



EXPLANATORY NOTES

Policing and Crime Act 2017

Chapter 3

£27.50

POLICING AND CRIME ACT 2017

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Policing and Crime Act 2017 (c. 3) which received Royal Assent on 31 January 2017.

- These Explanatory Notes have been prepared by the Home Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act. So where a provision of the Act does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

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Overview of the Act

- 1 In the 2010 to 2015 Parliament, the previous Government implemented a series of policing reforms, including the replacement of police authorities with directly elected Police and Crime Commissioners ("PCCs"), the creation of the National Crime Agency ("NCA"), the setting up of the College of Policing to drive professional standards, the strengthening of Her Majesty's Inspectorate of Constabulary ("HMIC"), and extending the powers and resources of the Independent Police Complaints Commission ("IPCC").
- 2 In May 2015, the Government was elected with manifesto commitments to "finish the job of police reform", "enable fire and police services to work more closely together and develop the role of our elected and accountable Police and Crime Commissioners" and "overhaul the police complaints system". This Act contains a number of measures to support the delivery of those commitments.
- 3 The purpose of the Act is to further improve the efficiency and effectiveness of police forces, including through closer collaboration with other emergency services; enhance the democratic accountability of police forces and fire and rescue services; build public confidence in policing; strengthen the protections for persons under investigation by, or who come into contact with, the police; ensure that the police and other law enforcement agencies have the powers they need to prevent, detect and investigate crime; and further safeguard children and young people from sexual exploitation.
- 4 The Act is in nine parts:
- 5 Part 1 places a duty on police, fire and rescue and ambulance services to collaborate, and enables PCCs to take on responsibility for the governance of fire and rescue services. Further, it enables PCCs and combined authority mayors with responsibility for both policing and fire to put in place a single chief officer for both services. This part also seeks to strengthen the current inspection powers under the Fire and Rescue Services Act 2004 in order to ensure an independent inspection regime for fire and rescue services in England.
- 6 Part 2 reforms the police complaints and disciplinary systems, including the governance of the IPCC, provides for a new system of "super-complaints" and confers new protections on police whistle-blowers. This part also aims to further strengthen the independence of HMIC and to ensure that it is able to deliver end-to-end inspections of the police, including by inspecting contractors and third parties who carry out policing functions.
- 7 Part 3 enables chief officers of police to confer a wider range of policing powers on police civilian staff and volunteers (excluding those reserved for warranted police officers) and confers on the Home Secretary a power to specify police ranks in regulations. This part also updates the core purpose of the Police Federation for England and Wales and makes it subject to the Freedom of Information Act 2000 ("the FOI Act").
- 8 Part 4 contains a number of reforms to police powers, including in relation to: pre-charge bail to introduce a presumption in favour of release without bail and statutory time limits and judicial oversight of extensions of bail beyond three months; a new offence of breaching pre-charge bail conditions that relate to travel restrictions in terrorism cases; powers to enable the retention of DNA profiles and fingerprints of those convicted outside of England and Wales; the powers under sections 135 and 136 of the Mental Health Act 1983 ("the 1983 Act") in respect of persons experiencing a mental health crisis, including banning the use of police cells for the detention of under-18s and reducing the maximum period of detention; the extension of police powers to investigate offences committed on vessels operating at sea where UK courts

have jurisdiction; amendments to the Police and Criminal Evidence Act 1984 ("PACE") to ensure that 17 year olds who are detained in police custody are treated as children for all purposes, and to enable greater use of video-link technology; and cross-border powers of arrest to enable a person who commits an offence in one UK jurisdiction to be arrested without warrant by an officer in another jurisdiction.

- 9 Part 5 makes further provision in respect of the term of office of Deputy PCCs to enable them to be eligible for appointment as an acting PCC in the event of the office of PCC falling vacant mid-term. This part also provides for changes to the names of police areas to be made by regulations.
- 10 Part 6 seeks to better protect the public by amending the Firearms Acts so as to close loopholes that can be exploited by criminals and terrorists and by ensuring that, through statutory guidance, there is a consistent approach by chief officers of police to the consideration of applications for firearm and shotgun certificates. This part also provides for the full cost recovery, through the levying of fees, of the Home Office's (and Scottish Government's) licensing functions in respect of companies trading in prohibited weapons, museums with firearms collections and shooting clubs. In addition, this part criminalises the possession of pyrotechnic articles at musical events.
- 11 Part 7 amends the Licensing Act 2003 ("the 2003 Act") to improve the effectiveness of the alcohol licensing regime in preventing crime and disorder, including provision for cumulative impact assessments and amendments to the late night levy.
- 12 Part 8 seeks to strengthen the enforcement regime for financial sanctions by increasing the maximum custodial sentence on conviction for breaching sanctions, expanding the range of enforcement options, including a new system of monetary penalties, and by providing for the immediate implementation of UN-mandated sanctions.
- 13 Part 9 contains miscellaneous and general provisions, including: to provide pardons for individuals, living or deceased, who were convicted of now repealed gay sex offences; an amendment to the Sexual Offences Act 2003 ("SOA") to provide that the offences in relation to child sexual exploitation cover the streaming or transmission of indecent images of children; introducing lifelong anonymity for victims of forced marriage; increases in the maximum sentence for more serious stalking and harassment offences; and a power to issue statutory guidance to local taxi and private hire vehicle licensing authorities in relation to the safeguarding of children and vulnerable individuals. 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 and for defendants in criminal proceedings to provide their name, date of birth and nationality to the court. It extends powers to seize cancelled British passports away from ports to invalid foreign passports and travel documents and restores littering powers for Scottish local authorities to issue litter abatement notices and street litter control notices.

Policy background

Emergency services collaboration

- 14 In May 2015, the Government was elected with a 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".

Governance

- 15 Directly elected PCCs are responsible for the governance of the police; fire and rescue authorities ("FRAs") are responsible for the fire and rescue service; and NHS trusts or NHS foundation trusts are responsible for ambulance services.
- 16 There are 37 PCCs in England (excluding London). In London, the Mayor's Office for Policing and Crime ("MOPAC") is the strategic oversight body which sets the direction and budget for the Metropolitan Police Service on behalf of the Mayor. The Common Council of the City of London is the police authority for the City of London police area.
- 17 The Local Democracy, Economic Development and Construction Act 2009 ("the 2009 Act") (as amended by the Cities and Local Government Devolution Act 2016) includes provisions which enable the transfer of fire and rescue and/or PCC functions to the elected mayor of a combined authority area. The Greater Manchester 'devolution deal' will establish a combined authority mayor from May 2017, and includes the transfer of fire and rescue and PCC functions. This will be implemented via secondary legislation drawing on the powers in the 2009 Act.
- 18 There are 45 FRAs in England comprising:
 - 6 metropolitan authorities: stand-alone authorities, serving the communities of groupings of metropolitan district councils;
 - 23 combined authorities: stand-alone authorities, serving the communities of combined county council and unitary authority areas;
 - 15 county authorities: integrated within an individual county council or unitary authority;
 - London Fire and Emergency Planning Authority ("LFEPA"): a body of the Greater London Authority.
- 19 In England, excluding London, 28 PCCs have police areas that are coterminous with FRA boundaries. A further five PCCs have police areas that are coterminous with the boundaries of the FRAs in their area when taken together, and only four PCCs have police areas which do not align with FRA boundaries. [Annex B](#) shows police areas and FRA areas in England.
- 20 There are 11 NHS trusts in England that provide ambulance services; five of which are currently NHS foundation trusts. An ambulance trust is governed by a trust board made up of a non-executive chairman, a selection of the service's executive directors (including the chief executive) and a selection of non-executive directors. NHS foundation trusts also have a council of governors, which represents the interests of foundation trust members and the public, and holds the trust's non-executive directors to account for the performance of the board.
- 21 Most NHS ambulance trusts encompass several police areas within their boundaries. For instance, North East Ambulance Service NHS Trust serves a region consisting of three PCC

areas: Cleveland, Durham and Northumbria. Only four police areas are served by more than one ambulance trust: Derbyshire, Hampshire, Humberside and Northamptonshire.

Demand on the emergency services

- 22 Crimes traditionally measured by the independent Crime Survey for England and Wales have fallen by a third since 2010¹. However, a College of Policing analysis of demands on policing ([Estimating demand on the police service](#), College of Policing, 2015) found some evidence to suggest that an increasing amount of police time is directed towards public protection work such as managing high-risk offenders and protecting vulnerable victims. Such cases often require considerable police resource.
- 23 Incidents attended by fire and rescue services in England have been on a long-term downward trend. Despite a small increase in 2015/16, the number of incidents in 2015/16 was 37% lower than a decade ago². There has also been a long-term downward trend in fire-related deaths and casualties for many years, recently reaching historically low levels. Fire-related fatalities in accidental dwelling fires, which accounted for almost two-thirds of all fire-related fatalities, increased by 24 (14%) from 167 in 2014/15 to 191 in 2015/16³. This is a decrease of 15% over the last 10 years³. This could be attributed to a range of factors including fire prevention work, public awareness campaigns, standards to reduce flammability such as furniture regulations, and the growing prevalence of smoke alarm ownership in homes (rising from 8% ownership in 1998 to 88% working ownership in 2015/16⁴).
- 24 Conversely, there is increasing demand on the ambulance service. Total calls to the ambulance switchboard have increased by 30% from just over 8 million in 2011/12 to just over 10.5 million in 2015/16 (with over 6,500 more emergency calls every day) and emergency responses to the most urgent calls have increased by 33%.
- 25 This changing profile of demand has led to a greater use of collaboration as a way to deliver services.

Collaboration

- 26 The Public Accounts Committee's 2011 report, *Transforming NHS Ambulance Services* ([46th Report of Session 2010/12, HC1353](#)), found varying levels of collaboration between NHS ambulance, fire and police services and recommended that collaboration should be strengthened. The report also found that, although NHS ambulance services collaborate with fire and rescue services and police forces in some areas, there is scope for a more systematic approach to sharing procurement and back office services across the emergency services.
- 27 In December 2012 the then Government commissioned Sir Ken Knight, the outgoing Chief Fire and Rescue Advisor (2007 to 2013), to conduct an independent review of efficiency in the provision of fire and rescue in England. His report [Facing the future: findings from the review](#)

1 [Crime Survey for England and Wales, year ending September 2016](#)

2 Fire statistics monitor: April 2015 to March 2016:

<https://www.gov.uk/government/statistics/fire-statistics-monitor-april-2015-to-march-2016> . Table FIRE 0101 Incidents attended by fire and rescue services by nation:

<https://www.gov.uk/government/statistical-data-sets/fire-statistics-data-tables#incidents-attended>.

3 Fire statistics monitor: April 2015 to March 2016:

<https://www.gov.uk/government/statistics/fire-statistics-monitor-april-2015-to-march-2016> . Table FIRE 0202 Fires, fatalities and casualties in dwelling fires by motive and fire and rescue authority:

<https://www.gov.uk/government/statistical-data-sets/fire-statistics-data-tables#dwelling-fires>

4 Fire statistics: England April 2014 to March 2015:

<https://www.gov.uk/government/statistics/fire-statistics-england-april-2014-to-march-2015> . Table FIRE 0701 Percentage of households owning a smoke alarm or working smoke alarm:

<https://www.gov.uk/government/statistical-data-sets/fire-statistics-data-tables#smoke-alarms>

[of efficiencies and operations in fire and rescue authorities in England](#), published May 2013, said: "Efficiency and quality can be driven through collaboration outside the fire sector, particularly with other blue-light services" and recommended that: "National level changes to enable greater collaboration with other blue-light services, including through shared governance, co-working and co-location, would unlock further savings."

- 28 Since 2010, the Government has invested over £88 million in local blue light collaboration projects (Fire Transformation Fund, Transformation Challenge Award and Police Innovation Fund) and supports the Emergency Services Collaboration Working Group, formed in September 2014, which brings together senior leaders from the blue light services with the aim of improving collaboration. The group has stated: "with an increasing demand for some of our services, coupled with the current and expected restrictions on funding, collaboration provides opportunities to truly innovate and save money."⁵
- 29 The group has compiled a national overview of collaboration⁶, which it updated in November 2016⁷, and published research⁸ to build the evidence base. The research has identified a number of collaboration opportunities ranging in scale of complexity from the sharing of control rooms and estates through to joint training programmes and the merging of local emergency service budgets and governance structures.
- 30 On 11 September 2015, the Home Secretary launched a joint Home Office, Department for Communities and Local Government and Department for Health consultation paper to seek views on proposals to improve joint working between the emergency services and enhance local accountability (House of Commons, Official Report, columns 22WS to 23WS). In a written ministerial statement on 26 January 2016 ([House of Commons, Official Report, HCWS489](#)), the Home Secretary set out the Government's response to the consultation, including a commitment to bring forward legislation:
- introducing a high level duty to collaborate on the three emergency services to improve efficiency or effectiveness;
 - enabling PCCs to take on the functions and duties of FRAs, where a local case is made (the proposed process for this is illustrated at [annex C](#));
 - where a PCC takes on the responsibilities of an FRA, enabling him or her to create a single employer for police and fire staff, facilitating the sharing of back office functions and streamlining management;
 - enabling PCCs to be represented on FRAs, in areas where such authorities remain in place;
 - bringing fire and rescue services in London under the direct responsibility of the Mayor of London by abolishing the London Fire and Emergency Planning Authority.
- 31 Chapters 1 to 3 of Part 1 of the Act give effect to these reforms.

5 [Emergency Services Collaboration: The current picture: an overview of collaboration in England and Wales \(2014\)](#), Public Services Transformation Network, p3

6 *ibid.*

7 <https://www.gov.uk/government/publications/policing-and-crime-bill-emergency-services-collaboration>

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

Inspection of fire and rescue services

- 32 Powers for the inspection of fire and rescue authorities are provided for in section 28 of the Fire and Rescue Services Act 2004. However, the inspection powers in the 2004 Act are currently dormant. Instead, fire and rescue authorities rely on a system of peer review, whereby an FRA can commission a 'Fire Peer Challenge', under a framework developed by the Local Government Association and Chief Fire Officers Association.
- 33 The Home Secretary, in her [speech at a Reform event on 24 May 2016](#), announced her intention of creating a robust inspection framework for fire and rescue. She said:

"To help fire and rescue authorities and PCCs hold their service to account and to drive closer scrutiny by taxpayers and communities, I intend to bring forward proposals to establish a rigorous and independent inspection regime for fire and rescue in England. I will shortly table amendments to the Policing and Crime Bill to strengthen the inspection powers in the Fire and Rescue Services Act 2004 to put beyond doubt the powers of fire inspectors to enter premises and access information, and to ensure the Government has the power to commission inspections of particular issues or fire and rescue services. Because it is only by understanding problems and holding services accountable that we can begin to fix them."
- 34 The changes are intended to create an inspection framework similar to the current framework for police forces. Chapter 4 of Part 1 gives effect to these changes.

Police complaints and discipline

The complaints system

- 35 The police complaints system is the mechanism by which the public may raise their concerns about the service they receive from their police force. The operation of the complaints system and the outcomes it achieves play an important role in ensuring that the police continue to exercise their powers fairly and legitimately in the eyes of the public.
- 36 The IPCC oversees the whole of the police complaints system and it has a statutory duty to ensure that public confidence is established and maintained in the police complaints system.
- 37 Once a member of the public makes an allegation about someone serving with the police (the allegation may be raised with the force, the PCC or the IPCC), the force must take a decision about whether the allegation should be recorded as a complaint. Once a complaint is recorded by the police force, efforts are made to resolve the allegation raised by the member of public, either by local resolution, a local investigation or by referring to the IPCC for an investigation. If a member of the public is unhappy with the way their complaint has been handled, the system has a series of appeal points which allows them to challenge a decision. The appeal is usually dealt with by the chief constable or the IPCC depending on the circumstances. More detail on the complaints process is provided in [annex D](#).
- 38 Police forces must refer certain complaints and incidents to the IPCC – for example, an allegation that an officer has seriously assaulted someone or committed a serious sexual offence, or if someone has died or been seriously injured following direct or indirect contact with the police.
- 39 A total of 37,105 complaints were recorded during 2014/15. This was a 6% increase compared

9 [Police Complaints, Statistics for England and Wales 2014/15, IPCC](#)

to 2013/14 and represents a 62% increase since 2004/05.

- 40 It took an average of 110 working days to finalise complaint cases in 2014/15, with the average time varying across police forces from 52 to 205 working days¹⁰.
- 41 35% of people lack confidence in the ability of the police to deal with their complaint fairly ([Public Confidence in the Police Complaints System, 2014](#), page 22) and 84% of people are not satisfied with how their complaint is handled ([Crime Survey for England and Wales 2015/16](#) - table S28)
- 42 In 2014/15, 40% of appeals to the IPCC against decisions taken by police forces were upheld¹¹ (up from 30% in 2010/11¹²).

The disciplinary system

- 43 In carrying out their duties, members of police forces, including civilian staff, are expected to maintain the highest standards of professional behaviour, which are set out in The Police (Conduct) Regulations 2012 (SI 2012/2632, as amended) and detailed in the College of Policing's Code of Ethics¹³.
- 44 The police disciplinary system is designed to deal with circumstances where these professional standards are not met. Disciplinary action may arise as a result of a complaint from a member of the public, an internal complaint or an incident such as a death or serious injury, where there is evidence of misconduct (that is a breach of professional standards) or gross misconduct (a breach so serious that dismissal would be justified). More information on the disciplinary process is provided in [annex E](#).
- 45 Where behaviour falls short of these standards, it is the responsibility of the police force to conduct a formal investigation and take forward disciplinary action where appropriate. Where allegations arise that are serious or sensitive, the police force must refer those cases to the IPCC, which then decides how the investigation should be carried out and to what extent the police force should be involved.
- 46 Since 1 December 2013, the College of Policing has managed a national register of officers struck-off from the police (the "Disapproved Register"). The register is available to forces for vetting purposes.
- 47 Since 1 May 2015, police misconduct hearings (and appeals) are held in public and since 1 January 2016 misconduct hearings have an independent, legally qualified chair.

IPCC powers

- 48 The IPCC was established by Part 2 of the Police Reform Act 2002 ("the 2002 Act") and started operating in 2004. It is responsible for overseeing the police complaints system in England and Wales, assessing appeals against complaints decisions and investigating serious matters involving the police, including deaths or serious injuries ("DSI") following police contact.
- 49 The 2002 Act sets out the detailed provision for the handling of recordable conduct matters, complaints, and DSI involving the police.

¹⁰ *ibid*

¹¹ *ibid*

¹² [Police Complaints, Statistics for England and Wales 2010/11, IPCC](#)

¹³ <http://www.college.police.uk/What-we-do/Ethics/Pages/Code-of-Ethics.aspx>

- 50 As the body that oversees police complaints, the IPCC sets the standards by which the police should handle complaints. Although the IPCC has statutory responsibility to oversee the police complaints system and to maintain public confidence, in reality, it is not in charge of the whole process, with a majority of cases being dealt with by police forces, unless considered serious, then police forces must refer to the IPCC.
- 51 In a statement to Parliament on police integrity on 12 February 2013, the Home Secretary committed to a major change programme to ensure that the IPCC has increased capacity and funding to investigate all serious and sensitive matters involving the police: "I want to make sure that the Independent Police Complaints Commission is equipped to do its important work... its role has been evolving and the proposals I announce today develop it further. Public concern about the IPCC has been based on its powers and its resources, and I want to address both issues." (House of Commons, Official Report, columns 713 to 715)
- 52 In 2014 the IPCC embarked on a three year programme of change, as it expands to investigate all serious and sensitive allegations and incidents involving the police. Since then the IPCC has recruited an additional 323 operational staff, taking it to a total of 877 (as of 2015/16) and the number of independent investigations taken on has increased nearly five-fold (starting 519 new investigations in 2015/16 compared with 109 in 2013/14).

Whistle-blowing

- 53 One of the ways in which police misconduct, malpractice and corruption is brought to light is when police officers or staff report it themselves. However these reports are not always made. Anecdotal evidence suggests that some of the reasons for this may be because it is not believed that anything will be done, the reporting routes available are not trusted, or they fear an adverse reaction from the police force.
- 54 Following a Government consultation, *Improving Police Integrity: Reforming the Police Complaints and Disciplinary Systems*, which ended in January 2015, the Government made changes to the Police (Conduct) Regulations 2012 to clarify that police whistle-blowers are protected from unfair disciplinary action and reprisals against them will not be tolerated. These changes ensure that the principles set out in the Public Interest Disclosure Act 1998 are incorporated in the police disciplinary process.
- 55 In its response¹⁴ to the consultation document *Improving Police Integrity*, the Government also announced its intention to introduce a number of additional measures to strengthen protections for police whistle-blowers in order to give police whistle-blowers greater confidence to report their concerns. In March 2016, the College of Policing published national whistle-blowing guidance entitled *Reporting Concerns*. The guidance sets out the support that should be provided, including providing feedback and updates to police whistle-blowers, giving them the right to be consulted by the force (or IPCC) and outlining the reporting routes available.

Review of complaints and disciplinary systems

- 56 On 22 July 2014, the Home Secretary made a further statement to Parliament (House of Commons, Official Report, columns 1265 to 1267) on the ongoing work to ensure the highest standards of integrity in the police. In the statement she announced:

¹⁴<https://www.gov.uk/government/consultations/improving-police-integrity-reforming-the-police-complaints-and-disciplinary-systems>

- a review of the police disciplinary system to be chaired by Major-General Chip Chapman (the "Chapman review"), with a consultation to follow which would include proposals to hold police misconduct hearings in public with legally-qualified panel chairs;
 - a single national policy for police forces on whistle-blowing alongside a plan to publish more information on conduct issues raised by police officers and the action taken as a result;
 - plans to consider the introduction of sealed investigations into serious misconduct and corruption by police officers;
 - regulations to ensure that officers cannot resign or retire to avoid dismissal in misconduct hearings; and
 - a review of the entire police complaints system, including the role, powers and funding of the IPCC and the local role played by PCCs that would be followed by a public consultation. The aim of the review was to put forward proposals for a system that is more independent of the police, easier for the public to follow, more focused on resolving complaints locally and that has a simpler system of appeals.
- 57 The [Chapman Review](#) was completed in October 2014 and concluded that the current police disciplinary system is too complex and lacked transparency and independence, with much of the system being managed by police forces themselves. The review made 39 recommendations for improving the current system. The Home Office has already implemented some of the recommendations through secondary legislation, including to provide for police misconduct hearings and appeals to be held in public. Independent legally-qualified chairs were introduced from January 2016, replacing senior police officers as chairs of misconduct hearing panels. In addition, the Police (Conduct) (Amendment) Regulations 2014 (SI 2014/3347) prevents officers from resigning or retiring to avoid investigation for gross misconduct.
- 58 In December 2014, the Government launched a public consultation, *Improving police integrity: reforming the police complaints and disciplinary systems*. The consultation found that elements of the police complaints system do not work efficiently or effectively and few of those involved with the system have confidence in it.
- 59 On 12 March 2015, the Home Secretary announced a range of reforms (House of Commons, Official Report, columns 36WS-38WS) as set out in the Government's [response to the consultation](#).
- 60 Changes to the police disciplinary system include:
- Extending the disciplinary regime to former officers for up to 12 months after they leave the police;
 - Ensuring that the IPCC investigate all cases involving chief officers;
 - Allowing the IPCC to present its own cases to disciplinary hearing panels.
- 61 Changes to the police complaints system include:
- Simplifying the complaints system;
 - A stronger role for PCCs;

- Clarifying the definition of a complaint;
- Ending the practice of non-recording complaints;
- Measures to strengthen protections for police whistle-blowers;
- Changes to the powers of the IPCC; and
- Introducing a system of super-complaints.

62 Chapters 1 to 4 of Part 2 of the Act give effect to those reforms announced in March 2015 requiring primary legislation.

IPCC governance

- 63 On 12 March 2015, the Government published the report from a Triennial Review of the IPCC¹⁵. A key element of such reviews is to consider whether the governance arrangements of the organisation are in line with recognised principles of good corporate governance.
- 64 The review noted IPCC's change programme to deliver the Home Secretary's commitment to ensure that it investigates all serious and sensitive cases involving the police by 2017/18. Organisational change has been significant with increased funding and with staff numbers increasing to around 900 by March 2016 (compared to around 400 in March 2013).
- 65 The review also noted that the current structure of the IPCC has resulted in Commissioners having a dual role "being engaged in both the governance of the organisation and its operational activity".¹⁶ The review recommended that the IPCC "consider what governance arrangements.....will best secure efficient, effective and accountable operations".
- 66 The IPCC's response to the Triennial Review¹⁷ set out proposals for reform of its governance arrangements. The proposals included for powers to be vested in a single Crown appointee who would have final accountability for decision-making.
- 67 The Home Secretary asked Sheila Drew Smith OBE to undertake an independent review of the IPCC's proposals to assess and test them and, if appropriate, make alternative recommendations. Sheila Drew Smith's report¹⁸ was published on 17 December 2015 alongside the launch of a public consultation¹⁹ on reforming the IPCC's structure and governance.
- 68 The Government's response to the consultation was published on 7 March 2016, and the Home Secretary announced that she would bring forward amendments to the then Policing and Crime Bill to provide for a new governance model (House of Commons, Official Report, 7 March 2016, column 43).
- 69 The existing Commission structure will be replaced and the reformed organisation will be known as the Independent Office for Police Conduct ("the IOPC").

¹⁵ Triennial review of the Independent Police Complaints Commission. Home Office, March 2015, ISBN:978-1-78246-786-1.

¹⁶ Ibid.

¹⁷https://www.ipcc.gov.uk/sites/default/files/Documents/speeches/IPCC_response_to_the_Triennial_Review_report_June_2015.pdf

¹⁸ "An independent review of the governance arrangements of the Independent Police Complaints Commission", Sheila Drew Smith, ISBN 978-1-911194-69-9

¹⁹ "Reforming the Independent Police Complaints Commission: structure and governance". public consultation launched on 17 December 2015

- 70 The IOPC will be headed by a Director General, appointed by Her Majesty The Queen. The Director General will have ultimate responsibility for individual case work decisions, including in respect of the investigation of the most serious and sensitive allegations involving the police. Corporate governance will be provided by a board comprising a majority of non-executive directors, appointed by the Home Secretary.
- 71 Chapter 5 of Part 2 of the Act gives effect to these changes.

Inspection

- 72 HMIC has a statutory duty to inspect and report on the efficiency and effectiveness of police forces in England and Wales. HMIC describes its role in the following terms:

"HMIC independently assesses police forces and policing activity ranging from neighbourhood teams through serious crime to the fight against terrorism – in the public interest.

In preparing our reports, we ask the questions which citizens would ask, and publish the answers in accessible form, using our expertise to interpret the evidence. We provide authoritative information to allow the public to compare the performance of their force against others, and our evidence is used to drive improvements in the service to the public."

- 73 In July 2011, HMIC was commissioned by the Home Secretary to review police relationships with the media and other parties (announced in an oral statement in the House of Commons on 18 July 2011 (Official Report, columns 622 to 642)). The subsequent report, *Without fear or favour: a review of police relationships* (December 2011), and its follow-up, *Revisiting police relationships: a progress report* (December 2012), found that while some progress has been made to ensure forces operate in a transparent manner, more needed to be done. The report concluded that a more transparent and challenging environment needed to be created in order to improve public confidence. It recommended that in addition to scrutiny of chief officers by PCCs, there continued to be a need for independent external scrutiny by HMIC, including unannounced inspections. It also highlighted the increased use of outsourcing within policing, and the need for scrutiny to apply to all those delivering policing functions. Amongst other things, Chapter 6 of Part 2 extends the remit of HMIC to cover the scrutiny of contractors and staff engaged in the delivery of policing functions.

Police workforce and representative institutions

Powers of police civilian staff and volunteers

- 74 The office of constable sits at the heart of policing in England and Wales, and their powers are defined across a wide range of Acts and at common law.
- 75 Since the passage of the Special Constables Act 1831, it has been possible to vest the full powers of a constable on volunteers serving with the police. The Road Traffic and Roads Improvement Act 1960 introduced Traffic Wardens with certain road traffic-related policing powers and Part 4 of the 2002 Act conferred on chief officers of police the power to designate a member of police staff as a Police Community Support Officer ("PCSO"), investigating officer, detention officer or escort officer, each with a range of specified policing powers appropriate to their role. In the case of PCSOs, these powers include the power to request the name and address from a person acting in an anti-social manner, certain specified powers to search and seize, and powers to issue fixed penalty notices for a list of specified offences. The role of PCSOs in local policing is

now well established. See [annex F](#) for further details of the powers associated with each of these roles.

- 76 Under the 2002 Act, a chief officer of police may designate a member of police staff as a PCSO, investigating officer, detention officer or escort officer, as the case may be, if satisfied that the individual is: a) suitable to carry out the role; b) capable of effectively carrying out the role; and c) has received adequate training. An individual may be designated in more than one role – for example, staff can be designated as both a detention officer and an escort officer to give greater flexibility in managing detained persons. For each role, chief officers have the discretion to confer on a designated member of staff the mix of powers, taken from a specified list of powers, appropriate to the individual’s particular role and training although, in the case of PCSOs, there is a set of standard powers which form a minimum core appropriate to the role.
- 77 Police staff without such designation have no powers.
- 78 There are two main types of volunteer in policing: special constables, who have the full range of police powers and the attendant training requirement and Police Support Volunteers, who undertake support functions such as staffing an enquiry desk and have no powers.
- 79 The current position of staff and volunteers is summarised in the table below:

	Full powers	Some powers	No powers
Paid, full-time or part-time	Police Officer	Designated Staff (that is, PCSO, Investigating Officer, Detention Officer, Escort Officer)	Other Police Staff
Unpaid, part-time	Special Constable	No Current Role	Police Support Volunteers

80 The College of Policing’s Leadership Review, published in June 2015, recommended that there should be increased flexibility in assigning powers and legal authority to staff. On 9 September 2015 the Home Secretary announced (House of Commons, Official Report, columns 12WS to 14WS) the launch of a consultation, *Reforming the Powers of Police Staff and Volunteers*, seeking views on proposals to:

- Abolish the concept of standard powers for PCSOs and enable each chief officer to designate their staff with only those powers they consider necessary in their force areas;
- Set out the core powers that should be reserved only for constables (with a power to amend this list by order);
- Allow police volunteers to be designated in the same manner as police staff; and
- Enable chief officers to designate PCSOs directly with the necessary traffic powers, rather than additionally designate them as traffic wardens, and abolish the role of traffic warden under the Road Traffic Act 1988.

The Home Secretary announced the outcome of the consultation on 20 January 2016 (House of Commons, Official Report, HCWS478). Sections 38 to 46 and Schedules 12 and 13 give effect to these proposals.

Police ranks

- 81 Presently the police rank structure is set out in provisions of the Police Act 1996 ("the 1996 Act"), while the Police Reform and Social Responsibility Act 2011 ("the 2011 Act") provides that there must be at least one of each of the chief officer ranks in every police force. See [annex G](#) for the current list of designated ranks and numbers of officers at each rank.
- 82 In an oral statement on 22 July 2014 (House of Commons, Official Report, columns 1265 to 1277), the Home Secretary announced that she had asked the College of Policing to conduct a fundamental review of police leadership. The Leadership Review June 2015 report included a recommendation to review the rank and grading structures in policing, stating that "ranks and grades in policing may need to be reformed as we move towards policing based on greater levels of practitioner autonomy and expertise". The report highlighted that flatter structures can enable organisations to be more responsive and to communicate more effectively.
- 83 The review is being led by the National Police Chiefs' Council ("NPCC"), reporting to the College of Policing-led Leadership Review Oversight Group and is expected to report later in 2016.
- 84 Section 47 will enable the review's recommendations to be implemented and provide a more flexible model for policing by setting out rank structure in secondary rather than primary legislation. The ranks of constable and chief constable (or Commissioner in the case of the Metropolitan Police Service and City of London police) will continue to be provided for in primary legislation.

Police Federation

- 85 The Police Federation for England and Wales ("the Police Federation") represents the interests of police officers below the rank of superintendent (namely, constables, sergeants, inspectors and chief inspectors). It was created in 1919 to represent officers, reflecting the fact that police officers are members of a disciplined service with an obligation to protect the public and, as such, are prohibited from joining a trade union or taking industrial action.
- 86 In spring 2013 the Police Federation commissioned a review to consider whether any changes were required to its operation or structure in order to ensure that it continued to promote the public good as well as the interests and welfare of its members. This review was conducted by an independent panel, chaired by Sir David Normington GCB.
- 87 The panel's final report, *Police Federation Independent Review*, was published in January 2014 and made 36 recommendations, to improve trust and public accountability, transparency, professionalism and member services, including:
 - The adoption of a revised core purpose which reflects the Police Federation's commitment to act in the public interest; and
 - Greater national oversight and transparency of Police Federation finances, including a requirement to publish all accounts and income and to co-ordinate resources centrally.
- 88 The report recommended that: "the starting point should be a revised statutory purpose for the Federation which sets a new tone and commitment, recognises the reality of its accountability to its members and the public and incorporates a commitment to new standards of conduct and transparency..."and that in order to achieve this, a revised core purpose "should be incorporated in legislation as soon as practicable" (pages 16 and 17).

- 89 The final report was endorsed by the Home Affairs Select Committee (recommendation 3 of the Committee's Report, *Reform of the Police Federation*, [18th Report of Session 2013/14, HC1163](#)) and by the Home Secretary in her speech to the Police Federation annual conference in May 2014. At the conference the Police Federation accepted all 36 recommendations and has adopted a revised core purpose that includes acting "in the interests of the members of the public".
- 90 In her speech at the Police Federation Annual Conference in May 2015, the Home Secretary committing the government to enshrining the revised core purpose in legislation.
- 91 The Home Secretary also stated in her speech that she would bring forward proposals to make the Police Federation subject to the Freedom of Information Act 2000 ("FOI Act"). The primary objective of the FOI Act is to increase the openness, transparency and accountability of those bodies subject to the Act. The provision of information under the FOI Act enables greater transparency about how public money is spent and greater scrutiny of public services. It allows the public to gain information about services and decisions that affect them and to hold bodies to account for those decisions. In a written ministerial statement (Official Report, 12 March 2015, WS387) the Home Secretary announced the publication of a draft section setting out how the FOI Act could be applied to the Police Federation.
- 92 Sections 49 and 50 give effect to these reforms of the Police Federation.

National Police Chiefs' Council

- 93 There has been a representative body for chief officers of police since 1858. The Association of Chief Police Officers of England, Wales and Northern Ireland ("ACPO") was formed in 1948. Its stated role was "to bring together the expertise and experience of chief police officers and senior police staff equivalents from across the United Kingdom, providing a professional forum to share ideas and best practice, develop national professional practice, co-ordinate resources and help deliver effective policing which keeps the public safe". In addition to acting as the professional voice of policing, ACPO co-ordinated national police operations and provided national policing services, such as the National Ballistics Intelligence Service ("NABIS").
- 94 In 2013, PCCs commissioned General Sir Nick Parker to undertake an independent review of ACPO, in the wake of the significant reforms to policing that had taken place since 2010. General Parker's terms of reference were to "examine the standing structures and functions currently delivered by ACPO in the context of the radically different national environment of PCCs, the College of Policing and the National Crime Agency and make recommendations to PCCs", including about the requirement for a collective national policing function akin to that fulfilled by ACPO. General Parker's report was published in August 2013 ([Independent Review of ACPO](#)). He concluded that there was "a requirement for a Chief Constables' Council with a full-time chair which should: conduct operational and managerial coordination between independent Chief Constables; act as the focus for command and leadership of the police service; maintain direct links to the National Business Areas to inform policing and implement practice; and speak with a coordinated and independent voice on the delivery of operational policing". In July 2014, chief officers voted in support of the creation of the National Police Chiefs' Council ("NPCC") and ACPO was formally closed down on 31 March 2015 and replaced by the NPCC on 1 April 2015.
- 95 The NPCC was constituted as a result of a [collaboration agreement](#), made under section 22A of the 1996 Act, between all chief officers of police and local policing bodies (PCCs and the equivalent in London) in England and Wales, the NCA, the College of Policing and other

policing bodies; it is hosted by the Metropolitan Police Service. The NPCC's functions are to:

- Co-ordinate national operations including defining, monitoring and testing force contributions to the Strategic Policing Requirement working with the NCA where appropriate;
- Command counter-terrorism operations and delivery of counter-terrorist policing;
- Co-ordinate the national police response to national emergencies and the mobilisation of resources across force borders and internationally;
- Implement national operational standards and policy as set by the College of Policing and Government;
- Work with the College of Policing to develop joint national approaches on criminal justice, value for money, service transformation, information management, performance management and technology; and
- Work with the College of Policing (where appropriate) to develop joint national approaches to staff and human resources issues (including misconduct and discipline) in line with chief constables' responsibilities as employers.

96 There are a number of statutory references to ACPO which, for example, require the Home Secretary to consult with the association before exercising certain policing-related delegated powers. Section 51 and Schedule 14 amend or repeal these provisions to take account of the replacement of ACPO by the NPCC.

Police powers

Pre-charge bail

97 Pre-charge bail, also known as police bail, is used to protect victims and witnesses of crime, secure and preserve evidence, and ensure the effective execution of justice. It also minimises the length of time suspects are detained while further enquiries are made.

98 Prior to charging a suspect with a crime, there are generally two scenarios where the police may grant bail with or without conditions:

- Where there is as yet insufficient evidence to charge a suspect with an offence and it is necessary to continue to investigate without them being held in custody.
- Where the police consider there is sufficient evidence to charge the suspect, but the case has been referred to the Crown Prosecution Service ("CPS") for a charging decision.

99 The police may detain a suspect for up to 24 hours prior to charge. Where the offence being investigated is indictable (that is, the more serious offences which can be tried in the Crown Court) detention can be extended to 36 hours on the authority of a police officer of at least the rank of superintendent. A warrant of further detention issued by a magistrates' court would be required to extend detention beyond 36 hours, to a maximum of 96 hours. In order to avoid prolonged periods of detention, the police have the power to grant bail to allow them to make

further enquiries. This stops the detention clock while the police undertake outstanding enquiries, meaning that suspects can still be detained for the remaining period of time if necessary.

100 Applying bail conditions means that the police can manage a suspect effectively within the community while further investigations progress. This recognises their status as a person under investigation and not as an offender, thereby preserving their rights and liberties. It also acknowledges the sensitivities of victims, witnesses and communities by offering some level of protection and mitigating the risk of further criminality.

101 Commonly used police bail conditions include:

- not to contact the victim directly or indirectly;
- not to attend the home address of the victim/not to enter the victim's street or a specific area marked out on a map;
- to live and sleep at a specified address;
- to report to a named police station on specific days of the week at specified times; and
- travel restriction conditions, such as passport surrender, especially where there is risk of flight.

102 Data on the use of pre-charge bail by police in England and Wales is not routinely collated centrally. In 2011, the then National Policing Improvement Agency ("NPIA") and ACPO Criminal Justice Business Area undertook a data collection exercise across all forces. Returns were received from twenty-three forces and indicated that over a six month period approximately one-third of individuals brought into custody were reported to have been given bail. There was also variation in the reported use of bail and the reported average length of bail given across forces, although it is not clear if this is due to different recording practices or in the actual use of bail across forces. ([The police use of pre-charge bail: an exploratory study](#), NPIA, July 2012).

103 On 18 December 2014 the Home Secretary announced ([House of Commons, Official Report, column 132WS](#)) the publication of the consultation paper *Pre-Charge Bail, A Consultation on the Introduction of Statutory Time Limits and Related Changes* to seek views on a series of measures intended to reduce both the number of individuals subject to, and the average duration of, pre-charge bail. This consultation was complementary to that carried out by the College of Policing on the principles of pre-charge bail management, which published its report *Response to the Consultation on the Use of Pre-Charge Bail* on 11 December 2014. In July 2015 the College published [authorised professional practice on pre-charge bail management](#).

104 The Home Secretary announced the outcome of the Government's consultation on 23 March 2015 ([House of Commons, Official Report, column 1112](#)). The response to the consultation set out the following proposals for legislation:

- Providing for a presumption to release without bail, with bail only being imposed when it is both necessary and proportionate;
- Setting a clear expectation that pre-charge bail should not last longer than a specified finite period of 28 days (subject to the possibility of extension);
- Making provision for when that initial period might be extended further, and

who should make that decision (including longer periods to be determined by the courts);

- Making clear that, where an individual has been released without bail while analysis takes place of large volumes of material, the police can make a further arrest where key evidence is identified as a result of the analysis of that material that could not reasonably have been done while the suspect was in custody or on bail;
- Providing a procedure to allow sensitive information to be withheld from a suspect where its disclosure could harm the investigation, such as where disclosure might enable the suspect to dispose of or tamper with evidence; and
- Providing for an exceptional case procedure.

105 Chapter 1 of Part 4 gives effect to these proposals.

106 The issue of suspected terrorists absconding from pre-charge bail has been of concern, following cases where individuals from the UK have been drawn to Daesh in Syria, Iraq and other countries. There is a particular risk that those under investigation of terrorism offences may seek to flee the UK. At present, while the police can impose conditions on an individual when releasing them on bail before charge, the only response available in the event that these conditions are breached is a return to custody. This option is not available where pre-charge custody time limits have already been reached.

107 When he gave evidence to the Liaison Committee on 12 January 2016, the Prime Minister indicated, in response to a question from Rt Hon Keith Vaz MP (Q53), that the Government would look at making breach of bail a criminal offence. On [6 April 2016](#) the Home Secretary announced that a new offence of breach of pre-charge bail conditions relating to travel for relevant terrorism offences would be introduced as part of the then Bill. Sections 68 and 69 provide for this new offence.

Retention of biometric material

108 The Protection of Freedoms Act 2012 ("the 2012 Act") established a new regime to govern the retention and use by the police in England and Wales of DNA samples, DNA profiles and fingerprints. The 2012 Act created a similar regime, applicable across the whole of the UK, to govern the retention and use of biometric material taken from those detained under the Terrorism Act 2000 ("TACT"). The 2012 Act also created the role of Commissioner for the Retention and Use of Biometric Material (the "Biometrics Commissioner"). The current retention schedule, which sets our biometric retention periods in different situations, is at [annex H](#).

109 At present DNA profiles and fingerprints of those arrested under PACE can be retained on the basis of convictions for any recordable offence in England and Wales. But this material can currently be retained on the basis of convictions outside of England and Wales in limited circumstances only. Firstly, the conviction must be for one of a number of 'qualifying' offences (in broad terms these are mainly serious sexual and violent offences), which means that if a person has a conviction elsewhere for a non-qualifying recordable offence, such as theft, then their DNA and fingerprints cannot be retained. Secondly, even where the person has a conviction for a qualifying offence, their DNA and fingerprints must have been taken specifically in relation to that conviction, rather than it being possible to retain DNA and

fingerprints taken on arrest for a different offence (which is the case in relation to England and Wales offences). It is likely there are significant numbers of arrested persons with convictions outside of England and Wales whose DNA and fingerprints either cannot be retained, or can be retained only after an unnecessary re-arrest and re-sampling. This makes it harder to solve crimes in which such persons may be involved and is also more onerous on individuals in terms of the need for additional sampling. This issue has been highlighted by the Biometrics Commissioner, who recommended in his [2015 Annual Report](#) (paragraphs 68 to 75) that "It is in my view desirable that the legislative change which is required in this connection should be made as soon as is reasonably possible."

110 Chapter 2 of Part 4 gives effect to this recommendation by extending the existing rules on retention of DNA and fingerprints of those with convictions in England and Wales to those with convictions elsewhere.

111 At present DNA profiles and fingerprints of those detained under Schedule 8 to TACT (which governs the detention of those arrested on suspicion of being a terrorist under section 41 of that Act, and those detained under Schedule 7, which contains powers to question people to determine whether they are terrorists) can be retained indefinitely where the person has a conviction for any recordable offence in England and Wales or Northern Ireland, or for an offence which is punishable by imprisonment in Scotland. Chapter 2 of Part 4 provides for indefinite retention of biometric material taken from Schedule 8 detainees where they have convictions outside the UK for the equivalent of recordable and imprisonable offences.

PACE: treatment of those aged 17

112 Some provisions of PACE currently treat 17 year olds as adults, as a result they do not benefit from additional safeguards that apply to children. In April 2013 the High Court, in the judicial review in *Hughes Cousins-Chang vs. (1) Secretary of State for the Home Department and (2) Commissioner of the Police for the Metropolis*, ruled that PACE Code of Practice C (which deals with the detention, treatment and questioning of suspects not related to terrorism) breached the claimant's European Convention on Human Rights Article 8 rights (right to a private and family life), and that of his parent, when read in the light of the UN Convention on the Rights of the Child. The High Court considered that the wish of a 17 year old in trouble to seek the support of a parent and the wish of a parent to be available to give that support lay at the heart of family life.

113 In order to comply with the High Court ruling, the Government introduced changes to PACE Codes C and H (which deal with the detention, treatment and questioning of suspects by police officers under the Terrorism Act 2000) on 27 October 2013. The Government subsequently conducted a review of the way that 17 year olds were treated under the primary provisions of PACE. The review concluded that 17 year olds should be treated in the same way as 10 to 16 year olds under all of the relevant provisions. Section 42 of the Criminal Justice and Courts Act 2015 amended PACE so that where a 17 year old is charged and denied bail then, as with 10 to 16 year olds, the police are required to transfer him or her to local authority accommodation, unless a custody officer certifies that to do so is impracticable. Previously 17 year olds denied bail would be kept in police custody before appearing in court. This change came into force on 26 October 2015. Section 73 of the Act makes three further changes to the remaining provisions in PACE which still treat a 17 year old as an adult.

