service in London.

The Government's consultation response document says that this has the support of the relevant stakeholders:

The Mayor of London, the London Councils, the Labour Group at the London Assembly and LFEPA itself all supported the abolition of LFEPA and the transfer of fire and rescue responsibilities to the Mayor.²⁴

Moreover, various proposals made by the Mayor have been reflected in the legislation.

2.4 Responses to the proposals

The Government reported a "broad spectrum of views" in the consultation response on their question on the process for allowing PCCs to take responsibility for fire services:

The proposal that the process should be enabling, with local areas coming forward with plans, received good support on the basis that it would appropriately reflect varying local circumstances. Alongside that, there was a broad spectrum of views, with some respondents questioning whether PCCs had the necessary knowledge and expertise in fire and rescue matters to take on the extended role.

Amongst those who supported the process, there was agreement that there should be a duty on authorities to provide a PCC with all necessary information to help prepare a local business case. Some respondents suggested that there should be a requirement for a PCC to consult both the fire and rescue authority and local authorities within the area, in addition to the local community.

In instances where there was not local agreement amongst all parties to a PCC taking on responsibility for the local fire service, some respondents did not support the proposal that a Secretary of State should take the final decision. There was some concern that the process would enable a PCC to overrule local opposition, and there were questions around whether PCCs would have a mandate to run fire and rescue services in such circumstances.²⁵

In London, the Mayor would take responsibility for fire and rescue services.

Some questioned whether PCCs have the right expertise.

Some thought it would be wrong for the Home Secretary to take the final decision if local agreement could not be reached.

²⁴ Ibid, p17

²⁵ Ibid, p9

A welcome from some PCCs

Julia Mulligan, North Yorkshire's Conservative Police and Crime Commissioner, welcomed the announcement:

PCCs have for some time been making the case to combine support services and take over the powers of Fire Authorities. This makes complete sense – we can save considerable amounts of money, cut out bureaucracy and improve accountability to the public.²⁶

Some PCCs have said that they can save money and improve accountability by taking over fire and rescue services.

Devon and Cornwall's Conservative PCC, Tony Hogg, said he had, 'long argued that emergency services should work more closely together,' and that it would be right to, 'fully explore what further benefits might be achieved by pursuing the Government's proposals.'²⁷

Could reforms go further?

Policy Exchange called the reforms "quite modest" and questioned whether PCCs would be able to fundamentally redesign services:

Asking each of the existing services to collaborate more seems like a smart move because it works within the structures that already exist. However, it may be better to empower PCCs to totally rethink how they provide local emergency services. Whichever option the Government choose they can bet on opposition from the unions and some figures in local government. It would be better that the current battles to reform public services create a new structure that makes more sense rather than modestly improving the existing structure which does not.²⁸

Policy Exchange thinks the reforms could go further.

The Chief Fire Officers Association

The Chief Fire Officers Association welcomed the Government's assurances that the two services would be operationally distinct, and supported the duty of collaboration, although it expressed concerns about the impact of funding cuts to the fire services:

There is scope for further collaboration between emergency services to ensure effective local and by extension national resilience, building on existing good work through JESIP and elsewhere. (...) However, the government will have to consider the impact of ongoing funding cuts on fire service capacity to deliver local and national resilience, especially at a time when both Police and Ambulance have seen their budgets protected.

We are pleased that the government has reiterated that police and fire services will remain operationally distinct.

There remain some areas for further consideration, such as financial model that would be put in place where PCCs do take over, and the potential implications of allowing a joint "Chief Officer" to designate certain police powers to their fire personnel.²⁹

Chief Fire Officers are pleased that the police and fire services will be operationally distinct, but concerned about funding cuts.

²⁶ *The Selebian*, '[Police Commissioner backs PMs call to merge Police and Fire support services](#)', 11 September 2015.

²⁷ *Western Morning News*, '[South West could see police and fire services under PCC control, as ministers move forward with plans](#)', 21 August 2015.

²⁸ Policy Exchange, '[Rethinking the emergency services split](#)', 25 January 2016

²⁹ Chief Fire Officers Association, '[Enabling collaboration between emergency services – Government consultation response](#)', 26 January 2016

Unions and the Police Federation

The Fire Brigades Union said that the proposal to put PCCs in charge of fire and rescue services was “stupid and dangerous” and pointed to low turnout in PCC elections:

Associations with the police could damage the trust firefighters have built up in their communities. This trust is essential in order to have access to people’s homes for vital fire prevention work. PCCs have not proven particularly effective in governing the police, 40 per cent of them have ended up costing the taxpayer more than the authorities they replaced. Giving them control of fire services would be a costly experiment. The home secretary talks of increasing accountability, but PCCs were elected on a historically low turnout of just 15%. Abolishing fire authorities, comprised of democratically elected councillors, would sweep away vital democratic safeguards. Giving police and crime commissioners control of the fire and rescue service is a stupid and dangerous proposal.³⁰

The Fire Brigades Union called the changes “stupid and dangerous”.

The Police Federation is concerned about different models of governance across England and Wales:

For example, there are 39 police forces in England, but over 50 fire and rescue services in the UK; so the current areas covered by services differ, and this alone would mean restructuring is already required if certain structures are merged.

“The services that all the emergency services provide can mean the difference between life and death,” added Mr White. “That’s why it is vital that any change is properly thought out. Failure is not an option.”³¹

The Police Federation is concerned about different governance models across England and Wales.

A Guardian article published when the response document came out in January indicated that the Fire Brigades Union and the Police Federation were still opposed to the changes.³²

Unison is concerned that the proposals are a cover for cuts:³³

“The last thing that the dedicated staff who work in our ambulance, police and fire and rescue services need is yet another reorganisation.

³⁰ Fire Brigades Union, [FBU brands home sec PCC plans 'dangerous'](#), 19 December 2015

³¹ Police Federation, [Police and Fire Services 'different' - we must not change status quo just to cut costs](#), 7 January 2016

³² [“Fire and police chiefs in role swap as government pushes for collaboration”](#), *Guardian*, 26 January 2016

³³ [“Emergency control room mergers are only about cost-cutting, says UNISON”](#), Press release, 26 January 2016

“Ministers can say that it’s all about closer working, but these plans are simply about giving the government cover for further damaging cuts to frontline services.

“The needs, skills and knowledge of the three emergency services are very different and any moves to merge control rooms, or other functions, will be opposed, because of the pressure it will put on already overstretched emergency workers.

“The government’s own taskforce looking at emergency service collaboration was unable to provide any hard evidence that any change would actually save money or improve services, but still ministers are ploughing ahead.

“Before embarking on yet another ill-thought out scheme, ministers’ time would be better spent working out how to ensure that the ambulance service is better integrated with A&E departments, NHS 111 and other parts of the health service, and undertaking a proper review of police collaboration so far.”

Unison thinks merging control rooms will put pressure on overstretched workers.

2.5 A police takeover?

Presumably in response to concerns raised in the consultation process, the Home Office factsheet states explicitly that the reforms do not represent a “police takeover”:

This does not mean a takeover of the fire and rescue service by police. The important distinction between operational policing and firefighting will be maintained, with section 37 of the Fire and Rescue Services Act 2004 – which prevents a full time police officer from being a firefighter – remaining in place. Similarly, there is no intention to give firefighters the power of arrest or any other core policing powers.³⁴

Police officers will not be acting as firefighters.

Firefighters will not have police powers.

In a Westminster Hall debate on police and fire shared services in November 2015, Policing³⁵ Minister Mike Penning emphasised:

At no stage in any part of the debate has it been said from the Government Benches—or anywhere, I think—that front-line operational officers in the police, fire or ambulance services should be amalgamated.³⁶

2.6 Reaction from the Labour Party

Shadow Home Office minister Lyn Brown said in a January 2016 debate that whilst Labour supported collaboration, the consultation had been flawed, there could be a “democratic deficit” and the fire service could become a “Cinderella service”. She quoted Peter Murphy, director of public policy and management research from Nottingham Business School, (Nottingham Trent University):

Peter Murphy (...) said that,

“if the current plans are implemented there is a very strong chance that the fire and rescue services would go back to the “benign neglect” that characterised the service from 1974 to 2001 when the Home Office was last responsible for fire services. Police, civil disobedience, immigration and criminal justice

³⁴ Home Office, [Factsheet: emergency services collaboration - part 1 overview](#), February 2016

³⁵ Now Minister for Policing, Fire and Criminal Justice and Victims

³⁶ [HC Deb 3 November 2015 c296WH](#)

dominated the Home Office agenda, as well as its time and resources.”

If the fire service becomes the lesser partner in a merged service, “the long-term implications will include smaller fire crews with fewer appliances and older equipment arriving at incidents. Prevention and protection work, already significantly falling, will result in fewer school visits and fire alarm checks for the elderly, not to mention the effect on business, as insurance costs rise because of increased risks to buildings and premises.”

I think his assessment is right. There is a real danger that fire will become an unloved, secondary concern of management—a Cinderella service. Perhaps the Minister can tell us how he will ensure that the service is improved, that we invest in the best equipment and training, that vulnerable people continue to have fire alarm checks and that schools are visited and children educated.³⁷

3. Police complaints

Summary

Part 2 of the Bill would implement many of the proposals in the [Improving Police Integrity](#) consultation. It would reform the system of police complaints in the following ways:

- A major role for Police and Crime Commissioners (PCCs) in the handling of police complaints
- Changes to the handling of complaints aimed at making the system easier to follow and more transparent
- Changes to the role and powers of the Independent Police Complaints Commission (IPCC) to reinforce its independence from police forces
- The introduction of 'super-complaints' to allow certain advocacy groups and charities to raise concerns over troubling systemic issues in policing

In a ministerial statement on 22 July 2014 the Home Secretary Theresa May announced an 'end to end' review of the entire police complaints system, including the work of the IPCC, to be conducted internally in the Home Office.³⁸ Its findings are set out in Chapter 2 of the Government consultation [Improving police integrity: reforming the police complaints and disciplinary systems](#). Amongst the review findings were the following:

- Elements of the police complaints system do not work efficiently or effectively.
- Few of those involved with the system have confidence in its ability to operate effectively. Large numbers of members of the public do not believe that the system will respond to their complaints fairly or effectively.
- Complaints take too long to resolve, either by local resolution or following the outcome of an investigation by either the police or the IPCC.
- Those working in the system feel they spend too long dealing with persistent and vexatious complaints, limiting the amount of time they can devote to other, more legitimate complaints.
- Police officers feel unable to admit to a mistake without fear of being subject to disciplinary proceedings.

The Home Office identified a number of failings in the current police complaints system

Despite complaints against police in England and Wales reaching a record high for the second year running³⁹ the Home Office found that most people dissatisfied with the police choose not to complain.⁴⁰

³⁸ HC Deb 22 July 2014 c1265

³⁹ ['Police complaints reach record high in England and Wales'](#), BBC News, 7 October 2015

⁴⁰ Home Office, [Improving police integrity: reforming the police complaints and disciplinary systems](#), December 2014, para 2.12

3.1 Structural reform

The Government's proposals to give Police and Crime Commissioners (PCCs) an enhanced role were borne out of a perceived need for greater independence in the police complaints system. The Home Office cited statistics showing 35% of people lack confidence in the ability of the police to deal with their complaint fairly⁴¹ and 78% of people are not satisfied with how their complaint is handled.⁴²

The Government hopes directly elected PCCs will make the system more independent

In the *Improving Police Integrity* consultation the Government put much stock in the fact that PCCs are directly elected. The link with the ballot box has led the Government to conclude that PCCs are best placed to assess how police complaints should be dealt with in their areas. The Government claimed consultation responses showed 'broad support for PCCs taking on a greater role in the complaints system'.

Adoption of functions

Clause 10 would insert into Part 2 of the *Police Reform Act 2002* a new section 13A. It would give local policing bodies⁴³ the power to take over a number of functions currently exercised by police forces relating to the receiving and recording of complaints. Aside from a requirement that PCCs take on the role of appellate body for appeals currently heard by chief officers, the legislation is *enabling* and would leave it up to PCCs themselves as to whether they take on these functions or leave them where they lie currently with police forces.

Under new section 13A (1) local policing bodies would be able to choose whether or not to take on responsibility for the functions listed in subsections (2) and (3). PCCs could opt to carry out the following functions:

PCCs would have a discretion as to how involved they become in handling complaints

- Receiving and recording complaints
- Contacting complainants to discuss the issue
- Resolving those complaints deemed appropriate for local resolution

They could go further and also act as a single point of contact and communication for a complainant throughout the processing of the complaint (though not in cases of complaints subject to independent investigation by the IPCC or a directed investigation⁴⁴). **Clause 12**, discussed below, creates a duty to keep complainants and third-parties informed of the handling of complaints.

The proposal to give PCCs responsibility for local resolution of complaints troubled a large number of those who responded to the

⁴¹ IPCC, *Public Confidence in the Police Complaints System*, 2014, p22

⁴² Crime Survey for England and Wales, 2012/13

⁴³ A local policing body is the local Police and Crime Commissioner. In London the local policing body is the Mayor's Office for Policing and Crime.

⁴⁴ Responsibility for keeping complainants informed and updated in IPCC or directed investigations lies with the IPCC itself. (A directed investigation is one which would be conducted by a police force under IPCC direction, where the investigator regularly reports to the IPCC and where the IPCC makes key decisions).

Home Office consultation.⁴⁵ They stressed that for local resolution to be effective and earn public confidence, the police who provided the service must have the chance to contribute. In its response the Government accepted the importance of policing's 'customer service element' and how it impacts on the resolution of complaints. Whilst noting that police forces deal with many complaints quickly and effectively outside of formal complaints procedures, the Government maintained that in some cases local resolution need not involve police forces at all and could be achieved by PCCs. The Government envisages scenarios in which PCCs will recommend to a police force how it should resolve a complaint. So as not to undermine the operation independence of chief constables, the forces will not have to follow the PCC recommendation. However the Government expects forces to cooperate with PCCs to accomplish a satisfactory outcome.

The Government hopes PCCs can achieve local resolution of complaints through an informal process.

Oversight of chief officers

Some respondents to the *Improving police integrity* consultation expressed doubt as to whether PCCs could adequately hold chief officers to account and said PCCs would require further powers to fulfil such an oversight role.

The *Police Reform and Social Responsibility Act 2011* introduced the office of Police and Crime Commissioner and tasked PCCs with holding chief officers to account. It was always implicit that this responsibility included oversight of how chief officers handled complaints. In **clause 16** the Government has moved to make this an explicit function of PCCs. This reflects the significant structural change in the complaints system that their new prominence represents.

Delegation of functions

The *Police Reform and Social Responsibility Act 2011* would permit PCCs to delegate functions to a deputy or to another person. However it lists a number of people who could not exercise delegated powers and prohibits the delegation of certain functions⁴⁶ altogether. Those to whom a PCC could not delegate power include constables, police staff and any person or body which maintains a police force.⁴⁷

Clause 17 would amend both the *Police Reform and Social Responsibility Act 2011* and the *Police Reform Act 2002* so as to allow for the delegation of complaints handling powers. The Bill's explanatory notes say this is restricted to those parts of the complaints handling system that PCCs can undertake and the role of hearing appeals of complaints currently heard by chief officers.

3.2 Handling of complaints

The procedure to be followed in dealing with complaints, conduct matters and cases arising from a death or serious injury is set out in

⁴⁵ Home Office, [Improving police integrity: reforming the police complaints and disciplinary systems - Summary of consultation responses and next steps](#), March 2015, para 2.11

⁴⁶ Functions that PCC may not delegate are those listed in [section 18 \(7\)](#)

⁴⁷ *Police Reform and Social Responsibility Act 2011* section 18 (6)

schedule 3 to the *Police Reform Act 2002*. **Clause 13** introduces **schedule 4** to the Bill, which would make extensive amendments to schedule 3.

Recording complaints

A source of confusion and disquiet identified by the Home Office review is the current practice of officers deciding whether or not to formally record a complaint. The review found some complainants could not understand why some complaints were not recorded - and suspected non-recording was a means by which their complaint could be ignored - whilst the success of a large number of appeals against non-recording decisions suggested officers did not fully grasp how decisions about recording should be taken.⁴⁸

The Bill would require all complaints to be recorded

Under **Schedule 4** all complaints must be recorded unless:

- The complainant withdraws the complaint
- It is decided that the complaint should be addressed informally, outside the legislative framework

However, a complaint must be recorded if that is the clear wish of the complainant. Schedule 3 para 2 would be amended so that a complainant's view as to how the complaint is dealt with is always sought.

An informal resolution would not be permitted in the following circumstances:⁴⁹

- Where the complainant wishes the complaint to be recorded (and for the complaint to be dealt with according to schedule 3 of the 2002 Act)
- Where the matter complained of allegedly resulted in death or serious injury
- Where the matter complained of would, if proved, constitute the commission of a criminal offence or justify bringing disciplinary proceedings
- Where the matter complained of may have involved the infringement of articles 2 and 3 of the *European Convention on Human Rights* (ECHR)
- The complaint is of a type specified by the Secretary of State as being for the IPCC to investigate

Certain complaints will not be suitable for informal resolution

A new flexibility

Schedule 4 of the Bill would simplify the handling of complaints. It would introduce a new requirement on the appropriate authority to handle complaints in a reasonable and proportionate manner as the authority itself determines.⁵⁰ The exception to this latitude is where a complaint alleges criminal conduct, behaviour that would justify disciplinary proceedings or a breach of articles 2 or 3 ECHR - in such circumstances an investigation would be mandatory.

