

# **ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 11: Policing etc**

##### **College of Policing**

##### ***Section 123: Regulations to be prepared or approved by the College***

336. *Subsection (1)* inserts new subsections (2ZA) and (2ZB) into section 50 of the Police Act 1996 (“the 1996 Act”). Section 50 of the 1996 Act confers on the Home Secretary the power to make regulations (subject to the negative resolution procedure) regarding the government, administration and conditions of service of members of police forces. Subsection (2)(a), (b), (c) and (g) of that section, read with subsection (1), gives the Home Secretary the power to make regulations regarding the ranks held by members of police forces (that is police officers), the qualifications for appointment and promotion of members of police forces, the periods spent on probation and the maintenance of personal records of members of police forces. New section 50(2ZA) and (2ZB) give responsibility for determining such matters to the College of Policing. The power to make regulations on such matters would continue to reside with the Home Secretary, but in future decisions as to the content will rest with the College. New section 50(2ZA) sets out the circumstances in which the Home Secretary is able to decline to make police regulations proposed by the College. The power to decline to make regulations on the grounds that “it would for some other reason be wrong to do so” (in new section 50(2ZA)(c)) should be read as covering similar kinds of things to those covered by new section 50(2ZA)(a) and (b). This limb could be used to cover a case where it would not be unlawful to make the regulations in the terms proposed by the College but it would be undesirable to do so because, for example, the regulation as drafted was not sufficiently clear, was flawed, or would not achieve the policy intention the College intended to achieve. In such circumstances the Home Secretary could ask that the College prepare a fresh draft so as not to lay flawed regulations before Parliament.
337. *Subsection (2)* inserts new subsections (2ZA), (2ZB) and (2ZC) into section 51 of the 1996 Act. Section 51 of that Act gives the Home Secretary the power to make regulations (subject to the negative resolution procedure) regarding the government, administration and conditions of service of special constables. The new subsections give the College of Policing responsibility for determining the same list of matters in respect of special constables as it will have under section 50 of the 1996 Act in respect of members of police forces. Again, responsibility for making regulations under section 51 will continue to reside with the Home Secretary but responsibility for the content of those regulations insofar as it relates to matters specified in new section 51(2ZA) will rest with the College. New section 51(2ZB) sets out the circumstances in which the Home Secretary is able to decline to make police regulations proposed by the College.

338. *Subsection (3)(a)* inserts new subsections (1A) and (1B) into section 53A of the 1996 Act. Section 53A of that Act gives the Home Secretary the power to make regulations (the first exercise of the power is subject to the affirmative resolution procedure, with any subsequent regulations being subject to the negative resolution procedure) requiring all police forces in England and Wales to adopt particular practices or procedures. New subsections (1A) and (1B) give the responsibility for determining the content of those regulations to the College of Policing. Responsibility for making regulations under section 53A will continue to reside with the Home Secretary (subject to the affirmative resolution procedure in all cases (*subsection (3)(c)*)). New section 53A(1A) sets out the circumstances in which the Home Secretary is able to decline to make police regulations proposed by the College.
339. *Subsection (3)(b)* repeals provisions in section 53A of the 1996 Act concerning the preparation of, and consultation on, regulations about police practices and procedures. These provisions are no longer necessary in light of the role of the College of Policing, as set out in new section 53A(1A) and (1B).
340. *Subsection (4)* amends section 63 of the 1996 Act. Section 63 requires the Home Secretary, prior to making regulations under section 50 or 51, to consult the Police Advisory Board for England and Wales (“the PABEW”) on changes she intends to make to certain police regulations. In consulting the PABEW, the Home Secretary must provide a draft copy of those regulations. *Subsection (4)* removes that requirement in respect of those regulations made under the new section 50(2ZB).
341. *Subsection (5)* amends section 97 of the Criminal Justice and Police Act 2001. Section 97(1) of that Act gives the Home Secretary the power to make regulations (subject to the negative resolution procedure) regarding police training, and the qualifications for deployment to perform particular tasks of individuals serving or employed for policing purposes in England and Wales. *Subsection (5)(a)* inserts new subsections (1A) and (1B) into section 97, which confer responsibility for determining the content of such regulations on the College of Policing. Responsibility for making regulations under section 97 will continue to reside with the Home Secretary. New section 97(1A) sets out the circumstances in which the Home Secretary is able to decline to make police regulations proposed by the College.

#### ***Section 124: Codes of Practice issued by the College***

342. This section amends section 39A of the 1996 Act. Section 39A of the 1996 Act gives the Home Secretary the power to issue Codes of Practice relating to the way in which chief constables discharge their functions. Using the powers given to her under section 39A, the Home Secretary has issued Codes of Practice on the following issues: police use of firearms and less lethal weapons; national intelligence model; management of police information; serious crime analysis section; collecting and sharing data on missing persons with public authorities; and management of police pursuits.
343. *Subsection (2)* substitutes a new subsection (1) of section 39A so as to provide that the College of Policing, rather than the Home Secretary, may issue such Codes of Practice but subject to the Home Secretary’s approval. New section 39A(1) also broadens the circumstances in which a Code of Practice under this section may be issued. At present, the Home Secretary may only issue a Code of Practice if she considers it necessary to do so for the purpose of promoting the efficiency and effectiveness of police forces. Under the new section 39A(1), the College may issue a Code of Practice if one of three tests is satisfied, namely that it considers it necessary to do so in order to improve the efficiency and effectiveness of the police, to facilitate joint or co-ordinated activity by two or more police forces, or if the College otherwise considers that it would be in the national interest for it to issue a Code of Practice.
344. *Subsections (3) to (5)* make consequential and supplementary amendments to: section 39A(2), to confer power on the College to revise in whole or in part a Code of Practice; section 39A(4), to require the College to consult with the National Crime

Agency prior to issuing a Code of Practice; and section 39A(5) to maintain the requirement for the Home Secretary to lay Codes of Practice before Parliament, even though they will be issued by the College.

***Section 125: Guidance by the College about employment etc of civilian staff***

345. This section inserts a new section 53E into the 1996 Act, which provides for the College of Policing to issue, revise and publish guidance with regard to the experience or qualifications of police civilian staff and the training they should undertake. The new section applies to private sector staff providing services under contract, as well as employed staff.
346. New section 53E(5) imposes a duty on chief constables, Police and Crime Commissioners, the Mayor's Office of Policing and Crime in London and the Common Council for the City of London Police to have regard to any such guidance issued by the College under new section 53E.

***Section 126: Power to give directions to the College***

347. *Subsections (1) and (2)* give the Home Secretary the power to direct the College to carry out activities if the Home Secretary believes those activities will improve the efficiency, effectiveness and integrity of the police in England and Wales.

***Section 127: Charging of fees by the College***

348. This section inserts new section 95A into the 1996 Act, which makes provision permitting the College of Policing to charge for providing services of a public nature only if the services are provided with a view to promoting the efficiency, effectiveness or professionalism of the police and are of a description specified by the Secretary of State by order (subject to the negative resolution procedure). The order must also specify the level of fees that the College may charge for providing a specified service, or specify how such fees are to be determined. The College already has the powers it needs to charge for providing commercial services through its status as a company limited by guarantee.

***Section 128: Appointment of senior officers as members of staff of the College***

349. This section inserts new section 100A into the 1996 Act, which allows those individuals who hold the office of constable to continue to do so after appointment as a member of staff of the College of Policing if they hold, or are eligible to hold, a rank higher than that of chief superintendent. New section 100A(3) allows the College of Policing to appoint such an individual to a higher rank than they may have held in their police force prior to appointment.

***Section 129: Disclosure of information to the College***

350. This section inserts a new section 100B in the 1996 Act which contains a broad information gateway to authorise any person to disclose information to the College if the disclosure is made for the purposes of the exercise of the College's functions. This would allow other organisations to share information with the College, such as data that would inform any research the College wished to carry out, or case studies that may assist with police training.