Police powers under the Mental Health Act 1983

- 114 The Mental Health Act 1983 ("the 1983 Act") provides for action to be taken, where necessary, to make sure that people with mental disorders get the care and treatment they need for their own health or safety, or for the protection of other people, even if the individual concerned does not consent to the action being taken. It sets out the criteria that must be met before such measures to compel compliance can be taken, along with protections and safeguards for patients. It also sets out the civil procedures under which people can be detained in hospital for assessment or treatment of mental disorder. In addition, the 1983 Act makes provision concerning the treatment and care of those accused of, and those convicted of, an offence.
- 115 It is intended to provide a balance between the need to detain a person, when this is necessary for health and safety reasons, while at the same time safeguarding the individual's civil liberties. Sections 135 and 136 of the 1983 Act confer powers on the police to temporarily remove people from private premises (section 135) or a public place (section 136) who appear to be suffering from a mental disorder and who need urgent care to a 'place of safety' specified in section 135(6), so that a mental health assessment can be carried out and appropriate arrangements made for their ongoing care if necessary.
- 116 In February 2014 the Government published the *Mental Health Crisis Care Concordat* for England to ensure that all those involved in supporting someone in a crisis work together to improve the system of care. In agreeing this Concordat, the 22 (now 28) national signatory organisations from across health, social care and policing signed up to a number of actions that can be found in the document. The Welsh Government has also published, in December 2015, a Concordat for Wales along a very similar set of principles. Both Concordats set out the standard of response that a person experiencing a mental health crisis should be able to expect.
- 117 Approaches, such as street triage schemes whereby mental health nurses and paramedics accompany police officers to such incidents or provide telephone support, have resulted in a more co-ordinated response. Improved local practice and access to services in some areas has led to a reduction in the number of times police cells were used for a person detained under section 136 in England from 8,667 in 2011/12 to 3,996 in 2014/15²⁰.
- 118 In December 2014, the Home Office and Department of Health published the outcomes of a joint review of the operation of sections 135 and 136. The review examined the practical implications of existing practice and was informed by a wide range of views (through over 1,000 survey responses). The published review included recommendations for a number of legislative changes to sections 135 and 136 (as well as some non-legislative recommendations).
- 119 The Department of Health included these recommendations in a wider public consultation announced on 6 March 2015 (House of Commons, Official Report, WS355 and House of Lords, Official Report, WS332) - *No voice unheard, no right ignored: a consultation for people with learning disabilities, autism and mental health conditions* (Cm 9007). The Government response to that consultation (Cm9142) was published on 10 November 2015 (House of Commons, Official Report, WS302 and House of Lords, Official Report, WS297) and included the following actions:
- "an end to the use of police cells as a place of safety for children and young people detained under sections 135 or 136 of the Mental Health Act 1983;
 - no one detained under sections 135 or 136 to be held in a 'place of safety' for more

²⁰ 2014-15 police data on use of section 136 in England and Wales, NPCC, June 2015

than 24 hours without being assessed by a relevant professional and either discharged or admitted."

120 The College of Policing ran a consultation on their new guidance for dealing with people with mental health problems between 11 November and 1 January 2016. The new guidance - [Mental Health Authorised Professional Practice](#) - was published on 3 August 2016.

121 Chapter 4 of Part 4 gives effect to these actions and other changes to sections 135 and 136 recommended in response to the earlier review.

Police powers: maritime enforcement

122 Currently, section 30 of the 1996 Act limits police jurisdiction to UK territorial waters, which extends to 12 nautical miles from the UK shore. This can hamper the effective disruption of criminal activity in the maritime context where court jurisdiction applies, as our law enforcement agencies are not always able to act when a crime has taken place on ships around the UK or on the high seas.

123 There are limited maritime enforcement powers in section 20 of and Schedule 3 to the Criminal Justice (International Co-operation) Act 1990 ("the 1990 Act") and in Part 3 of the Modern Slavery Act 2015 ("the 2015 Act").

124 The enforcement powers in the 1990 Act are limited to tackling drug trafficking offences on British ships and the importation or exportation of controlled drugs on British ships, vessels of states party to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances ("the Vienna Convention") and stateless vessels. The powers are only exercisable in respect of a vessel registered in a state party to the Vienna Convention, or within the territorial waters of another state in respect of any vessel, with the permission of the relevant state(s). For the purpose of detecting and enforcing such offences, the 1990 Act confers powers on constables, customs officials and other specified enforcement officers (and persons assisting them) to: stop, board, divert and detain ships; search ships and require anyone on board to provide information; arrest persons and seize and detain anything found on the ship which may be evidence of a relevant offence; and use reasonable force to perform such functions.

125 Part 3 of the 2015 Act conferred similar enforcement powers on the police, designated NCA officers, customs officials and members of Her Majesty's Armed Forces for the purpose of tackling offences in respect of human trafficking, slavery, servitude, and forced or compulsory labour. Under the 2015 Act the powers are exercisable in relation to:

- a United Kingdom ship in UK waters, foreign waters or international waters;
- a stateless ship in UK waters or international waters;
- a foreign ship in UK waters, or
- a ship, registered in the Channel Islands, Isle of Man or British overseas territory, in UK waters.

126 Part 3A of, and Schedule 4A to, the Immigration Act 1971 confer maritime enforcement powers on immigration officers, those powers will also be exercisable by police officers and certain members of the Armed Services. The maritime powers in the Immigration Act 1971 are limited to the enforcement of three immigration offences in UK territorial waters, namely the offences of assisting unlawful immigration, assisting an asylum-seeker to arrive in the UK and assisting

entry to the UK in breach of a deportation or exclusion order.

127 Given that each of these provisions is directed at the enforcement of specific offences, there remains a gap in the ability of the police and other law enforcement agencies to investigate other criminal offences on ships in UK territorial waters, in international waters and in the territorial waters of other states. Chapters 5, 6 and 7 of Part 4 will ensure that law enforcement agencies are capable of operating effectively in a maritime context when investigating any offence triable in England and Wales, Scotland or Northern Ireland.

128 In respect of England, Wales and Scotland, the enforcement powers will apply on:

- UK ships anywhere in international waters, in the territorial waters of another state (with permission from the relevant state), and in England and Wales and Scotland waters;
- stateless vessels in England and Wales and Scotland waters and international waters;
- foreign vessels in England and Wales and Scotland waters and international waters subject to the same authorisation requirements as in section 35(5) and (6) of the 2015 Act; and
- ships registered in the Isle of Man, any of the Channel Islands or a British overseas territory in England and Wales and Scotland waters and international waters subject to the same authorisation requirements as in section 35(5) and (6) of the 2015 Act.

129 In respect of Northern Ireland, the enforcement provisions will apply on:

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

130 Enforcement powers in England and Wales and Scotland will be exercisable in the territorial waters of the other jurisdiction when a ship is pursued there ("hot pursuit"). Ships may not be pursued into Northern Ireland waters from England and Wales or Scottish waters. The Northern Ireland provisions do not allow for the hot pursuit of a vessel outside of Northern Ireland waters.

Cross-border enforcement

131 Existing powers of cross-border arrest within the UK are provided for in Part 10 of the Criminal Justice and Public Order Act 1994 ("the 1994 Act"). The 1994 Act does not, however, provide for a police officer in one jurisdiction to arrest a person suspected of having committed an offence in another jurisdiction where no warrant for their arrest has been issued. In some circumstances, this may allow a suspect to evade arrest simply by crossing the boundary into

another jurisdiction within the UK. The provisions in Chapter 8 of Part 4 close this gap, extending the cross-border powers of arrest conferred by Part 10 of the 1994 Act in urgent cases. The cross-border provisions apply to a range of law enforcement bodies, limited to their specific functions.

Firearms

- 132 Firearms controls in the UK are among the strictest in the world, and as a result firearms offences make up a small proportion (less than 0.2%) of recorded crime²¹. The law regulating the possession and acquisition of firearms in England and Wales and Scotland is contained in the Firearms Act 1968 ("1968 Act").
- 133 Section 5 of the 1968 Act prohibits especially dangerous weapons including handguns and automatic weapons. Firearms, shotguns and rifles are licensed and held on a firearm or shotgun certificate granted by a chief officer of police. Low powered air weapons are not licensed in England and Wales unless they are of a type declared specially dangerous²² by the Firearms (Dangerous Air Weapons) Rules 1969 (SI 1969/47) or are otherwise prohibited under section 5 but there are restrictions on their sale. In Scotland, the Air Weapons and Licensing (Scotland) Act 2015 provides that any air weapon capable of discharging a missile with kinetic energy above one joule²³ as measured at the muzzle of the weapon is subject to certification. (Similarly, any airgun capable of a discharge with kinetic energy in excess of one joule is subject to certification in Northern Ireland.)
- 134 Permission to possess or to purchase or acquire a firearm will be granted to an individual who is assessed by the relevant licensing authority as not posing a threat to public safety and having good reason to own the firearm. Organisations such as target shooting clubs, museums and firearms dealers must also apply for licences if they wish to possess or use firearms. Persons who have been sentenced to a term of imprisonment of three years or more cannot possess a firearm or ammunition (including antique firearms) at any time.
- 135 The police are the licensing authority for firearm and shotgun certificates as well as for firearms dealers. Weapons prohibited under section 5 of the 1968 Act are authorised, in England and Wales, by the Home Office on behalf of the Secretary of State and in Scotland, by the Justice Department on behalf of the Scottish Ministers.
- 136 While the current licensing system is robust, the current legal framework has been the subject of a number of criticisms, including loopholes being exploited by those with criminal intent and the lack of definition of key terms within the legislation.
- 137 To remedy these, and other, shortcomings, in July 2015, the Law Commission published a consultation paper, *Firearms Law: A Scoping Consultation Paper*, aimed at addressing five particular deficiencies in the current law, namely:
- the failure to define "lethal";
 - the failure to define "component part";
 - the failure to define "antique";

21 [Chapter 3: Violent Crime and Sexual Offences - Weapons, ONS, 12 February 2015](#)

22 An air weapon is "specially dangerous" if it is capable of discharging a missile with kinetic energy in excess, in the case of an air pistol, of 6 foot lbs or, in the case of other air weapons, 12 foot lbs.

23 The SI, or metric, unit for kinetic energy.

- the failure to impose a legal obligation that firearms be certified as being deactivated to an approved standard; and
- the failure of the law to keep pace with technological developments in relation to whether an imitation firearm is 'readily convertible' into a live firearm.

138 Sections 125 to 128 address these deficiencies.

139 The Law Commission published the response to the consultation on 16 December 2015.

Lethality

140 Section 57(1) of the 1968 Act defines a firearm as a "lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged". However, the legislation does not define lethal in this context. In the absence of legislative guidance, the courts have failed to define the term "lethal" with any degree of precision. The current test can be found in *R v Thorpe (1987)*.²⁴ In that case the judge stated that "The test is this. It must be capable of causing injury from which death might – and the word is 'might' – result if it is misused."

141 Section 125 gives effect to the Law Commission's recommendations (at paragraphs 2.29 and 2.43 of its report) that for the purposes of section 57(1) a weapon should be considered lethal if:

"it is capable of discharging a projectile with a kinetic energy of more than 1 joule as measured at the muzzle of the weapon for the purposes of section 57(1) of the Firearms Act 1968".

142 The Law Commission also recommended that an exempting provision should be created:

"exempting airsoft guns from the scope of the 1 joule kinetic energy threshold which deems a barrelled weapon to be lethal."

143 Airsoft is a skirmishing game in which players shoot small spherical plastic missiles at opponents from imitation firearms using compressed air. The exemption is not absolute: it stipulates slightly higher kinetic energy thresholds of 1.3 joules for automatic type weapons and 2.5 joules for single shot variants. These limits have been set following scientific testing on the wounding potential of airsoft weapons operating at and above or below these levels.

Component parts

144 Section 57(1)(b) of the 1968 Act provides that the definition of "firearm" includes "any component part of such a lethal or prohibited weapon". Whenever the legislation refers to a firearm, therefore, it also refers to a component part of a firearm. This means that the component parts of rifles, for example, must be included as a separate entry on a firearm certificate.²⁵ Failure to do so constitutes an offence under section 1 of the 1968 Act.

145 However, the legislation does not define the term "component part" and while [Home Office guidance](#) provides advice on what constitutes a component part, the courts have decided that the meaning of this term is a question of fact for the jury.

146 The Government believes that this has created a lack of clarity. For example, for a person lawfully in possession of a rifle and wishing to possess a spare firing pin, there is currently ambiguity over whether it must be included as a separate entry on his or her firearm certificate.

²⁴ [1987] 1 WLR 383, [1987] 2 All ER 108.

²⁵ This would occur, for example, if an individual wished to keep spare parts to replace ones that became damaged.

The reforms seek to make clear that only those items listed below will be a component part.

147 Section 125 gives effect to the following Law Commission recommendations (at paragraphs 3.20, 3.28 and 3.44 of its report):

- "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.
- "that the Secretary of State be given the power to amend the statutory list of component parts by way of statutory instrument, subject to the affirmative resolution procedure"; and
- "that legislation be enacted to clarify that a component part shall remain classified as such so long as it is capable of fulfilling its function as part of a lethal barrelled weapon".

Antique firearms

148 Under section 58(2) of the 1968 Act, antique firearms are exempt from most of the provisions of that Act so long as they are held as a curiosity or ornament. This means, for example, that an antique firearm can be possessed without the need to obtain a firearm certificate or the authority of the Secretary of State if it would otherwise be a prohibited weapon. However, the legislation does not define "antique firearm", creating legal and practical difficulties in determining whether any given firearm is exempt from control as an antique.

149 There is evidence from law enforcement agencies that the law is failing to prevent the easy acquisition and possession of antique firearms by those with criminal intent, which the Government believes presents a public safety risk. The National Ballistics Intelligence Service ("NABIS") report that between 1 September 2014 and 31 August 2015, 59 antiques were recovered in criminal circumstances ([Law Commission Firearms Symposium](#), 8 September 2015).

150 Section 126 gives effect to the Law Commission recommendations (paragraphs 4.40 of their report) "that an "antique firearm" be defined as:

- "a firearm that is either employing an ignition system included on an amendable statutory list of obsolete ignition systems and is possessed as a curiosity or ornament or;
- 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".

151 Section 126 also gives effect to the Law Commission recommendation (paragraph 4.54 of their report) that:

- "sections 19 [offence of carrying a firearm in a public place] and 20 [offence of trespassing with a firearm] of the Firearms Act 1968 be extended so that it is clear that they apply to antique firearms".

Conversion of imitation firearms

152 The Firearms Act 1982 ("the 1982 Act") deals with readily convertible imitation firearms. These are defined as imitation firearms that can be "readily converted" into live firearms to which section 1 of the 1968 Act applies. By virtue of section 1(6) of the 1982 Act an imitation firearm will be considered "readily convertible" if:

- it can be converted without any special skill on the part of the person converting it in the construction or adaptation of firearms of any description; and
- the work involved in converting it does not require equipment or tools other than such as are in common use by persons carrying out works of construction or maintenance in their own homes.

153 Section 127 gives effect to the Law Commission recommendation (at paragraph 6.34 of its report) that a new offence is created "of being in possession of an article with the intention of using it unlawfully to convert an imitation firearm into a live firearm".

Deactivated firearms

154 Section 38(7) of the Violent Crime Reduction Act 2006 defines a deactivated firearm, for the purposes of that section only, as "an imitation firearm that consists in something which was a firearm, but has been rendered incapable of discharging a shot, bullet, or other missile as no longer to be a firearm".

155 Section 8 of the Firearms (Amendment) Act 1988 ("the 1988 Act") provides that a firearm is presumed to have been rendered incapable of discharging any shot, bullet or other missile, and to be no longer a firearm if it bears a mark made by either of the Proof Houses and which has been approved by the Secretary of State for the purpose of denoting that it has been so rendered, and one of the two Proof Houses²⁶ has certified in writing that the work done to deactivate the firearm has been to a standard approved by the Secretary of State.

156 In 1989 the Home Office produced a series of deactivation standards. These specify the physical changes that must be made to a firearm in order for it to be considered deactivated within the terms of section 8. These standards were revised in 1995 and in 2010. The more recent standards are more rigorous than those adopted in 1989. The new standards do not invalidate the operation of section 8 of the 1988 Act in respect of firearms deactivated to previous standards.

157 There is evidence to suggest that poorly deactivated firearms are being "reactivated" and used in crime. According to NABIS, the proportion of criminal shootings that involve reactivated firearms rose over the three years from 1 March 2012 to 31 March 2015, currently accounting for 5% of such shootings (Law Commission Firearms Symposium, 8 September 2015).

158 The potential risk posed by ineffectively deactivated firearms has also been recognised by the European Commission. In a consultation document published in 2013, the European Commission stated:

"Law enforcement authorities in the EU are concerned that firearm which have been

²⁶ The two Proof Houses (in London and Birmingham) provide a testing and certification service for firearms, provided for in the Gun Barrel Proof Acts 1868, 1950 and 1978 and various Rules of Proof.

deactivated are being illegally reactivated and sold for criminal purposes, [and that] items such as alarm guns, air weapons and blank-firers are being converted into illegal lethal firearms.²⁷"

159 Commission Implementing Regulation 2015/2403 of 15 December 2015²⁸ establishes common minimum standards for deactivation of firearms. The Regulation came into force on 8 April 2016.

160 This Regulation is given effect by the creation of a new criminal offence (section 128) which will prohibit the transfer of ownership of firearms that purport to be deactivated but do not comply with the deactivation standards specified in the technical specifications document published by the Secretary of State.

Fees

161 The Firearms Acts contain a number of powers to charge fees, as follows:

- section 32 of the 1968 Act sets out the fees payable for the grant, renewal, variation or replacement of a firearms certificate and the grant, renewal or replacement of a shot gun certificate;
- section 35 of the 1968 Act sets out the fee for the grant or renewal of a certificate of registration as a firearms dealer;
- paragraph 3 of the Schedule to the 1988 Act sets out the fee payable for the grant, renewal or extension of a licence issued under paragraph 1 of that Schedule exempting museums from certain provisions of the 1968 Act;
- section 15 of the 1988 Act sets out the fee to be paid for the grant or renewal of an approval for an approved rifle or muzzle-loading pistol club.

162 Section 43 of the 1968 Act confers power on the Secretary of State to amend the level of fees set out in sections 32 and 35 of that Act. The Home Office consulted on increases to the fees payable under sections 32 and 35 of the 1968 Act in November 2014. The [response to the consultation](#) was published on 12 March 2015 (House of Commons, Official Report, column 34WS to 35WS). The revised fees came into effect on 6 April 2015 (as a result of the Firearms (Variation of Fees) Order 2015 (SI 2015/611)).

163 There is no equivalent power to charge a fee for the grant of an authorisation under section 5 of the 1968 Act for the possession of prohibited weapons and ammunition. Authorisations may be granted under section 5 to a wide range of organisations, including (but not limited to):

- Firearms dealers for the purpose of storing, manufacturing, trading or restoring prohibited weapons;
- Carriers for the purpose of transporting prohibited weapons;
- Private Maritime Security Companies for the purpose of the deployment of armed guards to protect UK ships from piracy in the high risk areas;

²⁷ European Commission, Communication from the Commission to the Council and the European Parliament: Firearms and Internal Security of the EU: Protecting Citizens and Disrupting Illegal Trafficking (2013), page 5.

²⁸ http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.333.01.0062.01.ENG&toc=OJ:L:2015:333:TO

- Olympic (and Commonwealth) shooting squads so that they can possess pistols which are a prohibited weapon.

164 The cost to the Home Office and Scottish Government of the licensing regime for section 5 authorisations and museum and shooting club licences is currently an estimated £700,000 per annum. Section 132 confers a power on the Secretary of State to set fees in connection with authorisations under section 5 of the 1968 Act, and updates existing powers to set fees in connection with museum firearm licences and shooting club licences.

Statutory Guidance

165 HMIC published a report in September 2015 on the outcome of their inspection of police firearms licensing departments. Police licensing departments deal primarily with the licensing of shotguns and other civilian firearms, for use by farmers and in recreational shooting. The report, *Targeting the risk: An inspection of the efficiency and effectiveness of firearms licensing in police forces in England and Wales*, September 2015, HMIC, recommended strengthening the safeguards in the current licensing regime and improving consistency across forces in the procedures they follow. To this end, section 133 introduces a power to issue statutory guidance to chief officers on the exercise of their firearms licensing functions, with a duty on chief officers to have regard to the guidance.

Alcohol: licensing

166 The Licensing Act 2003 ("the 2003 Act") regulates the sale and supply of alcohol, the provision of entertainment, and late night refreshment (hot food and hot drink sold between 11pm and 5am). Licensing authorities (district and borough councils or unitary councils) administer the system of licensing under the 2003 Act. They carry out their functions with a view to what is appropriate to promote the statutory licensing objectives, namely the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm.

167 The system of licensing is achieved through the provision of authorisations through personal licences, premises licences, club premises certificates and temporary event notices.

168 Personal licences authorise individuals to sell or supply alcohol from a premises licenced for that activity (though not every individual who works in a licensed premises will require a personal licence).

169 A premises licence authorises the holder of the licence to use the premises to which the licence relates ("the licensed premises") for licensable activities. A premises licence has effect until the licence is revoked or surrendered, but otherwise is not time limited unless the applicant requests a licence for a limited period.

Powdered alcohol

170 Powdered alcohol is not yet available in the UK. It has been authorised for sale in the United States of America but as far as is known it is not yet available to buy in America or anywhere else. It is designed to be mixed with water, or a mixer such as orange juice or cola, to make a drink of the normal strength (for example, a single shot of vodka). The 2003 Act defines alcohol as "spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor". As a result it is unclear whether powdered alcohol would fall within the current licensing regime.

171 Vaporised alcohol is alcohol in the form of a vapour which can be inhaled either straight from the air into which the vapour is pumped or by using an inhalation device. It is currently available in the UK.

172 Section 135 amends the 2003 Act to ensure that the law is clear that both powdered and vaporised alcohol fall within the regulatory regime provided for in that Act.

Summary review: interim steps

173 If a licensed premises becomes associated with serious crime or disorder the police can make an application to the licensing authority for a summary review of the licence. The licensing authority must consider within 48 hours whether it is necessary to impose interim steps (temporary conditions on a licence), for example, suspending the premises licence. These interim steps enable the licensing authority to act quickly in cases where there has been serious crime or serious disorder as it can take the steps immediately without first being obliged to hear representations from the holder of the premises licence in question. The hearing to review the licence must take place within 28 days of receipt of the application.

174 However, there is currently a legal ambiguity over whether or not interim steps remain in place until the process is complete, once appeal channels have been exhausted, or whether they can be withdrawn or amended at an earlier stage. Feedback from licensing authorities indicates that the legislation is being interpreted in some areas in a way which means that businesses are remaining closed or significantly restricted due to interim steps, sometimes for months, while an appeal is lodged. In other areas the opposite is happening and this can result in premises which pose a risk to the public continuing to operate during the appeal period. Either result can operate unfairly. Section 137 amends the law to ensure that licensing authorities can take appropriate action to protect the public and businesses subject to summary reviews are treated fairly.

Forfeiture and suspension of licences on conviction of relevant offences

175 The 2003 Act contains provision to enable a criminal court to order the forfeiture or suspension of a personal licence where the licensee has been convicted before the court of a relevant offence (namely one of the offences specified in Schedule 4 to the 2003 Act). Where a personal licence is revoked or suspended the licensee will be prevented from selling or supplying alcohol.

176 Where the holder of a personal licence is charged with a relevant offence, he or she must produce the licence to the court before the case against him or her is first heard. A personal licence holder is also required to notify the licensing authority where he or she is convicted of a relevant offence or a foreign offence. The licensing authority does not have the ability to suspend or revoke the licence; nor is there provision for a court to order the forfeiture or suspension of a licence other than at the point the licensee is being sentenced for a relevant offence.

177 Section 138 amends the 2003 Act to give licensing authorities the power to revoke or suspend a licence, and section 139 updates the list of offences in Schedule 4.

Cumulative impact assessments

178 Cumulative Impact Assessments (referred to as cumulative impact policies (“CIPs”)), prior to being placed on a statutory footing, are intended to assist licensing authorities in carrying out their functions in relation to controlling the number or type of licence applications granted in an area where there is evidence of problems caused by high numbers of licensed premises concentrated in the area. The CIP scheme is currently set out in the statutory guidance issued under section 182 of the 2003 Act. The Government’s [Modern Crime Prevention Strategy](#), published in March 2016, committed to putting CIPs on a statutory footing in order to provide greater clarity and legal certainty about their use and to ensure that any cumulative impact assessment is based on evidence. Section 141 gives effect to this. It also contains certain requirements as to the consultation which must be carried out before a cumulative impact assessment can be published. The opinion forming the basis of the assessment must be reviewed at least every three years.

Late night levy

179 The late night levy is a power, conferred on licensing authorities by provision in Chapter 2 of Part 2 of the 2011 Act. This enables licensing authorities to charge a levy to persons who are licensed to sell alcohol late at night in the authority’s area, as a means of raising a contribution towards the costs of policing the late-night economy. Before implementing a late night levy, the licensing authority must consider the costs of policing and other arrangements for the reduction or prevention of crime and disorder in connection with the supply of alcohol between midnight and 6am, and the desirability of raising revenue via the levy. The licensing authority must consult those who are likely to be affected, including by writing to licensees who may have to pay the proposed levy.

180 Presently the levy may only apply to premises selling alcohol and must apply to the whole of the licensing authority’s area, but licensing authorities may choose to apply exemptions and reductions (according to prescribed categories). The licensing authority can decide the ‘late night supply period’ (the times at which the levy is payable), which must begin at or after midnight and end at or before 6am, and must be the same every day.

181 The Government committed, in its [Modern Crime Prevention Strategy](#), to improve the late night levy. Section 142 and Schedule 18 are intended to give greater flexibility to local areas by allowing licensing authorities to choose to impose the levy only in certain geographical areas of their licensing area. It also permits licensing authorities to impose a levy on late night refreshment establishments. The police may ask a licensing authority to make a proposal for a levy. This request must be supported by evidence, and both must be published by the licensing authority.

Financial sanctions

182 Sanctions are used as a foreign policy tool as part of a broader political and diplomatic strategy to achieve a desired outcome from a target country or regime. They are usually agreed and co-ordinated at an international level by the United Nations (“UN”) Security Council and the European Union (“EU”). They may include travel, arms, financial and trade restrictions against the individuals and entities who are subject to the restrictions, and in some cases against broad sectors within a jurisdiction, for example, the EU financial restrictions that were put in place against Iranian banks.

183 The primary aim of all UN sanctions, as set out in Chapter VII of the UN Charter, is to

implement decisions by its Security Council for the maintenance of international peace and security. The EU imposes sanctions to further its Common Foreign and Security Policy objectives.

184 Sanctions may be imposed on an individual or entity ('the target') to:

- (a) Coerce the target into changing its behaviour, by increasing the cost on them to such an extent that they decide the offending behaviour is no longer optimal;
- (b) Constrain the target, by trying to deny them access to key resources needed to continue their offending behaviour;
- (c) Signal disapproval of the target as a way of stigmatising and potentially isolating them, or as a way of sending broader political messages to international or domestic constituencies.

185 Sanctions in recent years have been imposed on targets in Iran to bring about a change in their nuclear programme, in Egypt and other Arab Spring countries to secure suspected misappropriated assets during democratic transition and in Ukraine and Russia to signal disapproval of infringement of Ukraine's sovereignty and territorial integrity.

186 Financial sanctions usually include prohibiting the transfer of funds and assets, directly or indirectly, to a sanctioned individual or entity, and a requirement to freeze their funds and assets. Other financial sanctions may also prohibit the provision of insurance and reinsurance, financial services, or financing for either specific sectors or target entities.

187 The UK currently has 27 international financial sanctions regimes in force including the sanctions regime targeting ISIL (Daesh) and Al-Qaida. Domestically, the UK also implements terrorist financing restrictions through the Terrorist Asset Freezing etc. Act 2010 ("TAFAs"). A full list of financial sanctions regimes can be found online at HMT's [financial sanctions page](#).

188 When sanctions are imposed by the UN or the EU, the UK acts on its international obligations to give effect to the sanctions in UK law. UN sanctions are implemented by the EU and once implemented through EU regulations, they take direct effect in the UK.

Enforcement

189 Currently the UK enacts domestic statutory instruments to make it a criminal offence to breach financial sanctions. However a licence or authorisation from HM Treasury can be granted to permit an action that would otherwise be prohibited.

190 The European Communities Act 1972 ("1972 Act") limits the maximum penalty for offences created by regulations made under section 2(2) of the Act, including offences related to breaching of financial sanctions, to two years' imprisonment (upon conviction on indictment in the Crown Court (or equivalent)) and three months (upon summary conviction in a magistrates' court (or equivalent)).

191 This is inconsistent with penalties for similar offences in other sanctions regimes, for example, offences under TAFAs carry a maximum penalty of seven years' imprisonment.

192 Enforcement measures available for a breach of financial sanctions are currently limited to criminal prosecution or an administrative warning letter.

193 In the [Summer Budget 2015](#) (HC264), the Chancellor announced the creation of a new Office of Financial Sanctions Implementation, which was established within the Treasury on 31 March 2016. The Budget report stated the following:

"The Office will provide a high quality service to the private sector, working closely with law

enforcement to help ensure that financial sanctions are properly understood, implemented and enforced. This will ensure financial sanctions make the fullest possible contributions to the UK's foreign policy and national security goals and help maintain the integrity of and confidence in the UK financial services sector. The government will also legislate early in this Parliament to increase the penalties for non-compliance with financial sanctions."

194 To support the work of the new unit, and ensure that financial sanctions are properly enforced, Part 8 of the Act:

- Provides for an uplift of criminal penalties for EU financial sanctions by applying a gloss to section 2(2) of the 1972 Act, and amending the Anti-Terrorism, Crime and Security Act 2001 and Counter-Terrorism Act 2008. The changes will enable the maximum custodial sentence for a criminal breach of financial sanctions to be increased from two to seven years for conviction on indictment and from three months to six months (12 months in Scotland) on summary conviction.
- Creates a monetary penalties regime for breaches of financial sanctions regimes.
- Includes financial sanctions in the list of offences to which Deferred Prosecution Agreements ("DPAs") and Serious Crime Prevention Orders ("SCPOs") apply.
- Enables the temporary implementation of UN Security Council Resolutions by UK legislation until their implementation via EU law.

Miscellaneous and General

National Crime Agency

195 The NCA's core mission, as set out by the then Government in *National Crime Agency: A Plan for the Creation of a National Crime Fighting Capability* (published in June 2011), is to lead the UK's fight to cut serious and organised crime. It is responsible for tackling major organised crime, such as drug and people trafficking, serious crime such as child sexual exploitation and complex international fraud, including cyber-crime. The NCA came into being in October 2013.

196 The NCA has a strategic role, bringing together intelligence from the UK and abroad to understand the international nature of organised criminal gangs, how they operate and how they can be disrupted.

197 The NCA has more than 4,000 officers and operates across the UK, respecting the devolution of policing in Scotland and Northern Ireland.

198 The NCA has close working partnerships with other government departments, UK police forces and other law enforcement agencies. It also has the power to direct chief officers of police forces and law enforcement agencies in England and Wales to undertake specific operational tasks to assist the NCA or other partners.

199 Reflecting the experience of its initial two years of operations, sections 157 and 158 and Schedule 19 make changes to the arrangements under which the NCA may enter into collaboration agreements with other law enforcement agencies and the enforcement powers with which the Director General of the NCA can designate officers.

Requirements to confirm nationality

- 200 Foreign nationals comprise 12% of the prison population in England and Wales²⁹. The Government aims to remove as many Foreign National Offenders ("FNOs") as quickly as possible to their home countries, to protect the public, to reduce costs and to free up spaces in prison. The number of FNOs removed from the UK has increased from 4,539 in 2011/12³⁰ to 5,277 in 2014/15³¹. More than 25,000 FNOs have been removed from the UK in the period 2010 to 2015³².
- 201 The Immigration Act 2014 provided for a revised deportation process so that, in cases where there is no real risk of serious irreversible harm to the individual, an FNO can only exercise his or her right of appeal from outside the UK, thereby allowing for the more rapid deportation of many FNOs. Most FNOs do not appeal once returned to their home country. By the end of 2015 more than 2,600 FNOs have been removed under the new 'deport first, appeal later' powers, since they came into force in July 2014.
- 202 However, the Public Accounts Committee (in its report *Managing and removing foreign national offenders*, 12 January 2015) called for more to be done to identify FNOs earlier in the criminal justice process. The report stated: "Identifying FNOs early, including obtaining relevant documents such as passports, is crucial to speeding up removal at a later stage and managing the risk posed by the FNO while in prison."
- 203 The Government believes that establishing nationality at the earliest opportunity post-arrest is ideally achieved through seizing identity documents. Successfully establishing identity early post-arrest helps to facilitate overseas criminal records checks - if serious offending is revealed this can allow the Home Office to consider deportation action even in cases where an individual is released without charge. Missing opportunities to establish the nationality of individuals early in the process can cause significant delays later, when seeking to deport FNOs and illegal immigrants from the United Kingdom.
- 204 However, successful identification is particularly difficult where an individual is not carrying a document at the time of arrest. Although it is already possible for officers to search premises for identity documents, this is resource intensive and to require officers to do so in every case would be a disproportionate use of police resources. The provisions in sections 159 to 161 seek to supplement these powers to give the police and immigration officers more opportunities to establish identity and nationality on arrest, and obtain documents from suspected FNOs where the police and immigration officers cannot utilise existing search powers or the individual cannot provide documents whilst in custody. A statutory requirement (backed by criminal sanction) on all defendants, regardless of their nationality, to state their name, date of birth and nationality in court will provide an added incentive for suspected foreign nationals to comply with the police in establishing their identity on arrest. It will also provide a second opportunity to capture this information for those who failed to give these details to the police.

Seizure of travel documents

- 205 The cancellation of foreign travel documents and British passports is an important tool in the fight against terrorism, and in particular in disrupting people travelling to conflict zones to fight or receive terrorist training ("foreign fighters").

²⁹ Offender Management Statistics Quarterly Bulletin, July to September 2015, MoJ

³⁰ *Managing and removing foreign national offenders*, October 2014, NAO

³¹ <https://www.gov.uk/government/statistics/immigration-statistics-july-to-september-2015-data-tables>

³² *Ibid.*

- 206 Present legislation (Schedule 8 to the Anti-social behaviour, Crime and Policing Act 2014) allows a police officer, customs officer or Immigration Officer to seize an invalid foreign or British travel document at a port. It also allows a police officer to seize a British (but not foreign) passport, away from a port, where that passport has been cancelled on public interest grounds, and where the Home Secretary has authorised use of the power. There is currently no power to seize an invalid foreign passport away from a port.
- 207 In December 2014, the EU made some technical changes to the Second Generation Schengen Information System ("SIS II"), in which the UK takes part, encouraging participating States to notify each other via SIS II when they had cancelled the travel document of a suspected foreign fighter. The objective of this change was to encourage other Member States to seize the travel documents if they came across them. At present, the UK would be unable to take action if the police or immigration enforcement came across a cancelled travel document away from a port. This means that the bearer would be able to continue using the document for travel, which creates a security risk.
- 208 Section 163 addresses this issue by providing a power to search for and seize invalid foreign travel documents away from ports and provide an accompanying power of entry to premises to search for and seize invalid foreign travel documents and British passports cancelled for reasons related national security.

Pardons and disregards

- 209 The 2015 Conservative Party manifesto made a commitment to "build on the posthumous pardon of Enigma codebreaker Alan Turing, who committed suicide following his conviction for gross indecency, with a broader measure to lift the blight of outdated convictions of this nature. Thousands of British men still suffer from similar historic charges, even though they would be completely innocent of any crime today. Many others are dead and cannot correct this injustice themselves through the legal process we have introduced while in government. So we will introduce a new law that will pardon these people, and right these wrongs." The pardon for Alan Turing was granted by HM The Queen in December 2013.
- 210 Under Chapter 4 of Part 5 of the Protection of Freedoms Act 2012 ("the 2012 Act"), which extends to England and Wales, individuals may apply to the Home Secretary for a formal disregard of their convictions for buggery and gross indecency between men. If the Home Secretary decides that it appears that certain conditions are met (for example, the other person involved in the conduct constituting the offence consented to it and was aged 16 or over), the conviction becomes disregarded and is deleted or annotated and will no longer be disclosed, including in Disclosure and Barring Service certificates or in court proceedings. Details of the number of applications for disregards since the scheme began is provided below.
- 211 Sections 164 to 172 give effect to the manifesto commitment, provide for an equivalent disregard scheme in Northern Ireland to that in the 2012 Act, provide for pardons for any living person who has a conviction or caution disregarded under the 2012 Act or equivalent Northern Ireland scheme, and allow the Secretary of State and Department for Justice in Northern Ireland to extend by regulations the disregard schemes to other offences that regulated, or were used to target, homosexual activity.

Disregards: 1 January 2017

Applicants	Cases	Cases Accepted	Cases Rejected	Cases in Progress
297	399	95	276	28

Accepted cases

Section 12 of the Sexual Offences Act 1956 (buggery)	Section 13 of the Sexual Offences Act 1956 (gross indecency)	Military equivalents	Older legislation	TOTAL
4	88	3	0	95

Rejected cases

In public lavatory	Non consensual	Under age	Not eligible ¹	No info found	Unrelated ²	TOTAL
51	8	6	26	14	171	276

[1] Not eligible - indecent exposure etc

[2] Unrelated - benefits fraud, drugs possession etc.

Some cases may be rejected for more than one reason, in which case only one reason is counted in the statistics.

Forced marriage: anonymity for victims

212 In a [speech at Ninestiles School in Birmingham](#) on 20 July 2015, the then Prime Minister announced the Government's intention to introduce lifelong anonymity for victims of forced marriage, and the Government's cross-Government violence against women and girls strategy³³ published on 8 March 2016 set out a commitment to bring forward legislation to introduce this measure. Section 173 and 174 give effect to that commitment and make corresponding provision for Northern Ireland.

Protection of children and vulnerable adults

213 Local authorities in England and Wales (and, in London, Transport for London) are responsible for licensing taxi and private hire vehicle ("PHV") operators and drivers.

214 When issuing taxi licences, local authorities must ensure that anybody who holds a licence is deemed a 'fit and proper person'. This will typically involve a criminal record check, a medical check, a driving test, a comprehensive topographical examination, and a check on the financial standing of the prospective proprietor. There is no statutory requirement for local authorities to carry out a criminal record check before issuing a licence to a taxi driver. As they are, however, required to ensure that the applicant is a 'fit and proper person', many authorities do, in fact, undertake such a check. Most councils have also adopted provisions that subject PHV drivers and operators to licensing.

215 Both the Jay³⁴ and Casey Reports³⁵ into child sexual exploitation noted the prominent role

33 <https://www.gov.uk/government/publications/strategy-to-end-violence-against-women-and-girls-2016-to-2020>

34 Independent Inquiry into Child Sexual Exploitation in Rotherham 1997-2013, Alexis Jay OBE

35 Report of Inspection of Rotherham Metropolitan Borough Council, Dame Louise Casey

played by taxi and PHV 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."

216 To assist local authorities in undertaking their licensing functions, the Department for Transport has published, most recently in 2010, Best Practice Guidance for local authorities on taxi and PHV licensing³⁶.

217 To help reduce the risk posed to children and vulnerable individuals from harm by taxi and PHV drivers who seek to abuse their position of trust, section 177 confers a power on the Secretary of State to issue statutory guidance to licensing authorities on the exercise of their taxi and PHV licensing functions.

Coroners' investigations into deaths: meaning of "state detention"

218 In England and Wales, coroners must undertake an investigation into a person's death when the coroner has reason to suspect that "the deceased died while in custody or otherwise in state detention" (section 1 of the Coroners and Justice Act 2009).

219 A person is in state detention for the purposes of coroner legislation when compulsorily detained by a public authority. Under the Mental Capacity Act 2005 ("the 2005 Act") a person who lacks capacity may be detained in circumstances which amount to deprivation of liberty. In 2014 the Supreme Court judgment in the cases of *P v Cheshire West and Chester Council* and *P&O v Surrey County Council (Cheshire West)* clarified the circumstances in which an authorisation of deprivation of liberty and the associated safeguards provided by the 2005 Act are likely to be required now including, for example, elderly persons with dementia living in care homes.

220 Since that ruling there has been a 10-fold increase between 2013 and 2015 in received applications of deprivation of liberty authorisations under the provisions of the 2005 Act and coroner inquests subsequently increased by over a quarter between 2014 and 2015. In 2015 the vast majority of such deaths would not have otherwise required a coroner's investigation (if the person had not been deprived of their liberty under the 2005 Act) with just 1% of such inquests concluded other than as a 'death by natural causes'.

221 The Chief Coroner in his [2015/16 annual report](#) recommended that the Coroners and Justice Act 2009 be amended to remove such cases from the category of "in state detention". Section 178 gives effect to this recommendation.

³⁶ <https://www.gov.uk/government/publications/taxi-and-private-hire-vehicle-licensing-best-practice-guidance>

Legal background

- 222 The legislation relating to policing in England and Wales is set out in a number of statutes. The principal enactments are as follows:
- 223 The Police Act 1996 ("the 1996 Act") provides for the organisation of police forces in England and Wales (including of the Metropolitan Police Service, the City of London Police (see also the City of London Police Act 1839) and the 41 police forces outside London (Schedule 1 to the Act lists the police areas outside London)); sets out the functions of the Secretary of State (in practice, the Home Secretary) in relation to policing; confers certain functions on the College of Policing, including in respect of the preparation of regulations made by the Home Secretary about the government, administration and conditions of service of police forces; provides for the inspection of forces by HMIC; provides for the Police Federation and the Police Remuneration Review Body; and makes provision in respect of disciplinary matters.
- 224 Part 1 of the Police Reform and Social Responsibility Act 2011 ("the 2011 Act") provides for the governance of police forces and, in particular, provides for the oversight of police forces outside London by directly elected PCCs and of the Metropolitan Police Force by MOPAC. The Common Council remains the police authority for the City of London Police (see section 6AZA of the 1996 Act). The Local Democracy, Economic Development and Construction Act 2009 ("the 2009 Act") (as amended by the Cities and Local Government Devolution Act 2016) would enable the functions of a PCC to be undertaken by the directly elected mayor of a combined authority area. Collectively PCCs, MOPAC and the Common Council are referred to in the 2011 Act and elsewhere as local policing bodies.
- 225 Part 2 of the Police Reform Act 2002 ("the 2002 Act") establishes the IPCC, sets out its functions and makes provision for the handling of complaints against the police.
- 226 Provisions in respect of the powers of police officers are contained in multiple statutes, but the core powers to prevent, detect and investigate crime are set out in the Police and Criminal Evidence Act 1984 ("PACE").
- 227 Part 4 of the 2002 Act makes provision in respect of the designation of police staff with certain specified powers of a police officer.

Emergency Services Collaboration

- 228 Sections 22A to 23I of the 1996 Act make provision for collaboration agreements entered into either by two or more policing bodies (which includes local policing bodies) or by the chief officer of police of one or more police forces and two or more policing bodies. The governance of FRAs is provided for in the Fire and Rescue Services Act 2004 ("the 2004 Act"). Sections 13 to 14 of the 2004 Act require FRAs to enter into mutual assistance schemes with other FRAs and make provision for the Secretary of State to make directions about such schemes and sections 16 and 17 enable FRAs to enter into agreements with other such authorities or other persons for that other authority or person to discharge certain of their statutory functions and make provision for the Secretary of State to make directions about these arrangements. The governance of ambulance services in England is provided for in the National Health Service Act 2006, under that Act the ten ambulance services in England are constituted as NHS Trusts of NHS Foundation Trusts.
- 229 Part 1 of the 2004 Act provides for FRAs for England and Wales. Section 1 sets out which authority is the FRA for an area – this is subject to sections 2 to 4 which provide for the making of schemes, by order, for the creation of a combined FRA for two or more areas and for

combined fire authorities under the Fire Services Act 1947 to continue to exist. Currently in England the FRA is, in a non metropolitan area, either the district council where there is no county council or – where there is a county council – that county council. In a metropolitan county it is the metropolitan county FRA, in Greater London the London Fire and Emergency Planning Authority and in the Isles of Scilly the Council is the FRA. The 2004 Act also in particular sets out the core functions of FRAs (although an FRA has statutory functions under other legislation, for example, as a category 1 responder under the Civil Contingencies Act 2004), and the role of the Secretary of State in setting out a Fire and Rescue National Framework and supervision. As with PCCs, the 2009 Act (as amended by the Cities and Local Government Devolution Act 2016) would enable the functions of an FRA to be undertaken by the directly elected mayor of a combined authority area.

Inspection of fire and rescue services

230 Section 28 of the 2004 Act provides for the inspection of FRAs, although there are currently no inspectors appointed under these provisions.

Police complaints and discipline

231 Part 2 of the 2002 Act deals with complaints against the police and related matters. Amongst other things, Part 2 establishes the IPCC (section 9) and sets out its general functions (section 10). Schedule 3 to the 2002 Act makes detailed provision for the handling of complaints, conduct matters (that is a matter that has not been the subject of a complaint but where there is an indication that a person serving with the police may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings), and DSI matters and for the carrying out of investigations into complaints, recordable conduct matters, and death and serious injury matters.

