

POLICING AND CRIME BILL
DELEGATED POWERS MEMORANDUM
MEMORANDUM BY THE HOME OFFICE

Introduction

1. This Memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Policing and Crime Bill. The Bill was introduced in the House of Lords on 14 June 2016. The memorandum identifies the provisions of the Bill which confer powers to make delegated legislation. It explains in each case why the power has been taken and the nature of, and reason for, the procedure selected. The memorandum has been prepared by the Home Office and HM Treasury.
2. The Bill gives effect to the Conservative Party's manifesto commitment to "finish the job of police reform". The Bill is in nine Parts:
 - Part 1 places a duty on police, fire and ambulance services to collaborate, enables Police and Crime Commissioners ("PCCs") to take on responsibility for fire and rescue services where a local case is made, and abolishes the London Fire and Emergency Planning Authority and transfers its functions to the London Fire Commissioner. It also provides for inspection of fire and rescue services.
 - Part 2 reforms the police disciplinary and complaints systems, provides for a new system of "super-complaints" and confers new protections on police whistle-blowers. This Part also further strengthens the independence of HM Inspectorate of Constabulary and ensures that it is able to deliver end-to-end inspections of the police.
 - Part 3 better enables chief officers to make the most efficient and effective use of their workforce by giving them the flexibility to confer a wider range of powers on police staff and volunteers and conferring a power on the Home Secretary to specify police ranks in regulations. This Part also strengthens the accountability and transparency of the Police Federation for England and Wales.
 - Part 4 contains a number of reforms to police powers, including to: pre-charge bail to put a stop to people remaining on bail for lengthy periods with no independent judicial scrutiny of its continued necessity; provide for the retention of biometric material where a person has committed an offence outside of England and Wales; the powers under sections 135 and 136 of the Mental Health Act 1983 to stop vulnerable people experiencing a mental health crisis being detained in police custody; to the Police and Criminal Evidence Act 1984 to ensure that 17 years olds who are detained in police custody are treated as children for all purposes; to extend the geographical reach of police enforcement powers so that they can effectively detect and investigate any offence on ships at sea; and to provide for cross-border powers of arrest.

- Part 5 makes further provision in respect of the term of office of Deputy PCCs and confers a power on the Home Secretary to change the name of a police area by regulations.
- Part 6 amends the Firearms Acts, including to better protect the public by closing loopholes that can be exploited by criminals and terrorists and by ensuring that, through statutory guidance, robust background checks are made on the suitability of persons to hold a firearms licence or shotgun certificate.
- Part 7 amends the Licensing Act 2003 to make the licensing system more effective in preventing crime and disorder.
- Part 8 strengthens the enforcement regime for EU, UN and other financial sanctions by increasing the maximum custodial sentence on conviction for a breach offence, introducing new enforcement powers including monetary penalties, and by providing for the immediate implementation of UN-mandated sanctions.
- Part 9 includes miscellaneous and general provisions, including an amendment to the Sexual Offences Act 2003 to better protect children and young people from sexual exploitation. This Part also contains provision to: require arrested persons to state their nationality; for suspected foreign nationals to produce their nationality document(s) following arrest; for defendants in criminal proceedings to provide their name, date of birth and nationality to the court; to give police and immigration officers further powers to seize cancelled foreign travel documents; to provide lifelong anonymity for victims of forced marriage and to provide for statutory guidance in respect of the licensing of taxis and private hire vehicles.

PART 1: EMERGENCY SERVICES COLLABORATION

Schedule 1, paragraph 5 – new section 4A(1) of the Fire and Rescue Act 2004: Power to provide for PCC to be fire and rescue authority

Power conferred on: Secretary of State

Power exercisable by: Order made by statutory instrument

Parliamentary procedure: Negative procedure

3. As set out within the Government’s response to its consultation on emergency services collaboration, *Enabling closer working between the emergency services: consultation responses and next steps* published on 26 January 2016, the Government intends to enable PCCs to take on responsibility for fire and rescue services where it would be in the interests of economy, efficiency and effectiveness or public safety and where a local case is made. This builds on the Government’s manifesto commitment to “enable fire and police services to work more closely together and develop the role of our elected and accountable Police

and Crime Commissioners”. Chapter 2 of Part 1 to the Bill gives effect to these proposals.

4. The Government does not intend to mandate the transfer of fire and rescue services to PCCs and the policy intention is that arrangements for PCCs seeking responsibility for their local fire and rescue authority should be locally determined. Given this approach, it is necessary to confer on the Secretary of State delegated powers to give effect to changes in the governance arrangements in a particular area. Accordingly, new section 4A(1) of the Fire and Rescue Services Act 2004 (“the 2004 Act”) provides a power, by order, to create a new corporation sole as the fire and rescue authority for the area covered by the order and for the PCC for that area to be that fire and rescue authority. Before making an order under new section 4A(1), the Bill requires the Home Secretary to be satisfied that such an order would be in the interests of economy, efficiency and effectiveness, or in the interests of public safety (new section 4A(5)). Given this requirement for a PCC’s proposals to meet one or other (or both) of these tests, this again necessitates leaving the implementation of changes to the governance of particular fire and rescue services to secondary legislation so that a judgement as to the efficacy of the proposals can be taken on a case-by-case basis. This is consistent with the Government’s broader position in relation to the local devolution of powers as provided for in the Cities and Local Government Devolution Act 2016.
5. New Schedule A1 to the 2004 Act (as inserted by paragraph 12 of Schedule 1 to the Bill) sets out the procedure for orders under new section 4A. Such an order may only be made if a PCC brings forward a proposal on which they have consulted locally (new section 4A(4) and paragraph 3 of new Schedule A1). Where an upper-tier local authority does not support the proposal put forward by the PCC, paragraph 4 of new Schedule A1 requires the Home Secretary to obtain an independent assessment of the proposal.
6. New sections 4B and 4D and 4G of the 2004 Act set out the further provisions that may be made by an order made under new section 4A.
7. The Government’s policy is that where a PCC takes on responsibility for the governance of fire and rescue services, the area served by the new style fire and rescue authority must be coterminous with the police force area. In cases where police and fire and rescue boundaries are not coterminous, new section 4B(1) enables an order under new section 4A to amend the boundaries of the relevant fire and rescue authorities. It is expected that a PCC’s proposal would set out any proposed boundary changes, and the Secretary of State will have regard to these when considering whether it would be in the interests of economy, efficiency and effectiveness or public safety for the order to be made. The power cannot be used to alter police force areas; the procedure in section 32 of the Police Act 1996 (“the 1996 Act”) will continue to apply.
8. By virtue of new section 4D, an order under new section 4A may also make various supplementary provision, including about the delegation of functions of the new authority to a deputy PCC, the sub-delegation of functions by that deputy PCC and the delegation of functions to employees of the fire and rescue

authority. The Government considers that it is preferable to make bespoke provision in an order made under new section 4A rather than generic provision, of restricted application, on the face of the 2004 Act.

9. New section 4G of the 2004 Act particularises the transitional provision that can be made by an order under new section 4A of the 2004 Act by virtue of the existing powers in section 60(2) of the 2004 Act. This is intended to confirm that an order under section 4A can, if local arrangements should require, include provision for a PCC specified in that order to act as a shadow FRA to exercise preparatory functions in a period prior to assuming full responsibility for fire and rescue functions. Such functions may relate for example to governance matters or financial matters where the PCC may have a role in setting the fire precept that they would inherit. The powers also enable provision to be made, after the order is fully in force, for the equalisation of council tax precepts over a specified period where fire and rescue authority areas are altered by a section 4A order. This will enable council tax referendum principles to be adhered to and would avoid sudden rises in council tax bills in some areas of the new authority.
10. By virtue of section 60(5) of the 2004 Act, orders made under new section 4A(1) are subject to the negative procedure. The Government considers that the negative procedure affords an adequate level of parliamentary scrutiny. The Bill itself sets out the core element of the new governance model – namely, that the PCC for a police force area becomes the fire and rescue authority for the same area. In enacting this legislation, Parliament would have approved the new governance model and the framework for PCCs to take on the functions of fire and rescue authorities, subject to local consultation and other procedures (including an independent assessment of the proposal where it is not agreed by the relevant council(s)) provided for in new Schedule A1 to the 2004 Act in any particular case. The application of the negative procedure for such orders is consistent with the existing provisions in section 2 of the 2004 Act where orders creating new combined fire and rescue are similarly subject to the negative procedure.

Schedule 1, paragraph 5 – new section 4C(2) of the Fire and Rescue Act 2004: Power to make schemes for the transfer of staff, property, rights and liabilities of existing fire and rescue authority to newly created fire and rescue authority

Schedule 1, paragraph 5 – new section 4I(1) of the Fire and Rescue Act 2004: Power to make schemes for the transfer of staff, property, rights and liabilities from a fire and rescue authority to chief constable

Clause 8 – new section 107EC(1) of the Local Democracy, Economic Development and Construction Act 2009: Power to make schemes for the transfer of staff, property, rights and liabilities from a fire and rescue authority to chief constable

Power conferred on: Secretary of State

Power exercisable by: Statutory scheme

Parliamentary procedure: None

11. New section 4C(2) of the 2004 Act confers a power on the Secretary of State to make one or more schemes for the transfer of property, rights and liabilities from an existing fire and rescue authority to a new PCC-type fire and rescue authority created by order under section 4A.
12. New section 4I(1) of the 2004 Act confers a power on the Secretary of State to make one or more schemes for the transfer of property, rights and liabilities from a fire and rescue authority to the chief constable if an order is made under section 4H creating the single employer model (see below).
13. New section 107EC(1) of the Local Democracy, Economic Development and Construction Act 2009 (“the 2009 Act”) enables an order under new section 107EA(2) (see below) which establishes the single employer model in a mayoral combined authority area to make provision for the making of a scheme for the transfer of property, rights and liabilities from a fire and rescue authority or the combined authority to the chief constable.
14. Such transfer schemes essentially make provision consequential on an order made under new section 4A or 4H or new section 107EA and 107EC of the 2009 Act, as the case may be. The Government considers it appropriate that the details of transfers of staff, property, rights and liabilities, which may be very technical and complex, should be set out in a transfer scheme. There are a number of precedents for such matters to be left to delegated legislation, including in sections 300 to 302 of the Health and Social Care Act 2012 (“the 2012 Act”) and Schedule 8 to the Crime and Courts Act 2013 (“the 2013 Act”).
15. A transfer scheme made under these provisions is not subject to any parliamentary procedure (as is the case with schemes made under the 2012 Act and 2013 Act). The Government considered this appropriate given that such a scheme is directly consequential upon the provisions made in an order under new section 4A or 4H of the 2004 Act or new section 107EA and 107EC of the 2009 Act. Given the local nature of any scheme, the Government also considers that it is not necessary in this instance to provide for such schemes to be laid before parliament, their content will nonetheless be given appropriate publicity in the relevant area.

Schedule 1, paragraph 5 – new section 4H(1) of the Fire and Rescue Act 2004: Power to make provision about delegation of functions of fire and rescue authority to chief constable and further delegation by chief constable

Power conferred on: Secretary of State

Power exercisable by: Order made by statutory instrument

Parliamentary procedure: Negative procedure

Clause 8 – new section 107EA(2) of the Local Democracy, Economic Development and Construction Act 2009: Power to make provision about

delegation of fire and rescue functions of a combined authority mayor to chief constable and further delegation by chief constable

Power conferred on: Secretary of State

Power exercisable by: Order made by statutory instrument

Parliamentary procedure: Affirmative procedure

16. The Government's response to its consultation on emergency services collaboration, *Enabling closer working between the emergency services: consultation responses and next steps* set out the Government's intention that where a PCC takes on responsibility for their local fire and rescue service, they may additionally create a single employer for police and fire staff, facilitating the sharing of back office functions and streamlining management (the "single employer" model). New section 4H of the 2004 Act provides for the single employer model where a PCC has assumed responsibility for the governance of a fire and rescue authority and new section 107EA of the 2009 Act, as amended by the Cities and Local Government Devolution Act 2016, provides for the single employer model where a mayor for the area of a combined authority (a combined authority mayor) has assumed (by exercise by the Secretary of State of powers under sections 105, 105A, 107D and 107F of the 2009 Act), the functions of a fire and rescue authority and of a PCC. New sections 4H and 107EA confer a power on the Secretary of State to provide for the delegation of the fire and rescue functions of a PCC-type fire and rescue authority or of a combined authority mayor, as the case may be, to the chief constable of a police force for the police area which corresponds to the authority's area and for the chief constable to further delegate those functions to their officers, police civilian staff and fire and rescue staff. Orders under new section 4H of the 2004 Act are also subject to the procedure in new Schedule A1 to the 2004 Act (subject to appropriate modifications as set out in paragraph 7 of that Schedule). Orders under new section 107EA of the 2009 Act are subject to an analogous procedure as set out in new section 107EB of the 2009 Act, although there are important differences between the two sets of procedures to reflect the arrangements for combined authority mayors. As with orders made under new section 4A of the 2004 Act, the Government considers that this is an appropriate matter to be provided for in secondary legislation given the need to make bespoke provision for a given area based on proposals initiated locally by the PCC (or by a combined authority mayor) and which draws on the structure and governance arrangements for police forces and fire and rescue services which sits across two principal enactments (that is the 2004 Act and the Police Reform and Social Responsibility Act 2011 ("the 2011 Act")).

17. An order under new section 4H of the 2004 Act can be combined with an order under section 4A or may be made subsequent to it. In either case, the PCC's proposal must set out why he or she considers it to be in the interests of economy, efficiency and effectiveness or public safety for the order to be made. In accordance with new Schedule A1, the PCC must also have consulted locally on their proposal.

18. In the case of an order under new section 107EA of the 2009 Act, the mayor must similarly set out why he or she considers it to be in the interests of economy, efficiency and effectiveness or public safety for the order to be made. There is no comparable duty on a mayor, as there is on a PCC, to consult relevant local authorities or the public, but in submitting a request to the Secretary of State to make a section 107EA order, he or she must provide a summary of the responses to any public consultation that has been carried out and of the representations (if any) which the mayor has received from the constituent members of the combined authority.
19. By virtue of section 60(5) of the 2004 Act, orders made under new section 4F(1) are subject to the negative procedure. The Government considers that the negative procedure affords an adequate level of parliamentary scrutiny. The Bill itself provides for the single employer model by establishing the principle that functions of a PCC-style fire and rescue authority may be delegated to the chief constable of the police area that corresponds to the area of the fire and rescue authority. In enacting this legislation, Parliament would have approved the single employer model and the framework for chief constables to take on certain functions of fire and rescue authorities, subject to mandatory local consultation and other procedures (including an independent assessment of the proposal where it is not agreed by the relevant council(s)) provided for in new Schedule A1 of the 2004 Act in any particular case. In these circumstances, the negative procedure affords an appropriate level of scrutiny for any order giving effect to the single employer model in any given area. The application of the negative procedure for such orders is consistent with the existing provisions in section 2 of the 2004 Act where orders creating new combined fire and rescue authorities and setting out arrangements for the exercise of their functions are similarly subject to the negative procedure.
20. By virtue of section 117(2) of the 2009 Act, orders under new section 107EA are subject to the affirmative procedure. This higher level of scrutiny reflects differences between the PCC and mayoral models, particularly the procedure for making section 107EA orders as compared with that applicable for orders made under section 4H of the 2004 Act, for example the absence of a statutory duty to consult. It also reflects the contrast between the detail in the Bill for arrangements for the new PCC-style FRA model – see in particular new Schedule A2 to the 2004 Act (inserted by section 4L(1)) and new section 4D - and that in the 2009 Act for arrangements where a combined authority is conferred functions, including where a combined authority mayor exercises PCC and or fire functions. The application of the affirmative procedure for such orders is therefore consistent with the existing provisions in Part 6 of the 2009 Act where orders creating new combined authorities and conferring powers on a mayor are similarly subject to the affirmative procedure.

Schedule 1, paragraph 5 - new section 4K(1) of the Fire and Rescue Services Act 2004: Power to make provision amending Part 2 of the Police Reform Act 2002, in respect of police officers and police staff where fire and rescue functions are delegated to chief constable for police area

Power conferred on: Secretary of State

Power exercisable by: *Order made by statutory instrument*

Parliamentary procedure: *Affirmative procedure*

Schedule 1, paragraph 5 - new section 4K(2) of the Fire and Rescue Services Act 2004: Power to make provisions in regard to the handling of complaints and conduct matters etc in relation to fire staff where fire and rescue functions are delegated to chief constable for police area

Power conferred on: *Secretary of State*

Power exercisable by: *Order made by statutory instrument*

Parliamentary procedure: *Negative procedure*

Schedule 1, paragraph 5 - new section 4K(4) of the Fire and Rescue Services Act 2004: Power to amend Part 2 of the Police Reform Act 2002 consequential on any provision made under section 4I(2)

Power conferred on: *Secretary of State*

Power exercisable by: *Order made by statutory instrument*

Parliamentary procedure: *Affirmative procedure*

Clause 8 - new section 107EE(1) of the Local Democracy, Economic Development and Construction Act 2009: Power to make provision amending Part 2 of the Police Reform Act 2002, in respect of police officers and police staff where fire and rescue functions are delegated to chief constable for police area

Power conferred on: *Secretary of State*

Power exercisable by: *Order made by statutory instrument*

Parliamentary procedure: *Affirmative procedure*

Clause 8 - new section 107EE(2) of the Local Democracy, Economic Development and Construction Act 2009: Power to make provisions in regard to the handling of complaints and conduct matters etc in relation to fire staff where fire and rescue functions are delegated to chief constable for police area

Power conferred on: *Secretary of State*

Power exercisable by: *Order made by statutory instrument*

Parliamentary procedure: *Affirmative procedure*

Clause 8 - new section 107EE(4) of the Local Democracy, Economic Development and Construction Act 2009: Power to amend Part 2 of the Police Reform Act 2002 consequential on any provision made under section 107EE(2)

Power conferred on: Secretary of State

Power exercisable by: Order made by statutory instrument

Parliamentary procedure: Affirmative procedure

21. As described above, new section 4H of the 2004 Act (and new section 107EA of the 2009 Act) provides for the single employer model under which a PCC (or combined authority mayor) may delegate functions of a PCC-type fire and rescue authority to the chief constable of a police force for the police area which corresponds to the authority's area and for the chief constable to further delegate those functions to their officers and both police and fire and rescue staff. Where such an order has been made and the PCC (or mayor) is operating under the single employer model, it is intended that the complaints procedures for the police should, so far as possible, also apply to fire and rescue staff in the same way as they apply to police staff.
22. New section 4K(1) confers a power on the Home Secretary to amend Part 2 of the Police Reform Act 2002 ("the 2002 Act") as a consequence of an order being made under section 4F of the 2004 Act that would enable the delegation of any fire and rescue authority related functions to police officers and police staff. Such consequential amendments might include, for example, expanding the definition of 'serious injury' in section 29(1) of the 2002 Act to reflect the differing nature of a 'serious injury' when police officers and staff undertake a fire and rescue authority-related function.
23. New section 4K(2) enables the Home Secretary by order to make provision for the handling of complaints about fire and rescue service authority staff so that the approach broadly mirrors, with any necessary modifications, that of the complaints procedure for police officers and police staff under Part 2 of the 2002 Act. This applies to staff transferred to a chief constable under a scheme made under new section 4I(1) or members of staff appointed by a chief constable under new section 4I(4).
24. New section 4K(4) enables the Home Secretary to make any necessary amendments to Part 2 of the 2002 Act as a consequence of an order made under new section 4K(2). Such amendments might include an extension to the Independent Police Complaints Commission's ("IPCC") functions under section 10 of the 2002 Act and an expansion of the list of persons to whom the IPCC must send its annual report (section 11(6) of that Act).
25. Before exercising these powers, the Home Secretary must consult the Police Advisory Board, the IPCC, persons considered by the Home Secretary to represent the views of PCCs and fire and rescue authorities, and other persons considered appropriate (see new section 4K(5)).

26. New section 107EE(1), (2) and (4) of the 2009 Act contain equivalent order-making powers where the single employer model operates in an area with a combined authority mayor exercising fire and rescue functions and the functions of a PCC.
27. Taken together, these powers will enable the framework for the investigation of complaints etc against police officers in Part 2 of the 2002 Act to be applied with the necessary modifications to fire and rescue authority staff operating under the direction and control of a chief constable under the single employer model. The new sections to be inserted into the 2004 and 2009 Acts establish the principle that, in such cases, the framework in Part 2 of the 2002 Act is to apply, accordingly the Government is satisfied that the necessary amendments to that Part and its application to fire and rescue authority staff is an appropriate matter to be left to secondary legislation.
28. By virtue of section 60(4) of the 2004 Act, the powers in new section 4K(1) and (4) of that Act are subject to the affirmative procedure as befitting Henry VIII powers of this kind. The prospective amendments to Part 2 of the 2002 Act, for example extending the functions of the IPCC, are significant and it is therefore appropriate that both Houses should be afforded the opportunity to debate and approve such changes.
29. By virtue of section 60(5) of the 2004 Act, the power in new section 4I(2) of that Act is subject to the negative procedure. Given that such an order must make corresponding or similar provision to that set out in Part 2 of the 2002 Act, rather than establish a wholly different complaints framework for fire and rescue staff, the Government considers that the negative procedure affords an appropriate level of parliamentary scrutiny. This order-making power is analogous to those in section 26C of the 2002 Act (which relates to National Crime Agency officers), section 28 of the Commissioners for Revenue and Customs Act 2005 (which relates to officers of HM Revenue and Customs) and section 41 of the Police and Justice Act 2006 (which relates to immigration officers). These powers are similarly exercisable subject to the negative resolution procedure.
30. By virtue of section 117(2) of the 2009 Act, orders under new section 107EE(1), (2) and (4) are all subject to the affirmative procedure. This higher level of scrutiny in the case of a section 107EE(2) order reflects differences in the procedure for making section 107EA orders as compared with that applicable to orders under section 4H of the 2004 Act, in particular the absence of a statutory duty to consult. The application of the affirmative procedure for such orders is also consistent with the existing provisions in Part 6 of the 2009 Act where orders creating new combined authorities are similarly subject to the affirmative procedure.

**Schedule 1, paragraph 5 – new section 4L(2) of the Fire and Rescue Act 2004:
Power to apply local policing provisions to Fire and Rescue Authority created
under new section 4A**

Power conferred on: Secretary of State

Power exercisable by: Order made by statutory instrument

Parliamentary procedure: Affirmative procedure where amending or repealing primary legislation, otherwise negative procedure

Clause 8 - new section 107EF(1) and (4) of the Local Democracy, Economic Development and Construction Act 2009: Power to apply local policing provisions to Fire and Rescue Authority created under new section 107EA

Power conferred on: Secretary of State

Power exercisable by: Order made by statutory instrument

Parliamentary procedure: Affirmative procedure

31. New section 4L(1) of, and new Schedule A2 to, the 2004 Act apply legislation relating to PCCs to a PCC-style FRA. While new Schedule A2 applies, with necessary modifications, the key provisions in the 1996 Act and 2011 Act, it is likely to be necessary to apply, with modifications, other relevant legislation. Accordingly, new section 4L(2) of the 2004 Act confers power on the Secretary of State to apply (with or without modifications) or to make provisions corresponding or similar to any provisions of a local policing enactment in relation to a new PCC-style FRA. This includes a power to apply or make provision corresponding or similar to any provisions made by an order or regulations (subsection (3)) and to make consequential amendments, revocations or repeals to any enactment (subsection (4)). These powers are required to enable the Secretary of State to apply provisions (in addition to those covered in new Schedule A2) that currently apply to a PCC in relation to their policing functions to a PCC acting as a fire and rescue authority. The provisions to be made by such an order are essentially consequential upon the new governance and single employer models provided for on the face of the Bill and are therefore considered to be matters which may be appropriately left to secondary legislation.