***Section 130: The College and the IPCC***

351. This section inserts a new section 26BA into Part 2 of the Police Reform Act 2002 ("the 2002 Act") which requires the Independent Police Complaints Commission ("the IPCC") and the College to enter into an agreement for the establishment of procedures for the handling of complaints against College staff that is akin to the procedures in Part 2 of that Act. Part 2 confers functions on the IPCC in respect of complaints about,

or matters indicating, misconduct or death or serious injury involving persons serving with police forces in England and Wales. Such functions include the examination of police forces' complaint handling procedures and undertaking, managing or supervising investigations into complaints or other matters. The purpose of these provisions is not simply to replicate Part 2 of the 2002 Act, because the arrangements will need to be tailored to the circumstances of the College, but they will ensure that the IPCC has oversight of the College in broadly the same way as it has in relation to the police. The intention is that such an agreement would only relate to those staff of the College who hold the office of constable.

## **Review bodies for police remuneration etc**

### ***Section 131: Abolition of Police Negotiating Board for the United Kingdom***

352. *Subsection (1)* abolishes the Police Negotiating Board (“PNB”) for the United Kingdom and *subsection (2)* repeals sections 61 and 62 of the Police Act 1996, which provided for the existence and constitution of the PNB and its functions in respect of police workforce regulations. *Subsection (3)* provides for the Secretary of State to secure the reimbursement of payments made by Scottish Ministers or the Department of Justice in Northern Ireland towards expenses incurred by the Police Negotiating Board for the United Kingdom. It allows for the refunding of any unused part of the annual contributions provided by both Northern Ireland and Scotland for the Police Negotiating Board for the United Kingdom.

### ***Section 132: Establishment of Police Remuneration Review Body***

353. *Subsection (1)* inserts a new Part 3A (comprising new sections 64A and 64B and new Schedule 4B) into the Police Act 1996, which provides for the “Police Remuneration Review Body” (“PRRB”). New section 64A(1) establishes the PRRB. New section 64A(2) sets out the composition of the PRRB; it is to comprise a chair appointed by the Prime Minister and five or more other members appointed by the Secretary of State, one of whom may be appointed by the Secretary of State as a deputy chair. New section 64A(3) requires the Prime Minister or Secretary of State to consult the Department of Justice in Northern Ireland before making an appointment to the PRRB. New section 64A(4) and (5) enables the Secretary of State to change the name of the PRRB by order subject to the negative resolution procedure.
354. New section 64B(1) requires the PRRB to consider and report on any matter which is referred to it by the Secretary of State and that relates to one of the following issues for police officers of or below the rank of chief superintendent in England and Wales, or for police cadets appointed under section 28 of the Police Act 1996: hours of duty; leave; pay and allowances; and the issue, use and return of clothing, personal equipment and accoutrements. New section 64B(2) requires the PRRB to submit such reports to the Prime Minister and Secretary of State, which the latter must then arrange to be published.
355. New section 64B(3) and (4) make similar provision for Northern Ireland to new section 64B(1) and (2).
356. New section 64B(5) sets out the directions that the Secretary of State and/or the Northern Ireland Department of Justice may give to the PRRB. The PRRB can be directed to: report within a specified time period; have regard to particular considerations; obtain specific evidence such as data from police forces; and make recommendations on specific matters referred to it such as named allowances, for example the Northern Ireland Transitional Allowance. New section 64B(6) enables the PRRB to include in its report any recommendations it considers to be appropriate, which it considers to arise out of the matters referred to it under section 64B(5) regardless of whether or not it is directly given a direction to do so under new section 64B(5). New

section 64B(7) enables the Secretary of State or Department of Justice to vary or revoke any references or directions to the PRRB.

357. *Subsection (2)* gives effect to Schedule 7 which inserts new Schedule 4B into the Police Act 1996.

***Schedule 7: Schedule to be inserted as Schedule 4B to the Police Act 1996***

358. Paragraphs 1 to 11 of new Schedule 4B make further provision for: the membership of the PRRB; the appointment, resignation and dismissal of its members; and its procedures. Paragraph 12 enables the Secretary of State to give directions to the PRRB about the matters that it is to consider when making decisions. Such directions may, for example, require the PRRB to consider the Government's public sector pay policy or the impact of its recommendations on recruitment and retention.
359. Paragraph 13 of new Schedule 4B sets out the persons and bodies the Secretary of State must consult before: making or revising a determination about the number of members or the kinds of experience the members of the PRRB should possess (under paragraph 2); issuing or revising a statement of principles relating to the conduct of members (issued under paragraph 4); giving or revising a direction as to the persons or bodies from whom it should gather evidence, the procedure for obtaining evidence, or the matters it should consider when making recommendations (under paragraph 11(2) or 12).
360. Paragraph 14 of new Schedule 4B requires the Secretary of State to publish statements of determinations (and revised determinations); statements of principles (and revised statements); and directions (and revised directions).
361. Paragraph 15 of new Schedule 4B enables the Secretary of State and Department of Justice in Northern Ireland to defray the costs of the PRRB.

***Section 133: Consultation about regulations: England and Wales***

362. *Subsection (1)* inserts new section 52A into the Police Act 1996. New section 52A(1) and (2) requires the Secretary of State to refer matters in respect of police officers of or below the rank of chief superintendent and police cadets in England and Wales, that relate to their hours of duty, leave, pay, allowances, and the issue, use and return of clothing, personal equipment and accoutrements, to the PRRB for consideration under new section 64B(1) before making regulations under section 50 or 52 of the Police Act 1996, unless new section 52A(5) applies. New section 52A(2)(b) requires the Secretary of State to consider the PRRB's report on the matters referred.
363. New section 52A(3)(a) requires the Secretary of State to refer matters in respect of police officers above the rank of chief superintendent in England and Wales, that relate to their hours of duty, leave, pay, allowances, and the issue, use and return of clothing, personal equipment and accoutrements, to the Senior Salaries Review Body ("SSRB") before making regulations under section 50 or 52 of the Police Act 1996, unless new section 52A(4) or (5) applies. New section 52A(4) applies where the subject matter of the regulations being considered would affect police officers of or below the rank of chief superintendent as well as those above and the Secretary of State considers it preferable for the matter to be considered by one review body; in such cases the matter must be referred to the PRRB to consider. For example, this provision might apply in a case where consideration is being given to introducing a new allowance payable to all ranks and it is sensible for the Secretary of State to obtain a single "strategic" view on the impact across the police.
364. New section 52A(5) sets out the circumstances in which the Secretary of State's duty to refer matters to the PRRB and/or to consider advice from the SSRB does not apply. If the Secretary of State considers that either there is not enough time refer the matter to the PRRB or SSRB before making regulations because the need is so urgent, or it

is unnecessary to refer the matter because of the nature of the proposed regulations, the duty does not apply. However, the default position is that the Secretary of State will not make regulations without first referring the matter to the PRRB or SSRB. The Secretary of State might, for example, consider that it is unnecessary to consult the PRRB or SSRB because the proposed changes to the regulations were of a minor or technical nature, or corrected some previous drafting error in the regulations, or it is proposed to use regulations to implement some uncontroversial benefit conferred on other workers by means of legislation that does not apply to police officers because they are not employees.