⁴⁸ Home Office, [Improving police integrity: reforming the police complaints and disciplinary systems](#), December 2014, para 2.41

⁴⁹ **Schedule 4 para 2 (3)**

⁵⁰ **Schedule 4** para 6 (3)

‘Disapplication’ provisions repealed

The Bill would also do away with the confusing term ‘disapplication’ and its associated provisions. Disapplication is when - in certain limited circumstances - a recorded complaint does not have to be dealt with under the *Police Reform Act 2002*. Responses to the *Improving Police Integrity* consultation disclosed almost universal agreement amongst stakeholders on the need to simplify the language used. Many saw confidence in the police complaints system further undermined by the difficulty in understanding terms such as disapplication. The flexible approach introduced by **schedule 4** would allow for authorities to simply decide to take no further action.

Confusing terminology would be removed

Duty to keep complainant and other interested persons informed

Clause 12 would create a duty on PCCs to keep complainants and other interested persons updated on the progress of the handling of their complaint, its outcome and any right to apply for a review of its handling. The duty would apply in all cases, whether or not an investigation into the complaint is launched. **Clause 12** would also allow the Secretary of State to specify in regulations further matters of which a complainant must be informed.

IPCC investigations

Currently the police have to refer serious and sensitive cases to the IPCC. Death or serious injury matters have to be referred. In addition, there are “mandatory referral criteria”, which cover allegations of:

Serious cases demand IPCC investigation

- Serious assault
- Serious sexual offences
- Serious corruption
- Criminal behaviour
- Misconduct
- Discrimination

The IPCC will then decide how the complaint will be dealt with. If it takes the view that the complaint does not require an investigation, it will refer the matter back to the appropriate authority to be dealt with. If it decides that an investigation is necessary, it might:

- Decide that the force itself should investigate it
- Supervise an investigation⁵¹
- Manage an investigation⁵²
- Carry out an independent investigation, using its own investigators

⁵¹ A supervised investigation is one conducted by a police force acting within prescribed terms of reference set by the IPCC

⁵² A managed investigation is one conducted by a police force under IPCC direction or control

The Government identified IPCC managed and supervised investigations⁵³ as a source of confusion for the public and complainants, who may question the degree of independence from police. The Government asserted that police involvement in IPCC investigations 'should be kept to an absolute minimum' and announced it would legislate to remove the option of managed and supervised investigations.⁵⁴

Confusing terminology has undermined public confidence

The reduction in IPCC reliance on police forces in its investigations is a major change. **Schedule 4** would remove the option of supervised investigations altogether. It would replace managed investigations with 'directed investigations'. Directed investigations are not dissimilar to managed investigations but the IPCC would exert greater control: the investigator appointed to lead an investigation would be under a new duty to keep the IPCC informed of the investigation's progress; and decisions as to whether an investigation should be subject to 'special requirements'⁵⁵ or follow the 'accelerated procedure'⁵⁶ are now ones the IPCC can take.

The Government wants IPCC investigations to be seen to be independent of police, but recognised there are cases in which the IPCC cannot conduct a thorough investigation without recourse to police help. **Schedule 4** would require the IPCC to first determine if it is appropriate for the police to play a role in the investigation of a complaint; if it is not then the IPCC must investigate the matter itself. However if it should decide a directed investigation is appropriate or necessary it could then avail itself of police resources.

In some cases the IPCC will require police assistance, but this must be limited

Schedule 4 would place an ongoing duty on the IPCC to review whether a directed investigation is necessary. Where recourse to police investigatory help is no longer required the IPCC must continue the investigation independently.

Just as PCCs are required to keep a complainant and interested parties informed of the progress of the investigation into a complaint, **Schedule 4** would oblige the IPCC to inform complainants and interested parties of both its determinations and reasoning.

Complaints about chief officers

Schedule 4 would also amend schedule 3 of the 2002 Act to allow the Secretary of State to specify in regulations that the IPCC investigate all complaints against chief officers. Currently the IPCC is not required to

⁵³ A managed investigation is one conducted by a police force under IPCC direction or control. A supervised investigation is one conducted by a police force acting within prescribed terms of reference set by the IPCC.

⁵⁴ Home Office, [Improving police integrity: reforming the police complaints and disciplinary systems - Summary of consultation responses and next steps](#), March 2015, para 5.18

⁵⁵ Investigations into complaints may be subject to special requirements where there is reason to believe there may have been criminality or behaviour that would warrant disciplinary proceedings

⁵⁶ The accelerated procedure may be followed where there is sufficient evidence to establish gross misconduct and it is in the public interest for the person responsible to no longer remain in the police

investigate all complaints against chief officers, with some matters investigated by chief officers from other forces.

3.3 Initiation of investigations by IPCC

A fundamental problem with the current system identified by the IPCC and noted by the Government in its response to the *Improving Police Integrity* consultation is that the IPCC is reliant on 'the organisations we oversee to enable us to look into matter that are of concern'.⁵⁷ Under the *Police Reform Act 2002* the IPCC cannot consider a matter until it has been recorded and referred to them by the police. Whilst the IPCC can direct that a police force refer a complaint to it, the Home Office review found that delays undermined public confidence. For the IPCC to respond swiftly new powers of initiative were needed.

The Government took the view the IPCC should be empowered to commence an investigation on its own motion, bypassing the need for a referral. The IPCC welcomed this statement, but held the view that any such power be limited to complaints of police misconduct rather than wider issues in police forces. Bolstered by considerable levels of support for its proposal, the Government promised to legislate at the first available opportunity.

The Bill would give the IPCC its 'own motion' power of investigation

Clause 14 would allow the IPCC to commence an investigation into any matter of concern that has come to its attention without the need for a police force to make a referral.

Clause 15 would insert new section 13B into the 2002 Act to allow the IPCC to revisit any of its own findings following an investigation and to reinvestigate. It may reinvestigate only those matters where it conducted the original investigation. It must keep complainants, appropriate authorities and other interested parties informed.

3.4 Language

Responses to the *Improving police integrity* consultation disclosed almost universal agreement amongst stakeholders on the need to simplify the language used. Many saw confidence in the police complaints system further undermined by the difficulty in understanding key terms.

Widening the definition of complaint

Presently, section 12 of the *Police Reform Act 2002* defines a complaint as 'any complaint about the conduct of a person serving with the police'. The Home Office identified three problems caused by this definition:⁵⁸

- Some complainants felt restricted in the types of issues they could raise as a complaint
- Some complainants believed they could complain only when they knew the identity of a particular officer

The Government's consultation found that the current definition of a complaint had a negative impact on complainants' experience of the system.

⁵⁷ Ibid, para 5.22

⁵⁸ Home Office, [Improving police integrity: reforming the police complaints and disciplinary systems](#), December 2014, para 2.40

- Some complainants felt that the definition of a complaint prevented a swift resolution of their issue - eg where a complainant simply wanted an apology or meeting with an officer, this could not be achieved as officers were concerned it would constitute an admission of misconduct

In response the Government promised to extend the scope of complaints to encompass policing practice and service failure, as well as the conduct of individual police officers.

Clause 11 would amend section 12 of the 2002 Act to introduce a new definition of a complaint:

Any expression of dissatisfaction with a police force which is expressed (whether in writing or otherwise) by or on behalf of a member of the public.

Clause 11 retains the present restrictions on who can raise complaints. Where an expression of dissatisfaction relates to the conduct of a person serving with the police, it will be deemed a complaint for the purposes of Part 2 of the *Police Reform Act 2002* only if the complainant is someone who:

- (a) claims to be the person in relation to whom the conduct took place; or
- (b) claims to have been adversely affected by the conduct; or
- (c) claims to have witnessed the conduct

Where an expression of dissatisfaction relates to something other than the conduct of a person serving with the police, it will be deemed a complaint for the purposes of Part 2 only if the complainant has been adversely affected by the matter.

‘Direction and control matters’

Complaints currently classified as direction and control matters - those that relate to the direction and control of a police force by its chief officer - will now be treated like any other complaint. **Schedule 4 para 43** of the Bill would amend schedule 3 para 29 of the 2002 Act to remove direction and control matters as a distinct category of complaint.

3.5 Super-complaints

One of the more innovative reforms to the police complaints system is the importation of the ‘super-complaint’ concept from the competition and markets and financial sectors. The original super-complaints system was created by the *Enterprise Act 2002* to better protect consumers in

‘Super-complaints’ have protected consumers’ interests in the financial sector

the commercial sector.⁵⁹ Whilst normal complaints are brought by individuals and relate to individual incidents, a police super-complaint would be brought by an organisation on behalf of the public, raising wider issues of detrimental policing practice.

The Government sees the introduction of super-complaints into policing as a means of addressing two problems:⁶⁰

- Allowing advocacy groups and charities to bring complaints will allow the police complaints system to address systemic issues - trends or patterns of behaviour that may otherwise go unnoticed or neglected
- Permitting organisations to raise people's concerns offers the public a choice as to how they bring complaints, so the grievances of those who may lack the confidence to bring a complaint themselves are more likely to be aired

Respondents to the Government's consultation were largely in favour of the proposal. They saw super-complaints as a way of resolving issues outside of the judicial process and believed it would likely improve the under-reporting of complaints from certain parts of society.⁶¹ Some were opposed: concerns were expressed about organisations not familiar with policing having a central role in the police complaints system; others warned of a potential negative impact on operational policing tactics; some raised the possibility that the role of PCCs may be undermined by allowing others to monitor and critique patterns and trends in policing.⁶²

The Bill would insert a new Part 2A and new sections 29A, 29B and 29C into the *Police Reform Act 2002*.

Clauses 18 and 19 would insert new sections 29A and 29B, giving the Secretary of State power to designate bodies as having super-complainant status. This power could be delegated to an authorised person, allowing for the appointment of an independent assessor to make decisions on who can lodge super-complaints. The Government previously recognised further work was necessary to define which organisations should have the power to make super-complaints⁶³ and there will be a consultation on the criteria for designation.⁶⁴ Given that police staff organisations and unions enjoy long established relationships with HMIC, the IPCC and the College of Policing, they will be excluded from the super-complaints system.⁶⁵

The Government will consult on which groups should be able to lodge super-complaints

⁵⁹ Super-complaints were subsequently introduced in the financial sector by the *Financial Services Act 2012* and the *Financial Services (Banking reform) Act 2013*.

⁶⁰ Home Office, [Improving police integrity: reforming the police complaints and disciplinary systems - Summary of consultation responses and next steps](#), March 2015, para 2.91

⁶¹ Ibid, para 2.85

⁶² Ibid, para 2.86

⁶³ Ibid, para 2.92

⁶⁴ Home Office, [Policing and Crime Bill Factsheet: Policing super-complaints](#), February 2016, para 6

⁶⁵ Ibid, para 7

Clause 18 provides that super-complaints would be made to HM Inspector of Constabulary (HMIC). Opinion was divided in responses to the Government's consultation as to which body should deal with super-complaints. The majority of respondents believed it should be the IPCC, though the IPCC itself did not share this view. Others felt HMIC was better placed to address issues raised by super-complaints, and some expressed the view that the Home Office itself ought to deal with such potentially serious matters.⁶⁶

However the government envisages consideration of super-complaints by a number of bodies. **Clause 20** would insert a new section 29C into the 2002 Act, under which the Secretary of State could make further provision about how the super-complaints system will work. Regulations made under such a power would likely mandate consideration of a super-complaint by a panel of HMIC, IPCC, the College of Policing and an independent member. It is also likely the super-complaints system will have a pre-submission stage where the crux of a super-complaint is discussed by the super-complainant and other bodies.

⁶⁶ Ibid, para 2.87

4. Police discipline

Summary

Chapters 3 and 4 of Part 2 of the Bill would introduce the following reforms of the police discipline system, following the recommendations of the Chapman Review:

- Further protection for whistle-blowers
- The introduction of a 'barred list' of all those dismissed from service in the police and prohibited from working in policing
- Closing the loophole that allows former officers and former special constables to avoid disciplinary proceedings for conduct during their time on the force
- Empowering the Secretary of State to issue guidance on the conduct of those serving in the police and on forces' exercise of their disciplinary functions

In a ministerial statement on 22 July 2014 the Home Secretary Theresa May announced an independent review of the police disciplinary system to be conducted by Major General (Retired) Chip Chapman. Mrs May described police disciplinary procedure as complex, having developed without a structure to fit its purpose. She said it lacked transparency with the public, was overly bureaucratic and insufficiently independent.⁶⁷

Whilst the Government was still considering the recommendations of the [Chapman Review](#)⁶⁸ the Home Secretary moved to start a process of reform. On 18 November 2014 she launched a consultation on other proposed changes to the police disciplinary system. This resulted in the *Police (Conduct) (Amendment) Regulations 2015*, which made changes to the *Police (Conduct) Regulations 2012* governing disciplinary and appeal hearings:

- Holding disciplinary and appeal hearings in public
- The appointment of legally-qualified chairs to disciplinary hearing panels
- Greater protection for police whistleblowers
- Changes to compensation payments due to chief officers on the termination of their appointment where a disciplinary finding is made against them

The Government moved quickly to implement changes to the disciplinary system.

In the *Improving Police Integrity* consultation the Government consulted on further proposals for reforming the police disciplinary system, based on the recommendations of the Chapman Review.

⁶⁷ HC Deb 22 July 2014 c1265

⁶⁸ Chip Chapman, [An Independent Review of the Police Disciplinary System in England and Wales](#), October 2014

4.1 Whistle-blowing

The Bill would give the IPCC a power to look into concerns raised by a whistle-blower without the need for the whistle-blower to first raise the matter with his own force.

Clause 21 would insert a new Part 2B into the *Police Reform Act 2002*.

Under new section 29E a person is a whistle-blower if:

- He raises a concern that is about a police force or person serving with the police;
- He was under the direction and control of a chief officer at the time the matters of concern occurred; and
- His concern isn't about conditions of service or something that could be dealt with as a complaint (under Part 2 of the 2002 Act)

The Bill provides a new definition of a whistle-blower.

The IPCC would be able to investigate any concern so long as:

- The whistle-blower consents
- It has considered the public interest

New section 29F would require the IPCC to inform a whistle-blower should it decide not to look into his concerns. Should the whistle-blower consent, the IPCC could as an alternative refer the concerns to the appropriate authority and make its own recommendations.⁶⁹ The appropriate authority would be the chief officer of the force. Where the concerns relate to the conduct of the chief officer, the appropriate authority would be the local policing body.

New section 29G would make special provision for conduct matters.⁷⁰ The IPCC would not be able to investigate a concern relating to a conduct matter and would be required to report the alleged conduct to the appropriate authority.

'Conduct matters' would not be subject to a whistle-blowing investigation.

Where a whistle-blower dies before the IPCC learns of his concern or commences an investigation, new section 29H would permit the IPCC to proceed without the whistle-blower's consent where it obtained the consent of the whistle-blower's approved representative. This will be a widow or widower, personal representative or other family member with a relevant interest in the outcome of the concern.

⁶⁹ The Bill envisages the Secretary of State making provision by regulations about the type of recommendations the IPCC could make, who it could make them to, and whether it should have the authority to require a response.

⁷⁰ Conduct matters are defined in section 12 (2) of the *Police Reform Act 2002* as any matter which is not and has not been the subject of a complaint but which indicates that a person serving with the police may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings.

Under new section 29I the IPCC would be prohibited from disclosing a whistle-blower's identity, information that would tend to reveal his identity or the nature of his concern. New section 29I (1) would allow the Secretary of State to make provision by regulations for exceptions to this protection in certain limited circumstances.

A whistle-blower's identity would be protected.

New section 29J would provide for the Secretary of State to make regulations governing the circumstances in which the IPCC may disclose information relating to its investigation.

New section 29M (2) would insert a new schedule 3A into the 2002 Act. The provisions of that new schedule are set out in schedule 5 of the Bill. The new schedule sets out the procedure to be followed by the IPCC in investigating a whistle-blower's concerns.

4.2 Disciplinary proceedings and former officers

Officers and special constables cannot escape disciplinary proceedings by resigning or retiring whilst proceedings are ongoing without the consent of the appropriate authority.⁷¹ However this current system relates only to those currently serving. Former officers and former special constables may avoid disciplinary proceedings for alleged misconduct during their time on the force when such matters come to light only after their resignation or retirement.

Clause 22 would address this problem by inserting new subsection 3A into the *Police Act 1996*. It would allow for matters that come to the attention of a chief officer before or in a specified period after an officer's resignation or retirement to form the basis of disciplinary proceedings commenced after an officer's service ends. The Bill's explanatory notes state that the specified period is to be the 12 months following an officer leaving the force.

Disciplinary proceedings could be brought against former officers.

Where proceedings result in a finding that the officer would have been dismissed had he or she still been serving, the officer would be barred from policing and added to the 'police barred list'.

Clause 22 would not have retrospective effect.

4.3 'Police barred list'

Clause 23 introduces **Schedule 6** of the Bill which would insert a new Part 4A into the *Police Act 1996*. It would provide for a list of all those dismissed (and of those who would have been dismissed had they still been serving) following disciplinary proceedings.

New section 88A would also provide for a duty on appropriate authorities to report those dismissed (or those whom a disciplinary hearing found would have been dismissed) to the College of Policing.