32. New section 107EF(1) and (4) confer equivalent order-making powers in the context of the operation of the single employer model by the mayor of a combined authority.

33. By virtue of section 60(4) and (5) of the 2004 Act, the powers in new section 4K(2) and (4) of that Act is subject to the affirmative procedure where regulations amend or repeal primary legislation (as befitting Henry VIII powers of this kind), but in any other case are subject to the negative procedure. Given the provision made in the Bill for the key modifications and amendments (see new Schedule A2 to the 2004 Act and paragraphs 77 and 81 of Part 2 of Schedule 1 to the Bill), the consequential nature of the provisions that may be made by an order under new section 4K and the fact that such an order would be applying, with any necessary modifications, provision already set out in primary legislation (principally the 2011 Act), the Government considers that the negative procedure affords an adequate level of parliamentary scrutiny where no textual amendments to primary legislation are being made.

34. By virtue of section 117(2) of the 2009 Act, orders under new section 107EF(1), and (4) of that Act are all subject to the affirmative procedure. This higher level of scrutiny in the case of a section 107EF order reflects differences in the procedure for making section 107EA orders as compared with that applicable to orders under section 4H of the 2004 Act, in particular the absence of a statutory duty to consult and the existing different legislative model for combined authority mayors. The application of the affirmative procedure for such orders is also consistent with the existing provisions in Part 6 of the 2009 Act where orders creating new combined authorities are similarly subject to the affirmative procedure.

Clause 10(1): Power to make schemes for the transfer of staff, property, rights and liabilities from the London Fire and Emergency Planning Authority to the London Fire Commissioner

Power conferred on: Secretary of State

Power exercisable by: Statutory scheme

Parliamentary procedure: None

35. Clause 10 confers a power on the Secretary of State to make one or more schemes for the transfer of property, rights and liabilities of London Fire and Emergency Planning Authority (“LFEPA”) to the London Fire Commissioner.

36. Such transfer schemes essentially make provision consequential on the provisions in clause 10 of, and Schedule 2 to, the Bill which abolish the LFEPA and establish the London Fire Commissioner in its place. The Government considers it appropriate that the details of transfers of staff, property, rights and liabilities, which may be very technical and complex, should be set out in a transfer scheme. There are a number of precedents for such matters to be left to delegated legislation, including in sections 300 to 302 of the Health and Social Care Act 2012 and Schedule 8 to the Crime and Courts Act 2013.

37. A transfer scheme made under these provisions is not subject to any parliamentary procedure. The Government considered this appropriate given that such a scheme is directly consequential upon the provisions made on the face of the Bill. Given that the impact of any scheme is confined to London, the Government also considers that it is not necessary in this instance to provide for such schemes to be laid before parliament, their content will nonetheless be given appropriate publicity in London.

Clause 11(2) – new section 28(A7)(e) of the Fire and Rescue Services Act 2004: Power to specify additional functions of a PCC-style fire and rescue authority which are not subject to inspection

Power conferred on: Secretary of State

Power exercisable by: Order made by statutory instrument

Parliamentary procedure: Negative procedure

38. The 2004 Act provides powers to inspect FRAs. In particular, section 28 provides for the appointment of inspectors, assistant inspectors and other officers and confers powers on them to obtain information about the manner of discharge of functions by FRAs.
39. Clause 11(2) inserts new subsections (A1) to (A9) into section 28 of the 2004 Act. These new subsections provide for a new method of appointment of inspectors (“English inspectors”), assistant inspectors and other officers for England. The subsections also introduce a requirement on the English inspectors to inspect and report on the efficiency and effectiveness of FRAs in England. New subsection (A6) provides that when carrying out an inspection under subsection (A3), an English inspector must not review or scrutinise decisions made, or other action taken, by an FRA created by an order under new section 4A of the 2004 Act (as inserted by Schedule 1 to the Bill) in connection with the discharge of an excluded function. (New section 4A provides for the creation of PCC-style FRAs.) New subsection (A7) sets out the relevant excluded functions, namely the functions of preparing a fire and rescue plan and a fire and rescue statement (within the meaning of new Schedule A2), the functions that an authority has in its capacity as a major precepting authority for the purposes of Part 1 of the Local Government Finance Act 1992, the function of appointing a chief finance officer under new section 4D(4), where functions of the authority have been delegated to a chief constable under an order under new section 4H, and the functions conferred on the authority by section 4J(4) and (5). In addition, paragraph (e) of new subsection (A7) further provides that the Secretary of State may specify additional functions or additional functions of a description specified as excluded functions for the purposes of subsection (A6).
40. Subsection (6) of clause 11 further amends the modifications of section 28 of the Police Reform and Social Responsibility Act 2011 (see paragraph 8(2) of new Schedule A2 to the 2004 Act, as inserted by Schedule 1 to the Bill) to provide that the references in subsection (6) of that section are to the functions of the relevant FRA that are excluded functions for the purposes of section 28(A6) of this Act. The effect of this provision is that responsibility for scrutinising the excluded functions of a PCC-style FRA will rest with the Police and Crime Panel.
41. As indicated in paragraph 4 above, the Government does not intend to mandate the transfer of fire and rescue services to PCCs and the policy intention is that arrangements for PCCs seeking responsibility for their local FRA should be locally determined. There is a requirement that before an order under new section 4A is made establishing a PCC as the FRA for an area, that the Home Secretary is satisfied that making the order would be in the interests of economy, efficiency and effectiveness, or in the interests of public safety (new section 4A(5)). This requirement for a PCC’s proposals to meet one or other (or both) tests necessitates leaving the implementation of changes to the governance of particular fire and rescue services to secondary legislation as stated in paragraph 4 above. The policy intention is that the excluded functions of a fire and rescue authority created by an order under new section 4A are those strategic functions which a PCC has not delegated in exercise of the power in new section 4D(10),

or where functions have been delegated to a chief constable under new section 4H, those functions which the PCC has not delegated in exercise of the power in new section 4H(1). However, where the PCC has not delegated functions connected with the operation of the fire and rescue service, those functions are to be subject to inspection and so are not to be excluded functions. This policy intention necessitates enabling additional functions to be specified in secondary legislation, consequential on a section 4A or 4H order, to reflect local arrangements for the delegation of functions. The intention is also to exclude functions of the PCC which are not currently set out in primary legislation, but will be provided for within the section 4A order establishing the PCC as an FRA. For example, where the PCC has not delegated the function of approving a contract for services or equipment over a specified limit, the specified limit or the nature of the retained function may vary according to local arrangements.

42. By virtue of section 60(5) of the 2004 Act, orders made under new section 28(A7)(e) will be subject to the negative procedure. The principle that certain functions of a PCC-style FRA are not to be subject to inspection will have been established in primary legislation. Moreover, the key statutory strategy functions of a PCC-style FRA which are to constitute excluded functions are similarly to be set out in primary legislation. Given these factors, the Government considers that the negative procedure provides an appropriate level of parliamentary scrutiny in respect of regulations specifying any additional excluded functions. As described above, there is also a close connection between orders made under new section 28(A7)(e) and those made under new section 4A which are also to be subject to the negative procedure.

PART 2: POLICE COMPLAINTS, DISCIPLINE AND INSPECTION

Chapter 1: Police complaints

Clause 12 - new section 13A(6) of the Police Reform Act 2002: Power to make provisions in connection with the giving and withdrawal of notices by the local policing body to the chief officer under section 13A(1) regarding the exercise of complaints-related functions.

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

43. Clause 12 inserts new section 13A into the 2002 Act which enables local policing bodies (that is, PCCs, the Mayor's Office for Policing and Crime ("MOPAC") and the Common Council of the City of London) to take on certain functions in relation to complaints against the police. New section 13A(1) of the 2002 Act provides for the mechanism by which a local policing body may assume certain such functions. That mechanism takes the form of the local policing body giving notice to the chief officer that it (rather than the chief officer) is to take on responsibility for the exercise of certain functions in relation to the complaints system.

44. New section 13A(6) enables the Home Secretary to make regulations about the giving and withdrawing of these notices.
45. The regulations will specify the process for the giving and withdrawing of the notices. It is envisaged that the regulations will set out who must be consulted before a notice can be given, for example, the chief officer. The regulations may also specify the minimum notice period before the withdrawal of a notice takes effect and any minimum intervals between the giving and withdrawal of a notice. These provisions will ensure that there is adequate time for a chief officer to put in place alternative arrangements to discharge the functions which are to revert to the force and to prevent the local policing body continually changing its position on those complaints related functions that it will exercise rather than the chief officer.
46. Given the procedural nature of the matters to be addressed in these regulations, the Government considers that they are properly a matter for secondary legislation. The regulation-making power also affords the flexibility to amend the procedures, for example the list of consultees or the specified minimum interval between the giving and withdrawal of a notice, in the light of experience with the operation of these new arrangements.
47. By virtue of section 105(2) of the 2002 Act, this power will be subject to the negative procedure. Given the procedural nature of the regulations and the duty to consult the Police Advisory Board for England and Wales (by virtue of section 63 of the 1996 Act) – and take into account any representations it makes – and others (see section 24 of the 2002 Act), the negative procedure is considered to provide an appropriate level of scrutiny.

Clause 14(3) – revised section 20(4)(d) of the Police Reform Act 2002: Power to specify additional matters in respect of which complainant must be kept properly informed

Clause 14(7) – revised section 21(9)(c) of the Police Reform Act 2002: Power to specify additional matters in respect of which an interested person must be kept properly informed

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

48. Clause 14(3) replaces the existing section 20(4) of the 2002 Act. The revised provision places a duty on the IPCC or the appropriate authority (namely the chief officer or local policing body) to keep a complainant properly informed, while the complaint is being handled and subsequently, of the matters listed in revised section 20(4). Those matters include the progress of the handling of the complaint and its outcome, any right to apply for a review of the outcome, and any other matters specified in regulations made by the Secretary of State.

49. Clause 14(7), which replaces the existing section 21(9) of the 2002 Act, makes similar provision in respect of interested persons' (for example, the next of kin of a person who died following contact with the police) in relation to a complaint, conduct matter or death or serious injury ("DSI") matter.
50. New section 20(4) replaces the provisions in the current system of complaints. Currently, the appropriate authority is required to contact the complainant at five specific stages (see existing section 20(4)) where there is an investigation into a complaint. There are also various notification duties on the appropriate authority when a complaint is not investigated (see Part 1 of Schedule 3 to the 2002 Act). New section 20(4) consolidates and simplifies these existing measures regarding when a complainant needs to be informed about his/her complaint. New section 21(9) similarly consolidates and simplifies existing provisions regarding when 'interested persons' need to be informed about the progress of the handling of complaints, conduct matters and DSI matters and their outcome. Taken together, these provisions create a less prescriptive complaints system.
51. Whilst the core requirements regarding those matters about which a complainant must be kept informed will continue to be set out in primary legislation, these regulation-making powers afford the flexibility to add to this list of matters in the light of changing circumstances and the operation of the reformed complaints system. Before exercising these powers, the Home Secretary will be required to consult the bodies specified in section 24 of the 2002 Act and the Police Advisory Board for England and Wales (by virtue of section 63 of the 1996 Act) and take into consideration any representations made by that Board.
52. By virtue of section 105(2) of the 2002 Act, these powers will be subject to the negative procedure. Given the core elements of the duty to keep a complainant and interested persons' informed will be set out in primary legislation and these powers can only be exercised so as to add to the matters about which the complainant and interested persons must be kept informed about, the negative procedure is considered to provide an appropriate level of scrutiny.

Schedule 5, paragraph 6(3) – new paragraph 6(2D) of Schedule 3 to the Police Reform Act 2002: Power to specify exceptions to the duty to investigate certain complaints

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercisable by:</i>	<i>Regulations made by statutory instrument</i>
<i>Parliamentary procedure:</i>	<i>Negative resolution</i>

53. Paragraph 6(3) of Schedule 5 to the Bill, which inserts new sub-paragraphs (2A) to (2E) into paragraph 6 of Schedule 3 to the 2002 Act, places a new duty on appropriate authorities to take "reasonable and proportionate action" (see new paragraph 6(2A) of Schedule 3 to the 2002 Act) to resolve a complaint. This replaces the existing provisions which require the appropriate authority to

categorise a complaint as suitable for local resolution, local investigation or disapplication.

54. New paragraph 6(2C) of Schedule 3 to the 2002 Act specifies the circumstances in which the appropriate authority must, in order to comply with its duty to take reasonable and appropriate action to resolve a complaint, investigate the complaint on its own behalf. The circumstances specified by sub-paragraph (2C) are that there is an indication that: (i) a person serving with the police may have committed a criminal offence, or behaved in a manner that would justify the bringing of disciplinary proceedings; or (ii) there may have been the infringement of a person's Article 2 (right to life) or 3 (prohibition of torture) rights under the European Convention on Human Rights.

55. However, there will be cases where, despite the application of sub-paragraph (2C), an investigation will not be an appropriate response. For example, if an individual raises a complaint relating to a matter which is substantially the same as a separate complaint on the same matter which has already been investigated to an outcome.

56. Whilst the overarching duty on the appropriate authority to take reasonable and proportionate action to resolve a complaint will always remain, the regulation-making power in new paragraph 6(2D) of Schedule 3 to the 2002 Act will allow the Secretary of State to specify the circumstances in which the appropriate authority does not have to conduct an investigation in order to comply with this overarching duty, even when the threshold to do so has been met. Leaving such matters to secondary legislation ensures that there is flexibility to vary the circumstances where the duty to investigate does not apply in the light of experience in operating the reformed complaints system.

57. By virtue of section 105(2) of the 2002 Act, this power is subject to the negative procedure. Given that the duty on the appropriate authority to take reasonable and proportionate action to resolve a complaint will remain, and the complainant has a right of review at the outcome of his/her complaint if he/she believes the outcome was not reasonable and proportionate, the negative procedure is considered to provide an appropriate level of scrutiny.

Schedule 5, paragraphs 10(2), 13(2) and 14(2) – paragraphs 5(1A), 14(1A) and 14D(1A) of Schedule 3 to the Police Reform Act 2002: Power to require the IPCC to determine that it is necessary for a complaint, recordable conduct matter or DSI matter concerning a chief officer or the Deputy Commissioner of Police of the Metropolis to be investigated

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

58. Under the existing system, the appropriate authority (the chief officer or local policing body) is required to refer certain complaints and recordable conduct

matters, and all death and serious injury (DSI) matters, to the IPCC. The IPCC must then determine whether or not it is necessary for the complaint or matter to be investigated and, if it decides that it is necessary, determine the form of investigation. However, there is no requirement for the appropriate authority to refer a complaint or recordable conduct matter which concerns a chief officer, or the Deputy Commissioner of Police of the Metropolis, to the IPCC, simply because the complaint or matter concerns such a person. Furthermore, although the appropriate authority may voluntarily choose to refer such a complaint or matter to the IPCC, there is no requirement for the IPCC to always investigate it (although the IPCC could choose to conduct an independent investigation following such a referral). The same applies regarding DSI matters.

59. Where an appropriate authority does not refer a complaint or recordable conduct matter to the IPCC, it usually investigates itself, appointing a chief officer of a different police force as the investigator. New paragraphs 5(1A), 14(1A) and 14D(1A) of Schedule 3 to the 2002 Act will enable the Secretary of State to require the IPCC to investigate all, or descriptions of, complaints, recordable conduct matters and DSI matters concerning a chief officer or the Deputy Commissioner of Police of the Metropolis. Regulations may also provide that the investigation is not to take the form of an investigation by the appropriate authority on its own behalf. The intention is that regulations will, at least initially, limit this to complaints and recordable conduct matters where there is an allegation of misconduct or gross misconduct, with the aim being to increase transparency in the process for handling allegations relating to chief officers. It will prevent a situation where a chief officer investigates a complaint or matter which concerns the conduct of another chief officer.

60. Alongside this, the Government intends to amend the regulations made under paragraphs 4 and 13 of Schedule 3 to the 2002 Act to mandate the referral of all complaints and recordable conduct matters concerning allegations of misconduct or gross misconduct of chief officers to the IPCC.

61. By virtue of section 105(2) of the 2002 Act, these regulation-making powers are subject to the negative procedure. Any regulations made under the new paragraphs 5(1A), 14(1A), and 14D(1A) of Schedule 3 of the 2002 Act would be subject to consultation with the IPCC and the representative bodies for chief officers and PCCs (see section 24 of the 2002 Act) and the Police Advisory Board for England and Wales (by virtue of section 63(3) of the 1996 Act). Given these consultation requirements and the procedural nature of the regulations, the Government is satisfied that the negative procedure affords an adequate level of parliamentary scrutiny.

Schedule 5, paragraph 15(9) – new paragraph 15(10) of Schedule 3 to the Police Reform Act 2002: Power to specify exceptions to the duty to notify complainants and interested parties of the IPCC’s determination on the form of investigation and the reasons for it.

Schedule 5, paragraph 37(8) – New paragraph 26(5B) of Schedule 3 to the 2002 Act: Power to specify exceptions to duty to notify various parties of the ‘Mode of Investigation’ determination for a re-investigation following a review.

Clause 17(1) – New section 13B(12) of the Police Reform Act 2002: Power to specify exceptions to duty to notify various parties of the ‘Mode of Investigation’ determination following a decision to reopen an investigation under section 13B.

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

62. Currently when the IPCC makes a determination as to the form of an investigation into a complaint, recordable conduct matter or DSI matter should take, it must inform the appropriate authority of that decision under paragraph 15(8) of Schedule 3 to the 2002 Act. The IPCC does not, however, have to disclose its reasons for that decision. There is also no requirement for the IPCC to inform the complainant (in the case of complaints) or any interested parties of that decision, or the reasons for it.

63. Paragraph 15(8) of Schedule 5 to the Bill amends paragraph 15(8) of Schedule 3 to the 2002 Act to require the IPCC, when informing the appropriate authority of its decision as to the form of investigation, to provide its reasons for that decision.

64. Paragraph 15(9) of Schedule 5 to the Bill inserts new paragraph 15(9) to (11) into Schedule 3 to the 2002 Act. New paragraph 15(9) places an obligation on the IPCC to inform the complainant (in the case of complaints) and interested parties (as defined in section 21 of the 2002 Act) of the determination and the reasons for it. This requirement applies regardless of which form of investigation the IPCC has determined is most appropriate (an investigation by the appropriate authority, a ‘directed’ investigation or an independent investigation by the IPCC).

65. Paragraph 25 of Schedule 3 to the 2002 Act, as amended by paragraph 34 of Schedule 5 to the Bill, enables the IPCC following a review to direct that a complaint be re-investigated. Paragraph 26(2) of Schedule 3, as amended, then requires the IPCC to make a determination as to the form of the re-investigation. New paragraph 26(5) and (5A) of Schedule 3 provides that the IPCC, as with a paragraph 15 determination, must notify the relevant parties (the appropriate authority, complainant and other interested persons) where they make a mode of investigation decision following a direction to reinvestigate a complaint following a paragraph 25 review. New paragraph 26(5B) provides that the duty to notify the complainant and other interested parties under paragraph 26(5A) is subject to exceptions provided for in regulations.

66. New section 13B of the 2002 Act, inserted by clause 17(1) of the Bill, enables the IPCC to require a complaint, conduct matter or DSI matter to be reinvestigated where it is satisfied that there are compelling reasons for doing so. New section 13B(3) then requires the IPCC to make a determination as to the form of the re-investigation. New section 13B(10) and (11) provides that the IPCC, as with a paragraph 15 determination, must notify the relevant parties (the appropriate

authority, complainant and other interested persons) where they make a mode of investigation decision following a determination to require a re-investigation. New section 13B(12) provides that the duty to notify any complainant and other interested parties under new section 13B(11) is subject to exceptions provided for in regulations.

67. These changes aim to increase the level of transparency and scrutiny around this part of the IPCC's decision-making process. However, there will be times when it would not be appropriate for the IPCC to disclose its decision on the form of investigation and/or the reasons for it to the complainant and any interested parties. This could be when covert surveillance of the officer under investigation will be required or if disclosure of the form of investigation decision would prejudice another ongoing investigation.

68. The duty to inform the complainant and interested parties of the decision and the reasons for that decision is therefore subject to exceptions as may be provided for by regulations made by the Secretary of State under new paragraph 15(10). There is an analogous power in section 20(5) to (8) of the 2002 Act and new paragraph 15(11) applies the provisions in section 20(6) to (8) to the exercise of the power in new paragraph 15(10). It is envisaged that the exceptions provided for in regulations made under new paragraph 15(10) will be consistent with those specified in regulations made under section 20(5) (see regulation 13 of the Police (Complaints and Misconduct) Regulations 2012 (SI 2012/1204)). As with the power in section 20, the Government considers that the detail as to the circumstances where the duty to notify the complainant and other interested persons should not apply may properly be left to secondary legislation, not least to provide the flexibility to modify such exceptions in the light of operational experience.

69. By virtue of section 105(2) of the 2002 Act, this regulation-making power is subject to the negative procedure. Whilst such regulations will, in effect, provide for a derogation from the obligations imposed on the IPCC in primary legislation, the regulation-making power is significantly circumscribed by section 20(6) of the 2002 Act. For this reason and in view of the precedent provided by the directly comparable regulation-making power in section 20(5), the negative procedure is considered to provide an appropriate level of scrutiny.

Schedule 5, paragraph 21 – new paragraph 19A(5) of Schedule 3 to the Police Reform Act 2002: Power to make provision as to procedure to be followed in connection with an investigation to which paragraph 19A applies

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

70. Paragraph 21 of Schedule 5 to the Bill substitutes a new paragraph 19A of Schedule 3 to the 2002 Act in place of the existing paragraphs 19A to 19E of that Schedule. Those paragraphs place a duty on the person investigating a

complaint, where there is an indication that a member of a police force or special constable may have committed a criminal offence or behaved in a manner justifying the bringing of disciplinary proceedings, or a recordable conduct matter, to assess (i) whether the conduct concerned, if proved, would amount to misconduct or gross misconduct and (ii) what form any disciplinary proceedings in respect of the conduct would be likely to take (termed a 'severity assessment'). They then set out special procedure that is to apply to such investigations, including procedure provided for in regulations (see paragraph 19D of Schedule 3 to the 2002 Act) as to the interview of persons whose conduct is being investigated. The new paragraph 19A of Schedule 3 to the 2002 Act essentially re-enacts these provisions in a streamlined form.