232 Section 50 of the 1996 Act confers on the Home Secretary the power to make regulations as to the governance, administration and conditions of service of police forces. In particular, regulations made under this section may make provision in respect of police discipline. Section 51 of the 1996 Act makes similar provision in respect of special constables. Chapter 2 of Part 4 of the 1996 Act makes further provision about disciplinary proceedings. In particular, section 84 enables the Home Secretary to make regulations about representation at disciplinary proceedings. The principal regulations made under these sections are the Police (Conduct) Regulations 2012 (SI 2012/2632). These apply where an allegation comes to the attention of the police force (or the PCC where the allegation relates to a chief constable) which indicates that the conduct of a police officer may amount to misconduct or gross misconduct. The regulations set out the procedure for dealing with such allegations, including provisions on investigations and misconduct proceedings.

233 Section 85 of, and Schedule 6 to, the 1996 Act make provision regarding appeals to a police appeals tribunal against dismissal. The Police Appeals Tribunals Rules 2012 (SI 2012/2630) govern the procedure for such appeals.

HMIC

234 HMIC was originally established by the County and Borough Police Act 1856. Its statutory framework is now provided for in sections 54 to 56 of the 1996 Act; these provide for the appointment and functions of inspectors of constabulary, the publication of reports, and the appointment of assistant inspectors and staff officers.

These Explanatory Notes relate to the Policing and Crime Act 2017 (c. 3) which received Royal Assent on 31 January 2017

Exercise of powers by civilian staff and volunteers

- 235 Section 38 of the 2002 Act sets out the four roles that can be designated to police staff (that is, PCSO, investigating officer, detention officer and escort officer), while section 38A of, and Schedule 4 to, the 2002 Act set out the powers that must or may be conferred on designated staff in each of those roles.
- 236 Sections 95 to 97 of the Road Traffic Regulation Act 1984 provides for the appointment and powers of traffic wardens.

Police ranks

- 237 Sections 9H and 13 of the 1996 Act are the key current provisions in relation to police ranks.
- 238 Section 9H concerns the ranks that may be held in the Metropolitan Police. Subsection (1) provides that the ranks of that force are those prescribed in regulations made under section 50. However, the effect of subsection (2) is that such regulations must (in addition to the ranks of commissioner, deputy commissioner, assistant commissioner, deputy assistant commissioner and commander (see the provisions of the 2011 Act below)) include the ranks of chief superintendent, superintendent, chief inspector, inspector, sergeant and constable.
- 239 Section 13 concerns the ranks for the other police forces (those outside London maintained in accordance with section 2 of the 1996 Act). Again, the ranks of those forces are those prescribed in regulations made under section 50. However (in addition to the ranks of chief constable, deputy chief constable and assistant chief constable (see the provisions of the 2011 Act below)), these must include the ranks of chief superintendent, superintendent, chief inspector, inspector, sergeant and constable (subsection (1)).
- 240 The 2011 Act makes provision for chief officer ranks, that is, the ranks above that of chief superintendent. For forces outside London, sections 2, 39 and 40 of the 2011 Act require every force to have a chief constable, one or more deputy chief constables and one or more assistant chief constables respectively. In the case of the Metropolitan Police, sections 4, 43, 45, 46 and 47 of the 2011 Act require there to be a commissioner of police for the metropolis, one deputy commissioner, one or more assistant commissioners, one or more deputy assistant commissioners and one or more commanders respectively.
- 241 The City of London Police Act 1839 ("the 1839 Act") makes provision for the City of London Police. Section 3 of that Act empowers the Common Council to appoint a Commissioner of the City of London Police. (That Act does not require the appointment of persons to any other particular rank.)
- 242 Section 50(1) of the 1996 Act provides the general power for the Secretary of State to make regulations as to the government, administration and conditions of service of police forces. Section 50(1)(a) specifies that this may include provision with respect to the ranks held by members of police forces.
- 243 The relevant regulations made under section 50 are the Police Regulations 2003 (S.I. 2003/527, as amended). Regulation 4 prescribes the ranks in relation to police forces maintained under section 2 of the 1996 Act, the Metropolitan Police and the City of London police. The prescribed ranks are the same as those provided for in the 1996 Act and 2011 Act.

Police Federation for England and Wales

- 244 The Police Federation was established by section 59 of the Police Act 1919. It has continued to exist since that time.
- 245 The core functions of the Police Federation are set out in sections 59(1) and (2) of the 1996 Act. Section 59(1) provides for the continuation of a "Police Federation for England and Wales and a Police Federation for Scotland for the purpose of representing members of the police forces in those countries respectively in all matters affecting their welfare and efficiency, except for (a) questions of promotion affecting individuals, and (b) (subject to subsection (2)) questions of discipline affecting individuals." (NB: The provisions of this Act relating to the Police Federation apply to England and Wales only.)
- 246 Section 59(2) provides that a "Police Federation may represent a member of a police force at any proceedings brought under regulations made in accordance with section 50(3) above... or on an appeal from any such proceedings". (Section 50(3) makes provision for the dismissal, demotion and other disciplinary measures of members of police forces.)
- 247 The Police Federation Regulations 1969 (SI 1969/1787, as amended), made under section 60 of the 1996 Act, set out the constitution of the Police Federation. These regulations were amended by the Police Federation (Amendment) Regulations 2015 (SI 2015/630) to give members of police forces the choice as to whether to be a member of the Police Federation, and to impose greater disclosure obligations on the Federation in relation to all monies held by the Federation and its branches and committees.

NPCC

- 248 ACPO was constituted as a company limited by guarantee and, as such, was not a statutory body, but section 96 of the 2002 Act provided for the President of ACPO to continue to hold the office of constable with the rank of chief constable. There are references to ACPO across some 13 enactments.

Pre-charge bail

- 249 Part 4 of PACE makes provision for the detention and release (either on bail or without bail) of persons suspected of committing a criminal offence but who have not yet been charged. Where a suspect is released on bail, either conditionally or unconditionally, the provisions of the Bail Act 1976 apply.

Mental health

- 250 Sections 135 and 136 of the Mental Health Act 1983 ("the 1983 Act") set out how and when a person considered to have a 'mental disorder' can be removed to a place of safety and detained there without their consent if specific requirements are met. Under both sections 135 (which deals with the search for and removal of persons from private premises) and 136 (which deals with the removal of persons from public places), a person may be detained for a maximum of 72 hours.

Maritime enforcement

251 Section 30 of the 1996 Act specifies the jurisdiction within which the police may exercise their powers under PACE and other enactments as being 'England and Wales and the adjacent United Kingdom waters' (UK waters are those waters within 12 nautical miles of UK shores).

252 Police maritime enforcement powers in respect of the investigation of drug trafficking and modern slavery offences are contained in section 20 of, and Schedule 3 to, the Criminal Justice (International Co-operation) Act 1990 ("the 1990 Act"), and Part 3 of, and Schedule 2 to, the Modern Slavery Act ("the 2015 Act") respectively.

PACE

253 The Police and Criminal Evidence Act 1984 ("PACE") provides the police with core powers to prevent, detect and investigate crime. In particular, it makes provision about powers of stop and search (Part 1); entry, search and seizure (Part 2); arrest and bail (Part 3); detention (Part 4); interviewing, taking and retention of fingerprints and intimate and non intimate samples (for example, for the purposes of DNA profiling) (Part 5); and the issuing of Codes of Practice (Part 6). The Codes of Practice made under PACE govern the use of those powers. There are eight such Codes as follows:

- Code A - Exercise by police officers of statutory powers to search a person or a vehicle without first making an arrest and the need for a police officer to make a record of a stop or encounter;
- Code B - Police powers to search premises and to seize and retain property found on premises and persons;
- Code C - Requirements for the detention, treatment and questioning of suspects not related to terrorism in police custody by police officers;
- Code D - Main methods used by the police to identify people in connection with the investigation of offences and the keeping of accurate and reliable criminal records;
- Code E - Audio recording of interviews with suspects in the police station;
- Code F - Visual recording with sound of interviews with suspects;
- Code G - Powers of arrest under section 24 of PACE (which provides the statutory power for a constable to arrest without warrant for all offences);
- Code H - requirements for the detention, treatment and questioning of suspects related to terrorism in police custody by police officers.

Cross-border enforcement

254 Section 136 of the Criminal Justice and Public Order Act 1994 ("the 1994 Act") provides that, where a warrant for the arrest of a person has been issued in any of the jurisdictions of England and Wales, Northern Ireland and Scotland, the person can be arrested in any other jurisdiction by a police officer from either the jurisdiction where the offence was committed or the

jurisdiction in which the person is found.

255 Section 137 of the 1994 Act provides that a constable from one jurisdiction can, without a warrant, arrest (or in the case of Scottish constables, "detain") a person in a jurisdiction other than their own 'home' jurisdiction, if that constable has reasonable grounds for suspecting that the person has committed or attempted an offence in the constable's 'home' jurisdiction.

256 Section 140 of the 1994 Act provides that a constable from one jurisdiction who is present in another jurisdiction can, without a warrant, arrest a person in that other jurisdiction in respect of an offence committed there. Arrest would be on the same basis as a constable who is from that other jurisdiction

Firearms

257 The Firearms Act 1968 ("the 1968 Act") is the principal statute regulating the control of firearms in England and Wales, and Scotland. Sections 1 and 2 prohibit the possession of a firearm or shotgun without an appropriate certificate (Part 2 of the Act provide for the application process for such certificates). Section 3 of the Act makes it an offence to commit certain acts by way of a trade or business relating to section 1 firearms, shotguns, ammunition or air weapons without being registered as a firearms dealer (sections 33 to 39 set out the process for registration of firearms dealers). Section 5 of the Act prohibits the possession of specific types of weapons, their component parts and ammunition without the authority of the Secretary of State. These include handguns, automatic weapons and weapons which dispense noxious gas, amongst others.

Alcohol: licensing

258 The Licensing Act 2003 ("the 2003 Act") creates a regulatory regime for the sale and supply of alcohol. Alcohol is defined in section 191 of the 2003 Act.

259 Sections 53A to 53C of the 2003 Act create a summary review process which allows the police to apply to a licensing authority for a review of the premises licence of premises licensed to sell alcohol by retail, where they consider the premises to be associated with serious crime or serious disorder (section 53A(1)).

260 Personal licences are provided for in section 111 of the 2003 Act.

261 Schedule 4 to the 2003 Act lists the relevant offences, conviction for which can result in the refusal of a personal licence or the suspension or forfeiture of such a licence.

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

263 Chapter 2 of Part 2 of the 2011 Act provides for the late night levy.

Financial sanctions

264 The UN requires financial sanctions to be imposed under Article 41 of the UN Charter. This sets out that the Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the UN to apply such measures. These may include complete or partial interruption of economic relations.

265 The legal basis for EU financial sanctions regimes is Article 215 of the Treaty on the Functioning of the European Union. This Article sets out that the Council may, on receipt of a

proposal from the High Representative for Foreign Affairs, interrupt or reduce financial or economic relations with third countries. This proposal might be prompted by a UN Resolution or the concerns of member States. The Council will then do so by way of a Decision or Regulation.

266 Section 2(2) of the European Communities Act 1972 ("the 1972 Act") enables provision to be made for the enforcement of all EU financial sanctions regulations. For example, the Ukraine (European Union Financial Sanctions) Regulations 2014 (SI 2014/507) provides for asset freezes in relation to individuals and entities listed under the EU Council Regulation 208/2014.

267 The UK has also enacted domestic legislation to impose financial sanctions regimes, such as Part 2 of the Anti-terrorism, Crime and Security Act 2001 and Schedule 7 to the Counter-Terrorism Act 2008.

268 DPAs were introduced by section 45 of and Schedule 17 to the Crime and Courts Act 2013 ("the 2013 Act"). (They only extend to England and Wales (see section 61(12) and 61(13)(g) of the 2013 Act).)

269 SCPOs were introduced by Part 1 of the Serious Crime Act 2007 ("the 2007 Act") in England and Wales and Northern Ireland. Section 46 of, and Schedule 1 to, the Serious Crime Act 2015 (which came into force on 1 March 2016), extended the provisions in Part 1 of the 2007 Act to Scotland.

National Crime Agency

270 The NCA was established by Part 1 of the 2013 Act and became operational on 7 October 2013. It is classified as a non-ministerial government department.

271 Section 10 of the 2013 Act confers powers on the Director General of the NCA to designate NCA officers with the powers of a constable, an officer of Revenue and Customs and an immigration officer.

272 Section 22A of the 1996 Act provides for collaboration agreements between the NCA and police forces in England and Wales.

Requirements to confirm nationality

273 The following powers are currently available to the police and/or immigration officers in relation to travel documents:

274 Section 20 of the Immigration and Asylum Act 1999 ("IAA") provides powers for documents to be supplied by chief constables and the NCA to the Secretary of State "for use for immigration purposes".

275 Powers to retain those documents are set out at section 17 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 ("the 2004 Act"), while the Secretary of State or an immigration officer suspects that "retention of the document may facilitate the individual's removal".

276 Section 35 of the 2004 Act provides the power to require a person to provide travel documents or information (including fingerprints) to the Secretary of State that may assist with the deportation or removal of that person from the UK.

277 Section 44 of the UK Borders Act 2007 ("the UKBA") also gives immigration and police officers the power to search premises in order to seize and retain nationality documents. It enables

immigration or police officers to search specified premises³⁷ where there is "reasonable suspicion" that an offence has been committed and the individual may not be a British Citizen.

278 Section 45 of the UKBA provides further powers to search other premises where there are reasonable grounds for believing that nationality documents may be found there. Documents can be retained where officers suspect that the person "may be liable to removal from the United Kingdom" and where "retention of the document may facilitate the individual's removal."

279 Section 57 of and Schedule 6 to the Immigration Act 2016 amend the IAA so as to place a new duty on the police to send nationality documents to Immigration Enforcement upon request, provided certain conditions are met, namely where the Secretary of State has reasonable grounds to believe that the police are lawfully in possession of a nationality document; and suspects that the person to whom the document relates may be liable to removal from the UK and that the nationality document would assist this.

280 In respect of the existing court procedure, details of a defendant's name, address and date of birth are currently requested under the Criminal Procedure Rules 2015 (SI 2015/1490), which govern the practice and procedure of the criminal courts. (No sanction currently attaches to failure to provide this information, nor is there any requirement to provide information on nationality.)

Powers to seize invalid passports

281 Schedule 8 to the Anti-Social Behaviour, Crime and Policing Act 2014 ("the 2014 Act") sets out powers to seize invalid passports and other invalid travel documents.

Pardons for certain abolished offences

282 A pardon can be granted by the Crown under the royal prerogative of mercy. The grant of such a Royal pardon is rare. The Crown used this power in 2013 to pardon Alan Turing for gross indecency. Pardons can also be granted by statute, such as the pardons for servicemen executed for disciplinary offences during World War I, under section 359 of the Armed Forces Act 2006.

283 Chapter 4 of Part 5 of the Protection of Freedoms Act 2012 makes provision for disregarding certain convictions and cautions for buggery and gross indecency between men.

Forced marriage: anonymity for victims

284 Section 121 of the 2014 Act provides for a criminal offence in England and Wales of forcing someone to marry. The legislation came into force on 16 June 2014 and criminalises the use of violence, threats, deception or any other form of coercion for the purpose of forcing a person into marriage or into leaving the UK with the intention of forcing that person to marry.

37 i) premises occupied or controlled by the individual, ii) premises on which the individual was arrested, and iii) premises on which the individual was, immediately before being arrested.

Stalking and harassment

285 Sections 4 and 4A of the Protection from Harassment Act 1999 provide for offences of putting people in fear of violence and stalking involving fear of violence or serious alarm or distress respectively. Section 32 of the Crime and Disorder Act 1998 provides for the penalty for racially or religiously aggravated forms of these offences.

Protection of children and vulnerable adults

286 The offences at sections 48 to 50 of the Sexual Offences Act 2003 ("the SOA") criminalise the following conduct: section 48 - causing or inciting sexual exploitation of a child; section 49 - controlling a child in relation to sexual exploitation; and section 50 - arranging or facilitating sexual exploitation of a child.

287 Section 51 of that Act defines the term "sexual exploitation" which applies to the offences at sections 48 to 50 of the SOA.

288 In England and Wales, outside London, taxis (also referred to as 'Hackney Carriages') are licensed by district councils under the Town Police Sections Act 1847 or the Local Government (Miscellaneous Provisions) Act 1976. All taxis and their drivers must be licensed. Private hire vehicles ("PHVs"), sometimes referred to as minicabs, drivers and operators are subject to licensing if a district council has adopted Part II of the 1976 Act (most have) or has similar provisions contained in a local Act.

289 In London, the main licence conditions are made under the London Cab Order 1934 (SI 1934/1346). The minicab trade in London is licensed by regulations made under the Private Hire Vehicles (London) Act 1998. Transport for London is responsible for taxi licensing while PHV licensing falls for the London Boroughs.

Coroners' investigations into deaths

290 Section 1 of the Coroners and Justice Act 2009 sets out the duties of a coroner to undertake the investigation of a person's death. Subsection (2)(c) provides that an investigation must be conducted if the coroner has reason to suspect that "the deceased died while in custody or otherwise in state detention".

291 Section 48 of the Coroners and Justice Act 2009 sets out the definition of "state detention" for these purposes. Subsection (2) of section 48 states: "A person is in state detention if he or she is compulsorily detained by a public authority within the meaning of section 6 of the Human Rights Act 1998 (c. 42)."

292 Sections 4A and 4B of the Mental Capacity Act 2005 provides the authority for a person who lacks capacity to consent to their living arrangements to be lawfully subject to a level of restriction on their freedom of movement which may amount to deprivation of liberty in order to maintain their wellbeing.

Territorial extent and application

293 Section 183 sets out the territorial extent of the Act, that is, the jurisdictions of which the Act forms part of the law. The extent of an Act can be different from its application. Application is about where an Act produces a practical effect.

294 Subject to certain exceptions, the provisions of the Act extend and apply to England and Wales only. The commentary on individual provisions of the Act includes a paragraph explaining their extent and application, however, the main exceptions are:

- Part 1: Emergency services collaboration – these provisions extend to England and Wales, but apply to England only;
- Part 2, section 21(2) and (3): References to England and Wales in connection with IPCC functions - these subsections extend to the United Kingdom but apply to England and Wales only;
- Part 2, section 29(8) and Schedule 7: Disciplinary proceedings against former members of the Ministry of Defence Police ("MDP"), British Transport Police ("BTP") and Civil Nuclear Constabulary ("CNC") - these provisions insofar as they relate to MDP extend and apply to the United Kingdom and insofar as they relate to BTP and CNC extend and apply to Great Britain;
- Part 2, section 37(6): Duty on Director General of the National Crime Agency to respond to inspection report – this subsection extends and applies to the United Kingdom;
- Part 3, section 39(3): Application of the Firearms Act 1968 to special constables and police volunteers – this subsection extends and applies to Great Britain;
- Part 3, section 45 and Schedule 12: Further amendments to enactments consequential upon the extension of powers of police civilian staff and police volunteers – the amendments to the Railways and Transport Safety Act 2003 relating to the powers of BTP civilian staff extend and apply to Great Britain;
- Part 4, sections 68 and 69: Breach of pre-charge bail conditions relating to travel – these sections extend and apply to England and Wales and Northern Ireland;
- Part 4, section 71: Retention of fingerprints and DNA profiles under the Terrorism Act 2000 - these provisions extend and apply to the United Kingdom;
- Part 4, section 76(3): PACE: audio recordings of interviews – this subsection extends and applies to the United Kingdom;
- Part 4, sections 84(2) to (5), 86 to 92, 95, 96(2) to (7), 98 to 104 and 106: Maritime enforcement powers - these provisions extend and apply to Great Britain insofar as they provide for hot pursuit of vessels into England and Wales or Scotland waters;
- Part 4, sections 96(1) and (8), 97 and 105: Maritime enforcement powers - these provisions extend and apply to Scotland only;
- Part 4, Chapter 7: Maritime enforcement powers - these provisions extend and

These Explanatory Notes relate to the Policing and Crime Act 2017 (c. 3) which received Royal Assent on 31 January 2017

apply to Northern Ireland only;

- Part 4, sections 116 to 119 and Schedules 15 to 17: Cross-border enforcement - these provisions extend and apply to the United Kingdom;
- Part 6, sections 125 to 133: Firearms – these provisions extend and apply to Great Britain;
- Part 8: Financial sanctions – with the exception of section 150 (which relates to deferred prosecution agreements and which extends and applies to England and Wales only), these provisions extend and apply to the United Kingdom;
- Part 9, section 158: Powers of NCA in relation to customs matters - this section extends and applies to the United Kingdom;
- Part 9, sections 159: Requirements to state nationality - this section extends and applies to England and Wales and Northern Ireland;
Part 9, sections 160 and 161: Requirements to produce nationality documents - these sections extend and apply to the United Kingdom;
- Part 9, section 162: Seizure of invalid travel documents - this section extends and applies to the United Kingdom;
- Part 9, sections 168(1) and (2) and 169 to 172: Pardons for certain abolished offences etc - these sections extend and apply to Northern Ireland only;
- Part 9, section 179: Littering powers of Scottish local authorities - this section extends and applies to Scotland only.

295 Section 156 also confers a power to extend the application of section 143 and regulations made under sections 152(1), 154 and 155 (temporary implementation of EU and UN financial sanctions), with any necessary modifications, to any of Guernsey, the Isle of Man and any of the British overseas territories, by Order in Council.

296 See the table in [annex I](#) for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Act

Part 1: Emergency Services Collaboration

297 This Part extends to England and Wales but applies to England only.

Chapter 1: Collaboration Agreements

298 To support collaboration to become more widespread at a local level, the Government set out in "Enabling Closer Working between the Emergency Services: Consultation response and next steps", its intention to introduce a new statutory duty on the three emergency services to consider opportunities to collaborate and to give effect to collaboration proposals where it would be in the interests of their efficiency or effectiveness. Chapter 1 introduces these new statutory duties. It does not specify how the services should collaborate except for high level provisions and restrictions; neither does it affect the scope of any existing powers of the emergency services to exercise their functions jointly or on behalf of one another or otherwise cooperate.

Section 1: Collaboration agreements

299 Section 1 provides for collaboration agreements to be made between police bodies, fire and rescue bodies and ambulance trusts. This does not affect the status of existing collaborations between the emergency services, but provides a clear legislative framework within which collaborative agreements can take place going forwards.

300 The effect of *subsections (1) and (2)* is that collaboration agreements do not need to include all three emergency services. However, they must include at least two different emergency services and can involve more than one of each emergency service. For example, the collaboration agreement could include two police forces and a fire and rescue service, but could not be made between just two police forces. (Where a service wishes to collaborate only with a different body of the same emergency service, it is expected that police forces would rely upon existing provisions for collaboration in section 22A of the 1996 Act; fire and rescue services would rely upon section 16 of the 2004 Act; and ambulance services, section 47 of, and paragraph 14 of Schedule 4 to, the National Health Service Act 2006.)

301 Whilst the new duties in relation to collaboration (as set out in section 2) are specifically focused on the emergency services, it is not intended to be at the expense of other, positive collaboration between emergency services and other local partners such as local authorities, health bodies and the voluntary sector. *Subsection (4)* therefore ensures that bodies other than those listed in subsection (2) can also be part of a collaboration agreement under subsection (1). However, there will be no duty on these other partners to collaborate; the duties in relation to collaboration will only apply to the bodies listed in subsection (2).

302 *Subsection (3)* requires a collaboration agreement to be in writing, setting out the details of the collaborative project. This might include information on accountability, governance, scope and finance or detail the process through which the parties will work together. However, the provisions are not prescriptive about the nature of the agreement to allow local services to determine how best to collaborate in the interests of local communities.

303 Section 1 is subject to the restrictions set out in section 3.

Section 2: Duties in relation to collaboration agreements

304 This section introduces a new statutory duty on police, fire and rescue and emergency ambulance services to keep under consideration opportunities to collaborate with one another, and further, where it would be in the interests of efficiency or effectiveness of at least two of the

services, for those services to give effect to such collaboration. This new duty will ensure that all opportunities for collaboration to improve efficiency or effectiveness are fully explored. This duty is intentionally high level and non-prescriptive to allow for local innovation in how collaboration is implemented, recognising that local areas are best placed to determine what form of collaboration will improve local services. We would expect consideration to include examples of existing collaborations set out within the Emergency Services Collaboration Working Group's National Overview Report³⁸ (for example, sharing of estates, corporate services, procurement, co-responding etc.).

305 Where an emergency service identifies an opportunity to collaborate they are required to notify the other relevant emergency services of the proposed collaboration and those other services are required to consider whether such a collaboration would be in the interests of efficiency or effectiveness of the proposed parties. *Subsections (2) and (3)* are not prescriptive about how this consideration is undertaken.

306 Where two or more of the emergency services consider it would be in the interests of their efficiency or effectiveness to collaborate and it is within their power to do so, then *subsections (4) and (5)* require those services to enter into a collaboration agreement. These provisions do not prevent an emergency service from entering into a collaborative agreement on a voluntary basis where they would not benefit – they may still enter the collaboration if doing so has the potential to improve the efficiency or effectiveness of the other services, or the impact of the collaboration would be neutral, but there would be no duty to do so. Where a collaboration agreement is in the interests of efficiency but would adversely affect effectiveness (or vice versa), the service wouldn't be required to collaborate as a result of section 3(1) – but again, could choose to do so.

307 The duty requires the services to evaluate the impact of a proposal on efficiency or effectiveness. Collaboration can lead to service improvements through both of these channels. Consequently it should not be a pre-condition of a collaboration agreement that it should improve both. If a collaboration initiative would improve the quality of the service but not save any money, for instance, we would still want the emergency services to give effect to that project.

308 The duties as set out in section 2 are all subject to the restrictions set out in section 3.

Section 3: Collaboration agreements: specific restrictions

309 This section sets out a number of specific restrictions to the application of the duty to collaborate.

310 The duty to collaborate will only require an emergency service to collaborate where the collaboration agreement would be in the interests of its efficiency or effectiveness, holding all else equal. As described above, *subsection (1)* sets aside the duty to enter into a particular collaboration agreement if that agreement would negatively impact on public safety or otherwise be detrimental to efficiency or effectiveness. For example, where a collaborative project would save money but lead to an increase in response times, the emergency services would not be required to give effect to that collaboration. An emergency service's consideration of the impact of a collaboration on its effectiveness is expected to include consideration of the impact on public safety; however, Part 1 makes explicit that where there is a negative impact on public safety alone (regardless of the overall assessment of effectiveness) the duty would not apply.

³⁸ <https://www.gov.uk/government/publications/policing-and-crime-bill-emergency-services-collaboration>

- 311 *Subsection (2)* provides that an ambulance trust is not required to enter into a collaboration agreement if the collaboration would, in its view, have a negative impact on its other wider functions, or the NHS in England more generally, even if the collaboration would improve the efficiency or effectiveness of the delivery of its emergency functions. Ambulance trusts have multiple functions and only one of these functions relates to emergency provision. For instance, ambulance services could provide other services such as non-emergency patient transport and NHS 111, which are separate from responding to 999 calls. This does not prevent the ambulance trust from voluntarily entering into a collaboration agreement in such a scenario, but it would not be required to do so.
- 312 *Subsections (4) and (5)* provide that an ambulance trust is required to consider the effect a collaboration proposal would have on the exercise of its other non-emergency functions or the wider NHS when considering whether it would be in the interests of its efficiency or effectiveness under the duty at section 2.
- 313 *Subsection (3)* provides that the duty to collaborate only applies to an ambulance trust in England insofar as it provides an emergency ambulance service. Ambulance trusts can still enter into collaboration agreements in regards to their non-emergency functions should they choose but they are not required to do so.
- 314 Where there is an elected mayor of a combined authority, such as the proposed plans for Greater Manchester, an order made by the Secretary of State may enable either the Mayor or the combined authority to exercise the functions of an FRA. *Subsections (7) and (8)* provide that the mayor or the combined authority may only enter into a collaboration agreement where they are entitled to exercise the particular fire and rescue functions by virtue of such an order. *Subsection (9)* makes similar provision where PCC functions have been transferred to a Mayor. There is no corresponding provision for PCC functions to be exercised by a combined authority.
- 315 *Subsection (10)* provides that a chief officer of police (as defined in section 5(8)) can only enter into a collaboration if the local policing body (a PCC, MOPAC and the Common Council of the City of London or a combined authority mayor exercising PCC functions– see section 5(9)) is also party to the agreement. This restricts a chief constable or the metropolitan police commissioner from entering into a collaboration without the involvement of the PCC (or a combined authority mayor exercising those functions), or MOPAC respectively. *Subsection (11)* provides that a local policing body must (unless they are a party to the agreement) consult the chief constable before entering into a collaboration agreement. This preserves the important notion of operational independence. Local policing bodies are expected to have regard to any operational objections raised by the chief constable, and under the provisions of the Policing Protocol Order 2011, they must not fetter the operational independence of the police force and the chief constable who leads it.

Section 4: Collaboration agreements: supplementary

- 316 This section sets out in very broad terms what a collaboration agreement might include.
- 317 *Subsection (1)* provides that the collaboration agreement may make arrangements for the joint exercise of functions or for one party to exercise another party's functions. This does not confer new powers on the emergency services, but affirms the ability to rely on existing powers to collaborate. For example, if an FRA was of the view that it was in the interests of its efficiency or effectiveness to jointly exercise some of its functions with a police body in England (and that police body considered it was similarly in their interests), there would be a duty on the FRA (and police body) to enter into a collaboration agreement (as per section 2). However, in order to actually give effect to the agreement, and thereby jointly exercise their powers with the police body, the FRA would be expected to rely on its current powers (for example section 16

of the Fire and Rescue Act 2004).

- 318 *Subsection (2)* provides that each of the services involved in collaboration will be able to make payments for the purposes of the agreement. These may be made between the parties themselves or others. This provision does not amend or affect the existing powers of the services where they already have powers to make payment.
- 319 The section (*subsections (3) and (4)*) also enables the collaborating parties to take necessary steps to facilitate a collaboration agreement, subject to any existing legal restrictions. The power at subsection (3) relates to the application of existing powers and is an incidental power to facilitate a collaboration agreement, rather than conferring new powers to perform functions. Being involved in a collaboration does not give a service new powers to delegate a function. Nor can a service where it does have the powers to delegate a function absolve itself of responsibility for the exercise of that function. This is made clear by *subsections (5) and (6)*.
- 320 *Subsection (7)* permits an emergency service to withdraw from a collaboration agreement if it is no longer in the interests of efficiency or effectiveness for them to remain party to that agreement. It requires that local agreements make provision for a party to withdraw. Such provisions are expected to include provision for the financial consequences of withdrawal and any relevant notice period.
- 321 *Subsection (8)* provides for collaboration agreements to be varied with the agreement of all parties, or replaced by a subsequent agreement. This will enable parties to straightforwardly update existing agreement by agreeing minor changes without the need to introduce a whole new agreement. However, where substantial changes are required, including changing parties to an agreement; a previous agreement can be replaced by a new one. This would again be with the consent of all original parties to the agreement.

Section 5: Collaboration agreements: definitions

- 322 Section 5 defines the terms used in this Chapter including 'relevant emergency service' and 'police body'. 'Fire and rescue body in England' is defined to include fire and rescue authorities in England as well as combined authorities and combined authority mayors exercising fire and rescue functions. The definition of 'relevant emergency service' in *subsection (3)* applies to the Chapter on emergency services collaboration; it is not intended to serve as a broader definition of emergency services.

Chapter 2: Police and Crime Commissioners: Fire and Rescue Functions

Section 6: Provision for police and crime commissioner to be fire and rescue authority

- 323 Section 6 and associated Schedule 1 make provision for a PCC to take responsibility for the fire and rescue service in his or her area where a local case is made (the 'governance' model), as well as to take the additional step to put in place a single employer for police and fire (the 'single employer' model).

Schedule 1: Provision for police and crime commissioner to be fire and rescue authority

- 324 *Paragraphs 1 to 13* amend the 2004 Act to provide for PCCs to become the FRA for an area, by in particular inserting new sections 4A to 4M and new Schedules A1 and A2 into that Act.
- 325 The Government does not intend to mandate the transfer of fire and rescue services to PCCs;

rather PCCs will be enabled to seek responsibility for their local FRA where a local case is made. 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, where a local proposal is made by the PCC. New section 4A confers a power for the Secretary of State to make an order creating a new FRA and making the PCC for the police area covered by the order that FRA (a "PCC-style FRA"). This preserves the distinct legal identity of the fire and rescue service by creating the PCC-style FRA as a separate corporation sole, rather than transferring the fire and rescue functions to the PCC. It also has the effect that existing references in legislation to PCCs do not apply to PCCs in relation to their fire functions. Existing plain references to FRAs will, however, apply to a PCC-style FRA.

326 New section 4A(5) provides that the Secretary of State can only make an order creating a PCC-style FRA if it appears to her that the PCC's proposal would be in the interests of either a) economy, efficiency and effectiveness, or b) public safety. This process follows the existing legislative provisions for the merger of FRAs. The test of economy, efficiency and effectiveness applies not just to the transferring FRA but to the wider impact of the proposed transfer. It is expected that the PCC's local business case will take into account transition costs, the impact on existing collaborations and, where the FRA is a county-FRA, the impact on wider council functions. New section 4A(6) further provides that the Secretary of State cannot make an order on the grounds of economy, efficiency and effectiveness if it would have an adverse impact public safety. The Secretary of State could make an order on the basis of public safety alone (including where it might have a negative impact on efficiency, effectiveness or economy) where such a transfer were necessary; for example, in the case of a failing authority.

327 In order to take on responsibility for the governance of fire and rescue, new section 4A(2) requires that the PCC's police area must be coterminous with the area of the FRA proposed to be created by the order or, where a PCC takes on more than one FRA within their area, the PCC's police area must be the same as the areas of those FRAs when taken together. This is to ensure that there is no disparity in the PCC's mandate across the police and fire and rescue areas. For example, a PCC could not be responsible for the exercise of fire functions outside of the area for which he or she was elected. Equally, a PCC could not be responsible for fire functions in only part of the area for which he or she was elected. So long as they are coterminous when taken together, a PCC could seek to take on more than one FRA as separate corporations sole, or they could propose that the FRAs merge; this is a matter for local determination as part of the business case process. Where the PCC's police area and the area of the FRA (or FRAs when taken together) that the PCC proposes to take responsibility for do not align, it would be for local areas to consider how boundaries should be changed before a PCC can take on responsibility for fire and rescue. New section 4B provides for changes to FRA boundaries to be included in an order under section 4A creating a new PCC-type FRA. This includes provision for mergers and de-mergers of FRAs (including PCC-style FRAs) as appropriate. Where a proposal would involve a change to police boundaries, the relevant PCCs would need to bring forward proposals under the procedure in sections 32 to 34 of the 1996 Act.

328 New section 4C enables the Secretary of State to make schemes transferring property, rights and liabilities from an existing FRA to the new PCC-style FRA. Such transfer schemes could include things such as buildings, debt and any criminal cases that involve the existing FRA. Where criminal liabilities are transferred, these would fall to the office of PCC, not the person occupying that post. New section 4C(6) clarifies that the powers to make transfer schemes also include the transfer of staff from the existing FRA to the new PCC-style FRA. These provisions ensure continuity by providing that the transfer scheme can make provision for things done by the previous FRA to remain in effect following the transfer. For example, if the existing FRA was party to an agreement, that agreement could continue to have effect in relation to the new

PCC-style FRA.

- 329 New section 4D makes further provision about PCC-style FRAs. New section 4D(1) to (3) provides for a PCC to be paid allowances in his or her capacity as an FRA. PCC salaries are a matter for the Senior Salaries Review Board, which will consider any additional functions performed by a PCC when determining his or her salary (see the amendment to paragraph 2 of Schedule 1 to the 2011 Act made by *paragraph 91* of Schedule 1 to this Act). New section 4D(4) to (7) makes provisions about the staff of PCC-style FRAs. PCCs must appoint a chief finance officer for the proper administration of the FRA's financial affairs. The provisions make this a statutory post, but there is nothing legislatively preventing the PCC from appointing the same individual to be the chief finance officer for both the police and fire functions, or preventing a PCC-style FRA and chief constable sharing a chief finance officer – this is a matter for local determination taking any potential conflicts of interest into account. PCCs will also be able to appoint such other staff as appropriate to allow them to exercise their fire functions. Amendments to the Local Government and Housing Act 1989 (see *paragraphs 62 and 63* of Schedule 1 to this Act), require the PCC-style FRA to have a Head of Paid Service and monitoring officer in the same way as a PCC does in relation to his or her police functions. Again, there would be nothing legislatively preventing the PCC from appointing the same individual for both his or her police and fire functions, but consideration would need to be given to any potential conflicts of interest. New section 4D also provides powers to enable PCC-style FRAs to pay remuneration, gratuities, allowances and pay pensions to their staff.
- 330 When a PCC takes responsibility for fire and rescue, the order made by the Secretary of State, in practice the Home Secretary, may contain provision about the delegation of fire and rescue functions by the PCC. New section 4D(10) provides that this delegation could include provisions enabling the PCC to delegate FRA functions to his or her deputy PCC and for the deputy PCC to in turn delegate those functions to a member of staff working for the new FRA or a member of the PCC's staff. There is no provision for the PCC to appoint an additional deputy PCC for fire. The order may also make provisions for the PCC to directly delegate the functions to an employee of the new FRA or of the PCC's staff. It is expected that, under the governance model, the PCC would make arrangements to delegate the majority of the operational functions of the FRA to the chief fire officer. The position of chief fire officer is not set out within legislation.
- 331 New section 4D(13) clarifies that the provision made by the Secretary of State as part of the order creating the PCC-style FRA can include provision for which functions of the FRA can or cannot be delegated. For example, this may make provision for the functions of the FRA that may only be performed by the PCC.
- 332 New section 4E provides that PCC-style FRAs will be required to establish and maintain a fire fund, mirroring the existing arrangements for PCCs in relation to their police fund (see section 21 of the 2011 Act). All receipts and expenditure of the FRA must be paid into and out of that fire fund, and accounts of payments made into and out of the fund must be kept. New style PCC-style FRAs will be funded through the local government finance settlement in the same way as an existing FRA and will receive revenue support grant and funding through business rate retention. To ensure that they will also receive other forms of central grant funding, an amendment is made to section 33 of the Local Government Act 2003 by *paragraph 83(3)* of Schedule 1 to this Act. *Paragraph 71* of Schedule 1 amends the Local Government Finance Act 1992 to make a PCC-style FRA a major precepting authority. The effect of these provisions is that the police and fire precepts will be paid to the PCC separately and will form two separate budgets in order to provide clarity and transparency in funding.
- 333 New section 4F places a duty on PCC-style FRAs to exercise their functions efficiently and effectively. This approach follows the PCC model set out in the 2011 Act and so PCC-style

FRAs will not be best-value authorities under the Local Government Act 1999.

- 334 Whoever is for the time being the PCC will be the PCC-style FRA and their terms of office will be coterminous. New section 4F(3) to (5) confirm that an acting commissioner is able to exercise the functions and duties of a PCC-style FRA as if he or she was the PCC. New section 4F(6) and (7) provide that should a PCC be disqualified from office, any acts he or she had undertaken whilst a PCC-style FRA would still be valid, in the same way as he or she would do in relation to his or her policing functions. For example, if the PCC had entered into an agreement with a local partner, the agreement would still be valid even if the PCC was disqualified from his or her post.
- 335 New section 4G makes provision for the transition of functions and duties from existing FRAs to new PCC-style FRAs. It enables provision to be made by the Secretary of State under the order creating the PCC-style FRA for a PCC to be a shadow authority, so that the PCC can exercise preparatory functions in the lead up to assuming full responsibility for FRA functions in an area. This could include the setting of a fire precept for the area. New section 4G(3) clarifies that that shadow authority can only be the PCC who will take on the functions of the FRA. Where there is more than one relevant PCC (for the purposes of making the case to the Secretary of State for the transfer), the shadow authority will be the PCC who is to become the FRA. New section 4G(6) and (7) also enable the Secretary of State to make provision about council tax equalisation as part of the order creating the new PCC-style FRA, where the PCC's proposal involves the merger of two or more FRA areas.
- 336 New section 4H enables PCCs that take on responsibility for the fire and rescue service(s) in their area to take an additional step to put in place the 'single employer' model. Under this model, the PCC is able to delegate fire and rescue functions to a chief constable, who would employ both police and fire personnel. That chief constable may be operationally known as the 'Chief Officer'.
- 337 As for the governance model, these provisions are locally enabling. The PCC will be able to make a local case requesting that the Home Secretary makes an order implementing the model where it is in the interests of economy, efficiency and effectiveness, or public safety. Given this approach, it is necessary to confer on the Secretary of State delegated powers to give effect to changes to the exercise of fire and rescue functions, where a local proposal is made by the PCC. New section 4H(1) to (3) enables the Secretary of State to make provision, by order, for the delegation of fire and rescue functions to the chief constable of the PCC's police area, and for the chief constable to further delegate those functions to both police and fire and rescue personnel. Such personnel will include members of the police force, the civilian staff of the police force, members of fire and rescue staff appointed by the chief constable and any staff transferred to the chief constable from the existing FRA or the PCC-style FRA under a transfer scheme made under new section 4I. The sub-delegation of functions by the chief constable to their police and fire personnel is subject to existing legal restrictions. New section 4H(9) provides that section 37 of the 2004 Act, which restricts the employment of police in fire-fighting will continue to apply under the single employer model. Equally, the warranted powers of police officers cannot be delegated to fire personnel - the amendments made to section 38 of the 2002 Act by section 38 of this Act make clear that the powers and duties of a constable specified in Part 1 of new Schedule 3B to the 2002 Act can only be exercised by a constable - these include the power or duty to make an arrest. This maintains the operational distinction between policing and fire.
- 338 New section 4H(2) provides that the order made by the Secretary of State can determine which functions of the FRA can or cannot be delegated by the PCC to the chief constable and can or cannot be sub-delegated by the chief constable to their fire or police personnel. This might include provision for functions that can only be performed by the PCC as FRA.

- 339 New section 4H(5) provides that the same tests of efficiency, effectiveness and economy or public safety apply to a PCC's business case for the single employer model as apply to a business case for the governance model. The Secretary of State can only give effect to a request for the single employer model if either of these tests have been met. New section 4H(6) further provides that the Secretary of State may not make an order implementing the single employer model on the grounds of efficiency, effectiveness or economy if it would have an adverse impact on public safety.
- 340 A PCC can implement the single employer model at the same time as he or she takes on responsibility for the governance of fire and rescue, in which case the Secretary of State can combine an order under section 4H with an order under section 4A creating a PCC-style FRA. Alternatively, a PCC can implement the single employer model subsequently. New section 4H(7) provides for new Schedule A1 to apply in relation to an order implementing the single employer model that is made subsequent to a new PCC-type FRA being created.
- 341 Under the single employer model, the chief constable of the PCC's police area will employ police and fire personnel for the purposes of exercising their police and fire functions. New section 4I provides for the transfer of property, rights, liabilities and personnel to the chief constable under the single employer model and makes additional provisions regarding personnel, including the ability for the chief constable to appoint, remunerate and pay pensions to fire and rescue staff.
- 342 New section 4I(1) enables the Secretary of State to make a transfer scheme which transfers property, rights and liabilities from an FRA to the chief constable for the PCC's police area if FRA functions have been delegated to that chief constable or from that chief constable back to the PCC-style FRA. Such transfer schemes could include personnel and the personnel that transfer will be dependent on the functions that are proposed to be delegated by the PCC to the chief constable. New section 4I(2) makes clear that the transfer may be made from a PCC-style FRA to the chief constable or directly from the previous FRA to the chief constable where the PCC's proposal is to implement the single employer model at the same time as he or she takes on governance of the FRA.
- 343 New section 4I(7) provides that, subject to new section 4I(8) to (10), a person cannot be jointly appointed by the chief constable as a member of fire and rescue staff and of the police force. This does not prevent a member of police personnel being delegated fire functions and vice versa, subject to existing legal restrictions – for example, a fire-fighter could not be given any of the core powers that only warranted police officers can hold, such as the power of arrest and section 37 of the 2004 Act prevents a police officer from exercising fire-fighting functions.
- 344 New section 4I(8) provides that where a chief constable is delegated fire and rescue functions by a PCC under the single employer model, the police force's chief finance officer will be responsible for the proper administration of both police and fire and rescue financial affairs. Given this dual function, new section 4I(9) clarifies that the provisions of new section 4I(7) preventing a person from being appointed jointly in relation to both police and fire functions does not apply to finance officers.
- 345 New section 4J applies where fire and rescue functions have been delegated to the chief constable under the single employer model and makes provision for the respective accountabilities of the PCC and chief constable when discharging these functions. New section 4J(2) and (3) place a duty on the chief constable to whom fire and rescue functions have been delegated to ensure that they, and those to whom they have delegated fire and rescue functions, secure good value for money in the exercise of their functions. This provision replicates the chief constable's existing duty to secure value for money in relation to their police functions. New section 4J(4) requires PCC-style FRAs to ensure that the fire and rescue

functions that are delegated to the chief constable are exercised efficiently and effectively whether exercised by the chief constable, members of their police force, civilian police staff or fire staff and new section 4J(5) further requires the PCC to hold the chief constable to account for the exercise of their functions. This approach follows the PCC model set out in the 2011 Act. Chief constables exercising fire and rescue functions and PCC-style FRAs will not therefore be best value authorities under the Local Government Act 1999.