365. New section 52A(6) requires the Secretary of State to supply a draft of any proposed regulations to persons whom the Secretary of State considers to represent the interests of: the persons or bodies who between them maintain police forces; chief officers of police; members of police forces; and police cadets appointed under section 28 of the Police Act 1996, and consider any representations made by them before making regulations. This provision applies in all cases, even where the Secretary of State has not referred a matter to the PRRB or SSRB, as set out under new section 52A(5). The purpose is to ensure that in every case the Secretary of State has the benefit of the technical knowledge of these interested parties in arriving at a final version of the regulations.
366. New section 52A(7) and (8) provides the Secretary of State with the power to amend by order (subject to the negative resolution procedure) the reference to the SSRB in new section (3)(a) and replace it, if the name or the functions of the SSRB changes.
367. *Subsection (2)* makes a consequential amendment to section 63 of the Police Act 1996 to ensure that, as now, there is no requirement on the Secretary of State to refer draft regulations relating to matters within the remit of the PRRB to the Police Advisory Board for England and Wales.
368. *Subsection (3)* amends section 1 of the Police Pensions Act 1976 by replacing the requirement for the Secretary of State to consult the Police Negotiating Board before making changes to police pensions regulations with a requirement to consult the “appropriate advisory or negotiating body”. This is defined in new subsection 1(1A) as the Police Advisory Board for England and Wales for regulations with regard to England and Wales and the Police Negotiating Board for Scotland for regulations with regard to Scotland. New subsection 1(1B) also makes provision for the Secretary of State to invite the views of the Northern Ireland Policing Board and the Police Association of Northern Ireland when consulting the PABEW on regulations regarding England. It is intended that in practical terms representatives of those bodies will join the PABEW for the purposes of the PABEW’s consideration of police pension regulations, in order to promote consistency of approach as between England and Wales on the one hand and Northern Ireland on the other.
369. *Subsection (4)* inserts a new subsection (3) into section 52 of the Police Act 1996 the effect of which is to require the Secretary of State to consult the PABEW, and invite the views of the Northern Ireland Policing Board and Police Association of Northern Ireland, before making regulations about the pension arrangements for police cadets.
370. *Subsection (5)* amends Schedule 3 to the Police and Justice Act 2006 the effect of which is to require the Secretary of State to consult, before exercising the power to merge police pension schemes, PABEW as regards England and Wales; the PNB for Scotland as regards Scotland; and the Northern Ireland Policing Board and the Police Association for Northern Ireland as regards Northern Ireland.

### ***Section 134: Consultation about regulations: Northern Ireland***

371. *Subsection (1)* amends section 25 of the Police (Northern Ireland) Act 1998. That section confers power on the Northern Ireland Department of Justice to make regulations about the conditions of service of members of the Police Service of Northern

Ireland. There is a requirement to consult the Northern Ireland Policing Board before making such regulations save where they relate to the duty, leave, pay, allowances, or pensions of police officers and the issue, use and return of equipment. The amendments maintain this saving, but require the Department of Justice to invite the views of the PABEW in relation to draft regulations in respect of police pension arrangements.

372. *Subsection (2)* inserts new section 25A into the Police (Northern Ireland) Act 1998 which makes similar provision about regulations governing the duty, leave, pay or equipment of members of the Police Service of Northern Ireland as new section 52A of the Police Act 1996 (as inserted by section 133) does in relation to police officers in England and Wales. *Subsection (3)* amends section 41 of into the Police (Northern Ireland) Act 2000 to make like provision about regulations governing the hours, leave, pay or equipment of police trainees (the changes do not affect regulations made under section 41 in relation to police reserve trainees).

## **Independent Police Complaints Commission**

### ***Section 135: Application of IPCC provisions to contractors***

373. Part 2 of the 2002 Act establishes the framework under which the IPCC operates to handle police complaints and misconduct. Section 12 of the Act sets out the complaints, matters and persons to which Part 2 of the 2002 Act applies. For the purposes of this section, persons “serving with the police” fall within IPCC oversight.
374. Currently, only certain private sector contractors who are “designated” by a chief officer in accordance with section 39 of the 2002 Act (to carry out escort and detention functions) fall within Part 2 and therefore are subject to IPCC oversight. However, the police (whether chief officers or local policing bodies) increasingly enter into agreements with private sector contractors to carry out other types of functions, including the provision of staff to operate emergency call centres, provide front counter services (dealing with members of the public who call at police stations or offices) and provide business support services as required (for example, finance and procurement, human resources, facilities management). The anomaly is, however, that although they are providing services traditionally carried out by police officers and staff, such individuals and their employees fall outside IPCC oversight as they are not, for the purposes of the 2002 Act, defined as “serving with the police”.
375. To achieve more parity between private sector contractors in these roles and police officers and staff, and to reflect this increased contracting out of functions, this section inserts a power to make regulations (subject to the negative resolution procedure) into section 12 of the 2002 Act, enabling the Secretary of State to make provision that a contractor, sub-contractor or an employee of a contractor or sub-contractor is to be treated as a person serving with the police. New section 12(10) defines a contractor as a person who contracts with a local policing body or a chief officer of police for the provision of services to the chief officer. The effect of this section is that all contractors, sub-contractors or their employees, of a class specified in regulations as providing services to a chief officer of police, will be required to cooperate with investigations by, or under the oversight of, the IPCC. In other words, the IPCC will be able to investigate specified categories of private sector contractors under the complaints and conduct framework set out in Part 2 of the 2002 Act and any regulations made thereunder.
376. Where services provided by private sector contractors have no connection to what are essentially policing functions, and where it would serve no useful purpose for Part 2, or any regulations made under it, to apply, the category of employee will be limited by regulations (section 105(4) of the 2002 Act enables regulations to make different provisions for different cases). The IPCC’s oversight will continue in relation to employees who are designated under section 39 of the 2002 Act and the provisions in that section about the process of designation will continue to apply. However, paragraph 94 of Schedule 11 provides for the repeal of section 39(9) to (11) of the 2002 Act which

will have the effect of avoiding the future possibility of creating a different complaints system for contracted-out staff.

377. New section 12(9) of the 2002 Act enables the Secretary of State in making regulations under new section 12(8), to make modifications to Part 2 of the 2002 Act in its application to contractors. The purpose of this subsection is, amongst other things, to enable the Secretary of State to prescribe the identity of the “appropriate authority” in regulations. In relation to employees who are under the direction and control of the chief officer, the chief officer or the local policing body is likely to be prescribed as the appropriate authority. In other cases, the appropriate authority may be the contractor or the local policing body.

### ***Section 136: Application to IPCC of provisions about investigation of offences***

378. This section amends paragraph 19 of Schedule 3 to the 2002 Act which relates to those investigations carried out by the IPCC itself. Paragraph 19(6) already confers a power on the Secretary of State to make an order specifying the provisions in the Police and Criminal Evidence Act 1984 (“PACE”) relating to the investigation of criminal offences by police officers which will apply, subject to any specified modifications, to the investigation of offences by members of staff of the IPCC.
379. *Subsection (2)* amends paragraph 19(6) to extend the scope of this order-making power so that an order may also specify the provisions of PACE relating to the investigation of criminal offences by police officers and the provisions of a code of practice issued under sections 60 (tape-recording of interviews), 60A (visual recording of interviews) or 66 (codes of practice) of that Act which will apply, subject to any specified modifications, to the investigation of offences by members of the IPCC’s staff.
380. *Subsection (3)* inserts new sub-paragraph (6A) into paragraph 19 of Schedule 3 to the 2002 Act. This enables the power conferred by sub-paragraph (6) to provide, in particular, that a member of the IPCC’s staff may exercise a power under PACE in respect of which authorisation would otherwise be required by a police officer of or above a particular rank if authorisation is given by a member of the IPCC’s staff of or above a specified grade.
381. An order is expected to be made in respect of a number of powers relating to entry and search of premises and the questioning of persons in PACE and the codes of practice issued under sections 60, 60A and 66 of that Act. For example, if the IPCC seeks authority to interview a suspect who wishes to have legal advice but has not yet received it pursuant to paragraph 6.6(b)(i)/(ii)/*Note 6A* of PACE Code C (Code of Practice for the detention, treatment and questioning of persons by police officers<sup>1</sup>), it must seek authorisation from a police officer ranked superintendent or above. It is proposed that under the new power, a senior member of the IPCC will be able to authorise the use of this power in an investigation.
382. The purpose of this power is to maintain the IPCC’s ability to investigate matters independently and expeditiously, in particular in investigations which involve alleged criminality on the part of those serving with the police.

### ***Section 137: Provision of information to IPCC***

383. This section inserts new paragraphs 19ZA to 19ZD in Schedule 3 to the 2002 Act, dealing with the handling of police complaints and conduct matters. The effect of this section is to provide the IPCC with a broad power to serve an information notice on any person, where the information is reasonably required for the discharge of the IPCC’s statutory functions, that is, where it is necessary and relevant to a matter under investigation by the IPCC. For example, the IPCC may use this power to request passenger travel information (such as Oyster card data) which would reveal the identity

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/117589/pace-code-c-2012.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117589/pace-code-c-2012.pdf)



of witnesses to an event or provide evidence of passenger movements, central to an investigation about a complaint, conduct or death or serious injury matter.