71. New paragraph 19A(5) provides a regulation-making power which will enable the Secretary of State to make provision setting out how an investigation that meets the conditions in paragraph 19A(2) to (4) should proceed. The conditions in paragraph 19A(2) to (4) are essentially the same as described above, with one slight change to reflect the new category of 'directed' investigations (see new paragraph 19A(3)).
72. It is intended that the regulations will specify the actions required of an investigator in such cases, in particular the need for a 'severity assessment' in relation to the conduct of the person concerned, and any requirements on others to provide certain information to the appropriate authority in connection with the investigation.
73. The intention here, and elsewhere in Chapter 1 of Part 2 of the Bill, is to simplify the complaints legislation, including by transferring more of the detailed procedural requirements from primary to secondary legislation, thereby mirroring the approach in respect of the police disciplinary system (where the procedural requirements sit predominantly in secondary legislation – see Part 3 of the Police (Conduct) Regulations 2012, which covers similar ground to that set out in the existing paragraphs 19A to 19E of Schedule 3 to the 2002 Act).
74. By virtue of section 105(2) of the 2002 Act, this regulation-making power is subject to the negative procedure. The Government considers this affords an appropriate level of parliamentary scrutiny given the essentially procedural matters to be dealt with in the regulations (see above and new paragraph 19A(6) for examples of the kind of matters which it is envisaged the regulations will cover). Moreover, the negative procedure is consistent with that provided for in sections 50 and 51 of the Police Act 1996 under which the Police (Conduct) Regulations are made and with the existing power in paragraph 19D of Schedule 3 to the 2002 Act (which is superseded by this new power).

Schedule 5, paragraph 23 – new paragraph 20A(3) of Schedule 3 to the Police Reform Act 2002: Power to determine accelerated procedure in special cases

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure:

Negative resolution

75. Paragraph 23 of Schedule 5 to the Bill substitutes new paragraph 20A of Schedule 3 to the 2002 Act for the existing paragraphs 20A to 20I. Those paragraphs provide for an accelerated procedure for the investigation of complaints and recordable conduct matters in cases where the investigator believes that the appropriate authority would, on consideration of the matter, conclude that (i) there is sufficient evidence of gross misconduct by a member of a police force or special constable, and (ii) it is in the public interest for that person to cease to be a member of a police force or special constable without delay. As with the changes made by paragraph 21 of Schedule 5 to the Bill, the intention here is to simplify the legislative framework for the police complaints system as provided for in Part 2 of the 2002 Act, including by transferring more of the detailed procedural requirements to secondary legislation, reflecting the approach taken with the police disciplinary system.
76. In place of the accelerated procedures set out in the existing paragraphs 20A to 20I of Schedule 3 to the 2002 Act, new paragraph 20A(3) confers on the Secretary of State a power to provide for such procedures in regulations.
77. The regulations will specify the actions required of an investigator in a case where the investigator (or the IPCC in the case of a 'directed' investigation) believes that the appropriate authority would, on consideration of the matter, conclude that the special conditions (as described above) are met. In particular, these regulations will provide detail for how a report to the appropriate authority or the IPCC outlining why the case meets the special conditions will be submitted. It will also outline the decisions required by the appropriate authority and the IPCC once an investigator has submitted the report.
78. By virtue of section 105(2) of the 2002 Act, this regulation-making power will be subject to the negative procedure. The Government considers this affords an appropriate level of parliamentary scrutiny given the essentially procedural matters to be dealt with in the regulations (see above and new paragraph 20A(4) for examples of the kind of matters which it is envisaged the regulations will cover). Moreover, the negative procedure is consistent with that provided for in sections 50 and 51 of the Police Act 1996 under which the Police (Conduct) Regulations 2012 are made (Part 5 of those regulations contain similar procedural requirements in respect of disciplinary matters).

Schedule 5, paragraph 31 – new paragraph 6A(7) of Schedule 3 to the Police Reform Act 2002: Power to make further provision about recommendations made by local policing bodies on a review of the outcome of a complaint under paragraph 6A (review where no investigation)

Schedule 5, paragraph 34(5) – new paragraph 25(4H) of Schedule 3 to the Police Reform Act 2002: Power to make further provision about recommendations made by local policing bodies on a review of the outcome of a complaint under paragraph 25 (review following an investigation)

Power conferred on:

Secretary of State

Power exercisable by: *Regulations made by statutory instrument*

Parliamentary procedure: *Negative resolution*

79. Part 4 of Schedule 5 to the Bill make a number of changes to the provisions in Schedule 3 to the 2002 Act that govern what recourse a complainant has if he or she remains dissatisfied with the outcome of his or her complaint. The current rights of appeal are replaced by a right for the complainant to apply to the relevant body for a review of the outcome of the complaint. New paragraph 6A of Schedule 3 to the 2002 Act (inserted by paragraph 31 of Schedule 4 to the Bill) covers reviews where the complaint was not investigated. Paragraph 25 of Schedule 3 to the 2002 Act, as amended by paragraph 34 of Schedule 5 to the Bill, covers reviews where the complaint was investigated. Under the new provisions, the review body will consider whether the outcome of the complaint was reasonable and proportionate. The PCC (and London equivalents) is the relevant review body for the majority of complaints handled locally by the chief constable. In their new review body role, PCCs will make recommendations (either under paragraph 6A or 25 of Schedule 3 to the 2002 Act) to the appropriate authority where they believe the original outcome of a complaint was not reasonable and proportionate. Paragraph 6A(6) and paragraph 25(4E) and (4G) set out particular recommendations that may be made by the review body in such circumstances. New paragraph 6A(7) and 25(4H) enable the Home Secretary to make further provision by regulations about recommendations under paragraph 6A(6)(a) or (b) and paragraph 25(4E)(a), (b) or (c) or (4G)(b).
80. If the chief constable decides not to implement a recommendation made by the PCC, the expectation is that they should provide a response to the PCC and complainant explaining why. These regulation-making powers allow the Secretary of State to make provision specifying how and when those responses should be provided.
81. The intention is that the requirements on a chief officer to respond will be based on those set out in paragraph 28B of Schedule 3 to the 2002 Act in respect of recommendations made by the IPCC under paragraph 28A of that Schedule. Such requirements include a duty to respond to the IPCC within 56 days. While such requirements appear on the face of the 2002 Act in respect of recommendations made by the IPCC, they relate to essentially procedural matters and are therefore considered an appropriate matter for secondary legislation. The Government notes that the requirements in respect to responses to coroners reports on action to prevent other deaths, including a requirement to respond within 56 days, is set out in regulations (see regulation 29 of the Coroners (Investigation) Regulations 2013 (SI 2003/1629)).
82. By virtue of section 105(2) of the 2002 Act, these regulation-making powers are subject to the negative procedure. The Government considers this affords an appropriate level of parliamentary scrutiny given the procedural matters to be dealt with in the regulations. This is consistent with the negative procedure that

applies to regulations made under section 43 of the Coroners and Justice Act 2009.

Schedule 5, paragraph 45 – new paragraph 28ZA(1) and (4) of Schedule 3 to the Police Reform Act 2002: Power to make regulations regarding recommendations for remedies to achieve complainant satisfaction

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

83. New paragraph 28ZA of Schedule 3 to the 2002 Act (together with other amendments to that Schedule made by Schedule 5 to the Bill) allows a local policing body and the IPCC in their role as a review body (under paragraphs 6A and 25 of Schedule 3 respectively), and the IPCC following a 'directed' or an independent investigation into a complaint (under paragraph 23), to make recommendations with a view to remedying the dissatisfaction expressed by the complainant. New paragraph 28ZA(1) confers on the Secretary of State a power to prescribe the kind of remedies that a local policing body or the IPCC may so recommend.

84. Complaints often contain a number of separate allegations and the relevant review body (and the IPCC, following receipt of an investigation report) needs to have the necessary powers to make appropriate recommendations concerning remedial steps to address the complainant's dissatisfaction.

85. The power to make provision for recommendations under this paragraph will allow the Secretary of State to provide a framework for the types of remedies that can be recommended. The Government envisages using this power to specify the possible following remedies: (i) an apology or explanation by a force; (ii) that a complaint be referred to formal mediation; and (iii) that evidence of learning or service improvement be shared with the complainant. In future, the regulations might also provide that the IPCC can recommend modest financial compensation, although this is not the current policy intention. Under the regulation-making power in new paragraph 28ZA(4), the Secretary of State will also be able to specify time limits for the appropriate authority to respond to recommendations and the persons who should be copied into responses. Having established in primary legislation the principle that local policing bodies and the IPCC may make recommendations with a view to remedying the dissatisfaction expressed by the complainant, and the framework for making such recommendations, the Government considers that the detailed provision regarding such matters as to whom recommendations may be made and to whom responses must be copied is an appropriate matter to be left to secondary legislation. These regulation-making powers also afford the flexibility to add additional recommendations over time as new ways of responding to complaints are developed.

86. The current legislation regarding complaints already contains a similar provision at paragraph 8(2) of Schedule 3 which enables the Secretary of State to make provision for the different descriptions of procedures that are available for dealing with a complaint where it is decided it is to be subjected to local resolution.

87. By virtue of section 105(2) of the 2002 Act, this regulation-making power will be subject to the negative procedure. The Government considers this affords an appropriate level of parliamentary scrutiny given the essentially procedural matters to be dealt with in the regulations (see above and new paragraph 28ZA(5) for examples of the kind of matters which it is envisaged regulations made under sub-paragraph (4) will cover), and the precedent set by the existing regulation-making power in paragraph 8(2) of Schedule 3.

Clause 22 - New section 23(2)(pa) of the Police Reform Act 2002: Power to make regulations conferring powers on local policing bodies to delegate the exercise or performance of the powers and duties conferred on them under Part 2 of the 2002 Act.

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

88. Section 23(1) of the 2002 Act confers power on the Secretary of State to make regulations regarding the procedure to be followed under any provision of Part 2 of that Act. Without prejudice to the generality of that power, section 23(2) lists a number of things, related to Part 2, which the Secretary of State may also provide for in regulations; clause 22(1) adds to that list. The power provided for in new section 23(2)(pa) will enable the Secretary of State to make regulations to allow local policing bodies to delegate their Part 2-related functions; including functions which they acquire as a result of giving a notice under new section 13A (as inserted by clause 12) (in respect of the recording of complaints and acting as the single point of contact for the complainant) and their functions regarding reviews under Schedule 3 (as amended by Part 4 of Schedule 5 to the Bill).

89. This provision complements the existing provision in section 23(2)(p) that allows the Secretary of State to make regulations conferring powers on chief officers to delegate the functions and powers conferred on them under Part 2.

90. The Government intends that regulations made under new section 23(2)(pa) will specify to whom local policing bodies may delegate their Part 2-related functions. This will allow local policing bodies to take a decision which best suits their local area – this may be through collaborating on their Part 2 functions with other PCCs (including by discharging functions at a regional level).

91. By virtue of section 105(2) of the 2002 Act, this power will be subject to the negative procedure. Given the procedural nature of the regulations, the precedent provided by section 23(2)(p) of the 2002 Act, and the duty to consult

the Police Advisory Board for England and Wales (by virtue of section 63 of the 1996 Act) – and take into account any representations it makes – and others (by virtue of section 24 of the 2002 Act), the negative procedure is considered to provide an appropriate level of scrutiny.

Clause 23 - Power to make schemes for the transfer of staff from a police force to a local policing body

Power conferred on: Local policing body

Power exercisable by: Statutory scheme

Parliamentary procedure: None

92. Clause 23 confers a power on a local policing body (namely PCCs, the Mayor's Office for Policing and Crime and the Common Council of the City of London) to make one or more schemes for the transfer of staff to itself from the police force maintained by the local policing body.

93. Under the reformed police complaints system, local policing bodies will be the relevant 'review body' for those appeals currently heard by chief constables. They will also have the ability to take on certain other responsibilities in the complaints system. Clause 23 will allow, if desirable, for the transfer of staff from the police force to the local policing body's office for the purpose of discharging these additional complaints responsibilities. The Government expects a local policing body to agree any transfer scheme with the chief constable. Exceptionally, where agreement is not possible, the Home Secretary would need to consent to the making of a transfer scheme (subsection (5)). The ability to make a transfer scheme will be particularly relevant for the larger forces that currently deal with a significant number of appeals.

94. Such transfer schemes essentially make provision consequential on the provisions in clause 23 of, and Schedule 5 to, the Bill which confer additional functions on local policing bodies under the reformed complaints system. The Government considers it appropriate that the details of transfers of staff, which may be very technical, should be set out in a transfer scheme. There are a number of precedents for such matters to be left to delegated legislation, including in sections 300 to 302 of the Health and Social Care Act 2012 and Schedule 8 to the Crime and Courts Act 2013.

95. A transfer scheme made under these provisions is not subject to any parliamentary procedure (as is the case with schemes made under the 2012 Act and 2013 Act). The Government considered this appropriate given that such a scheme is directly consequential upon the provisions made on the face of the Bill. Given that the impact of any scheme is confined to a particular police force area, the Government also considers that it is not necessary in this instance to provide for such schemes to be laid before parliament, their content will nonetheless be given appropriate publicity in the area concerned.

Chapter 2: Police super-complaints

Clause 25 – new section 29B(1) of Police Reform Act 2002: Power to designate persons eligible to make super-complaints

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

96. As set out in the consultation on *Improving police integrity: reforming the police complaints and disciplinary systems*, the Government proposes to introduce a system of policing super-complaints. A policing super-complaints system would allow organisations, such as charities and advocacy groups, to raise issues on behalf of the public about patterns or trends that could undermine the legitimacy or confidence in policing. There are three existing super-complaints systems in operation relating to competition and markets and the financial sector, run by the Financial Conduct Authority, the Competition and Markets Authority, and the Payment Systems Regulator, as provided for in sections 234C to 234G of the Financial Services and Markets Act 2000 (inserted by section 43 of the Financial Services Act 2012), section 11 of the Enterprise Act 2002 and sections 68 to 70 of the Financial Services (Banking Reform) Act 2013 respectively.

97. Organisations would have to apply to the Secretary of State, or a person specified in regulations made under new section 29B(6) of the 2002 Act, for designated body status. New section 29B(1) of the 2002 Act, read with new section 29B(2), confers a power on the Secretary of State to make or revoke a designation in regulations. Where a designated body is designated by an authorised person appointed under new section 29B(6), the Secretary of State may only make such regulations (under new section 29B(2)) in response to a request from the authorised person.

98. Given the need to assess any applicant organisation against the eligibility criteria, it is considered appropriate that the designated bodies are specified in secondary legislation. Furthermore, a regulation-making power will enable the list of designated bodies can be kept up to date. If a new body emerges who meet the criteria for designation they can be included without enacting further primary legislation. Similarly, if an existing designated body ceases to operate or no longer meets the criteria they can be removed from the provision without further primary legislation. Removal from the list would be no barrier to an organisation re-applying if they are excluded.

99. By virtue of section 105(2) of the 2002 Act, this regulation-making power is subject to the negative procedure. Having provided for the framework of the super-complaints system in primary legislation, including provision for the appointment of designated bodies, the negative procedure is considered to provide an adequate level of scrutiny for the regulations making the designations. This reflects the procedure for the similar powers under section 234C(2) of the Financial Services and Markets Act 2000, section 11(5) of the Enterprise Act 2002 and section 68(2) of the Financial Services (Banking Reform) Act 2013.

Clause 25 – new section 29B(3) and (4) of the Police Reform Act 2002: Power to specify criteria for purpose of designating persons eligible to make super-complaints

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

100. In the existing super-complaints models, the criteria for designation are determined and published by the relevant department (without any parliamentary process), and the designated bodies are then designated by order – see, for example, section 68(3) of the Financial Services (Banking Reform) Act 2013.

101. Given the range in subject matter dealt with by groups operating in the policing landscape, the varying composition of such groups and the particular sensitivities associated with policing, the Government is keen to provide a greater level of transparency and accountability when preparing and promulgating the criteria for designation. New section 29B(3) and (4) of the 2002 Act therefore confers a power on the Secretary of State to set out criteria in regulations. There is a duty to consult before the regulation-making power is exercised (new section 29B(5)); such consultees would, for example, include the National Police Chiefs' Council and persons representing Police and Crime Commissioners.

102. It is envisaged the criteria for the designated body status in a policing super-complaints system would include experience in representing the interests of the public. Candidates for designation would also need to be able to demonstrate that they had the capacity and capability to test and compile a range of evidence to form the basis for a super-complaint.

103. It is anticipated the criteria are not intended to exclude legitimate smaller organisations or groups that are newly formed. Such organisations should be encouraged to submit their evidence to a designated body with similar interests to be submitted on their behalf or as part of a wider super-complaint. For example, a local charity providing children's services could submit a complaint via Barnardo's.

104. By virtue of section 105(2) of the 2002 Act, these regulation-making powers are subject to the negative procedure. As noted above, under other super-complaints regimes the criteria for designation are not subject to any form of parliamentary control. Given the particular sensitivities associated with, and the high level of public interest in, policing, the Government considers that in this instance the negative procedure should apply.

Clause 25 – new section 29B(6) of the Police Reform Act 2002: Power to specify authorised person empowered to designate bodies eligible to make super-complaints

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

105. In the existing systems, super-complaints can only be submitted by bodies designated by the Secretary of State or the Treasury. A body can only be designated if it meets set criteria. It is expected that designated bodies will be in a strong position to represent the interests of the public, and able to provide solid analysis and evidence in support of any super-complaint. There will be a similar approach for policing super-complaints.

106. New section 29B of the 2002 Act provides for the designation of bodies authorised to make super-complaints. While the formal designation of “designated bodies” will fall to the Home Secretary in all cases (exercising the regulation-making power in new section 29B(1)), she may delegate the task of selecting designated bodies to a person specified or described in regulations (see subsection (6)). Under this power, the Home Secretary could appoint an independent person, such as a Queen’s Counsel, to make decisions on designation. The Home Secretary must then designate a body if asked to do so by this authorised person (see new section 29B(2)). We would not expect this function to be delegated to the College of Policing, IPCC or HM’s Inspectorate of Constabulary (“HMIC”) as this role could be seen to conflict with their role in the resolution of a super-complaint.

107. The ability to appoint an alternative “authorised person” to select designated bodies eligible to make super-complaints, affords a degree of flexibility should it prove desirable to appoint someone outside of the Home Office to take on this role. Such an approach may be considered appropriate if, for example, we wished to increase the level of transparency and independence in the system to encourage charities and advocacy groups to apply for designation. In addition, as any person (in all likelihood an individual rather than a body) appointed for this purpose will change over time, it would not be appropriate to specify a particular person on the face of the legislation.

108. By virtue of section 105(2) of the 2002 Act, this regulation-making power is subject to the negative procedure. In enacting these provisions, Parliament will have approved the framework of the super-complaints system, including the arrangements for designating bodies under new section 29B. Given this, the Government considers that the negative procedure affords an adequate level of parliamentary scrutiny for any regulations specifying an alternative approved person. This approach also reflects the fact that only the most significant public appointments are subject to pre-appointment hearings by select committees.

Clause 26(1) – new section 29C(1) of the Police Reform Act 2002: Power to make provision about super-complaints

Power conferred on: Secretary of State

Power exercisable by: Regulations made by regulations

Parliamentary procedure: Negative procedure

109. New section 29C(1) of the 2002 Act, inserted by clause 26, confers a power on the Secretary of State to make provision about how the super-complaints system will operate. Having established the overall framework in primary legislation, it is appropriate to set out the detail of how the system will operate in secondary legislation.
110. In making such regulations, the Home Office would work closely with HM Chief Inspector of Constabulary as the person responsible for responding to super-complaints. New section 29C(2) and (3) set out the provision that may, in particular, be made in such regulations. It is envisaged that the regulations would provide for a pre-submission process whereby a designated body would be required to enter into a dialogue with HMIC or other relevant policing body prior to the submission of a policing super-complaint in an effort to reach an informal resolution and for the consideration of a super-complaint by a panel comprising representatives of HMIC, IPCC and the College of Policing and an independent person. The regulations would also set out how the IPCC could treat part of a super-complaint as a complaint etc under Part 2 of the 2002 Act (where appropriate) and a timeframe for an initial reply to the complainant from HMIC.
111. By virtue of section 105(2) of the 2002 Act, this regulation-making power is subject to the negative procedure. The existing super-complaints regimes leave the procedure to be followed to the responsible bodies. Again, given the particular sensitivities and high level of public interest associated with policing matters, it is considered appropriate that the procedure for dealing with policing super-complaints should be subject a greater level of parliamentary scrutiny compared with the extant systems.

Chapter 3: Whistle-blowing: Power of IPCC to investigate

Clause 27(1) – new section 29E(4) of the Police Reform Act 2002: Power to make further provision about recommendations that may be made by the IPCC following a decision not to investigate a concern raised by a whistle-blower

Schedule 6 – paragraph 6(2) of new Schedule 3A to the Police Reform Act 2002: Power to further provision about recommendations that may be made by the IPCC following receipt of report into whistle-blowing investigation.

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

112. Clause 27 inserts a new Part 2A (comprising new sections 29D to 29M and new Schedule 3A) into the 2002 Act which provides for a framework for the investigation of concerns raised by police whistle-blowers.
113. Where the IPCC decides that it is not in the public interest to investigate a whistle-blowing concern, new section 29E(2) enables the IPCC to make recommendations in the light of the concern (new section 29E(2)(b)). Despite

the public interest not being satisfied, the IPCC may nevertheless have some indication or evidence that suggests improvements are necessary and will therefore be able to make recommendations to the police force.

114. In cases where the IPCC does investigate a concern raised by a whistleblower, paragraph 5 of new Schedule 3A to the 2002 Act requires the person in charge of the investigation to submit a report to the IPCC. Under paragraph 6(1) of new Schedule 3A, the IPCC may then make a recommendation in relation to any matter dealt with in the report. Upon completion of a whistle-blowing investigation, depending on the findings within the report, the IPCC may consider it necessary to make recommendations to the police force on actions that should be taken. Paragraph 6(2) of new Schedule 3A allows the Secretary of State to make further provisions about recommendations in regulations.
115. The Government envisages that these provisions will allow the IPCC to make recommendations which may suggest improvements to the police force.
116. New section 29E(5) and paragraph 6(3) of new Schedule 3A provides a non-exhaustive list of the matters that may be included in such regulations, including the kind of recommendations that may be made by the IPCC, the persons to whom a recommendation may be made (for example, the chief officer or the PCC) and provision to authorise the IPCC to require a response to a recommendation (this could include a requirement to respond within a set timeframe). Other matters that might be included in such regulations is a requirement (subject to exceptions) on the IPCC to notify the whistle-blower of the response to a recommendation.
117. Having established on the face of the Bill provision for the IPCC to make recommendations, following the receipt of a report on a whistle-blowing investigation and in cases where they decide not to investigate, the Government considers that further provision about such recommendations is an appropriate matter to be left to secondary legislation. By virtue of section 105(2) of the 2002 Act, these regulation-making powers are subject to the negative procedure. Given the procedural nature of such regulations and the fact that they will be subject to consultation (by virtue of new section 29L), the Government considers that the negative procedure provides an appropriate level of scrutiny.