- 346 New section 4K makes provisions in relation to complaints and conduct matters. Where an order is made under new section 4H to provide for the "single employer" model, it is intended that the complaints procedures for police officers and police staff should, so far as possible, also apply to fire and rescue staff in the same way as they apply to police force personnel. New section 4K(1) confers a power on the Secretary of State, by order (subject to the affirmative procedure), to amend Part 2 of the 2002 Act as a consequence of an order being made under new section 4H. Such consequential amendments might include, for example, broadening 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 FRA-related function.
- 347 New section 4K(2) enables the Secretary of State by order (subject to the negative procedure) 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).
- 348 New section 4K(4) enables the Secretary of State by order (subject to the affirmative procedure) 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 IPCC's 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).
- 349 Before exercising these powers, the Secretary of State must consult the Police Advisory Board, the IPCC, persons considered by the Secretary of State to represent the views of PCCs and FRAs, and other persons considered appropriate (new section 4K(5)).
- 350 New section 4L enables the Secretary of State to make further provisions applying legislation that relates to FRAs (with or without modifications) or to make new provisions that are corresponding or similar to any existing legislation relating to FRAs to those persons listed in new section 4L(2) - that is a chief constable to whom functions have been delegated under a section 4H order, members of their police force or the chief constables police or fire staff.
- 351 New section 4M enables the Secretary of State to make further provisions applying legislation that relates to PCCs (with or without modifications) or to make new provisions that are corresponding or similar to existing PCC legislation to a PCC-style FRA. Sections 4L and 4M together ensure that any necessary consequential provisions can be made when the Secretary of State makes an order creating a PCC-style FRA under section 4A or provides for the single employer model under section 4H.
- 352 *Paragraph 7* amends section 5A of the 2004 Act to make PCC-style FRAs a relevant authority for the purposes of section 5 of that Act. This ensures that PCC-style FRAs have the same powers of competence as existing combined and metropolitan FRAs, including powers to enter into commercial arrangements and exercise powers indirectly incidental to their functions. To ensure that PCC-style FRAs will also continue to have powers to trade and to enter into joint ventures, *paragraph 83(4)* makes a consequential amendment to section 95(7) of the Local Government Act 2003. PCC-style FRAs will also by virtue of the amendment in section 23 of the Local Government Act 2003 have powers to borrow under section 1 of the Local

Government Act 2003.

- 353 To ensure that opportunities for collaboration between police and fire are being fully explored at a local level, *paragraph 10* of Schedule 1 inserts new section 25A into the 2004 Act and provides that a PCC-style FRA must have regard to the priorities of the PCC's police and crime plan (see section 7 of the 2011 Act). An equivalent amendment to the 2011 Act at *paragraph 88* ensures that the PCC has a reciprocal duty to have regard to the FRA's fire and rescue plan and the Fire and Rescue National Framework when exercising their PCC functions. New section 5(5C) of the 2011 Act makes clear that a PCC, in their capacity as both PCC and FRA, may issue a joint police and fire and rescue plan to discharge both statutory duties simultaneously – this would be a matter for local determination.
- 354 *Paragraph 11* amends section 34 of the 2004 Act, which makes provision for pensions. It ensures that existing references to those who are employed or have been employed by an FRA includes those who are transferred to or appointed by a chief constable under the single employer model. Since a chief constable to whom fire and rescue functions have been delegated under the single employer model will not be an FRA, the amendments to section 34 also provide that the references to an FRA in this section are to be treated as if they did refer to a chief constable.
- 355 To clarify the restrictions on the employment of members of a police force for the purposes of fire and rescue functions, *paragraph 12* substitutes a new section 37 of the 2004 Act. New section 37(1) prohibits a police officer from being employed by an FRA or a chief constable who has been delegated FRA functions to extinguish a fire or to protect life and property in the event of a fire. This preserves the operational distinction between police and fire. However, since a chief constable to whom fire and rescue functions have been delegated under the single employer model is also a member of a police force, new section 37(2) ensures that such a chief constable or a deputy chief constable to whom functions might be delegated is not restricted by new section 37(1) in exercising all functions of the FRA, including those in section 7 of the 2004 Act in relation to making provision for extinguishing fires and protecting life and property in the event of fire. This is to ensure the chief constable and his or her deputy can exercise strategic management of all fire functions.
- 356 *Paragraph 13* inserts new Schedules A1 and A2 into the 2004 Act.
- 357 New Schedule A1 sets out the process by which a PCC can make a proposal to take on responsibility for fire and rescue in his or her local area. The Government does not intend to mandate the transfer of fire and rescue functions to PCCs - instead these measures are locally enabling and the Secretary of State will only make an order where a local case has been made. Paragraph 1 of new Schedule A1 sets out that the PCC's proposal must contain an assessment of why it is in the interests of economy, efficiency and effectiveness or public safety for them to take on the governance of fire and rescue. Additionally, if the PCC's proposal includes a request to implement the single employer model, the PCC must set out their reasons for proposing this model, including why it would be in the interests of economy, efficiency and effectiveness or public safety.
- 358 Where a PCC is interested in taking on governance of the fire and rescues service, they will work with the relevant fire and rescue authorities in their area to prepare their local case. Paragraph 2(1) of new Schedule A1 requires the relevant FRA(s) to cooperate with the PCC and to provide any information that the PCC might reasonably require. Such information could include details on FRA budgets, spending commitments, liabilities and assets etc. Paragraph 2(3) provides that an FRA is not required to provide information if it would breach any restrictions on the disclosure of information, for example commercial confidentiality. Paragraph 2(4) clarifies that where a PCC has taken responsibility for two or more FRAs (which taken together are coterminous with their police area) and subsequently makes a

request to the Secretary of State to merge these FRAs the duty to cooperate and to share information would not apply as this would be imposing a duty on the PCC to cooperate with themselves.

359 The Government will only enable police and fire functions to be brought together under a PCC where there is a strong local case to do so. Paragraph 3(1)(a) of new Schedule A1 requires the PCC to consult each of the upper tier local authorities in their area on their proposal (or a combined authority where it is exercising the fire and rescue functions), before they submit it to the Secretary of State. This ensures that the consultation requirement captures all local authorities that operate fire and rescue committees or nominate members to combined or metropolitan fire and rescue authorities. Paragraph 3(1)(b) and (1)(c) additionally require the PCC to consult people in their police area and to consult representatives of personnel who the PCC considers may be affected by the PCC's proposal. This is to ensure the PCC has secured, and taken into account, local opinion on their proposal before making a request to the Secretary of State. Paragraph (1)(d) will also require a PCC to publish a response to the consultation he or she has undertaken in the interests of transparency. Whilst it is for the PCC to determine the manner in which to consult and to publish their consultation response, the Association of Police and Crime Commissioner Chief Executives will issue guidance on the PCC's business case process, which will cover the consultation process. Where there is more than one relevant PCC (that is, where a proposal involves boundary changes), then more than one PCC may be consulting with the people in their area. To take a hypothetical example, a proposal by the Devon and Cornwall PCC to de-merge the Devon and Somerset FRA to enable them to take on governance of fire and rescue would require the Devon and Cornwall PCC to secure the views of the people in their area on the proposal and the Avon and Somerset PCC to secure the views of the people in their area. In practice, this may be a joint consultation, although that would be a matter for local determination.

360 Where there is not local agreement to a PCC's proposal (that is, where one or more the upper tier local authorities in the area do not support the PCC's proposal), paragraph 4(2) of new Schedule A1 provides that the PCC may still submit their proposal to the Secretary of State, but would additionally be required to provide copies of their consultation material, copies of representations made by local authorities, a summary of the views of the public in their area, a summary of the views expressed by representatives of affected personnel and the PCC's response to those views and representations. Paragraph 4(3) provides that the Secretary of State would then be required to secure an independent assessment of the PCC's proposal. The Secretary of State must have regard to that assessment and consider the material provided to them in accordance with paragraph 4(2) when deciding whether or not to make an order transferring responsibility for fire and rescue. Such an independent assessment may be secured from HMIC, the Chief Fire and Rescue Adviser or any other such independent person as the Secretary of State deems appropriate. In the interests of transparency, paragraph 4(4) provides that the Secretary of State must publish the independent assessment she secures of the PCC's case as soon as practicable after making a decision on whether to approve the transfer of governance. Where the Secretary of State decides to make an order after having had regard to an independent assessment in practice, the assessment would be published in advance of laying the order to afford sufficient time for relevant parties to consider its findings.

361 Paragraph 5(1) of new Schedule A1 provides that the Secretary of State may give effect to the PCC's proposals with any modifications that he or she thinks appropriate. However, before doing so, he or she must consult the PCC that made the proposal and the local authorities within the area of the FRA proposed to be created. Where a PCC has proposed to both adopt the governance model and take the additional step of implementing the single employer model by delegating fire and rescue functions to the chief constable, the Secretary of State cannot only give effect to the governance model.

- 362 Paragraph 6 of new Schedule A1 defines a relevant PCC as a PCC whose police area contains, in whole or part, the area of the new PCC-style FRA proposed to be created. In the case of proposals that require boundary changes, there could therefore be more than one relevant PCC and it is expected that the proposal would be brought forwards jointly (paragraph 6(4)).
- 363 Paragraph 6(3) provides that any changes to the police areas are not to be considered when determining the relevant PCC in the proposal. For example, if the proposal includes the merger of two police areas the relevant PCCs would be determined based on the existing police areas, rather than the new area created. For example, if the proposal suggested that Dorset and Wiltshire police areas should be merged to allow a PCC to take on responsibility for the Dorset and Wiltshire FRA, then both the Dorset PCC and the Wiltshire PCC would be the relevant PCCs for the purposes of bringing forwards the proposal and securing the views of those in their area.
- 364 Paragraph 7 of new Schedule A1 provides for the application of the new Schedule in cases where a PCC is only putting forward a proposal to move to a single employer model having previously adopted the governance model. In such cases, the PCC will still be required to prepare a local case setting out why their proposal is in the interests of economy, efficiency and effectiveness or public safety and to consult locally on their proposals.
- 365 New Schedule A2 of the 2004 Act makes provisions about the application of existing legislation which relates to PCCs to PCC-style FRAs.
- 366 Paragraph 1 of new Schedule A2 provides for the definitions that apply within that Schedule. The effect of paragraph 1(3) is that references to the "fire and rescue plan" are to the Integration Risk Management Plan that FRAs produce in accordance with the Fire and Rescue National Framework. The effect of paragraph 1(4) is that references to a "fire and rescue statement" are to the statement of assurance that FRAs produce in accordance with the Fire and Rescue National Framework.
- 367 PCC-style FRAs will be under the same duties as PCCs to exercise their functions transparently and to ensure that local people have a say in how their fire and rescue service is delivered. This reflects the PCC model of direct local accountability. Paragraph 2 of new Schedule A2 requires PCCs to obtain the views of the community in relation to their fire and rescue functions. This mirrors the arrangements for PCCs in relation to their policing functions. Paragraph 7 requires the PCC to have regard to these views when carrying out their fire and rescue functions. Paragraph 4 provides that the requirements to make information available to the public, as set out in section 11 of the 2011 Act, will also apply to the PCC in relation to their fire and rescue functions. The intention is to apply the Elected Local Policing Bodies (Specified Information) Order 2011(SI 2011/3050) to a PCC in their capacity as an FRA, subject to any necessary modifications.
- 368 The role of police and crime panels will also be extended to scrutinise the exercise of the PCC's fire and rescue functions in the same way as they scrutinise the PCC's policing functions. Paragraph 3 of new Schedule A2 provides for scrutiny of the PCC-style FRA's fire and rescue plan. The PCC will be required to send their draft fire and rescue plan and any variation to the police and crime panel and have regard to any reports or recommendations made by the panel in relation to this plan. The PCC will also be required to keep their fire and rescue plan under review, particularly in relation to any reports or recommendations made by the police and crime panel. To ensure opportunities for greater collaboration are being fully explored at a local level, the PCC will also be required to consult the chief constable on the fire and rescue plan under both the governance and single employer models. PCC-style FRAs will not be required to send a copy of their fire and rescue plans to the responsible authorities on community safety partnerships. *Paragraphs 77 to 80* of Schedule 1 instead provide that a

PCC-style FRA will be a responsible authority under section 5 of the Crime and Disorder Act 1998 for crime and disorder reduction strategies to reflect their wider community safety role.

369 Paragraph 5 of new Schedule A2 provides for the scrutiny of the PCC-style FRA's fire and rescue statement (the statement of assurance produced in accordance with the Fire and Rescue National Framework). The process will be the same as when a PCC issues an annual report, as set out in section 12 of the 2011 Act. The PCC-type FRA must send the statement to the relevant police and crime panel and attend a public meeting to present the statement and answer any questions the panel raise on the statement. They must then provide and publish a response to any report or recommendations arising from the statement. The PCC-style FRA may decide themselves how to respond to any subsequent report. There would be nothing preventing a PCC from combining their annual report on the exercise of their police functions and the statement of assurance for fire and rescue – discharging both statutory duties simultaneously – but this would be a matter for local determination.

370 As set out above, paragraph 7 of new Schedule A2 requires a PCC-style FRA to have regard to the views of the people in the area in relation to their fire and rescue functions as well as the views expressed in any report or recommendations made by the police and crime panel on the PCC's annual statement of assurance. It also requires PCCs to have regard to any financial code of practice issued by the Secretary of State.

371 Paragraphs 8 and 9 of new Schedule A2 provide police and crime panels with powers to scrutinise the fire and rescue functions of a PCC. Paragraph 8 requires panels to exercise their functions with a view to supporting the PCC to exercise their fire and rescue functions. Panels must also review the fire and rescue plan and make recommendations on it, scrutinise the fire and rescue statement, review or scrutinise the decisions and actions of the PCC in relation to discharge of his or her functions and make any necessary reports or recommendations. Paragraph 6 sets out the obligation on the PCC to provide the police and crime panel with any information the panel may reasonably require in order to enable them to exercise these scrutiny functions.

372 Paragraph 9 of new Schedule A2 provides for the police and crime panel to require the PCC-style FRA and their staff to attend before the panel to answer any questions the panel feel necessary for it to carry out its functions. This power also requires the PCC-type FRA to respond in writing to any report or recommendations made by the panel and comply with any requirement imposed by the panel either through their attendance before the panel or in such a report. In the single employer model the attendance of the chief constable can be compelled. This arrangement is similar to that for the PCC exercising his functions in relation to policing, as set out in section 29 of the 2011 Act.

373 Paragraphs 10 and 13 of new Schedule A2 provide for regulations regarding complaints and conduct matters, made under section 31 of and Schedule 7 to the 2011 Act, to apply to a PCC-style FRA in the same way they apply to PCCs (and to other relevant officer holders as set out in section 31(3).)

374 Paragraph 11 of new Schedule A2 provides for police and crime panels to scrutinise the appointment of the PCC-style FRA's chief finance officer. This applies the relevant provisions of Schedule 1 to the 2011 Act, including the requirement for the PCC to notify the panel of the proposed appointment of a chief finance officer, the requirement for the panel to review the proposed appointment and make a report to the PCC including a recommendation on whether or not the candidate should be appointed. There is nothing preventing a PCC from appointing the same person a chief finance officer for both their police and fire and rescue functions – this is a matter for local determination taking into account any potential conflict of interest. In such a case, the proposed appointment of the PCC's chief finance officer for police as the chief

finance officer for fire and rescue (or vice versa) would be subject to scrutiny by the panel. This scrutiny requirement does not apply to the PCC-style FRA's chief executive.

375 Police and crime panels will also be responsible for scrutinising the fire precept set by a PCC-style FRA. Paragraph 12 of new Schedule A2 provides for Schedule 5 to the 2011 Act to apply to PCC-style FRAs in the same way as it does to PCCs so that the process is the same for the fire precept as it is for the police precept.

376 Part 2 of Schedule 1 makes amendments to various other Acts that are consequential on a PCC taking responsibility for fire and rescue. These provisions ensure that PCCs have the same powers as other FRAs in relation to their fire and rescue functions and ensure that where appropriate the PCC model will apply in the same way to PCC-style FRAs as it does to PCCs. The amendments address a range of issues, including the application of health and safety legislation, landlord and tenancy arrangements, the right to make representations about directions to dispose of land, publicity arrangements and exemptions from insurance requirements for FRA vehicles.

377 A number of amendments enable the Secretary of State to make grant payments to PCC-style FRAs in the same way as they can to other FRAs. *Paragraph 16* amends the Local Government Act 1966 to enable grants for special expenditure due to ethnic minority population. *Paragraph 20* amends the Local Government Grants (Social Need) Act 1969 to enable the Secretary of State to make grants to PCC-style FRAs who are required to incur expenditure by reason of their special need. *Paragraph 83(3)* amends section 33 of the 2003 Act to ensure that PCC-style FRAs can also receive other forms of central government funding. It is the intention that new PCC-style FRAs will be funded through the Local Government finance settlement in the same way as an existing FRA and they will receive revenue support grant and funding through business rate retention.

378 The local government transparency code will not apply to a PCC-type FRA (it will not fall within section 2 of the Local Government, Planning and Land Act 1980). The PCC will instead be under a duty to publish specified information in relation to their FRA functions in accordance with paragraph 4 of new Schedule A2.

379 *Paragraphs 60 to 64* apply a range of provisions within the Local Government and Housing Act 1989 regarding the staffing of PCC-style FRAs. These apply a number of provisions concerning the staff of a PCC-style FRA including the political restriction of staff, the designation of a head of paid service and designation of a monitoring officer. PCCs are required to have a head of paid service and a monitoring officer for their fire functions, but there would be nothing stopping them from appointing the same person to perform both functions, or for the role to be shared between policing and fire. As the role of chief executive for the PCC's fire functions is not set out within the legislation, the police and crime panel does not have a statutory role in relation to scrutinising any appointments to this role.

380 *Paragraph 71* amends the Local Government Finance Act 1992 to provide for a new PCC-style FRA to be a major precepting authority. The effect is that a PCC will raise two separate precepts, one for police and one for fire.

381 *Paragraphs 77 to 80* provide that a PCC-style FRA will be a relevant authority for crime and disorder reduction strategies to reflect their wider community safety role. This differs from PCCs in relation to their policing functions who are not a relevant authority, but are required to have regard to the priorities of relevant authorities, co-operate with them in the exercise of their functions and to send them a copy of their Police and Crime Plan.

382 *Paragraph 83(4)* amends section 95(7) of the Local Government Act 2003 to ensure that FRAs' powers to trade and to enter into joint ventures can continue to be exercised by PCC-style

FRAs. These powers have allowed local collaborative arrangements to be put in place – for example, a joint vehicle workshop between Humberside police and Humberside FRA relies on the powers of the FRA to offer services without being constrained in relation to charging and trading.

383 *Paragraphs 86 to 93* make amendments to the 2011 Act.

384 *Paragraphs 87 and 89* provide for a PCC-style FRA to be known as the "Police, Fire and Crime Commissioner" for the police area and for the police and crime panel in such a case to be known as the "Police, Fire and Crime Panel".

385 *Paragraph 88* provides that a PCC who is also a PCC-style FRA must have regard to the Fire and Rescue National Framework and the Integrated Risk Management Plan that they issue as an FRA, when they issue or vary their Police and Crime Plan.

386 *Paragraph 90* inserts new subsections (10) and (11) into section 66 of the 2011 Act to provide that a person employed by an FRA of any kind cannot stand for election or hold the office of a PCC. This mirrors similar restrictions that apply to those employed by a chief constable and to members of a police force.

387 *Paragraph 91* amends paragraph 2 of Schedule 1 of the 2011 Act to provide that the Secretary of State may take into account the FRA functions of a PCC when making a determination on PCC pay. This does not require the Secretary of State to make an additional payment in relation to those functions.

388 *Paragraph 92* amends Schedule 6 to the 2011 Act to make provisions about police and crime panels where the PCC they are responsible for scrutinising has taken on responsibility for fire and rescue. Sub-paragraph (3) provides that a member of staff of a PCC-style FRA or a member of staff of the chief constable to whom FRA functions have been delegated under the single employer model cannot be a co-opted member of a police and crime panel which exercises functions in relation to that PCC-style FRA. Sub-paragraph (4) provides that a panel which exercises functions in relation to a PCC-type FRA cannot delegate scrutiny of the PCC-type FRAs fire and rescue plan or annual statement of assurance to a committee or sub-committee. These are functions that can only be performed by the panel, in the same way that scrutiny of the PCCs police and crime plan and annual report cannot be delegated. Sub-paragraph (5) introduces a new paragraph 32A into Schedule 6 that requires a panel to review its membership and to make any required changes to its membership, when the PCC it is responsible for scrutinising takes on responsibility for fire and rescue. This is to ensure the panel has the necessary skills, expertise and knowledge to fulfil its functions in relation to fire and rescue.

389 *Paragraph 93* amends Schedule 8 to the 2011 Act to enable a senior fire officer to apply to be the chief officer employing both police and fire personnel under the single employer model. It provides that a chief constable under the single employer model, who may be known operationally as the 'chief officer', does not need to have held the office of constable if they have fire experience at a senior level and they have met the standards for the role set by the College of Policing. This may include having completed the Senior Police National Assessment Centre and the Strategic Command Course. This is to ensure fairness that the role of 'chief officer' can be held by someone with senior expertise in either the police or the fire service, whilst also ensuring that those eligible to apply have relevant experience and training. It is for the PCC to appoint the best person for the job.

Section 7: Involvement of police and crime commissioner in fire and rescue authority

390 To encourage collaboration in areas where a PCC does not take on responsibility for fire and rescue, these provisions enable a PCC to be represented on an FRA (outside of London) with

voting rights, where the FRA agrees.

- 391 The provisions reflect the different governance arrangements that apply to the different kinds of FRA. The basic position under section 1 of the 2004 Act is that, in England, in a non-metropolitan area, the FRA is either the county council, or the district council where there is no county council. In a metropolitan county it is the metropolitan county FRA. The Secretary of State may by order make a scheme constituting an FRA for the combined area of two or more existing FRAs and these are called combined FRAs.
- 392 An FRA which is a non-metropolitan county council may operate "executive arrangements" or a "committee system" in order to provide governance for fire and rescue services. Executive arrangements involve either an elected mayor or council leader; and two or more councillors of the authority area as appointed by the elected mayor/ council leader. The committee system operates a decision making process in accordance with the Local Government Act 1972. The authority may appoint a committee and that committee may appoint sub-committees. Members of the committee or sub-committee are not required to be members of the appointing authority or committee.
- 393 Metropolitan county FRAs are established under section 26 of the Local Government Act 1985 and their membership is comprised of councillors appointed from the constituent councils of the authority. The FRA is able to establish committees and sub-committees to provide governance functions and members of these committees are not required to be members of the authority. Decisions are made by a majority of members of the authority voting with the person presiding having a casting vote if necessary.
- 394 The arrangements for the exercise of functions by a combined FRA are set out in the scheme under which the FRA is constituted.
- 395 It is also possible, under the provisions of the 2009 Act (as amended by the Cities and Local Government Devolution Act 2016), for a combined authority to exercise FRA functions. Powers in the 2009 Act would enable similar provision for PCC representation in such a combined authority.
- 396 The provisions of section 7 amend existing local government legislation to provide for PCCs to be represented on county, combined and metropolitan fire and rescue authorities. Under these provisions a PCC may request to be represented on a committee, joint committee or sub-committee that is exercising (whether wholly or partly) functions of a non metropolitan FRA. The appointing authority or committee must then consider the request and give their reasons for agreeing or refusing the request. In the interest of transparency, the authority or committee must also publish those reasons in such manner as they think appropriate. Where a PCC's request is agreed, the appointing authority or committee will make arrangements for the PCC's appointment to committees to attend, speak at and vote at meetings to ensure that the PCC's participation is meaningful. A PCC may similarly request to attend, speak and vote at meetings of the principal council and the same procedure applies. *Subsection (9)* makes mirror provision in relation to PCC participation in meetings of the executive and committees of the executive. *Subsections (5) to (7)* enable a PCC to become a member of a metropolitan FRA and *subsections (10) to (12)* amend section 3 of the 2004 Act to make provision for the appointment of a PCC to a combined FRA.
- 397 New paragraph 6ZA(4) of Schedule 12 to the Local Government Act 1972 (as inserted by *subsection (3)*) provides that the PCC will also be treated as if they were a member of a non-metropolitan county FRA for the purposes of matters such as receiving meeting papers, calling extraordinary meetings and determining meeting quorums. It will also be possible for PCCs to be the chair or vice-chair of an FRA – this will be a matter for local determination. However, PCCs will not be able to claim expenses as a member of an FRA – they will claim

expenses in relation to their role as a PCC. Amendments to section 26 of the Local Government Act 1985 (*subsection (6)*) provide that PCCs will become members of metropolitan FRAs and will therefore have the same rights as other metropolitan FRA members.

398 New paragraph 6ZA(2)(a) of Schedule 12 to and new section 102(9) of the Local Government Act 1972 and new paragraph section 4A(2) of Schedule A1 to the Local Government Act 2000 provide that a PCC is only to be represented on an FRA so far as the business relates to fire and rescue. Therefore, where a non-metropolitan county council does not have a dedicated sub-committee for fire, any attendance, speaking and voting rights extended to PCCs will be restricted to matters affecting fire and rescue and do not extend to issues relating to the authority's other services.

Section 8: Combined Authority Mayors: exercise of fire and rescue functions

399 The Government's intention is it should be possible for a combined authority mayor who exercises both fire and rescue and policing functions to discharge these in a similar way to a PCC.

400 There are already existing powers in the 2009 Act (as amended by the Cities and Local Government Devolution Act 2016) to enable a combined authority mayor to take on responsibility for the governance of policing and fire (analogous to the governance model for PCCs). However, there is no existing provision in legislation that would enable a mayor who had taken responsibility for both policing and fire to implement the single employer model. Section 8 enables this to happen. It will allow combined authority mayors to realise the full benefits of collaboration between police and fire services – for example, bringing together the senior management team and consolidating back office functions. The process by which a combined authority mayor would seek to implement the single employer model follows that for PCCs as far as possible, taking into account the different context of the mayoral model.

401 *Subsection (2)* amends the 2009 Act to provide for combined authority mayors to put in place the single employer model by inserting new sections 107EA to 107EG into that Act.

402 New section 107EA enables the Secretary of State to make provision, by order, that enables a combined authority mayor to delegate fire and rescue functions to the chief constable of the police force for their area and for the chief constable to further delegate these functions to both police and fire and rescue personnel. That is, to members of their police force, to the civilian staff of their police force, to members of fire and rescue staff appointed by the chief constable or to any fire and rescue staff transferred to the chief constable under a transfer scheme made under the 2009 Act, as amended by this Act. The sub-delegation of functions by the chief constable to their police and fire personnel is subject to existing legal restrictions. *Subsection (9)* clarifies that section 37 of the 2004 Act, which restricts the employment of police in fire-fighting will continue to apply under the single employer model. Equally, the warranted powers of police officers cannot be delegated to fire personnel - the amendments made to section 38 of the 2002 Act by section 39 of this Act make clear that the powers and duties of a constable specified in Part 1 of new Schedule 3B to the 2002 Act can only be exercised by a constable - these include the power or duty to make an arrest. This maintains the operational distinction between policing and fire.

403 New section 107EA(1) provides that the single employer model may only be put in place by a combined authority mayor who exercises both policing and fire functions. If a mayor exercises only fire functions but not policing (or vice versa) they cannot delegate fire functions and transfer fire and rescue personnel to the chief constable of the corresponding police force area. A mayor could make the request to implement the single employer at the same time as taking on responsibility for policing and/or fire but an existing mayor would need to be in place to request it. The model cannot be requested by a combined authority.

- 404 New section 107EA(3) provides that an order made by the Secretary of State can determine which functions of the FRA can or cannot be delegated by the PCC to the chief constable and can or cannot be sub-delegated by the chief constable to their fire or police personnel. This might include provision for functions that can only be performed by the mayor as FRA.
- 405 New section 107EB makes provisions for the procedure by which a combined authority mayor would put in place the single employer model. As for the provisions relating to PCCs, these provisions are locally enabling. A combined authority mayor may submit a proposal to the Secretary of State where he or she considers there is a local case for the single employer model. New section 107EB(1) provides that the Secretary of State could only implement this model where a request has been made. New section 107EB(2) provides that the mayor's proposal must set out why it would be in the interests of a) economy, efficiency and effectiveness, or b) public safety for an order establishing the single employer model to be made. The mayor is also required to submit a description of any local public consultation and a summary of any responses to such a consultation, and a summary of representations made by constituent members of the combined authority when making their request. Where a mayor has undertaken public consultation, new section 107EB(3) requires them to publish a response to that consultation in the manner that they deem appropriate.
- 406 Where there is not local agreement to the mayor's proposal (that is, where two-thirds or more of the constituent members of the combined authority have indicated that they disagree) new section 107EB(4) and (5) provide that the mayor may still make a request to the Secretary of State, but he or she would additionally be required to provide copies of any representations made by the constituent members of the combined authority and include in the proposal his or her response to these representations and to the views expressed in any public consultation undertaken. New section 107EB(6) provides that the Secretary of State would then be required to secure an independent assessment of the mayor's proposal. Such an independent assessment may be secured from HMIC, the Chief Fire and Rescue Adviser or any such other independent person as the Secretary of State deems appropriate. In the interests of transparency, new section 107EB(7) requires the Secretary of State to publish the independent assessment secured. The Secretary of State must have regard to that assessment and to the material provided under new section 107EB(2) and (5) when deciding whether or not to make an order implementing the single employer model. As with a comparable order under the 2004 Act, the Secretary of State may not make an order unless it appears to her that it is in the interests of economy, efficiency and effectiveness or public safety to do so (and she may not make an order on the grounds of economy, efficiency and effectiveness if she thinks that it would have an adverse effect on public safety).
- 407 New section 107EB(10) and (11) provide that the Secretary of State may give effect to the mayor's proposals with any modifications that he or she thinks appropriate. However, before doing so, the Secretary of State must consult the mayor and the constituent members of the combined authority. This would only permit the Secretary of State to make minor amendments to the mayor's proposal. If the Secretary of State did not consider the case was strong enough, the mayor would need to bring forwards a new proposal.
- 408 New section 107EC mirrors the provisions of new section 4I of the 2004 Act (as inserted by Schedule 1 to the Act). Under the single employer model, the chief constable of the mayor's police area will employ police and fire personnel for the purposes of exercising their police and fire functions. New section 107EC provides for the transfer of property, rights, liabilities and personnel to the chief constable and makes additional provisions regarding personnel, including the ability for the chief constable to appoint staff, and pay remuneration and pensions to fire and rescue staff.
- 409 New section 107EC(1) enables the Secretary of State to make a transfer scheme which transfers

property, rights and liabilities from an FRA (if the mayor is moving straight to the single employer model upon taking fire and rescue functions) or from the combined authority (if the single employer model is implemented subsequently) to the chief constable for the corresponding police area if an order has been made under new section 107EA delegating fire and rescue functions to that chief constable. It also provides that transfer schemes can be made transferring properties, rights and liabilities back to the combined authority from the chief constable. Such transfer schemes could include personnel and the personnel that transfer will be dependent on the functions that are proposed to be delegated by the PCC to the chief constable.

- 410 New section 107EC(5) provides that, subject to new section 107EC(6) to (8), a person cannot be jointly appointed by the chief constable as a member of fire and rescue staff and of the police force. This does not prevent a member of police personnel being delegated fire functions and vice versa, subject to existing legal restrictions – for example, a fire-fighter could not be given any of the core powers that only warranted police officers can hold, such as the power of arrest and section 37 of the 2004 Act prevents a police officer from exercising firefighting functions.
- 411 New section 107EC(6) provides that where a chief constable is delegated fire and rescue functions by a combined authority mayor under the single employer model, the police force's chief finance officer will be responsible for the proper administration of both police and fire and rescue financial affairs. Given this dual function, new section 107EC(7) clarifies that the provisions of new section 107EC(5) preventing a person from being appointed jointly in relation to both police and fire functions does not apply to finance officers.
- 412 New section 107ED mirrors the provisions of new section 4J of the 2004 Act. It only applies where fire and rescue functions have been delegated to the chief constable by the combined authority mayor under the single employer model and makes provision for the respective accountabilities of the PCC and chief constables when discharging these functions. New section 107ED(2) and (3) place a duty on the chief constable to whom fire and rescue functions have been delegated to ensure that they, and those to whom they have delegated fire and rescue functions, secure good value for money in the exercise of their functions. This provision replicates the chief constable's existing duty to secure value for money in relation to their police functions. New section 107ED(4) requires combined authority mayors to ensure that the fire and rescue functions that are delegated to the chief constable are exercised efficiently and effectively whether exercised by the chief constable, members of their police force, civilian police staff or fire staff and new section 107ED(5) further requires the mayor to hold the chief constable to account for the exercise of their functions.
- 413 New section 107EE mirrors new section 4K of the 2004 Act and makes provisions in relation to complaints and conduct matters. Where an order is made under new section 107EA to provide for the single employer model, it is intended that the complaints procedures for police officers and police staff should, so far as possible, also apply to fire and rescue staff in the same way as they apply to police force personnel. New section 107EE(1) confers a power on the Secretary of State, by order (subject to the affirmative procedure), to amend Part 2 of the 2002 Act as a consequence of an order being made under new section 107EA. Such consequential amendments might include, for example, broadening 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 FRA-related function.
- 414 New section 107EE(2) enables the Secretary of State by order (subject to the negative procedure) 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

107EC(1) or members of staff appointed by a chief constable under new section 107EC(2).

- 415 New section 107EE(4) enables the Secretary of State by order (subject to the affirmative procedure) to make any necessary amendments to Part 2 of the 2002 Act as a consequence of an order made under new section 107EE(2). Such amendments might include an extension to the IPCC's 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). 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 FRAs, and other persons considered appropriate.
- 416 New sections 107EF and 107EG enable the Secretary of State to make further provisions applying local policing, and fire and rescue enactments (with or without modifications) or to make new provisions that are corresponding or similar to existing such legislation in relation to combined authority mayors who implement the single employer model, chief constables to whom fire and rescue functions have been delegated and any panels established under section 5C of the 2009 Act. This ensures that any necessary consequential provisions can be made when the Secretary of State makes an order implementing the single employer model under section 107EA.
- 417 New section 107EG also makes a number of technical and consequential provisions to allow mayors and chief constables in mayoral combined authorities to give effect to the single employer model.

Chapter 3: London Fire Commissioner

- 418 This Chapter brings fire and rescue services in London under the direct responsibility of the Mayor of London by abolishing the London Fire and Emergency Planning Authority ("LFEPA") which is a functional body of the Greater London Authority and creates the London Fire Commissioner as a corporation sole.

Section 9: The London Fire Commissioner

- 419 This section abolishes LFEPA and transfers the residual functions to the new London Fire Commissioner. Schedule 2 makes consequential amendments to the Greater London Authority Act 1999 ("the 1999 Act") and to other Acts.

Schedule 2: The London Fire Commissioner

- 420 Part 1 provides for the amendment of the 1999 Act to enable the abolition of LFEPA and the establishment of the London Fire Commissioner.
- 421 *Paragraph 2* provides that being appointed or designated as the Deputy Mayor for Fire (under section 67(1)(b) of the 1999 Act) does not prevent a person from being elected or being an Assembly member.
- 422 *Paragraphs 3 and 4* replace references to LFEPA in the 1999 Act (relating to restricting the power of the Authority and to the advice that the Mayor is required to disclose to the Assembly) with references to the London Fire Commissioner.
- 423 *Paragraph 5* provides for the appointment of the London Fire Commissioner to be subject to confirmation hearings provided for under the 1999 Act.
- 424 *Paragraph 6* provides for the power to require attendance at Assembly meetings which might require giving evidence and producing documents which discloses advice given to the Mayor by the London Fire Commissioner. This replicates the position which was the case with

LFEP.A.

- 425 *Paragraph 7* increases the number of members of staff the Mayor can appoint (in addition to the Mayor's political advisors) from ten to eleven.
- 426 *Paragraphs 8 and 9* provide for a person appointed as the Deputy Mayor for Fire to be or to remain a member of the Assembly or to be or remain a member of a local authority and to continue to perform any work or services in that capacity.
- 427 *Paragraph 10* inserts new Part 6A, comprising new sections 327A to 327I, into the 1999 Act. New Part 6A makes further provision in respect of the London Fire Commissioner.
- 428 New section 327A(1) allows for there to be the London Fire Commissioner and subsection (2) provides for the London Fire Commissioner to be a corporation sole. Subsection (3) requires the Mayor to appoint the London Fire Commissioner.
- 429 Subsection (4) confers on the London Fire Commissioner the functions of an FRA for Greater London under the 2004 Act and any other enactments. Subsection (5) requires that the London Fire Commissioner must ensure that the London Fire and Rescue Service is efficient and effective.
- 430 Subsection (6) refers to the meaning of the London Fire and Rescue Service as mentioned in subsection (5) which is for the personnel, services and equipment secured by the London Fire Commissioner for the purposes of meeting the Commissioner's duties. These duties are as in subsection (6)(a), (b), (c) and (d) – fire safety, firefighting, road traffic accidents and emergencies as set out in sections 6, 7, 8 and 9 of the 2004 Act. Subsection (6)(e) includes any other functions conferred on an FRA by other legislation.
- 431 Subsection (7) provides for the Mayor to hold the London Fire Commissioner to account for the exercise of the Commissioner's functions.
- 432 New section 327B(1) disqualifies a person from being appointed as the London Fire Commissioner unless the person has reached the age of 18. Subsection (2) disqualifies a person from being appointed as, or being, the London Fire Commissioner if they are a member of the Assembly or a London borough council. Subsection (3) sets out criteria relating to debt, bankruptcy and criminal conviction which disqualify a person from being appointed as, or being, the London Fire Commissioner.
- 433 Subsections (4) defines an imprisonable offence for the purpose of subsection (3)(c) as an offence for which a person who has reached the age of 18 may be imprisoned for a term, or given life imprisonment. Subsection (5) explains the time from which a person is to be treated as being convicted.
- 434 New section 327C provides for the suspension and removal of the London Fire Commissioner from office.
- 435 Subsection (1) allows the Mayor to suspend the London Fire Commissioner from duty with the approval of the Secretary of State.
- 436 Subsection (2) requires the Mayor to notify the Secretary of State if the Mayor suspends the London Fire Commissioner under subsection (1).
- 437 Subsection (3) allows the Mayor to call upon the London Fire Commissioner to resign or retire subject to the approval of the Secretary of State and the conditions set in subsections (5) and (6).
- 438 Subsection (4) requires the London Fire Commissioner to resign or retire if called do so by the Mayor as in subsection (3).

- 439 Subsection (5) puts certain requirements on the Mayor before they can call upon the London Fire Commissioner to retire or resign. Subsection (5)(a) requires the Mayor to give the London Fire Commissioner a written explanation of the reasons why the Mayor is proposing to call for the resignation or retirement. Subsection (5)(b) requires the Mayor to give the Commissioner the opportunity to make written representations to the Mayor, and subsection (5)(c) requires the Mayor to consider any written representation made by the Commissioner.
- 440 Subsection (6) requires the Mayor to comply with the requirements in subsection (5) before seeking the approval of the Secretary of State to call upon the London Fire Commissioner to retire or resign.
- 441 New section 327D(1)(a) allows the Mayor to issue the London Fire Commissioner guidance on how the Commissioner is to exercise his or her functions, subsection (1)(b) allows the Mayor to give general directions as to the manner in which the Commissioner is to exercise his or her functions, and subsection (1)(c) allows the Mayor to give specific directions as to the Commissioner's functions.
- 442 Subsection (2) allows that any specific directions given by the Mayor under subsection (1)(c) may include a direction for the London Fire Commissioner to not exercise a specified power.
- 443 Subsection (3) allows the Mayor under subsection (1) to include guidance or directions on how the London Fire Commissioner is to perform his or her duties or conduct any legal proceedings.
- 444 Subsection (4) requires the Mayor to have regard to the Fire and Rescue National Framework, and fire safety enforcement guidance when exercising the powers under section 327D. Subsection (5) explains what is meant by the Fire and Rescue National Framework and the fire safety enforcement guidance.
- 445 New section 327E allows the Secretary of State, where he or she thinks any guidance or directions issued under section 327D by the Mayor are inconsistent with the Fire National Framework or fire safety enforcement guidance, to direct the Mayor to remove the inconsistency. The Mayor must comply with any such directions from the Secretary of State.
- 446 Subsection (1) of new section 327F enables the Mayor to arrange for the Deputy Mayor for Fire to carry out any fire and rescue function of the Mayor.
- 447 Subsection (2) defines the Deputy Mayor for Fire.
- 448 Subsection (3) defines the functions of the Mayor in relation to fire and rescue which the Deputy Mayor for Fire may exercise under subsection (1). These do not include the Mayor's power conferred by new section 327C to suspend the London Fire Commissioner or to call upon the London Fire Commissioner to resign or retire.
- 449 Subsection (4) provides that the Secretary of State can issue directions to the Deputy Mayor for Fire if the Secretary of State considers that a direction issued by the Deputy Mayor for Fire, when exercising the fire and rescue functions of the Mayor, are inconsistent with the Fire and Rescue National Framework or fire safety enforcement guidance.
- 450 New section 327G makes provision for the scrutiny of documents prepared by the London Fire Commissioner.
- 451 Subsection (1) deals with the preparation and publication by the London Fire Commissioner of a document in accordance with the Fire and Rescue National Framework (as defined in subsection (4)) which sets out the Commissioner's priorities and objectives in connection with the discharge of the Commissioner's functions or contains a statement of the way in which the Commissioner has had regard to the Framework and to that document in connection with the

- discharge of the Commissioner's functions.
- 452 Subsection (2) requires the Commissioner to send a copy of the document or revision in draft to the Mayor and the Assembly fire and emergency committee before publishing.
- 453 Subsection (3) states that the Commissioner may not publish the document or any revision to it unless the Assembly has had an opportunity to review the draft document or revision, make a report on it to the Mayor, and the Mayor has approved the draft document or revision.
- 454 New section 327H makes provision for the Assembly fire and emergency committee.
- 455 Subsection (1) requires the Assembly to appoint a committee, to be known as the fire and emergency committee, to carry out a range of functions on its behalf.
- 456 Subsection (2) describes the functions which the fire and emergency committee must discharge. These are functions relating to the appointment of the London Fire Commissioner and the Deputy Mayor for Fire such as holding confirmation hearings (under section 60A of and Schedule 4A to the 1999 Act) and the functions set out in new section 327I of the 1999 Act (see below).
- 457 Subsection (3) prevents the Assembly from using another means to discharge the fire and emergency committee functions – it can only discharge them through the committee established under subsection (1).
- 458 Subsection (4) prevents the Assembly from using the fire and emergency committee to carry out any other functions of the Assembly.
- 459 Subsection (5) refers to "special scrutiny functions" to be exercised at a meeting of the whole committee. Subsection (13) defines "special scrutiny functions" as the functions conferred by section 327I(1) or by section 60A and Schedule 4A in relation to the appointment of the London Fire Commissioner and the Deputy Mayor for Fire.
- 460 Subsections (6) to (9), when read together, provide that any provision, apart from the excluded provisions, made by any enactment which applies to committees of the Assembly applies to the fire and emergency committee as though that committee were a committee under section 54(1)(a). Subsection (7) defines the "excluded provisions" as provisions in section 54(5) – so far as it provides for the Assembly to retain power to exercise functions delegated to a committee – and section 55 (Assembly committees and sub-committees) of the 1999 Act .
- 461 Subsection (10) provides for the Assembly to fix the number of members of the committee and their term of office. It also allows for non-members of the Assembly to be part of the committee.
- 462 Subsection (11) deals with any sub-committee which discharges the functions of the fire and emergency committee. It provides for the fire and emergency committee to fix the number of members of the sub-committee and their term of office. It also allows for non-members of the Assembly to be members of the sub-committee.
- 463 Subsection (12) requires the fire and emergency committee to exercise its functions so that they support the effective exercise of the functions of the London Fire Commissioner.
- 464 New section 327I provides for functions to be discharged by the fire and emergency committee. Subsection (1) requires the fire and emergency committee to review draft documents presented to it by the London Fire Commissioner, and to make a report or recommendation to the Mayor.
- 465 Subsections (2) to (5) require the fire and emergency committee to review how the London Fire Commissioner is exercising his or her functions and the committee has the power to investigate and prepare reports on the Commissioner's actions and decisions. The power also extends to investigating the actions and decisions of an officer of the London Fire Commissioner and to

- any other matters which the Assembly considers to be of importance to fire and rescue services in Greater London. Subsection (4) allows the fire and emergency committee to investigate and prepare reports about the actions and decisions of the Deputy Mayor for Fire.
- 466 Subsections (6) and (7) allow the fire and emergency committee to require the persons listed to attend proceedings to give evidence or to provide documents in their possession which can be considered at the proceedings.
- 467 Subsection (8) considers the position of an officer of the London Fire Commissioner in relation to subsection (6) requirements. An officer is not required to give evidence or produce documents if they would disclose advice they had given to the London Fire Commissioner.
- 468 Subsection (9) applies relevant provisions under sections 61 to 65 of the 1999 Act to the requirements under subsection (6). These provisions relate to the procedures for requiring persons to attend proceedings and provide documents. Section 64 provides for an offence of failing to attend proceedings, with a maximum penalty of six months' imprisonment or an unlimited fine.
- 469 *Paragraphs 11 to 13* make relevant consequential changes to the 1999 Act by substituting London Fire Commissioner for LFEPA and repealing Part 7 of the 1999 Act which made provision for the LFEPA.
- 470 *Paragraph 14* makes an amendment to Schedule 4A to the 1999 Act inserting new provisions in respect of the confirmation hearings etc for the appointment of the London Fire Commissioner and Deputy Mayor for Fire. *Paragraph 14(3)* inserts a new paragraph 11 in Schedule 4A to provide the Assembly with the power to veto any such appointment but only if it has held a confirmation meeting and notifies the Mayor within a period of three weeks beginning with the day on which the Assembly receives the notification from the Mayor. The Assembly may not veto the appointment of the candidate as the Deputy Mayor for Fire if the candidate is a member of the Assembly. New paragraph 11(3) of Schedule 4A to the 1999 Act prevents the Mayor from appointing a candidate who has been vetoed by the Assembly. New paragraph 11(5) provides that in reaching the decision to veto a candidate the Assembly must have a required majority of at least two thirds of the votes in favour of that decision.
- 471 *Paragraph 15* inserts new Schedule 27A into the 1999 Act.
- 472 Paragraph 1 of new Schedule 27A deals with the appointment of the London Fire Commissioner and the tenure of office. The Mayor determines the terms and conditions of the appointment and the tenure of office is subject to the provisions set out in new section 327C regarding the suspension and removal of London Fire Commissioner.
- 473 Paragraph 2 of new Schedule 27A provides for the remuneration of the London Fire Commissioner. All remuneration will be provided for under the Commissioner's terms and conditions and can include allowances for expenses incurred in the performance of their functions. Paragraph 2(3) allows for a pension to be paid to the London Fire Commissioner in accordance with the terms and conditions of the Commissioner's appointment. Paragraph 2(5) requires the Mayor to have regard to the financial resources of the Commissioner when determining the terms and conditions of the appointment.
- 474 Paragraph 3 deals with the appointment of a deputy London Fire Commissioner. Paragraph 3(1) enables the London Fire Commissioner to appoint a deputy and paragraph 3(2) provides for that deputy to exercise any or all of the Commissioner's powers and duties. However, in the case of the Commissioner's absence, incapacity or suspension from duty or where there is a Commissioner vacancy, paragraph 3(3) limits the period of exercising the powers and duties of the London Fire Commissioner by the deputy to three months unless the Mayor consents to a

longer period.