Under new section 88B the College of Policing would be required to maintain a list of all persons reported to it under new section 88A. The

The College of Policing would record the details of those barred from working in policing.

⁷¹ *Police (Conduct) Regulations 2012* (as amended), paragraph 10A

information recorded would be that specified in regulations by the Secretary of State.

New section 88C would set out the effect of inclusion on the police barred list. It would place a duty on chief officers, local policing bodies, HMIC and the IPCC to check the names of all applicants for jobs against the names on the list. They could not employ or otherwise appoint anyone named on the police barred list.

Chief officers and other bodies would need to check job applicants are not on the barred list.

There would be provision for the Secretary of State to add to the list of those who must check job applicants against the police barred list. Should the Secretary of State specify an organisation that conducts both policing functions and other non-relevant functions, new section 88D would require that organisation to check names against the police barred list only when an employee or appointee would exercise policing functions.

New section 88E would prohibit chief officers, local policing bodies, HMIC and the IPCC from entering into contracts which would see a person on the police barred list exercising policing functions.

Under new section 88F those successful in an appeal against an adverse finding of a disciplinary hearing would be eligible for removal from the police barred list.

New section 88G would see a list of all those included on the police barred list being made publicly available by the College of Policing. The amount of detail included would be that specified in regulations. A person's details would be publically available for five years from the date of their being added to the list. There is provision for the Secretary of State to specify by regulations exceptions to the duty to publish.

The barred list would be made publicly available.

New section 88H would give the College of Policing power to disclose information on the police barred list if it deemed it to be in the national interest.

4.4 'Police advisory list'

New sections 88I-88M would provide for a 'police advisory list'. This is an interim list that would record the details of those who resign or retire whilst under investigation for gross misconduct or before the conclusion of disciplinary proceedings. Once proceedings conclude, names would either be added to the police barred list or, under new section 88L, be removed should the disciplinary panel not find a matter proven or amounting to gross misconduct. Like the police barred list it would be maintained by the College of Policing.

4.5 The Police Appeals Tribunal

Officers can appeal to the Police Appeals Tribunal (PAT) against findings of disciplinary hearings and senior officers can appeal against the findings of misconduct meetings.

Clause 24 would make amendments to the *Police Act 1996* relating to the composition of the PAT. Paragraphs 1 and 2 of schedule 6 of that Act would be repealed and replaced by new subsections (1A) and (1B),

which would be inserted in section 85 of the same Act.. They would provide for the Secretary of State to make rules as to how the PAT is constituted. Schedule 6 of the 1996 Act would be amended to allow such rules to govern the appointment of the PAT chair.

PAT panels for disciplinary proceedings involving non-senior officers are appointed by the local policing body. Those for cases involving senior officers are appointed by the Secretary of State. New subsection (1B) inserted by **clause 24** into section 85 would allow a local policing body or the Secretary of State to delegate this responsibility.

4.6 Guidance on disciplinary proceedings and conduct

Clause 25 would amend sections 87 and 87A of the *Police Act 1996* to allow the Secretary of State and the College of Policing to issue guidance on disciplinary proceedings.

Under new subsection (1) to section 87 the Secretary of State would be empowered to issue guidance to the following bodies on the discharge of their disciplinary functions:

- Local policing bodies
- Chief officers of police
- Other members of police forces
- Members of the civilian staff of a police force
- The IPCC

The Secretary of State would be able to issue guidance on disciplinary procedures.

New subsection (1B) would allow the College of Policing, with the Secretary of State's approval, to issue its own guidance on discharging disciplinary functions to local policing bodies, chief officers of police and other members of police forces.

New section 87A would provide for the Secretary of State to issue guidance as to matters of conduct, efficiency and effectiveness to:

- Members of police forces
- Special constables
- Members of the civilian staff of a police force

Should the Secretary of State approve, the College of Policing could also issue such guidance to members of police forces and special constables.

New section 87 (3) would require that the guidance be followed; under subsection (4) a person's failure to follow such guidance may be evidence in disciplinary proceedings brought against him.

5. Inspecting the police

5.1 Background

[Her Majesty's Inspectorate of Constabulary](#) is established in statute to inspect and report "on the efficiency and effectiveness of every police force maintained for a police area".⁷² In addition to regular value for money inspections, they also conduct thematic reviews on issues affecting forces across England and Wales.

A number of the Bill's provisions have developed in response to concerns about police integrity in recent years. Some of these concerns centred on the relationship between the Metropolitan police and the media in the wake of the discovery of widespread phone-hacking by journalists at the *News of the World* in 2011.

Relationships with contractors

The Home Secretary announced in July 2011 that she would be asking Her Majesty's Inspectorate of Constabulary to look into undue influence, inappropriate contractual arrangements and other abuses of power".⁷³ The resulting report looked at relationships with contractors (amongst other things).⁷⁴ Clearly the police have procured goods and services from the private sector for many years, and more recently a number have outsourced delivery of some back-office functions for efficiency purposes. HMIC's follow up report in 2012 pointed to instances where this had caused concern:

Increasingly, forces are outsourcing much of their back-office activity as well as procuring goods and services annually worth hundreds of millions of pounds. HMIC has seen instances where police officers and staff who have led on negotiations with suppliers have, upon successful conclusion of contracts, left the Service and been immediately employed by that contractor – in one case as contract manager for the company's relationship with the force.⁷⁵

The changes are proposed in response to concerns about some relationships between police and contractors.

In 2013 HMIC and the National Audit Office jointly produced a guide [Private sector partnering in the police service](#). The *Anti-Social Behaviour Crime and Policing Act 2013* extended the remit of the police complaints system to cover police contractors.⁷⁶ Background is in Library Research Paper 13/34, [Anti-social Behaviour Crime and Policing Bill](#), which was prepared for the Bill's second reading.

Inspecting Police and Crime Commissioners' staff

The Government's consultation document on reforming the police complaints system (see section 3 of this Briefing Paper, above) also considered whether the remit of HMIC should be extended to cover Police and Crime Commissioners' staff where they were involved in the reformed complaints system:

⁷² Section 54 *Police Act 1996*.

⁷³ [HC Deb 18 July 2011 c632](#)

⁷⁴ HMIC, [Without fear or favour: a review of police relationships](#), December 2011

⁷⁵ HMIC [Revisiting police relationships: A progress report](#), December 2012

⁷⁶ [Section 135](#)

2.44 The Government has reflected carefully on the views it received regarding the proposal to extend the remit of HMIC. The Government has already taken steps to make the police more accountable to the public through the introduction of PCCs, who are accountable to their electorates locally. Chief constables are accountable to PCCs. In this structure, it is clearly appropriate for HMIC to inspect chief constables, and for PCCs to challenge chief constables on the decisions they take regarding the way they run the force. However, allowing HMIC to inspect PCCs would undermine the democratic accountability of PCCs to their electorate. The Government does not believe that accountability should be mediated by a third party and so the Government will not enable HMIC to inspect PCCs directly. Scrutiny of PCCs will continue to be provided by PCPs.

2.45 However, the efficient and effective operation of the complaints system is an essential element of ensuring public confidence in the ability of the system to hold police forces to account. HMIC's judgements on the efficient and effective operation of policing functions are at the core of the police's ability to improve the service they offer the public. Wherever the complaints function sits, whether in a police force, with a PCC or elsewhere, HMIC will continue to retain the ability to inspect the efficiency and effectiveness of that function.⁷⁷

5.2 The Bill

Clause 26 amends section 54 of the *Police Act 1996* to reflect the way in which policing is increasingly delivered by many organisations (including private sector companies and, in future, PCCs' staff). It extends the inspector of constabulary's ability to get the information they need by serving "any person" with a notice to provide it. It also extends the types of premises to which inspectors can require access.

The Bill would widen HMIC's powers to obtain information.

Clause 27 (1) extends the remit of HMIC to cover scrutiny of contractors and PCC staff if, or to the extent that, they are employed to assist the police force.

It would also extend HMIC's remit to cover contractors and PCC staff.

⁷⁷ Home Office, [*Improving police integrity: reforming the police complaints and disciplinary systems - Summary of consultation responses and next steps*](#), March 2015, p15

6. Police civilians and volunteers

Summary

Part 3 of the Bill would give chief officers more flexibility in the way they designate powers to their civilian staff, and would also allow them to designate police powers to civilian volunteers. Currently special constables have full police powers, but the thousands of other volunteers working in police forces have none.

The Bill would replace the four current categories of police civilians (who have limited powers) with two broad categories – “community support officers” and “police support officers”. It would also place police volunteers on a statutory footing as “community support volunteers” and “policing support volunteers”.

Chief officers would be able to give these people any power or duty of a constable other than those on a list of “core” powers reserved for constables. This reverses the current position, where chief officers can choose from a list of possible powers for each of the four categories of civilian. The Home Secretary would be able to add to the list of “core” powers for police officers through a statutory instrument.

The Bill leaves unchanged the position of contracted out detention officers and escort officers, who currently can be designated with very limited police powers.

6.1 Background

Sworn police officers hold the office of constable and have a wide range of police powers. These are set out in many separate pieces of legislation and in the common law. As will be seen in section 10 below the *Police and Criminal Evidence Act 1984* codifies many of the main powers, but there are many others as well.

What are “police civilians”?

Civilians have worked alongside police officers in police forces for many years. Traffic wardens were the first civilians to be granted what were police powers.

The Labour government introduced a number of important reforms through the *Police Reform Act 2002*. One of these was to “widen the police family” by introducing four new categories of police civilians with limited police powers:

- Police Community Support Officers (PCSOs)
- Investigation Officers
- Detention Officers
- Escort Officers

The most widely known are PCSOs.

What powers do they have?

Under the 2002 Act, chief officers can designate civilians who are employed by the force as having the powers which are applicable for that role. The powers are set out in various parts of schedule 4 to the 2002 Act. There is:

Labour “widened the police family” by introducing police civilians with limited police powers.

Police Community Support Officers are the most well-known of these.

- a long list of potential PCSO powers in part 1;
- a shorter list of 12 powers for investigating officers in part 2 (mainly to do with their access to crime scenes)
- 12 powers for detention officers in part 3 (mainly to do with searching and fingerprinting detainees)
- Essentially two powers for escort officers in part 4 (to do with keeping arrested people under control while they take them to police stations).

Chief officers choose from a “menu” of possible powers.

All these powers are conveniently listed in [Annex F](#) of the explanatory notes.

In the case of PCSOs, when the legislation first came in there was quite a long “menu” of powers and it was up to chief officer which, if any, of those the PCSO had. The potential powers were set out in part 1 of Schedule 4 to the 2002 Act. However the Labour government decided that it was causing too much confusion for the public having PCSOs in different forces which such very different powers, and so it decided to legislate for PCSOs to have a set of “standard powers” – in effect a subset of the powers listed in Part 1 of Schedule 4.⁷⁸

Since 2007, PCSOs have had certain standard powers, although chief officers could also choose from a menu of possible additional powers.

Currently chief officers have discretion to designate individuals with more than one role; for example, staff can be designated as both detention and escort officers to give greater flexibility.

Who are police volunteers?

There have been volunteer special constables, who are sworn officers with full police powers, since the 19th century.⁷⁹ As at September 2015 there were just over 16,000 special constables across the 43 forces of England and Wales.⁸⁰

The only police volunteers to be covered by statute at the moment are special constables, who have full police powers.

There are also volunteers without police powers who assist the police in other ways. Some of these are termed “Police Support Volunteers”. The College of Policing, which was set up as part of the policing reforms of the previous Government, “aims to promote the use of volunteers across the UK’s police services by sharing best practice”.⁸¹ It says:

Police Support Volunteers are now part of the police culture and are highly valued not only for the direct support they provide but for the key links to the community. They are vetted and undertake many varied tasks depending upon the needs and constraints of each individual force.

Police forces are increasingly using volunteers in a variety of roles.

Unison, the union which represents police civilian staff produced a report in 2014. This expressed concern that forces were turning to these volunteers as a result of cuts to policing budgets:

The College confirmed in February 2014 that: ‘A significant majority of forces now operate police support volunteer (PSV) schemes with individual forces developing their own schemes as befits their local needs. In total there are currently just over 9,000

⁷⁸ Background is in Library Research Paper 06/11 [The Police and Justice Bill](#) and Library Briefing Paper 2718, [Police Community Support Officers](#)

⁷⁹ *Special Constables Act 1831*

⁸⁰ Home Office, [Police workforce, England and Wales: 30 September 2015](#), 28 January 2016, table 5

⁸¹ College of Policing, [Citizens in Policing](#), accessed 25 February 2016

PSVs performing over 100 different roles in support of policing. Core roles can be broadly categorised as: administrative, public reassurance, front counter and safer neighbourhoods.’ As this report will show, if these are the ‘core roles’, there is now a new cadre of police support volunteers stepping out from these traditional, and maybe acceptable duties, to perform jobs which are clearly operational and which test any consensus on PSVs which may have existed in the past.⁸²

6.2 Consultation on change

There have been concerns in recent years about police integrity, brought about (for example) by allegations of improper disclosure to journalists during the phone hacking affair and the conduct of undercover investigators infiltrating environmental protestors.⁸³

Part of the response to those concerns was a review of police leadership by the College of Policing. One of the recommendations in the resulting report was that the Government should “increase flexibility in assigning powers and legal authorities to staff”.⁸⁴

The Government issued a consultation document in September 2015.⁸⁵ In the forward to this, the Home Secretary Theresa May emphasised the role of “police volunteers” (who, apart from special constables, do not have statutory status at present):

Volunteers also play a vital role in community safety. Since 1831, Special Constables have taken many of the same risks as full-time police officers, for no reward other than the satisfaction of playing their part in keeping their communities safe from crime. In recent years, Police Support Volunteers have also played an important part of policing in such roles as manning police enquiry desks or giving crime prevention advice. There is more that volunteers can do. This Government wants to encourage those with skills in particular demand, such as those with specialist IT or accountancy skills, to get involved and help the police to investigate cyber or financial crime and, as their experience grows, to enable them to play a greater part in investigations. These reforms will also help the police to make further progress on the use of cyber-specials.

The Government wants to encourage those with specialist skills to volunteer with the police.

At present, as we have seen, there are lists of the powers available to different types of police civilian. By contrast, powers which are only for police officers are not codified in this way.

The Government is essentially proposing to reverse this situation. There would be statutory list of “core” powers which are only available to police, with the power to amend this list by order.

⁸² Unison, [Home Guard of Police Support Volunteers to fill in for police cuts](#), October 2014

⁸³ For background see Home Affairs Committee, [Leadership and standards in the police](#), HC 67 2013-14 23 June 2013

⁸⁴ College of Policing, [Review of Leadership](#), June 2015, p36

⁸⁵ Home Office, [Reforming the Powers of Police Staff and Volunteers A Consultation on the way Chief Officers Designate the Powers and Roles of Police Staff and Volunteers](#), September 2015

Chief officers would then be able designate police powers that aren't on this core list to police staff or to volunteers at their discretion. This would be a much more flexible regime than the current one.

The consultation document also proposed abolishing the office of traffic warden. Currently there are very few actual "traffic wardens" left.⁸⁶ As parking enforcement was decriminalised in the 1990s, most of that work is now done by local authorities. Many forces dual-designate some of their PCSOs as Traffic Wardens to make them 'Traffic PCSOs'.

The Government published its response document on 20 January 2016 and summarised the response to the various proposals as follows:⁸⁷

- The vast majority of responses (86%) agreed with the principal proposal to give chief officers a greater level of control over the designation of powers on their staff;
- 67% of responses agreed that chief officers should be able to designate powers on volunteers. The Police Federation were concerned that such moves should not lead to the replacement of police officers by paid staff or volunteers, while UNISON expressed similar concern that volunteers should not be used to replace paid staff.
- The proposal to create a list of powers exercisable only by police officers was very well received, with 92.5% of respondents welcoming this. The content of that list, as set out in the consultation document, was also well received, with few proposals to add to the list and none to subtract from it.
- A significant minority (20%) of respondents also expressed concern over the merger of the roles of detention and escort officers, whose primary responsibility is the welfare of the detainee, with the role of investigating officer, for whom the progress of the investigation is the priority.
- 6% of respondents queried the need for designated staff and volunteers to wear uniform, given the cost of providing a uniform to a volunteer who may only perform a few shifts per month.

Under the Bill, there would be a list of powers which only sworn officers could have.

6.3 The Bill

Clause 28 would enable chief officers to designate a staff member in one or both of these roles:

- a community support officer
- a policing support officer

These would replace the four categories of PCSO, investigating officer, escort officer or detention officers for staff employed by the force.

Four existing categories of civilian staff with limited powers would be replaced by two.

⁸⁶ Traffic wardens are appointed by chief constables under section 95 of the *Road Traffic Regulation Act 1984* and the consultation document says there are only 18 left across England and Wales.

⁸⁷ Home Office, [Reforming the Powers of Police Staff and Volunteers: Summary of Consultation Responses and Proposals for Legislation](#), January 2016

What about staff of private companies?

However, the categories “escort officers” and “detention officers”, together with the powers which currently go with them, would remain for contracted out staff. Under section 39 of the *Police Reform Act 2002*, these comparatively limited powers and duties can be contracted out; this feature was in the Act as originally brought in.

The Bill would leave this section intact. It would not alter the powers which could be granted to these staff.