Clause 27(1) – new section 29F(4) of the Police Reform Act 2002: Power to modify Schedule 3 in relation to a conduct matter for the purpose of making provision for the protection of anonymity of whistle-blowers

Schedule 6 – paragraph 4(5) of new Schedule 3A to the 2002 Act: Power to modify Schedule 3 of the Police Reform Act 2002 for the purpose of making provision for the protection of the anonymity of whistle-blowers

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

118. New section 29F requires the IPCC, upon receipt of information from a whistle-blower, to determine whether to launch a conduct investigation under Part 2 of the 2002 Act rather than a whistle-blowing investigation under new section 29D(2). Where it decides to proceed with a whistle-blowing investigation, further information may come to light in the course of the investigation which indicates that a person has committed a criminal offence or behaved in a manner that would justify the bringing of disciplinary proceedings. In such circumstances, paragraph 4 of new Schedule 3A provides that the investigation would cease to be a whistle-blowing investigation under section 29D(2) and become a conduct investigation under Part 2 of the 2002 Act. In either such circumstances the identity of the whistle-blower should continue to be protected.
119. New section 29F(4) and paragraph 4(5) of new Schedule 3A confer a power on the Secretary of State (in practice, the Home Secretary), by regulations, to modify Schedule 3 to the 2002 Act in relation to a conduct matter to ensure the identity of the whistle-blower is protected (and only for that purpose). For example, modifying paragraphs 19E and 20H to limit the information provided to the appropriate authority if that information could be used to identify the whistle-blower.
120. The principle that the identity of a whistle-blower should be protected regardless of whether a whistle-blowing investigation is conducted under new section 29D or as a conduct matter in accordance with Schedule 3 to the 2002 Act is established on the face of the Bill. Making any necessary modifications to Schedule 3 of the 2002 Act to deliver this objective is an appropriate matter to be left to secondary legislation. Any modifications will be set out in the regulations rather than by textual amendments to the 2002 Act. These regulation-making powers are narrowly focused and any regulations are subject to consultation (by virtue of new section 29L and section 63 of the Police Act 1996 (as amended by clause 27(5))), given this the Government is satisfied that the negative procedure (by virtue of section 105(2) of the 2002 Act) provides sufficient level of parliamentary scrutiny.

Clause 27(1) – new section 29H(2) of the Police Reform Act 2002: Power to specify exceptions to duty to keep whistle-blower informed

Schedule 6 – paragraph 5(3) and (5) of new Schedule 3A of the Police Reform Act 2002: Power to make provision for circumstances when the report submitted at the end of a whistle-blowing investigation should not be sent to the whistle-blower, and may be submitted to the appropriate authority without the whistle-blowers consent

Power conferred on: Secretary of State

Power exercisable by: Regulations made by regulations

Parliamentary procedure: Negative procedure

121. New section 29H(1) of the 2002 Act requires the IPCC to keep the whistle-blower informed about an investigation under section 29D(2) of his or her

concern and the outcome. New section 29H(2) enable exceptions to this duty to be specified in regulations. The power to make regulations is circumscribed. Regulations may only disapply the duty for “permitted non-disclosure purposes”, namely:

- a) preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any actual or prospective criminal proceedings;
- b) preventing the disclosure of information in any circumstances in which it has been determined in accordance with the regulations that its non-disclosure –
- c) is in the interests of national security;
- d) is for the purposes of the prevention or detection of crime or the apprehension or prosecution of offenders;
- e) is for the purposes of the investigation of an allegation of misconduct against the whistle-blower or the taking of disciplinary proceedings or other appropriate action in relation to such an allegation;
- f) is for the purposes of an investigation under Part 2 that relates to the whistle-blower;
- g) is required on proportionality grounds (see section 29HA(5)); or
- h) is otherwise necessary in the public interest.

122. Paragraph 5(1) of new Schedule 3A imposes a duty on the investigator to submit a report of the outcome of a whistle-blowing investigation to the IPCC. The IPCC must then send a copy of the report to the whistleblower (paragraph 5(2)(a)) and to the appropriate authority where the whistle-blower consents (paragraph 5(2)(b)).

123. Paragraph 5(3) enables the Secretary of State to make provisions for exceptions to the duty placed on the IPCC to copy the report to the whistleblower for any of the permitted non-disclosure purposes (paragraph 5(4)); such purposes has the same meaning as in new section 29H.

124. Paragraph 5(3) enables the Secretary of State to specify circumstances where a copy of the final report may be sent to the appropriate authority without the consent of the whistle-blower. Again such circumstances are limited to the permitted disclosure purposes (paragraph 5(6)), as defined in new section 29I of the 2002 Act.

125. By virtue of section 105(2) of the 2002 Act, these regulation-making powers are subject to the negative procedure. The analogous regulation-making power in section 20(5) of the 2002 Act is also subject to the negative procedure and, as in that instance, the grounds for derogating from the duties to keep a whistleblower informed and to disclose an investigation report are set out on the face of the 2002 Act, as amended, thereby narrowing the scope of these powers. Given this, and the requirement to consult with a wide range of interested bodies (by virtue of new section 29L), thus providing an additional measure of scrutiny and reassurance, the Government considers that the negative procedure affords an appropriate level of scrutiny.

Clause 27(1) – new section 29I(1) of the Police Reform Act 2002: Power to authorise disclosure of specific information by the IPCC for specified purposes.

Clause 27(1) – new section 29J(1) of the Police Reform Act 2002: Power to authorise disclosure of specific information by the IPCC for specified purposes.

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

126. New section 29I(1) of the 2002 Act confers a power on the Secretary of State (in practice, the Home Secretary), to set out in regulations circumstances in which the IPCC may be required or authorised to disclose to specified persons: i) the identity of a whistle-blower; and ii) the nature of a concern raised by a whistle-blower.

127. New section 29J(1) of the 2002 Act confers a power on the Secretary of State to set out in regulations circumstances in which the IPCC may be required or authorised to disclose i) information relating to a whistle-blowing investigation; and ii) information relating to the outcome of any such investigation.

128. In both instances the power to make regulations is circumscribed. Regulations may only require or authorise disclosure for “permitted disclosure purposes”, namely:

- a) the protection of the interests of national security;
- b) the prevention or detection of crime or the apprehension of offenders;
- c) the institution or conduct of criminal proceedings;
- d) the investigation of allegations of misconduct against whistle-blowers and the taking of disciplinary proceedings or other appropriate action in relation to such allegations;
- e) investigations under Part 2 that relate to whistle-blowers;
- f) investigations under this Part;
- g) any other purpose that is for the protection of the public interest.

129. Persons specified in the regulations may include the appropriate authority (namely, the chief officer of police or the local policing body) or the Crown Prosecution Service.

130. Given the range of purposes in which it might be appropriate to disclose the identity of a whistle-blower or other information of the kind set out in new section 29I(2) and 29J(2), and the need for flexibility to take account of the operation of the new Part 2B of the 2002 Act, the Government considers that these are appropriate matters to be addressed in regulations.

131. By virtue of section 105(2) of the 2002 Act, these regulation-making powers are subject to the negative procedure. These regulation-making powers are to

apply in limited circumstances (specified on the face of the 2002 Act, as amended), as described above, where the protection of the identity of a whistle-blower cannot be reasonably be expected. The regulations are subject to consultation (by virtue of new section 29L). Taking these considerations together, the Government is satisfied that the negative procedure provides an appropriate level of scrutiny.

Schedule 6 - new paragraph 2(4) of Schedule 3A to the Police Reform Act 2002: Power to specify requirements for purpose of restricting access to information relating to the whistle-blowing investigation and to prevent disclosure of such information save with the consent of the person in charge of the investigation

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

132. Paragraph 2(1) and (2) of new Schedule 3A require the person in charge of the whistle-blowing investigation and any other person designated for the purposes of the investigation not disclose the identity of the whistle-blower unless the whistle-blower consents or the disclosure is authorised by regulations made under new section 29L(1).

133. In some circumstances it is inevitable that there will need to be some engagement with a police force to obtain information and therefore a covert investigation may be necessary. Paragraph 2(4) of new Schedule 3A enables the Secretary of State to specify in regulations the requirements that the person in charge of a whistle-blowing investigation may impose to ensure that access to information is restricted to selected persons and those persons do not disclose information without the consent of the person in charge. This is to ensure that the identity of the whistle-blower is protected if he or she so wishes.

134. The Government intends to use the regulation-making power to set out that non-disclosure agreements (“NDA”) could be used to achieve this where appropriate to restrict the information to certain individuals within a force. A NDA is a contract through which parties agree not to disclose information covered by the agreement. Currently, forces use NDAs (often referred to as a secrecy notice) for a number of different reasons including preventing officers from disclosing information regarding a sensitive criminal investigation that they may be involved in.

135. The intention is that regulations will require that forces provide the IPCC, on request, with a list of contacts within each force who can be used as part of covert investigations. Where the IPCC receives a report from a whistle-blower and decides to conduct a covert investigation, the IPCC will be able to require a person from that list to sign a NDA before any information is exchanged. The IPCC will determine what information it requires from that person and by when, and it will also determine who (if anyone) is permitted to know any details of the

case. For example, it will be reasonable in many cases for the chief officer to know, but the IPCC may wish to exclude them in some cases.

136. The identified person from the police force must take all reasonable steps to provide the information to the IPCC or - if that information is not available – provide an explanation to the IPCC as to why they are unable to do so, and indicate whether the information may be obtained elsewhere. Disclosure to any third party, including other members of the police force or the local policing body, would be subject to obtaining written consent from the person in charge of the investigation. Where information is disclosed without such consent, disciplinary action may be taken where there is a breach of the NDA by a police officer or staff member. The intention is to establish a clear link between breach of a NDA and the police disciplinary system by amending the Police (Conduct) Regulations 2012 to set out details about the disciplinary sanction.

137. Such detailed arrangements in respect of NDAs, which may be subject to change in the light of operational practice, are appropriately a matter for secondary legislation.

138. By virtue of section 105(2) of the 2002 Act, this regulation-making power is subject to the negative procedure. Given that such regulations are designed to protect the identity of a whistle-blower and therefore reinforces the protections provided for on the face of the Bill, together with the fact that they will be subject to consultation (by virtue of new section 29L), the Government considers that the negative procedure affords an appropriate level of scrutiny.

Chapter 4: Police discipline

Clause 28(2) and (3): new sections 50(3A) and 51(2B) of the Police Act 1996 – Power to make regulations concerning disciplinary proceedings against former members of police forces and former special constables.

Power Conferred on: Secretary of State

Power Exercisable by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative Resolution

139. Sections 50 and 51 of the 1996 Act provide powers to make regulations related to the “maintenance of discipline” of members of police forces and special constables respectively. In particular, regulations must establish (or make provision for the establishment of) procedures for the taking of disciplinary proceedings in respect of the conduct, efficiency and effectiveness of members of police forces and special constables, including procedures for cases in which such persons may be dealt with by dismissal. The existing legislation only allows provision to be made in regulations as regards serving members of police forces and serving special constables – and therefore the procedures cease to apply when the person leaves the force through retirement or resignation. The Police (Conduct) Regulations 2012 (SI 2012/2632, as amended) have been made under sections 50 and 51. In addition, section 84 of the 1996 Act requires regulations

to be made governing representation at disciplinary proceedings, and section 85 requires rules to be made regarding appeals against dismissal. Before exercising the powers in sections 50, 84 and 85, the Secretary of State is under a duty, by virtue of section 63 of the 1996 Act, to consult the Police Advisory Board for England and Wales and to take into consideration any representations made by that Board.

140. Clause 28(2) and (3) inserts new sections 50(3A) and 51(2B) into the 1996 Act respectively which confer powers to make regulations providing for the procedures referred to above to apply (with or without modifications) as regards former members of police forces and former special constables in the following cases. These are cases where (i) at the time of the relevant misconduct, inefficiency or ineffectiveness the person was a member of a police force or a special constable, and either (ii) the person resigns or retires after the allegation comes to light (but before disciplinary proceedings commence), or (iii) the person resigned or retired before the allegation came to light, but the period between the retirement or resignation and the allegation coming to light does not exceed the period specified in regulations. Clause 28(4) and (5) makes consequential amendments to sections 84 and 85 of the 1996 Act to enable regulations and rules in respect to representation at disciplinary proceedings and appeals respectively to cover former members of police forces and former special constables.
141. Regulations under the new sections 50(3A) and 51(2B) of the 1996 Act will enable, as regards former members of police forces and former special constables falling within the cases set out above, an allegation in relation to incompetence, gross incompetence, misconduct or gross misconduct to be investigated and, where there is a case to answer, disciplinary proceedings to be brought against the person. Where such proceedings lead to dismissal following a finding of misconduct or gross misconduct the person would then be added to the 'police barred list' (see Schedule 8 to the Bill).
142. The regulations will specify the time period referred to above. The current intention is to set this period at 12 months. As announced at Commons Report stage (Official Report, 13 June 2016, column 1466), the Government also intends to bring forward an amendment in the Lords to allow, in exceptional circumstances, for disciplinary proceedings to be brought outside of the normal 12 month time limit.
143. At present, under the Police (Conduct) Regulations 2012 (regulation 10A, as inserted by the Police (Conduct) (Amendment) Regulations 2014 (SI 2014/3347), any member of a police force or special constable who is under investigation or subject to disciplinary proceedings may not resign or retire whilst those proceedings are ongoing. When regulations are made under new sections 50(3A) and 51(2B), this restriction on resigning or retiring will be removed.
144. At present, the regulations establishing procedures for the taking of disciplinary proceedings as regards serving member of police forces and serving special constables are subject to the negative procedure (see sections 50(8) and 51(4) of the 1996 Act). As these provisions allow for those procedures to apply

(with or without modifications) in respect of former members of police forces and former special constables, the Government considers that, in the interests of consistency, the same level of parliamentary scrutiny should apply.

Schedule 8: new Part 4A of the Police Act 1996: Police Barred List and Police Advisory List

- **Power to specify period within which relevant authorities must report dismissals etc to College of Policing (new sections 88A(2)(a) and 88I(3)(a) of the 1996 Act)**
- **Power to specify information to be included in report of dismissal etc (new sections 88A(2)(b) and 88I(3)(b))**
- **Power to define “disciplinary proceedings” in relation to a former member of police staff (new section 88A(4)(b))**
- **Power to specify information to be included in police barred list (new section 88B(3) of the 1996 Act) and police advisory list (new section 88J(3) of the 1996 Act)**
- **Power to specify other persons subject to the duties to consult the police barred list and not to employ or appoint barred persons (new section 88C(5)(e) of the 1996 Act) and to consult the police advisory list (new section 88K(3)(e) of the 1996 Act)**
- **Power to specify appeal proceedings for the purposes of new section 88F(1)(d)**
- **Power to specify period within which relevant authorities must report reinstatement of dismissed persons to College of Policing (new section 88F(3)(a) of the 1996 Act) and discontinuance of disciplinary proceedings etc (new section 88L(3)(a))**
- **Power to specify information to be included in report to College of Policing about reinstatement of dismissed persons and about discontinuance of disciplinary proceedings etc (new sections 88F(3)(b) and 88L(3)(b) of the 1996 Act)**
- **Power to specify additional circumstances under which person may be removed from police barred list (new section 88F(5) of the 1996 Act) and police advisory list (new section 88L(6) and (7) of the 1996 Act)**
- **Power to specify description of barred persons to be included in published list (new section 88G(1)(b) of the 1996 Act)**
- **Power to specify information about barred persons that is to be published by the College of Policing (new section 88G(2) of the 1996 Act)**
- **Power to specify period within which specified information about barred persons must be published by the College of Policing (new section 88G(3)(b) of the 1996 Act)**
- **Power to specify exceptions to duty on College of Policing to publish information about barred persons (new section 88G(4) of the 1996 Act)**

Power Conferred on: Secretary of State

Power Exercisable by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative Resolution

145. New Part 4A of the 1996 Act (comprising new sections 88A to 88M) places on a statutory footing existing practice related to the “Disapproved Register” maintained by the College of Policing. The “Struck-Off List”, or “Police Barred List” as it is termed in the new Part 4A (new sections 88A to 88H), will comprise a list of names of individuals serving with the police who have been dismissed (or would have been dismissed had they not retired or resigned) from a police force and are barred from being reappointed as a police officer (or as a member of police staff) by any force in England and Wales.
146. New sections 88I to 88M separately creates the “Police Advisory List” which will comprise individuals formerly serving with the police who resigned or retired from a force whilst under investigation or are subject to disciplinary proceedings in respect of an allegation relating to conduct, efficiency or effectiveness which, if proved, might have resulted in their dismissal. This list is available for vetting purposes but does not include a statutory bar from a policing role. The list will also include police volunteers designated with policing powers who have had their designated powers removed for matters that had they been serving as a member of staff or officer would have led to their dismissal.
147. The provisions in new Part 4A of the 1996 Act set out the framework for the operation of the police barred and advisory lists (“the lists”). The provisions in new Part 4A include a number of regulation-making powers. The intention is that the regulations made under these powers will set out the various detailed requirements on police forces, the College of Policing and others in relation to the operation of the lists, including the information to be supplied to the College, how such information and the lists will be handled and managed, and other related requirements. The provisions in respect of the police barred list are analogous to the arrangements for the medical and legal professions provided for in the Medical Act 1983 and the Solicitors Act 1974, although in those cases there is a register of persons eligible to practice in those professions which is not the case here.
148. New section 88A imposes a duty on chief officers of police and local policing bodies (namely PCCs and their London equivalent) to report a person to the College of Policing where he or she has been dismissed from the force while serving as a police officer, special constable or member of police staff (or there is a finding in relation to the person in disciplinary proceedings that the individual would have been dismissed had he or she not resigned or retired). New section 88A(2) enables regulations to be made specifying the time period within which a report must be made to the College by the relevant authority and the information that must be included in the notification to the College. Such information is expected to include the name, date of birth, rank or grade, police force and warrant card number (or employee number) of persons reported to the College, as well as the date of their dismissal (or finding) and a brief description of the misconduct that led to their dismissal.
149. New sections 88A(4)(b) and 88F(1)(d) confers powers to define the terms “disciplinary proceedings” and “appeal proceedings” respectively in relation to

members of civilian police staff. The disciplinary system (including appeal provisions) for police staff is set out in policy and guidance, rather than in primary or secondary legislation, there is therefore no statutory definition of these terms. These powers are required to establish these definitions for the purposes of police staff in relation to the police barred list. Given that the disciplinary arrangements for civilian staff is not set out in statute, and is therefore potentially more fluid, defining these terms in secondary legislation will enable the definitions to better keep in step with changes to those arrangements. A similar power to define “disciplinary proceedings” is currently provided for in section 29 of the 2002 Act.

150. New section 88I creates similar provisions to the barred list in relation to the police advisory list, including the requirement to report to the College where: (i) a person resigns or retires from a force following an allegation about their conduct, efficiency or effectiveness but before the disciplinary process has concluded; or (ii) in the case of police officers and special constables, where an allegation is received within a specified period after the individual had left the force, which if proven, would have led to dismissal had they still been serving. New section 88I(3) enables regulations to be made specifying the time period within which a report must be made to the College by the relevant authority and the information that must be included in the notification to the College.
151. New sections 88B and 88J place a duty on the College of Policing to maintain the lists, consisting of the names and other details of persons reported to the College under new section 88A and 88I. New sections 88B(3) and 88J(3) provide a power to make regulations in relation to the information to be included in the lists. Such information is expected to correlate to the information provided under new sections 88A and 88I. Such regulations may confer functions on the College of Policing, including enabling it to exercise discretion, for example, on how it transposes the information provided by police forces onto the lists.
152. New section 88C provides that any person listed on the police barred list is barred from being employed by or otherwise appointed by a chief officer of police, a local policing body, HM Chief Inspector of Constabulary or the IPCC and requires those persons/bodies to undertake pre-employment/employment checks against the list. New section 88K imposes a similar requirement to undertake checks against the police advisory list, however this section does not extend the bar on a person from being employed or appointed. New sections 88C(5)(e) and 88K(3)(e), (4) and (5) enable additional persons or bodies to be subject to this requirement to make pre-employment checks against the lists. These powers may only be used to add persons or bodies exercising relevant public functions, that is functions of a public nature relating to policing or law enforcement in England and Wales (new section 88C(6) and (7)). This power may be used to require law enforcement bodies such as the National Crime Agency, Serious Fraud Office or Border Force to undertake pre-employment checks against the barred list. This regulation-making power recognises that there are potentially a wide range of bodies exercising law enforcement functions of a public nature and, as such, it is appropriate to consider on a case-by-case basis whether to subject them to the duty imposed by new sections 88C and 88K. The ability to extend the duties imposed by new sections 88C and 88K will also ensure that persons

dismissed from police forces for misconduct cannot then be reemployed in another law enforcement capacity. Where a specified body has both relevant public functions and other functions, the regulation-making power also affords the flexibility to impose the requirement to undertake pre-employment checks only insofar as the person to be employed is to be engaged in undertaking relevant public functions (see new section 88D). New section 88E makes similar provisions in respect of contractors so that a chief officer of police or local policing body must not enter into a contract with a person which would permit a barred person to carry out a role from which they would be barred if they were directly employed.

153. New section 88F provides for the removal of a person's name from the police barred list where they are reinstated to a force following a successful appeal against dismissal by the force concerned. The relevant police force or local policing body is required to report such cases to the College. New section 88F(3) enables regulations to be made specifying the time period within which such a report must be made to the College by the relevant authority and the information that must be included in the notification to the College. New section 88F(5) enables regulations to prescribe other circumstances where a person's name must be removed from the barred list. Such circumstances might include the death of a person named on the barred list or following a court order (for example, following a judicial review). Such regulations may confer functions on the College of Policing, including enabling it to exercise discretion in relation to the removal of a person from the list.
154. New section 88L makes similar provisions to the barred list for the removal of a person's name from the police advisory list where it is determined that no disciplinary proceedings will be brought; or where they have been brought they are either withdrawn or concluded without a finding that the person would have been dismissed had they still been serving. It also provides for a person to be removed from the list if they are added to the police barred list under new section 88A. New section 88L(3) enables regulations to be made specifying the time period within which such a report must be made to the College by the relevant authority and the information that must be included in the notification to the College. New section 88L(6) creates a regulation-making power for the removal of an individual from the advisory list in circumstances outside of those described above in order to allow for further situations to be captured and catered for. New section 88L(7) requires the Secretary of State to make regulations in respect of removal from the list in relation to police civilian staff and police volunteers to allow for circumstances outside of the regulated discipline or appeals system (that is the system provided for under regulations and rules made under sections 50, 51 and 85 of the 1996 Act) which does not apply to these groups.
155. New section 88G requires the College of Policing to publish certain information contained in the police barred list. While the College will hold a single version of the police barred list containing all the information prescribed under new section 88B(3), the published information will be limited to that specified in regulations. New section 88G(1) enables regulations to specify descriptions of persons who must be included on the published barred list. The intention is to include on the published list only those police officers or special constables who

have been found guilty of gross misconduct and who have been dismissed from a police force following a misconduct hearing. The provisions related to publication do not extend to the police advisory list.