475 Paragraph 4 deals with damages and costs in legal proceedings. The paragraph sets out where the London Fire Commissioner must pay damages or costs and where they have the discretion to make such payments.

476 Part 2 of Schedule 2 makes consequential amendments to other Acts.

Section 10: Transfer of property, rights and liabilities to the London Fire Commissioner

477 This section provides for the transfer of property, rights and liabilities to the London Fire Commissioner through a scheme made by the Secretary of State.

Chapter 4: Inspection of fire and rescue services

Section 11: Inspection of fire and rescue services

478 Section 11 amends the 2004 Act to make further provision about the inspection of FRAs in England.

479 *Subsection (2)* inserts new subsections (A1) to (A9) into section 28 of the 2004 Act, which amend the process for appointing inspectors, assistant inspectors and other officers and provides for one of the inspectors appointed to be the chief fire and rescue inspector for England. This aligns with the process for appointing Her Majesty's Inspectors of Constabulary.

480 New subsections (A6) to (A8) of section 28 restrict the inspection powers of fire and rescue inspectors when inspecting PCC-style FRAs, to exclude certain strategic functions of the PCC such as the preparation of the strategic fire and rescue plan and annual statement (new subsection (A7)(a)); setting the fire precept (new subsection (A7)(b)); appointing a chief fire officer (new subsection (A7)(c)) and functions connected to holding the chief constable to account (new subsection (A7)(d)). The functions, actions and decisions of the PCC will instead be subject to scrutiny by the corresponding police and crime panel, and directly held to account by the public. This is consistent with the PCC model and mirrors arrangements for the inspection of the PCC's policing functions. New subsection (A7)(e) provides for further excluded functions to be set out in an order (subject to the negative procedure). This will enable the Secretary of State to specify excluded functions consequential on the order made under new section 4A of the 2004 Act which creates a PCC as the fire and rescue authority for an area and consequential on an order made under new section 4H of the 2004 Act if the PCC proposes to delegate fire and rescue functions to a single chief officer.

481 *Subsection (4)* inserts new section 28A into the 2004 Act, which requires the chief fire and rescue inspector to prepare an inspection programme and an inspection framework, for the Secretary of State's approval. It also enables the Secretary of State (in practice the Home Secretary) to require the inspection of any specified FRA. It also enables the chief fire and rescue inspector with the approval of the Secretary of State to initiate the inspection of an English fire and rescue authority under section 28(A3) which has not been set out in an inspection programme nor required by the Secretary of State.

482 New section 28A(7) makes clear that a fire inspector can make a visit for the purposes of inspection without prior notice, regardless of the content of the inspection programme.

483 *Subsection (5)* inserts new section 28B into the 2004 Act, which provides for the publication of inspection reports. New section 28B(4) requires the chief fire and rescue inspector to submit an annual report to the Secretary of State, while new section 28B(6) requires this report to be laid

before Parliament.

484 *Subsection (6)* amends paragraph 8(2) of Schedule A2 to the 2004 Act, as inserted by Schedule 1 to the Act, which modifies section 28 of the Police Reform and Social Responsibility Act 2011 to provide that the functions of a PCC that are to be scrutinised by a Police and Crime Panel ("PCP") are those that are excluded from inspection under the provisions of section 28(A6). This ensures that there remains public assurance for the delivery of fire and rescue functions – the strategic functions of the PCC will be subject to scrutiny by the PCP and the operational delivery of the fire and rescue service will be subject to inspection.

485 *Subsection (7)* introduces Schedule 3 to the Act, which inserts new Schedule A3 into the 2004 Act.

486 *Subsection (8)* provides that any fire inspector appointed under the existing provisions of the 2004 Act will continue to be such once this section comes into force, and will be taken as having been appointed under the new arrangements.

Schedule 3: Schedule to be inserted as Schedule A3 to the Fire and Rescue Services Act 2004

487 Schedule 3 inserts new Schedule A3 into the 2004 Act, which makes further provision about the powers and duties of fire and rescue inspectors.

488 Paragraph 2 of new Schedule A3 enables a fire and rescue inspector to delegate the inspection function to another public authority. This would, for example, enable the fire and rescue inspector to delegate the inspection of a joint function operated by the fire and rescue authority with the police, to be undertaken by Her Majesty's Inspectorate of Constabulary, if that reduced duplication of effort and provided consistency.

489 Paragraph 3 requires fire and rescue inspectors to co-operate with HMIC, while paragraph 4 enables fire and rescue inspectors and HMIC to carry out joint inspections.

490 Paragraph 5 enables the chief fire and rescue inspector to assist other public authorities (subparagraph (1)) and to assist the inspection of best value authorities (subparagraph (2)). Subparagraph (1) enables the chief fire and rescue inspector to assist public bodies such as fire and rescue services elsewhere in the United Kingdom, or other public organisations which may have fire related concerns. Where a best value inspection is being carried out under the Local Government Act 1999, subparagraph (2) enables the chief fire and rescue inspector to do anything appropriate to facilitate it.

491 Paragraph 6 provides fire and rescue inspectors with powers to obtain information, in line with the powers available to HMIC (as amended by section 36). It enables an inspector to serve a notice on a relevant person to require them to provide information, documents and evidence for the purposes of an inspection. Paragraph 6(2) provides that this applies to fire and rescue authorities, their staff and contractors. Paragraph 6(6) to 6(8) restricts the information that can be obtained under these provisions to exclude sensitive information, such as intelligence service information.

492 Paragraph 7 enables inspectors to obtain access to premises occupied by a fire and rescue authority or a person providing services to a fire and rescue authority in England whether or not by virtue of any enactment, and to documents and other things on those premises, for the purposes of inspection, by serving a notice.

493 Paragraph 8 enables the chief fire and rescue inspector for England to certify to the High Court that a person has failed to comply with a notice under paragraphs 6 or 7. It enables the High Court to inquire into the matter and, where appropriate, deal with the person as if they had

committed a contempt of court. Under the Contempt of Court Act 1981 the maximum penalty for contempt is two years' imprisonment.

494 Paragraph 9 provides that, should an inspector receive sensitive information, they must not disclose the information or the fact that they have received it without the relevant authority's consent.

495 Paragraph 10 places a duty on the person providing information to make the inspector aware that the information is intelligence service information as defined in paragraph 9.

Section 12: Fire safety inspections

496 Section 12 amends relevant articles of the Regulatory Reform (Fire Safety) Order 2005 (SI 2005/1541) to ensure that the powers of inspectors available under article 27 of the Order are extended to those who are authorised by the Secretary of State to act for the purposes of the Order in England and Wales under article 25 (that is, in Crown owned and occupied premises and in the relevant parts of UK Atomic Energy Authority premises).

Part 2: Police Complaints, Discipline and Inspection

497 Subject to limited exceptions, this Part forms part of the law of England and Wales. The exceptions relate to section 29(8) and Schedule 7 which insofar as they relate to MDP extend and apply to the United Kingdom and insofar as they relate to BTP and CNC extend and apply to Great Britain; and section 37(6) which extends and applies to the United Kingdom.

Chapter 1: Police Complaints

Section 13: Local policing bodies: functions in relation to complaints

498 Currently local policing bodies³⁹ have limited statutory functions relating to the police complaints system. These include holding the chief officer⁴⁰ to account for how he or she exercises his or her functions (including the handling of complaints) and being the appropriate authority for complaints regarding the conduct of the chief officer.

499 This Chapter confers, or allows local policing bodies to choose to take on, direct responsibility for a number of statutory functions in the police complaints system. The Act also makes it explicit that local policing bodies are to hold chief officers to account for the exercise of their functions in relation to the handling of police complaints (see section 21).

500 Local policing bodies will be the review body for reviews/appeals currently heard by chief officers (see Schedule 5). This section, which inserts new section 13A into the 2002 Act, covers those other complaints functions under Part 2 of (including Schedule 3 to) the 2002 Act (as amended, including by this Act) for which local policing bodies can assume responsibility. It allows a local policing body to give a notice to the relevant chief officer that the local policing body, rather than the chief officer, will exercise certain functions in the process for handling complaints. A local policing body can take responsibility for the functions detailed under subsection (2) or both subsections (2) and (3) of new section 13A of the 2002 Act. These are set out at A and B below.

39 "Local policing body" means a PCC or MOPAC in relation to the metropolitan police district; or the Common Council in relation to the City of London police area.

40 The chief officer refers to the chief constable of the relevant police force, or in the case of the metropolitan police and City of London police, the commissioner.

Functions	
A. Receiving and recording complaints	<p>If a local policing body gives a notice that it will exercise the functions listed in new section 13A(2), it will take on the following functions:</p> <ul style="list-style-type: none"> - The duty to make initial contact with complainants to understand how best their issues might be resolved. - The ability to resolve complaints otherwise than in accordance with Schedule 3 to the 2002 Act (which will likely be appropriate for low-level customer service related issues). - The recording of complaints (and related notification duties).
B. Single point of contact	<p>If a local policing body gives a notice that it will exercise the functions listed in new section 13A(2) and (3), in addition to the functions above, it will, as far as is possible, become the single point of contact throughout the handling of complaints (in cases which are not investigated independently by the IPCC or through a directed investigation). This means that they must keep a complainant informed on the progress of the handling of their complaint, the outcome of the handling of their complaint, any right of review or any other factor specified in regulations.</p> <p>Where the IPCC is investigating a complaint, or the investigation is a directed investigation, the duty to keep the complainant informed lies with the IPCC.</p>

501 Local policing bodies will be able to delegate their complaints handling functions where appropriate (see section 21).

502 A complaint made on the day a notice is given under new section 13A(1) or thereafter will be dealt with under the new arrangements, with the local policing body taking on the chief officer's relevant functions and references to the chief officer in the relevant legislation being read as references to the local policing body, with necessary exceptions (as set out in subsections (4) and (5) of new section 13A).

503 Subsections (6) and (7) of new section 13A enable the Secretary of State, by regulations (subject to the negative procedure), to make provision regarding the giving and withdrawal of notices. Regulations may, for example, specify the steps local policing bodies must take before issuing notices and the circumstances under which notices may be withdrawn.

Section 14: Definition of police complaint

504 For the purposes of the current legislation, a complaint is defined in section 12(1) of the 2002 Act as a 'complaint about the conduct of a person serving with the police'. There are various restrictions as to how such a complaint can be made and who can make it.

505 Section 14 replaces this definition with 'any expression of dissatisfaction with a police force'. This means that where a member of the public raises an issue that does not directly relate to the conduct of an individual officer or member of police staff it will be considered a complaint for the purposes of Part 2 of the 2002 Act. (Schedule 3 to that Act sets out how complaints made against the police should be handled.) This could include a purely customer-service related complaint or a complaint about an issue of policing policy.

506 In the current system, complaints can only be raised by: (i) a member of the public who claims to be the person in relation to whom the conduct took place; (ii) a member of the public who claims to be adversely affected by the conduct; (iii) a member of the public who claims to have witnessed the conduct; or (iv) a third party acting on behalf of any of the above. These current arrangements are closely replicated in the new system for complaints about the conduct of a person serving with the police. In the case of other complaints, the complainant will have to have been adversely affected by the matter about which dissatisfaction is expressed. For example, this excludes complaints about incidents that people have simply seen on the television being treated as complaints for the purposes of Part 2 of the 2002 Act.

507 Schedule 4 to the Act makes a number of consequential amendments to Part 2 of the 2002 Act to reflect that complaints under the new definition will not always be complaints about the conduct of a person serving with the police. These include an amendment (*paragraph 2 of Schedule 4*) to the description of a complaint in section 10 of the 2002 Act which sets out the IPCC's functions and a number of changes to provisions relating to the handling of complaints in Schedule 4 to clarify that the complaint may not always relate to the conduct of an individual.

508 In the current system, certain complaints can be classified as relating to a 'direction and control matter', as defined at paragraph 29 of Schedule 3 to the 2002 Act. This includes complaints relating to operational decision making about deployment of resources and strategic decisions about how policing powers should be exercised. Such complaints are treated differently to complaints about the conduct of an individual – in particular, there are limited appeal rights. Paragraph 45 of Schedule 5 to the Act amends Schedule 3 to the 2002 Act with the consequence of removing 'direction and control matter' as a separate category of complaint. In future, complaints about those matters will be captured in the new definition of complaint provided for by section 14 and will be treated exactly the same as any other complaint.

Section 15: Duty to keep complainant and other interested persons informed

509 Sections 20 and 21 of the 2002 Act currently set out the requirements for the IPCC and appropriate authority to keep the complainant and interested parties (for example, a relative in the case of complaint relating to a death or serious injury) informed where an investigation is taking place into a complaint. Similarly, where a complaint is currently handled through local resolution, there are a number of requirements in Schedule 3 to the 2002 Act as to when a complainant must be informed of developments and the nature of the information to be provided. This includes the need to provide an opportunity for the complainant to make comments about the complaint, subsequent findings and the requirement to share any report produced. In this case they are set out in regulations.

510 Section 15 creates an over-arching duty to keep the complainant and interested parties informed about the handling of a complaint or matter, whether or not it is being investigated. New section 20(3A) of the 2002 Act (inserted by *subsection (2)*) extends the current general duty on the appropriate authority to keep the complainant informed in cases where: (i) the complaint is being handled by the appropriate authority in accordance with Schedule 3 otherwise than by way of an investigation, and (ii) the complaint is being handled by the appropriate authority otherwise than in accordance with Schedule 3 (that is, resolved informally, as it relates to a low-level issue). New section 21(8A) of the 2002 Act (inserted by *subsection (6)*) extends the current general duty on the appropriate authority to keep interested persons informed to cases where the complaint or matter is being handled by the appropriate authority in accordance with Schedule 3 otherwise than by way of an investigation.

511 *Subsections (3) and (7)* replace the current lists of matters on which complainants and interested parties must be kept informed with lists of matters that apply in all cases, whether or not there

is an investigation. Provision is also made for the Secretary of State to specify further matters in regulations (subject to the negative procedure).

512 Section 20(9) of the 2002 Act places a duty on a person appointed to carry out an investigation under Part 2 to provide the IPCC or, as the case may be, the appropriate authority with all such information as the IPCC or that authority reasonably require for the purpose of discharging their responsibilities for keeping the complainant properly informed. *Subsection (5)* amends section 20(9) so that the duty imposed by that subsection applies where a third party is involved in the handling of the complaint other than by carrying out an investigation.

513 *Subsection (9)* repeals the notification duties in paragraphs 23 and 24 of Schedule 3 to the 2002 Act as these are now captured by the overarching duties to keep the complainant and interested persons informed under the amended sections 20 and 21 of the 2002 Act. *Subsections (4) and (8)* insert the provisions at paragraphs 23(12) and 24(10) of Schedule 3 (repealed by subsection (9)), into sections 20 and 21 respectively of the 2002 Act, which allow the IPCC and the appropriate authority to (subject to exceptions, although notwithstanding any obligation of secrecy imposed by any rule of law or otherwise) provide the complainant and any interested persons with a copy of any investigation report submitted under paragraph 22 of Schedule 3, as amended.

Section 16: Complaints, conduct matters and DSI matters: procedure

514 Schedule 3 to the 2002 Act sets out the processes to be followed by the appropriate authority and IPCC when handling a complaint, a conduct matter or a death and serious injury ("DSI") matter (Parts 1 to 2A of Schedule 3) and where investigating complaints and such matters (Part 3 of Schedule 3). Part 3 of Schedule 3 also deals with appeal rights and related issues.

515 This section introduces Schedule 5 to the Act which makes substantial revisions to Schedule 3 to the 2002 Act to provide for a number of changes to the way complaints, conduct matters and DSI matters are handled and investigated.

Schedule 5: Complaints, conduct matters and DSI matters: procedure

516 Schedule 5 makes a number of changes to the current processes for handling complaints.

517 *Recording complaints*: The first step in the current process is, where a complaint is made to a local policing body or a chief officer, for that body or person to establish whether or not they are the appropriate authority and, if not, to notify the appropriate authority. Similarly, where a complaint is made to the IPCC, it must notify the appropriate authority.

518 Under the current system, the appropriate authority is required to record the complaint unless: the complainant withdraws the complaint; the subject matter of the complaint has been (or is being) dealt with by means of criminal or disciplinary proceedings; or the complaint falls within a description set out in regulations⁴¹ (for example, if the force deems the complaint as fanciful or repetitious). This allows for the non-recording of complaints even when the complainant is clear that he or she wants to make a formal complaint.

519 Under the changes made by Schedule 5, the only circumstances in which a complaint does not have to be recorded are:

- If the complainant withdraws the complaint.
- If the appropriate authority determines that it should be handled outside of the formal system set out in legislation. But, even here, the appropriate authority

⁴¹ The Police (Complaints and Misconduct) Regulations 2012 (SI 2012/1204)

must record the complaint if the complainant makes clear his or her wish for that to happen.

520 The ability for the appropriate authority to determine matters that that can be handled outside the formal system allows, with the approval of the complainant, for low-level customer service related matters to be resolved to the complainant's satisfaction, without having to follow the processes set out in Schedule 3 to the 2002 Act. In practice, the police can and do already seek to resolve matters to the complainant's satisfaction in this way. However, new paragraphs 2(6A) to 2(6D) of Schedule 3 to the 2002 Act (inserted by *paragraph 2(3)*) formalise this arrangement, allowing the police (or local policing body in cases) to deal with complaints outside of the arrangements in Schedule 3, but with specific exceptions. Complaints cannot be dealt with in this way if:

- The complainant wants his or her complaint recorded (and thus dealt with under Schedule 3);
- The complaint is one alleging that the conduct or other matter complained of has resulted in death or serious injury;
- The complaint is one alleging that there has been conduct by a person serving with the police which (if proved) might constitute the commission of a criminal offence or justify the bringing of disciplinary proceedings;
- The conduct or other matter complained of (if proved), might have involved the infringement of a person's rights under Article 2 (right to life) or 3 (prohibition of torture) of the Convention (within the meaning of the Human Rights Act 1998);
- The complaint is of a description specified in regulations made by the Secretary of State for the purposes of paragraph 4 of Schedule 3 to the 2002 Act (which deals with the referral of complaints to the IPCC).

521 If any of these conditions are met, then the complaint must be recorded and dealt with under the amended Schedule 3 to the 2002 Act.

522 *Paragraph 2(2)* introduces an explicit provision in paragraph 2(6) of Schedule 3 to the 2002 Act for the appropriate authority to contact the complainant before it records a complaint to understand how it might best be resolved to the complainant's satisfaction.

523 *Paragraph 2(5)* removes the Secretary of State's ability to make regulations under paragraph 2(8) of Schedule 3 to the 2002 Act. These set out cases in which the appropriate authority can decide not to record (for example, where a complaint is deemed fanciful or repetitive).

524 Given that these changes to paragraph 2 of Schedule 3 to the 2002 Act mean that whenever a complainant wants his or her complaint recorded it will be, *paragraph 3* removes the current appeal right against non-recording (currently dealt with in paragraph 3 of Schedule 3 to the 2002 Act).

525 *Paragraph 2(6)* outlines the action that is required by the appropriate authority when it determines that something which purports to be a complaint (as defined in section 12 of the 2002 Act) is not a complaint. This replicates and replaces the existing paragraph 3(1) and (2) of Schedule 3.

526 *Handling of complaints by the appropriate authority:* In the current system, if a recorded complaint is not referred to the IPCC for consideration (under paragraph 4 of Schedule 3), the appropriate authority must consider how the complaint should be dealt with. The three options available

are:

- Local resolution – this means complaint is handled in accordance with a procedure which does not involve a formal investigation and is laid down by regulations made under paragraph 8 of Schedule 3;
- Investigation – this means the complaint is investigated in accordance with the requirements set out in Part 3 of Schedule 3;
- Disapplication – this means the complaint is handled otherwise than in accordance with Schedule 3. Grounds for disapplication (which are set out in regulations) include that there has been a delay of over 12 months between the incident and the subsequent complaint and that the complaint is viewed to be vexatious or oppressive.

527 *Paragraph 6(3)* of Schedule 5 replaces these options with an over-arching duty, in the new paragraph 6(2A) of Schedule 3, on the appropriate authority to handle the complaint in such reasonable and proportionate manner as it determines. However, if at any time it appears to the appropriate authority that there is an indication that an individual may have committed a criminal offence or behaved in a way that would justify disciplinary proceedings, or that there may have been the infringement of a person's rights under Article 2 (right to life) or 3 (prohibition of torture) of the Convention (within the meaning of the Human Rights Act 1998), the appropriate authority must discharge its duty by undertaking an investigation on its own behalf (unless any of the exceptions detailed in regulations made under the new paragraph 6(2D) of Schedule 3 applies). Where there is no such indication, the appropriate authority has the flexibility to handle the matter in such 'reasonable and proportionate' manner as it determines, within the bounds of any statutory guidance issued by the IPCC. Consequent to these changes,, no specific process of 'local resolution' is required and Schedule 5 repeals these provisions of Schedule 3 to the 2002 Act, including paragraph 8 which sets out arrangements for local resolution (removed by paragraph 8 of Schedule 5). Similarly, the provisions of Schedule 3 on 'disapplication' are no longer needed, as the appropriate authority has the ability to deal with cases that do not require investigation in a 'reasonable and proportionate' manner, and this may mean that no further action should be taken – these provisions are also repealed (chiefly by *paragraph 7* of Schedule 5).

528 *Investigations:* Schedule 5 makes a number of changes to the provisions in Schedule 3 to the 2002 Act that govern how investigations by the IPCC and an appropriate authority should be undertaken and the steps to take following an investigation. These are described below.

529 *Forms of investigation:* Currently, when a complaint, conduct matter or DSI matter is referred to the IPCC it has five options. If it decides that it is not necessary for the complaint or matter to be investigated, it can choose to refer it back to the appropriate authority to deal with it as it sees fit (paragraphs 5, 14 and 14D of Schedule 3 to the 2002 Act). Alternatively, if the IPCC decides that it is necessary for the complaint or matter to be investigated, it must choose one of the options in paragraph 15(4) of Schedule 3. It can refer it back to the appropriate authority to investigate (paragraph 16 of Schedule 3) or it can decide to conduct an independent investigation itself (paragraph 19 of Schedule 3). It can also choose to supervise an appropriate authority investigation into the complaint or matter (a 'supervised' investigation under paragraph 17 of Schedule 3) or to manage an appropriate authority investigation into the complaint or matter (a 'managed' investigation under paragraph 18 of Schedule 3).

530 Schedule 5 makes a number of changes to how the IPCC determines the form of investigation, including removing the option of a 'supervised' investigation and replacing 'managed'

investigations with 'directed' investigations.

531 Currently, once the IPCC has decided that a complaint or matter must be investigated, paragraph 15(2) and (3) of Schedule 3 requires the IPCC to determine the form of the investigation and to have regard to the seriousness of the case and the public interest test in so doing. *Paragraph 15(6)* of Schedule 5 modifies this test so that the IPCC must first consider whether, having regard to the seriousness of the case and the public interest, it is appropriate for the appropriate authority to conduct the investigation on its own behalf (or, to put it another way, that there should be no IPCC involvement). If the IPCC determines that it is not appropriate for the appropriate authority to conduct the investigation on its own behalf, the IPCC must investigate the case itself, unless it decides that a 'directed' investigation would be more appropriate.

532 If the IPCC determines that there must be IPCC involvement in an investigation, the expectation (as reflected in the new paragraph 15(4B) of Schedule 3 to the 2002 Act) is that the investigation should be an independent investigation. It is only where the IPCC is clear that it would be more appropriate for the investigation to be a 'directed' investigation that the investigation can then take that form (as set out in new paragraph 15(4C)). For example, the IPCC may determine under new paragraph 15(4A) that it must have some involvement in an investigation into serious allegations of corruption against a police officer. However, the IPCC may then decide that it is more appropriate for the investigation to take the form of a 'directed' investigation because the investigation requires extensive covert surveillance of the officer in question – a specialist capability that the IPCC does not possess.

533 *Paragraph 15(9)* of Schedule 5 places a new duty on the IPCC to inform the complainant, interested parties and the person to whose conduct the investigation will relate of its determination and the reasons for its determination, subject to exceptions to be set out in regulations. The IPCC must also now inform the appropriate authority of the reasons for its determination (*paragraph 15(8)* of Schedule 5).

534 *Paragraph 19* of Schedule 5 amends paragraph 18 of Schedule 3 to the 2002 Act, replacing provisions for 'managed' investigations with those for 'directed' investigations. A 'directed' investigation retains some of the features of a 'managed' investigation but includes a number of additional features that allow the IPCC to exert greater control over the investigation.

535 As with a 'managed' investigation, a 'directed' investigation is undertaken by an investigator appointed by the appropriate authority who is under the 'direction and control' of the IPCC. As with 'managed' investigations, the IPCC can require the appropriate authority to select another investigator to conduct the 'directed' investigation (*paragraph 19(3)* of Schedule 5).

536 *Paragraph 19(4)* of Schedule 5 places a new duty on the investigator to keep the IPCC informed of the progress of the investigation.

537 Currently, the investigator appointed by the appropriate authority to lead a 'managed' investigation takes the key decisions on how the investigation should proceed. These are:

- whether to certify the investigation as subject to special requirements under paragraph 19B of Schedule 3 (that is, that there is an indication of criminality or behaviour which would justify the bringing of disciplinary proceedings);
- whether to proceed in accordance with the 'accelerated procedure' under paragraph 20A (that is, that there is sufficient evidence to establish gross misconduct and it is in the public interest for the person whose conduct it is to cease to be a member of a police force or special constable without delay);

- whether to make a submission under paragraph 21A (that is, that, in the case of an investigation into a DSI matter, there is an indication of criminality or behaviour which would justify the bringing of disciplinary proceedings).

538 Provisions regarding the 'special procedure' (which applies where the investigation is certified as being subject to special requirements) and 'accelerated procedure' are currently set out at paragraphs 19A to 19E and 20A to 20I respectively of Schedule 3. *Paragraphs 21 and 23* of Schedule 5 repeal these provisions, substituting them with new paragraphs 19A and 20A, which provide powers for the Secretary of State to provide for these procedures in regulations. New paragraph 19A allows the IPCC, in the case of a 'directed' investigation, to determine that the 'special procedure' (the details of which will be set out in regulations) should apply.

539 Similarly, paragraph 20A allows the IPCC, in the case of a 'directed' investigation, to determine that the 'accelerated procedure' (the details of which will be set out in regulations) should apply. Therefore, a 'directed' investigation will afford the IPCC more control than a 'managed' investigation currently does.

540 In the current system, under paragraph 15(5) of Schedule 3 to the 2002 Act, the IPCC may at any point decide to change the form of an investigation following a referral (for example, choose to change an investigation by the appropriate authority to an independent investigation). While the IPCC retains the ability to change forms of investigation in the new system, Schedule 5 places an ongoing duty on the IPCC, in cases where the investigation is a 'directed' investigation, to consider whether a 'directed' investigation continues to be the right form of investigation (new paragraph 15(5) of Schedule 3 inserted by paragraph 15(7) of Schedule 5 to this Act). If, at any time, the IPCC considers that a 'directed' investigation is no longer the most appropriate form of investigation (as per new paragraph 15(5A) of Schedule 3) the IPCC will now be compelled to switch to an independent investigation to ensure IPCC investigations retain the highest degree of independence at all times. Returning to the example above, were the investigation to reach a stage where covert surveillance is no longer required, such that it is no longer more appropriate for the investigation to be a 'directed' investigation, the IPCC would have to switch to an independent investigation.

541 *Requirement on the IPCC to investigate conduct matters involving chief officers:* Under the existing system, the appropriate authority is required to refer certain complaints and recordable conduct matters, and all DSI matters, to the IPCC. The IPCC then determines whether or not it is necessary for the complaint or matter to be investigated and, if it determines that it is, to determine the form of investigation.

542 There is no current requirement for the appropriate authority to refer an allegation of misconduct against a chief officer to the IPCC, simply because it involves a chief officer. There are occasions when such allegations are investigated by chief officers of other forces. The Government therefore intends to use existing powers to require the referral of all complaints and matters concerning the conduct of chief officers to the IPCC.

543 *Paragraphs 10(2), 13(2) and 14(2)* of Schedule 5 insert new paragraphs 5(1A), 14(1A) and 14D(1A) respectively into Part 3 of Schedule 3 to the 2002 Act. These provide new powers to enable the Secretary of State to specify in regulations that the IPCC must independently investigate all complaints, recordable conduct matters and DSI matters which relate to the conduct of a chief officer or the Deputy Commissioner of the metropolitan police.

544 *Matters relating to disciplinary proceedings following an IPCC investigation:* Under the existing system, following an independent investigation by the IPCC (or a 'managed' investigation) the IPCC notifies the appropriate authority that it must determine certain matters relating to discipline, including whether any person to whose conduct the investigation related has a 'case

to answer' in respect of misconduct or gross misconduct - or has no case to answer, and whether or not the person's performance is unsatisfactory. The appropriate authority must make those determinations and notify the IPCC of its determinations by way of a memorandum. The IPCC must then make recommendations and may ultimately direct that disciplinary action be brought.

545 *Paragraph 26(2)* of Schedule 5 inserts new paragraph 23(5A) to (5F) into Part 3 of Schedule 3 to the 2002 Act to amend this process. In future, following an independent investigation or a 'directed' investigation, the IPCC will determine matters relating to discipline, including whether any person to whose conduct the investigation related has a 'case to answer' in respect of misconduct or gross misconduct, or has no case to answer. This new power will simplify and streamline the current process. The IPCC will have to seek the appropriate authority's views before issuing a final determination.

546 The IPCC can also direct the appropriate authority to determine what other action (if any) it will, in its discretion, take in respect of non-discipline matters identified in its report (new paragraph 23(5A)(f) of Schedule 3 to the 2002 Act). The appropriate authority will be required to notify the IPCC as to its decision; the IPCC would not be able to overturn the appropriate authority's decision as regards such non-disciplinary matters. In the new paragraph 24(6)(aa) of Schedule 3 (inserted by paragraph 27(2) of Schedule 5), the appropriate authority has an equivalent power of determination on non-criminal and non-disciplinary matters following an investigation on its own behalf.

547 *Discontinuing an investigation:* Under the existing system (paragraph 21 of Schedule 3 to the 2002 Act), the appropriate authority or IPCC can stop or 'discontinue' an investigation into a complaint, conduct matter or DSI matter. The circumstances in which investigations can be discontinued are set out in regulations. For example, an investigation can be discontinued if the complainant is not co-operating and it is not reasonably practicable to continue or if it is discovered, after an investigation is launched, that the matter is suitable for local resolution. *Paragraph 24* of Schedule 5 repeals paragraph 21 of Schedule 3, ending the ability of the IPCC and appropriate authority to discontinue an investigation. Instead, an investigation report under paragraph 22 or 24A of Schedule 3 will have to be produced in all cases (with investigators simply wrapping up their investigation and reporting on the investigation to date in cases where they are unable to proceed any further).

548 *Paragraph 10(3)* of Schedule 5 provides that in cases where: (i) the appropriate authority has decided to investigate a complaint on its own behalf, (ii) it is then required to refer the complaint to the IPCC, and (iii) the IPCC decides that it is not necessary for the complaint to be investigated, the IPCC must refer the complaint back to the force for the appropriate authority to complete its investigation.

549 *Paragraphs 13(3) and 14(3)* of Schedule 5 replicate this arrangement for conduct matters and DSI matters. In the case of the amendment to paragraph 14(D) of Schedule 3 (DSI matters), this will only apply where: (i) the DSI matter is referred to the IPCC, (ii) the IPCC determines that it is not necessary for the matter to be investigated, (iii) it is referred back to the appropriate authority, (iv) the appropriate authority decides to investigate on its own behalf, (v) the IPCC requires the matter to be referred to it again, and (vi) the IPCC again determines that it is not necessary for the matter to be investigated. In these circumstances, the IPCC must refer the matter back to the appropriate authority and the appropriate authority must conclude its investigation.

550 *Determinations: Paragraph 26* inserts new paragraph 23(5A)(c) into Schedule 3 to the 2002 Act. This allows the IPCC to make a determination on those matters covered in an investigation report which do not relate to the commission of a criminal offence by, or the conduct or

performance of, a person to whose conduct the investigation related.

551 *Reviews*: Schedule 5 makes 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 at the outcome of his or her complaint. These are described below.

552 Rights of appeal: There are five appeal points in the existing complaints system. A complainant may appeal against:

- A failure to notify or record a complaint;
- A decision by the appropriate authority to disapply the requirements of Schedule 3 in relation to the handling of a complaint;
- The outcome of a complaint dealt with through local resolution;
- A decision by the appropriate authority to discontinue an investigation into a complaint;
- The outcome of an investigation into a complaint.

553 Schedule 5 requires complaints to be recorded where the complainant wants that to happen, and removes the ability of the appropriate authority to disapply the requirements of Schedule 3 and discontinue an investigation. The associated appeal rights are therefore also removed.

554 Schedule 5 also replaces the categorisation of a complaint as suitable for either local resolution or local investigation with a new duty in new paragraph 6(2A) of Schedule 3 (inserted by *paragraph 6(3)* of Schedule 5) requiring the appropriate authority to take reasonable and proportionate action to resolve a complaint. In some cases, the only way in which the appropriate authority can discharge this duty is by conducting an investigation – see new paragraph 6(2D) and (2E) of Schedule 3 (inserted by paragraph 6(3)).

555 New paragraphs 6A(2) and 25(1B) of Schedule 3 to the 2002 Act (inserted by *paragraphs 31 and 34* of Schedule 5 respectively) provide for the complainant to have a right to apply to the relevant review body for a review of the outcome of the complaint.

556 These provisions, taken together, represent a single right of review at the outcome of the complaint. Paragraph 6A of Schedule 3 covers reviews where the complaint was not investigated. Paragraph 25 covers reviews where the complaint was investigated. Under the new provisions in new paragraphs 6A(4) and 25(4A) of Schedule 3, the review body will consider whether the outcome was a reasonable and proportionate one. These replace the various grounds for appeal currently outlined in paragraphs 8A and 25 of Schedule 3 to the 2002 Act.

557 New paragraph 25(4B) of Schedule 3 provides that when reviewing the outcome of a complaint that was investigated by the appropriate authority, the relevant review body may review the findings of the investigation.

558 New paragraphs 25(1A) and 25(4J) of Schedule 3 (inserted by *paragraphs 34(2) and 34(5)* of Schedule 5 respectively) ensure that, in cases where the 'accelerated procedure' has applied (paragraph 20A of Schedule 3 to the 2002 Act refers) there is only a right of review if the investigator has continued his or her investigation. In such cases, the right of review applies only with respect to the paragraph 22 report produced at the end of that investigation.

Section 17: Initiation of investigations by IPCC

559 Under the existing arrangements in Schedule 3 to the 2002 Act, the IPCC cannot consider a

matter until that matter has been recorded and referred to them by the police. The IPCC can require a force to record a matter and to refer it to them but they cannot make a decision about the form of investigation (if one is necessary) until the referral has taken place.

560 *Subsection (3)* amends Schedule 3 to the 2002 Act, so that where a complaint comes to the attention of the IPCC, it may treat that complaint as referred and consider the form of investigation – and commence an investigation – without the need for a referral.

561 The IPCC is required to notify the complainant of its decision as well as the appropriate authority and, unless it would prejudice an existing or possible future investigation, the person complained against. In such cases the appropriate authority is required to record the matter. *Subsections (4) to (10)* make similar provision for the IPCC to consider conduct and DSI matters without the need for referral.

562 Taken with changes made by Schedule 5 that allow the IPCC to change the form of any investigation once it has commenced, these provisions will allow the IPCC to investigate any matter that has come to its attention without the need for a referral.

Section 18: IPCC power to require re-investigation

563 *Subsection (1)* inserts new section 13B into the 2002 Act which enables the IPCC to re-investigate a complaint, recordable conduct matter, or DSI matter at any time if it is satisfied that there are compelling reasons to do so. This applies only to investigations that were conducted as independent or directed investigations. It will not be able to re-investigate where the original investigation was conducted by an appropriate authority.

564 Such a decision can only be taken if the original investigation has concluded, with the report of that investigation submitted to the IPCC as set out in paragraphs 22(3), 24A or 22(5) of Schedule 3 to the 2002 Act.

565 If the IPCC decides to re-investigate, the usual duties to notify the appropriate authority of the report (of the original investigation), and to consider criminal or disciplinary action – as set out in paragraphs 23, 24A, 27 and 28B of Schedule 3 to the 2002 Act – cease to apply (see amendments made to these paragraphs by *subsections (3) to (6)*).

566 The IPCC is however obliged to notify the appropriate authority, complainant (if any), the person whose conduct the re-investigation concerns and any person entitled to be kept properly informed of any decision to re-investigate. Exceptions to the duty where it might, in the opinion of the IPCC, prejudice the re-investigation may be set out in regulations (see new section 13B(12)).

Section 19: Sensitive information received by IPCC: restriction on disclosure

567 *Subsection (2)* inserts new sections 21A and 21B into the 2002 Act to make provision for the handling of sensitive information when it is received by the IPCC and when that information is disclosed to another person by the IPCC or one of its investigators.

568 New section 21A sets out that where the IPCC receives sensitive information, defined at subsection (3) of that section, the IPCC must not disclose the information or the fact that it has been received unless the relevant authority (as defined in subsection (5)) consents to disclosure. The restriction also applies to an investigator appointed under paragraph 18 of Schedule 3 in an IPCC directed investigation and to anyone who the IPCC or a paragraph 18 investigator discloses the information to.

569 New section 21B places a duty on the person providing sensitive information to make the IPCC or paragraph 18 investigator aware that the information is intelligence service information or intercept information as defined at subsection (5) of section 21A. *Subsection (3)* makes

amendments to Schedule 3 in light of the new provisions. Where the Commission would contravene new section 21A by submitting a copy of an investigation report in its entirety outside of the Commission, they must instead send a copy of the report after having removed or obscured any sensitive information which they must not disclose. In addition, the Commission is prevented from providing copies of further documents or items requested by the appropriate authority if they would contravene new section 21A.

570 *Subsection (3)(a)* repeals existing provisions at paragraph 19ZD of Schedule 3 to the 2002 Act. The effect of new sections 21A and 21B is to restrict the IPCC from disclosing any sensitive information that it has received, such as that originally from one of the intelligence agencies, unless the relevant authority in the organisation concerned consents to disclosure.

Section 20: Investigations by IPCC: powers of seizure and retention

571 *Subsection (1)* inserts new paragraphs 19ZE to 19ZH into Schedule 3 to the 2002 Act, which confer additional powers on the IPCC to seize and retain evidence.

572 New paragraph 19ZE provides the IPCC with the power to seize items which may have evidential value relating to the IPCC's investigations. Sub-paragraph (1) permits these powers to be exercised by anyone suitably designated to undertake an IPCC investigation. Sub-paragraph (2) permits the designated person to seize any item which they have reasonable grounds to believe may relate to the investigation of a conduct or other matter being investigated, and which is necessary to secure to prevent it being concealed, lost, altered or destroyed. Sub-paragraph (3) enables the designated person to request digital information. Sub-paragraph (4) prevents the designated person from seizing material which is legally privileged. Sub-paragraph (5) links the exercise of these powers to those in PACE. Sub-paragraph (6) aligns the definition of premises with that in PACE.

573 New paragraph 19ZF places a responsibility on the designated person to notify the owner of the details of those items seized under paragraph 19ZE, as stated in sub-paragraph (1). Sub-paragraph (2) requires that a notice be provided if requested by the occupier of the premises from where the object was seized or the person who had custody/control immediately before seizure. Sub-paragraph (3) requires the notice to state what was seized and the reason for its seizure. Sub-paragraph (4) requires that this notice be given in "reasonable time", and links the definition of designated person to that given in paragraph 19ZE(1).

574 New paragraph 19ZG provides the IPCC with the ability to retain evidence it seizes under the powers given in paragraph 19ZE. Sub-paragraph (1) provides that the power of retention applies to any item seized under paragraph 19ZE or otherwise in the lawful possession of the IPCC. Sub-paragraph (2) enables the IPCC to retain the items for as long as is necessary to complete criminal or disciplinary proceedings, or an inquest, except where an image or copy of the item would suffice for the purposes of the IPCC's investigation, as set out in sub-paragraph (3).

575 New paragraph 19ZH provides for the owner of items seized and retained to access their property. Sub-paragraph (1) provides for supervised access to any items seized by the IPCC under paragraph 19ZE or retained under paragraph 19ZG. Sub-paragraph (2) permits the owner of items seized and retained by the IPCC to access their property under supervision, with sub-paragraphs (3) and (4) requiring that the IPCC permit them to copy or photograph the items seized or retained, or to provide them with a copy or photograph. Sub-paragraph (5) requires that the IPCC provide the copy or photograph to the owner within a reasonable time. However, sub-paragraph (6) exempts the IPCC from requirements for access or copying if they have reasonable grounds to believe that to do so would prejudice proceedings.

576 *Subsection (2)* makes a consequential amendment to the PACE exempting IPCC-designated

persons from the requirement to provide a formal record (as defined by PACE); such provision is superceded by the bespoke provision made by new paragraph 19ZF (see above).

Section 21: References to England and Wales in connection with IPCC functions

577 *Subsection (1)* inserts new subsection (8) into section 29 of the 2002 Act, this provides that all references to England and Wales in sections 26, 26BA and 26C of the 2002 Act include the territorial waters adjacent to England and Wales, clarifying the IPCC's jurisdiction with respect to law enforcement agencies which have agreements with the IPCC under these sections.

578 *Subsection (2)* makes a similar amendment to section 28 of the Commissioners for Revenue and Customs Act 2005, clarifying the jurisdictional extent of the IPCC with respect to Her Majesty's Revenue and Customs.

579 *Subsection (3)* also makes a similar amendment to section 41 of the Police and Justice Act 2006, clarifying the jurisdictional extent of the IPCC with respect to Border Force.

Section 22: Oversight functions of local policing bodies

580 Sections 1 and 3 of the 2011 Act set out that the relevant local policing body in a police area in England and Wales must hold to account the chief officer for that area in the exercise of a number of functions. Section 6ZA of the 1996 Act allows for the Secretary of State to make regulations conferring functions on the Common Council (the local policing body for the City of London Police).

581 Implicit in the above sections is the ability for local policing bodies to hold the chief officer to account in their statutory duties in regard to police complaints under Part 2 of the 2002 Act. Given the expansion of the role of local policing bodies in handling complaints, this section amends sections 1 and 3 of the 2011 Act and section 6ZA of the 1996 Act, to provide for an explicit duty for local policing bodies to hold to account the chief officer in regard to the handling of complaints under Part 2 of the 2002 Act.

Section 23: Delegation of functions by local policing bodies

582 *Subsection (1)* inserts a new paragraph (pa) into section 23(2) of Part 2 of the 2002 Act. This subsection allows the Secretary of State to make regulations regarding the delegation by the local policing body of the exercise of the powers and duties they have under Part 2 of the Act.

583 Currently, sections 18 and 19 of the 2011 Act allow a PCC or MOPAC to delegate the exercise of their functions, subject to certain exceptions. The local policing body retains ultimate responsibility for the discharge of a function delegated to another person.

584 *Subsections (2) and (3)* amend sections 18 and 19 of the 2011 Act. They make clear that the delegation by local policing bodies of their powers and duties under Part 2 of the 2002 Act is subject to the new section 23(2)(pa) of the 2002 Act, and any regulations made under this provision, rather than the current power regarding delegation of functions provided by for sections 18 and 19 of the 2011 Act.

585 *Subsection (4)* makes the same change to the Local Government Act 1972 to establish that the delegation by the Common Council of their Part 2-related functions is subject to the new section 23(2)(pa) of the 2002 Act, and any regulations made under this provision.

586 These provisions will give the local policing body flexibility to delegate their complaints related functions in a way that best suits their local area.

Section 24: Transfer of staff to local policing bodies

587 The section allows, if desirable, for the transfer of staff from the police force to the local policing body's office for the purpose of dealing with the local policing body's additional

complaints responsibilities. The transfer will only require approval from the Secretary of State if the chief constable and the local policing body cannot agree on the transfer.