The Bill would not change the powers of contracted-out escort or detention officers.

Police volunteers

There would be a new power to designate powers on volunteers (other than special constables). Chief officers could designate them as either or both of:

- a community support volunteer
- a policing support volunteer

These volunteers would have to be under the direction and control of the chief officer in order to be designated with those powers.⁸⁸

The Bill would, for the first time, allow police powers to be given to civilian volunteers.

What powers would be reserved for police officers?

These are set out in [schedule 7](#). They include:

- powers of arrest
- stop and search powers
- anti-terrorism powers
- the powers of a custody sergeant

These could be changed by order.

The Bill gives a list of powers which only sworn police officers can have.

What powers could be given to civilian staff and volunteers?

Under clause 28(4), community support officers, community support volunteers, policing support officers and policing support volunteers could be given any police powers **except** those in the list in schedule 7.

In addition, community support officers and community support volunteers could be designated with additional special powers to reflect their role.

For example, currently a Police Community Support Officer has a power to require a person to give their name and address if the PCSO has reason to believe they have committed a relevant offence. There is also a power for a PCSO to detain a person for 30 minutes to wait for the arrival of a police officer if they fail to give their name and address. This power to detain is one of the discretionary powers, rather than a standard one.

These are powers which are specific to the role to reflect the way they work with police officers. The Bill lists such additional powers for

⁸⁸ clause 28(12)

community support officers and community support volunteers in [schedule 8](#).

Other changes

Clause 29 would give the College of Police the power to issue guidance on designating and training police volunteers.

Clause 24 would remove the power to appoint traffic wardens.

Reactions

The Police Federation argues against an extension of powers for police staff and volunteers:

Moves to substitute volunteers for fully trained police officers are ill-thought out and will not allow the Police service to best serve the public. (...)

Steve White, chairman of the Police Federation of England and Wales, said: "We and our members understand the need for further police reform. However, the British public deserves and expects a properly resourced, professional and fully accountable police service to keep them safe in these dangerous times.

"We have seen no convincing arguments on the need to provide powers above or beyond those that already exist to police staff and volunteers.

"Having recently had the Government say 'the police protect us and we are going to protect the police', which clearly infers a need for greater resources, we appear to now be looking at a situation where they want to provide these resources on the cheap.

"Special constables and a significant army of volunteers up and down the country do sterling work, but they should not be a replacement for a sworn-in professional officers."⁸⁹

The Police Federation is against what it sees as "moves to substitute volunteers for fully-trained police officers".

Unison welcomes increased powers for police staff, but calls the powers for volunteers a "huge mistake":

"Police staff will be pleased that they are to get new responsibilities and powers that will stand them in better stead when it comes to fighting crime in our towns and cities.

"This is something that police staff have long wished for and means that in future they will have a range of powers at their disposal that will ensure they can get the job done more quickly and more effectively than before.

"But it's a huge mistake to do the same for volunteers. Volunteers cannot be deployed to tackle serious crime in the middle of the night, and they are free to absent themselves from the workplace at any time, because they have no contract of employment. This makes volunteers totally unsuitable for police forces that need to know they can turn out staff in an emergency."⁹⁰

Unison welcomes new powers for police staff, but is against giving these powers to volunteers.

⁸⁹ Police Federation, [Volunteers are not a substitute for fully trained officers](#), 20 January 2016

⁹⁰ Unison, [Police staff will be pleased with new powers, less so that volunteer colleagues will get the same](#), 20 January 2016

7. Police ranks

7.1 Background

The College of Policing's review of police leadership (see section 6 above) also recommended a review of ranks and grades of both officers and civilians:⁹¹

There is evidence from the commercial sector to suggest that flatter structures may allow organisations to be more responsive to social shifts and agile in meeting market demands, because they have fewer levels of decision making and therefore fewer communication barriers. This view was supported by feedback from external leaders consulted by the College Chair, Dame Shirley Pearce. Research into employee engagement points to the importance of a compelling strategic narrative which can be shared throughout an organisational hierarchy. Too many layers of supervision may present a barrier to clear communication, which is crucial for building trust. (...)

Ranks and grades in policing may need to be reformed as we move towards policing based on greater levels of practitioner autonomy and expertise. While starting with police officer ranks, the same approach should be applied to police staff tiers and grades.

Currently most police ranks are provided for in the *Police Act 1996* and regulations under it. There are also requirements in the *Police Reform and Social Responsibility Act 2011* for forces to have chief constables, deputy chief constables and assistant chief constables.

The National Police Chief Constable's Council is currently conducting the review which the College of Policing recommended. It is expected to report in April 2016 recommending a new rank structure.⁹²

The National Police Chief's Council is conducting a review of the police rank structure.

7.2 The Bill

Clause 35 would allow the Home Secretary to make regulations setting out the rank structure in England and Wales. There are some limitations. The regulations would not be able to dispense with the rank of constable or chief constable (or Commissioner in London).

⁹¹ College of Policing, [Review of Leadership](#), June 2015, p22

⁹² Home Office, [Policing and Crime Bill: Police Ranks Factsheet](#), February 2016

8. Police representative institutions

8.1 The Police Federation

Origins

The Police Federation was founded by the *Police Act 1919* in response to two police strikes in 1918 and 1919.⁹³ The Act set out the organisation's constitution and prohibited the police from being part of any trade union. The Federation's purpose is still set out in statute:

The Police Federation has a statutory purpose.

(1) There shall continue to be a Police Federation for England and Wales and a Police Federation for Scotland for the purpose of representing members of the police forces in those countries respectively in all matters affecting their welfare and efficiency, except for—

(a) questions of promotion affecting individuals, and

(b) (subject to subsection (2)) questions of discipline affecting individuals..

Membership and funding

Until 2015, membership of the Federation was automatic for all police officers up to and including the rank of Chief Inspector. However, payment of the subscription was voluntary,⁹⁴ with non-paying members receiving a lower level of service.

From April 2015, membership is no longer compulsory.⁹⁵ Payment of the subscription is still voluntary. The Federation did receive some limited funding from the Home Office for staff costs.⁹⁶ However the Home Secretary announced in May 2014 that this would be withdrawn from August 2014 in view of the Federation's "vast reserves".⁹⁷

Recent criticisms and the Normington review

The Federation has been the focus of criticism in recent years. These criticisms included lack of transparency (particularly concerning some of its branches' accounts), its role in the "Plebgate" scandal,⁹⁸ and allegations of bullying at senior levels.⁹⁹ In response to this, the Federation's leadership called for Sir David Normington to conduct a review and make reform proposals. Surveys of members for this review showed widespread dissatisfaction and disillusionment with the

The Federation responded to recent criticisms by commissioning the Normington Review to make reform proposals.

⁹³ Clive Emsley, *The English Police: A Political and Social History*, 1991, pp 124-127

⁹⁴ Regulation 4 of the *Police Federation Regulations 1969* (SI 1969/1787) (as amended)

⁹⁵ [Police Federation \(Amendment\) Regulations SI 2015/630](#) which came into force on 2 April 2015

⁹⁶ [HC Deb 16 Dec 2013 c396W](#)

⁹⁷ Home Secretary's Police Federation 2014 speech

⁹⁸ The altercation between Andrew Mitchell MP and police on duty in Downing Street in September 2012, and the conduct of Police Federation

⁹⁹ For a discussion of these see Home Affairs Committee, [Reform of the Police Federation](#), 13 May 2014, HC 1163 2013-14

Federation's performance.¹⁰⁰ The Normington review commented that whilst the "perfect storm" of Government reforms to pay, conditions and pensions would have challenged most organisations in the Federation's position, the review had heard criticisms "from inside and out, and there had been a strategic failure in engaging with reforms."¹⁰¹

The Normington review made 36 recommendations including:

- A "revised core purpose" including references to transparency, integrity and acting in the public interest
- Greater transparency over finances

In its May 2014 report on [Reform of the Police Federation](#), the Home Affairs Committee said the Normington Report "presents a sensible, balanced and proportionate package".¹⁰² The Federation accepted all the recommendations.¹⁰³

In her speech to the Police Federation Annual Conference in May 2015, the Home Secretary said:

I know, for example, that you are keen to enshrine the Federation's Core Purpose in legislation – so I can tell you that I will put that on the statute book.¹⁰⁴

The Police Federation would have to protect the public interest and maintain high standards of conduct and transparency when fulfilling its core purpose.

8.2 The Bill

Section 59 of the *Police Act* 1996 provides for the purpose of the Federation. **Clause 37** would amend this by placing a duty on the Federation, in fulfilling its core purpose, to:

- protect the public interest
- maintain high standards of conduct; and
- maintain high standards of transparency

Clause 38 would apply the *Freedom of Information Act 2000* to the Federation by making it a public authority for the purposes of that Act.

The Federation would also be covered by the Freedom of Information Act.

8.3 The Association of Chief Police Officers

The Association of Chief Police Officers was an organisation, formed in 1948, which brought together chief officers to drive improvements in policing. It was a professional body rather than a staff association, and it had great importance not only in developing operational policy but also in carrying out some centralised operational functions. These included some which became controversial, such as the National Public Order Intelligence Unit (NPOIU) which was set up to monitor public demonstrations. Concerns about this came to the fore when

¹⁰⁰ Normington Review, [Final report: The trusted voice for frontline officers](#), Independent Review of the Police Federation, 1 January 2014

¹⁰¹ p10

¹⁰² Home Affairs Committee, *Reform of the Police Federation*, 13 May 2014, HC 1163 2013-14, p10

¹⁰³ Police Federation Press Release, [Federation accepts all recommendations in the Independent Review](#), 21 May 2014

¹⁰⁴ Home Office, [Home Secretary's Police Federation 2015 speech](#), 20 May 2015

information about the activities of an NPOIU officer led to the collapse of a trial in 2010.¹⁰⁵

ACPO became a public limited company in 1997 for pragmatic reasons.¹⁰⁶ This rather odd status for a body with such importance for public policy led to concerns about accountability (for example, until 2011 ACPO was not subject to the *Freedom of Information Act 2000*),¹⁰⁷ and ACPO itself recognised that this structure was unsuitable. Another driver for reform was the wider changes to policing which the previous Government were introducing, for example introducing the College of Policing. In 2013, ACPO commissioned General Sir Nick Parker to conduct an independent review, and the resulting report recommended a Chief Constables' Council with a full time chair to conduct operational and managerial coordination.¹⁰⁸ In July 2014 chief officers voted to form the [National Police Chiefs Council](#), and this replaced ACPO on 1 April 2015.

ACPO was abolished and replaced by the National Police Chief's Council in April 2015.

8.4 The Bill

Clause 39 and **schedule 11** would remove references to ACPO in various pieces of legislation.

The Bill removes various references to ACPO.

¹⁰⁵ See Home Affairs Committee, [Undercover Policing: Interim Report](#), 1 March 2013, HC 837 2012-13

¹⁰⁶ i.e. to maintain independence from Government while enabling ACPO to fulfil its support functions, such as the employment of secretariat staff, and allow for transparency in publishing accounts. This was set out on what was ACPO's [History](#) page, accessed 13 April 2012.

¹⁰⁷ The Act was extended to cover ACPO by the [Freedom of Information \(Designation as Public Authorities\) Order 2011](#) SI 2011/2598

¹⁰⁸ General Sir Nick Parker, [Independent Review of ACPO](#), August 2013

9. Pre-charge bail

Summary

Part 4 chapter 1 of the Bill is the Government's response to long-standing concerns over the use by police of their powers to bail suspects prior to charge. The most significant reforms include:

- A presumption that suspects released prior to charge would be released not on bail
- Time limits on bail and safeguards to prevent a person remaining on bail indefinitely

Rather than suspects being held in prison whilst police investigate allegations, pre-charge bail allows police officers to conduct an investigation whilst allowing suspects to maintain their normal routines. Conditions can be attached to bail allowing the police to offer protection to complainants or witnesses, to preserve evidence and to mitigate the risk of further criminality.

Pre-charge bail has been the subject of stringent and varied criticism, described by some as 'an assault on liberty'¹⁰⁹ and by others as 'fairly toothless'.¹¹⁰ On 23 March 2015 the Home Secretary Theresa May promised to bring about 'the greatest reform of police bail legislation since it was passed 30 years ago'.¹¹¹

9.1 Presumption of release without bail

The Government seeks to enable the police to release someone pending further investigation without bail in circumstances where bail is not considered to be necessary. This proposal met with widespread support. The National Police Chief's Council suggested the establishment of a presumption to release without bail, with bail only being imposed when it is both necessary and proportionate. The Government recognised such a presumption would represent 'an important shift in emphasis' for the custody sergeant and believed it addressed an issue flagged up by the Howard League for Penal Reform: bail ought to be imposed rather than granted.

A presumption of release without bail represents an 'important shift in emphasis'.

One note of caution sounded was the potential for non-bail cases to be seen as having less priority resulting in even longer waits for a decision on charge.

Clauses 40, 42, 43, 44 and 45 amend *PACE* to create a presumption that where detention is not necessary whilst an investigation continues or a police charging decision is made, the suspect should be released without bail being imposed.

¹⁰⁹ Peter Tatchell, '[Pre-Charge Police Bail: An Assault on Liberty](#)', *Huffington Post*, 1 February 2015

¹¹⁰ '[David Cameron vows police bail shake up as top cop says it is toothless](#)', *the Telegraph*, 12 January 2016

¹¹¹ Home Office News Release, '[Home Secretary announces time limits for police bail](#)', 23 March 2015

In its summary of the responses to the pre-charge bail consultation the Government accepted the suggestion that there ought to be a requirement on police to notify a suspect released without bail of any decision to take no further action. Currently suspects must be released from bail when an investigation concludes with a decision to take no further action. The Government promised to include such a requirement in legislation but it has not chosen to do so in the Bill.¹¹²

9.2 Pre-conditions of bail

The presumption would not apply where pre-conditions of bail are satisfied. These pre-conditions would be set out in a new *PACE* section 50A inserted by **clause 46**:

The presumption would not apply in certain cases.

- Imposing bail must be necessary and proportionate
- Bail must be authorised by an officer of at least the rank of inspector and any representations made by the suspect or the suspect's representative must be considered

9.3 Time limits on bail

In a letter to *the Telegraph* in December 2015 former ministers, current MPs, lawyers and campaigners attacked the current rules governing pre-charge bail as 'a perversion of justice' that leaves suspects in a 'legal limbo'.¹¹³ The letter's signatories argued that the 'mental anguish' inflicted on those waiting many months to find out whether or not they will face charges amounts to a form of punishment without trial.

The Government consultation revealed almost universal support for the introduction of a statutory limit on the time someone can be subject to pre-charge bail. There was however no consensus in consultation responses on where the limit should be set.

Clauses 48 and 49 would introduce time limits on pre-charge bail.

Clause 48 would amend *PACE* to set a limit of 28 days on 'street bail' (pre-charge bail granted elsewhere than at a police station).

Clause 49 would insert 13 new sections 47ZA to 47ZM into *PACE*. The Bill's [explanatory notes](#) clearly set out the content of each section at pages 91 to 93. In brief:

- New section 47ZB would provide for initial bail periods of 28 days in standard cases and three months in Serious Fraud Office cases
- The bail start date is the day after the day on which the suspect was arrested for the relevant offence
- Under new section 47ZD the initial period in standard cases could be extended to a period of three months by a senior officer (of at least the rank of superintendent)
- New section 47ZC would set four conditions that must be met before a senior officer can authorise such an extension:

¹¹² Home Office, [Pre-Charge Bail: Summary of Consultation Responses and Proposals for Legislation](#), March 2015, page 7

¹¹³ ['The injustice of pre-charge police bail'](#), *the Telegraph*, 1 December 2014

- (a) Reasonable grounds to suspect the person on bail is guilty of the offence for which they were arrested and are on bail
- (b) Reasonable grounds for believing either that further time is needed for a police charging decision or that further investigation is necessary
- (c) Reasonable grounds for believing that the decision-making on whether or not to charge or the continuing investigation is being conducted diligently and expeditiously
- (d) Continuing bail is both necessary and proportionate
 - The senior officer must consider any representations made by the suspect or his representatives
 - Under new section 47ZF the period of pre-charge bail could be extended beyond three months but only if authorised by a magistrates' court, which must be satisfied of conditions (b) to (d) above
 - An exception is made in new section 47ZE for 'exceptionally complex' cases as identified by a senior prosecutor - in such cases an officer of at least the rank of assistant chief constable may extend bail to a date six months after arrest, having consulted with a senior prosecutor and if conditions (a) to (d) are met
 - New section 47ZG would empower magistrates' courts to grant further extensions of three months, or of six months where the decision is unlikely to be reached or the investigation unlikely to be concluded in the shorter period
 - Under new section 47ZI applications for extensions of the bail period would be decided by a single magistrate 'on the papers', unless he or she deems an oral hearing to be in the interests of justice or the extension would take the bail period beyond 12 months and either party requests an oral hearing
 - New section 47ZJ (5) allows for the exclusion of the person on bail and his representatives from any part of any hearing of an application for an extension of the bail
 - Where an application for an extension of the bail period cannot be heard by a magistrates' court before the period's expiration, new section 47ZJ would provide that it be treated as extended until the application can be heard (though applications may be refused if the court considers that the application could have been made at a point that would have afforded the court time to hear it)
 - In cases where the charging decision is for CPS to make, new section 47ZL would disapply bail time limits to periods a suspect spends on bail awaiting the CPS decision (though the time limits will reapply should the CPS request further investigation by the police in order to make its decision)
 - Under new section 47ZM, any period suspects granted 'street bail' subsequently spend as a hospital in-patient will not count towards time limit calculations

Longer time limits apply in exceptionally complex cases.