156. The regulation-making power will enable the criteria for determining the categories of persons to be included on the published list under review and to broaden (or narrow) such categories in the light of experience; for example, certain categories of dismissed police staff designated with policing powers might be added to the published list in future. The regulation-making power also affords the flexibility to establish exceptions to the general rule, for example where the disciplinary hearing was held in private for exceptional reasons and it remains necessary not to publish the officer's identity.
157. New section 88G(2) provides a related delegated power which enables regulations to specify the information about those categories of individuals specified in regulations made under new section 88G(1) to be included in the published barred list. The intention is to specify a sub-set of the information supplied under new section 88A. Such information is expected to include the name, rank or grade, police force of persons reported to the College, as well as the date their name was added to the barred list and a brief description of the misconduct that led to their dismissal.
158. New section 88G(3)(b) enables the Home Secretary to prescribe the period within which information must be included on the published barred list. The specified period is expected to vary so that an individual is only included on the published barred list once the time limit for lodging an appeal against dismissal has elapsed and no appeal has been lodged, or where an appeal has been lodged following the conclusion of an unsuccessful appeal. The time limits for submitting such appeals are themselves set out in secondary legislation, accordingly this regulation-making power will enable the time periods specified for the purposes of new section 88G to keep in step.
159. New section 88G(4) enables regulations to specify exceptions to the duty on the College to publish specified information in the police barred list. The power may be exercised so as to specify information which must never be published or is published for a shorter period than the five years specified in new section 88G(3)(c). This regulation-making power recognises that there may be circumstances where information about an individual should not be put into the public domain.
160. The expectation is that the great majority of the names included on the police barred list will be published. In allowing exceptions to be made, these regulation-making powers recognise that there will be certain limited exceptions, for example where publication of the name of a dismissed individual, or of all the information held by the College in relation to that individual, may result in a significant risk of harm to the individual or other affected person, such as vulnerable witnesses or victims. Other examples might be where the conduct which gave rise to the dismissal relates to issues of national security or sensitive operational matters, or where there are outstanding criminal or judicial proceedings which could be prejudiced by the publication of this information.

161. For each regulation-making power, there is power to make different provision for different cases and circumstances.

162. The core elements of the scheme are set out in the new Part 4A of the 1996 Act. The Government considers that the detailed requirements relating to the operation of the scheme are appropriate matters to be left to secondary legislation. All the regulation-making powers are subject to the negative procedure (see new sections 88A(8), 88B(5), 88C(8), 88F(9), 88G(8), 88I(9), 88J(5) and 88L(11)). Again, given the procedural nature of these regulation-making powers, the Government considers that this provides an appropriate level of parliamentary scrutiny. In contrast, regulations made by the General Medical Council in respect of the operation of the register of medical practitioners are subject to the approval of the Privy Council but are not subject to any parliamentary procedure (see section 31 of the Medical Act 1983). Similarly, regulations made by the Law Society governing the operation of the roll of practicing solicitors (made under section 28 of the Solicitors Act 1974) are not subject to any parliamentary procedure.

Clause 29(6): Power to make corresponding provision in respect of application of the police barred list to persons exercising law enforcement functions

Power Conferred on: Secretary of State

Power Exercisable by: Regulations made by statutory instrument

Parliamentary Procedure: Negative procedure

163. Clause 29(6) enables regulations to make corresponding or similar arrangements that replicate those set out under new Part 4A of the 1996 Act in relation to individuals who are, or have been, employed or appointed by a person exercising functions of a public nature relating to policing or law enforcement. This power may be exercised, in effect, to create similar provisions in respect of individuals dismissed by other bodies of constables, such as the Civil Nuclear Constabulary (“CNC”), British Transport Police (“BTP”) or Ministry of Defence Police or for organisations carrying out quasi-policing functions, such as the National Crime Agency.

164. By virtue of clause 29(7) any regulations will be subject to the negative procedure. The negative procedure is considered appropriate in such other cases given that the regulations providing for analogous barred and advisory lists will be closely modelled on the provisions set out the new Part 4A of the 1996 Act and to that extent this regulation-making power is similar to that in section 26C of the 2002 Act which enables regulations to apply, with modifications, the provisions of Part 2 of that Act to the NCA or to make similar such provision.

Clause 30(2) - new section 85(1A) and (1B) of the Police Act 1996: Power to make rules governing Police Appeals Tribunals

Power conferred on: Secretary of State

Power exercisable by: Rules made by statutory instrument

Parliamentary procedure: Negative resolution

165. The composition of police appeals tribunals (“PATs”) – which hear appeals against dismissal – is currently determined by the provisions in paragraphs 1 and 2 of Schedule 6 to the 1996 Act. PATs consist of three panel members who are appointed by the local policing body (for non-senior officers) or the Secretary of State (for senior officers). “Senior officer” means a member of a police force holding a rank above that of chief superintendent (see paragraph 10 of Schedule 6 to the 1996 Act).

166. A PAT appointed to consider an appeal by a senior officer must consist of (i) a person chosen from a list of persons nominated by the Lord Chancellor (who acts as the chairperson); (ii) Her Majesty’s Inspector of Constabulary or one of Her Majesty’s Inspectors of Constabulary nominated by the Chief Inspector; and (iii) the permanent secretary to the Home Office or a Home Office director nominated by the permanent secretary. In the case of the consideration of appeals by non-senior officers, the PAT must consist of (i) a person chosen from the list referred to above (who acts as the chairperson); (ii) a senior officer; and (iii) a retired member of a police force who, as the time of his or her retirement, was a member of an appropriate staff association (as defined in paragraph 10 of Schedule 6 to the 1996 Act).

167. Clause 30(4)(a) repeals paragraphs 1 and 2 of Schedule 6 to the 1996 Act. In their place, new section 85(1A) and (1B) of the 1996 Act enables the Secretary of State to determine the composition of PATs in rules. In particular, those rules may allow the person specified to appoint members of PATs to delegate that function. New paragraph 5(2) of Schedule 6 enables such rules to specify who should be the chairperson. The intention remains to retain a legally qualified person as a chair (nominated by the Lord Chancellor and appointed by the Home Secretary). However, in relation to PATs which consider appeals by non-senior officers, the Government intends to replace the existing retired police officer panel member with a lay member. A lay member will ensure greater independence and bring a more public focus to proceedings.

168. Enabling the composition of PATs to be determined by rules will provide flexibility. For example, this will enable collaboration where forces wish to do so and, as a result of bringing together the consideration of appeals by a smaller number of regionalised PATs, will help improve consistency in appeal outcomes and raise standards across all forces, as well as enabling efficiencies and savings. The new power would also allow the Home Secretary – in the future – to enable an external organisation such as the College of Policing, to arrange the appointment of PATs on behalf of local policing bodies and the Secretary of State (for senior officers).

169. By virtue of section 85(5) of the 1996 Act, any rules made under the new section 85(1A) or (1B) will be subject to the negative procedure. Before making rules, the Secretary of State will have to consult the Police Advisory Board the Police Advisory Board for England and Wales (by virtue of section 63 of the 1996 Act) – and take into account any representations it makes. Given the statutory duty to consult the Police Advisory Board and the operation of the provisions in section 6 of the Tribunals and Inquiries Act 1992, the Government is satisfied that the negative procedure affords an appropriate level of parliamentary scrutiny.

Clause 30(7) - new section 4A(1)(b)(i) of the Ministry of Defence Police Act 1987: Extension of power to make regulations governing Police Appeals Tribunals

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

170. Section 4A of the Ministry of Defence Police Act 1987 (“the 1987 Act”) requires the Secretary of State by regulations to make provision (i) specifying the cases in which members of the Ministry of Defence Police may appeal to a PAT, and (ii) equivalent to that made (or authorised to be made) in relation to PATs by Schedule 6 to the 1996 Act. The Secretary of State may also make regulations as to the procedure on appeals to PATs under the section. Further to the changes to Schedule 6 of the 1996 Act referred to above, clause 30(7) amends section 4A(1) of the 1987 Act to require the Secretary of State to make provision equivalent to that made by rules under new section 85(1A) of the 1996 Act.

171. By virtue of section 4A(5) of the 1987 Act, regulations made under the section are subject to the negative procedure. The Government does not consider that the extension of this regulation-making power warrants a change in the existing level of parliamentary scrutiny.

Clause 31(2) - new section 87(1) of the Police Act 1996: Power to issue guidance in respect of discharge of disciplinary functions

Power Conferred on: Secretary of State

Power Exercisable by: Statutory guidance

Parliamentary Procedure: None

Clause 31(3) - new section 87(1B) of the Police Act 1996: Power to issue guidance in respect of discharge of disciplinary functions

Power Conferred on: College of Policing

Power Exercisable by: Statutory guidance

Parliamentary Procedure: *None*

172. Clause 31(2) re-enacts with modifications the existing power conferred on the Home Secretary by section 87(1) and (1A) of the 1996 Act to issue guidance in relation to the discharge of disciplinary functions by local policing bodies, chief officers of police and others. The current guidance is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434377/misconduct-perform-attendance_v4_1_1.pdf. Those to whom guidance is issued are under a duty to have regard to it in discharging their disciplinary functions, and any failure to do so is admissible in evidence in any disciplinary proceedings (and subsequent appeal).
173. At present, the Home Secretary can issue guidance under section 87 in relation to the discharge of disciplinary functions under regulations made under sections 50 and 51 of the 1996 Act – that is, functions in relation to members of police forces and special constables. However, the discipline systems for police staff and volunteers are not covered by section 50 or 51 regulations. Those systems are established and operated locally by individual forces. Therefore, guidance under the existing section 87 does not extend to disciplinary functions in relation to police staff and volunteers.
174. The substituted subsection (1) of section 87 of the 1996 Act, read with new subsection (4A) and the replacement subsection (5) (see clauses 31(4) and (5) and 40(2)), provides for the Home Secretary to issue guidance to local policing bodies, chief officers and others about the discharge of their disciplinary functions in relation to all those serving with the police, including police staff and volunteers. It also allows the guidance to cover the discharge of disciplinary functions in relation to persons who are no longer serving with the police.
175. Clause 31(3) amends section 87 of the 1996 Act to provide the College of Policing with a similar power. However, in this case the guidance can only be issued to local policing bodies, chief officers and other members of police forces and can only cover their disciplinary functions in relation to members of police forces and special constables (and former members of police forces and former special constables). Furthermore, such guidance can only be issued with the approval of the Home Secretary.
176. The College of Policing is the professional body for policing and therefore such a function is consistent with its existing remit for professionalising the police service and providing guidance, codes of practice and support to police forces in respect of different aspects of policing.
177. This power will link to the existing functions of the College of Policing including, in particular, the issue of a Code of Ethics, which sets out the Standards of Professional Behaviour governing the police conduct system. Those standards, as set out in the Police (Conduct) 2012 Regulations, are the starting point for misconduct investigations and disciplinary proceedings as misconduct is defined as a breach of professional standards.

178. Although the Home Secretary will retain the power to issue guidance in respect of disciplinary matters (as the Home Office remains responsible for the legislation), this provision will allow the College of Policing to issue supplementary guidance (with the Home Secretary's approval) on certain aspects of the system. This will allow it, for example, to provide more bespoke guidance solely in relation to the gross misconduct process, to build understanding and awareness among police constables.

179. Guidance issued under the amended section 87 of the 1996 Act will not be subject to any parliamentary procedure. This is consistent with the position under the existing section 87. Procedures for the taking of disciplinary proceedings in respect of members of police forces and special constables (and, in future, former members of police forces and former special constables) are set out in detail in regulations subject to the negative procedure (made under sections 50 and 51 of the 1996 Act) and any guidance must be consistent with those regulations. Although the College of Policing's power to issue guidance is new, the persons to whom it may issue guidance, and the scope of the guidance, are narrower (as explained above) and it may not issue guidance without the Home Secretary's approval. Accordingly, the Government does not consider that guidance issued by the College requires parliamentary oversight. This is consistent with other provisions to issue statutory guidance, including section 22 of the 2002 Act, which confers power on the IPCC to issue statutory guidance concerning the exercise or performance of any powers or duties in relation to the handling of complaints, recordable conduct matters, death or serious injury matters and misconduct.

Clause 31(5) - new section 87(5) of the Police Act 1996: Power to specify meaning of "disciplinary proceedings" for purposes of section 87 (and section 87A)

Power Conferred on: Secretary of State

Power Exercisable by: Regulations made by statutory instrument

Parliamentary Procedure: Negative procedure

180. New section 87(5) of the 1996 Act confers a power to define the term "disciplinary proceedings" (for the purposes of section 87 – and new section 87A, inserted by clause 31(7); see new section 87A(5)) in relation to police staff and volunteers (see clause 40). The disciplinary system for police staff is set out in policy and guidance, rather than in primary or secondary legislation, and "disciplinary proceedings", in relation to them, therefore has no statutory definition. The disciplinary system for police volunteers will be set out in national guidance. Given that the disciplinary arrangements for police staff and volunteers is not set out in statute, and is therefore potentially more fluid, defining the term in secondary legislation will enable the definition to better keep in step with changes to those arrangements. A similar power to define "disciplinary proceedings" is currently provided for in section 29 of the 2002 Act (for the purposes of Part 2 of that Act).

181. By virtue of new section 87(6) (inserted by clause 30(6)), the regulation-making power is subject to the negative procedure. This is considered appropriate given the technical nature of such regulations and the precedent provided by section 29 of the 2002 Act.

Clause 31(7) - new section 87A(1) of the Police Act 1996: Power to issue guidance concerning conduct etc

Power Conferred on: Secretary of State

Power Exercisable by: Statutory guidance

Parliamentary Procedure: None

Clause 31(7) - new section 87A(2) of the Police Act 1996: Power to issue guidance concerning conduct etc

Power Conferred on: College of Policing

Power Exercisable by: Statutory guidance

Parliamentary Procedure: None

182. Clause 31(7) inserts new section 87A into the 1996 Act. New section 87A(1) enables the Secretary of State to issue guidance as to matters of conduct, efficiency and effectiveness to members of police forces, special constables and police staff and volunteers (see clause 40(3)). Whereas section 87 guidance will concern the discharge of disciplinary functions (and therefore be issued to those who have such functions), section 87A guidance will cover the way in which all members of police forces, special constables and police staff and volunteers should conduct themselves.

183. New section 87A(2) confers a similar power on the College of Policing, but in its case the guidance can only be issued to members of police forces and special constables – and the approval of the Home Secretary is needed to issue guidance.

184. Sections 50 and 51 of the 1996 Act allow the Secretary of State to make provision with respect to the conduct, efficiency and effectiveness of members of police forces and special constables respectively and the maintenance of discipline. Those regulations are subject to the negative procedure and any guidance must be consistent with those regulations.

185. For the reasons set out in paragraph 179 above the Government is satisfied that it is not necessary for such operational guidance to be subject to any parliamentary procedure.

Chapter 5: IPCC: Re-naming and organisational change

Clause 33(6) – new section 10D of the Police Reform Act 2002: Duty to prepare code of practice dealing with the relationship between the Director General and the Office for Police Conduct

Power conferred on: Director General of the Office for Police Conduct and the Office, acting jointly

Power exercisable by: Statutory code

Parliamentary procedure: None

186. Clause 32 and 33 and Schedule 9 reform the governance structure of the IPCC and rename it “the Office for Police Conduct” (“OPC”). The OPC will be headed by a Director General, who will be responsible for the OPC’s investigations and decisions. Corporate governance will be provided by a unitary Board (which legally will constitute the OPC), consisting of at least six other members and including a majority of non-executive directors. Clause 33 provides for the Director General to carry out the investigatory and other functions previously discharged by the IPCC and for the governance functions of the Board. New section 10D of the 2002 Act (inserted by subsection (6) of clause 33) requires the Director General and the Board jointly to prepare a code of practice which will govern the relationship between them. The code of practice must reflect the operational independence of the Director General and address the matters specified in new section 10D(3). The Director General and the Board must comply with the code (new section 10D(6)) and the Board must publish the code (new section 10D(7)).

187. The Government considers it appropriate for the Director General and the Board to issue such a code of practice in order to set out how they will work together in discharging their respective functions and to ensure the good governance of the OPC. Those functions will be set out on the on the face of the 2002 Act (as amended), as such, the working protocols governing the relationship between the Director General and the Board may properly be left to delegated legislation. Similar management protocols are provided for in other enactments; see for example the framework document governing the way in which the National Crime Agency (“NCA”) operates, including its relationship with the Home Secretary (Schedule 2 to the Crime and Courts Act 2013), and the code of practice governing the relationship between the National Audit Office and Comptroller and Auditor General (paragraph 10(1) of Schedule 3 to the Budget Responsibility and National Audit Act 2011).

188. The code of practice is not subject to any parliamentary procedure. This is considered appropriate given that the code will be a jointly agreed statement between the Director General and the Board. Moreover, the document will build on the governance arrangements and the respective functions of the Director General and the Board as set out in primary legislation and must be consistent with those provisions. The NCA framework document is similarly not subject to any parliamentary scrutiny.

PART 3: POLICE WORKFORCE AND REPRESENTATIVE INSTITUTIONS

Chapter 1: Police workforce

Clause 37(4) – new section 38(6C) of the Police Reform Act 2002: Power to add to list of excluded powers and duties of constables

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative procedure

189. Section 38 of the Police Reform Act 2002 (“the 2002 Act”) enables chief officers of police to designate police staff in one of four roles, namely Police Community Support Officer (“PCSO”), Investigating Officer, Detention Officer or Escort Officer. It is possible to designate a member of police staff in more than one of these roles, for example combining the roles of detention and escort officers. Schedule 4 to the 2002 Act sets out the powers that may be conferred on each type of officer, although under a power conferred by section 38A of the 2002 Act the Secretary of State has specified a standard list of powers that must, as a minimum, be conferred on a PCSO (section 38A is repealed by clause 37(10) of the Bill). Currently, in order for a type of officer to be given additional powers beyond those listed in Schedule 4, primary legislation is needed to amend that Schedule (some 40 additional powers have been added to Schedule 4 since its enactment).

190. The purpose of clauses 37 and 44 and Schedules 10 and 12 is to give chief officers the ability to confer a wider range of powers on designated police staff and volunteers and so give police forces a more flexible workforce, enabling police officers to focus on the most important roles. It achieves this by reversing the current approach so that instead of setting out a list of powers that may be conferred on designated staff, it would be open to chief officers to confer on designated staff (and volunteers) any of the powers and duties of a constable with the exception of those excluded powers specified in Part 1 of new Schedule 3A to the 2002 Act. The list of excluded powers includes the most sensitive and coercive policing powers, including powers of arrest and stop and search, as well as powers provided for in terrorism legislation and the Official Secrets Acts.

191. New section 38(6C) of the 2002 Act, inserted by clause 37(4), confers a power on the Secretary of State to amend Part 1 of new Schedule 3A to the 2002 Act, by regulations, so as to add to this list of excluded powers and duties. This power might be needed if, in the light of experience, there is public concern that a particular power should only be exercised by warranted police officers, or after new legislation is passed which creates police powers which are considered to be suitable for exercise by constables only. The scope of the regulation-making power does not extend to amending or removing powers or duties already specified in the list; such a change would require primary legislation.

192. By virtue of new section 38(9C) of the 2002 Act (as inserted by clause 37(7)), the new regulation-making power is subject to the affirmative procedure (see also the amendments to section 105(3)(b) of the 2002 Act made by paragraph 4(a) of Schedule 12). Given that this is a Henry VIII power, the particular sensitivities around policing powers and the high level of public and parliamentary interest, the Government considers that any such regulations should be debated and approved by both Houses before they come into force.

Clause 37(6) – new section 38(9B)(b) and (c) of the Police Reform Act 2002: Power to disapply prohibition on chief officers of police authorising designating police staff and volunteers to use a firearm

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative procedure

193. As set out in the consultation document *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*, issued on 9 September 2015, the Government wishes to prohibit police staff and volunteers from using either a firearm (within the ordinary meaning of that word, that is a rifle, pistol, or other portable gun) or a Conducted Energy Device (known commonly as a Taser). However, section 5(1)(b) of the Firearms Act 1968 also prohibits the possession etc of “any weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing”, which includes the CS and PAVA sprays used as self-defence equipment by the police, and issued by a number of forces to their PCSOs and other designated staff.

194. In order to ensure that, where a police force’s risk assessment process requires its issue to designated staff or volunteers, clause 37(6) inserts a new section 38(9B)(a) into the 2002 Act, disapplying the general prohibition on the possession of firearms by PCSOs or other designated staff so that they can carry CS or PAVA sprays while on duty. As a future-proofing exercise, clause 37(6) also inserts new sections 38(9B)(b) and (c), as well as new section 38(9C), into the 2002 Act, enabling the Secretary of State to specify by regulations weapons which it would be permissible to permit designated police staff to use. The power is to specify (a) any weapon for a purpose specified in regulations, and (b) any weapon of a description specified in regulations. In order for the future-proofing to be wide enough to allow for weapons that have not yet been invented, the power would theoretically allow such regulations to specify that PCSOs or other designated staff could be issued with any firearm; however, it is the clear intention of the Government that the power would be used only in respect of items of self-defence equipment. Once such regulations had been made, it would then be for chief officers of police to consider whether it was appropriate in all the circumstances to issue such equipment to some or all of their designated staff or volunteers.

195. Given the broad public interest in the potential to specify otherwise prohibited items of self-defence equipment to enable it to be issued to designated police staff or volunteers, the Government considers the power to be both appropriate and necessary. Given the breadth of the power as described in the previous paragraph, the Government considers it appropriate for such a power to be exercisable only with the explicit consent of both Houses of Parliament, and has therefore provided for this power to be subject to the affirmative procedure (as provided for in new section 38(9C) and section 105(3)(b) (as amended by paragraph 4(b) of Schedule 12) of the 2002 Act.

Schedule 10, paragraph 8(2): Power to modify application of legislation relating to powers and duties of a constable

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

196. Clause 37(4) replaces the current approach of listing the powers that may be designated by chief officers of police on designated members of staff or volunteers with a power to designate any power of a constable, other than those core police powers set out in Part 1 of Schedule 10. Given the historic nature of the office of constable, it may be necessary to modify the way that some of the powers of a constable are expressed in order to enable a designation to have effect in the way intended. Paragraph 8(1) of Schedule 10 makes two standard modifications, the regulation-making power in paragraph 8(2) of that Schedule then enables the Secretary of State to make any necessary further modifications to such powers (or, indeed, to modify the modifications made by paragraph 8(1)). Given that the powers of a constable are listed across numerous enactments and may require often subtle and bespoke modifications when conferred on designated staff, the Government considers that this is properly a matter for secondary legislation.

197. By virtue of section 105(2) of the 2002 Act, this regulation-making power is subject to the negative procedure. Given the technical nature and narrow focus of these regulations, the Government considers that the negative procedure is appropriate for such a power.