384. New paragraph 19ZA(1) sets out that the IPCC may serve a notice in accordance with any investigation carried out by it under paragraph 19 of Schedule 3. The effect of this is that the power will only be exercisable by the IPCC when conducting an independent investigation. The requirements as to the content of the notice are set out at new paragraph 19ZA(4).
385. It is expected that the IPCC will seek the information it requires by first making an informal request to a relevant person. However there may be occasions when it would be more appropriate or convenient for the IPCC to be able to serve a notice immediately, without having to be required to first make an informal request. New paragraph 19ZA(1) therefore provides for this. Where information requested is no longer required, the IPCC may cancel a notice pursuant to new paragraph 19ZA(6).
386. Certain information is excluded from the requirement which is intended to act as an important safeguard to persons on whom an information notice may be served. An information notice must not – as set out at new paragraph 19ZA(2) – require a person to disclose information which may reveal evidence of the commission of an offence by the person concerned, reflecting the approach taken in provisions contained within section 43(8) to (8C) of the Data Protection Act 1998. This amounts to a protection from self-incrimination. The notice must also not require disclosure of information which is legally privileged within the meaning of section 10 of PACE. Further, under new paragraph 19ZA(2)(c), the IPCC cannot require disclosure of communications data that is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (“RIPA”). New paragraph 19ZA(2)(d) prevents a notice from requiring disclosure of information falling within the “control principle”, that is information provided to the person by, or by an agency of, the Government of a country or territory outside the United Kingdom where that Government does not consent to the disclosure of that information. Nor can the IPCC require a postal or telecommunications operator (within the meaning of Chapter 2 of Part 1 of RIPA) to provide communications data (within the meaning of that Chapter). For example, the IPCC could not use an information notice to require the disclosure of subscriber or billing information from a telephone or internet service provider. Nor could it require address details from the Post Office or utility suppliers to locate potential witnesses. This is to ensure that the IPCC’s existing duties in respect of RIPA material are not altered and that the IPCC continues to obtain data from communications service providers in accordance with the framework in RIPA, rather than by virtue of the new broad information notice power.
387. New paragraph 19ZB(1) provides that a failure to comply with the notice, or knowingly or recklessly making a false statement in connection with it, will enable the IPCC to certify the failure to the High Court which may then deal with the matter as a contempt of court; this reflects the approach set out in section 54 of the Freedom of Information Act 2000.
388. A person has a right of appeal against the notice by virtue of new paragraph 19ZC to the First-tier Tribunal on the ground that the notice is not in accordance with the law. This reflects existing provision for appeals in the Data Protection Act 1998 and Freedom of Information Act 2000, which each relate to appeals against notices which may be given to a person in respect of the disclosure (or non-disclosure) of information. In new paragraph 19ZC, the term “not in accordance with the law” refers to an error of law which includes but is not limited to a breach of any specific right under the European Convention of Human Rights or otherwise. If the Tribunal considers that the notice is not in accordance with the law, it is required to quash the notice and may give direction to the IPCC so that it may serve a further notice. Given that the IPCC may only request information or serve a notice in accordance with the new paragraph 19ZA where it is reasonably required, this acts as a further safeguard to ensure all data requests are necessary, proportionate and justified.

389. New paragraph 19ZD provides for the handling of intelligence service and intercept information, and information from a government department which, if disclosed, would in the opinion of the Secretary of State (or Minister of the Crown in charge of the relevant department if that Minister is not a Secretary of State) damage national security, international relations, or the economic interests of the United Kingdom (or any part of the United Kingdom). Where the IPCC receives such information, directly or indirectly, it is prohibited from making onward disclosure of that material unless it has consent from the “relevant authority” (defined in 19ZD(4)). The IPCC is also prohibited from disclosing – - without consent – the fact that it has received such material. This is the effect of new paragraph 19ZD(1). The prohibition on the IPCC disclosing without consent such information, or the fact that it has received such information, will mean that it must take all reasonable steps to avoid such disclosure, including inadvertent disclosure.
390. Where the relevant authority (defined in new paragraph 19ZD(4)) provides consent and the IPCC discloses information to other persons, a similar bar on onward disclosure is placed on the recipient of that information from the IPCC (new paragraph 19ZD(3)), unless consent has been granted by the relevant authority.

***Section 138: Unsatisfactory performance procedures following investigation of death or serious injury matter***

391. *Subsection (1)* amends paragraph 24C of Schedule 3 to the 2002 Act which relates to a death or serious injury matter where there is no indication that a person serving with the police may have behaved in a manner which would justify the bringing of disciplinary proceedings. New paragraph 24C(3) to (5) provides the IPCC with a power to recommend that a person’s performance is unsatisfactory (as opposed to treated as misconduct) and that the appropriate authority should take recommended action in relation to it where the investigation is in respect of a death or serious injury matter.
392. *Subsections (2) to (4)* link this power with paragraph 27 of Schedule 3 to the 2002 Act. Paragraph 27 makes provision for the process in accordance with which the IPCC may make a recommendation or a direction to the appropriate authority in relation to disciplinary proceedings in respect of a conduct matter. The effect is that the IPCC may also recommend and direct the appropriate authority to take steps in relation to a person’s unsatisfactory performance in respect of a death or serious injury matter.
393. This section will result in parity in respect of the IPCC’s existing powers to recommend and direct unsatisfactory performance procedures in complaint and conduct matters investigated by the IPCC.

***Section 139: Recommendations by IPCC and requirement to respond***

394. This section inserts new paragraphs 28A and 28B into Schedule 3 to the 2002 Act which makes provision in respect of the handling of police complaints and conduct matters. Currently, recipients of recommendations issued by the IPCC pursuant to paragraphs 22(3), 22(5) and 24A(2) and matters that come before the IPCC to consider under paragraphs 8A and 25(2) of Schedule 3, that is those issued about institutional or systemic failings at the end of an independent, managed or supervised investigation or on appeal from a local investigation, are not statutorily required to respond. This results in a situation which adversely affects public confidence in the police complaints system. The effect of this section is to establish a statutory framework obliging recipients of such recommendations to respond within a specified time period (56 days, beginning on the day on which the recommendation was made).
395. For example, a response will be required under this power where the IPCC issues, as it has done, local recommendations to the effect that a force should review its system for storing files for investigations that are both active and closed and that it should

ensure that all files are readily accessible.<sup>2</sup> In the case of national recommendations applicable to all forces, the requirement to respond will depend on the basis on which the IPCC has issued the recommendation. For example, a national recommendation issued by the IPCC under this power following an independent investigation into a fatal shooting, recommending that all radio channels used by firearms officers should be audio recorded,<sup>3</sup> will attract the requirement to respond. However, if the IPCC decides to make a recommendation under its general recommendation-making power under section 10(1)(e) of the 2002 Act, there will be no requirement to respond as this is outside the scope of this provision.