Bail time limits would not apply whilst the CPS makes a charging decision.

9.4 Withholding sensitive information

Clause 49 would insert new section 47ZH into *PACE* to allow police or prosecutors to apply to the magistrates' court for permission to withhold from the person on bail and his representatives sensitive information relating to the application to extend bail.

New section 47ZH (4) would require the court to be satisfied that there are reasonable grounds for believing disclosure would have one or more of the following results:

- (a) evidence connected with an indictable offence¹¹⁴ would be interfered with;
- (b) a person would be interfered with or injured;
- (c) a person suspected of having committed a criminal offence and not yet arrested would be alerted;
- (d) the recovery of property obtained as a result of an indictable offence would be hindered.

Under new section 47ZI, such applications under new section 47ZH would be determined by a single magistrate 'on the papers', unless that single magistrate is of the opinion that the interests of justice require an oral hearing. If the magistrate held such an opinion, the application would be determined by two or more magistrates sitting otherwise than in open court. They would be required by new section 47ZI (8) to exclude from the hearing the person on bail and his representatives.

9.5 Bail conditions

The Bill makes limited changes to the imposition of conditions on pre-charge bail. **Clause 47** would amend *PACE* provisions in two ways:

- An officer would be able to arrest without warrant any person previously arrested and released on pre-charge bail who he suspects of breaching the conditions of that bail
- A custody officer would be able to impose conditions when releasing a suspect on pre-charge bail under any of the provisions in *PACE* Part 4

The Government has not sought to make it an offence to breach pre-charge bail conditions. The Prime Minister told the House of Commons Liaison Committee in January 2016 that he would 'look carefully' at police bail powers after the Metropolitan Police assistant commissioner Mark Rowley described them as 'weak and toothless'.¹¹⁵

The Government has chosen not to make breach of pre-charge bail conditions an offence.

Such criticism followed the revelation that a suspected terrorist was free to leave the UK following his release on pre-charge bail whilst investigations into alleged terrorism offences continued. The Mayor of London, Boris Johnson, described pre-charge bail regulations as 'a pretty

¹¹⁴ An indictable offence is one tried by judge and jury in the Crown Court.

¹¹⁵ ['David Cameron vows police bail shake up as top cop says it is toothless'](#), *The Telegraph*, 12 January 2016

ineffective system' and called for a more robust approach.¹¹⁶ Former Director of Public Prosecutions Lord Macdonald argued that in terrorism cases police should not release a suspect on pre-charge bail without the prior agreement of a specialist prosecutor from the CPS Counter Terrorism Division.¹¹⁷

9.6 Re-arrest

Clause 51 would amend provisions of *PACE* to extend the circumstances in which a person previously arrested and released on pre-charge bail may be re-arrested without warrant. It would permit a re-arrest following analysis of existing evidence that could not reasonably have been carried out before the suspect's release from custody.

¹¹⁶ ['Boris Johnson: Bail laws impeding police in extremism cases'](#), BBC News, 7 January 2016

¹¹⁷ ['Police powerless to follow terror suspects to seize passports, Boris Johnson reveals'](#), The Telegraph, 7 January 2016

10. Other police powers

10.1 Entry and search of premises

PACE section 17 - which allows a constable to enter any premises for the purposes of arrest – would be amended by **clause 52** to permit entry for the purpose of making an arrest for breach of bail (both pre- and post-charge).

10.2 *PACE* and those aged 17

Clause 53 would amend *PACE* to further extend safeguards to 17 year olds in police detention.

The use of the term 'juveniles' (defined as children aged 10 to 16) in *PACE* rather than 'children and young people' created an anomaly where children aged 17 were excluded from important protections in police detention. In April 2013 the High Court ruled that the Home Secretary had acted unlawfully in refusing to revise Code C of the *PACE* Codes of Practice so as to distinguish the procedures applicable to a 17-year-old detainee in police custody from those applicable to an adult.¹¹⁸ The court held that treating 17-year-olds in detention as adults was contrary to their rights under article 8 of the *European Convention on Human Rights 1950*.

The High Court found the Home Secretary had acted unlawfully in not extending *PACE* protections for 'juveniles' in police custody to 17 year olds.

Whilst new *PACE* Codes C and H (dealing with the detention, treatment and questioning of suspects in both non-terrorism and terrorism cases respectively) were issued following the judgment, provisions creating significant anomalies as to how 17 year olds were treated remained in the primary legislation.

In the passage of the *Criminal Justice and Courts Act 2015* the Government accepted an amendment that sought to change the definition of an 'arrested juvenile' in *PACE* from someone under 17 to under 18. The Act so amended section 37 (15) of *PACE*, with the practical result that police forces are now required to transfer 17 year olds who have been charged and denied bail to local authority accommodation.

Clause 53 addresses those provisions of *PACE* which still treat 17 year olds as adults.

Subsection (2) would amend *PACE* section 30A to allow a police officer, when releasing an arrested 17 year old on bail somewhere other than at a police station, to impose conditions on bail that the officer thinks are necessary for the suspect's welfare.

Subsection (3) would amend section 63B of *PACE* so that an appropriate adult must be present before police can take a urine sample or non-intimate sample from a 17 year old in police detention in order to test for the presence of Class A drugs. Presently the age condition

¹¹⁸ [R \(HC\) v Secretary of State for the Home Department \[2013\] EWHC 982 \(Admin\)](#). See too '[Police must treat 17-year-olds in custody as children, court rules](#)', the *Guardian*, 25 April 2013

applies only to those below the age of 17. The role of appropriate adult can be filled by a parent or guardian, other family member or friend, or by a specialist appropriate adult (paid or voluntary). Currently a police officer or member of police staff cannot fulfil the role, and this restriction would be widened further by **clause 58**.

Where police wish to take an intimate sample from a person in police detention, they are required by section 62 of PACE to get the 'appropriate consent'. This is defined in section 65 (1) (a) as meaning, in relation to a person aged 17 years or over, the consent of that person. In the cases of those not yet 17 the consent of both suspect and parent/ guardian is required (in the cases of those aged under 14 the requirement is limited to the consent of the parent/ guardian).

Subsection (4) would amend section 65 to set the age limit at 18, so that the consent of both a 17 year old and his parent or guardian must be attained before an intimate sample be taken.

10.3 Use of live links

The Bill would amend *PACE* to allow for much greater use of the video conferencing technology known as live-links in relation to a person in police detention.

Use of live links in extending detention

Section 41 of *PACE* provides that a person detained by the police can be held without charge for an initial period of 24 hours. Under section 42 of *PACE*, an officer of the rank of superintendent or above who is responsible for the police station at which the person is detained can authorise the person's detention for a period up to 36 hours. That authorising officer must be physically present at the police station.

Clause 54 would insert new section 45ZA into *PACE* to allow an officer not present to use a live link to authorise an extension of detention.

New section 45ZA (1) provides three requirements for the use of a live link in such circumstances:

- (a) a custody officer must consider the use of a live link to be appropriate;
- (b) the arrested person must have had legal advice on the use of the live link; and
- (c) the 'appropriate consent' must have been given.

The appropriate consent is that set out in new section 45ZA (2). Where the detained person is 18 or over, he must consent to the use of the live link. In the case of a child aged at least 14, his consent and that of his parent or guardian must be sought. In the case of a child not yet 14, his parent or guardian must have given consent.

Section 42 (6)-(8) of *PACE* provide that an authorising officer must give a detained person the opportunity to make representations about his detention. New section 45ZA (6) ensures such representations can be made with the use of a live link.

The Bill would allow an officer not present to authorise a person's further detention.

Use of live links in applying for warrants for further detention

The police may make an application to a magistrates' court for a warrant of further detention where they wish to detain a person without charge beyond 36 hours. Under sections 43 and 44 of *PACE* the magistrates' court may issue such a warrant, permitting detention without charge up to a maximum of 96 hours.

Presently a magistrates' court may not hear any application for a warrant of further detention unless the detained person has been brought before the court.¹¹⁹ **Clause 54** would introduce new section 45ZB which would allow a magistrates' court to hear an application where the detained person follows proceedings in court via live link. New section 45ZB (1) provides for four pre-requisite safeguards:

- (a) a custody officer must consider the use of a live link for this purpose to be appropriate;
- (b) the arrested person must have had legal advice on the use of the live link;
- (c) the 'appropriate consent' must have been given; and
- (d) it is not contrary to the interests of justice for the court to give a direction that the hearing be by live link.

Under new section 45ZB (3), a live link direction would disapply the requirement that the detained person be brought to court.

Use of live links in conducting interviews under *PACE*

Section 39 of *PACE* relates to a custody officer's responsibilities in relation to people detained in his police station. A custody officer must ensure that all detainees held at his station are treated in accordance with the provisions of *PACE* and its codes of practice.

Clause 55 seeks to amend this section to allow a detained person to be interviewed via live link by an officer elsewhere. Subsection (2) would allow for the transfer of physical custody to an officer not involved in the investigation for the purposes of establishing a live link with another officer elsewhere.

PACE interviews could be conducted by an officer not physically present at the station the suspect is held.

The clause would impose duties on both the local officer whose involvement is limited to setting-up the live link and the officer who conducts the *PACE* interview via the live link. Subsection (2) would insert five new subsections into section 39 of *PACE* under which both officers would be required to report to the custody officer as to the manner in which *PACE* and its codes of practice were complied with while the detained person was in their custody.

¹¹⁹ *Police and Criminal Evidence Act 1984*, section 43 (2)

10.4 Definition of 'appropriate adult'

Clause 58 would amend provisions of *PACE*, the *Crime and Disorder Act 1998* and the *Criminal Justice Act 2003*, widening the prohibition on police acting as an appropriate adult for children and young people.

Presently a police officer or member of police staff cannot serve as an appropriate adult for the purpose of section 63B of *PACE* (taking a sample of urine or a non-intimate sample from a person in police detention to test for the presence of Class A drugs). **Clause 58** widens this prohibition in section 63B (10)(c) to cover anyone 'employed for, or engaged in, police purposes'. Police purposes has the meaning given by section 101 (2) of the *Police Act 1996*, which includes the purposes of special constables, cadets undergoing training and civilians employed for the purposes of the force, special constables or cadets.

Section 66ZA (7)(d) of the *Crime and Disorder Act 1998* would be amended so the prohibition on a police officer or member of police staff acting as an appropriate adult in the context of youth cautions is similarly widened.

The restriction on police officers or staff acting as appropriate adults in the context of pre-sentence drug testing set out in section 161 (8)(c) of the *Criminal Justice Act 2003* would also be amended to impose the same wider restriction.

Those employed for, or engaged in, police purposes would not be able to act as appropriate adults for children in police detention.

11. Powers under the *Mental Health Act 1983*

Summary

Clauses 59 to 61 would make important changes the *Mental Health Act 1983* in response to concern about police powers to respond to people who seem to be suffering from mental disorders.

The police have powers to remove such people who are in need of care or control to a “place of safety”. There has been much concern about the use of police cells for this, both because of their unsuitability for people experiencing a mental health crisis and because of the burden on the police.

There has also been concern about whether the powers which relate to people who are on private property (such as rooftops or railway lines) are sufficiently flexible.

The main changes proposed in the Bill are:

- If the person was already in a “place of safety”, the police would be able to keep them there instead of removing them elsewhere
- Where a person who seems to be mentally disordered is on private property (other than dwellings) the police wouldn’t need a warrant to enter that property to deal with the situation
- Clearer rules about whose consent is needed for a place of safety to be used, for example where there is more than one occupier
- A ban on the use of police cells as a place of safety for under 18s (with a power to place restrictions on their use for over 18s by order)
- The maximum length of time for which a person can be detained will be reduced from 72 hours to 24 hours (extendable for a further 12 hours with medical authorisation)

11.1 Background

The current law

Sections 135 and 136 of the *Mental Health Act 1983* give the police power to remove someone having a mental health crisis without their consent and detain them for up to 72 hours.

Section 135 covers the search and removal of people “believed to be suffering from a mental disorder” who are on **private premises**.

Private premises can include rooftops of buildings or railway lines. In brief, this needs a warrant from a magistrate based on an oath by an approved mental health professional. Once that has been obtained, the police can enter the specified premises and take them to a “place of safety”. This could be residential care accommodation, a hospital or, crucially, “a police station”.

Section 136 covers “mentally disordered persons found in **public places**” who appear to be “in immediate need of care or control”. Because they are in public places, there is no need for a warrant. Once again, they can be removed to a “place of safety” as defined in section 135, and detained.

Concerns about policing mental health

There have been concerns for many years about the way in which people with mental health problems are treated by the criminal justice system. In particular police custody is widely viewed as not being a suitable environment for people experiencing a mental health crisis. Firstly, this could be seen as criminalising people for what is essentially a health need. Secondly, it may make things worse and, in the most tragic cases, can lead to deaths in custody.

There have been concerns for some time about the use of police cells as a “place of safety” for people experiencing a mental health crisis.

The Independent Police Complaints Commission

In 2008, the IPCC examined the use of police custody as a “place of safety” and found that, despite consensus that it should be a last resort, twice as many people were held there as were detained in hospital for the same purpose.¹²⁰ There were wide variations between forces, and the variation in availability of alternative places of safety was the strongest reason for this.

The Bradley Report

The [Bradley Report](#) published in 2009 looked at people with mental health problems and learning disabilities in the criminal justice system more widely.¹²¹ One of its findings was that “the estimated number of mentally disordered suspects passing through police stations varies between 2% and 20%”. The review found that mental health training for officers was inadequate, as was the assessment of detainees, and that despite recognition of the unsuitability of police detention for people with mental illness it continued “to be used on a fairly wide basis”.

Her Majesty’s Inspectorate of Constabulary

HMIC published [A Criminal Use of Police Cells](#) in 2013 which found that despite the Mental Health Act Code of Practice stating that a police cell should be used as a place of safety only on an “exceptional basis”, in practice in some areas this was done regularly. HMIC looked more broadly at the use of police custody for vulnerable people in a report published in March 2015. Inspectors found:¹²²

Joint working arrangements with mental health services in some forces were successfully diverting people with mental health problems away from custody by offering them advice and support. However, these services were not always available.

¹²⁰ Maria Docking, et al, [Police Custody as a “Place of Safety”: Examining the Use of Section 136 of the Mental Health Act 1983](#), Independent Police Complaints Commission, September 2008

¹²¹ Lord Bradley’s review of people with mental health problems or learning disabilities in the criminal justice system, April 2009

¹²² HMIC, [The welfare of vulnerable people in police custody](#), March 2015 p18

However, HMIC did note marked improvements in the rates of detention under the *Mental Health Act 1983*.

Independent Commission on Mental Health and Policing

A spate of deaths in police cells led the Commissioner of the Metropolitan Police to ask Lord Adebawale to conduct an independent review, which looked at 55 cases covering a five year period. The report, published in 2013, highlighted communication failures, a lack of mental health awareness amongst staff and officers, lack of training, discriminatory attitudes and poor record keeping.¹²³

The Home Affairs Committee

The Home Affairs Committee published a report on policing and mental health in February 2015.¹²⁴ The Committee was “concerned by the extent to which frontline officers are increasingly spending their time helping people with mental health problems.”¹²⁵ In particular it noted that many submissions, particularly from the police, supported the removal of police cells from the statutory list of acceptable places of safety. The Committee concurred:

We recommend that the specific reference to a police station should be removed from the definition of “places of safety” in s. 135(6) of the *Mental Health Act 1983*. We recognise that there are concerns over the lack of health-based places of safety that exist in some parts of the country, particularly rural areas. However, this proposal has been under discussion for some time now and commissioners should have started commissioning appropriate place of safety provision before now. All areas need to do so, and be able to demonstrate that they have made progress by July 2015. The Government should immediately re-issue guidance to police forces and health trusts defining the exceptional circumstances in which police cells may be used as places of safety. The presumption should clearly be the health facility not the police cell.

The Government’s own review of s. 136 recommended ensuring that police cells can only be used as a place of safety for adults in situations where the person’s behaviour is so extreme they cannot otherwise be safely managed. Following the general election a new government should set out what they will do to ensure this happens if it will not amend the *Mental Health Act 1983*.

Changes to police practice

Street triage

There are currently “street triage” schemes in 28 forces in England and Wales.¹²⁶ Under these, a mental health nurse and sometimes a paramedic goes out with the police to incidents where police believe people need immediate mental health support. The first schemes started in Cleveland and Leicestershire and then were extended to

¹²³ [Independent Commission on Mental Health and Policing Report](#), May 2013, p7

¹²⁴ Home Affairs Committee, [Policing and mental health](#), HC 202 2014-15, 6 February 2015

¹²⁵ p8

¹²⁶ Home Office Impact Assessment HO0231, [Policing and Crime Bill – Amend Police Powers under the Mental Health Act 1983](#), 29 January 2016, para 20

another nine areas in 2013.¹²⁷ The Home Office impact assessment on this part of the Bill says that ten other forces are currently reviewing or planning for triage, and two others report that they have other local agreements in place to provide the necessary support to officers.¹²⁸ NHS England has commissioned a formal evaluation of the various pilots and models which will report in 2016. However, the Government says that “initial signs indicate that a significant proportion of s136 detentions can be averted through triage – over 50% in the case of the West Midlands pilot”.¹²⁹

There have been changes to practice in response to these concerns.