Schedule 11, paragraph 3(11)(g): Power to specify additional byelaw-making bodies

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

198. Schedule 11 inserts a new Schedule 3C into the 2002 Act which sets out the powers and duties that may be conferred on PCSOs or police community support volunteers (“PCSVs”) in addition to certain powers and duties of a

constable. Such additional powers include the power to require a person to provide their name and address where they are suspected of committing an offence under a “listed byelaw” made by a “relevant body”. Paragraphs 3(7) and (9) of Schedule 11 provides that byelaws may only be included in the list compiled by a chief officer of police where agreement to do so is reached between the police and the relevant byelaw-making body. Paragraph 3(11) sets out, in sub-paragraphs (a) to (f), the current list of bodies that are able to make byelaws; in order ensure that this list of relevant bodies remains up to date in the event that byelaw-making powers are conferred on new bodies the power in paragraph 3(11)(g) would enable the Secretary of State to designate such new bodies for the purpose of these provisions. Any such designation would, in practice, only be made following consultation with, and with the agreement of, the body concerned. Paragraph 3(12) provides that regulations made under paragraph 3(11)(g) may also provide for the police to agree to take on enforcement under sub-paragraphs (7) and (9) with the Secretary of State, rather than one of the listed bodies (for example, where byelaws are made by the Defence Council in respect of Ministry of Defence land).

199. By virtue of section 105(2) of the 2002 Act, this regulation-making power is subject to the negative procedure. Given that the scheme enabling PCSOs and PCSVs to require a person to provide their name and address for the purpose of enforcing byelaws is set out on the face of the Bill, the Government considers that the negative procedure provides an adequate level of scrutiny for the regulations adding to the list of relevant byelaw-making bodies.

Clause 39(1) – new section 53F of the Police Act 1996: Power to issue guidance about designated police volunteers

Power conferred on: College of Policing

Power exercisable by: Statutory guidance

Parliamentary procedure: None

200. Clause 39(1) amends the Police Act 1996 by inserting a new section 53F which allows the College of Policing to issue guidance about the experience, training and qualifications of designated police volunteers. The College is required to publish its guidance and chief officers of police are under a duty to have regard to the guidance.

201. New section 53F broadly replicates for designated police volunteers section 53E of the 1996 Act which provides for the College of Policing to issue guidance about the experience, training and qualifications of designated police staff.

202. Section 38 of the 2002 Act, as amended by the Bill, provides that a chief officer of police must not designate a volunteer with policing powers unless satisfied that the person is suitable to carry out the functions for the purposes of which he or she is designated; is capable of effectively carrying out those functions; and has received adequate training in the carrying out of those functions. The provision of guidance to chief officers by the College of Policing

will assist them in making a determination as to whether a prospective volunteer satisfies the requirements as to suitability, capability and training. These are properly matters appropriate for guidance issued by the professional body for policing.

203. Any guidance issued under new section 53F of the 1996 Act would not be subject to any parliamentary scrutiny, on the grounds that it would provide practical advice on the application of the legislative provisions and would be worked up in consultation with police forces. The approach taken in new section 53F mirrors that in section 53E, which similarly provides for no parliamentary procedure for the guidance in respect of the experience, training and qualifications of designated police staff.

Clause 39(2) – new section 97(6)(c)(iv) of the Criminal Justice and Police Act 2001: Power to make regulations about training of designated police volunteers

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

204. Section 97(1) of the Criminal Justice and Police Act 2001 (“the 2001 Act”) confers power on the Secretary of State to make regulations about police training and the qualifications for deployment to perform particular tasks of persons serving or employed for policing purposes in England and Wales. Section 97(6)(c) provides that references to a person serving or employed for policing purposes in England and Wales are references to a person who is: (i) a member of a police force in England and Wales (that is, police officers), (ii) a special constable, or (iii) a person employed for the purposes of a police force in England and Wales. Clause 39(2) amends sections 97(6)(c) to add designated police volunteers to this definition of a person serving or employed for policing purposes; accordingly any regulations made under section 97(1) may cover the training of such volunteers. The extension of the power will enable the Home Secretary to make regulations setting out minimum standards of training for designated volunteers. By virtue of section 97(5) of the 2001 Act, regulations made under section 97 are subject to the negative procedure; the amendment made to section 97 by clause 39 is in keeping with the existing provisions of that section and consequently does not, in the Government’s view, warrant any change to the scrutiny arrangements for such regulations.

Clause 46 – new section 50A(1) of the Police Act 1996: Power to make regulations about police ranks

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative procedure

205. In June 2015, the College of Policing published the outcome of its leadership review. One of the recommendations was to review the rank structure so that it is more able to empower individuals, adapt to different situations and improve the flow of information and decision making throughout the chain of command. The purpose of clause 46 is to allow the police rank structure to be changed in accordance with the findings of that review (and subsequently in the light of changing policing needs). Currently, section 9H(1) of the Police Act 1996 (“the 1996 Act”) provides that the ranks to be used by the Metropolitan Police are those prescribed by the Secretary of State in regulations under section 50(2)(a) of that Act. However, section 9H(2) requires those ranks to include those of chief superintendent, superintendent, chief inspector, inspector, sergeant and constable. In addition, sections 4, 43, 45, 46 and 47 of the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”) requires there to be a Commissioner and Deputy Commissioner of Police for the Metropolis and one or more Assistant Commissioners, one or more Deputy Assistant Commissioners, and one or more commanders. Similarly, section 13(1) of the 1996 Act provides that the ranks to be used by all other police forces are those prescribed by the Secretary of State in regulations under section 50(2)(a) of the 1996 Act, but also requires those regulations to include the ranks of chief superintendent, superintendent, chief inspector, inspector, sergeant and constable. Sections 2, 39 and 40 of the 2011 Act place a requirement on all police forces outside London to have a chief constable, and one or more deputy chief constables and one or more assistant chief constables. The result is that the Secretary of State has very little flexibility in the rank structure that she may provide for in regulations and, accordingly, regulation 4 of the Police Regulations 2003 simply specifies those ranks already stipulated in primary legislation.

206. New section 50A(1) of the 1996 Act enables the Secretary of State, by regulations, to specify the ranks that may be held by members of police forces in England and Wales. The National Police Chiefs’ Council, reporting to the College of Policing-led Leadership Review Oversight Group, is currently reviewing the rank structure and is expected to report in April 2016. The purpose of this regulation-making power is to give the Secretary of State, working with the College of Policing, the power to implement the recommendations of the current review (if agreed) and the flexibility to alter the rank structure again in the light of any future reviews. The clause repeals sections 9H and 13 of the 2011 Act as well as the existing regulation-making power in section 50(2)(a) of the 1996 Act. The new regulation-making power cannot be exercised so as to dispense with the rank of constable or chief constable (or Commissioner). Subject to those constraints, the power may be exercised to abolish other ranks (including Deputy Chief Constable and Assistant Chief Constable or the London equivalents) or create new ranks.

207. The regulation-making power will also enable consequential and transitional amendments to be made to any primary or secondary legislation that refers to a specific rank (for example, certain police powers under the Police and Criminal Evidence Act 1984 must be exercised by an officer of at least the rank of

inspector or superintendent) that may no longer exist as a result of changes to the rank structure. Such a power would be used to substitute the nearest equivalent rank. This power may also be used, as necessary, to repeal or otherwise amend relevant provisions in the 2011 Act referred to above so as to remove references to any abolished rank or, where a rank continues, to make it discretionary as whether to appoint one or more persons at that rank.

208. These regulations can be made in one of two ways. First, the College of Policing may submit draft regulations on this matter to the Secretary of State. If the College does so, the Secretary of State must lay them before Parliament (new section 50B(2)(a)) unless she considers the draft regulations to be unlawful, an impairment on police efficiency, or otherwise wrong to enact (new section 50B(3)). If those draft regulations are laid before Parliament, and approved by both Houses (new section 50B(2)(b)), she must make regulations in those terms. Second, the Secretary of State could prepare regulations herself and lay them before Parliament. In this instance, new section 50B(4) requires the Secretary of State to ensure that the College of Policing have approved those draft regulations before they are laid before Parliament. This approach reflects the position of the College as the professional body for policing and mirrors existing provisions, for example, in section 50(2ZA) and (2ZB) of the 1996 Act.

209. Although the existing regulation making power in section 50(2)(a) of the 1996 Act is subject to the negative procedure, the replacement power is subject to the affirmative procedure (new section 50B(1)). The affirmative procedure is considered appropriate in this instance given that the rank structure has historically been set out largely in primary legislation (see, for example, section 7 of the Police Act 1964) and there will be a strong parliamentary interest in substantive changes to the existing longstanding structure. Moreover, this is a Henry VIII power which further argues for the application of the affirmative procedure.

PART 4: POLICE POWERS

Chapter 1: pre-charge bail

Clause 62 - new section 47ZK of the Police and Criminal Evidence Act 1984: Power to make rules of court in connection with applications for extension of pre-charge bail

Power conferred on: Criminal Procedure Rules Committee (under section 69 of the Courts Act 2003)

Power exercisable by: Rules of court made by Statutory Instrument

Parliamentary procedure: Negative resolution

210. Clause 62 inserts new section 47ZK into the Police and Criminal Evidence Act 1984, which would enable rules of court to be made in relation to the making of

applications to extend pre-charge bail and to withhold sensitive information from the person in respect of whom the application to extend bail relates. Such rules may also provide for the process to be followed in a magistrates' courts for dealing with such applications. It is appropriate that these matters are dealt with in rules of court as they concern the practice and procedure to be followed in the criminal courts. The procedure for making such rules is well established. Rules made under sections 69 and 72 of the Courts Act 2003 are subject to the negative resolution procedure and the Government considers that this remains appropriate for the procedural rules applicable to pre-trial hearings.

Chapter 4: Powers under the Mental Health Act 1983

Clause 78(5) – new section 136(1B)(d) of the Mental Health Act 1983: Power to specify additional categories of health professionals for purpose of the duty to consult

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

211. Clause 78(5) inserts new subsection (1C) into section 136 of the Mental Health Act 1983 ("the 1983 Act"), which imposes a duty on a constable to consult a health professional, where it is practicable to do so, before deciding to remove a person to, or keep them at, a place of safety under section 136(1). The subsection lists categories of health care professionals for this purpose, namely: (a) a registered medical practitioner; (b) a registered nurse; (c) an approved mental health professional; or (d) a person of a description specified in regulations made by the Secretary of State.

212. This approach offers greater flexibility to facilitate effective local arrangements that may already be in place. Such arrangements, which can include arrangements that have become known as 'street triage', involve health professionals offering advice and information to support police officers' decisions about using section 136 powers (or taking other action). Local 'triage' arrangements vary and the concept is evolving as areas learn from existing good practice. A list of appropriate health professionals to consult contained solely in primary legislation would risk cutting across existing local arrangements, and curtail the scope for local innovation. Providing for additional options to be set out in regulations will both provide an opportunity to engage with local partner organisations to establish in more detail how local practice is developing so as to provide effective support, and allow the Government to respond quickly in the event that a particular type of health professional that is not on the list in the Bill becomes prevalent in future.

213. The regulation-making power in new section 136(1C) of the 1983 Act is subject to the negative procedure (by virtue of section 143(2) of the 1983 Act). It is in the interests of a person detained under section 136 that a constable

consults a health professional before deciding what action to take. The duty only applies where such consultation is practicable. A key determining factor as to whether such consultation is practicable is the availability of a health professional. Any additions to the list of health professionals for the purposes of this provision would have the effect of expanding the cohort of health professionals available for consultation and, as such, would enhance the care afforded to those detained under these powers. Given this, the Government is satisfied that the negative procedure affords an appropriate level of parliamentary scrutiny.

Clause 79(6) – new section 136A(2) of the Mental Health Act 1983: Power to provide for circumstances where police stations may be used as places of safety

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

214. Clause 79(6) inserts new section 136A into the 1983 Act which makes further provision in respect of the use of police stations as places of safety for persons suffering a mental health crisis. New section 136A(2) confers power on the Secretary of State to make regulations about the circumstances in which police stations can be used as a place of safety to take an adult detained/removed by a police officer under section 135 or 136 of the 1983 Act.

215. The conditions that will be set out by regulations will have the effect of limiting the use of police stations to specific circumstances, in which it might be judged to be in the best interests of the detainee and relevant staff or other members of the public, for a police station to be used, or where there are otherwise truly exceptional circumstances. Those circumstances will principally occur when the person displays violence or aggression that could not otherwise safely be managed in a health based place of safety. The conditions will also have the effect of excluding a number of circumstances which currently and, Ministers have decided inappropriately, lead to police stations being used – including, in particular, insufficient provision of health based places of safety.

216. The regulations will specify the minimum police rank at which the decision to use a police station should be authorised, arrangements for escalation to health staff of an appropriate level to settle (with the appropriately senior police officer) any difference of opinion about whether the conditions for using a police station have been satisfied, the necessary safeguards that should be in place in the event that a police station is used, and proposed ‘post incident review’ arrangements. In terms of guiding police and health professionals to make the complex and somewhat subjective decision of whether the patient’s behaviour warrants a police station to be used, the Government anticipates that the regulations will set out the range of considerations that should be taken into account to inform a risk based decision.

217. It is more appropriate to set out the circumstances in which a police station can be used as a place of safety by regulation than on the face of primary legislation for two principal reasons. Firstly, using secondary legislation offers more flexibility to review whether the conditions effectively support the policy objective of police stations only being used in the genuinely exceptional circumstances when it is in the best interests of the detainee and policing and health professionals involved. It may prove necessary or desirable to amend the conditions at a future date in the light of evolving experience or practice.

218. Secondly, these regulations will contain detailed, potentially technical provision, inappropriate for primary legislation. As highlighted above, we anticipate that the regulations will guide inspectors to take a range of factors into account (in consultation with other officers and health professionals) in deciding whether a police station should be used.

219. The regulation-making power in new section 136A(2) of the 1983 Act is subject to the negative procedure (by virtue of section 143(2) of the 1983 Act). Given that new section 136A establishes the principle that police stations may only be used as a place of safety for adults detained under section 135 or 136 of that Act in circumstances specified in regulations, and given that the effect of such regulations will be to limit those circumstances to the benefit of adults suffering a mental health crisis, the Government considers that the negative procedure affords a sufficient level of parliamentary scrutiny. In addition, the intention is that the draft regulations will be subject to consultation later this year, to ensure that they are achievable in practice and reflect accurately the policy intention.

Chapters 5 and 6: Police powers: Maritime enforcement

Clause 82(3)(g) and 94(3)(e): Power to add to list of law enforcement officers eligible to exercise maritime enforcement powers

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

220. Chapter 4 of Part 4 extend the maritime enforcement powers of the police and other law enforcement officers in England and Wales. Chapter 5 of Part 4 makes equivalent provision in respect of the police and other law enforcement officers in Scotland. The provisions augment those in the Criminal Justice (International Cooperation) Act 1990 (“the 1990 Act”) and the Modern Slavery Act 2015 which are restricted to tackling drug trafficking, human trafficking and modern slavery offences, respectively. The intention is to ensure that law enforcement officers have the necessary powers to prevent, detect and investigate or prosecute all criminal offences committed on vessels in UK territorial waters, on the high seas and in the territorial waters of other States where the England and Wales courts or Scottish courts as the case may be, have jurisdiction.

221. The maritime enforcement powers include the power to stop, board, divert and detain (clause 86 and clause 98), search and obtain information (clause 87 and clause 99) and the powers of arrest and seizure (clause 88 and clause 100).

222. Clause 82(3) defines a “law enforcement officer” for the purpose of the England and Wales provisions. Paragraphs (a) to (f) lists those persons defined as law enforcement officers, including police officers in England and Wales, special constables, British Transport Police officers, port constables, and designated customs officials. Clause 82(3)(g) makes provision for the Secretary of State to specify further categories of law enforcement officer by regulations. Any additions to the list will not be made by textual amendments to clause 82. Clause 94(3) adopts a similar approach in relation to the Scottish provisions and includes an identical regulation-making power at paragraph (e). These powers are necessary to enable the categories of law enforcement officer who may exercise these maritime enforcement powers to be extended in the light of changing operational requirements. For example, both the Criminal Justice (International Cooperation) Act 1990 and the Modern Slavery Act 2015 confer powers on armed forces personnel and there may be an operational case for extending the powers in this Bill to such personnel in future. These regulation-making powers does not enable the Secretary of State to remove or amend any of the categories of law enforcement officer listed in clause 82(3)(a) to (f) or clause 94(3)(a) to (d).

223. Regulations made under clause 82(3)(g) and clause 94(3)(e) are subject to the negative resolution procedure (see subsection (5) in each case). Whilst these provisions confer significant enforcement powers on specified persons, the regulation-making powers will only be exercised to add categories of personnel who have a law enforcement role and, in practice, there will be some nexus between any newly specified category of law enforcement officer and law enforcement in the maritime environment. The Government therefore considers that the negative procedure provides an appropriate level of parliamentary scrutiny. Moreover, the negative procedure matches that for the equivalent power in paragraph 1(1)(c) of Schedule 3 to the 1990 Act. That power has been exercised to add commissioned officers of Her Majesty’s ships, officers of the sea-fishery inspectorate and officers of the fishery protection service to the list of enforcement officers for the purposes of Schedule 3 to the 1990 Act.

Clause 92(6): Power to make regulations bringing into force a code of practice or revisions to a code of practice

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: (i) Affirmative procedure on first exercise, or (ii) affirmative procedure or laying only on subsequent exercise

224. Clause 92 requires the Secretary of State to prepare a code governing the practice to be followed by enforcement officers when arresting a person under the new power of arrest in clause 88. In particular, the code must provide guidance as to the information to be given to the person at the time of arrest. This provision closely reflects a similar provision in paragraph 5 of Schedule 2 to the Modern Slavery Act 2015.

225. There is already a code of practice, made under section 66(1)(a)(iii) of the Police and Criminal Evidence Act 1984 (“PACE”), governing the exercise, by police officers, of statutory powers to arrest (PACE Code G). Since section 30 of the Police Act 1996 confines the application of police powers to the adjacent UK waters (the 12 nautical mile limit), it follows that the application of the existing PACE codes are similarly confined; hence the need to create a new code governing arrest under clause 88, which will apply to law enforcement officers operating in international and foreign waters.

226. Broadly speaking, the approach taken to framing this power has been to achieve parity with the existing model in section 67 of PACE. As such, the procedure for the regulations bringing the initial code of practice into operation is the affirmative resolution procedure. Where the code is subsequently revised, there is a choice of parliamentary procedure for bringing the revision of the code into operation; either the affirmative resolution procedure or no parliamentary procedure.

227. This follows the approach in section 67(7A) of PACE, which was substituted by section 11(1) of the Criminal Justice Act 2003. When section 11(1) of the Criminal Justice Act 2003 was debated in Parliament, the Home Office gave an undertaking that: (a) the no parliamentary procedure route would only be used for revisions of PACE codes in confined circumstances where it was appropriate to dispense with closer parliamentary scrutiny because of the minor or non-contentious nature of the revisions concerned; and (b) the Department would treat itself as bound by the advice of the Home Affairs Select Committee as to the appropriate procedure (Lords Hansard, 7 July 2003, column 45). The intention is that this undertaking will apply equally to the regulations bringing into force a code of practice made under clause 92.

228. In light of the fact that the approach is to mirror the existing model in section 67 of PACE 1984 and in paragraph 5 of Schedule 2 to the Modern Slavery Act 2015, the Government considers that the approach taken in clause 92 provides the appropriate degree of parliamentary scrutiny.

Chapter 7: Cross-border enforcement

Clause 105 - new section 137B(1) of the Criminal Justice and Public Order Act 1994: Power to prescribe “specified offences” in respect of which the additional cross-border powers of arrest may be exercised

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative procedure

229. Part 10 of the Criminal Justice and Public Order Act 1994 (“the 1994 Act”) provides for cross-border powers of arrest. In particular, section 136 provides that a person in respect of whom a warrant for arrest has been issued in any jurisdiction in the UK may be arrested in any other jurisdiction in the UK, by a constable in any police force (or other specified persons) from the issuing or executing jurisdiction or by any other person authorised in the warrant; section 137 provides that a constable from one jurisdiction can arrest without warrant (or in the case of Scottish constables, detain) a person in a jurisdiction other than his own ‘home’ jurisdiction, if that constable has reasonable grounds for suspecting that an offence has been committed or attempted in the constable’s own ‘home’ jurisdiction; and, section 140 confers reciprocal powers of arrest on constables of the police forces in the three jurisdictions of the UK.

230. Clause 105 (which inserts new sections 137A to 137D into the 1994 Act) updates the provisions in Part 10 of the 1994 Act in a number of respects. In particular, it closes a gap in the cross-border arrest powers to ensure that a person who commits an offence in one UK jurisdiction and is then found in another UK jurisdiction can be arrested without a warrant by an officer from the jurisdiction in which the person is found. The provisions in new section 137A of the 1994 Act contain a number of safeguards; in particular, the additional cross-border power of arrest is only exercisable if: (a) the arresting officer has reasonable grounds for suspecting that the suspect has committed a specified offence in another jurisdiction and (b) the constable has reasonable grounds to believe that it is necessary to arrest the person to allow prompt and effective investigation or to prevent any prosecution from being hindered by the person’s disappearance (England and Wales and Northern Ireland) or the constable is satisfied that it would not be in the interests of justice to delay the arrest to allow an arrest to take place under one of the other cross-border powers (Scotland).¹ These limitations ensure that the new power of arrest without warrant is only used when it is necessary and proportionate to do so.

231. New section 137B provides that a specified offence for these purposes is one specified in regulations made by the Secretary of State. The Secretary of State would specify the relevant offences in each of England and Wales, Scotland and Northern Ireland, with the consent of the Scottish Ministers and the Department of Justice in Northern Ireland. The Secretary of State will only be able to include an offence which may be tried on indictment in the jurisdiction where it was committed, setting a minimum level of seriousness. In addition, the Secretary of State will only be able to include an offence in the regulations if satisfied that the availability of the power of arrest in respect of the offence is necessary in the interests of justice. This additional safeguard will ensure that the Secretary of State specifically considers whether this new power of arrest is appropriate in relation to each offence.

¹ The provision in relation to constables in England and Wales and Northern Ireland mirrors the requirements under section 24 of the Police and Criminal Evidence Act 1984 and Article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989, respectively. The provision in relation to constables in Scotland mirrors the provision in section 1 of the Criminal Justice (Scotland) Act 2016.

232. Given that the criminal law differs in each of the three jurisdictions it is necessary to develop a bespoke, but analogous, list of offences for each jurisdiction. Moreover, as these provisions relate, in part, to devolved matters in Scotland and Northern Ireland it is appropriate that the list of offences in Scotland and Northern Ireland is subject to consultation with and the agreement of the Scottish Government and Northern Ireland Department of Justice. To allow for the list of specified offences, and any subsequent revisions to it, to be agreed with the devolved administrations, the Government considers it appropriate that the list of specified offences be prescribed in secondary legislation and for such secondary legislation to be subject to the consent of the Scottish ministers and Northern Ireland Department of Justice. This approach would also afford the flexibility to update the list in the light of experience and to reflect the creation of relevant new offences.

233. The Government recognises that in other contexts, for example in relation to the trigger offences for serious crime prevention orders (see Schedule 1 to and section 4 of the Serious Crime Act 2007), such lists of offences are commonly set out in primary legislation albeit with a power to amend by secondary legislation. The list in Schedule 1 to the Serious Crime Act 2007 is the basis for the imposition of a serious crime prevention order on a person for the purpose of restricting or disrupting involvement in criminal activity in the future. The nature of the criminal offences which form the basis of such an order is essential to ensure that the order is only imposed in relation to “serious” crime. The Government considers that that example can be distinguished from new cross-border power of arrest because the nature of the offence for which the person arrested is not core to the power of arrest, but an added safeguard in respect of the power. The other cross-border powers of arrest in Part 10 do not depend on the commission of a specified offence.