396. New paragraph 28A(4) and (5) sets out the categories of recipient from whom the IPCC may require a response to its recommendations. Given the gravity and seriousness of DSI matters and other matters of sufficient seriousness which will be prescribed within regulations (such as those listed in regulation 4(2)(b) of the Police (Complaints and Misconduct) Regulations 2012), new paragraph 28A(4)(a) enables the IPCC to make a recommendation and to require a response from “any person”. In the interests of proportionality as regards other types of matter, new paragraph 28A(5) limits the category of recipients to persons serving with the police and local policing bodies; however, as this provision will be amending Part 2 of the 2002 Act, it will by implication, also include additional policing bodies, that is, bodies of constables which are not maintained by a local policing body, police forces and other categories of persons over which the IPCC exercises oversight. It will also extend to private sector contractors who will be brought within the IPCC’s oversight by virtue of section 135.
397. New paragraph 28A(6) places a requirement on the IPCC to publish its recommendations. Where the recipient of a recommendation is a local policing body, the IPCC is also required to provide a copy to the chief officer and similarly, where a recommendation is directed at a chief officer, the IPCC must send a copy to the local policing body. This is to reflect the reality of local policing arrangements and the interest of both parties in policing matters within their force area. Where the recipient of a recommendation is a contractor, sub-contractor or an employee of such a person, both the local policing body and the chief officer must also be provided with a copy. The IPCC may also copy in other bodies as it deems appropriate.
398. Recipients of IPCC recommendations are required to respond in writing by virtue of new paragraph 28B(1). This response must include the action the recipient has taken or proposes to take in response or why they have not taken or do not propose to take any action in response. A recipient is required to provide the response within 56 days but may be granted an extension at the discretion of the IPCC pursuant to new paragraph 28B(3). It is also extended where proceedings are commenced for judicial review of the IPCC’s decision to make a recommendation as set out at new paragraph 28B(4).
399. The IPCC has a duty, under new paragraph 28B(5), to publish responses received within 21 days of receipt and provide a copy of the response to those copied into its initial recommendations. New paragraph 28B(6) provides however, for recipients of IPCC recommendations to make representations so that the requirements of publication and disclosure do not apply to their response. This could – at the discretion of the IPCC – result in either non-publication or part-publication but if the IPCC decides to publish or disclose a response (in whole or in part) where the recipient has made representations, this decision must be communicated to the recipient prior to publication (see new paragraph 28B(8)).
400. New paragraph 28B(8) sets out the IPCC’s obligations to publish responses following representations being made by recipients under 28B(6), and new paragraph 28B(9)

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<sup>2</sup> Southwark Sapphire Unit’s local practices for the reporting and investigation of sexual offences, July 2008 – September 2009, Independent Investigation Learning Report, available at: [www.ipcc.gov.uk](http://www.ipcc.gov.uk)

<sup>3</sup> IPCC independent investigation into the fatal shooting of Mark Saunders on 6 May 2008. Investigation report available at: [www.ipcc.gov.uk](http://www.ipcc.gov.uk).

makes provision about the effect of judicial review proceedings on the IPCC's duty to publish.

401. New paragraph 28B(10) places a requirement on local policing bodies and chief officers, as recipients, to publish their responses to IPCC recommendations. The requirement to publish applies as it does to the IPCC under new paragraph 28A.

#### ***Section 140: Appointment of chief officers of police***

402. *Subsections (1) to (3)* amend the requirement in the 2011 Act that to be eligible to be appointed as a chief constable a person must have served as a police constable in the UK. The section provides that, as an alternative, a person can have served as a police officer in an approved overseas police force, at an approved rank. *Subsections (4) to (6)* make an equivalent change to the 2011 Act in respect of the appointment of the Metropolitan Police Commissioner.
403. The section also places a duty on the College of Policing to make recommendations to the Secretary of State on the designation of approved countries, police forces and ranks, service in which would be deemed suitable experience for someone taking on the role of chief constable in England or Wales. Any such designation would be made by the Secretary of State by way of regulations (subject to the negative resolution procedure). It is expected that the College will take into account the direction set out in the *Independent Review of Police Officer and Staff Remuneration and Conditions* that only countries that have a common law jurisdiction and practice "policing by consent" will be suitable for designation.

#### ***Section 141: Financial arrangements for chief officers of police***

404. This section amends the 2011 Act insofar as it relates to the financial controls on chief officers of police. It should be read with paragraphs 99 and 100 of Schedule 11 to the Act. Those paragraphs repeal paragraph 7(3) of Schedule 2 and paragraph 4(3) of Schedule 4 to the 2011 Act, which prohibit chief constables and the Metropolitan Police Commissioner respectively from borrowing.
405. *Subsection (1)* inserts a new paragraph 7A into Schedule 2 to the 2011 Act. New paragraph 7A sets out the circumstances under which a chief constable will be able to borrow. A chief constable will only be able to borrow to cover immediate short term expenditure (it will therefore enable chief constables to have an overdraft facility on their bank account). This borrowing must be in sterling and can only take place with the consent of the relevant Police and Crime Commissioner. New paragraph 7A(2)(b) prohibits chief constables from entering into credit arrangements. New paragraph 7A(3) sets out the circumstances under which a chief constables will be able to invest. A chief constable will only be able to invest for a purpose relevant to his or her functions or for the purpose of prudent financial management, and with the consent of the relevant PCC. New paragraph 7A(4) also applies a number of provisions of Part 1 of the Local Government Act 2003, and any regulations made under them, to chief constables as they apply currently to local authorities. Part 1 of the Local Government Act 2003 sets out the legal framework within which local authorities may undertake capital expenditure and central Government may regulate that activity. The effect of each of the applied provisions is as follows:
- section 6 (protection of lenders): provides that lenders do not need to check whether chief constables have the power to borrow;
  - section 7 (meaning of "credit arrangements"): sets out what constitutes a credit arrangement (for the purposes of the prohibition in the new paragraph 7A(2)(b) of Schedule 2 to the 2011 Act);

*These notes refer to the Anti-Social Behaviour, Crime and Policing Act 2014 (c.12) which received Royal Assent on 13 March 2014*

- sections 9 to 11 (capital receipts): set out what constitutes a capital receipt, how it can be used and areas where the Secretary of State can make regulations. Provisions relating to housing land are not included as they are not relevant to chief constables;
  - section 13 (security for money borrowed etc): sets out further conditions around borrowing arrangements for chief constables, including not using property as security against the sum being borrowed;
  - section 14 (information): stipulates that chief constables must provide the Secretary of State with any information he or she requires on capital finance etc and accounts;
  - section 15 (guidance): stipulates that chief constables shall have regard to guidance and regulations issued by the Secretary of State relating to capital finance etc and accounts;
  - section 16 (meaning of “capital expenditure”): defines what constitutes capital expenditure and how the Secretary of State can classify an item of expenditure as being capital expenditure;
  - section 17 (external funds); sets out that borrowing by a chief constable for the purposes of an external fund (for example a trust fund) will not be considered to be borrowing in the usual sense;
  - section 18 (local authority companies etc): allows the Secretary of State to make regulations applying the other provisions of Part 1 to a company set up by a chief constable;
  - section 20 (directions): sets out the conditions under which directions should be given;
  - sections 21 and 22 (accounts): sets out that the Secretary of State can make regulations relating to accounting arrangements which would apply to chief constables. This ensures that the statutory accounting framework that applies to Police and Crime Commissioners also applies to chief constables; and
  - section 24 (application to Wales): enables Welsh Ministers to make regulations in respect of chief constables in Wales (rather than the Secretary of State).
406. New paragraph 7A(5) provides that regulations made by the Secretary of State under any of the provisions in new paragraph 7A(4) will apply to the chief constable of a police force in England in the same way as they apply to a local authority in England.
407. New paragraph 7A(6) provides that regulations made by Welsh Ministers under any of the provisions in new paragraph 7A(4) will apply to the chief constable of a police force in Wales in the same way as they apply to a local authority in Wales.
408. New paragraph 7A(7) provides that any of the provisions specified in new paragraph 7A(4) (and regulations made under them) also apply, so far as relevant, for the purposes of the borrowing powers conferred and restrictions imposed by new paragraph 7A(1) to (3), as well as for the purposes of Part 1 itself.
409. New paragraph 7A(8) provides that any order made under section 217 or 218 of the Local Government and Public Involvement Health Act 2007 (which relate to entities etc. controlled by local authorities), as far as relevant, should be applied to chief constables.
410. *Subsection (2)* amends the provisions of the 2011 Act applying to the Metropolitan Police Commissioner by making changes corresponding to those set out in subsection (1) for chief constables.