2014 Mental Health concordat

In February 2014, the Government announced a Mental Health Crisis Care Concordat between twenty two organisations to improve care during mental health crises.¹³⁰ It committed national organisations to working together locally in order to stop the use of police stations as places of safety, apart from in exceptional circumstances.

Falls in the use of police custody

The explanatory notes state that improved local practice has “led to a reduction in the number of times police cells were used for a person detained under section 136 in England from 8,667 in 2011/12 to 3,996 in 2014/1515.”¹³¹

Government review

In 2014 the Department of Health and Home Office undertook a joint review of the operation of sections 135 and 136.¹³² Its legislative recommendations, set out on [page 11](#) are reflected in the Bill. The Department of Health consulted on these in March 2015¹³³ and the response document was published in November 2015.¹³⁴ This said that the Government had:

(...)received very strong messages of support on not using police cells as places of safety for under-18s and that no one should be held in a place of safety under sections 135 and 136 for more than 24 hours.¹³⁵

¹²⁷ Department of Health, [Extending the street triage scheme: New patrols with nurses and the police](#) 20 August 2013

¹²⁸ Home Office Impact Assessment HO0231, [Policing and Crime Bill – Amend Police Powers under the Mental Health Act 1983](#), 29 January 2016, paragraph 20

¹²⁹ Ibid

¹³⁰ Department of Health, Deputy Prime Minister's Office and Home Office, [Better care for mental health crisis](#), 18 February 2014 See [Mental Health Crisis Care Concordat Improving outcomes for people experiencing mental health crisis](#)

¹³¹ p22

¹³² Department of Health and Home Office, [Review of the Operation of Sections 135 and 136 of the Mental Health Act 1983](#), December 2014

¹³³ Department of Health [No voice unheard, no right ignored – a consultation for people with learning disabilities, autism and mental health conditions](#) Cm 9007, March 2015

¹³⁴ Department of Health [Government response to ‘No voice unheard, no right ignored’ – a consultation for people with learning disabilities, autism and mental health conditions](#), Cm 9142, November 2015

¹³⁵ p23

11.2 The Bill

Clause 59(2) would amend the provision in section 135 of the *Mental Health Act 1983* to give the police more flexibility when they are executing a warrant to enter private premises. If the person is already in a place of safety, the police can keep them there instead of having to remove them.

Clause 59(4) would allow the police to enter anywhere (other than a dwelling) without a warrant if it is in the interests of the person who seems mentally disordered or for the protection of others. Before doing so the constable must “if it is practicable to do so” consult a specified health professional.

Clause 60 would clarify whose permission is needed before a “place of safety” can be used, and enables a private dwelling to be used as this if the occupier and the person who seems to be suffering from a mental disorder consent to this. It would also introduce the ban on the use of police cells as a place of safety for under 18s, and has an order making power to restrict their use for those over 18 and make provision for their treatment in detention.

Clause 61 would replace the 72 hour time limit for detention in a place of safety under sections 135 and 136 with a 24 hour “permitted period” extendable by a further 12 hours if the responsible doctor authorises this. Where the place of safety is a police cell, then this will need the approval of a police officer at superintendent rank or above.

The Bill would ban the use of police cells as places of safety for under 18s.

This could be extended to over 18s by order.

The Bill would reduce the 72 hour time limit for temporary detention to 24 hours.

This could be extended to 12 hours with medical authorisation.

12. Police powers: maritime enforcement

12.1 Background

Under international law, states have a right of “hot pursuit” (pursuing a suspect with a view to arrest).¹³⁶ In defined circumstances, this right allows a coastal State to pursue onto the high seas a foreign vessel that has violated its laws.

Section 30 of the *Police Act 1996* states that a police officer “shall have all the powers and privileges of a constable throughout England and Wales and the adjacent United Kingdom waters.” A state’s territorial waters are defined in international law as extending up to 12 nautical miles of the UK shore.¹³⁷

There are limited maritime enforcement powers for constables, customs officials and some other enforcement officials in legislation. The explanatory notes cite enforcement powers for:

- drug trafficking offences¹³⁸
- human trafficking, slavery, servitude, and forced or compulsory labour offences¹³⁹

In addition the Immigration Bill currently before Parliament contains maritime enforcement powers for immigration and police officers and the Armed Forces.¹⁴⁰

The [explanatory notes](#) explain the reasons for the new enforcement provisions:¹⁴¹

Given that each of these provisions is directed at the enforcement of specific offences, there remains a gap in the ability of the police and other law enforcement agencies to investigate other criminal offences on ships in UK territorial waters, in international waters and in the territorial waters of other states. Chapter 4 of Part 4 will ensure that law enforcement agencies are capable of operating effectively in a maritime context when investigating any offence triable in England and Wales. The enforcement powers will be exercisable in the territorial waters of Scotland and Northern Ireland when a ship is pursued there from other waters (“hot pursuit”). These enforcement provisions will apply on:

- UK ships anywhere on the high seas (‘international waters’), in the territorial waters of another state (with permission from the relevant state), and in England and Wales waters;
- stateless vessels in England and Wales waters and international waters;

International law allows “hot pursuit” in international waters in particular circumstances.

There are specific maritime enforcement powers, for example for drug trafficking offences, but the Government says this leaves gaps in dealing with other offences.

¹³⁶ This is codified in the [United Nations Convention on the Law of the Sea](#), (UNCLOS) 1982 and [United Nations Convention on the High Seas](#) 1958

¹³⁷ [United Nations Convention on the Law of the Sea](#), (UNCLOS) 1982

¹³⁸ Section 20 and Schedule 3, *Criminal Justice (International Co-operation) Act 1990*

¹³⁹ Part 3 of the *Modern Slavery Act 2015*

¹⁴⁰ See Commons Briefing Paper 7304, [Immigration Bill 2015-16](#),

¹⁴¹ pp 23-24

- foreign vessels in England and Wales waters subject to the same authorisation requirements as in section 35(5) and (6) of the 2015 Act; and
- ships registered in the Isle of Man, any of the Channel Islands or a British overseas territory in England and Wales waters subject to the same authorisation requirements as in section 35(5) and (6) of the 2015 Act.

12.2 The Bill

Clause 62 would allow police and other “law enforcement officers”¹⁴² to exercise maritime enforcement powers for the purposes of preventing, detecting, investigating and prosecuting offences under the law of England and Wales. These powers are:

The Bill would give police and others broader maritime enforcement powers.

- The power to stop, board, divert and detain (**clause 66**)
- The power to search and obtain information (**clause 67**)
- The power of arrest and seizure (**clause 68**)

Where enforcement can take place depends on the nationality of the ship:

Nationality of ship	Where the powers can be exercised
United Kingdom	England and Wales waters, foreign waters ¹⁴³ or international waters.
Foreign	England and Wales waters
None	England and Wales waters or international waters
Isle of Man, the Channel Islands or a British Overseas Territory	England and Wales waters

Clause 64 covers hot pursuit of ships in Scotland and Northern Ireland Waters. It provides that a law enforcement officer may exercise the maritime enforcement power in relation to a ship in Scotland or Northern Ireland waters if the ship has been pursued there and:

- Immediately before the pursuit the ship was in “relevant waters”¹⁴⁴
- Before pursuit, a signal was given for the ship to stop
- The pursuit of the ship is not interrupted

¹⁴² Constables or special constables from a force in England and Wales, British Transport Police officers, port constables, customs officers or “a person of a description specified in regulations”

¹⁴³ Defined in clause 73 as “the sea and other waters within the seaward limits of the territorial sea adjacent to any relevant territory or state” other than the UK

¹⁴⁴ For a UK ship or one with no nationality, this would be England and Wales waters or international waters. For foreign ships or those registered in the Isle of Man, Channel Islands or British Overseas Territory, “relevant waters” would be England and Wales waters.

13. Police and Crime Commissioners and Police Areas

13.1 Deputy Police and Crime Commissioners

Police and Crime Commissioners replaced police authorities in England and Wales from November 2012 under the *Police Reform and Social Responsibility Act 2011*. The next elections are in May 2016.

The next PCC elections are in May 2016.

Under [section 18](#) of the 2011 Act, a PCC may appoint a deputy to whom he or she can legally delegate certain functions. This deputy is the only post on the PCC's staff which is exempt from political restrictions.¹⁴⁵ Appointing a deputy isn't compulsory.

There are separate provisions for the Police and Crime Panel ¹⁴⁶ to appoint an acting PCC if there is a vacancy (because the PCC has resigned or died for example) or if the PCC is incapacitated.¹⁴⁷

Detailed rules about PCCs and their staff are set out in schedule 1 to the 2011 Act. In particular, [paragraph 8](#) provides for the deputy's term of office to end "not later than the day when the current term of office of the appointing PCC ends".

There would be more flexibility about deputy PCCs' terms of office.

Clause 74 is designed to introduce more flexibility about PCCs' terms of office. Following an ordinary PCC election, the deputy's term of office will end no later than six days after the poll. This would allow the deputy to stay in post until the new PCC takes office.

Where there is a by-election called due to a vacancy, the deputy's term of office will end automatically when the new PCC delivers a declaration of acceptance of office. The new PCC will then be able to decide whether to appoint a new deputy or not. The amendment also ensures that a deputy PCC is eligible to be appointed as an acting PCC if the Police and Crime Panel choose this.

Deputy PCCs would be able to stand for election as PCCs.

Clause 75 would allow a deputy PCC to stand for election at an ordinary PCC election. Currently [section 65](#) of the 2011 Act disqualifies them from doing this because they count as a member of the PCC's staff.

13.2 Naming police areas

Police areas are set out in schedule 1 of the *Police Act 1996*. Under section 32, the Secretary of State can make an order to change a police force area, but she cannot do this just to change the name of a police area. Clause 76 would allow for this. The police and crime commissioner for Hampshire is reportedly in talks with the Home Office about changing the name of the force to include the Isle of Wight.¹⁴⁸

The Bill would allow police areas to be renamed without primary legislation.

¹⁴⁵ Section 1(9) *Local Government and Housing Act 1989* (as amended)

¹⁴⁶ The Police and Crime Panel scrutinise the PCC

¹⁴⁷ [Section 62](#) *Police Reform and Social Responsibility Act 2011*

¹⁴⁸ ["Hampshire police name 'should include Isle of Wight'"](#), BBC News, 12 February 2016

14. Firearms

Summary

Part 6 of the Bill would make the following changes to the law on firearms as recommended by the Law Commission in a recent report: it would provide a statutory definition of the terms 'lethal', 'component part' and 'antique firearm' and create a new offence of possession of an article for the conversion of an imitation firearm into a live firearm.

The Bill would also make provision regarding the charging of fees, including in relation to authorisations to possess prohibited weapons and provide a power for the Home Secretary to issue statutory guidance to the police in respect of firearms.

The provisions in Part 6 of the Bill would extend and apply to Great Britain.

14.1 Firearms law

The [Firearms Act 1968](#) is the main statute concerning the control of firearms in England, Wales and Scotland. Sections 1 and 2 prohibit the possession of a firearm or shotgun without an appropriate certificate. Section 5 prohibits the possession of specific types of weapon (such as handguns and automatic weapons), their component parts and ammunition, without the authority of the Secretary of State.

14.2 Implementation of Law Commission recommendations

In July 2015 the Law Commission published a [consultation paper on Firearms Law](#).¹⁴⁹ It aimed to consult on particular reforms that appeared to be urgently needed and to examine the case for more fundamental reform. The specific problems identified as causing difficulties in practice were:

- the failure to define the terms 'lethal', 'component part' and 'antique';
- the failure to impose a legal obligation that firearms be certified as being deactivated to an approved standard; and
- the failure of the law to keep pace with technological development in relation to whether an imitation firearm is 'readily convertible' into a live firearm.¹⁵⁰

The Law Commission published a [final report following the consultation](#) in December 2015.¹⁵¹ This set out recommended reforms aimed to address these pressing problems which, it said, undermine the effectiveness of the law regulating the possession and acquisition of firearms.

Clauses 77 to 79 of the Bill would implement the majority of these recommendations.

¹⁴⁹ Law Commission, *Firearms Law: A scoping Consultation Paper*, No 224

¹⁵⁰ *Ibid* para 1.1.6

¹⁵¹ Law Commission, *Firearms Law – Reforms to Address Pressing Problems*, No 363

Lethality and component parts

A firearm is defined as “a lethal barrelled weapon from which any shot, bullet or other missile can be discharged”.¹⁵² However, there is no definition in legislation of the term ‘lethal’ in this context and the Law Commission states that the courts have failed to define the term with any degree of precision. **Clause 77** would provide that a weapon should be considered lethal if it has a muzzle kinetic energy of more than one joule.¹⁵³

Clause 77 would provide for an exception from the scope of the one joule threshold for airsoft guns so that they would not be regarded as firearms.

The definition of firearm includes “any component part of such a lethal or prohibited weapon”.¹⁵⁴ However the legislation does not define the term ‘component part’ and the courts have decided that the meaning is a question of fact for the jury. This has created a lack of clarity.

Clause 77 would provide for a statutory definition of ‘component part’ and give the Secretary of State the power to amend the statutory list of component parts by statutory instrument subject to the affirmative procedure. A component part would be defined as:

- a barrel, chamber or cylinder,
- a frame body or receiver; or
- a breech block, bolt or other mechanism for containing the discharge at the rear of the chamber.

A component part shall only remain classified as such so long as it is capable of being used as a part of a lethal barrelled or prohibited weapon.

Antique firearms

Antique firearms are exempt from most provisions of the *Firearms Act 1968* so long as they are held as a curiosity or ornament.¹⁵⁵ However, the legislation does not define the term ‘antique firearm’. This creates practical and legal difficulties in determining whether any given firearm is exempt from control as an antique.

Clause 78 would provide a definition of an antique firearm by reference to either a description of the cartridge with which its chamber is capable of being used or a description of its ignition system. These descriptions would be specified in regulations made by statutory instrument subject to the affirmative procedure. The *Firearms Act 1968* would be amended so that the offences of carrying a firearm in a public place and of trespassing with a firearm may be committed when in possession of an antique firearm.

Clause 77 would give effect to the Law Commission’s recommendations regarding the definitions of the terms ‘lethality’ and ‘component part’

Clause 78 would give effect to the Law Commission’s recommendations regarding the definitions of the term ‘antique firearm’

¹⁵² Section 57(1) *Firearms Act 1968*

¹⁵³ Muzzle kinetic energy is the power of the discharged projectile as it leaves the barrel of the weapon.

¹⁵⁴ Section 57(1)(b) *Firearms Act 1968*

¹⁵⁵ Section 58 *Firearms Act 1968*

Possession of articles for conversion of imitation firearms

The law currently does not criminalise possession of equipment with the intention of using it to convert imitation firearms into live firearms.

Clause 79 would give effect to the Law Commission's recommendation to create a new offence of being in possession of an article with the intention of using it unlawfully to convert an imitation firearm into a live firearm. The new offence would apply to any person except a registered firearms dealer. The maximum penalty would be five years' imprisonment and/or a fine.

Clause 79 would create a new offence, as recommended by the Law Commission, of possession of an article for the conversion of an imitation firearm into a live firearm

14.3 Fees

The Firearms Acts provide for a number of powers to charge fees for:

- the grant, renewal, variation or replacement of a firearms certificate;
- the grant, renewal or replacement of a shot gun certificate;
- the grant or renewal of certificate of registration as a firearms dealer;
- the grant, renewal or extension of a licence exempting museums from certain provisions of the *Firearms Act 1968*;
- the grant or renewal of an approval for an approved rifle or muzzle-loading pistol club.

There is currently no similar power to charge a fee for the grant of an authorisation for the possession of prohibited weapons and ammunition.¹⁵⁶ Prohibited weapons includes items such as handguns, automatic weapons, missiles and rockets. These authorisations are granted to organisations including firearms dealers, private maritime security companies and Olympic shooting squads and are currently provided free of charge.

The Bill

Clause 80 of the Bill would provide for fees to be charged for the grant, variation or renewal of prohibited weapon authorisations by the Home Office or Scottish Government. The fees would be set out in regulations. The regulations would be allowed to set different fees, for example for different categories of applicant or different sizes of organisation, or both.

Clause 80 would provide for fees to be charged for prohibited weapon authorisations

New regulation making powers, under **clause 80**, would replace those currently in place for setting fees in relation to an approved rifle or muzzle-loading pistol club and excepting museums from certain provisions. The new powers would allow for differential fees, depending, for example, on the size of the shooting club or museum firearms collection. All the regulation making powers in this clause would be subject to the negative resolution procedure.

¹⁵⁶ Under section 5 of the *Firearms Act 1968*

14.4 Statutory guidance

Currently the [Home Office guidance](#) to chief officers of police on some of their functions in respect of firearms is issued on a non-statutory basis.¹⁵⁷

Her Majesty's Inspectorate of Constabulary published [a report](#) in September 2015 following an inspection of firearms licensing department in police forces in England and Wales, which stated:

On too many occasions, the police are not following the Home Office guidance or the Authorised Professional Practice. And, the guidance and practice in many respects are inadequate, allowing room for interpretation and the creation of inconsistency in the way firearms licensing is undertaken within and between police forces.¹⁵⁸

HMIC concluded that the guidance should be distilled into clear rules that chief officers should be obliged to follow and that those rules should carry the weight of the law.