588 *Subsection (6)* ensures provision that has the same or similar effect as the Transfer of Undertakings (Protection of Employment) Regulation 2006 (SI 2006/246) will be required in the transfer arrangement, ensuring staff have the same or similar terms and conditions.

Chapter 2: Police Super-Complaints

589 This Chapter, which inserts a new Part 2A into the 2002 Act (comprising new sections 29A to 29C), provides for the creation of a system of police 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 in policing that could undermine legitimacy. There are three existing super-complaints systems in operation relating to competition and markets and the financial sector. These are run by the Competition and Markets Authority (section 11 of the Enterprise Act 2002), the Financial Conduct Authority (sections 234C to 234H of the Financial Services and Markets Act 2000 (inserted by section 43 of the Financial Services Act 2012)), and the Payment Systems Regulator (sections 68 to 70 of the Financial Services (Banking Reform) Act 2013).

Section 25: Power to make super-complaints

590 This section inserts new section 29A into the 2002 Act to provide a power for designated bodies to make super-complaints about any aspect of policing in England and Wales that causes significant harm to the interests of the public. A super-complaint will be made initially to Her Majesty's Chief Inspector of Constabulary ("HMCIC").

591 Super-complaints will be distinct from complaints made under Part 2 of the 2002 Act. Part 2 complaints are concerned with individual incidents and individual complainants. A super-complaint, on the other hand, is a report submitted by a designated body (see below) about a systemic issue in policing.

592 For example, a charity, designated for this purpose, could become aware of a problem with how the police handle a specific issue. They would gather evidence for this and submit a detailed report to HMCIC, outlining both the evidence and the harm caused. The super-complaints regime applies not just to the 43 territorial forces in England and Wales but also to the NCA, Ministry of Defence Police, Civil Nuclear Constabulary and British Transport Police (see new section 29A(3)).

Section 26: Bodies who may make super-complaints

593 This section inserts new section 29B into the 2002 Act which makes provision for designating bodies who will be eligible to make a super-complaint. New section 29B(1) and (2) confer a power on the Secretary of State (in practice, the Home Secretary), by regulations (subject to the negative procedure), to designate (or revoke the designation of) a body as able to make super-complaints. Such bodies may, for example, be charities or advocacy groups. The Secretary of State may delegate the decision to designate a body to an authorised person specified in regulations (subject to the negative procedure). Under this power, the Home Secretary could appoint an independent person, such as a Queen's Counsel, to make decisions on designation. When deciding whether to designate a body for the purposes of new section 29B, the Secretary of State or the authorised person, as appropriate, must apply criteria set out in regulations (new section 29B(3) and (4)). It is envisaged the criteria for designated body status in a policing super-complaints system would include a requirement of 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.

Section 27: Regulations about super-complaints

594 This section inserts new section 29C into the 2002 Act which confers a power on the Secretary of State to make further provision, by regulations (subject to the negative procedure), about how the super-complaints system will operate. In making such regulations, the Home Office would work closely with HMCIC as the person responsible for receiving a super-complaint. 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 HMCIC and other relevant policing bodies prior to the formal submission of a policing super-complaint in an effort to reach an informal resolution. The regulations will also provide for the consideration of a super-complaint by a panel including representatives of HMCIC, IPCC and the College of Policing (to this end, new section 29C(3) enables regulations to confer functions on such persons). The regulations may also set out how the IPCC could treat part of a super-complaint as a Part 2 complaint (where appropriate) and a timeframe for an initial reply to the complainant from HMCIC.

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

595 This Chapter provides for a new power for the IPCC to investigate concerns raised by police whistle-blowers and enables further provision to be made by regulations to protect the identity of the whistle-blower.

Section 28: Investigations by the IPCC: whistle-blowing

596 *Subsection (1)* inserts a new Part 2B into the 2002 Act (comprising new sections 29D to 29N) to provide a power for the IPCC to investigate concerns raised by police whistle-blowers.

597 New section 29D defines a whistle-blower as an individual who is or was under the direction and control of a chief officer of police (this includes officers, police staff, PCSOs, special constables and volunteers) and raises a concern about a police force or a person serving with the police.

598 The concern should not be about the working conditions of persons serving with the police. The concern must not relate to the conditions of service of persons serving with the police or be about a matter that could be dealt with as a complaint by the person under Part 2 of the 2002 Act.

599 The concern must not relate to a matter that is:

- subject to an ongoing investigation by, or directed by, the IPCC under Part 2 of the 2002 Act (as an existing complaint, conduct matter or DSI matter),
- subject to an ongoing investigation under new Part 2B of that Act (as an existing whistle-blowing matter), or
- being dealt with under new Part 2A of that Act and regulations made under it (as a super-complaint).

600 The IPCC may only begin to investigate a concern under new Part 2B if consent is provided by the whistle-blower. The power to investigate a concern is at the IPCC's discretion. In deciding whether to investigate the IPCC must take into account the public interest. It may take into

account other factors it deems relevant (for example, whether a matter is more appropriately dealt with through an alternative route and whether it appears there is sufficient evidence to initiate the investigation).

- 601 New section 29E makes provision for dealing with a decision by the IPCC not to investigate a concern raised by a whistle-blower under new Part 2B. The IPCC must inform the whistle-blower of the decision. If the whistle-blower consents, the IPCC may disclose the nature of the concern to the appropriate authority, usually the relevant chief officer of police, and make recommendations in the light of the concern. For example, the IPCC could recommend to the appropriate authority to improve training in a certain area.
- 602 New sections 29E(4) and (5) confer a power on the Secretary of State (in practice, the Home Secretary), to make further provision about these recommendations in regulations (subject to the negative procedure). Regulations may describe the kinds of recommendations the IPCC may make, specify the persons to whom recommendations may be made and permit the IPCC to require a response to any recommendation made. It is envisaged the recommendations would include additional training, updates to guidance or a change to operating procedures.
- 603 New section 29F sets out how the IPCC should handle a whistle-blowing concern where it determines that the concern is about a conduct matter for the purposes of Part 2 of the 2002 Act. In such cases, the IPCC must not carry out a whistle-blowing investigation under new Part 2B but must notify the appropriate authority, which must record the matter as a conduct matter under Schedule 3 to the 2002 Act.
- 604 Similarly, new section 29G sets out how the IPCC should handle a whistle-blowing concern where it determines that the concern is about a DSI matter for the purposes of Part 2 of the 2002 Act. In such cases, the IPCC must not carry out a whistle-blowing investigation under new Part 2B but must notify the appropriate authority, which must record the matter as a DSI matter under Schedule 3 to the 2002 Act.
- 605 New sections 29F(4) and 29G(4) confer powers on the Secretary of State (in practice, the Home Secretary) to make provision modifying Schedule 3 of the 2002 Act by regulations (subject to the negative procedure) in relation to conduct and DSI matters that are recorded following the raising of a whistle-blowing concern. Any modifications must be for the purpose of protecting the identity of whistle-blowers.
- 606 New section 29H provides for the handling of a whistle-blowing investigation where the whistle-blower dies before the IPCC becomes aware of the concern or where the individual dies during an investigation. This section ensures that despite the death of the whistle-blower the IPCC may either start or continue an investigation. In such an eventuality the IPCC would seek consent from an approved representative, for example, a widow or widower (or surviving civil partner) of the whistle-blower. Any requirement to protect the identity of the whistle-blower ceases to apply in the event of the death of the whistle-blower.
- 607 New section 29I imposes a duty on the IPCC to keep the whistle-blower informed about the progress of the investigation and its outcome. Section 29I(2) confers a power on the Secretary of State, by regulations (subject to the negative procedure), to set out exceptions to this duty. Section 29I(3) details that exceptions to the duty may only be allowed for permitted non-disclosure purposes set out at section 29I(4). These purposes include in the interest of national security and preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any actual or prospective criminal proceedings.
- 608 New section 29J makes provision for the protection of the identity of a whistle-blower. Section 29J(5) provides a duty on the IPCC not to disclose the identity of the whistle-blower, information which may reveal the whistle-blower's identity or the nature of the concern raised.

Section 29J(1) confers a power on the Secretary of State, by regulations (subject to the negative procedure), to authorise disclosure of this information in certain circumstances to specified persons. Section 29J(3) details that exceptions to the protection of the whistle-blowers identity may only be imposed for limited 'disclosure purposes' set out at new section 29J(4). The disclosure purposes include in the interests of national security and the institution or conduct of criminal proceedings.

609 New section 29K makes provision for the protection of information relating to the investigation or information relating to the outcome of an investigation. Section 29K(1) confers a regulation-making power (subject to the negative procedure) on the Secretary of State to authorise disclosure in limited circumstances. The limited circumstances are those set out at 29J(4).

610 New section 29L sets out the provisions contained in Part 2 of the 2002 Act that should be applied to new Part 2B. These provisions ensure that the powers provided to the IPCC to investigate other complaints, conduct or DSI matters can be used in the context of a whistle-blowing investigation, for example, the power to inspect police premises and the power to issue guidance.

611 New section 29M sets out an obligation on the Secretary of State to consult with specific groups before making regulations under new Part 2B. The list of bodies mirrors those set out in section 24 of Part 2 to the 2002 Act. Any regulations made under this Part will also be subject to section 63 of the 1996 Act, this means the Secretary of State must also consult the Police Advisory Board for England and Wales.

612 New section 29N sets out the definitions of various terms used in new Part 2B to the 2002 Act.

613 New section 29N amends section 10 of the 2002 Act, which sets out the functions of the IPCC, so as to include functions in relation to whistle-blowing conferred by the new Part 2B.

Schedule 6: Schedule to be inserted as new Schedule 3A to the Police Reform Act 2002

614 New Schedule 3A to the 2002 Act sets out the procedure that the IPCC must follow when undertaking a whistle-blowing investigation.

615 Paragraph 1 of new Schedule 3A provides for the appointment of a person to take part in an investigation. This mirrors the arrangements for designating an investigator for IPCC independent investigations as set out in paragraph 19 of Schedule 3 to the 2002 Act.

616 Paragraph 2 stipulates that the person in charge of a whistle-blowing investigation and others involved in the investigation (under new Part 2B inserted by section 28) may not disclose the identity of the whistle-blower or information that might reveal the identity. Paragraph 2(2) sets out exceptions to the duty to protect the identity including where the whistle-blower gives consent. The paragraph confers a regulation-making power (subject to the negative procedure) on the Secretary of State to permit the person in charge of the investigation to impose requirements to ensure that those involved in the investigation do not disclose information without the consent of the person in charge.

617 Paragraph 3 provides for the IPCC to obtain information during a whistle-blowing investigation; this mirrors the powers available to the IPCC in an independent investigation under Schedule 3 to the 2002 Act.

618 Paragraph 4 sets out the procedure when it becomes apparent in the course of a whistle-blowing investigation (under new section Part 2B) that misconduct may have taken place. In such circumstances, the whistle-blowing investigation would cease and a conduct investigation under Part 2 of the 2002 Act would begin. Paragraph 4(5) confers a power on the Secretary of State (in practice, the Home Secretary), by regulations (subject to the negative

procedure) to modify Schedule 3 for the purpose of protecting the anonymity of the whistle-blower during the subsequent Part 2 investigation.

- 619 Paragraph 5 sets out the procedure when it becomes apparent in the course of a whistle-blowing investigation (under new Part 2B) that a concern is about a DSI matter. In such circumstances, the whistle-blowing investigation would cease and an investigation into the DSI matter under Part 2 of the 2002 Act would begin. Paragraph 5(5) confers a power on the Secretary of State (in practice, the Home Secretary), by regulations (subject to the negative procedure) to modify Schedule 3 for the purpose of protecting the anonymity of the whistle-blower during the subsequent Part 2 investigation.
- 620 Paragraph 6 sets out the arrangements at the end of a whistle-blowing investigation. The person in charge of the investigation must submit a report to the IPCC. A copy of the report must be sent to the whistle-blower and, subject to approval by the whistle-blower, to the appropriate authority. Paragraph 6(3) confers a power on the Secretary of State to set out in regulations (subject to the negative procedure) circumstances when the report must not be shared with the whistle-blower. Non-disclosure of the final report to the whistle-blower is limited to specific purposes set out in new section 29I(4). Paragraph 6(5) confers a power on the Secretary of State to set out in regulations (subject to the negative procedure) circumstances when the final report may be shared with the appropriate authority where the whistle-blower refuses to consent. Disclosure to the appropriate authority without the consent of the whistle-blower is limited for permitted disclosure purposes set out at new section 29J(4). The paragraph provides the IPCC with the ability to comply with their duty to provide final copies of the investigation report while still complying with section 21A, the protection of sensitive information.
- 621 Paragraph 7 sets out the ability of the IPCC to make recommendations to the force concerned at the end of a whistle-blowing investigation (under new section 2B). The paragraph confers a power on the Secretary of State to set out in regulation (subject to the negative procedure) the kinds of recommendations the IPCC could make, the persons to whom the recommendation may be made and permit the IPCC to seek a response to any recommendation made. It is envisaged the recommendations would include additional training, update to guidance or a change to operating procedures.

Chapter 4: Police Discipline

Section 29: Disciplinary proceedings: former members of police forces and former special constables

- 622 Section 50 of the 1996 Act provides a power to make regulations with respect to "the conduct, efficiency and effectiveness of members of police forces and the maintenance of discipline". Section 51 provides a power to make similar provision in respect of special constables. In exercise of these powers, the Police (Conduct) Regulations 2012 (2012/2632) prescribe, amongst other matters, the standards of professional behaviour for officers and special constables and procedures for investigating breaches of these standards and any subsequent disciplinary proceedings. These provisions do not apply to civilian police staff as their conditions of service and procedures linked to their conduct and performance are set locally and administered by individual forces.
- 623 The existing legislation applies to serving members of police forces and serving special constables and therefore ceases to apply when the person has left the force through retirement or resignation. At present, existing regulations (regulation 10A of the Police (Conduct)

Regulations 2012 (2012/2632)) stipulate that any of 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, unless there are exceptional circumstances.

- 624 *Subsection (2)* inserts new subsections (3A) to (3G) into section 50 of the 1996 Act, which allow for the procedures concerning disciplinary proceedings which apply to serving officers of police forces to be extended to former members of police forces in certain circumstances. New subsection (3A) sets out that regulations may provide for those procedures to apply to former officers where an allegation comes to the attention of a chief officer of police, local policing body or IPCC which relates to the individual's conduct, efficiency or effectiveness whilst he or she was serving with the police and the condition in new subsection (3B), (3C) or (3D) is satisfied.
- 625 The condition in new subsection (3B) is that the allegation comes to the attention of the chief officer (or other body) prior to the individual leaving the force. The condition in new subsection (3C) is that the allegation comes to the attention of the chief officer (or other body) after the individual leaves the force, but within a prescribed period of time after the individual has left. It is intended that this period, which will be prescribed in regulations, will be 12 months.
- 626 The condition in new subsection (3D) is that the allegation comes to the attention of the chief officer (or other body) after the individual leaves the force, and after the expiry of the prescribed period referred to above, but the allegation is such that, if proved, the person could have been dealt with by dismissal had he or she not left the force. Regulations made to deal with these cases are required by new subsection (3E) to provide that disciplinary proceedings may only be brought where the IPCC determines that it would be reasonable and proportionate to do so. In making that determination, the IPCC will have regard to: (a) the seriousness of the alleged misconduct, inefficiency or ineffectiveness, (b) the impact of the allegation on public confidence in the police; and (c) the public interest. New subsection (3F) provides that regulations may be made concerning the matters to be taken into account by the IPCC for the purposes of new subsection (3E)(a)-(c). These provisions are intended to capture the most serious and exceptional cases, where due to their nature and circumstances there is a need for accountability irrespective of when the matter has come to light.
- 627 New subsection (3G) states that regulations must provide that where disciplinary proceedings against a former officer are not the first set of proceedings taken against the person, they may only be taken if they result from a re-investigation of the allegation which commences within a prescribed period (beginning with the person's resignation or retirement). It is intended that this period, which will be prescribed in regulations, will be 12 months.
- 628 *Subsection (3)* replicates these provisions for former special constables.
- 629 These changes will mean that disciplinary proceedings can take place after the person concerned has left the force. In such cases, if the individual's conduct is found to amount to gross misconduct then, although he or she cannot be dismissed (having already left the force), a finding could be made that he or she would have been dismissed and, as a consequence, his or her name would be placed on the police barred list (see Schedule 8). These changes will allow for the removal of the current restrictions on those under investigation or subject to disciplinary proceedings (regulation 10A of the Police (Conduct) Regulations 2012).
- 630 Examples of how these provisions will work in practice are provided below.

Example 1:

Sergeant G is alleged to have committed gross misconduct because of offensive and inappropriate language used against a member of the public on social media, following an incident on-duty.

The investigation commences and a report into the incident is made, followed by the decision that Sergeant G has a case to answer for gross misconduct. Following the case to answer decision Sergeant G resigns from the force and the proceedings continue.

The disciplinary process concludes with a public misconduct hearing taking place, which former Sergeant G attends. The hearing panel finds former Sergeant G guilty of gross misconduct. Former Sergeant G is reported to the College of Policing so that his name can be entered onto the police barred list.

Example 2:

Superintendent K retires from her police force. Two months later it comes to light that Superintendent K submitted fraudulent expense claims over a period of five years, totalling several thousand pounds.

The force launches an investigation into the issue and finds there is a case to answer for gross misconduct and so arranges a misconduct hearing which former Superintendent K attends. At the hearing the panel finds that the counts are proven and had former Superintendent K still been serving, she would have been dismissed. Former Superintendent K is reported to the College of Policing so that her name can be entered onto the police barred list.

631 *Subsections (4), (5) and (6)* amend provisions relating to representation at disciplinary or appeal proceedings, appeals against dismissal and Police Appeals Tribunals respectively so that they apply to former members of police forces and former special constables.

632 *Subsection (7)* makes transitional provisions. It sets out, first, that regulations made under the new section 50(3A) or 51(2B) of the 1996 Act may not make provision regarding a person who resigns or retires before the coming into force of the relevant subsection. Second, it sets out that regulations may make provision for cases where the alleged misconduct took place before the commencement of the relevant subsection (but where the person resigns or retires after the coming into force of the subsection) only if the alleged misconduct is such that, if proved, there could be a finding that the person would have been dismissed had he or she not resigned or retired. *Subsection (8)* and Schedule 7 provide for the provisions of section 29 to be replicated for non-Home Department police forces (the Ministry of Defence Police, the British Transport Police and the Civil Nuclear Constabulary), which are governed by separate legislation.

Section 30: Police barred list and police advisory list

633 Section 30 and Schedule 8 combined create a new statutory list of persons barred from policing called the "Police Barred List", held by the College of Policing. The provisions also create a

These Explanatory Notes relate to the Policing and Crime Act 2017 (c. 3) which received Royal Assent on 31 January 2017

"Police Advisory List", which will include details of individuals who are under investigation for matters which could lead to their dismissal at the time that they resign or retire from the force, pending the outcome of the investigation or disciplinary proceedings. If the individual receives a finding of dismissal they will be added to the Police Barred List, if there is a lesser finding or no disciplinary proceedings are brought, the individual's details will be removed. The advisory list will also include police volunteers designated with policing powers who have been dismissed. The creation of these lists is achieved by inserting new Part 4A into the 1996 Act, which sets out the various provisions and requirements on those affected. The provisions created by new Part 4A require that any dismissals from a police force are reported to the College of Policing, which will hold this information and maintain a list of people barred from policing activity. Any person on this list will be prevented from being employed by or appointed to a position in a police force, the IPCC, HMIC and any other organisation specified in regulations.

634 An example of how these provisions will work in practice is below.

Example 1

Police constable X is alleged to have committed gross misconduct through excessive use of force against an individual in his custody. The matter is investigated by the force's professional standards department, at the conclusion of which a report into the incident is produced, followed by the decision that PC X has a case to answer in relation to gross misconduct and a public misconduct hearing takes place. The hearing panel, chaired by an independent legally-qualified chair, determines that PC X has committed gross misconduct and is dismissed without notice for the offence.

The appropriate authority provides a report to the College of Policing including the officer's name, rank, date of birth, warrant card number and details of conduct that led to the dismissal. PC X is added to the police barred list.

The officer's name and details of the case are made publically available for a period of five years.

635 *Subsection (1)* introduces Schedule 8, which inserts a new Part 4A (comprising sections 88A to 88M) into the 1996 Act, which includes the duties, procedures and provisions related to the administration and maintenance of the police barred list (sections 88A to 88H) and the police advisory list (sections 88I to 88M), as well as the effects of being an individual included on the lists or removal from them. *Subsections (3) to (5)* make consequential amendments to the 2011 Act to ensure that a person who appears on the police barred list cannot be appointed as the Commissioner or Deputy Commissioner of the Metropolitan Police or a chief constable.

636 *Subsection (6)* allows the Secretary of State to make regulations containing similar provisions to Schedule 8 for policing/law enforcement bodies not captured by Schedule 8, which will include, for example, non-Home Department Police Forces such as the British Transport Police, Civil Nuclear Constabulary and Ministry of Defence Police, as well as the National Crime Agency.

- 637 New section 88A of the 1996 Act creates a duty for the 'relevant authority'⁴² to report a member of a police force or a special constable where he or she is dismissed, or there is a finding that he or she would have been dismissed had he or she not resigned or retired (subsection (1)(a) and (b)). Subsection (1)(c) and (d) makes corresponding provision for civilian staff⁴³. A report must be made within such period as is specified in regulations and must include such information as is so specified (subsection (2)).
- 638 New sections 88I to 88M create similar provisions for the police advisory list. New section 88I requires the relevant authority to report a person to the College of Policing if the individual resigns or retires whilst under investigation for misconduct related matters which could lead to dismissal or before the disciplinary process concludes; or where an allegation relating to misconduct is received within a set period of time of an individual leaving the force. The duty to report the officer to the College of Policing will therefore only apply where there is an ongoing investigation. The period will be set out in regulations and is expected to be 12 months. This list is effectively an interim list to record information about people who resign or retire while under investigation or subject to proceedings. Once that process has concluded, if the person would have been dismissed, they are effectively transferred to the barred list, however if the matter is not proven or does not amount to gross misconduct they are simply removed from the police advisory list.
- 639 The police advisory list does not bar a person from being appointed but is made available for vetting purposes (new section 88K) should the individual seek employment with another policing body identified in new section 88K(3) (including chief constables, PCCs, HMIC and the IPCC) and as specified in regulations made by virtue of new section 88C(5)(e). These bodies are under a duty to consult the police advisory list before appointing or employing a person. A further report detailing whether misconduct liable to lead to dismissal was proven or no case was found is required where it is determined that no disciplinary proceedings will be brought, where the proceedings are withdrawn or where they conclude without a finding that the individual would have been dismissed (new section 88L). By virtue of section 41, police volunteers who are found to have committed gross misconduct will also be captured on the police advisory list.

42 For chief officers, the relevant authority is the relevant PCC, as the local policing body. In London this function falls to MOPAC for the Metropolitan Police and the Police Committee of the City of London Corporation for the City of London Police. For all other police officers, the relevant authority is the chief officer of the police force in which they serve.

43 Civilian staff (defined in subsection (4)) are those employed by a police force but who do not hold the office of constable and are not subject to the Police (Conduct) Regulations 2012, including the regulated disciplinary system. They are employees of the force, subject to contractual conditions and employment law.

Example 2

Inspector B is alleged to have committed gross misconduct by failing to respond appropriately to an incident and effectively exercise his duties, and subsequently including false and misleading information in written accounts and subsequent interviews.

An investigation is initiated by the force professional standards department. However, in the early stages of the investigation Inspector B resigns from the force.

On receipt of the letter of resignation, the chief constable provides a report to the College of Policing that Inspector B has resigned whilst under investigation. This information is held on the police advisory list pending the conclusion of the investigation and any subsequent proceedings. It is available for vetting purposes.

The investigation continues and, at its conclusion, a report into the incident is made, followed by the decision that Inspector B has a case to answer in relation to counts of gross misconduct.

During this time, Inspector B has sought to apply for a position of similar rank with a neighbouring force. During the course of the recruitment process, the neighbouring force contacts the College of Policing as part of the vetting process. The force considers the information provided by the College and decides not to appoint Inspector B.

A public misconduct hearing finds that Inspector B has committed one count of gross misconduct and a further count of misconduct and makes a finding that had he still been serving, he would have been dismissed without notice for the offence.

The chief constable provides a further report to the College of Policing including the former inspector's name, rank, date of birth, warrant card number and details of conduct that led to the dismissal. Inspector B is added to the police barred list.

640 New section 88B places a duty on the College of Policing to maintain a list of people who are reported to it under new section 88A (subsection (1)) and for that list of individuals to be known as the police barred list (subsection (2)). Subsection (3) sets out that the list must include such information in relation to a person reported under section 88A as is specified in regulations (subsection (4)).

641 New section 88C sets out the effects and consequences of being included on the police barred list, that is, being a "barred person". New section 88C(2) places a requirement on certain individuals and bodies (subsection (5)) including chief officers and local policing bodies, HMIC and the IPCC to consult the police barred list before employing or appointing any person. Subsection (3) prohibits those individuals and bodies from employing or appointing a barred person. New section 88C(5)(e) allows regulations to specify additional persons or bodies which carry out policing or law enforcement functions who must not appoint barred persons to those organisations. This is to prevent individuals who have been dismissed from policing from undertaking similar roles or functions similar to that of police in other organisations. New section 88K sets out the effects of inclusion on the police advisory list. Inclusion on the list does not bar a person from being appointed or employed by a policing body. However, the bodies named above are required to consult the police advisory list as part of their vetting process.

- 642 *Subsection (3) and (4)* of section 30 places a similar duty on the Home Secretary not to recommend to Her Majesty the appointment of a person as commissioner and deputy commissioner of the Metropolitan Police if that person has been barred from policing. *Subsection (5)* in turn places a similar duty on PCCs in respect of the appointment of chief constables for police forces outside of London.
- 643 New section 88D places similar duties to those imposed by new section 88C on organisations which carry out both policing/law enforcement functions, as well as other functions and who are identified in regulations made under new section 88C(5)(e). This is to ensure that if an individual is to be transferred internally or seconded to a role which relates to policing or law enforcement functions, the organisation must check with the College of Policing before making the appointment (subsection (4)). For example, if a person was carrying out a back-office or non-public function not related to policing and law enforcement but sought to transfer to a front-line or operational role which meets the specified criteria and is on the barred list, they could not take up that role or carry out those functions. New section 88E prohibits a chief constable, local policing bodies and others (new section 88C(5)) from entering into contracts which would permit a barred person from carrying out a role from which they would be barred if they were directly employed. It is expected that contracts between police forces and private sector providers of policing related services will include standard conditions to prevent barred persons from being engaged as part of such a contract.
- 644 New section 88F sets out the process for removal of an individual's name from the police barred list where an individual has been successful upon appeal to the Police Appeals Tribunal (subsection (1)(a) and (b)) or following a finding of unfair dismissal (subsection (1)(c) and (d)) on appeal or by an employment tribunal.
- 645 The relevant authority must report such decision/finding to the College of Policing (subsection (2)), within a period of time and containing information to be specified in regulations (subsection (3)). Subsection (4) requires the College of Policing to remove the person from the list where such a report is received. Subsection (5) allows regulations to set out other circumstances in which a person's name must be removed from the police barred list. New section 88L creates similar provisions for an individual to be removed from the police advisory list where it is found that the person had not committed gross misconduct and would not have been dismissed (subsection (1)) or in other circumstances specified in regulations (subsection (6) and (7)). In these circumstances, the relevant authority must make a report to the College of Policing (subsection (2)) within such period and containing such information as specified in regulations (subsection (3)). New section 88G makes provision regarding the publication of information on the police barred list. If information which appears on the police barred list is of a description specified in regulations, and relates to a description of person so specified, the College must publish it (subsections (1) and (2)). The intention is to specify only certain information relating to members of police forces and special constables and former members of police forces and former special constables (that is, not civilian staff). The period of publication is limited to five years from the date the individual is added to the list (subsection (3)(c)) after which the details must no longer be published (subsection (3)(d)).
- 646 New subsection 88G(4) allows for regulations to be made making exceptions to the publication requirements. As set out in subsection (5), these regulations may stipulate that information should never be published (subsection (5)(a)) or that information should cease to be published before the end of the five year period (subsection (5)(b)). This may be appropriate in certain limited circumstances, these may, for example, include following the death of an individual on the barred list or in response to a court order.
- 647 New section 88H allows the College of Policing to disclose to any person information contained on the police barred list, where it considers that to be in the public interest. This

provision is replicated for the police advisory list in section 88M.

Section 31: Appeals to Police Appeals Tribunals

- 648 This section amends Schedule 6 to the 1996 Act. This Schedule determines the composition of Police Appeals Tribunals (“PATs”). Such tribunals hear appeals made by police officers against any disciplinary finding and/or outcomes imposed at a misconduct meeting, misconduct hearing or special case hearing under the Police (Conduct) Regulations 2012, and in the case of non-senior police officers under the Police (Performance) Regulations 2012.
- 649 At present, a PAT consists of three panel members who are appointed by the local policing body (for non-senior officers) or the Secretary of State (for senior officers). Under Schedule 6 to the 1996 Act, a PAT which considers an appeal by a senior police officer must comprise a chair chosen from a list of persons nominated by the Lord Chancellor and appointed by the Home Secretary; a panel member from HMIC; and a panel member who is a Home Office director. In the case of the consideration of appeals by non-senior officers, the panel must have a chair chosen from a list of persons nominated by the Lord Chancellor and appointed by the Home Secretary; a panel member who is a serving police officer; and a panel member who is a retired police officer.
- 650 *Subsection (2)* amends Schedule 6 so that the ‘relevant person’ governs the appointment of the PAT in appeals made by a senior officer, rather than solely the Secretary of State. *Subsection (3)* replicates this change for appeals made by non-senior officers rather than the relevant local policing body as is the case at present.
- 651 *Subsection (3)(c)* changes the composition of PATs in appeals made by non-senior officers, where the existing retired police officer panel member will be replaced with a lay member who is independent of the police. The composition of PAT panels for senior officers will remain the same.
- 652 *Subsection (4)* allows the Secretary of State to make rules enabling the relevant person who appoints the PAT panel to differ according to each case and circumstance and, where necessary, to delegate their existing responsibility. Rules could allow the delegation of this responsibility to the appropriate authority of another force, or another body, to facilitate collaboration on the administration of PATs across multiple forces.
- 653 *Subsection (5)* defines the lay person as a person who is not, and has never been, a member of a police force or special constable within the United Kingdom or civilian police staff within England and Wales, a member of staff within a local policing body or individuals who have served within the national police forces of the British Transport Police, Civil Nuclear Constabulary or Ministry of Defence Police.
- 654 *Subsection (6)* makes consequential amendments as a result of these changes to Part 1 of Schedule 22 to the Criminal Justice and Immigration Act 2008 and Part 1 of Schedule 16 to the 2011 Act.

Section 32: Guidance concerning disciplinary proceedings and conduct etc

- 655 *Subsection (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. 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).
- 656 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 –

These Explanatory Notes relate to the Policing and Crime Act 2017 (c. 3) which received Royal Assent on 31 January 2017

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.

657 The amendments to section 87 of the 1996 Act, made by *subsections (2), (4) and (5)* (read with section 41(2)) provide 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.

658 *Subsection (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.

659 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) Regulations 2012, are the starting point for misconduct investigations and disciplinary proceedings as misconduct is defined as a breach of professional standards.

660 *Subsection (7)* inserts new section 87A into the 1996 Act. New section 87A(1) enables the Secretary of State, in practice the Home Secretary, to issue guidance as to matters of conduct, efficiency and effectiveness to members of police forces, special constables and police staff and volunteers. Whereas section 87 guidance will concern the discharge of disciplinary functions (and will 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.

661 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.

Chapter 5: IPCC: Re-naming and Organisational Change

Section 33: Independent Office for Police Conduct

662 The IPCC was established under the 2002 Act and formally became operational on 1 April 2004. Section 9 of the 2002 Act sets out the organisational structure of the corporate body of the IPCC ("the Commission") which consists of a Chair, appointed by Her Majesty, and not less than five other members, appointed by the Secretary of State.

663 Section 33 amends section 9 of the 2002 Act by providing for the IPCC to continue to exist and to be renamed as the Independent Office for Police Conduct ("IOPC"). The section also replaces the existing Commission structure with a new corporate structure ("the Office") consisting of a Director General and at least six other members. The other members must consist of persons appointed as non-executive members and employee members but with the requirement that a majority of the Office must be non-executive members.

664 The Director General is to be appointed by Her Majesty The Queen and the non-executive members are to be appointed by the Secretary of State. Employee members will be appointed by the non-executive members on the recommendation of the Director General.

665 Presently, section 9(3) of the 2002 Act sets out a number of conditions and restrictions on the appointment of a person as a member of the Commission. The conditions include that the Chair and other members cannot have held office as a constable in any part of the United Kingdom or have worked for another specified law enforcement body such as the NCA. *Subsection (6)* provides that such restrictions will apply to the Director General.

666 The section also introduces Schedule 9 to the Act setting out further detailed changes to Schedule 2 to the 2002 Act along with minor and consequential amendments, including changes to Schedule 3 to the 2002 Act which deals with investigations by the IPCC.

Schedule 9: Independent Office for Police Conduct

667 Part 1 of Schedule 9 amends Schedule 2 to the 2002 Act. It provides for establishing specific organisational and governance arrangements for the Office including: the processes and conditions for the appointment of members of the Office (the Director General, non-executive members and employee members); remuneration arrangements; arrangements for the appointment of the Office's staff; the delegation of the Director General's functions; the protection of the Director General from personal liability; arrangements and conditions for setting up regional offices; and arrangements for the proceedings of the corporate body, including the requirement to establish an audit committee.

668 *Paragraph 11* inserts new paragraph 6A into Schedule 2 to the 2002 Act to provide the Director General with various powers of delegation. These provisions reflect the new structure of the IOPC in which all of the existing functions of the IPCC, including its investigative functions, will become functions of the Director General. To support the efficient and effective carrying out of those functions, the Director General will, in practice, need to be able to delegate tasks and functions to members of staff, while ultimately remaining accountable.

669 New paragraph 6A(1) and (3) provides the Director General with a general power to delegate functions and to authorise a person to exercise any of the Director General's function on behalf of the Director General.

670 New paragraph 6A(2) provides for the categories of person who the Director General may authorise to carry out a function, namely - employee members of the Office, staff of the IOPC and constables on secondment. New paragraph 6A(4) and (5) provide for the arrangements that may be put in place, and the extent to which a function may be delegated – for example to its full extent or subject to certain conditions specified by the Director General.

671 New paragraph 6A(6) provides the Director General with a power to specify that "restricted persons" may not exercise "designated functions" (as defined in paragraph 6A(7)(a) and (b)). A restricted person is a person who falls within section 9(3) of the 2002 Act, that is, a person who has held the office of constable in any part of the UK or who has worked for a specified law enforcement agency.

672 Presently, all members of the Commission must not be restricted persons and, in future, the Director General must not be a restricted person. No such legislative bar exists for any employees of the IPCC, and the organisation currently employs a number of individuals, including investigative staff, who have held the office of constable or who are serving constables on secondment from their force.

673 As members of the Commission itself cannot have held the office of constable, any work undertaken by the IPCC's staff is ultimately overseen by a person who is independent from the

police, and the Commission is ultimately accountable for investigation decisions. In the new governance structure, the Director General will be the "single-head" and also must not have held the office of constable. The Director General will take on all the functions of the IPCC, including investigative functions, and therefore ultimately the work of the IOPC's staff will be overseen by a person who is independent from the police and accountable for investigation decisions.

- 674 The provisions in new paragraph 6A, and in particular sub-paragraphs (6) to (8), provide for the Director General to determine, as he or she considers appropriate, the roles and tasks, that is, "designated functions", that may or may not be carried out by a person who has held the office of constable (that is, a "restricted person"). These provisions are designed to support the Director General in carrying out his or her functions; with particular regard to the function to secure that public confidence is established and maintained in the police complaints system, and to ensure that arrangements for handling complaints manifest an appropriate degree of independence.
- 675 New paragraph 6A(7)(a) provides that, in determining whether a function is a "designated function", the Director General may in particular make reference to the position or seniority of members of staff. This provides for the Director General to be able to determine that a particular function is a designated function if being performed at a certain level of seniority (for example, a particular function related to investigations).
- 676 New paragraph 6A(8) provides for the Director General to determine the circumstances when a restricted person is to be treated as not being a restricted person whether generally or in respect of a particular function and, therefore, not prevented from carrying out a designated function.
- 677 To provide transparency in the exercise of the Director General's powers of delegation, new paragraph 6A(9) and (10) provide that the Director General must publish a statement of policy about how he or she proposes to exercise their powers under paragraph 6A(7)(a) and (8), and for requirements on the information that should be included in the statement.
- 678 New paragraph 6A(11) provides that the powers conferred on the Director General under new paragraph 6A(7)(a) and (8) are subject to any regulations of the kind mentioned in section 23(2)(g) of the 2002 Act. This section provides the Secretary of State with a power to make regulations limiting the persons who may be appointed to carry out or assist with investigations.
- 679 New paragraph 6A(12) to (14) provides for the Director General to exercise a function himself or herself and also provide that, anything done or not done by a person authorised to carry out a delegated function, is to be treated as having been done or not done by, or in relation to, the Director General. New paragraph 6A(14) provides for an exception in cases of any criminal proceedings brought in respect of anything done or not done by the authorised person.
- 680 Part 2 of Schedule 9 provides for further minor and consequential amendments to the 2002 Act. *Paragraph 56* provides for amendments to Schedule 3 to the 2002 Act (handling of complaints and conduct matters). Presently, the Commission and persons appointed to investigate cases have a number of distinct roles in the investigation process. For example, decisions, such as whether to refer a matter to the Crown Prosecution Service, are taken by the Commission but responsibility and accountability for the investigation and the report, upon which such decisions are taken, rests with the individual investigator. The amendments to Schedule 3 provide for the Director General to be responsible for investigations and investigation decisions, and that persons to whom the Director General delegates powers to carry out investigations are exercising those powers on behalf of the Director General.

681 Part 3 provides for minor and consequential amendments to other Acts of Parliament.

Section 34: Exercise of functions

682 *Subsection (2)* amends section 10 of the 2002 Act (which sets out the general functions of the IPCC) and provides for all the current investigatory and other functions of the IPCC to be functions of the Director General. This includes the function to secure that public confidence is established and maintained in the system of police complaints.

683 *Subsection (6)* inserts new sections 10A to 10D into the 2002 Act. New section 10A provides for the functions of the corporate body, "the Office", which include: ensuring that it has in place appropriate arrangements for good governance and financial management; determining and promoting the organisation's strategic aims and values; providing support and advice to the Director General in carrying out his or her functions, and to monitor and review the carrying out of the Director General's functions.

684 *Subsection (4)* inserts new subsection (5A) into section 10 which provides that, in carrying out his or her functions, the Director General must have regard to any advice provided by the Office under the new section 10A(1)(c).

685 New section 10B introduces a duty for the Director General and the Office to carry out their functions efficiently and effectively. New sections 10C and 10D contain provisions about the relationship between the Director General and the Office.

686 New section 10C provides for the Director General and the Office jointly to prepare a strategy for the exercise of their functions, including planned use of resources. The strategy will serve as a business plan for the Office and Director General. New section 10C(1) provides that the strategy must be reviewed and, if appropriate, revised at least every 12 months. New section 10C(2) provides that the strategy must set out how the Director General and the Office propose to carry out their functions in the period covered the strategy. New section 10C(3) provides that the strategy is to include a plan for the use of resources for the carrying out of the functions of the Director General and the Office, during the period covered by the strategy. New section 10C(4) and (5) provides that the Director General and the Office must each give effect to the strategy and jointly publish the strategy stating the time from which it takes effect.

687 New section 10D provides for the Director General and the Office to prepare jointly a code of practice dealing with the relationship between them. New section 10D(2) provides that in drawing up the code, the Director General and the Office must in particular seek to reflect the principle that the Director General is to act independently in carrying out his or her functions. New sections 10D(3) and (4) set out the provisions which must be included in the code. New sections 10D(5) to (7) provide that the Director General and the Office must jointly review the code regularly and, as appropriate, revise it, that they must each comply with the code and jointly publish a code (or revised code) stating the time from which it takes effect.

Section 35: Public records

688 This section provides for the IOPC to be listed in Schedule 1 to the Public Records Act 1958. The effect is that records of the IOPC will become 'public records', whether they were created before or after this section comes into force and whether the records were created in the name of the IOPC or the IPCC.

Chapter 6: Inspection

Section 36: Powers of inspectors to obtain information, access to police premises etc

- 689 Section 54(2) of the 1996 Act provides for HMIC to inspect and report on the efficiency and effectiveness of police forces in England and Wales. Schedule 4A to the 1996 Act gives the inspectors of constabulary powers to require information from a chief officer and access to force premises in support of this function.
- 690 *Subsection (1)* replaces paragraphs 6A and 6B of Schedule 4A to the 1996 Act and inserts in their place, new paragraphs 6A to 6F. The existing paragraph 6A requires the chief officer of a police force to provide information to inspectors of constabulary for the purposes of a section 54 inspection. Similarly, paragraph 6B requires the chief officer of a police force to allow inspectors access to any premises occupied by the force for the purposes of a section 54 inspection.
- 691 The revised paragraph 6A extends the inspectors of constabulary's ability to obtain information that they reasonably require for the purposes of a section 54 inspection from any person by serving them with a notice requiring the provision of that information. This is intended to reflect the fact that policing is delivered in increasingly diverse ways by multiple organisations, including in partnership with other local agencies, private sector companies and potentially in future by staff in PCCs' offices.
- 692 The revised paragraph 6B extends the types of premises to which the inspectors of constabulary can require access, to include the premises of persons providing services to assist the police force under a contractual arrangement, and to the premises of local policing bodies, in so far as the inspectors of constabulary can reasonably require such access for the purposes of the section 54 inspection.
- 693 The revised paragraphs 6A(11) and 6B(5) extend the definition of 'inspector' to include a person authorised by an inspector of constabulary to act on their behalf, for example, a member of staff of HMIC.
- 694 New paragraph 6C enables HMCIC to certify to the High Court that a person has failed to comply with a notice under revised paragraphs 6A or 6B. It enables the High Court to inquire into the matter and, where appropriate, deal with the person as if they had committed a contempt of court. Under the Contempt of Court Act 1981 the maximum penalty for contempt of court is two years' imprisonment.
- 695 New paragraph 6D provides that a person, other than the police bodies listed, on whom a notice is served under paragraph 6A, may appeal to the First-tier Tribunal against that notice on the ground that the notice is not in accordance with the law. If an appeal is brought, the notice has no effect until the appeal is withdrawn or determined. The Tribunal may quash the notice, or give directions regarding the service of a further notice. The right of appeal does not extend to those involved in delivering policing functions as set out in new paragraph 6D(2A).
- 696 New paragraph 6E sets out that, should an inspector receive sensitive information, they must not disclose that information or the fact that they have received it without the relevant authority's consent. The new paragraph 6E also sets out the type of information that the restrictions relate to. These restrictions apply equally to an inspector of constabulary and to any person authorised by an inspector to receive information on his or her behalf.
- 697 New paragraph 6F requires a person who provides an inspector with intelligence service information to make the inspector aware that the information is intelligence service or protected information relating to a relevant warrant, or to provide the inspector with enough information to identify the authority responsible for the information.

Section 37: Inspectors and inspections: miscellaneous

- 698 *Subsection (1)* inserts a new subsection (7) into section 54 of the 1996 Act. New subsection (7) defines a 'police force' for the purposes of section 54 of that Act and therefore the scope of HMIC's remit. The new definition includes staff appointed by the chief officer of the police force; PCC staff if, or to the extent that, they are employed to assist the police force; and persons contracted to assist the police force.
- 699 Section 55 of the 1996 Act provides for the publication of HMIC reports. *Subsection (2)* inserts new subsections (5A) and (5B) into section 55. New subsection (5A) introduces a 56 day time limit for a PCC to prepare and publish their comments on HMIC reports. New subsection (5B) introduces a new requirement for a PCC's comments to address each recommendation made in an HMIC report. These new provisions will bring the requirements relating to HMIC reports into line with those relating to IPCC reports and Coroners' 'Action to prevent other deaths notices'.
- 700 Section 55(6) of the 1996 Act currently requires PCCs to send a copy of their comments in response to an HMIC report to the Secretary of State (in practice, the Home Secretary). *Subsection (3)* amends this to require PCCs to also send a copy of their comments to HMIC. This will ensure that HMIC is aware of all PCCs' responses to their reports.
- 701 Currently section 56 of the 1996 Act requires the Home Secretary to appoint Assistant Inspectors of Constabulary ("AICs"). *Subsection (4)* amends section 56 to transfer responsibility for AIC appointments to the chief inspector of constabulary. This will enable HMIC to respond more flexibly to emerging resource requirements.
- 702 *Subsection (5)* amends paragraph 2 of Schedule 4A to the 1996 Act. Paragraph 2 currently requires HMCIC to prepare an inspection programme and inspection framework. *Subsection (5)(a)* and *(b)* move the requirement from HMCIC to the inspectors of constabulary. This is intended to reflect the fact that HMIC inspections are undertaken by all of the HMIs rather than HMCIC specifically. *Subsection (5)(c)* inserts new sub-paragraphs (6) and (7) into paragraph 2 of Schedule 4A, these will enable HMCIC to initiate inspections outside of the inspection programme referred to in paragraph 2(1)(a). This is intended to allow HMIC greater flexibility to respond to emerging risks and issues.
- 703 *Subsection (6)* inserts new subsections (1A) and (1B) into paragraph 4 of Schedule 6 to the 2013 Act. Paragraph 4 of that Act requires the Director General of the NCA to prepare comments on any HMIC inspection of the NCA. New paragraph 4(1A) requires these comments to be prepared within 56 days of the report being published by the Secretary of State (in practice the Home Secretary). New paragraph 4(1B) requires these comments to address each recommendation made by HMIC. This is intended to bring the requirements relating to NCA responses to HMIC reports into line with the new requirements relating to PCC comments as provided for in subsection (2).