234. Despite this distinction, the Government considers it appropriate that the regulation-making power in new section 137B should be subject to the affirmative procedure (see subsection (3)) to afford both Houses the opportunity to debate and approve the list of specified offences and any revisions to it, ensuring that the power is only available where the underlying offence means that it is appropriate.

Clause 105 - new section 137D(5) of the Criminal Justice and Public Order Act 1994: Power to make modifications or exceptions to the provisions applying the rights of arrested persons

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative procedure

235. Under the existing cross-border powers of arrest in Part 10 of the 1994 Act (see above), different provision is made about the treatment of suspects arrested, depending on the jurisdiction in which the warrant was issued or the person was

arrested. Under section 136 (execution of warrants), where the warrant was issued in England and Wales or Northern Ireland, no specific provision is made about the rights of suspects. Where the warrant was issued in Scotland, the person has the same rights as they would have had the warrant been executed in Scotland. Under section 137, where the offence was committed in England and Wales or Northern Ireland, the suspect has the same right to information on arrest as they would had they been arrested in England and Wales or Northern Ireland (by virtue of the requirement that it would have been lawful for the arrest to be made in the 'home' jurisdiction²), but no further provision is made for the treatment of suspects while detained. Suspects are taken by the arresting officer to the jurisdiction in which the offence is being investigated as soon as reasonably practicable, at which time the rights of suspects in the investigating jurisdiction (i.e. England and Wales or Northern Ireland) will be applicable. Under section 137, where the offence was committed in Scotland, the suspect has the same rights as the person would have had the person been arrested in Scotland. Section 138(1A) and (1B) makes modifications to Scottish legislation when persons are arrested in respect of Scottish offences in another jurisdiction.

236. Under the new power of arrest without warrant, the person will be arrested in, and by a police force from, a jurisdiction other than the one in which the offence was committed. The person will be detained in the arresting jurisdiction for the purpose of obtaining and executing a warrant for their arrest under section 136 or for the purpose of enabling officers from the investigating jurisdiction to travel to arrest the person under section 137. In most cases, the person will be detained for a short period, as detention can only be authorised if satisfied that officers are acting expeditiously to re-arrest the person. However, there will be some cases in which the person is detained for the maximum period of 36 hours, for example because the person is arrested in a place which is very far from the location of the investigating force (for example, a person arrested in the Shetland Islands for an offence committed in Devon). Given the length of time for which a person may be detained outside the investigating jurisdiction, new section 137D(1) to (4) applies the principal provisions as to the rights which would be applicable to detained persons had they been arrested in the jurisdiction where the offence was committed. These are: the right to be provided with certain information on arrest; the rights to have certain persons notified of the fact of the arrest and the place where the person is being held; and the right of access to legal advice.

237. While it is appropriate to apply the provisions as to the rights which would be available in the investigating jurisdiction, those provisions will need to be modified in order to apply them to the very different context of cross-border arrest and of detention for the limited purpose of enabling re-arrest. New section 137D(5) gives the Secretary of State the power to make modifications or exceptions to the way in which those provisions are applied to persons arrested under cross-border powers, with the consent of the Scottish Ministers and the Department of Justice in Northern Ireland, as appropriate.

² In relation to Northern Ireland, this describes the effect of section 137(6) as amended by the Policing and Crime Bill.

238. Given that the law on the treatment of suspects differs in each of the three jurisdictions it is necessary for modifications to be drafted differently in relation to each jurisdiction. Moreover, as these provisions relate, in part, to devolved matters in Scotland and Northern Ireland it is appropriate that the application and modification of those provisions in respect of suspects from Scotland and Northern Ireland is subject to consultation with and the agreement of the Scottish Government and Northern Ireland Department of Justice. To provide a mechanism for securing such prior agreement, including for revisions to the regulations, the Government considers it appropriate that the modifications or exceptions to the application of the provisions are made using secondary legislation which is subject to the consent of the Scottish Ministers and Northern Ireland Department of Justice.

239. As the provisions to be modified are provisions of primary legislation and relate to the rights of detained persons, the Government considers it appropriate that the regulation-making power should be subject to the affirmative procedure (see new section 137D(6)) to afford both Houses the opportunity to debate and approve any modifications or exceptions to the applied provisions.

PART 5: POLICE AND CRIME COMMISSIONERS AND POLICE AREAS

Clause 110 – new section 31A(1) of the Police Act 1996: Power to amend name of police areas

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative procedure

240. The table in Schedule 1 to the 1996 Act sets out the areas, outside London, within England and Wales for which there must be a police force (see section 2 of the 1996 Act). Under section 1 of the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”) there is a PCC for every police area listed in Schedule 1 to the 1996 Act. The name of every PCC is “the Police and Crime Commissioner for [name of police area]” (see section 1(3) of the 2011 Act). The Home Secretary has received representations from one PCC to change the name of their police force area, and therefore the PCC’s official title, so that it better describes the communities the force and PCC serve. The Home Secretary has indicated that she is ready to consider such representations where there is local support and the change of name would represent value for money. From time to time there have been other proposals to change the name of a police force area.

241. Currently, any change to the name of a police force area would require primary legislation. (Section 32 of the 1996 Act contains an order-making power which enables geographical alterations to be made to a police area, together with any consequential change to the name of an altered area, but this power cannot be exercised so as simply to change the name of a police area.) New

section 31A of the 1996 Act enables the Home Secretary to amend the name of a police area, as specified in the first column of Schedule 1 to the 1996 Act, by regulations. While not specified in new section 31A, as indicated above, the power would only be exercised where there was evidence of local support and the proposed change of name represented value for money (having regard, for example, of the cost of changing force logos). Once these conditions are satisfied, the regulation-making power would enable any change of name to be implemented promptly.

242. As provided for in new section 31A(2), the regulation-making power is subject to the affirmative procedure. While this is a narrowly targeted Henry VIII power (a name change would have no wider impact on the governance arrangements for a police force), the Government is satisfied that the affirmative procedure is nonetheless appropriate given the potentially wide level of public and parliamentary interest in any proposed changes to longstanding names of force areas (albeit that such interest will generally be confined to the area affected by the regulations).

PART 6: FIREARMS

Clause 111(6) – new section 57B(1) of the Firearms Act 1968: Power to amend the definition of “component part” of a firearm

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative procedure

243. Section 1 of the 1968 Act prohibits the possession of a firearm without an appropriate certificate. The Act contains a number of offences to give effect to that prohibition. Section 57(1) of the 1968 Act defines a firearm for the purposes of the Act. Section 57(1)(b) provides that a “component part” of a firearm is to be treated as a firearm, but no definition of a component part is set out in the legislation.

244. In their report *Firearms Law – Reforms to address pressing problems* (December 2015), the Law Commission recommended that “the term “component part” in the Firearms Act 1968 be defined as (1) the barrel, chamber, cylinder; (2) Frame, body or receivers; (3) Breech block, bolt or other mechanism for containing the charge at the rear of the chamber”. Clause 77(4) amends section 57 of the 1968 Act to give effect to this recommendation (although for absolute clarity the list of component parts includes “receiver” instead of “receivers” and “other mechanisms for containing *the pressure of discharge* [rather than just *the charge*] at the rear of a chamber”).

245. The Law Commission went on to recommend that there should be a power to amend the list of component parts by secondary legislation subject to the affirmative procedure. At paragraph 3.26 of their report the Commission set out the case for such a power:

“Our terms of reference stipulated that we were to take account of advances in firearms technology. Enshrining an exhaustive list of component parts into law runs the risk that it could quickly become obsolete. We believe that giving the Secretary of State the power to amend the list is an effective way of ensuring that it can be amended rapidly to reflect future developments.”

246. New section 57B of the 1968 Act, inserted by clause 111(6), accordingly provides for such a power.

247. The Law Commission report cited some concerns expressed in response to their consultation about the inclusion of such a power. At paragraph 3.24 of their report they referred to concerns expressed by, “for example, the London Criminal Courts Solicitors’ Association [which] suggested that since being in unlawful possession of a component part constitutes a serious offence, primary legislation ought to be the means by which a part is added to any statutory list. The Commission concluded that such concerns “about this power can be addressed by making it subject to the affirmative resolution procedure”. The Government shares this view and new section 57B(3) duly applies the affirmative procedure.

Clause 112(2) – new section 58(2A) of the Firearms Act 1968: Power to specify obsolete cartridges and ignition systems for purpose of defining an “antique firearm”

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative procedure save where amending regulations removes a description of cartridge or ignition system in which case negative procedure

248. Section 58(2) of the 1968 Act exempts antique firearms from most of the prohibitions and restrictions placed in that Act on the possession of firearms. Accordingly a person may possess a functioning firearm without a firearms certificate, provided that it is an “antique” and he or she possesses it as a “curiosity or ornament”. The 1968 does not define an “antique firearm”. This has led to a loophole in the control of lethal weapons that has been exploited by criminal groups.

249. To address this loophole, the Law Commission recommended (at paragraph 4.40) in their December 2015 report *Firearms Law – Reforms to address pressing problems* that “an “antique firearm” be defined as: (1) a firearm employing an ignition system included on an amendable statutory list of obsolete ignition systems and is possessed as a curiosity or ornament; or (2) a firearm that is chambered for a cartridge type included on an amendable statutory list of cartridge types that are no longer readily available and is possessed as a curiosity or ornament”. Clause 112 gives effect to this

recommendation. New section 58(2A) of the 1968 Act provides that a firearm is an antique firearm if its chamber is capable of being used only with a cartridge of a description specified in regulations or its ignition system is of a description specified in regulations; the intention is to specify what are, in effect, obsolete cartridges and ignition systems. What constitutes an obsolete cartridge or ignition system will change over time. A cartridge or ignition system may not be obsolete now, but could be in 10 or 20 years time. Equally, it may be that criminal gangs seek to manipulate apparently obsolete cartridges or ignition systems for their own ends. Given this, the Government considers it appropriate to set out the lists of obsolete cartridges and ignition systems in secondary legislation which can be amended in line with changes in the availability of antiquated cartridge types or ignition systems in the legitimate or criminal markets. We will review the existing non-statutory guidance (which includes a list of firearms with obsolete cartridges) and consult interested parties to determine which firearms should be specified on the list and therefore not subject to certificate controls, and which firearms should be omitted from the list and subject to certificate controls.

250. New section 58(2C) and (2D) of the 1968 Act provide for two types of parliamentary procedure. The initial regulations, any replacement regulations and any amending regulations adding a description of ignition system or cartridge type are subject to the affirmative procedure. Any amending regulations which have the effect of removing a description of ignition system or cartridge type are subject to the negative procedure. As the initial (or any replacement) list of obsolete cartridge types or ignition systems will be central to determining whether a firearm is an antique firearm for the purposes of the 1968 Act (and may render certain firearms previously held as an antique subject to the licensing requirements of the 1968 Act), the Government considers it appropriate that the initial or replacement regulations are debated and approved by Parliament. Once made, the regulations are expected to be broadly stable over time. Any additions to the list will benefit those who possess firearms that are newly considered to have an obsolete cartridge type or ignition system. However, given the effect of adding a description of ignition system or cartridge type would be to remove the affected firearms from many of the controls in the 1968 Act it is appropriate that such regulations should also be debated and approved by both Houses so that they can satisfy themselves that the amending regulations do not present a risk to public safety. Any deletions from the list will be made where there is evidence that firearms with previously considered obsolete cartridge types or ignition systems are being used for criminal purposes and it would therefore be in the public interest for the relevant cartridges or ignition systems to be removed from the relevant prescribed list at the earliest opportunity. Given this, the Government considers that the negative procedure is appropriate for any amending regulations deleting a description of ignition system or cartridge type.

Clause 115(1) - new section 32ZA(1) of the Firearms Act 1968: Power to require payment of a fee for an authority under section 5 of the Firearms Act 1968

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

Clause 115(2) - new section 15B(1) of the Firearms (Amendment) Act 1988: Power to require payment of a fee for an approval under section 15 of the Firearms Act 1988

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

Clause 115(4) - new paragraph 3A(1) of the Schedule to the Firearms (Amendment) Act 1988: Power to require payment of a fee for a museums firearms licence

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

251. The Firearms Act 1968 (“the 1968 Act”) and the Firearms (Amendment) Act 1988 (“the 1988 Act”) make provision on the charging of fees to applicants of firearms licences, approvals and exemptions. Currently: section 32 of the 1968 Act sets out the fees payable for the grant, renewal or replacement of a firearms or shotgun certificate and for the variation of a firearms certificate; section 35(1) of the 1968 Act sets out the fee to be paid for the registration of a firearms dealer; section 15(6) of the 1988 Act sets out the fee payable on the grant or renewal of an approval for a rifle club or muzzle-loading pistol club; and paragraph 3 of Schedule 1 to the 1988 Act provides for fees in respect of the grant, renewal or extension of a licence exempting a museum from certain provisions of that Act. Section 43 of the 1968 Act confers a power to vary each of these fees by regulations, subject to negative resolution procedure. There is, however, no provision for the charging of fees for the granting of an authority to possess a weapon otherwise prohibited under section 5 of the 1968 Act, nor is there provision under section 15(6) of or paragraph 3 of the Schedule to the 1988 Act to charge different fees for different persons or organisations.

252. Clause 115 remedies these omissions by introducing three new regulation-making powers which allow the Secretary of State to provide for a discretionary power to charge a fee for an authorisation under section 5 (including a power to set different fees for different cases – new section 32ZA of the 1968 Act), and changes the fee-paying regimes under section 15 of the 1988 Act (new section 15B of the 1988 Act) and for a museum firearms licence under the Schedule to that Act (new paragraph 3A of the Schedule to the 1988 Act). Clause 115(5) repeals the existing fees provision in respect of approvals for shooting clubs in section 15(6) of the 1988 Act. In contrast to the existing approach to fees under the Firearms Acts, these regulation-making powers provide both for the initial

setting of the level of fees in the secondary legislation and a power to vary them, rather than specifying the level of fees on the face of the Firearms Acts with a power to vary the specified sum.

253. The power to set differential fees in each case reflects the fact that applications for section 5 authorities, section 15 approvals and museum firearm licences will come in a variety of forms (for example, grants, renewals and different types of variations) and from a variety of organisations (for example, in the case of section 5 authorities from firearms dealers and providers of maritime security) and it is therefore appropriate for the fee structure to reflect the differential cost of processing applications from different categories of applicant, or from different sizes of organisation, or both. Fees will be set in accordance with Treasury guidance in *Managing Public Money*. This approach is also necessary in order to allow for any new categories of applicant that emerge in due course to be rapidly accommodated and brought within the fees regime.

254. The regulations are subject to negative resolution procedure. Having established, on the face of the Firearms Acts, the principle that fees are payable in respect of the grant, renewal etc. of section 5 authorities, section 15 approvals and museum firearm licences approvals, and that different fees may be set for different cases, the Government considers that the negative procedure provides an appropriate level of parliamentary approval for the setting of the fees themselves. Moreover, in adopting the negative procedure, the Bill mirrors the position in respect of the existing power to vary fees in section 43 of the 1968 Act. Other statutory powers to set and vary fees are also commonly subject to the negative procedure, for example, those in the Licensing Act 2003 and Gambling Act 2005.

Clause 116(2) – new section 55A of the Firearms Act 1968: Power to issue guidance as to exercise of police functions under Firearms Act 1968

Power conferred on: Secretary of State

Power exercisable by: Statutory guidance

Parliamentary procedure: None

255. The 1968 Act confers a number of functions on chief officers of police, including in relation to the grant, renewal and revocation of firearms certificates and shotgun certificates and the registration of firearms dealers. To assist police firearms units in discharging these functions under the 1968 Act (on behalf of the relevant chief officer of police), the Home Office issues a guide to firearms licensing law; the December 2015 edition is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479794/Guidance_on_Firearms_Licensing_Law_Nov_2015_v16.pdf.

256. This guide is non-statutory and accordingly there is no obligation on police firearms units to adhere to the guide. Her Majesty's Inspectorate of Constabulary was critical of a number of aspects of the firearms licensing regime in their September 2015 report *Targeting the risk: an inspection of the*

efficiency and effectiveness of firearms licensing in police forces in England and Wales. The report found that forces frequently did not follow existing guidance, pointed to inconsistent practice between forces and argued that “the Home Office guidance was too discretionary in its approach”. The report concluded (at paragraph 8.17) that “the Home Office should review how the status of the guidance may be enhanced, in order to ensure that the police and, where necessary, the courts take into account the same considerations”.

257. In response to HMIC’s report, clause 116 inserts new section 55A into the 1968 Act which confers a power on the Secretary of State to issue guidance to chief officers of police as to the exercise of their functions under, or in connection with the 1968 Act. Such functions include functions under the Firearms (Amendment) Act 1988 (“the 1988 Act”) as section 25(6) of that Act provides for sections 53 to 56 of the 1968 Act (which would include the new section 55A) to apply as if the 1988 Act were contained in the 1968 Act. Functions “in connection with” the 1968 Act would include functions in connection with the Home Secretary’s (and Scottish Ministers’) functions in respect of the licensing of prohibited weapons under section 5 of the 1968 Act where police forces carry out background checks of applicants and others. The Home Secretary is required to consult the National Police Chiefs’ Council and the Chief Constable of the Police Service of Scotland before issuing any guidance or revisions thereto (new section 55A(5)). Chief officers of police are required to have regard to the guidance (new section 55A(4)).

258. Any guidance issued under new section 55A will not be subject to any parliamentary scrutiny, on the grounds that it will provide practical advice on the application of the legislative provisions and will be worked up in consultation with the police. The guidance will not conflict with, or alter the scope of, the provisions of the 1968 and 1988 Acts. Moreover, whilst chief officers will be required to have regard to the guidance when exercising their functions under those Acts, the guidance will not be binding to the extent that this requirement falls short of a duty to follow the guidance. The approach taken in the new clause is consistent with other legislative provisions providing for statutory guidance, for example section 5C of the Female Genital Mutilation Act 2003, as inserted by section 75 of the Serious Crime Act 2015, and section 53E of the Police Act 1996, inserted by section 125 of the Anti-social Behaviour, Crime and Policing Act 2014.

PART 7: ALCOHOL: LICENSING

Clause 122 – amended section 182 of the Licensing Act 2003: Duty to issue guidance

Power conferred on: Secretary of State

Power exercisable by: Statutory guidance

Parliamentary procedure: None

259. Clause 122 amends section 182 of the Licensing Act 2003 (“the 2003 Act”), which places a duty on the Home Secretary to issue guidance to licensing authorities on the exercise of their functions under that Act. The initial publication of the guidance was subject to the equivalent of the affirmative resolution procedure (section 182(2) of the 2003 Act), any revision of the guidance is subject to the equivalent of the negative procedure (section 182(4)-(6) of the 2003 Act). The current guidance is available at: <https://www.gov.uk/government/publications/section-182-of-the-licensing-act-2003-amended-guidance>. Clause 122 removes this parliamentary procedure.

260. The parliamentary procedure currently provided for in section 182 of the 2003 Act was added to the then Licensing Bill during its passage through the Lords. Indeed, the inclusion of such a procedure reflected a recommendation from the Delegated Powers Committee in their first report of session 2002/03; that report stated:

“Clause 177 provides for the issue and revision of guidance by the Secretary of State to licensing authorities. Authorities are required to have regard to this guidance in carrying out their licensing functions (clause 4(3)); so the guidance is important to the operation of the bill. **We considered that there should be an opportunity to debate the guidance, and the House may wish to consider whether the guidance might be brought into operation only by order made by the Secretary of State and subject to a Parliamentary procedure.**”

261. The 2003 Act has now been in force for 10 years and is well established. The guidance issued under section 182 has been revised on 12 occasions since it was first published, most recently in March 2015, and on not one of those occasions has the equivalent of the negative procedure been triggered. The nature of the statutory guidance is such that it cannot conflict with or override the provisions of the 2003 Act which itself sets out a detailed framework for the operation of the liquor licensing regime. And while licensing authorities are required to have regard to the guidance it is not binding to the extent that this requirement falls short of a duty to follow the guidance. Typically other forms of statutory guidance are not subject to parliamentary scrutiny, for example guidance issued by the Gambling Commission to local authorities under section 25 of the Gambling Act 2005. Given that the regime provided for in the 2003 Act is well embedded and the approach taken elsewhere in respect of analogous guidance, the Government is now of the view that it is not necessary to afford Parliament the opportunity to scrutinise revisions to the guidance.

Part 8: Financial sanctions

Clause 124(1): Modification of application of paragraph 1(1)(d) of Schedule 2(2) to the European Communities Act 1972

Power conferred on: *Designated Ministers and Departments including the Treasury*

Power exercisable by: *Regulations made by statutory instrument*

262. Financial sanctions are a key part of foreign and security policy, and focus upon significant threats to international peace and security. They are imposed on target states, regimes or other persons or groups that pose such a threat in order to achieve a foreign policy objective. This is done by making it more difficult for the target state, regime or group to access their funds and assets, do international business, or access financial markets and services until they comply with that objective (for example, cease human rights abuse, or stop nuclear proliferation). They can also be imposed on regimes that are suspected of having misappropriated public funds, allowing for those funds to be preserved until the question of their ownership has been settled. They reflect international agreements on common foreign policy objectives, and are often embodied in a UN Security Council Resolution (“UNSCRs”) and/or directly effective EU Regulations. Enforcement of these regimes within the UK is the responsibility of the UK Government.

263. Currently, provision to enforce financial sanctions that derive from directly effective European Regulations is made by way of regulations made under section 2(2) of the European Communities Act 1972 (“ECA”). These regulations create a criminal offence for breaching the requirements of the EU Regulation. Currently, paragraph 1(1)(d) of Schedule 2 to the ECA restricts a sentence of imprisonment for such an offence to a maximum of two years (on indictment) and three months³ (on summary conviction).

264. Clause 124(1) provides for a gloss on section 2(2) of the ECA, which will operate only in relation to financial sanctions regimes. Clause 124(2) sets aside the limitation in paragraph 1(1)(d), and clause 117(3) enables regulations made under section 2(2) of the ECA to implement enforcement of a financial sanctions regime deriving from an EU Regulation to make provision for sentences of:

- a) 7 years upon conviction upon indictment;
- b) 6 months upon summary conviction in England and Wales, rising to 12 months when paragraph 1(1)(d) of Schedule 2 ECA 1972 is amended by the Criminal Justice Act 2003;
- c) 12 months upon summary conviction in Scotland; and
- d) 6 months upon summary conviction in Northern Ireland.

265. This will enable the sentencing regime for financial sanctions to come into line with sentences for comparable criminal offences, such as breaching trade restrictions (which often accompany financial sanctions measures) where the maximum sentence is seven years imprisonment, and breaching counter-terrorism measures (also put in place to defend international peace and security) where the maximum sentence is 10 years imprisonment. They will also create a deterrent effect commensurate with the seriousness of breaches of financial sanctions, which are put in place to protect international peace and

³ This will rise to 6 months in England and Wales upon the commencement of section 154(1) of the Criminal Justice Act 2003.

security (for example by preventing nuclear proliferation), and breaches of which place innocent people at serious risk.