The Bill

Clause 81 would introduce a power for the Home Secretary to issue statutory guidance to chief officers on the exercise of their firearms licensing functions. Chief officers would be under a duty to have regard to the statutory guidance.

Clause 81 would provide for statutory guidance on firearms

¹⁵⁷ Home Office, *Guide on Firearms Licensing Law*, December 2015

¹⁵⁸ Her Majesty's Inspectorate of Constabulary, *Targeting the risk: An inspection of the efficiency and effectiveness of firearms licensing in police forces in England and Wales*, September 2015p10

15. Alcohol licensing

15.1 Legislative framework: the Licensing Act 2003

Alcohol licensing is a devolved matter in Scotland and Northern Ireland. Under the *Licensing Act 2003*, there are four [“licensable activities”](#) in England and Wales:

- the sale of alcohol
- the supply of alcohol
- the provision of regulated entertainment
- the provision of late-night refreshment¹⁵⁹

Licensing authorities are responsible for issuing and enforcing licences, and must promote the four statutory licensing objectives:

- preventing crime and disorder
- preventing public nuisance
- public safety
- preventing children from harm¹⁶⁰

Any business that sells or supplies alcohol on a permanent basis needs a [premises licence](#). The licence must also name a [designated premises supervisor](#) (DPS) – the person who has day-to-day responsibility for the running of the business and who is the primary contact for the licensing authorities and police. The DPS must hold a [personal licence](#), as must anyone who sells or supplies alcohol or authorises its sale or supply.

The Gov.UK [website](#) gives further details of the licensing requirements under the 2003 Act.

15.2 Defining “alcohol”

Background

Section 191(1) of the 2003 Act defines alcohol as “spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor”.

In March 2015, powdered alcohol, marketed under the name “Palcohol”, was approved for sale in the USA.¹⁶¹ The product has not yet been made available to buy there or anywhere else.¹⁶² As the 2003 Act focuses on alcohol as a liquid, it is not clear that it would apply to powdered alcohol.

Vaporised alcohol - which can be inhaled either straight from the air into which the vapour is pumped or by using an inhalation device – is

¹⁵⁹ Licensing Act 2003 s1

¹⁶⁰ Licensing Act 2003 s4

¹⁶¹ The company’s website states that the powdered alcohol would be sold in sachets containing the correct quantity of powder to make the equivalent of one shot (25ml) of, for example, vodka or rum when it is diluted with the appropriate quantity of liquid – Home Office [Impact Assessment](#) (IA No: HO0221), December 2015, p4

¹⁶² Home Office, [Policing and Crime Bill Factsheet: alcohol provisions](#), February 2016, p3

available in the UK and has been sold as a “novelty” product.¹⁶³ The Government has said that, as far as it is aware, vaporised alcohol has been sold with an alcohol licence and businesses and licensing authorities have treated it as liquid alcohol. However, it is not clear that the current definition does cover vaporised alcohol.¹⁶⁴

The Bill

Clause 82 would amend the 2003 Act to make clear that powered and vaporised alcohol are both covered by the Act.

According to a Home Office [impact assessment](#), the police, licensing authorities and the licensed trade are all in favour of clarifying the law.¹⁶⁵

15.3 Premises licences – summary reviews

Background

Under section 53A of the 2003 Act, the police can apply to the licensing authority for a summary review of a premises licence where the premises in question is associated with serious crime and/or disorder.

The licensing authority must consider within 48 hours whether it is necessary to impose interim steps on the licence, pending the determination of a review.¹⁶⁶ These interim steps (temporary conditions on the licence) enable the licensing authority to act quickly without having to hear representations from the holder of the licence.

A hearing to review the premises licence must take place within 28 days of receipt of the application. The decision taken at the review hearing only comes into effect once the 21 day time limit for appealing has expired or any appeal has been dealt with. According to the explanatory notes to the Bill, there is currently an ambiguity about whether or not interim steps remain in place until the process is complete, once appeal channels have been exhausted, or whether they can be withdrawn or amended at an earlier stage:

Feedback from licensing authorities indicates that the legislation is being interpreted in some areas in a way which means that businesses are remaining closed or significantly restricted due to interim steps, sometimes for months, while an appeal is lodged. In other areas the opposite is happening and this can result in premises which pose a risk to the public continuing to operate during the appeal period. Either result can operate unfairly.¹⁶⁷

The Home Office has said that clarifying the law in this area is in the interests of licensing authorities, the police, the public and the licensed trade:

It will help ensure the public is protected from premises associated with serious crime and serious disorder and reduce demand on

¹⁶³ Home Office, [Impact Assessment](#) (IA No: HO0221), December 2015, p5

¹⁶⁴ Ibid

¹⁶⁵ Ibid, p6

¹⁶⁶ Section 53A(2) of the Licensing Act 2003

¹⁶⁷ Home Office, [Explanatory Notes to the Policing and Crime Bill](#), February 2016, para 144

the police from needing to deal with such premises through separate or alternative emergency processes.

Clarity will also ensure that businesses subject to summary reviews are treated fairly...¹⁶⁸

The Bill

Clause 84 would require the licensing authority to determine at the review hearing what interim steps should be in place pending the outcome of any appeal, or the expiry of the time limit for making an appeal. These arrangements will allow licensing authorities and the police to take effective enforcement action. Licensees and the police will be able to appeal the interim steps to a magistrates' court.

15.4 Personal licences – powers in relation to convictions

Background

All alcohol sales have to be made or authorised by a personal licence holder.¹⁶⁹ The system of personal licences is described in chapter 4 of Home Office [guidance](#) on the 2003 Act.

A personal licence can be suspended or forfeited by a court where the holder has been convicted of a relevant offence. These are set out in Schedule 4 of the Act and include violent and sexual offences, drugs offences, firearms offences, and breaches of licensing law.

Where the holder of a personal licence is charged with a relevant offence, she must produce the licence to the court before the case is first heard. She must also notify the licensing authority following conviction for a relevant offence or a foreign offence.

The licensing authority does not have the ability to suspend or revoke a personal licence. The court cannot order the forfeiture or suspension of a licence other than at the point the licensee is sentenced for a relevant offence.

In 2013/14, sixteen personal licences were suspended or forfeited.¹⁷⁰

According to the [Institute of Licensing](#)¹⁷¹, courts are failing to check whether defendants are personal licence holders.¹⁷² After consulting its members on this issue, the Institute found that 75% of respondents had experienced problems with the existing arrangements.¹⁷³

The Bill

Clause 85 of the Bill would amend the 2003 Act so that licensing authorities would have the power to revoke or suspend a licence. The courts would retain their existing powers. Where a licensing authority

¹⁶⁸ Home Office, [Impact Assessment](#) (IA No: HO0222), December 2015, p9

¹⁶⁹ The system for personal licences is set out in part 6 of the Licensing Act 2003

¹⁷⁰ Home Office, [Policing and Crime Bill Factsheet: alcohol provisions](#), February 2016, p2

¹⁷¹ A professional body representing those who work in licensing

¹⁷² Home Office, [Policing and Crime Bill Factsheet: alcohol provisions](#), February 2016, p2

¹⁷³ Ibid

suspends or revokes a licence, the licence holder will have the opportunity to make representations to the licensing committee, and will have a right to appeal to a magistrates' court.

A Home Office [factsheet](#) on the Bill explains the difference that the clause would make in relation to some of the problems identified by the Institute of Licensing:

- A personal licence holder convicted of selling non-duty paid alcohol in their shop, was fined £33,000. The police asked the court to order forfeiture of the licence but the court decided the defendant had been punished enough. Six months later the same individual was convicted and fined for a second offence of selling counterfeit alcohol. **In future, the licensing authority will be able to revoke the licence after the first offence.**
- A personal licence holder convicted of sex offences failed to notify the court of the personal licence. The police interviewed him under caution for failing to notify the court of the licence, and he voluntarily surrendered his personal licence to the licensing authority. **Under the new arrangements the licensing authority will be able to revoke a licence in these circumstances.**¹⁷⁴

Clause 86 of the Bill would add the following offences to Schedule 4 of the 2003 Act:

- the sexual offences listed in Schedule 3 to the Sexual Offences Act 2003;
- the violent offences listed in Part 1 of Schedule 15 to the Criminal Justice Act 2003;
- the manufacture, importation and sale of realistic imitation firearms contrary to section 36 of the Violent Crime Reduction Act 2006;
- using someone to mind a weapon contrary to section 28 of the Violent Crime Reduction Act 2006; and
- the terrorism-related offences listed in section 41 of the Counter-terrorism Act 2008

15.5 Guidance issued under the 2003 Act

Background

Section 182(1) of the 2003 Act requires the Secretary of State to issue guidance to licensing authorities on the discharge of their functions under the Act.¹⁷⁵

A revised version of the guidance does not come into force until the Secretary of State lays it before Parliament.¹⁷⁶ It is then subject to the negative resolution procedure.¹⁷⁷

The [guidance](#) was last revised in March 2015.

¹⁷⁴ Ibid, emphasis added

¹⁷⁵ The [guidance](#) was last revised by the Home Office in March 2015

¹⁷⁶ Section 182(4) of the Licensing Act 2003

¹⁷⁷ Section 182(5) of the Licensing Act 2003

The Bill

Revised versions of the guidance have never been subject to parliamentary debate.¹⁷⁸ The Government has said that the requirement to lay revised versions before Parliament is therefore “unnecessary”.¹⁷⁹

Clause 87 of the Bill would amend section 182 of the 2003 Act so that revised guidance would no longer need to be laid before Parliament before coming into force.

¹⁷⁸ Home Office, [Policing and Crime Bill Factsheet: alcohol provisions](#), February 2016, p4

¹⁷⁹ Home Office, [Policing and Crime Bill Factsheet: alcohol provisions](#), February 2016, p4

16. Financial sanctions

Summary

Financial sanctions are a familiar part of the international community's response to various threats. The 'war on X' is often accompanied with a sanctions regime that either applies to individuals, companies or to countries. Since they are normally internationally applied they have their basis in international law.

This part of the Bill would generally extend existing sentences for financial sanctions offences and introduces new civil penalties to be enforceable by the Treasury.

In terms of the administration of financial sanctions in the UK, this is the responsibility of the Asset Freezing Unit (AFU) in the Treasury. The current [consolidated list of financial sanctions targets](#) in the UK runs to 164 pages. Targets cover individuals, regimes (Al Qaida; Belarus, N.Korea) and entities from the Abdallah Azzam Brigades to the Iraq Northern State Cement enterprise. They are applied for a number of reasons – terrorism, human rights or misappropriation of funds.

16.1 What are sanctions?

[Sanctions and embargoes](#) are political trade and financial restrictions against individuals, companies or countries. They can be put in place by:

- A UN Security Council resolution, to maintain or restore international peace and security.
- An EU Common Position and (where appropriate) Regulation, which could be to implement UN sanctions, to further the EU's [Common Foreign and Security Policy](#) (CFSP) objectives, or to uphold respect for human rights, democracy and the rule of law.
- The [Organisation for Security and Co-operation in Europe](#), which can also impose national arms embargoes.
- The UK, under domestic anti-terrorism legislation.

There are various types of sanctions and embargoes, including for instance arms embargoes, bans on exporting or importing items or raw materials, travel bans on individuals, or financial sanctions on government ministers or terrorists.

This Bill concerns only financial sanctions. These can range from freezing the assets of specified individuals or companies to bans on providing financial services such as insurance to designated governments, to prohibiting the transfer of funds to a whole country. The UK publishes a [consolidated list of asset freeze targets](#) designated by the UN, EU and UK under financial sanctions legislation, and there is an [overview of EU sanctions on the Europa website](#).

16.2 Implementation: UN, EU and UK

UN financial sanctions can be implemented in the UK by Order in Council, but most are the subject of EU Regulations and domestic implementing regulations. There are some concerns about the time

taken to implement UN financial sanctions through EU Regulations, and about the lack of parliamentary scrutiny of Orders in Council.

UN Security Council resolutions

UN sanctions are agreed by Security Council resolutions under [Article 41 of the UN Charter](#). These resolutions are binding on the UK (Articles 2 and 25 of the UN Charter) and their obligations override those under other treaties (Article 103 of the Charter) – potentially even the European Convention on Human Rights (ECHR).¹⁸⁰

UN Security Council resolutions on sanctions require UN Member States to implement them ‘without delay’ – a term that has been interpreted as meaning ideally ‘within a matter hours’ of a designation by the UN:

The phrase without delay means, ideally, within a matter of hours of a designation by the United Nations Security Council or its relevant Sanctions Committee (e.g. the 1267 Committee, the 1988 Committee, the 1718 Sanctions Committee or the 1737 Sanctions Committee). For the purposes of S/RES/1373(2001), the phrase without delay means upon having reasonable grounds, or a reasonable basis, to suspect or believe that a person or entity is a terrorist, one who finances terrorism or a terrorist organisation. In both cases, the phrase without delay should be interpreted in the context of the need to prevent the flight or dissipation of funds or other assets which are linked to terrorists, terrorist organisations, those who finance terrorism, and to the financing of proliferation of weapons of mass destruction, and the need for global, concerted action to interdict and disrupt their flow swiftly.¹⁸¹

The Charter itself binds the UK government under international law, and the UK’s [United Nations Act 1946](#) gives the government the power under domestic law to enforce UN sanctions through Orders in Council. These Orders must be laid before Parliament, but otherwise have no parliamentary scrutiny.

The Government’s use of Orders in Council under the 1946 Act for asset-freezing measures to implement UN Security Council resolutions on terrorist finance was strongly criticised in the first case heard by the UK Supreme Court, *Ahmed & Ors v HM Treasury*. In its January 2010 judgment,¹⁸² Lord Hope said that the lack of parliamentary scrutiny was ‘wholly unacceptable’:

¹⁸⁰ The House of Lords in *R (Al-Jedda) v Secretary of State for Defence* [2007] UKHL 58 said that where a measure taken by the UK to implement its UN obligations was inconsistent with any other international obligation (including the ECHR), the UN obligation prevailed. But the European Court of Human Rights subsequently said that the UN resolution had not in this case obliged the UK to intern the person, so there was no conflict: *Al-Jedda v The United Kingdom*, application no 27021/08, judgment of 7 July 2011.

¹⁸¹ [Financial Action Task Force](#) (an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction), [International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations](#), February 2012, updated October 2015, pp123-4

¹⁸² [2010] UKSC 2

Conferring an unlimited discretion on the executive as to how those resolutions, which it has a hand in making, are to be implemented seems to me to be wholly unacceptable. It conflicts with the basic rules that lie at the heart of our democracy.¹⁸³

Lord Rodger agreed:

the making of an Order, which, in effect, amounts to permanent legislation conferring powers to affect, directly, very basic domestic law rights of citizens and others lawfully present in the United Kingdom goes well beyond the general power to make Orders in Council conferred by section 1(1) of the United Nations Act 1946. If such measures are to be taken, it is for Parliament to deliberate and to determine that the benefits of giving the Treasury such powers outweigh the potential disadvantages and that it is accordingly expedient to adopt these measures in order to enable the United Kingdom to fulfil its obligations under SCR 1373.¹⁸⁴

EU Regulations

UN financial sanctions are now generally given effect in the UK through EU Regulations.¹⁸⁵

The EU Regulations are adopted anything from a few days to a few weeks after the Security Council resolution. This means there can be a gap between the UN sanctions being agreed and them taking effect in the UK.

The EU can also reinforce UN financial sanctions by applying stricter and/or additional measures, and it can also impose its own financial sanctions. This is also done through Regulations.

Although EU Regulations have 'direct effect', binding EU citizens and business directly, those on financial sanctions tend to need UK secondary legislation too,¹⁸⁶ for example to impose custodial penalties.

All sanctions need to be reviewed regularly to assess whether they are being effective, meeting their objectives and not breaching human rights. This means that the UK secondary legislation is frequently amended, and/or drafted to allow people or businesses subsequently added to the list to be covered automatically ('ambulatory references').

¹⁸³ Para 45

¹⁸⁴ Para 174

¹⁸⁵ See [EU restrictive measures factsheet](#), 29 April 2014

¹⁸⁶ Under section 2(2) of the *European Communities Act 1972*

Box 3: Implementing the 2011 Libya sanctions

The Government has used Orders in Council under the *United Nations Act 1946* to implement UN sanctions speedily before an EU Regulation is made. The last time it did so was in relation to Libya:

- 26 February 2011:** The UN Security Council passed a resolution on sanctions against Libya.¹⁸⁷
- 27 February 2011:** The UK made an Order in Council¹⁸⁸ to implement the sanctions, convening an emergency Privy Council at Windsor within hours (on a Sunday) to do so.¹⁸⁹
- 2 March 2011:** The EU adopted a Regulation implementing the new UN sanctions and introducing additional EU measures.¹⁹⁰
- 3 March 2011:** The UK passed a regulation in almost identical terms to the Order in Council, but with references to the EU Regulation instead of the Security Council resolution.¹⁹¹

There is more information on the current [financial sanctions in relation to Libya](#) on the gov.uk website.