Part 3: Police Workforce and Representative Institutions

704 With limited exceptions, this Part forms part of the law of England and Wales. The exceptions relate to section 39(3) which extends and applies to Great Britain and to section 45 and Schedule 12, where certain amendments relating to the powers of BTP civilian staff extend and apply to Great Britain.

Chapter 1: Police workforce

Section 38: Powers of police civilian staff and police volunteers

705 Chapter 1 of Part 4 of the 2002 Act (exercise of police powers etc. by civilians) enables chief officers to confer certain powers on their civilian staff by designating them to undertake specific functions in four categories: community support officer (commonly known as PCSOs); investigating officer; detention officer; and escort officer. This section extends the powers of chief officers of police to designate powers on their staff and introduces for the first time a power to designate powers on volunteers.

706 *Subsection (2)* replaces subsection (1) of section 38 of the 2002 Act, with the effect of enabling a chief officer to designate a member of staff as either or both of a community support officer or a policing support officer; and new section 38(1A) provides that a chief officer may designate a police volunteer as either or both of a community support volunteer or a policing support volunteer.

707 *Subsections (3) and (10)* repeal section 38(5A) to (6A) and section 38A of the 2002 Act, which provide for PCSOs to be designated, as a minimum, with a list of standard powers. In future, it will be a decision for each chief officer as to which powers their PCSOs will have.

708 *Subsection (4)* inserts new subsections (6B) to (6F) into section 38 of the 2002 Act, regarding the powers and duties that can be conferred on a person designated under section 38 of the 2002 Act. New subsection (6B)(a) provides that such a person may be given any power or duty of a constable, other than a 'core' power or duty specified in Part 1 of new Schedule 3B to the 2002 Act (excluded powers and duties), inserted by Schedule 10. Part 2 of new Schedule 3B provides that, when a designated staff member or volunteer is given a power of a constable, the various statutory provisions are interpreted in such a way as to ensure the power works as intended.

709 The list of core or excluded powers includes powers of arrest, stop and search and those under terrorism legislation, for example the power to apply for a search warrant under Schedule 5 to the Terrorism Act 2000 as part of a terrorism investigation.

710 New subsection (6B)(b) provides that, where the person is designated as a PCSO or a community support volunteer, they may be given any power or duty set out in new Schedule 3C to the 2002 Act (inserted by Schedule 11). New Schedule 3C carries over, with minor modifications, those powers currently set out in Part 1 of Schedule 4 to the 2002 Act (which is repealed by paragraph 5(3) of Schedule 12) that are available to be designated to PCSOs and that are not powers of a constable (for example, the power in paragraph 7 of new Schedule 3C to the 2002 Act to detain a person in certain circumstances pending the arrival of a constable).

711 New section 38(6C) of the 2002 Act confers on the Secretary of State a power, by regulations (subject to the affirmative procedure), to amend new Schedule 3B in order to add to the list of core powers and duties of constables, that is those powers which may not be designated on staff or volunteers.

712 New section 38(6D) introduces Part 2 of new Schedule 3B to the 2002 Act, which sets out how the new designation of powers will work in practice, including providing a regulation-making power (subject to the negative procedure) at paragraph 8(2) to modify an enactment to ensure

that a constable power works as intended when used by a designated member of police staff or volunteer.

713 New section 38(6E) and (6F) of the 2002 Act provide that, when designating a staff member or volunteer, a chief officer may limit the extent to which a police power or duty given to that person may be exercised.

714 *Subsection (5)* inserts new subsection (7A) into section 38 of the 2002 Act, which provides that a police volunteer's designation under section 38 can be subject to restrictions and conditions, which would be specified in the designation. For example, if a volunteer was based in a particular locality, their designation could be restricted to that locality and its surrounding area.

715 *Subsections (6) and (7)* insert new subsections (9A) to (9C) into section 38 of the 2002 Act. New section 38(9A) provides that chief officers must ensure that no one designated under section 38 is authorised to use a firearm, within the meaning given by section 57(1) of the 1968 Act (which includes a conducted energy device, commonly referred to as a Taser), in carrying out their designated role.

716 New subsection 38(9B) creates an exception from new subsection (9A), ensuring designated staff and volunteers can, at the discretion of the chief officer, be equipped with and, where necessary, use CS or PAVA sprays (subsection (9B)(a)); in addition, they may carry and use, in accordance with appropriate instructions, a weapon for a purpose specified in regulations made by the Secretary of State (subsection (9B)(b)); or a weapon of a description specified in regulations made by the Secretary of State, whether generally or for a specified purpose (subsection (9B)(c)). This enables the issue of appropriate self-defence devices in future, once such a device has been tested and authorised. Given the potential scope of this power, new section 38(9C) provides that regulations as described under subsections (9B)(b) and (c) will be subject to the affirmative procedure.

717 *Subsection (8)* inserts new section 38(12) into the 2002 Act, to define a "police volunteer" as a person who is under the direction and control of the chief officer making a designation under section 38(1A) and who is not a constable, a special constable or a relevant employee.

718 Subsection (8) also inserts new section 38(13) into the 2002 Act, which provides that, for the purpose of subsection 38(12), a person is to be treated as a relevant employee only in relation to times when the person is acting in the course of their employment with that employer; in other words they cannot use any powers designated to them as an employee if they are not "on duty".

Section 39: Application of Firearms Act 1968 to the police: special constables and volunteers

719 This section makes necessary consequential amendments to the 1968 Act to ensure that police civilian volunteers are 'in the service of Her Majesty' for the purposes of that Act and therefore makes clear that these staff do not need a certificate or authorisation under section 1 or 5 of the 1968 Act in order to carry a defensive spray. The section puts community support volunteers and policing support volunteers in the same position as police officers and police civilian staff. It also removes any ambiguity regarding special constables (that could have been caused by inserting specific reference to other types of police volunteers, that is, civilian volunteers) by making it explicit on the face of the 1968 Act that special constables are members of a police force for the purpose of that Act and therefore similarly do not require a certificate or authorisation under the 1968 Act when equipped with a defensive spray.

720 *Subsection (2)(a)* inserts new paragraph (ba) into section 54(3) of the 1968 Act, with the effect of

clarifying that a community support volunteer or a policing support volunteer designated under section 38 of the 2002 Act by the chief constable of a police force is included in the definition of a person who is deemed to be in the service of Her Majesty for the purposes of the 1968 Act.

721 *Subsection (2)(b)* inserts new paragraph (g) into section 54(3) of the 1968 Act, with the effect of clarifying that a community support volunteer or a policing support volunteer designated under section 38 of the 2002 Act by the chief constable of the British Transport Police Force is included in the definition of a person who is deemed to be in the service of Her Majesty for the purposes of the 1968 Act.

722 *Subsection (3)* amends section 57(4) of the 1968 Act to provide that, regarding England and Wales, 'member of a police force' means a constable of a police force or a special constable appointed under section 27 of the Police Act 1996, while for Scotland 'member of a police force' means a constable within the meaning of section 99 of the Police and Fire Reform (Scotland) Act 2012. *Subsection (3)* also clarifies that 'member of the British Transport Police Force' includes a special constable appointed under section 25 of the Railways and Transport Safety Act 2003.

Section 40: Training etc of police volunteers

723 This section provides powers to the College of Policing to issue guidance about the designation and training of volunteers who are to be given powers under these provisions. *Subsection (1)* inserts new section 53F (Guidance about designated police volunteers) into the 1996 Act, which enables the College of Policing to issue guidance on relevant experience and qualifications that it would be appropriate for a person to have before being designated as a community support volunteer or a policing support volunteer, and the training that should be undertaken by said volunteer before or after being designated.

724 New section 53F(3) provides that any such guidance issued by the College of Policing, including any revisions, must be published, while new section 53F(4) provides that each chief officer of police must have regard to any such guidance issued by the College of Policing under this section in making appointments and issuing designations.

725 Section 97 of the Criminal Justice and Police Act 2001 provides for the Secretary of State to make regulations about police training. *Subsection (2)* extends that regulation-making power to include designated volunteers in the police training regulations.

726 In consequence of these provisions, *paragraph 3* of Schedule 12 repeals the obsolete section 45 of the 2002 Act, which enabled the Secretary of State to issue a code of practice around the designation process for staff, but which was never brought into force. Schedule 12 also makes a number of other consequential changes to other legislation to take account of the changes made by section 37, including to provisions relating to collaboration agreements between forces (paragraphs 1 and 10).

Section 41: Police volunteers: complaints and disciplinary matters

727 In the current police complaints system, police volunteers are not subject to the provisions for dealing with complaints under Part 2 of the 2002 Act. This means that any complaints made against a volunteer or any conduct issues identified are handled how the relevant force sees fit.

728 Section 41 amends section 12 of the 2002 Act to bring volunteers designated as community support volunteers or investigation support volunteers (and who have certain powers of the constable conferred on them - see section 38) within the definition of individuals serving with the police. This means that those volunteers will be subject to the police complaints system as set out in Part 2 of the 2002 Act.

729 *Subsection (2)* amends new section 87(4A)(a) of the 1996 Act (as inserted by section 32) to allow the Secretary of State to issue statutory guidance about functions in relation to the conduct, efficiency and effectiveness of community support volunteers and investigation support volunteers. *Subsection (3)* provides that, where such guidance is issued, those to whom the guidance is issued must have regard to it and a failure to have regard to the guidance will be admissible as evidence in the disciplinary proceedings.

Section 42: Police volunteers: police barred list and police advisory list

730 This section amends the new Part 4A of the 1996 Act inserted into that Act by Schedule 8 to this Act.

731 *Subsection (2)* imposes a duty on a chief officer to check that a person does not appear on the police barred list before designating him or her as a community support volunteer or a policing support volunteer. If the person is barred they may not be so designated. The intention is to prevent someone who has been dismissed as a police officer, special constable or designated member of police staff from being designated as a police volunteer. If the person appears on the police advisory list there is no bar on designating that person as a police volunteer, but the chief officer would be expected to take such information into account in deciding whether to proceed with the designation.

732 *Subsection (3)* places a duty on a chief officer to report to the College of Policing that the designation of a police volunteer has been withdrawn for reasons relating to his or her conduct, efficiency or effectiveness. There is a similar duty to report to the College where a person stops volunteering as a police volunteer before an investigation about an allegation relating to his or her conduct, efficiency or effectiveness has been completed. A person so reported would have his or her name recorded on the police advisory list.

733 *Subsection (5)* extends the regulation-making power in new section 88L(7) of the 1996 Act (inserted by Schedule 8) so as to require the Secretary of State, by regulations, to prescribe the circumstances in which the name of a former police volunteer must be removed from the police advisory list.

Section 43: Police volunteers: inspection

734 This section amends section 54 of the 1996 Act to make clear that, for the purposes of section 54, police volunteers are within the meaning of 'police force' in certain circumstances. *Subsection (1)* has the effect that police volunteers can be inspected by HMIC under section 54. *Subsection (2)* clarifies that those designated as community support volunteers or police support volunteers may not appeal against a notice requiring information or access to premises, in the same way as any other individual who is part of a police force for the purposes of section 54. This aligns with other provisions within the Act which seek to ensure that policing volunteers who are designated with powers are in the same position as other members of a police force.

Section 44: Restrictions on designated persons acting as covert human intelligence sources

735 Section 29 of the Regulation of Investigatory Powers Act 2000 ("RIPA") provides for the authorisation of the conduct or use of a covert human intelligence source. This section inserts new subsection (6A) into section 29 of RIPA, to provide that a staff member or volunteer, who is designated under section 38 of the 2002 Act, cannot be authorised to act as a covert human intelligence source, where such an authorisation would require or enable them to establish contact in person. This means that a designated staff member or volunteer would not be able to work undercover face to face, but could do so online, for example, as part of an online child sexual abuse investigation.

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Section 45: Further amendments consequential on section 38 etc

736 This section introduces Schedule 12 which makes consequential amendments on section 38.

Schedule 12: Powers of civilian staff and volunteers: further amendments

737 Part 1 of Schedule 12 makes further amendments to the 2002 Act consequential on the provisions in section 38.

738 Part 2 makes further amendments to other enactments consequential on the provisions in section 38.

739 Part 3 makes minor correcting amendments to the 2002 Act to take account of the new definition of anti-social behaviour introduced by section 2(1) of the Anti-social Behaviour, Crime and Policing Act 2014 ("the 2014 Act"). That section defined anti-social behaviour for the purposes of Part 1 of the 2014 Act as:

- conduct that has caused, or is likely to cause, harassment, alarm or distress to any person,
- conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, or
- conduct capable of causing housing-related nuisance or annoyance to any person."

740 This definition was then applied elsewhere in the 2014 Act and to other enactments, including (by virtue of paragraph 31 of Schedule 11 to the 2014 Act) to section 50 of the 2002 Act. Section 50 of the 2002 Act confers on a constable in uniform the power to require a person who is acting or has been acting in an anti-social manner to give their name and address. The amendment made by the 2014 Act to section 50 of the 2002 Act inadvertently referred to "acting in an anti-social manner" rather than "engaging in anti-social behaviour" (as under the new provisions of the 2014 Act). Sub-paragraphs (2) and (3) amend section 50 of the 2002 Act so that the power to require a person's name and address applies where that person has engaged, or is engaging, in anti-social behaviour (as defined by reference to section 2 of the 2014 Act).

741 Paragraph 3 of Schedule 5 to the 2002 Act enables a person accredited under a community safety accreditation scheme to exercise the power of a constable under section 50 of the 2002 Act "to require a person whom he has reason to believe to have been acting, or to be acting, in an anti-social manner (within the meaning of section 1 of the Crime and Disorder Act 1998 (c. 37) (anti-social behaviour orders))." Sub-paragraphs (4) to (7) similarly amend paragraph 3 of Schedule 5 to the 2002 Act to correct the reference to "acting in an anti-social manner", and also to apply the new definition of anti-social behaviour set out in the 2014 Act.

Section 46: Removal of powers of police in England and Wales to appoint traffic wardens

742 Sections 95 to 97 of the Road Traffic Regulation Act 1984 confer powers on chief constables to appoint traffic wardens, to carry out police functions connected with the enforcement of the law relating to traffic (including pedestrians) and stationary vehicles.

743 *Subsection (1)* repeals sections 95 to 97 for the purposes of the law in England and Wales, removing these powers and thereby abolishing the office of traffic warden in England and Wales. *Subsections (2) to (9)* make consequential amendments to sections 95 to 97 of the 1984 Act in order to preserve the office of traffic warden in Scotland. *Subsection (10)* introduces Schedule 13 which makes amendments to other enactments consequential upon the abolition of the

office of traffic warden in England and Wales.

Section 47: Power to make regulations about police ranks

744 Presently the police rank structure is set out in the 1996 Act, the 2011 Act and regulations made under the 1996 Act. This section inserts new sections 50A and 50B into the 1996 Act to replace existing powers to make regulations as to police ranks with new powers for the Secretary of State to make regulations, subject to the affirmative procedure, setting out the rank structure (not including chief officers) for police forces in England and Wales. Under current legislation, the Secretary of State has very little flexibility in the rank structure that may be provided for in regulations as the ranks are effectively stipulated in primary legislation. The powers in section 47 (combined with the consequential amendments in section 48) will provide such flexibility.

745 These powers will enable the Secretary of State, through regulations, to implement as appropriate the findings of the College of Policing rank review. The review might, for example, recommend the abolition of certain ranks, the creation of new ranks and/or that certain ranks that are currently mandatory for each force under the 2011 Act (for example, assistant chief constable) should become discretionary.

746 Subsection (1) of new section 50A provides the basic power for the Secretary of State to specify police ranks (other than chief officers of police) in regulations. This must include the rank of constable. New section 50A will enable amendments to be made to any primary or secondary legislation that refers to a specific rank (for example, certain police powers under PACE 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 so as to substitute the nearest equivalent rank. The powers may also be used, as necessary, to repeal or otherwise amend relevant provisions in the 2011 Act so as to remove references to any abolished rank or, where a rank mentioned there continues, to make it discretionary as whether to appoint one or more persons at that rank.

747 New section 50B contains procedural provisions in relation to regulations under new section 50A. Such regulations are subject to the affirmative resolution procedure (subsection (1)).

748 Regulations under new section 50A 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 he or 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)), the Secretary of State must make regulations in those terms. Second, the Secretary of State could prepare regulations him or 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.

Section 48: Section 47: consequential amendments

749 This section makes various consequential amendments to the 1996 Act in the light of the new regulation-making power in respect of police ranks. In particular, *subsection (2)* repeals sections 9H and 13 of that Act, which are the existing provisions in the 1996 Act that mandate a list of ranks that must be included in the police rank structure.

Chapter 2: Representative Institutions

Section 49: Duties of Police Federation for England and Wales in fulfilling its purpose

750 Subsection (1) of section 59 of the 1996 Act provides for the purpose of the Police Federation, namely to represent members of the police forces in England and Wales in all matters affecting their welfare and efficiency (subject to certain specified exceptions which relate to individual promotions and disciplinary matters). This section inserts a new subsection (1A) into section 59 of the 1996 Act, the effect of which is to place a duty on the Police Federation, in fulfilling its core purpose, to act to protect the public interest, maintain high standards of conduct and maintain high standards of transparency.

Section 50: Freedom of Information Act etc: Police Federation for England and Wales

751 This section provides for the Police Federation to be treated as a public authority for the purposes of the the FOI Act, the Data Protection Act 1998 ("the 1998 Act") and section 18 of the Inquiries Act 2005, which includes provision in respect of the disclosure of information by public authorities about public inquiries established under that Act.

752 The effect of the section is to apply to the Police Federation the obligations imposed on public authorities under the FOI Act to maintain a publication scheme and publish information in accordance with it, and to respond to requests for information from members of the public and others.

753 The provision also requires the Police Federation to fulfill the extended obligations imposed on public authorities under the 1998 Act. This includes the requirement to consider the disclosure of any personal data held in paper records in response to a subject access request submitted under section 7 of the 1998 Act.

Section 51: Removal of references to ACPO

754 Section 51 and Schedule 14 extend in the main to England and Wales. Whilst some of the enactments amended by Schedule 14 also extend and apply to Scotland and Northern Ireland, there is no substantive effect on the law in those jurisdictions.

755 This section gives effect to Schedule 14 which repeals or amends statutory references to ACPO following its abolition and replacement, in part, by the NPCC.

Schedule 14: Removal of references to ACPO

756 *Paragraph 1* amends section 101(1) of the 1996 Act to replace the definition of ACPO with a definition of the NPCC. The NPCC was formed on 1 April 2015 to replace ACPO as the body which provides national police coordination and leadership.

757 *Paragraphs 2 and 3* make consequential repeals, including of section 96 of the 2002 Act, which provides for the President of ACPO to hold the rank of chief constable.

758 *Paragraphs 4 to 7* replace various statutory references to ACPO with references to the NPCC. As amended, a number of these provisions require the Secretary of State (in practice the Home Secretary) to consult with the NPCC:

- before issuing a code of practice under PACE;
- before issuing a code of practice for police interviews of witnesses identified by the accused under the Criminal Procedure and Investigations Act 1996;
- before making a direction regarding the permitted electronic forms of communication used for sending notice of:

- firearms transactions under the 1968 Act
- the export of firearms under the 1988 Act
- the transfer of firearms held on certificate under the 1997 Act;
- before making regulations and arrangements pertaining to various policing matters including the design and performance of police equipment and before requiring a police force to use certain central facilities under the 1996 Act;
- before making an order, regulations, and issuing a code of practice or guidance on various policing issues under the 2002 Act;
- before issuing guidance to police constables on domestic violence under the Crime and Security Act 2010;
- in the course of preparing a code of practice for surveillance camera systems and before making an order specifying or describing a person as a relevant authority which, when exercising its functions, must have regard to the surveillance camera code of practice under the Protection of Freedoms Act 2012.

759 *Paragraph 7(f)* amends section 70(2)(j) of the Courts Act 2003 to require that one person representing the NPCC be appointed to the Criminal Procedure Rule Committee.

Part 4: Police Powers

Chapter 1: Pre-charge Bail

760 The provisions of this Chapter form part of the law of England and Wales. Sections 68 and 69 (offence of pre-charge bail conditions relating to travel) also form part of the law of Northern Ireland.

Section 52: Arrest elsewhere than at a police station: release before charge

761 Section 52 concerns section 30A of PACE, which provides for a power for a constable to release on bail a person who is arrested other than at a police station (known as 'street bail'). The section amends section 30A to enable such a release without bail. *Subsection (3)* amends section 30A(1), the effect of which is to establish a presumption that, where a police officer decides that it is appropriate to release an arrested person rather than take them to a police station, that release will be without bail, unless the requirements in new section 30A(1A) (inserted by *subsection (4)*) are met. Those requirements are that that the constable is satisfied that bail is necessary and proportionate in all the circumstances (having regard, in particular, to any bail conditions that would be imposed) and bail is authorised by a police officer of the rank of inspector or above.

Section 53: Section 52: Consequential amendments

762 Section 53 makes a number of amendments to PACE as a consequence of the changes made by section 52.

Section 54: Release from detention at a police station

763 This section amends sections 34 and 37 of PACE to establish a presumption that release of a person whilst an investigation continues should be without bail unless the pre-conditions of bail are satisfied. These are defined in new section 50A of PACE (inserted by section 58) as the

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custody officer being satisfied that bail is necessary and proportionate in all the circumstances (having regard, in particular, to any bail conditions that would be imposed) and bail is authorised by a police officer of the rank of inspector or above (having considered any representations made by the person or their legal representative).

764 *Subsection (7)* amends section 37(7) of PACE so that, where the custody officer believes he or she has enough evidence to charge an individual for the offence that he or she was arrested for, and the person is released for a police charging decision to be made, such release will be without bail unless the pre-conditions for bail are satisfied.

Section 55: Release following arrest for breach of bail etc

765 *Subsection (3)* amends section 37CA of PACE to provide that, where a person was bailed for a police charging decision and then arrested for breach of that bail, release from such custody will only be on bail if the pre-conditions of bail are met.

Section 56: Release from further detention at police station

766 Section 41 of PACE provides for limits on the time a person can be detained without charge. This is (subject to certain exceptions) 24 hours, which is calculated from a point known in PACE as the "relevant time" (normally, the time detention was authorised). A person who has been in detention for 24 hours after the "relevant time" and who has not been charged must be released (unless further detention is authorised or permitted under subsequent provisions of PACE). *Subsection (1)* amends section 41(7) so that such a release should normally be without bail, unless the pre-conditions for bail are satisfied. *Subsections (3) and (4)* amend section 42(10) and insert new section 42(10A) to make equivalent provision in respect of a person whose continued detention is authorised up to 36 hours and is then released no later than that point.

Section 57: Warrants of further detention: release

767 This section makes equivalent provision to section 56 in respect of those persons being released from police detention under section 43 or 44 of PACE, that is those who have had their extended detention authorised by a warrant of further detention (up to 72 hours from the "relevant time") issued by a magistrates' court, which can be extended up to 96 hours from the "relevant time", or where the court refused to grant such a warrant or extension.

Section 58: Meaning of "pre-conditions for bail"

768 This section inserts new section 50A into Part 4 of PACE to define the "pre-conditions for bail" referred to above.

Section 59: Release without bail: fingerprinting and samples

769 Where a person is arrested under section 24 of PACE on suspicion of the commission of a recordable offence (generally, an offence punishable with imprisonment), sections 61 and 63 of that Act give the police the power to take fingerprints and a non-intimate DNA sample without the arrested person's consent. Section 59 modifies those powers to make clear that, where the grounds for detention set out in section 34(2) cease to exist and the person is released without bail, the powers to take DNA and fingerprints – and the supporting power to require the person's attendance at a police station under Schedule 2A to PACE – remain available to the police.

Section 60: Release under section 24A of the Criminal Justice Act 2003

770 Section 24A of the Criminal Justice Act 2003 gives the police the power to arrest a person where the police have reasonable grounds for suspecting that the person has failed, without reasonable excuse, to comply with any of the conditions attached to a conditional caution that he or she has previously accepted. Section 24A(2) also allows the police to release the person on

bail while a charging decision is made. Section 60 amends section 24A(2) to require the custody officer to determine whether the arrested person should be released with or without police bail, applying the pre-conditions for bail set out in new section 50A of PACE (inserted by section 58); the time limits set out in new sections 47ZA to 47ZM of PACE (inserted by section 63) do not apply in this situation.

Section 61: Bail before charge: conditions of bail etc

771 This section amends various provisions of PACE in respect of bail conditions. In particular, *subsection (2)* amends section 46A(1A) so that a constable has a power to arrest without warrant any person released on bail under Part 4 of PACE who is reasonably suspected of breaching their bail conditions (currently such a power only exists in respect of bail granted under certain sections of that Part). *Subsection (4)* amends section 47(1A) so as to allow a custody officer to impose bail conditions when releasing a person on bail under any of the provisions in Part 4 (currently the power only exists in respect of bail granted under certain sections).

Section 62: Limit on period of bail under section 30A of PACE

772 This section amends sections 30B, 30CA and 30D of PACE in order to set a time limit for 'street bail' (bail granted under section 30A of PACE elsewhere than at a police station). The section requires that the bail notice given under section 30B must, in addition to the existing requirements, set out the date, time and place at which bail must be answered. The date is required to be 28 days from the day after arrest. Because any extension of bail would be granted under Part 4, there is no provision to extend bail granted under section 30A. *Subsections (6) and (7)* provide that the police's existing power to alter a bail return date (the time at which the person is to attend at the police station to answer bail) may not be used to extend street bail beyond the 28-day limit.

Section 63: Limits on period of bail without charge under Part 4 of PACE

773 Section 63 inserts new sections 47ZA to 47ZM into Part 4 of PACE. The new sections set out the regime of time limits and extensions being introduced in respect of pre-charge bail under that Part of that Act. The first new section, section 47ZA, underpins the other new sections by providing in subsection (2) that a person given bail must always be required to answer that bail on the day the relevant time limit (known in the Act as "the applicable bail period") expires. Subsections (3) to (5) of new section 47ZA provide two exceptions to that general rule, permitting (but not requiring) a custody officer to set an earlier (but not later) date to return to the police station. The exception in subsection (3) applies where the person is already on pre-charge bail for another offence and the custody officer believes it to be appropriate to set the same return date for all cases. The exception in subsection (4) applies where the custody officer believes a charging decision will be made before the end of the applicable bail period. Subsection (8) of new section 47ZA defines the phrase 'relevant offence' as the offence for which the person has been arrested and subsequently bailed.

774 New section 47ZB sets out that the initial bail period will be three months for Senior Fraud Office ("SFO") cases, or 28 days in all other cases. However, the bail period may be extended in accordance with the provisions mentioned below. Subsection (4) defines a number of terms used elsewhere in PACE as amended by these sections; in particular, sub-subsection (4)(a) provides that the bail start date is the day after the person's arrest.

775 New section 47ZC of PACE sets out the four conditions that a senior police officer or prosecutor must consider in making a decision as to whether to extend bail under new sections 47ZD or 47ZE. When a magistrates' court is considering extending bail under new sections 47ZF and 47ZG, the court will only consider conditions B to D. Condition A is that there are reasonable grounds to suspect that the person on bail is guilty of the offence for which they were arrested and are on bail. Condition B is that there are reasonable grounds for believing

either that further time is needed for the police to make a charging decision under police-led prosecution arrangements (where the person has been bailed for that purpose) or that further investigation is necessary. Condition C is that there are reasonable grounds for believing that the charging decision or investigation (as applicable) is being conducted diligently and expeditiously. Condition D is that releasing the person on bail continues to be both necessary and proportionate in all the circumstances of the particular case (having regard, in particular, to any bail conditions that are or would be imposed).

776 New section 47ZD of PACE allows a senior police officer (defined in new section 47ZB(4)(d) as an officer of superintendent rank or above) to extend bail in a non-SFO case (including a Financial Conduct Authority ("FCA") case) from 28 days to three months where the conditions A to D set out in new section 47ZC are met. The senior officer must arrange for the suspect or their legal representative to be invited to make representations, and must consider any that are made before making a decision. The suspect (or their representative) must be informed of the outcome.

777 New section 47ZE of PACE creates an exception to the general position that all pre-charge bail beyond the point three months after arrest must be authorised by a magistrates' court. This exception can only apply where a case has been designated as "exceptionally complex" by a senior prosecutor designated for the purpose by the Director of the SFO, the Chief Executive of the FCA or the Director of Public Prosecutions ("DPP") (subsections (2) and (9)). Where a case has been designated, a police officer of at least the rank of assistant chief constable (Commander in the Metropolitan or City of London forces), a senior member of staff of the FCA or a member of the senior civil service within the SFO, may extend bail to a point six months after arrest if satisfied that conditions A to D in new section 47ZC are met. As with an extension under new section 47ZD, the decision-maker must invite and consider representations from the person on bail (or their legal representative) before reaching a decision and must arrange for them to be informed of the decision. Where the decision is taken by a senior police officer, the officer must consult a designated senior prosecutor before making their decision.

778 New section 47ZF provides the mechanism for a magistrates' court to extend bail beyond three or (where an extension has been made in an "exceptionally complex" case under new section 47ZE) six months, on the application of the police or a prosecutor. An application must be made before the previous bail period expires. The magistrates' court may only authorise an extension of bail where satisfied that conditions B to D as set out in new section 47ZC are met.

779 Where a case does not fall within the definition in new section 47ZF(7), the court may extend the bail period by a further three months. Where the case does fall within that definition, for example, where the further investigations to be made are likely to take more than three months to conclude, the court may extend the bail period by a further six months, effectively 'skipping' one extension hearing after three months.

780 New section 47ZG allows the court to authorise further extensions of the bail period for periods of three months or (in cases falling within the definition of subsection (8)) six months.

781 New section 47ZH of PACE allows the police or prosecutors to apply to the court to withhold certain information relevant to the application to extend bail from the person on bail and their legal representatives. The court may only allow information to be withheld for the four grounds set out in subsection (4); essentially, that there are reasonable grounds to believe that disclosing that information would lead to evidence being interfered with (sub-subsection (a)), a person coming to harm (sub-subsection (b)), another suspect escaping arrest for an indictable offence (sub-subsection (c)) or the recovery of property obtained as a result of an indictable offence being hindered (sub-subsection (d)).

- 782 New section 47ZI of PACE provides further detail on the procedures to be followed by magistrates' courts in considering applications under new sections 47ZF, 47ZG and 47ZH. Applications to extend bail under new sections 47ZF and 47ZG will normally be considered by a single magistrate on the basis of written evidence only, unless either the magistrate decides that the interests of justice require an oral hearing (in cases where bail would be extended to a point no later than twelve months from arrest) or the application would result in bail being extended beyond twelve months and either party has requested such a hearing. Subsection (4) provides that, as with an application for a warrant of further detention under section 43 of PACE, any such hearing will be before at least two magistrates and the proceedings will not be open to public (in order to avoid any potential prejudice to a subsequent trial).
- 783 New section 47ZI(5) and (6) permits the court to exclude the person on bail and their legal representatives from any part of an oral hearing to extend bail where sensitive information might be disclosed (as defined in new section 47ZH(4)).
- 784 New section 47ZI also provides for a single magistrate to decide an application under new section 47ZH (withholding sensitive information) on the papers, unless that magistrate decides that the interests of justice require an oral hearing. Where such an oral hearing takes place, it will be before at least two magistrates and the proceedings will not be open to public. The court must exclude the person on bail and their legal representatives from that oral hearing.
- 785 New section 47ZJ sets out that, if the application to extend bail cannot be determined by the court before the end of a bail period, that bail period will be treated as extended until such time as the application can be determined. The court should determine such applications as soon as practicable. However, the court can refuse such an application if it considers that it would have been reasonable for the application to have been made in time for the court to have determined it before the end of a bail period.
- 786 New section 47ZK enables Criminal Procedure Rules to make provision in relation to applications under new sections 47ZF, 47ZG and 47ZH and proceedings relating to such applications.
- 787 New section 47ZL deals with the position of pre-charge bail in those cases where the police refer a case to the DPP (in practice, a Crown Prosecutor) for a charging decision. The effect of subsections (2) and (3) is that the bail time limits do not apply in cases where an individual is bailed under sections 37(7)(a) or 37C(2)(b) of PACE while waiting for a charging decision to be made by the DPP. However, where a charging decision has been requested from the DPP, but the DPP requests further information from the police before reaching that decision, the effect of subsections (4) to (11) is that the bail time limits will re-apply during the period that the police are gathering that information (subsection (6)) and, accordingly, the police must set a new bail return date that is not after the end of the person's applicable bail period (subsection (5)). If, at the point that the DPP makes the request for further information, the person's applicable bail period would end within seven days of the DPP's request, the effect of subsection (8) is that the person's applicable bail period is extended to seven days from that request in order to give the police time to gather the information, seek a bail extension or release the suspect from bail. Subsections (9) and (10) provide that, where the information requested by the DPP is provided, the bail time limit is again suspended.
- 788 New section 47ZM makes provision in respect of 'street bail' (bail under section 30A of PACE) and persons on bail who are hospitalised. Where a person was initially given 'street bail' for 28 days under section 30A of PACE, new section 47ZM(2) treats that period as the first 28 days of bail under Part 4 of PACE and any further bail would need to be authorised under Part 4 as amended by this Act, in the same way as when the initial period had been granted at a police station. Subsections (4) and (5) of new section 47ZM provide that, if on the day that a person's

applicable bail period would end, they are in hospital as an in-patient, any time that person spent in hospital as an in-patient while on pre-charge bail would not be included in the time period calculations.

Section 64: Section 63: Consequential amendments

789 This section makes a number of consequential amendments to Part 4 of PACE to take account of the time limit provisions set out in section 63. In particular, *subsection (7)* inserts new subsections (4A) to (4E) into section 47 of PACE; new subsection (4D) provides that that the police's power to alter a bail return date may not be used to extend bail beyond the relevant bail time limit.

Section 65: Release under provisions of PACE: re-arrest

790 This section amends the various provisions of PACE that deal with re-arrest after a release on bail to extend the circumstances in which that power can be used so that a re-arrest can also be made where existing evidence has been analysed and that analysis could not reasonably have been carried out while the suspect was in detention.

Sections 66 and 67: Notification of decision not to prosecute

791 Sections 66 and 67 amend the relevant sections of PACE (sections 34, 37 or 37CA and sections 41 to 44 respectively) to require the police to notify a person released without bail once a decision has been reached that they will not be prosecuted for the offence for which they were originally arrested. This ensures that a person released without bail will be informed by the police of a decision not to prosecute in the same way as a person released on bail (who is notified of the decision when their bail is cancelled).

792 For the avoidance of any doubt, sections 66 and 67 also make clear that a decision not to prosecute does not prevent an investigation being resumed if further evidence comes to light.

Section 68: Offence of pre-charge bail conditions relating to travel

793 Section 68 (together with section 69) creates a new offence of breaching certain travel-related conditions of pre-charge bail (defined as 'travel restriction conditions' in *subsection (2)*) for those arrested on suspicion of committing a terrorist offence. The offence can be tried on indictment in the Crown Court, which means that the Criminal Attempts Act 1981 applies so as to make it an offence to attempt to breach a travel restriction condition.

794 The maximum penalty for the offence is twelve months' imprisonment, a fine or both (see *subsection (4)*). The offence extends to England and Wales and Northern Ireland; there is already an offence of breaching the equivalent of pre-charge bail in Scotland.

795 The offence would apply where a person has been arrested under section 24 of PACE or article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989, on suspicion of committing a terrorist offence, as listed in section 41 of the Counter-Terrorism Act 2008; has been released on pre-charge bail, subject to a travel restriction condition; and subsequently breaches, without reasonable excuse, any of those conditions (see *subsection (1)*). There is, however, no provision for a reasonable excuse to be raised in cases where the arrestee breaches a condition not to leave the UK.

796 The offences listed in section 41 of the Counter-Terrorism Act 2008 cover a range of offences including membership of a proscribed organisation, fundraising in support of terrorism, and encouraging terrorist acts.

797 The police have the power to impose a pre-charge bail condition requiring the surrender of a passport under section 47(1A) of PACE, which confers on a police constable the "normal powers to impose conditions of bail" found in section 3(6) of the Bail Act 1976. The existing

power permits bail conditions which are considered by the police as necessary to prevent the suspect from failing to surrender travel documents, offending whilst on bail, interfering with prosecution witnesses or otherwise obstructing the course of justice, or for his or her own protection.

798 The Counter-Terrorism and Security Act 2015 confers powers to allow the police to seize and retain passports at ports if they reasonably suspect a person is travelling to engage in terrorism related activity outside the UK. That Act also enhanced border security for aviation, maritime and rail travel, with provisions relating to passenger data, the process for granting carriers authority to carry passengers, and security and screening measures.

799 This section provides another tool for the police to tackle terrorism by deterring those arrested on suspicion of a terrorist offence from breaching a travel restriction condition imposed under the terms of their pre-charge bail; and by adding to the range of offences which might be prosecuted in cases where such a person has returned to the UK. This might assist if there are evidence-gathering difficulties relating to other offences that the person might have committed abroad.

Section 69: Offence of pre-charge bail conditions relating to travel: interpretation

800 Section 69 defines the terms 'travel document', 'passport' and 'port' for the purposes of section 68. 'Travel document' includes passports, travel tickets or other documents that would enable a person to leave the United Kingdom.

Chapter 2: Retention of biometric material

801 Section 70 forms part of the law of England and Wales, while section 71 forms part of the law of the UK.

Section 70: Retention of fingerprints and DNA profiles: PACE

802 This section amends Part 5 of PACE to enable DNA profiles and fingerprints to be retained on the basis of convictions outside England and Wales in the same way as such material may currently be retained on basis of convictions in England and Wales.

803 At present, if a person has a conviction outside of England and Wales, their DNA profile and fingerprints can be retained only if the conviction is equivalent to a 'qualifying' offence in England and Wales (in broad terms, a serious sexual or violent offences). So if a person has a conviction(s) elsewhere for a non-qualifying recordable offence, such as theft, then their DNA profile and fingerprints cannot be retained. In addition, even where the person has a conviction for a qualifying offence, their DNA and fingerprints must have been taken specifically in relation to that conviction, rather than it being possible to retain this material following arrest for a different offence. This means that the person would have to be re-sampled and re-fingerprinted (following a senior officer's approval) in order for their DNA and fingerprints to be retained.

804 The section extends the circumstances in which DNA and fingerprints can be retained on the basis of convictions outside of England and Wales. The amendments effectively enable such material to be retained in the same way as for persons convicted of a recordable offence in England and Wales, as per the retention schedule, set out in [annex H](#).

805 The amendments make clear that the provisions only apply to offences committed outside of England and Wales where that offence would constitute a recordable offence if committed in England and Wales. The retention power does not apply in cases where the conviction elsewhere is for an act which is not an offence in England and Wales.

Section 71: Retention of fingerprints and DNA profiles: Terrorism Act 2000

806 This section makes similar provision in respect of persons arrested under section 41 of, or detained under Schedule 7 to, TACT. It amends Schedule 8 to TACT to enable DNA profiles and fingerprints to be retained indefinitely where a person has convictions outside the United Kingdom, where the act constituting the offence would constitute a recordable offence under the law of England and Wales or Northern Ireland, or an imprisonable offence under the law of Scotland.

Chapter 3: Powers Under PACE: Miscellaneous

807 This Chapter forms part of the law of England and Wales (with the exception of section 76(3) which extends and applies to the United Kingdom).

Section 72: PACE: entry and search of premises for the purpose of arrest

808 Section 17 of PACE provides the police with the power to enter and search premises for the purposes of arrest. This section amends section 17 to provide the police with the power of entry to premises to exercise their existing power to make an arrest for breach of bail, whether pre- or post-charge, under any of the powers set out in the section.

Section 73: PACE: treatment of those aged 17

809 This section amends PACE to extend current safeguards for 14 to 16 year olds to 17 year olds.

810 *Subsection (2)* amends section 30A of PACE (bail elsewhere than at police station) which provides for a police officer to release an arrested person on bail, subject to certain conditions. Currently, in cases where the person is under the age of 17, such conditions may include requirements which appear to the officer to be necessary for a person's welfare or own interests. *Subsection (2)* extends this provision to young persons aged 17.

811 *Subsection (3)* amends section 63B of PACE which provides for the taking of a sample of urine or non-intimate sample from a person in police detention for the purposes of testing for the presence of Class A drugs. (Section 65(1) of PACE defines a non-intimate sample as: a sample of hair other than pubic hair, a sample taken from a nail or under the nail, a swab taken from any part of the body except from genitals or a body orifice (excluding the mouth), saliva or a skin impression.) Section 63B(5A) provides that if the person is under the age of 17, such testing may only take place in the presence of an appropriate adult. *Subsection (3)* amends section 63B(5A) to apply the age condition to those under the age of 18 years. This ensures that 17 year olds may only be tested in the presence of an appropriate adult. An appropriate adult is responsible for protecting (or 'safeguarding') the rights and welfare of a child or vulnerable adult who is either detained by police or is interviewed under caution voluntarily. The appropriate adult role can be filled by a number of different types of people, including: parents or guardians, other family members, friends or carers, specialist appropriate adults either paid or voluntary. The person must be a responsible person who is neither a police officer or a member of civilian staff, nor employed for or engaged on police purposes.

812 Section 62 of PACE provides for taking an intimate sample (namely, a sample of blood, semen or any other tissue fluid, urine or pubic hair, a dental impression or a swab taken from any part of a person's genitals (including pubic hair) or from a person's body orifice other than the mouth) from a person in police detention if 'appropriate consent' is obtained. Section 65(1)(a) PACE defines 'appropriate consent' in this context to mean, in the case of a person over 17, the consent of that person. *Subsection (4)* amends section 65(1)(a) to raise the age threshold for independent consent to persons aged 18 years and above. As a result, a 17 year old and his or her parent or guardian would need to consent to the taking of an intimate sample (as is already

the case with 14 to 16 year olds).

Section 74: PACE: detention: use of live links

813 This section amends Part 4 of PACE, which makes provision for, amongst other things, pre-charge detention. *Subsection (2)* inserts new sections 45ZA and 45ZB, which make provision for the use of video conferencing technology, termed 'live link', in connection with the extension of pre-charge detention.

814 Under Part 4 of PACE a person may initially be detained pre-charge for a maximum of 24 hours. Section 42(1) and (2) of PACE provides for the authorisation of continued detention, for a maximum of a further 12 hours, at a police station by a police officer of the rank of superintendent or above. At present, the authorising officer must be physically present in the police station. New section 45ZA(1) enables these functions to be performed by an officer who is at a different location to where the suspect is held but has access to the use of live link, provided the following safeguards apply:

- a custody officer considers that the use of the live link is appropriate. This could be in circumstances where it would take the authorising officer a significant amount of time to arrive at the police station either because of duties or requirements elsewhere or due to the proximity of police station,
- the arrested person has had advice from a solicitor on the use of the live link, and
- the appropriate consent (as defined in new section 45ZA(2)) to the use of the live link has been given.

815 New section 45ZA(4) applies to section 42 of PACE the modifications set out in new section 45ZA(5) to (7). Section 42(5)(b) requires the authorising officer to record the grounds for continued detention in the custody record and section 42(9)(b)(iii) and (iv) requires the officer to record any decision to refuse to allow a detainee to have someone informed of their arrest, with grounds; the modification enables another officer physically present at the police station to make such records instead of the authorising officer at the other end of the live link.

816 Section 42(6) to (8) of PACE provide for the detained individual or his or her solicitor to make representations to the authorising officer (for example, to make the case for release on bail) orally or in writing. The officer determining the authorisation can refuse to hear oral representations if the authorising officer considers the individual to be unfit to make such representations by reason of his or her condition or behaviour. New section 45ZA(6) provides for representations to be made orally via live link or in writing, for example, by email or fax.

817 Where an officer authorises the extension of a person's detention and that person has not exercised their right to legal representation, section 42(9) of PACE requires the authorising officer to inform the detained person of that right. New section 45ZA(7) disapplies that requirement on the basis that the detained person will have had legal advice as a precondition for the use of live link.

818 New section 45ZA(8) defines terms used elsewhere in the new section. The definition of an 'appropriate adult' includes the term "police purposes", by virtue of new section 45ZA(9): this term is defined by reference to the definition in the 1996 Act as including in relation to a police area, the purposes of (a) special constables appointed for that area; (b) police cadets undergoing training with a view to becoming members of the police force maintained for that area; and (c) civilians employed for the purposes of that force or of any such special constables or cadets.

819 Sections 43 and 44 of PACE enable a magistrates' court, on application by a constable, to extend pre-charge detention up to a maximum of 96 hours. A magistrates' court may only hear such an application for a warrant of further detention, or for the extension of such a warrant, if the person to whom it relates is brought before the court. New section 45ZB(1) enables a magistrates' court to hear an application under section 43 or 44 by means of live link. The court may give a direction to use live link, provided the following safeguards apply:

- a custody officer considers that the use of the live link is appropriate,
- the arrested person has had advice from a solicitor on the use of the live link,
- the appropriate consent (as defined in new section 45ZB(2)) to the use of the live link has been given, and
- it is not contrary to the interests of justice to give the direction.