### **Section 142: Grants to local policing bodies**

411. **Section 142** changes the terms under which the Police Main Grant<sup>4</sup> is paid to local policing bodies (namely, Police and Crime Commissioners or, in London, the Mayor's Office for Policing and Crime and the Common Council of the City of London).
412. *Subsection (1)* amends section 46(1) of the 1996 Act. Section 46(1) current enables the Home Secretary to make grants to local policing bodies "for policing purposes". As amended, the Home Secretary will be able to make grants to local policing bodies "for the purpose of their functions". This wider scope for paying grants to local policing bodies is in recognition of their wider responsibilities for commissioning services under the provisions of section 143.
413. *Subsection (2)* makes a corresponding change to 47(1) of the 1996 Act, which makes provision for the Home Secretary to make grants to local policing bodies for the purpose of capital expenditure; and section 92(2), which enables London Boroughs to make grants to the Mayor's Office for Policing and Crime for policing purposes (section 92(1), which enables local authorities to make grants to Police and Crime Commissioners is not constrained by a reference to "for police purposes").
414. Paragraph 102 of Schedule 11 to the Act includes consequential repeals of provisions which previously amended section 46(1) of the 1996 Act and are therefore now spent.

### **Section 143: Powers of local policing bodies to provide or commission services**

415. **Section 143** gives local policing bodies power to provide or commission services, in particular support services for victims and witnesses of, and those affected by, crime and anti-social behaviour.
416. *Subsection (1)* describes the types of services that may be provided or commissioned by a local policing body. Specifically, *subsections (1)(a) and (1)(b)* refer to services that the local policing body believes will reduce crime and disorder, and services for victims or witnesses of crime and anti-social behaviour and services for other persons affected by crime or anti-social behaviour. The express reference to anti-social behaviour enables local policing bodies to fund, provide or commission services to victims, witnesses and other affected persons whether or not the anti-social behaviour constitutes a criminal offence.
417. Additionally, *subsection (1)(c)* provides for potential future expansion of the scope of the services that may be commissioned, by way of an order made by the Secretary of State (subject to the negative resolution procedure). *Subsection (2)* enables any order made under subsection (1)(c) to make different provision for different police areas; this will allow any new commissioning powers to be piloted.
418. *Subsection (3)* provides that, as well as entering into contracts for the provision of relevant services, local policing bodies may make grants in connection with those services and can attach conditions to these grants, should that be necessary. Such conditions may, for example, require repayment of the grant in the event of non-provision of the service and periodic reporting of the service provided.

### **Section 144: Power to take further fingerprints or non-intimate samples**

419. *Subsection (1)* amends subsections (5A) and (5B) of section 61 of PACE which provide respectively that arrested and charged persons may be fingerprinted without their consent, but generally only if they have not previously been fingerprinted during the course of the investigation. It makes these subsections subject to new

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<sup>4</sup> Police Main Grant funding to the police is distributed by the Home Office and derived from the Police Allocation Formula and the Formula Funding published by the Department for Communities and Local Government. The police also receive funding from the relevant precept component of council tax.

section 61(5C), which allows such persons to be fingerprinted again if the investigation was discontinued, the fingerprints were destroyed, and the investigation then resumed.

420. Similarly, *subsection (2)* amends section 63(3ZA) and 63(3A) of PACE which provide respectively that an arrested or charged person may have a non-intimate sample (such as a cheek swab taken for DNA profiling) taken without consent, but generally only if this has not already been done during the course of the investigation. This subsection is made subject to new section 63(3AA), which allows such a person to have a non-intimate sample taken without consent again if the investigation was discontinued, the DNA sample and profile destroyed, and the investigation then resumed.
421. Under Schedule 2A of PACE, if a person is charged or arrested then released without having had their DNA or fingerprints taken, the police may take them later, but only within the following six months. The consequential amendments to Schedule 2A, made by paragraph 86 of Schedule 11 to the Act, apply this principle to the scenario involving retaking above, putting a time limit of six months from the resumption of the investigation on the power to retake DNA or fingerprints.

***Section 145: Power to retain fingerprints or DNA profile in connection with different offence***

422. This section substitutes a new section 63P into PACE. New section 63P provides that fingerprints or a DNA profile taken in connection with the investigation of one offence are to be treated as if they were taken in connection with the investigation of any other offence that the person is subsequently arrested for, charged with, convicted of or given a penalty notice for. This means that provisions in PACE for the retention of fingerprints or DNA profiles where there is a criminal conviction will apply in such cases, without the need for a causal link between the arrest in respect of which the fingerprints and DNA profiles were taken and the subsequent offence.

***Section 146: Retention of personal samples that are or may be disclosable***

423. *Subsection (1)* amends section 63U of PACE which provides for certain exclusions from the PACE retention regime for DNA profiles and fingerprints (collectively referred to as “section 63D material”). Section 63U(5) provides that material need not be destroyed in accordance with sections 63D to 63Q, 63S and 63T (which govern the retention of DNA profiles and fingerprints) where it falls to be disclosed under the CPIA or its associated Code of Practice. *Subsection (1)(a)* inserts a reference to section 63R of PACE (which governs the retention of DNA samples) into section 63U(5) thereby making the retention rules in section 63R subject to the CPIA in the same way as sections 63D to 63Q, 63S and 63T. *Subsection (1)(b)* inserts new subsections (5A) and (5B) into section 63U of PACE. These provide firstly that any sample retained under the CPIA must not be used other than for the purposes of any proceedings for the offence in connection with which it was taken and, secondly, that once the CPIA no longer applies, the sample must be destroyed.
424. *Subsection (2)* makes equivalent amendments to paragraph 20I of Schedule 8 to the Terrorism Act 2000. Paragraphs 20A to 20I of Schedule 8 to the 2000 Act provide for the retention of DNA samples and profiles and of fingerprints taken from persons detained under section 41 of or Schedule 7 to the 2000 Act (that is, persons arrested as suspected terrorists or persons detained under the ports and border control provisions in Schedule 7). The retention regime in Schedule 8 to the 2000 Act is broadly equivalent to that set out in sections 63D to 63T of PACE; in particular paragraph 20I of Schedule 8 replicates section 63U(5) of PACE as described above.

***Section 145: Powers to seize invalid passports etc***

425. **Section 145** introduces Schedule 8 which provides powers for the seizure of invalid passports and other travel documents.

**Schedule 8: Powers to seize invalid passports etc**

426. *Paragraph 1* sets out the interpretation of key terms in the Schedule. *Paragraph 1(1)* defines an examining officer as a constable, an immigration officer, or a customs official. *Paragraph 1(2)* defines a travel document. *Paragraph 1(3)* defines what constitutes an invalid travel document. *Paragraph 1(4)* defines a port.
427. *Paragraph 2* provides powers to examining officers at ports in respect of invalid travel documents, which are primarily passports issued by the government of any state but can include other documents such as emergency travel documents. These powers may be exercised when the officer believes a person is entering or leaving Great Britain or Northern Ireland, or travelling by air within Great Britain or within Northern Ireland (*paragraph 2(1)*). They empower an examining officer to require a person to hand over all travel documents, to search for travel documents, to inspect travel documents for the purpose of checking their validity, to retain such a document while its validity is checked, and to retain any travel document believed to be invalid (*paragraph 2(2)*). *Paragraph 2(3)* provides that the power to search applies to searches of the person, his or her possessions and any vehicle in which he or she has been or is about to be travelling. *Paragraph 2(4)* provides that in exercising these powers, an examining officer may, if necessary, use reasonable force. The officer may also authorise another person to carry out a search on his or her behalf. It is a matter for the examining officer to decide how to exercise this power, but it would appear for example that a police community support officer might, if convenient and appropriate, be authorised by such an officer to exercise this power. An examining officer may also stop a person or vehicle for the purpose of exercising the powers in paragraph 2.
428. *Paragraph 3* affords powers of search and seizure to constables in respect of certain cancelled UK passports; these powers are not available to other examining officers. *Paragraph 3(1)* provides that these powers are available outside a port in the case of a person whom the constable reasonably believes to be in a possession of a passport that meets all the criteria in *paragraph 3(2)*: that it was issued by or for Her Majesty's Government; it has been cancelled by the Secretary of State (in practice, the Home Secretary) on grounds of involvement in activities so undesirable that it is contrary to the public interest for the person to have access to passport facilities; and the Secretary of State has specified the passport in an authorisation issued for the use of the powers under this paragraph. *Paragraph 3(3)* provides constables with the power to require the production of travel documents for inspection, to search for and take possession of travel documents, to retain any such documents while their validity is checked, and to retain travel documents that are believed to be invalid. *Paragraph 3(4)* provides that the power of search includes the powers to search the person, his or her possessions, any vehicle in which he or she has been travelling or is about to travel, and any premises on which the constable is lawfully present. *Paragraph 3(5)* provides that a constable may, if necessary, use reasonable force in exercising the powers under this paragraph, and also that a constable may authorise a person to carry out a search on his or her behalf.
429. *Paragraph 4* makes further provisions in relation to the retention and return of seized documents. *Paragraph 4(1)* provides that a document that is retained while its validity is investigated must be checked as soon as possible. If it is found to be valid, or invalid only because it has expired, it must be returned straight away (*paragraph 4(2)*). A passport cannot be retained for checks for longer than seven days unless it has already been found to be invalid for a reason other than expiry (*paragraph 4(3)*). This is because there may be legitimate uses for an expired passport, for example, if it incorporated an extant visa issued by another country. However, a requirement to return an expired travel document does not apply if the officer concerned reasonably believes it to have been intended for use for purposes for which it is no longer valid (*paragraph 4(4)*). A requirement to return a travel document under this paragraph has effect subject to any other provision outside the Schedule under which it may lawfully be retained (*paragraph 4(5)*).