16.3 The Bill

Clause 88 defines EU and UN financial sanctions in relation to their founding statutes and other sanctions with respect to the UK's *Anti-terrorism, Crime and Security Act 2001* and the *Counter-Terrorism Act 2008*. The explanatory notes provide examples of the types of legislation caught by the provisions of the Bill:

834 The definition includes an EU financial sanctions Regulation, and a statutory instrument made under section 2(2) of the European Communities Act 1972 to implement it into UK domestic law. For example, the Iran (European Union Financial Sanctions) Regulations 2016, which implement the financial sanctions regime contained in EU Regulation 1267/2012, as amended.

835 The definition includes UK legislation which is enacted in order to directly implement a UN financial sanctions Regulation. For example, the Libya (Financial Sanctions) Order 2011, which implemented UNSCR 1970 adopted on 26 February 2011.

836 The definition includes a freezing order made under section 4 of the Anti-terrorism, Crime and Security Act 2001. An example of such an order is the Andrey Lugovoy and Dmitri Kovtun Freezing Order 2016 (SI 2016/67), which froze the assets of the

¹⁸⁷ UN Security Council Resolution 1970 (2011), 26 February 2011

¹⁸⁸ [Libya \(Financial Sanctions\) Order 2011](#), SI 2011/548, 27 February 2011

¹⁸⁹ For information on the role and powers of the Privy Council see [Commons Briefing Paper 7460](#), 8 February 2016

¹⁹⁰ [Council Regulation \(EU\) No 204/2011](#), 2 March 2011

¹⁹¹ [Libya \(Asset-Freezing\) Regulations 2011](#), SI 2011/605, 3 March 2016

two men assessed by a public inquiry on 21 January 2016 to have been responsible for the poisoning of Alexander Litvinenko.

837 The definition also includes a direction given under paragraph 13 of Schedule 7 to the Counter-Terrorism Act 2008 which includes requirements not to enter into or continue business transactions with a designated person. An example of such a direction is contained in the Financial Restrictions (Iran) Order 2012, which prohibited British businesses from dealing with Iranian banks.¹⁹²

Criminal penalties for breaching financial sanctions

It is a criminal offence to breach a financial sanction, without an appropriate licence or authorisation from HM Treasury. The Bill would increase some of the maximum penalties available from two to seven years' imprisonment.

Sanctions implemented by EU Regulations

Penalties for breaching sanctions that are implemented by EU Regulations are limited by the general restriction on penalties for breaching EU obligations set out in [paragraph 1\(1\)\(d\) of Schedule 2 to the European Communities Act 1972](#) (ECA). This states that secondary legislation setting a penalty for breaching an EU obligation cannot impose more than a maximum of two years' imprisonment (on indictment) or three months' imprisonment (on summary conviction) and/or a fine.

Clause 89 of the Bill would not itself increase the maximum custodial penalty available for breaching EU financial sanctions, but would allow UK secondary legislation to do so. It would disapply the two-year restriction in the ECA (not for the first time)¹⁹³ and allow regulations implementing EU financial sanctions to impose a maximum of seven years' imprisonment following conviction on indictment. This would match the maximum penalty available for breaching a UK terrorist asset freeze under the *Terrorist Asset-Freezing etc. Act 2010*.

The Government has said that the statutory instruments currently implementing financial sanctions under the ECA will be amended by further regulations once the Bill is enacted so that these new penalties apply.¹⁹⁴

Other related offences

Some other related anti-terrorism offences also currently have maximum penalties of two years on indictment and/or a fine:

- Breach of a freezing order under section 4 of the *Anti-terrorism, Crime and Security Act 2001*. These orders are limited to two years and must be kept under review.

¹⁹² [Explanatory notes, pp834-837](#)

¹⁹³ See for example [Criminal Justice Act 1993 s70\(2\)](#); [Countryside and Rights of Way Act 2000 s81\(2\)](#); [Criminal Justice Act 2003 ss307\(2\)\(3\) and 336](#); [Coroners and Justice Act 2009 ss143\(1\) and 182\(1\)\(c\)](#) (with [s180](#)); [Enterprise and Regulatory Reform Act 2013 ss75, 78 and 103\(1\)](#)

¹⁹⁴ HM Treasury, [Policing and Crime Bill Factsheet: Financial Sanctions](#), February 2016, para 9

- Breach of directions under Schedule 7 to the *Counter-Terrorism Act 2008*.

Clause 90 would increase the maximum penalties for some of these offences to seven years on indictment, in line with clause 89 and the *Terrorist Asset-Freezing etc. Act 2010*. Others would remain at two years' maximum on indictment.

The most serious breaches of trade embargoes – which usually also apply to countries which are the target of sanctions – attract a maximum penalty of 10 years' imprisonment.¹⁹⁵

Monetary Penalty Regime

Clause 91 would allow the Treasury to levy a fine when a sanctions offence is too serious to be dealt with by "a mere warning letter" but not serious enough in either "extent and circumstances to justify a criminal prosecution". The civil standard of proof will apply in such cases. The maximum fine is either £1,000,000 or 50% of the total value of the breach, whichever is the greater. Later subsections of the clause ((6) to (10)) require reviews of the maximum penalties which can be altered by regulation subject to the affirmative procedures.

Clause 92 would set out the procedural rules for the penalty regime. The key checks and safeguards are:

- Treasury must notify the individual and give them an opportunity to make representations in defence;
- After a final decision is made the individual can request a review by a Minister (of the Crown – not necessarily a Treasury Minister (3)) who has the full range of options from cancellation to upholding the decision. This review must be "carried out by the Minister personally" (5);
- All decisions are subject to judicial review.

Clause 93 would extend the regime in cases where the original offender is a corporate or other business form. In addition to the original fine if, on the balance of probabilities (the civil law test) the action which occurred:

- (a) took place with the consent or connivance of the officer, or
- (b) was attributable to any neglect on the part of the officer.¹⁹⁶

Then the officer of the company/body could also be fined according to the scale in clause 92.

Clause 94 would require the Treasury to publish guidance on the use of this power and of fines made under it.

Other enforcement measures

Clause 95: deferred prosecution agreements (DPAs).

DPAs are procedures which have been used a great deal in the United States when dealing with all types of financial crimes by companies – eg

¹⁹⁵ [Export Control Order 2008](#) (SI 2008/3231) Arts 34-36

¹⁹⁶ Clause 93 (1)

money laundering or bribery – but they have only recently become available to UK Regulators and prosecutors.

DPA's were introduced on 24 February 2014, under the provisions of [Schedule 17 of the Crime and Courts Act 2013](#). They are determined by the Serious Fraud Office. It describes the key features of this process:

- They enable a corporate body to make full reparation for criminal behaviour without the collateral damage of a conviction (for example sanctions or reputational damage that could put the company out of business and destroy the jobs and investments of innocent people).
- They are concluded under the supervision of a judge, who must be convinced that the DPA is 'in the interests of justice' and that the terms are 'fair, reasonable and proportionate'
- They avoid lengthy and costly trials
- They are transparent, public events¹⁹⁷

The first UK DPA was agreed with Standard Bank in [November 2015](#).

Clause 96: serious crime prevention orders

Serious Crime Prevention Orders (SCPOs) are a civil order designed to prevent, restrict or disrupt serious crime through prohibitions, restrictions or requirements. They were introduced by the *Serious Crime Act 2007*. The Crown Court can make an SCPO when sentencing a person who has been convicted of a serious offence. The orders can be made against individuals, bodies corporate, partnerships or unincorporated associations. The power is very broad, with the Act giving non-exhaustive lists of examples of prohibitions, restrictions or requirements.¹⁹⁸ Breach of an order is a criminal offence.

Clause 96 would add a breach of financial sanctions legislation to the list of offences for which a SCPO could be given.

Implementing UN sanctions: temporary Treasury regulations

Clauses 97 and 98 of the Bill address the potential gap between passing a UN financial sanctions resolution and adopting the EU Regulations to implement them.

The Government can currently use Orders in Council under the 1946 Act to implement UN financial sanctions resolutions speedily before the EU passes an implementing Regulation (see Box 3 above). But, perhaps reflecting the Supreme Court's criticism in the *Ahmed* case of the lack of parliamentary scrutiny for these Orders,¹⁹⁹ the Bill proposes a different method.

Clauses 97-98 would allow the Treasury to create temporary regulations (subject to the negative procedure) enforcing the UN financial sanctions.

¹⁹⁷ [Serious Fraud Office website](#)

¹⁹⁸ Section 5

¹⁹⁹ *Ahmed & Ors v HM Treasury* [\[2010\] UKSC 2](#)

The temporary regulations would last until the EU Regulations take effect, or for up to 30 days (extendable once by up to 30 days longer) from when the UN sanctions were agreed, whichever comes first. The temporary regulations would be able to impose criminal penalties for breach which would be the same as the newly-increased maximum penalties in **clause 89** (see above).

The Government considers that the negative procedure is appropriate, because financial sanctions regulations made under section 2(2) of the ECA are currently subject to the negative procedure, and because using the affirmative procedure might prevent the Government from implementing a sanctions regime within 48 hours of a UN Security Council resolution.²⁰⁰ It recognises that regulations made in this way would 'almost certainly' breach the convention whereby a negative SI is laid for at least 21 days prior to coming into force, but hopes to mitigate this by producing a template for temporary financial sanctions regulations for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee to look at.²⁰¹

Another option would be for the regulation to take effect as soon as it was laid, but to require approval by affirmative resolution within a stated period as a condition of continuance.

In the *Ahmed* case, Lord Rodger had suggested that temporary Orders in Council could be made under the 1946 Act until Parliament legislated:

I consider, however, that section 1(1) would authorise Her Majesty to make an Order in Council, even with these far-reaching effects, provided that it had only a limited life-span and was replaced, as soon as practically possible, by equivalent legislation passed by Parliament. In this way the United Kingdom could promptly fulfil its obligations under the United Nations Charter.²⁰²

²⁰⁰ Home Office, [Policing and Crime Bill: Delegated Powers Memorandum](#), February 2016, paras 248-51

²⁰¹ Home Office, [Policing and Crime Bill: Delegated Powers Memorandum](#), February 2016, para 252

²⁰² [\[2010\] UKSC 2](#) para 176

17. National Crime Agency: collaboration agreements and powers

17.1 Background

What is the NCA?

The National Crime Agency is a national body dealing with cross border and international crime. It was put on a statutory basis by the [Crime and Courts Act 2013](#) and was launched on 7 October 2013.

When the NCA was created, it brought together officers and staff from the following predecessor organisations:

- The Serious Organised Crime Agency (SOCA)
- The Police Central e-Crime Unit (PCeU)
- The Child Exploitation and Online Protection Centre (CEOP),
- The Criminal and Financial Investigation (CFI) Border function of the Home Office

The National Crime Agency was launched in 2013.

It has since also taken over some functions and staff from the former National Fraud Authority (NFA).

The NCA's main job is to lead the fight against serious crime and organised crime, either through its own activities or through working with the police and other law enforcement agencies

Its job is to lead the fight against serious and organised crime.

A key difference between the NCA and SOCA is that it has the power to direct Chief Police Officers and others in certain circumstances.²⁰³ The Act provides for voluntary two-way tasking and assistance arrangements between the NCA, and UK law enforcement partners and others. However, if voluntary agreements cannot be made, or made in time then the Director General can issue a direction to the chief officer.²⁰⁴

The NCA has four Commands

- [Organised Crime Command \(OCC\);](#)
- [Border Policing Command \(BPC\);](#)
- [Economic Crime Command \(ECC\);](#)
- [Child Exploitation and Online Protection \(CEOP\) Command.](#)

In addition, the [National Cyber Crime Unit \(NCCU\)](#) works across all these commands on domestic and international law enforcement activity to tackle cyber crime threats.

NCA powers

The NCA has around 4,500 officers, who can be given one or more of the following:

²⁰³ [Section 5](#), *Crime and Courts Act 2013*. Background is in [Library Research Paper 13/4](#)

²⁰⁴ Further detail can be found in the NCA/Home Office, [Framework Document for the National Crime Agency](#), October 2013

- The powers and privileges of a constable
- The powers of an officer of Revenue and Customs
- The powers of an immigration officer

At the end of 2014, over 2,000 officers had powers.²⁰⁵

17.2 The Bill

Clauses 102 and 103 and **schedule 12** would make changes to the arrangements under which the NCA may enter into collaboration agreements with other law enforcement agencies and the enforcement powers with which the NCA's Director General can designate officers.

The Bill would allow the NCA to enter into collaboration agreements with more than one force.

Clause 102 would change the wording of the power to enter into collaboration agreements. As things stand the wording does not allow the NCA to enter into a collaboration agreement with just one force. Clause 102 would correct this.

Clause 103 would enable officers to be designated with the powers of a "general customs official" as defined in the *Borders Citizenship and Immigration Act 2009*. This conferral power needs updating because Border Force officials have taken over general customs work so giving the NCA officers the powers of an officer of Revenue and Customs no longer gives them access to new general customs powers

²⁰⁵ NCA, [Annual Report and Accounts 2014-15](#)

18. Requirements to confirm nationality

18.1 Requirement to state nationality

Clause 104 would insert new sections 43A and 43B into the *UK Borders Act 2007* which would have effect across the UK.

Under new section 43A any arrested person asked by an immigration officer or constable to state his nationality would be required to do so. New section 43B makes non-compliance an offence, whether no information or false or incomplete information is provided. Those who can show a reasonable excuse for non-compliance will have a defence.

Under new section 43A such a request of an arrested person can be made only where the immigration officer or constable suspects the person may not be a British citizen. The immigration officer or constable must inform the arrested person that he may commit an offence should he fail to comply with the request. A written record must be made of the request and this must be done in the presence of the arrested person.

The offence created by new section 43B is summary-only.²⁰⁶ The maximum penalty in England in Wales are six months imprisonment and an unlimited fine or both. In Scotland the maximum penalty is 12 months imprisonment and a fine not exceeding £5000 or both. In Northern Ireland the maximum penalty is 6 months imprisonment and a fine not exceeding £5000 or both.

The [explanatory notes](#) to the Bill state **clause 104** is designed to help establish a person's identity early in the criminal justice process, which would allow criminal records checks to be requested from the right county, and to facilitate immigration checks.

The Bill would require an arrested person to state his nationality if asked by an immigration officer or police officer.

The changes aim to establish identity at an early stage in proceedings

18.2 Requirement to produce nationality document

Clause 105 would insert new sections 46A, 46B and 46C into the *UK Borders Act 2007* which would have effect across the UK.

New section 46A creates a requirement that an arrested person due to be released - before a charging decision is taken or after a decision to charge - must comply with a request by an immigration officer or constable to produce an immigration document. The arrested person must be given a written notice requiring him to produce an immigration document no later than 72 hours after his release. The notice must clarify the document to be produced and how it is to be produced. It must warn the arrested person that he may commit an offence should he fail to comply.

Non-compliance in the absence of a reasonable excuse would be an offence under new section 46C. The new section clarifies that deliberate

²⁰⁶ Summary-only offences are those tried without a jury.

destruction or disposal of a nationality document is not a reasonable excuse, unless it was done for a reasonable cause or beyond the arrested person's control. It also makes clear that 'reasonable cause' does not include attempts to delay or increase the chances of success in a claim or application, nor does it include following advice on immigration applications (unless it is unreasonable to expect the arrested person not to follow that advice). The offence is summary-only with the same maximum penalties as those for the offence under new section 43B.

New section 46B would allow immigration documents to be retained by an immigration officer or constable where they suspect that the arrested person may be liable to removal from the UK and retaining the document may facilitate the removal.

The Bill's [explanatory notes](#) state **clause 105** has two functions: to verify any statement made on arrest, and to assist in the enforcement of subsequent immigration action.

18.3 Requirement to give information in criminal proceedings

The *Criminal Procedure Rules* require that criminal courts in England and Wales record a defendant's name, address and date of birth. There is currently no sanction should the defendant refuse to give this information. Nor is there a requirement to record a defendant's nationality. **Clause 106** would insert new section 86A into the *Courts Act 2003*, creating an offence of failing to comply with the requirement to give information in criminal proceedings. The clause applies only to England and Wales.

Under new section 86A (1) a defendant is required to provide a criminal court with his name, date of birth and nationality if the information is requested of him. In the absence of a reasonable excuse a failure to do is an offence under new section 86A (3). The offence is summary only and the maximum penalty is six months imprisonment or a fine or both. Under new section 86A (6) the court that requested the information may deal with any suspected defence under this new section at the same time as dealing with the alleged offence that brought the defendant before the court.

To safeguard the privilege against self-incrimination, new section 86A (4) provides that the information provided cannot be used as evidence in any other criminal proceedings against the defendant.

19. Child sexual exploitation – streaming indecent images

Background

Sections 48 to 50 of the *Sexual Offences Act 2003* (SOA) are concerned with the sexual exploitation of children. Under section 51 of the Act, a child is sexually exploited if:

- they offer or provide sexual services in return for payment; or
- an indecent image is recorded

There has been uncertainty as to whether the streaming of indecent images of children is a “recording” for the purposes of the SOA.²⁰⁷

The Bill

Clause 107 would amend the SOA to ensure that it covers situations where indecent images are streamed via the internet or transmitted by other means (e.g. via CCTV).

This would apply to England and Wales only.

²⁰⁷ Ministry of Justice, [Policing and Crime Bill Factsheet: Live streaming of indecent images of a child](#), February 2016

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