266. Existing regulations made under section 2(2) of the ECA making provisions to enforce EU financial sanctions are subject to the negative procure. The Government does not consider that this gloss on section 2(2) warrants a change to the level of scrutiny for these regulations given that Parliament will, in enacting this Bill, have given its approval to the higher maximum penalty for this particular category of offences created under the section 2(2) power.

Clause 126(7): Power to change the permitted maximum monetary penalty

Power conferred on: The Treasury

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative procedure

267. Clause 126(1) confers a power on the Treasury to impose a monetary penalty upon any person who has breached a financial sanctions regime. That breach could arise from a number of actions, for example:

- a) moving funds that are subject to an asset freeze without a licence;
- b) supplying a person subject to an asset freeze with funds;
- c) supplying a person subject to an asset freeze with goods (that may or may not be themselves subject to prohibitions on supply); or
- d) failing to pass information to the relevant authorities after having been required to do so.

Clause 126 contains a number of procedural requirements in respect of such an imposition, including prior notification, the ability to submit representations, consideration of those representations, and a right of review by a Minister.

268. Clause 126(3) and (4) specify what the maximum monetary penalty can be (the “permitted maximum”):

- a) where a breach of sanctions involves goods or funds that can be quantified (such as a transfer of funds equivalent £3,200,000), a monetary penalty up to the greater of either (1) half of the value (in the example given, a penalty of up to £1,600,000) or (2) £1,000,000; and
- b) where a breach of sanctions cannot be quantified, a monetary penalty of up to £1,000,000.

269. The Government notes that it could have taken the power to set the permitted maximum in the regulations made under 126(1). It has chosen to set the permitted maximum on the face of the clause so that it is immediately clear in primary legislation that high value breaches of financial sanctions regimes can and will be penalised proportionately.

270. Clause 129(1) requires the Treasury to publish guidance on the circumstances in which a monetary penalty may be imposed, and the factors which will be relevant in determining the value of a penalty. The Government is

aware of its general duty to act in a proportionate fashion, and not to punish relatively minor breaches with disproportionately large monetary penalties.

271. Clause 126(6) requires the Treasury to keep the permitted maximum under review. Clause 128(7) enables the Treasury to alter the permitted maximum by regulations (and make transitional provision if that is thought necessary to safeguard the position of any person, such as those upon whom a monetary penalty might be imposed).

272. Before exercising that power, the Treasury is obliged to consult such persons as they consider appropriate. Such persons might include financial regulatory bodies, representatives of the financial industries, trade representatives, representatives of persons subject to sanctions, the EU and the UN.

273. While many breaches involving funds and economic resources of lower value can and will continue to be adequately dealt with by way of warning letters, the Treasury over the last two years has seen breaches involving funds or assets that can be valued at tens or hundreds of thousands of pounds. In a small number of cases the value of the funds and assets involved in the breaches are in the millions, and as the Treasury expands its enforcement activity we expect to become aware of more high value breaches. The focus of the monetary penalty regime will be to deter breaches from being committed, and punish breaches that have been committed, including removing any profit that may have derived from the breach. The Government notes that monetary penalties levied by the Financial Conduct Authority in the UK and the Office of Foreign Asset Control in the United States can be much higher.

274. It is important in this context that the permitted maximum enables the Treasury to impose monetary penalties that are proportionate to the size of financial transactions covered, remove any profit from breaches as well as punish this conduct, and the prospect of which are sufficiently punitive to persons involved so as to deter them from breaching sanctions.

275. That is why it is important to be able to monitor the value of sanctions breaches and vary the permitted maximum to fit the reality of the situation. The Government acknowledges that if the reviews produce evidence that the cap is set too high, it will need to be lowered, and if the cap is set too low, it will need to be increased.

276. The regulation-making power is subject to the affirmative procedure. This recognises the fact that this is a Henry VIII power and that it could be exercised so as to substantially increase the permitted maximum provided on the face of the Bill, and accordingly it is appropriate that in such circumstances the regulations should be subject to debate and approval by both Houses.

Clause 129: Power to issue guidance on monetary penalties

Power conferred on: *The Treasury*

Power exercisable by: *Statutory guidance*

Parliamentary procedure: *None*

277. Clause 129(1) requires the Treasury to publish guidance on the circumstances in which it may consider that a monetary penalty is appropriate, and how the amount of any such penalty will be determined. This will inform people about what behaviours might result in a monetary penalty being levied, and the likely scale of any penalty in any given scenario. This provision will make the monetary penalty regime open and transparent.

278. The guidance issued under clause 129 will not be subject to any parliamentary scrutiny, on the grounds that it will provide practical advice on the application of the monetary penalty regime as set out in the legislation. The guidance will not conflict with, or alter the scope of, the provisions in Part 8 of the Bill. The approach taken in clause 129 is consistent with other legislative provisions providing for statutory guidance, for example paragraph 25 of Schedule 7 to the Counter Terrorism Act 2008 provides for Treasury approved guidance in respect of the civil penalties regime provided for in Part 6 of that Schedule and paragraph 6 of Schedule 17 to the Crime and Courts Act 2013 provides for the Director of Public Prosecutions and Director of the Serious Fraud Office to issue a code providing guidance to prosecutors on deferred prosecution agreements.

Clause 132(1) and (3): Power to create temporary sanctions regimes to implement UN obligations, and extend the period of time they are effective

Power conferred on: *The Treasury*

Power exercisable by: *Regulations made by statutory instrument*

Parliamentary procedure: *Negative procedure*

279. This regulation-making power is only relevant to financial sanctions regimes that derive from requirements contained in Resolutions of the UN Security Council (“UNSCRs”).

280. The UK is a signatory of the United Nations Charter. The most important Articles of that Charter to note are:

- a) Article 2, which obliges signatories to comply with the Charter;
- b) Article 24, which confers upon the UN Security Council (of which the UK is a permanent member) the primary responsibility to maintain international peace and security;
- c) Article 25, which obliges signatories to accept and carry out decisions of the UN Security Council;
- d) Article 39, which provides that the Security Council shall determine the existence of any threat to international peace and security; and
- e) Article 41, which empowers the Security Council to decide what measures not involving the use of armed force shall be taken to combat such threats, and call upon signatories to apply them.

281. Treaties do not confer powers upon the executive or duties upon citizens unless incorporated into domestic law by Parliament⁴. In the case of the UN Charter, this was done by the United Nations Act 1946.
282. The UK accordingly has a treaty obligation, incorporated into domestic law, to implement UNSCRs. UNSCRs made under Article 41 of the Charter require the UK to put into place a number of measures, including financial sanctions, “without delay”. There is no formal definition of “without delay”, but the Financial Action Task Force⁵ (“FATF”) have interpreted it as meaning “ideally within hours”, have indicated that at most it should be within 48 hours, and have criticised countries that take longer than 48 hours to implement UNSCRs.
283. Financial sanctions regimes deriving from UNSCRs are usually implemented within the European Union by the EU Commission on behalf of Member States (who are all Charter signatories). This can cause some delay: a recent analysis suggested that it took an average of 3.5 weeks after a UNSCR to implement a directly effective EU Regulation. While the EU has committed to reducing this time, there remain concerns that it will not be practically possible to legislate within 48 hours of a UNSCR. The Government is also concerned that delays in implementation will enable persons who are named as sanctions targets by the UN to remove their assets from the jurisdiction.
284. Clause 132(1) resolves this problem by enabling the Treasury to establish a temporary financial sanctions regime in order to implement the UNSCR within the UK “without delay”. That clause and clause 133 contain provisions that expressly permit the temporary sanctions regime to provide for, amongst other things, asset freezes and restrictions upon the transfers of funds. It will be expressly limited in effect to an absolute maximum of 60 days from the date of the UNSCR.
285. The power in clause 132(1) can only be used to make regulations that take effect for up to 30 days after the date of the UNSCR. Clause 134(3) enables further regulations to be made, on one occasion only (clause 134(4)), to extend the effect of the regulations made under clause 132(1) to up to 60 days after the date of the UNSCR. A temporary sanctions regime will cease to have effect as soon as any directly effective EU legislation establishes a sanctions regime to give effect to the UNSCR. The Government is confident that the EU will be able to put such provisions in place within 60 days of a UNSCR.
286. By virtue of clause 132(6), these regulation-making powers are subject to the negative procedure. The Government notes that the regulations made under section 2(2) of the European Communities Act 1972 implementing EU sanctions regulations on a permanent basis are routinely also subject to the negative procedure.

⁴ As recorded in Maclaine Watson & Co Ltd v Dept of Trade & Industry [1989] 3 All ER 523 at 544-545.

⁵ An inter-governmental body established in 1989 by the UK and other countries to set standards and promote effective implementation of measures to combat threats to the international financial system, including breach of financial sanctions.

- a) a list of financial sanctions targets in the original UNSCR can be amended to include the new sanctions target;
- b) a separate UNSCR can provide that the new sanctions target should be subject to the financial sanctions regime derived from the original UNSCR; or
- c) a Sanctions Committee established by the original UNSCR could decide that the new sanctions target should be subject to the financial sanctions regime.

293. Usually, following on from the UN 'listing', the EU will 'list' the new sanctions target by including them in an Annex of the EU Regulation that lists those individuals and entities subject to the EU Regulation (which establishes the sanctions regime required by the original UNSCR).

294. Clause 134(1) contains a power for the Treasury to make a set of regulations providing for a 'link' between UNSCRs and EU Regulations. Clause 135 will then operate so that a sanctions target who is 'listed' by reference to the original UNSCR is deemed to be 'listed' under the corresponding EU Regulation. The financial sanctions will then apply to them, for a period of up to 30 days. The deeming provision will cease after the sooner of:

- a) 30 days; or
- b) the day that they are 'listed' under the EU regulation.

The Government is confident that the EU will be able to 'list' the new sanctions target in the EU Regulations within 30 days.

295. For example, in a fictional scenario where the UN has adopted a UNSCR in relation to nuclear proliferation in Erewhon, including a requirement for an asset freeze for 'listed' sanctions targets, the EU will then create a sanctions regime for Erewhon in a directly effective EU Regulation which contains provisions for an asset freeze. Some time later, the UN's Sanctions Committee decide that General Ydobon has been involved in nuclear proliferation in Erewhon, and 'lists' him under the Erewhon UNSCR. However, he would not be subject to the regime set out in the EU Regulation until he is also 'listed' by the EU. In the mean time, the regulations issued under clause 134(1) would link the Erewhon UNSCR and the Erewhon EU Regulations. Accordingly, the deeming provisions would operate to deem General Ydobon to be subject to the financial sanctions regime (including the asset freeze) in the Erewhon EU Regulations, and so his assets in the UK could be frozen.

296. The Government did consider whether the details of the UNSCRs and EU Regulations should be contained in a Schedule to the Bill, and take a power to amend that Schedule as and when it is necessary to do so. It decided not to do so, because:

- a) the lists are long and complicated; and so are not best suited for the face of primary legislation;
- b) the lists in primary legislation would need to be frequently updated by way of secondary legislation as new UNSCRs and EU Regulations are made and older ones are revoked, and the same effect can be achieved without use of a Henry VIII power; and

- c) the lists would become out of date in the time between the end of the Parliamentary procedure and the primary legislation coming into effect.

297. Accordingly, the Government decided that establishing and maintaining these long and technical lists was suitable for secondary legislation. Considering the technical nature of the provisions contained therein, and the fact that they would require regular updating, the Government considered that the negative procedure (as applied by clause 134(3)) to be appropriate.

Clause 136(1) and (2): Powers to extend temporary sanctions measures to Crown Dependencies and British Overseas Territories by Order in Council

Power conferred on: Her Majesty

Power exercisable by: Order in Council

Parliamentary procedure: None

298. Clause 136(1) and (2) provide that Her Majesty may, by Order in Council, extend temporary sanctions measures to the Crown Dependencies and British Overseas Territories (“the relevant territories”).

299. The temporary sanctions measures under clauses 132(1) and 134(1) extend to the whole of the UK (see clause 149(2)(t)). They do not extend directly to the relevant territories.

300. Currently, permanent sanctions measures are implemented in certain of the relevant territories by Orders in Council made under various Acts (including the United Nations Act 1946) and the Royal Prerogative. Clause 136(1) and (2) ensure that the temporary sanctions measures in Part 8 of the Bill can be extended to any or all of the relevant territories as appropriate. It is intended that the temporary sanctions measures will cease to have effect after the legislation implementing the EU Regulation in the relevant territories has been made.

301. Clause 136(4) to (6) applies only to temporary sanctions regimes created under clause 125. They enable the temporary sanctions regime giving effect to a UNSCR to take effect for up to 120 days after the date of the UNSCR, although as above it is intended the temporary sanctions regime would cease to have effect earlier if the legislation implementing the EU Regulation in the relevant territories has been made before the expiry of this period. This longstop period is longer than the one which will apply in the UK. This reflects the fact that EU Regulations do not apply directly in some of the relevant territories. As described above, it is therefore necessary for further legislation be made following the EU Regulation, or for the relevant territory to take its own legislative steps to implement the sanctions regime. The Government is confident that all of the necessary steps to implement a UNSCR in the relevant territories can be taken within 120 days.

302. Although the clause has been drafted to enable the temporary sanctions measures to be extended to all of the relevant territories, the Government notes that some of them are enacting their own legislation to implement UNSCRs ‘without delay’. The Government does not propose to make an Order in Council to extend the provisions to a relevant territory that has its own legislation in place. The Government is working closely with the relevant territories to ensure that UNSCRs are implemented in a swift and co-ordinated fashion, whether this is done via extension of the provisions in this Bill or otherwise.

303. As is customary for Orders in Council extending provisions of an Act to the Crown Dependencies and Overseas Territories, the power in this clause is not subject to any parliamentary procedure.

Part 9: Miscellaneous and general

Clause 145: Power to issue guidance to public authorities in respect of functions under taxi and private hire vehicle (“PHV”) legislation

Power conferred on: Secretary of State

Power exercisable by: Statutory guidance

Parliamentary procedure: None

304. Taxi and PHV licensing is carried out by local authorities and Transport for London under a number of different statutory provisions, including the London Hackney Carriage Act 1843, sections 37 to 68 of the Town Police Clauses Act 1847, the Metropolitan Police Carriage Act 1869, Part 2 of the Local Government (Miscellaneous provisions) Act 1976, the Private Hire Vehicles (London) Act 1998 and the Plymouth City Council Act 1975.

305. Licensing authorities must ensure, amongst other things that licenses are issued only to drivers who are “fit and proper”, but the term is not defined further in legislation.

306. The Department for Transport issues the Taxi and Private Hire Vehicle Licensing: Best Practice Guidance, the last version of which was issued in 2010⁶. The guidance has currently no statutory basis.

307. Both the Jay⁷ and Casey Reports⁸ into child sexual exploitation (“CSE”) noted the prominent role played by taxi drivers in a large number of cases of abuse. The Casey Report in particular uncovered what was described as “weak and ineffective arrangements for taxi licensing which leave the public at risk”. The Government strongly agrees that continued work with the taxi and PHV sector is needed to reduce the risk of CSE and other abuse of vulnerable individuals.

⁶ <https://www.gov.uk/government/publications/taxi-and-private-hire-vehicle-licensing-best-practice-guidance>

⁷ Independent Inquiry into Child Sexual Exploitation in Rotherham 1997 -2013 by Alexis Jay OBE

⁸ Report of Inspection of Rotherham Metropolitan Borough Council by Louise Casey CB

308. The Law Commission's May 2014 report on Taxi/PHV legislation⁹ recommended a re-write of the existing, outdated taxi/PHV legislation and included a draft Bill to that end. The Government is currently considering the Law Commission's report and draft Bill. Pending any codification of the existing legislation in this area, clause 145 empowers the Secretary of State (in practice the Secretary of State for Transport in consultation with the Home Secretary) to issue statutory guidance to local taxi and PHV licensing authorities in relation to the safeguarding of children and vulnerable adults and requires such authorities to have regard to the guidance when exercising their taxi and PHV licensing functions (subsections (2) to (4)).

309. The Secretary of State is required to consult the National Police Chiefs' Council, persons representing the interests of public authorities who are required to have regard to the guidance, persons representing the interests of taxi and PHV drivers and others whose livelihood is affected by the licensing functions to which the guidance relates and such other persons (for example, children's organisations) the Secretary of State considers appropriate (subsection (5)). The aim of such statutory guidance is to promote the adoption of good practice by all relevant public authorities when exercising their licensing functions under the relevant taxi and PHV legislation.

310. Any guidance issued under clause 145 will not be subject to any parliamentary scrutiny on the grounds that it will provide practical advice on the application of the relevant taxi and PHV legislative provisions (as specified in subsection (6)) and will be worked up in consultation with the police, the relevant public authorities, the taxi and PHV sector and others. The guidance will not conflict with, or alter the scope of, the provisions of the relevant taxi and PHV legislation. Moreover, whilst the relevant public authorities will be required to have regard to the guidance when exercising functions under the relevant legislation, the guidance will not be binding to the extent that this requirement falls short of a duty to follow the guidance. The approach taken in clause 145 is consistent with other legislative provisions providing for statutory guidance in respect of local authority licensing functions, for example guidance issued by the Gambling Commission to local authorities under section 25 of the Gambling Act 2005.

**Clause 146(1) – new section 94(1) of the Environmental Protection Act 1990:
Power to prescribe description of premises in respect of which a street litter
control notice may be issued**

Power conferred on: *The Scottish Ministers*

Power exercisable by: *Order made by Scottish Statutory Instrument*

Parliamentary procedure: *Negative procedure*

⁹ http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc347_taxi-and-private-hire-services.pdf

311. The Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”) introduced a range of new powers to tackle anti-social behaviour. These replaced a number of existing ones, including the power to serve litter abatement notices under section 92 of the Environmental Protection Act 1990 (“the 1990 Act”) and street litter control notices under section 93 (and associated section 94) of the 1990 Act. The intention was that the Community Protection Notice, provided by sections 43 to 58 of the 2014 Act, would replace these notices in dealing with littering issues in England and Wales. Accordingly the relevant provisions of the 1990 Act were repealed by paragraph 21 of Schedule 11 to the 2014 Act. The intention was that this repeal should apply to England and Wales only. However, the unintended effect of section 184(8) of the 2014 Act was that this repeal was extended to Scotland as well as England and Wales. The Community Protection Notice is not available in Scotland, so this repeal has left a gap in the powers available in Scotland to tackle littering. Clause 146 therefore re-enacts sections 92, 93 and 94 of the 1990 Act in Scotland and so reinstates the powers for Scottish local authorities to issue litter abatement notices and street litter control notices.
312. New section 93 of the 1990 Act, as with its predecessor, would enable a Scottish local authority to issue a street litter control notice on the occupier or owner of premises which are of a description prescribed under new section 94(1)(a). New section 94 of the 1990 Act, again as with its predecessor, confers on the Scottish Ministers the power, by order, to prescribe the different types of commercial or retail premises against which a street litter control notice may be issued, the descriptions of the land which may be included in a specified area and the maximum area of land which may be included. The power also allows the Scottish Ministers to describe the premises or land by reference to occupation or ownership or to the activities carried out there. Given that street litter control notices impose duties on the owner or occupier of relevant premises (see new section 94(4)), and it is an offence to fail to comply with a notice without reasonable excuse, it is appropriate to target the power to issue these notices on commercial or retail premises (for example, fast food enterprises) which generate litter in their immediate surrounds rather than provide for a generic power in primary legislation to issue a notice on the occupier or owner of any premises (including domestic dwellings). Given the wide variety of commercial and retail premises and the differing locations they may be sited, it is appropriate to use secondary legislation to specify the descriptions of premises to be subject to these notices. Secondary legislation also affords the flexibility to update the list of specified premises, for example, to take account of new types of commercial or retail enterprises which may become the cause of littering problems.
313. The Street Litter Control Notices Order 1991 (SI 1991/1324), as amended by SI 1997/632, was made under the original section 94 of the 1990 Act. Amongst the descriptions of premises specified in that Order as it applies in Scotland are: premises used wholly or partly for the sale of food or drink for consumption off the premises, service stations, cinemas and theatres, banks and building societies with automated teller machines and betting offices. Subsection (2) of clause 146 revives that Order.

314. By virtue of new section 94(1), an order made under that subsection is subject to the negative procedure. Given that the framework for street litter control notices will continue to be provided for in primary legislation, including the limitation on applying such notices only to commercial or retail premises, the UK and Scottish Governments consider that the negative procedure continues to afford an adequate level of (Scottish) parliamentary scrutiny for an order setting out the detail of the particular description of such premises. The application of the negative procedure is consistent with the order-making power in the original section 94 of the 1990 Act.

Clause 147: Power to make further consequential amendments

Power conferred on: Secretary of State and the Treasury

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution (if it does not amend primary legislation), otherwise affirmative resolution

315. Clause 147(1) and (2) confers power on the Secretary of State and the Treasury to make such consequential provision as they consider appropriate for the purposes of the Bill. The regulation-making power does not enable non-textual modifications to be made to primary or secondary legislation. Such provision may include repealing, revoking or otherwise amending primary and secondary legislation (subsection (3)(b)). The powers conferred by this clause are wide but they are limited by the fact that any amendments made under the regulation-making power must be genuinely consequential on provisions in the Bill. But there are various precedents for such provisions including section 59 of the Crime and Courts Act 2013, section 181 of the Anti-social Behaviour, Crime and Policing Act 2014, section 85 of the Serious Crime Act 2015 and section 61 of the Psychoactive Substances Act 2016. The Bill already includes significant changes to other enactments as a consequence of the provisions in the Bill but it is possible that not all of the necessary consequential amendments have been identified in the Bill's preparation. The Government considers that it would therefore be prudent for the Bill to contain a power to deal with these in secondary legislation. If regulations under this clause do not repeal, revoke or otherwise amend primary legislation they will be subject to the negative resolution procedure (by virtue of subsection (5)). If regulations under this clause do repeal, revoke or otherwise amend provision in primary legislation it will be subject to the affirmative resolution procedure (by virtue of subsection (4)) as befitting a Henry VIII power of this type. It is considered that this provides the appropriate level of parliamentary scrutiny for the powers conferred by this clause.

Clause 150: Commencement power

Power conferred on: Secretary of State and the Treasury

Power exercisable by: Regulations made by statutory instrument

Parliamentary Procedure: None

316. Clause 150(1) and (2) contains standard powers for the Secretary of State and the Treasury to bring provisions of the Bill into force by commencement regulations. As usual with commencement powers, regulations made under this clause are not subject to any parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by regulations enables the provisions to be brought into force at a convenient time.

317. Subsections (7) and (8) confers power on the Secretary of State and the Treasury to make such saving, transitional or transitory provisions as they consider appropriate in connection with the coming into force of the provisions in the Bill. This is a standard power to enable the changes made by the Bill to be implemented in an orderly manner. Such powers are often included, as here, as part of the power to make commencement regulations (for example, section 88(9) of the Serious Crime Act 2015) and, as such, are not subject to any parliamentary procedure on the grounds that Parliament has already approved the principle of the provisions in the Bill by enacting them.

**Home Office
June 2016**