430. *Paragraphs 5(1) and 5(2)* create two offences in relation to the operation of the new powers. These are respectively the offence of failing to hand over travel documents without reasonable excuse, and obstructing or frustrating a search. Both are summary offences with maximum penalties of six months' imprisonment, or a fine (which in Scotland and Northern Ireland may not exceed £5,000), or both (*paragraph 5(3)*).
431. *Paragraph 6* provides an examining officer with the same power of arrest as a constable in respect of these new offences or offences under section 4 or 6 of the Identity Documents Act 2011 (possession of false identity documents with improper intention or without reasonable excuse).

### ***Section 148: Port and border controls***

432. *Section 148* introduces Schedule 9, which makes amendments relating to the port and border controls in Schedule 7 to the Terrorism Act 2000 ("the 2000 Act") and the associated Schedule 8 to that Act which governs the treatment of persons detained under Schedule 7.

### ***Schedule 9: Port and border controls***

433. *Paragraph 1* of Schedule 9 amends paragraph 1 of Schedule 7 to the 2000 Act, subparagraph (1) of which defines an examining officer for the purpose of Schedule 7 to the 2000 Act, that is, persons who have the powers conferred by Schedule 7 to the 2000 Act to conduct examinations at ports. Paragraph 1(1) of that Schedule currently defines an examining officer as a constable, an immigration officer, or a customs officer designated for the purpose of the Schedule by the Secretary of State and the Commissioners of Revenue and Customs. Paragraph 1(2) amends paragraph 1(1)(b) of Schedule 7 to the 2000 Act so as to limit those immigration officers who may exercise the powers of an examining officer to those designated for the purpose of Schedule 7 by the Secretary of State. *Paragraph 1(3)* inserts new paragraph 1A into Schedule 7 to the 2000 Act which places a duty on the Secretary of State to issue a code of practice which will specify the details of the requisite training to be undertaken by officers who are to act as examining officers or exercise other functions under Schedule 7 and the procedure for making designations. The code of practice must be laid before Parliament and brought into force by an order subject to the affirmative resolution procedure.
434. *Paragraph 2* repeals paragraph 6(4) and inserts a new paragraph 6A into Schedule 7 to the 2000 Act so as to further restrict the maximum period of time a person may be examined under Schedule 7 and prevent questioning from going on for more than an hour unless the person is detained. At present paragraph 6(4) permits detention for up to nine hours from the time a person's examination begins. New paragraph 6A of Schedule 7 to the 2000 Act introduces a separate limit of one hour on the period during which a person may be examined without being detained and then introduces an overall limit of six hours on the period a person may be examined (including any period of detention). Detention of a person under these powers triggers the provisions of Part 1 of Schedule 8 to the 2000 Act which govern the treatment of persons detained under Schedule 7; amongst other things these provisions confer on a detainee the right to inform a person of his or her detention and to consult a solicitor in private.
435. *Paragraph 3* amends paragraph 8 of Schedule 7 to the 2000 Act which relates to the searching of persons examined under that Schedule. New paragraph 8(4) of Schedule 7 prohibits an intimate search of a person. An "intimate search" is defined in new paragraph 8(7) of Schedule 7. New paragraph 8(5) prevents a person from being strip searched (again as defined in new paragraph 8(7)) unless: the person has been detained; an examining officer has reasonable grounds to suspect that the person is concealing something which may be evidence that the person is concerned in the commission, preparation or instigation of acts of terrorism; and a strip search has been authorised by a senior officer (as defined in new paragraph 8(6) of Schedule 7).

436. *Paragraph 4* inserts a new paragraph 11A into Schedule 7 to the 2000 Act. New paragraph 11A expressly provides a power to make and retain copies of anything obtained under paragraphs 5, 8 or 9 of Schedule 7 to the 2000 Act. The copy may be retained for as long as is necessary for the purpose of determining whether a person is involved in the commission, instigation or preparation of terrorism, or for use as evidence in criminal proceedings or in connection with deportation proceedings.
437. Information obtained in this way would be subject to the provisions of the Data Protection Act and the statutory Code of Practice on the Management of Police Information.<sup>5</sup>
438. *Paragraph 5* amends the provisions in Schedule 8 to the 2000 Act which relate to the rights of persons detained under Schedule 7. Currently the rights conferred by Schedule 8, for example the right to consult a solicitor, only apply to persons detained at a police station or places designated as such. Ports do not generally include areas designated as police stations. The amendments made to Schedule 8 by this paragraph extend certain rights conferred under that Schedule to persons detained at ports, airports or international rail stations under Schedule 7. The rights are: the right of a detained person in England and Wales or Northern Ireland to have a named person informed of the fact of his or her detention (paragraph 6 of Schedule 8); the right of a detained person in England and Wales or Northern Ireland to consult a solicitor in private (paragraph 7 of Schedule 8); and the right of a detained person in Scotland to have a solicitor or another person informed of the fact of his or her detention and to consult a solicitor in private (paragraph 16 of Schedule 8). These rights may be qualified by paragraphs 8 and 9 of Schedule 8 in relation to England and Wales and Northern Ireland, and paragraph 17 in relation to Scotland in that a police officer of at least the rank of superintendent may authorise a delay in the exercise of these rights or a non-private legal consultation in certain specified circumstances, for example where informing a person of the fact of someone's detention under Schedule 7 could lead to interference with or harm to evidence of a serious offence. *Paragraph 5* amends these paragraphs of Schedule 8 so that the power of a senior police officer to qualify the rights conferred by paragraphs 6, 7 and 16 of Schedule 8 applies where a person is detained at a port, airport or international rail station other than at a police station.
439. Further clarification and qualification of the right to consult a solicitor is provided by new paragraph 7A of Schedule 8, in respect of a detained person in England, Wales and Northern Ireland, and new paragraph 16A of Schedule 8, in respect of a detained person in Scotland. These are inserted by *paragraph 5(6)* and *(10)*. Where a person detained for examination requests to consult a solicitor, he or she may not be questioned until he or she has consulted a solicitor (or no longer wishes to do so). This right is qualified in that the examining officer may question the detained person if he believes that postponing questioning would prejudice the purpose of the examination (meaning the determination of matters in paragraphs 2 or 3 of Schedule 7). Similarly, the new paragraphs also clarify that a detained person is entitled to consult a solicitor in person, but not if the examining officer reasonably believes that the time that this would take would prejudice the purpose of the examination.
440. *Paragraph 6* amends paragraph 10 of Schedule 8 to the 2000 Act so as to remove the power to take an intimate sample from a person detained under Schedule 7.
441. *Paragraph 7* inserts a new Part 1A (comprising new paragraphs 20K, 20L, 20M and 20N) into Schedule 8 to the 2000 Act, providing for the review of detention under Schedule 7. New paragraph 20K provides that a person's detention under Schedule 7 must be reviewed periodically by a review officer no later than one hour after the start of detention and at subsequent intervals of no more than two hours. The review officer may authorise continued detention only if satisfied that it remains necessary for the purposes of exercising a power conferred by paragraph 2 or 3 of Schedule 7 (questioning

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<sup>5</sup> <http://www.acpo.police.uk/documents/information/2010/201004INFMOP101.pdf>

for the purpose of determining whether the person appears to be a person who is or was involved in the commission, preparation or instigation of acts of terrorism). If the review officer does not authorise continued detention then the person must be released. The other new paragraphs specify that the review officer must give a detained person or their solicitor an opportunity to make representations about their detention (20L), must ensure that the detained person is informed of their rights (20M) and must make a written record of the review and must inform the detained person if continued detention is authorised (20N).

442. *Paragraph 8* amends Schedule 14 to the 2000 Act to make provision for statutory codes of practice to be issued for certain functions under Schedules 7 and 8 to the 2000 Act, including the functions of reviewing officers.

### ***Section 149: Inspection of the Serious Fraud Office***

443. *Subsection (1)* amends section 2 of the Crown Prosecution Service Inspectorate Act 2000 so that the Chief Inspector of the Crown Prosecution Service has the same powers of inspection for the SFO as he or she has for the CPS. This will include inspection of the SFO's investigative work. The Chief Inspector will also have the same duty to report to the Attorney General on matters connected with the operation of the SFO as he or she has for the CPS.
444. *Subsection (2)* amends section 3 of the Criminal Justice Act 1987 so that information that has been disclosed to the SFO by HM Revenue and Customs can be disclosed to HMCPSI for the purposes of an inspection. It also ensures SFO can disclose information to HMCPSI which would otherwise be covered by an obligation of secrecy imposed by or under any enactment, other than the Taxes Management Act 1970.

### ***Section 150: Jurisdiction of Investigatory Powers Tribunal over Surveillance Commissioners***

445. *Section 150* amends section 91(10) of the Police Act 1997 ("the 1997 Act"), which in its original form provides that:
- "The decisions of the Chief Commissioner or, subject to sections 104 and 106, any other Commissioner (including decisions as to his jurisdiction) shall not be subject to appeal or liable to be questioned in any court
446. However, RIPA established the Investigatory Powers Tribunal ("the IPT") and provides that it has jurisdiction over the Surveillance Commissioners in certain circumstances. The amendment made by *subsection (3)* therefore clarifies that subsection (10) of section 91 is not to be read as affecting the IPT's jurisdiction to consider complaints against Surveillance Commissioners' decisions, including their approval of police and other agencies' use of certain types of covert surveillance and property interference. *Subsection (2)* removes the reference to section 106, which was repealed by RIPA.

### ***Section 151: Fees for criminal record certificates***

447. This section inserts into section 125 of the 1997 Act, a new subsection (1A). This allows the Secretary of State to take into account, when setting fees for services provided by the Disclosure and Barring Service, the costs associated with applications made under Part 5 of the 1997 Act in respect of volunteers, which are provided free of charge.

### ***Section 152: Powers of community support officers***

448. *Section 152* gives effect to Schedule 10, which amends Part 1 of Schedule 4 to the Police Reform Act 2002 to allow chief constables to designate PCSOs so as to give them additional powers.

***Schedule 10: Powers of community support officers***

449. *Paragraph 2* provides that a chief officer may designate PCSOs so as to give them the power to issue fixed penalty notices in respect of a number of cycling and traffic offences, including failure to comply with requirements about lighting and reflectors for bicycles, failure to comply with traffic signs or a traffic direction, carrying a passenger on a cycle, failing to stop for a police constable, driving the wrong way down a one-way street, sounding a horn when stationary or at night and for causing unnecessary noise, not stopping an engine when stationary, contravening a bus lane, opening a door so as to cause injury/danger, and stopping, waiting or parking at or near a school entrance. A chief officer may also designate the power to stop cyclists who have committed certain of these offences (*paragraph 6*). Before a chief officer designates powers in relation to the offence of stopping, waiting or parking at or near a school entrance, he or she must consult local authorities within the force area (*paragraph 3*).
450. *Paragraph 4* provides that PCSOs may be designated so as to give them powers to seize and retain materials and information relevant to the investigation of a crime when lawfully on any premises within the police force area. This will be subject to the safeguards that PACE already applies to constables exercising this power, including protection for legally privileged material, a requirement to provide a record to the occupier of the premises, and provisions to allow photographs or copies of seized items to be made by or for the owner.
451. *Paragraph 5* provides that PCSOs may be designated so as to give them powers under the House to House Collections Act 1939 to require house to house collectors to provide their name, address, signature and certificate of authority.
452. *Paragraph 2* provides that a PCSO in London may be given the power to issue a fixed penalty notice for an offence under section 15 of the Local Authorities Act 2004 in respect of an offence under section 38(1) of the London Local Authorities Act 1990 or section 27 (1) of the City of Westminster Act 1999 of unlicensed street trading.

***Section 153: Use of amplified noise in vicinity of the Palace of Westminster***

453. *Section 153* extends the controls on the use of amplified noise equipment in Parliament Square, as provided for in Part 3 of the 2011 Act, to a wider area around the Palace of Westminster (the “Palace of Westminster controlled area”).
454. *Subsection (2)* inserts new section 142A into the 2011 Act, which defines the “Palace of Westminster controlled area”.
455. *Subsections (3) and (4)* enable a constable or authorised officer to direct a person to refrain from or cease using amplified noise equipment in that area, under sections 143 and 144 of the 2011 Act. Failure to comply with such a direction without reasonable excuse is an offence with a maximum penalty on summary conviction of a level 5 fine (currently up to £5,000). On conviction, a court may also make an order for the purpose of preventing the defendant from engaging in further prohibited activity in Parliament Square and the Palace of Westminster controlled area (*subsection (6)*), which amends section 146 of the 2011 Act).
456. *Subsection (5)* amends *section 145* so that the power to seize property that is being used in connection with an offence under *section 143* (for example, speakers or a loudhailer) will also be available in the Palace of Westminster controlled area.
457. The relevant authority, which may authorise the use of amplified noise equipment in the new controlled area, is Westminster City Council or, in relation to land owned by the Royal Parks, the Secretary of State (*subsection (8)*).

***Section 154: Littering from vehicles***

458. **Section 154** inserts a new section 88A into the Environmental Protection Act 1990, which confers on the Secretary of State a power to make regulations providing for the keeper of a vehicle (who would be presumed to be the registered keeper if the vehicle is registered) to pay a civil fixed penalty in a case where a littering offence has been committed in respect of the vehicle. Subsection (6) of new section 88A provides a power to make consequential amendments to Part 4 of the Environmental Protection Act 1990 and/or Part 2 of the London Local Authorities Act 2007. Regulations under the new section 88A would be subject to the affirmative procedure on the first use of the power. Any subsequent regulations dealing with the amount of the fixed penalty notice or making consequential amendments to Part 4 of the Environmental Protection Act 1990 or Part 2 of the London Local Authorities Act 2007 would also be subject to the affirmative procedure (subsection (3) of new section 88A). Otherwise, regulations under the new power would be subject to the negative procedure.
459. Subsections (3) and (5) of new section 88A set out the various matters which must or may be included in the regulations, including the amount of the fixed penalties (or how the amount is to be determined), the period for paying a fixed penalty (and for payment within this period to discharge any liability for conviction for the littering offence), provision for the issue of a written notice to the keeper, the persons authorised to issue a penalty notice, rights to make representations and bring appeals, and enforcement. Subsection (4) provides that authority to give a fixed penalty notice can only be given to a “litter authority” or its officers. The “litter authority” is the body responsible for keeping the land where the offence occurred clear of litter and refuse, for example, the local authority or Highways Agency.
460. **Section 184(1)** provides for this section to extend to England and Wales, although the power to make regulations under new section 88A of the Environmental Protection Act 1990 is limited to littering offences in England.