820 New section 45ZB(3) provides that where a live link direction is given by a magistrate, the requirement under section 43(2)(b) of PACE for the person in detention to be brought before the court for the hearing does not apply – thereby enabling a live link hearing between the police station and court.

821 Subsections (4) and (5) of new section 45ZB defines various terms used in new section 45ZB. (As to the meaning of "police purposes" see above.)

822 *Subsection (3)* makes a consequential amendment to section 45(1) of PACE to apply the definition of a magistrates' court in that section to new section 45ZB, namely a court consisting of two or more justices of the peace sitting otherwise than in open court.

823 Section 45A of PACE provides for the use of "video-conferencing facilities" for decisions about detention, in the case of an arrested person who is held at a police station. To ensure the consistent use of terminology in PACE, *subsection (4)* replaces references to "video-conferencing facilities" with the term "live link" and provides a definition of that term.

824 *Subsection (5)* similarly replaces the references to "video-conferencing facilities" in section 40A of PACE which provides for the use of a telephone to conduct a review of detention under section 40 where it is not practicable to conduct the review via a live link.

Section 75: PACE: interviews: use of live links

825 This section amends section 39 of PACE, which concerns the responsibilities of the police to persons detained under that Act. Section 39 requires that all detainees are treated in accordance with PACE and the relevant codes of practice and that, where required, records must be made in relation to the detained person on their custody record. The aim of the amendments is to enable remote interviewing using live link so that a police officer can interview a suspect from a different location.

826 *Subsection (2)* amends section 39(2)(a) of PACE to permit a custody officer to transfer physical custody of a detained person to an officer who is not involved in the investigation and whose responsibility would be to facilitate the live link interview with the investigating officer.

827 *Subsection (3)* inserts new subsections (3A) to (3E) of section 39 which modifies the operation of section 39(3) which places a duty on the investigating officer, in whose custody the detainee is, to report to the custody officer how section 39 of PACE and the codes of practice were adhered to upon return of the individual to the custody officer. New subsections (3A) to (3E) apply the same responsibilities as to the treatment of the detainee to the interviewing officer on the other end of the live link.

Section 76: PACE: audio recording of interviews

828 *Subsection (2)* amends section 60 of PACE, which makes provision for the Secretary of State to issue a code of practice in connection with the tape-recording of suspect interviews at police stations and to make orders in relation to such codes. This updates PACE by reflecting advances in audio recording technology and future-proofs it by using the general term "audio recording" rather than referring to any specific format.

829 *Subsection (3)* similarly amends section 113 of PACE, which concerns interviews of service personal suspected of committing an offence. Specifically, section 113(4)(a), which states the matters for which codes of practice can be issued by the Secretary of State for the investigation of service matters, is updated by substituting the reference to "tape recording" for "audio recording".

Section 77: PACE: duty to notify person interviewed that not to be prosecuted

830 Section 77 has the same effect as sections 66 and 67 in respect of individuals interviewed as suspects without being arrested. It inserts a new section 60B into Part 5 of PACE, requiring that a person suspected of an offence, who is interviewed without being arrested, be notified in writing of a decision that he or she will not be prosecuted for the offence.

Section 78: PACE: consultation on codes of practice

831 Section 66 of PACE provides for the Secretary of State to issue codes of practice which govern the use of police powers under PACE. Sections 60 and 60A separately provide for the Secretary of State to issue codes of practice specifically relating to the tape-recording and visual recording of interviews. Section 67 of PACE makes further provision in respect of the procedure for making of codes of practice, including a duty to consult specified consultees (including persons representing the views of PCCs, the NPCC (see *paragraph 5(a)* of Schedule 14 to this Act) and the Law Society of England and Wales) before issuing or revising a code of practice.

832 This section inserts new subsections (4A) to (4C) into section 67 of PACE, which qualify the duty to consult under subsection (4).

833 New subsection (4A) removes the duty to consult on revisions to the codes of practice under section 67(4) PACE where: (a) the proposed revision is consequential to legislation (as defined in new subsection (4C)); and (b) there is no discretion as to the nature of the revision. New subsection (4B) requires the Secretary of State to publish a statement upon issuing a revised code under new subsection (4A) stating that the criteria specified therein apply. The aim of this amendment is to enable a timely revision to the codes of practice where a formal public consultation exercise would cause delay in making revisions which would be made, in content and in form, irrespective of the consultation exercise. An example of where this would be used is the 2015 amendment of section 37(15) PACE (Duties of custody officer after charge: arrested juveniles) by section 42 of the Criminal Justice and Courts Act 2015 to re-define 'arrested juvenile' to include 17 year olds. As a result of this change to PACE, PACE code of practice C was similarly amended.

Section 79: Definition of "appropriate adult" in criminal justice legislation

834 Section 63B of PACE provides for taking a sample of urine or non-intimate sample (see section 73 above) from a person in police detention for the purposes of testing for the presence of Class A drugs. Section 63B(5A) of PACE provides that if the person is a child, such testing may only take place in the presence of an appropriate adult.

835 Section 63B(10)(c) of PACE provides that a police officer or person employed by the police

cannot be an appropriate adult in this context. *Subsection (1)* widens this restriction so that anyone employed for, or engaged on, police purposes cannot be an appropriate adult. This restriction will apply to any police officers, police civilian staff, contractors or volunteers engaged in police activities.

836 Section 66ZA of the Crime and Disorder Act 1998, on giving youth cautions, requires that the caution be given in the presence of a parent or guardian or other "appropriate adult" (as determined by PACE). *Subsection (2)* amends the definition of appropriate adult in section 66ZA in a similar manner as subsection (1).

837 Section 161 of the Criminal Justice Act 2003, which concerns pre-sentence drug testing, requires, in the case of a person under 17, that an order under section 161(2) to provide a sample must take place in the presence of an "appropriate adult". *Subsection (3)* amends the definition of appropriate adult in similar manner as subsection (1).

Chapter 4: Powers under the Mental Health Act 1983

838 This Chapter forms part of the law of England and Wales.

839 This Chapter makes changes to sections 135 and 136 of the 1983 Act, inserts new sections 136A to 136C, and makes other consequential amendments to that Act. Sections 135 and 136 give the police powers to detain and remove persons who appear to the officer to be suffering from a mental disorder and take them to a designated "place of safety", with a view to having their mental health assessed and, where appropriate, arrangements made for their ongoing care and/or treatment.

Section 80: Extension of powers under sections 135 and 136 of the Mental Health Act 1983

840 Currently, sections 135 and 136 of the 1983 Act provide for the police to detain a person believed to be suffering from a mental disorder in specified circumstances and "remove" them to a designated place of safety. Such designated places of safety include hospitals, police stations and local authority residential care homes. *Subsections (2), (3) and (4)* amend the 1983 Act to provide flexibility for the officer, in certain circumstances, to keep the person at the place at which they have been detained if it is a place of safety. *Subsection (4)* also makes amendments to provide for a police officer to act quickly to protect people by extending the application of section 136 to private property (other than private dwellings) – such as railway lines, offices and rooftops – where previously a warrant under section 135 would have been needed to detain and remove the person under the 1983 Act.

841 *Subsection (5)* inserts new subsection (1C) into section 136 and requires police officers to obtain advice from a doctor, nurse, approved mental health professional (or other person specified in any regulations which may be made) before exercising their powers under section 136, unless in the officer's judgment it would not be practicable to do so. An officer might decide it is not practicable to consult if, for example, he or she needs to act without delay in order to keep a person safe from immediate danger.

Section 81: Restrictions on places that may be used as places of safety

842 Section 135(6) of the 1983 Act defines "place of safety" for the purposes of both sections 135 and 136. *Subsections (2) and (3)* amend section 135(6) and insert new subsection (7) respectively. The requirement for the occupier to be "willing to temporarily receive the patient" is removed, thus removing ambiguity around the use of places for which it may be difficult to identify a sole or main occupier (such as community centres or other multiple use buildings). *Subsection (3)*

enables a private dwelling to be used as a place of safety, where the person believed to be suffering from a mental disorder and an occupier of the property consent to its use. *Subsections (4) and (5)* amend sections 135 and 136 respectively to make each of those sections subject to a new section 136A of the 1983 Act, inserted by *subsection (6)*.

843 New section 136A prevents the use of police cells as a place of safety in any circumstances where the detainee is under 18 years of age. It also confers on the Secretary of State the power to make regulations (subject to the negative procedure) to restrict the circumstances in which police cells may be used as a place of safety for adults (aged 18 years or over) and to make provision for the treatment of such adults whilst so detained, including provision for the review of their detention. Such regulations are likely to include a set of considerations that police officers and health professionals must take into account when making decisions, in order to help regularise decisions on whether a person should be most safely managed in a police station or somewhere else, and make provision for the procedural steps required.

Section 82: Periods of detention in places of safety etc

844 Currently a person detained under section 135 or 136 of the 1983 Act can be held for a maximum of 72 hours pending the required mental health assessment. *Subsections (2) and (3)* amend sections 135 and 136 of the 1983 Act to replace the 72 hour time limit with the term "permitted period of detention". The "permitted period of detention" is 24 hours from the time a person arrives at a place of safety or the time a police officer decides to keep the person at a place of safety.

845 *Subsection (4)* inserts new section 136B into the 1983 Act. This makes provision for the responsible medical practitioner to authorise the extension of the permitted period of detention (24 hours) by a maximum of 12 hours where the condition of the detainee makes it necessary to do so. Where both the place of safety at which the detainee is being held and the intended place of assessment is a police station, authorisation to extend the permitted period of detention will also require the approval of a police officer of the rank of superintendent or above. This brings the maximum period of detention under sections 135 and 136 of the 1983 Act into line with that which can be authorised by a superintendent under PACE.

846 *Subsection (5)* makes a consequential amendment to section 138 of the 1983 Act which provides for the retaking of patients escaping from custody while being taken to or detained in a place of safety.

Section 83: Protective searches: individuals removed etc under section 135 and 136 of the Mental Health Act 1983

847 At present a person detained under section 136(1) of the 1983 Act may be searched under a general power to search upon arrest. This is because section 136(1) of the 1983 Act was specifically preserved as a police power of arrest under Schedule 2 to PACE. Schedule 2 is a preservation of certain powers of arrest and the general power to search upon arrest is found at section 32 of PACE. This section amends the 1983 Act to enable constables to carry out searches where a warrant is issued under 135(1) or (2) or where a person is detained under section 136(2) or (4).

848 This section, which inserts new section 136C into the 1983 Act, complements the provisions in section 81, which widen the definition of a place of safety, by enabling police to conduct protective searches of a person in places where police officers may not currently have explicit powers of search.

849 New section 136C of the 1983 Act enables a police officer to search a person who is subject to section 135 or section 136(2) and (4) if the officer has reasonable grounds for believing that the

person has a dangerous item concealed on them and presents a danger to themselves or to others. New section 136C(4) and (5) provide safeguards to ensure that the search is only used to the extent that is reasonably required to discover the item, and is limited to a search of outer clothing and the mouth. New section 136C(7) provides that this search power does not affect any existing powers to search the person.

Chapter 5: Maritime Enforcement: English and Welsh Offences

850 This Chapter forms part of the law of England and Wales, but also applies to Scotland to the extent that it provides for the exercise of the maritime enforcement powers following the hot pursuit of vessels into Scotland waters.

Section 84: Application of maritime enforcement powers: general

851 Section 30 of the 1996 Act limits the powers and privileges of constables to England and Wales and the adjacent United Kingdom waters. It provides that constables can exercise "maritime enforcement" powers on land and within the territorial waters (12 nautical miles as measured from the baseline (that is, the mean low water mark)). Section 30(6)(b) of the 1996 Act provides that section 30 is without prejudice to other enactments conferring powers on constables for particular purposes. This Chapter confers such powers.

852 *Subsection (1)* provides that the police and others (generically termed "law enforcement officers") may exercise what are collectively termed "the maritime enforcement powers" (as defined in *subsection (2)*) for the purposes of preventing, detecting, investigating or prosecuting offences under the law of England and Wales in the maritime context and specifies the categories of ship upon which these powers can be exercised. These include certain categories of ship operating in "England and Wales waters", "international waters" and "foreign waters", these terms are defined in section 95(1).

853 *Subsection (3)* defines "law enforcement officers" for the purpose of exercising the maritime enforcement powers. This includes provision at subsection (3)(g) for the Secretary of State to specify in regulations made by statutory instrument (subject to the negative procedure) other categories of person who may be allowed to exercise these powers.

854 *Subsection (6)* limits the exercise of powers under this section by reference to section 85. This requires authority from the Secretary of State before the maritime enforcement powers are exercised in relation to a foreign ship in the territorial waters of England and Wales or international waters.

Section 85: Restriction on exercise of maritime enforcement powers

855 *Subsection (1)* sets out that the authority of the Secretary of State is required before a law enforcement officer exercises any of the maritime enforcement powers provided for in section 84 in relation to a UK ship in foreign waters.

856 *Subsection (2)* provides that the Secretary of State may only provide an authority under subsection (1) where the consent of the State or relevant territory in whose waters the powers would be used has been obtained.

857 Similarly, *subsection (3)* requires that the authority of the Secretary of State is needed before these powers are used in the territorial waters of England and Wales or international waters in respect of a foreign ship, or a ship registered under the law of a relevant territory.

858 *Subsection (4)* sets out the specific circumstances where the Secretary of State may give an authority under subsection (3). These restrictions ensure that the powers are aligned with the UN Convention on the Law of the Sea.

Section 86: Hot pursuit of ships in Scotland waters

859 This section provides for powers of hot pursuit, where law enforcement officers operating in England and Wales waters or international waters seek to pursue a ship into Scottish waters.

860 *Subsection (1)* sets out that a law enforcement officer may exercise the maritime enforcement powers in relation to a ship in Scotland waters, provided that the conditions in this subsection are met.

861 *Subsection (2)* provides that, for the purposes of subsection (1)(e), pursuit is not interrupted simply because the method of carrying out the pursuit, or the identity of the ship or aircraft carrying out the pursuit, changes during the course of the pursuit. For example, where a speed boat is pursued initially by a police helicopter and then by a border force clipper, this represents an uninterrupted pursuit.

Section 87: Restriction on exercise of maritime enforcement powers in hot pursuit

862 *Subsection (1)* requires that the authority of the Secretary of State is given before maritime enforcement powers are exercised under section 86 (hot pursuit) in relation to a foreign ship, or a ship registered under the law of a relevant territory, within the territorial sea adjacent to Scotland. *Subsection (2)* sets out the circumstances under which the Secretary of State may give authority under subsection (1) in relation to a foreign ship.

Section 88: Power to stop, board, divert and detain

863 This section provides a power to stop and board a ship, and to direct the vessel to be taken to a port in England and Wales, or elsewhere, and detained there, where a law enforcement officer has reasonable grounds to suspect that an offence under the law of England and Wales is being or has been committed on that ship, or that that ship is being used in connection with the commission of an offence under the law of England and Wales.

864 It notes that if the enforcement officer is acting on the authority of the Secretary of State, as set out in section 84(3) or 86(1), the officer can require the vessel to be taken to a port in that vessel's flag state or in another country willing to take the vessel. In exercising that power, an enforcement officer has the power to require any member of a vessel's crew to take action necessary to support their enforcement activity in relation to that power. Written notice must be provided to the master of any vessel detained under this subsection, which must state the ship is to be detained until withdrawn via a further written notice, signed by a constable or a law enforcement officer.

Section 89: Power to search and obtain information

865 This section provides a law enforcement officer with the power to search a ship, and anyone or anything found on the ship. This power may be exercised when the officer has reasonable grounds to suspect that there is evidence relating to an offence under the law of England and Wales (other than items subject to legal privilege) on a ship upon which the maritime enforcement powers are exercisable. The power extends to requiring a person found on the ship to provide information about him or herself or about anything found on the ship.

866 This power is restricted to a search only for evidence relating to an offence under the law of England or Wales.

867 *Subsection (8)* provides that the powers to search anyone or anything on the ship or to require a person on the ship to provide information may be exercised on the ship or elsewhere. 'Elsewhere' is included to cover circumstances where persons leave the ship or where items which could amount to evidence relating to an offence under the law of England and Wales are thrown overboard.

Section 90: Power of arrest and seizure

868 *Subsections (1) and (2)* provides a power of arrest to a law enforcement officer. An arrest may be made when the officer has reasonable grounds to suspect that an offence has been committed on a ship upon which the maritime enforcement powers are exercisable.

869 *Subsection (3)* allows a law enforcement officer to seize and retain anything which appears to be evidence of that offence, with the exception of any items believed to be subject to legal privilege. Such items are items as defined by section 10 of PACE as items that relate to communications between a professional legal adviser and his or her client, or any person representing his or her client.

870 *Subsection (4)* provides for the powers set out in subsection (2) or (3) to be exercisable on the ship "or elsewhere". "Elsewhere" is included for the same reason as in section 89 (see above).

Section 91: Maritime enforcement powers: supplementary: protective searches

871 Where the power to stop, board, divert and detain a ship is exercised under section 88, this section allows 'protective searches' to be carried out. *Subsection (2)* enables a law enforcement officer to search any person found on the ship for anything (for example, weapons or tools), which might be used to cause physical injury, damage to property, or endanger the safety of any ship. *Subsection (3)* provides for a protective search to be undertaken on board the ship or elsewhere.

872 *Subsection (4)* allows the officer carrying out the search to seize and retain anything found if the officer believes that the person might use it to cause injury or damage to property, or endanger the safety of the ship. A seized item may only be retained for so long as there are reasonable grounds to believe that it might be used in such a manner.

873 *Subsection (6)* limits the power to search a person under subsection (2) to the removal of an outer coat, jacket or gloves, where that search takes place in public view.

Section 92: Maritime enforcement powers: other supplementary provision

874 *Subsection (1)* provides that a law enforcement officer may take other persons ("assistants") or equipment or materials on board a ship to assist them in exercising the powers set out in this Chapter. *Subsection (3)* makes clear that the assistant may perform functions on behalf of the constable or officer if under the supervision of the officer.

875 *Subsection (2)* allows the officer to, if necessary, use reasonable force in performing any of the functions under this Chapter.

876 *Subsection (4)* provides that, if asked to do so, a law enforcement officer must provide evidence of their authority. That evidence may be in the form of a warrant, badge or written authorisation.

Section 93: Maritime enforcement powers: offences

877 This section creates two offences, set out in *subsections (1) and (2)*, where a person impedes or frustrates the exercise of the functions of a law enforcement officer under this Chapter, or either fails to provide information or provides false information. Both offences are summary only and on conviction the defendant is liable to a fine (*subsection (4)*).

878 *Subsection (3)* provides a power of arrest without warrant for these offences.

Section 94: Maritime enforcement powers: code of practice

879 This section imposes an obligation on the Secretary of State to prepare and issue a code of practice for law enforcement officers who use the power of arrest conferred by section 90. This

code must provide guidance on the information (for example, procedural rights) to be given to a person at the time of their arrest.

880 The code and any revisions to the code are to be brought into force by regulations, subject to the affirmative procedure.

Section 95: Interpretation

881 *Subsections (1) and (2)* define terms used throughout Chapter 5.

882 *Subsection (3)* provides that references to the United Nations Convention on the Law of the Sea (UNCLOS) include references to any modifications of that Convention agreed after the passing of this Act that have entered into force in relation to the United Kingdom.

Chapter 6: Maritime Enforcement: Scottish Offences

883 Chapter 6 provides for maritime enforcement powers equivalent to those set out in Chapter 5 of Part 4 to apply in Scotland, taking account of Scots law and practice.

884 Section 19 of the Police and Fire Reform (Scotland) Act 2012 provides that the police service of Scotland can carry out functions throughout Scotland. This means that the Scottish police can operate within the territorial waters of Scotland, which extends to 12 nautical miles from the Scottish shore. This can hamper the effective disruption of criminal activity in the maritime context, as Scottish law enforcement agencies are not always able to act when a crime has taken place on ships outside the territorial waters of Scotland, for example in and around the territorial waters of other parts of the UK or on the high seas.

885 As with sections 84 to 95, which concern maritime powers in connection with English and Welsh offences, sections 96 to 106 make provision for law enforcement officers in Scotland to use their powers in the maritime context for the purpose of preventing, detecting and investigating offences under the law of Scotland.

886 The powers will be exercisable on UK registered ships in Scotland waters, foreign waters (subject to restrictions in section 97) or international waters; ships without nationality in Scotland waters or international waters; foreign ships in Scotland waters or international waters (subject to restrictions in section 97), or ships, registered under the law of a relevant territory, in Scotland waters or international waters (again, subject to restrictions in section 97).

887 The powers will be exercisable by a constable as under section 99 of the Police and Fire Reform (Scotland) Act 2012; British Transport Police officers; designated customs officials (as under Part 1 of the Borders, Citizenship and Immigration Act 2009); suitably designated National Crime Agency officers under the Crime and Courts Act 2013; or any person of a description specified in regulations made by the Secretary of State (made under section 96(3)(e)).

888 The Scottish sections do not make provision for the preparation and issue of a code of practice, which is provided for in the English and Wales context under section 94. As is done for the Modern Slavery Act 2015, the Scottish Government will issue non statutory guidance governing the use of arrest and other powers under these provisions.

Chapter 7: Maritime Enforcement: Northern Irish Offences

889 Chapter 7 provides for maritime enforcement powers equivalent to those set out in Chapter 5 of Part 4 to apply in Northern Ireland, but not including the powers of 'hot pursuit', and taking account of Northern Irish law and practice. The powers are also limited to the territorial waters

of Northern Ireland, unlike the provisions that apply in respect of Scotland and England and Wales.

890 Section 32 of the Police (Northern Ireland) Act 2000 limits police jurisdiction throughout Northern Ireland and its adjacent UK waters within the seaward limits of the territorial sea in the same manner as section 30 of the 1996 Act applies in England and Wales. Within this jurisdiction, the main provisions in Chapter 7 provide Northern Ireland law enforcement officers with maritime specific powers to stop, board, detain and divert ships for the purpose of preventing, detecting or investigating an offence under the law of Northern Ireland. In particular, the powers may be exercised in relation to:

- a United Kingdom ship in Northern Ireland waters;
- a ship without nationality in Northern Ireland waters;
- a foreign ship in Northern Ireland waters; or
- a ship, registered under the law of a relevant territory, in Northern Ireland waters.

891 The powers will be exercisable by a constable who is a member of the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve; a special constable in Northern Ireland by virtue of section 79 of the Harbours, Docks and Piers Clauses Act 1847; designated customs officials (as under Part 1 of the Borders, Citizenship and Immigration Act 2009); suitably designated NCA officers under the Crime and Courts Act 2013; or any person of a description specified in regulations made by the Secretary of State (made under section 107(3)(e)).

Chapter 8: Cross-border enforcement

892 This Chapter forms part of the law of the United Kingdom.

Section 116: Extension of cross-border powers of arrest: urgent cases

893 Section 116 inserts new sections 137A to 137D into Part 10 of the 1994 Act. New section 137A provides for cross-border powers of arrest for the purpose of enabling the person to be re-arrested either under section 136 (where an arrest warrant is obtained) or under section 137 of the 1994 Act (where no arrest warrant is issued)

894 Any constable exercising this power must have reasonable grounds for suspecting that the person has committed a specified offence in another jurisdiction. In addition, constables of a police force in England and Wales or Northern Ireland must have reasonable grounds to believe that it is necessary to arrest the person to allow prompt and effective investigation or prevent any prosecution from being hindered by the person's disappearance. This is similar to the tests applying to arrests without warrant by constables of those forces under PACE and the Police and Criminal Evidence (Northern Ireland) Order 1989 ("PACE(NI)"). Similarly, constables of a police force in Scotland must be satisfied that it would not be in the interests of justice to delay the arrest to enable arrest under section 136 or 137 of the 1994 Act. This is similar to the test applying to arrests without warrant by constables of that force under the Criminal Justice (Scotland) Act 2016.

895 As with sections 136 and 137 of the 1994 Act, the ancillary powers that the officer has when arresting the person under new section 137A depend on the jurisdiction in which the offence was committed.

896 Where the offence was committed in England and Wales or in Northern Ireland, an officer's

powers of entry and search before and after arrest are those set out in new section 137E (inserted by section 117) and section 139 of the 1994 Act. The exception to this is where the arrest takes place in Scotland, when the power of entry and search before arrest is limited to that which a Scottish constable would have if the offence had been committed in Scotland.

- 897 Where the offence was committed in Scotland, the officer has the same powers that a Scottish constable would have when arresting the person for the offence in Scotland.
- 898 The new power of arrest also applies to BTP officers, Revenue and Customs officers and immigration officers.
- 899 Schedule 15 inserts new Schedule 7A to the 1994 Act, which includes the specified offences for which the additional cross-border powers of arrest without warrant in new section 137A can be used.
- 900 New section 137B of the 1994 Act provides the Secretary of State with a power to make regulations (subject to the affirmative procedure) to add or remove an offence from the list of offences specified in new Schedule 7A. These offences are limited insofar as they must be offences which may be tried on indictment, and the Secretary of State must consider that it is necessary in the interests of justice that the new power of arrest should apply to it.
- 901 New section 137B(8) provides that the Secretary of State must obtain the consent of the Scottish Ministers and the Department of Justice in Northern Ireland before modifying the list of offences in regulations.
- 902 New section 137C of the 1994 Act specifies limits on the period for which persons arrested under the new powers may be detained for the purpose of the re-arrest of the person under sections 136 or 137. The provision includes safeguards in the form of staged authorisations. Individuals may be detained for an initial three hour period. Further detention for no more than 21 further hours may be authorised by an officer of at least the rank of inspector in both the arresting and the investigating force. A third period of no more than 12 further hours may also be authorised by an officer of a rank above that of inspector in both the arresting force and the investigating force. Authorisation may only be given for detention for the second and third periods if the authorising officer in each force is satisfied that it is in the interests of justice to do so. The authorising officer in the investigating force must also be satisfied that there are reasonable grounds to suspect that the person has committed the specified offence and that expeditious action is being taken to enable the arrest of the person under section 136 or 137.
- 903 New section 137D of the 1994 Act concerns the rights and entitlements of persons arrested under new section 137A, such as the information to be given about the purpose of detention under new section 137C and the periods for which they may be detained, that is, three hours, a further 21 hours and a further 12 hours, subject to authorisations. Other rights, such as the right to certain information on arrest, the right to have someone informed, the right to legal advice, and special provisions for dealing with young persons, are applied by reference to the relevant statutes in England and Wales, Northern Ireland and Scotland. Schedule 16 inserts new Schedule 7B into the 1994 Act, which sets out appropriate modifications of those enactments. New section 137D provides the Secretary of State with a power to make regulations, subject to the affirmative procedure and the consent of the Scottish Ministers and the Northern Ireland Department of Justice, to add, remove, alter and disapply statutory rights.

Section 117: Cross-border enforcement: powers of entry to effect arrest

- 904 Section 117 inserts new section 137E into Part 10 of the 1994 Act. New section 137E provides powers of entry and search for the purpose of making an arrest in respect of an offence committed in England and Wales or Northern Ireland under Part 10 of the 1994 Act (as amended by section 116). It applies only in relation to the exercise of powers of arrest in

England and Wales or Northern Ireland, and only in respect of indictable offences and certain other offences. The powers of entry and search are similar to those in section 17 of PACE and Article 19 of PACE(NI).

Section 118: Cross border enforcement: officers of Revenue and Customs

905 This section amends the Finance Act 2007 to provide that all of the cross-border powers of arrest will be exercisable by Revenue and Customs officers in relation to any of the functions of HMRC or Revenue and Customs officers. This means that the powers will be available in relation to both tax and customs matters. Designated customs officials and NCA officers who are designated with the powers of Revenue and Customs officers will also be able to exercise cross border powers of arrest.

Section 119: Cross border enforcement: minor and consequential amendments

Section 119 introduces Schedule 17, which makes minor and consequential amendments to Part 10 of the 1994 Act. In particular, minor amendments are made to reflect changes to PACE and PACE(NI). An amendment is also made to section 139 of the 1994 Act to provide that an officer who enters and searches a property under that section has the same powers of seizure as the officer would have if the power of entry and search had been exercised in the officer's 'home' jurisdiction in respect of an offence in that jurisdiction.

Chapter 9: Miscellaneous

Section 120: Powers to require removal of disguises: oral authorisation

906 Section 60AA of the 1994 Act provides a power for the police to remove disguises from individuals where authorisation given by an inspector or higher rank is in place in that locality. Authorisation may be given where the authorising officer reasonably believes that activities may take place in a locality that are likely to involve the commission of offences and that the authorisation is expedient in order to prevent or control the activities. Subsections (3) to (6) of section 60AA set out the other requirements which must be satisfied when giving, or extending the duration of, an authorisation. In particular, subsection (6)(a) currently requires that any authorisation must be in writing and signed by the officer giving it.

907 Section 120 amends section 60AA to make provision for an oral authorisation to be given to remove disguises where it would not be practicable to make an authorisation in writing, for example where there is a spontaneous public order incident. In such cases, the oral authorisation would need to specify appropriate matters (such as the location where the powers could be exercised) and be subsequently recorded in writing.

Part 5: Police and Crime Commissioners and Police Areas

908 This Part forms part of the law of England and Wales.

Section 121: Term of office of deputy police and crime commissioner

909 Paragraph 8 of Schedule 1 to the 2011 Act provides for the term of office of a deputy PCC to end "not later than the day when the current term of office of the appointing PCC ends."

910 *Subsection (2)* amends paragraph 8 of Schedule 1 to the 2011 Act to provide greater flexibility concerning a deputy PCC's term of office. The amendment covers two situations: the first following an ordinary PCC election (where no by-election has been called), the second where a by-election is called due to a vacancy in the office of the PCC. In the first case, the PCC will be

required to include in the terms and conditions of the deputy PCC that the latter's term of office will end no later than six days after the day of the poll at the next ordinary PCC election. That is the same date as the day on which the term of office of the appointing PCC would, if there were no vacancy (leading to a by-election) in the office before then, end in accordance with section 50(7)(b). This ensures the deputy PCC is able to remain in post until a new PCC takes office.

911 In the second case, the deputy PCC's term of office will automatically end when, in the event of a by election, the new PCC makes and delivers a declaration of acceptance of office. The newly elected PCC may then decide whether to re-appoint the existing deputy PCC, replace them or discontinue the post altogether. This will enable the deputy PCC to remain in post until the new PCC takes office following the by-election, whilst allowing the new PCC flexibility about whether he appoints a deputy PCC or not. This amendment also ensures that a deputy PCC is eligible to be appointed as the acting PCC, if the relevant Police and Crime Panel chooses to do so. This is because an acting PCC must be appointed from the existing staff of the PCC.

912 New paragraph 8(3B) of Schedule 1 to the 2011 Act allows a PCC, subject to the provisions above, to make such provisions about termination of the appointment of a deputy PCC in the terms and conditions of appointment as the appointing PCC thinks appropriate. This will allow a degree of local flexibility to enable the PCC, for example, to make a short term appointment.

913 *Subsections (4) to (6)* contain transitional provisions so that the change in the term of office of a deputy PCC has retrospective effect, save where on the date this section comes into force a by-election is in progress.

Section 122: Eligibility of deputy police and crime commissioner for election

914 Section 65 of the 2011 Act disqualifies a deputy PCC, by virtue of being a member of the PCC's staff, from being elected as a PCC. This section amends section 65 to allow a deputy PCC to stand for election at an ordinary PCC election.

915 This section also enables a deputy PCC to stand for election as PCC at a by-election, but only where the deputy PCC has been appointed as acting PCC by the relevant Police and Crime Panel, and remains in that post from the time they are nominated as a candidate until the declaration of the result of the by-election.

Section 123: Deputy mayor for policing and crime as member of local authority

916 Section 1 of the Local Government and Housing Act 1989 ("the 1989 Act") applies certain political restrictions to the deputy mayor for policing and crime in London, where the deputy mayor is not a member of the London Assembly. Where a deputy mayor is not a member of the London Assembly, he or she is employed as a member of staff of MOPAC. Section 1 of the 1989 Act applies political restrictions to those staff. This section amends section 1 of the 1989 Act, removing certain political restrictions placed on the position of deputy mayor for policing and crime so that, where an elected member of a local authority is appointed as deputy mayor for policing and crime in London, he or she does not have to resign his or her position in order to take up the post, and also may stand for election as a local councillor.

Section 124: Amendments to the names of police areas

917 Section 1 of the 1996 Act provides for England and Wales to be divided into police areas, the name and geographical extent of the 41 police areas outside London are then specified in Schedule 1 to the 1996 Act.

918 Section 1 of the 2011 Act provides for a PCC for every police area listed in Schedule 1 to the 1996 Act. Section 1(3) provides that the name of the PCC is "the Police and Crime

Commissioner for [name of police area]".

- 919 Section 32 of the 1996 Act contains an order-making power which enables geographical alterations to be made to a police force area, together with any consequential change to the name of an altered area, but this power cannot be exercised so as to simply to change the name of a police area.
- 920 *Subsection (1)* inserts new section 31A into the 1996 Act which enables the Secretary of State (in practice, the Home Secretary) to amend the name of a police force area by regulations (subject to the affirmative procedure).
- 921 New section 31A of the 1996 does not stipulate any criteria for the exercise of the regulation-making power, but it is envisaged that the Home Secretary will only exercise the power in response to local representations, for example from the PCC, where there is evidence of local support and the proposed change of name represents value for money (having regard, for example, to the cost of changing force logos).
- 922 *Subsection (2)* makes a consequential amendment to section 1 of the 1996 Act which draws out the distinction between the power in new section 31A of the 1996 Act (which is limited to changing the name of a police area in the first column of Schedule 1 to the 1996 Act) and the existing powers in section 32 of the 1996 Act and in various local government enactments (which enable both the name of a police force area and its geographical extent or description (as set out in the second column of Schedule 1) to be amended).

Part 6: Firearms and pyrotechnic articles

923 Sections 125 to 133 form part of the law of England, Wales and Scotland.

Section 125: Firearms Act 1968: meaning of "firearm" etc.

- 924 Section 57(1) of the 1968 Act (Interpretation) defines a firearm as a "lethal barrelled weapon" but does not define "lethal" in this context. It also provides that the definition of firearm includes any "component part" but without defining this term.
- 925 *Subsection (2)* amends section 57(1) of the 1968 Act so as to define a firearm as: (a) a lethal barrelled weapon; (b) a prohibited weapon; (c) a relevant component part of either a lethal barrelled or prohibited weapon; or (d) an accessory which is designed or adapted to diminish the noise or flash caused by firing a lethal barrelled weapon.
- 926 *Subsection (3)* inserts new subsections (1B) and (1C) into section 57 of the 1968 Act. Subsection (1B) defines a lethal barrelled weapon by reference to a threshold of one joule for muzzle kinetic energy. Muzzle kinetic energy is the power of a discharged projectile as it leaves the barrel of a weapon.
- 927 This means that a weapon with a muzzle kinetic energy below the lethality threshold of one joule is not a firearm for the purposes of the 1968 Act. An air pistol (which uses compressed air to fire a projectile) with a muzzle kinetic energy above the lethality threshold but below 6 ft lb (or 12 ft lb for other air weapons) is a firearm but does not need to be held on a firearms certificate by virtue of section 1(3)(b) of the 1968 Act. An air pistol with a muzzle kinetic energy in excess of 6 ft lb, or any other air weapon with a muzzle kinetic energy in excess of 12 ft lb, needs to be held on a firearms certificate. (Converted into SI units, these figures are 8.13 joules and 16.27 joules. The conversion factor from foot-pounds to joules is to multiply by 1.3558.)
- 928 New section 57(1C) provides that the definition of firearm is subject to new section 57A of the 1968 Act (exception for airsoft guns - see below).

929 *Subsection (4)* inserts a new subsection (1D) into section 57 of the 1968 Act which defines a relevant component part of a lethal barrelled weapon or a prohibited weapon. The following items are relevant component parts:

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

930 This provision will ensure that those parts that have the potential for criminal misuse are subject to control, whilst not requiring that every pin or screw be listed separately on a firearms certificate.

931 These terms are not defined further but will take their commonly understood meanings, namely:

- Barrel – that part of a firearm through which a projectile or shot charge travels under the impetus of powder gasses, compressed air, or other like means. A barrel may be rifled or smooth;
- Chamber – the rear part of the barrel bore that has been formed to accept a specific cartridge or shotshell. In a revolver the holes in the cylinder represent multiple chambers;
- Cylinder – the rotating part of a revolver, that contains the chambers;
- Frame – in revolvers, pistols, and break-open guns, the basic unit of a firearm which houses the firing and breech mechanism and to which the barrel and grips are attached;
- Body – another word for receiver or frame;
- Receiver – the basic unit of a firearm which houses the firing and breech mechanism and to which the barrel and stock are assembled;
- Breech block – the locking and cartridge head support mechanism of a firearm that does not operate in line with the axis of the bore;
- Bolt – on a rifle, this is a component which slides into an extension to the barrel at the breech end and rotates to lock.

932 *Subsection (5)* inserts a new section 57A (exception for airsoft guns) into the 1968 Act. This provides that airsoft guns are not to be regarded as firearms, and defines what an airsoft gun is. It provides for slightly higher maximum permitted muzzle kinetic energy levels for airsoft guns: 1.3 joules for automatic variants and 2.5 joules for single shot variants. (These thresholds were informed by testing carried out by the (now disbanded) Forensic Science Service in 2011.)

933 'Airsoft' is an activity employing low-powered air weapons in acting out military or law enforcement scenarios, where the participants shoot at each other with spherical plastic pellets of up to 8mm in diameter. The weapons in question are not rifled and are made from low density metal.

934 *Subsection (6)* inserts a new section 57B into the 1968 Act which confers on the Secretary of State (in practice, the Home Secretary) a power to amend by regulations made by statutory

instrument (subject to the affirmative procedure) the definition of relevant component part set out in the new section 57(1D).

Section 126: Firearms Act 1968: meaning of "antique firearm"

935 Section 58 of the 1968 Act exempts antique firearms from most of the prohibitions and restrictions imposed by that Act, but does not define "antique" firearm. Home Office guidance (Guidance on Firearms Licensing Law, April 2016, Chapter 8 and Appendix 5) currently includes lists of obsolete calibres, ignition systems and antique air weapons manufactured before 1939.

936 *Subsection (2)* inserts new subsections (2A) to (2H) into section 58 of the 1968 Act to define an antique firearm by reference to either a description of the cartridge with which its chamber is capable of being used or a description of its propulsion system. In addition, such a description can be refined to provide that the firearm must either have been manufactured before a certain date, or a specified number of years must have elapsed since the firearm was manufactured. These descriptions will be specified in regulations. New section 58(2G) provides that these regulations will be made by statutory instrument (subject to the affirmative procedure) when first made, and when further obsolete cartridges or propulsion systems are added to these regulations. New section 58(2H) provides that a statutory instrument that only amends regulations previously made by way of removing a description of a cartridge or a propulsion system from these regulations will be subject to the negative procedure.

937 *Subsection (3)* amends section 58(2) of the 1968 Act to provide that the offences in section 19 (carrying a firearm in a public place) and section 20 (offence of trespassing with a firearm) of that Act may be committed when in possession of an antique firearm.

938 *Subsections (4) to (7)* set out the transitional arrangements for any firearms that will no longer fall within the definition of an antique firearm following the coming into force of regulations made as described above.

939 *Subsection (5)* disapplies section 5 of the 1968 Act (which makes it an offence to possess a prohibited weapon) for personal possession of a firearm previously considered to be an antique, except for those who are in possession of such firearms for the purposes of trade or business, who will have to apply for a section 5 authority in the usual way.

940 *Subsections (6) and (7)* provide that a person who is in possession of a firearm before it is no longer considered to be an antique firearm must not be refused a certificate (or be refused an application to renew a certificate) on the grounds that he does not have a good reason for possessing the firearm. This is to enable someone whose firearm no longer qualifies as an antique to retain it provided that it is held on certificate.

Section 127: Possession of articles for conversion of imitation firearms

941 The law does not currently criminalise possession of equipment with the intention of using it to convert imitation firearms into live firearms. Currently a person does not commit an offence until they are in possession of an imitation firearm that is in fact readily convertible, without an appropriate certificate or authority.

942 An imitation firearm is defined in section 57(4) of the 1968 Act as meaning any thing which has the appearance of being a firearm (other than such a weapon as is mentioned in section 5(1)(b) of that Act) whether or not it is capable of discharging any shot, bullet or other missile.

943 This section inserts new section 4A into the 1968 Act which provides for a new offence of being in possession of an article with the intention of using it to convert an imitation firearm into a firearm. The new offence, as set out in new section 4A(1), applies to any person other than a registered firearms dealer.

944 A firearms dealer is defined at section 57(4) of the 1968 Act as a person who, by way of trade or business: manufactures, sells, transfers, repairs, tests or proves firearms or ammunition to which section 1 of this Act applies, or shotguns; or sells or transfers air weapons. Firearms dealers registered under section 33 of the 1968 Act are excluded from the offence because they are able to lawfully carry out conversions as part of their trade or business.

945 New section 4A(1)(a) provides for the conduct (*actus reus*) element of the offence, namely that a person has in his or her possession an article, or an article is under his or her control, that is capable of being used to convert an imitation firearm into a live firearm, whether by itself or in conjunction with other articles. Such an article may, for example, be a machine tool. New section 4A(1)(b) sets out the mental (*mens rea*) element of the offence, namely that the person intends to use the article to convert an imitation firearm into a firearm. It follows that mere possession of such an article is not sufficient on its own to determine guilt.

946 The offence is triable either way, that is (in England and Wales) in a magistrates' court or the Crown Court. New section 4A(2) sets out the maximum penalties for the offence. In England and Wales, until section 154(1) of the Criminal Justice Act 2003 comes into force, the maximum penalty on summary conviction will be six months' imprisonment and/or a fine. After section 154(1) is commenced, the maximum penalty will be 12 months' imprisonment and/or a fine. In Scotland the maximum penalty on summary conviction will be 12 months' imprisonment and/or a fine of up to £10,000. In both jurisdictions, the maximum penalty on conviction on indictment will be five years' imprisonment and/or a fine.

Section 128: Controls on defectively deactivated weapons

947 Section 8 of the Firearms (Amendment) Act 1988 provides that a firearm is presumed to have been rendered incapable of discharging any shot bullet or other missile, and is no longer considered to be a firearm if it bears a mark made by either of the Proof Houses and which has been approved by the Secretary of State for the purpose of denoting that it has been so rendered, and one of the two Proof Houses⁴⁴ have certified in writing that the work done to deactivate the firearm has been to a standard approved by the Secretary of State.

948 The current law does not however establish a legal requirement that, in order for a weapon to be considered deactivated as a matter of law, it must be certified as being deactivated to an approved standard. This means there is no legal obligation to comply with the approved Home Office standards.

949 This section inserts new section 8A into the Firearms (Amendment) Act 1988 to give effect to new deactivation standards, which deactivated firearms must meet if they are offered for sale or gift or actually sold, gifted or otherwise transferred and provides for a new offence for those who sell or gift, or offer to sell or gift, "defectively deactivated" firearms. This will prohibit the transfer of ownership of firearms that purport to be deactivated but do not comply with the applicable technical specifications for deactivation. It will not prohibit the temporary hiring of such weapons for the purposes of film, television or theatre productions.

950 New section 8A(1)(a) and (b) define the conditions which must be met to engage the new offence, namely when a defectively deactivated weapon is placed on the market or made available as a gift to another person, or, when it is actually sold or made as a gift to another person.

951 The new deactivation standard does not apply to a firearm deactivated to previous standards unless it is offered for sale or gift or actually sold, gifted or otherwise transferred.

⁴⁴ The two Proof Houses (in London and Birmingham) provide a testing and certification service for firearms, provided for in the Gun Barrel Proof Acts 1868, 1950 and 1978 and various Rules of Proof.

- 952 New section 8A(2) provides for an exemption from the offence if a defectively deactivated weapon is offered for sale or gift otherwise offered for transfer to persons in places outside of the EU.
- 953 New section 8A(3) provides for the exemption for the offence in circumstances where a defectively deactivated weapon is actually sold or otherwise transferred to persons and places outside of the EU. In both cases, this is reflective of the fact that the technical specifications which deactivated firearms must meet are encoded in EU Regulation 2015/2403 which has effect across all Member States.
- 954 New section 8A(4) provides the definition of a "defectively deactivated weapon" and does so by reference to the conditions which such a weapon must satisfy in order for it to be considered as "defectively deactivated". A defectively deactivated weapon must have at one time been an actual firearm which has been subject to a technical procedure to render it incapable of firing live ammunition, but nonetheless, does not meet the specifications set out in the new technical standards established by new section 8A(5).
- 955 These conditions distinguish a defectively deactivated weapon from other categories of weapons or imitation weapons resembling firearms which are incapable of firing live ammunition, such as realistic imitation firearms or blank firing firearms, or a deactivated firearm which has been deactivated to the required technical standards established by this new section. This provides clarity for the prosecution of this new offence.
- 956 New section 8A(5) provides for the Secretary of State to publish a document which sets out the technical specifications for the deactivation of a firearm.
- 957 New section 8A(6) provides that the specifications for the deactivation of a firearm may vary for different types of weapon.
- 958 New section 8A(7) provides for the Secretary of State to amend and publish new deactivation standards for firearms. The revised standards must specify a date from which the changes shall take effect.
- 959 New section 8A(8) disapplies new section 8A(1)(a) and (b) in relation to the conditions of an offence of transfer, or advertising for sale or as a gift, of a firearm which has been deactivated to UK standards before 8 April 2016, where these activities are undertaken between museums which have been issued with a 'museum firearms licence' by the Home Office.
- 960 New section 8A(9) provides that the meaning of the term 'sale' of a deactivated includes exchange or barter.
- 961 New section 8A(10) defines 'museum firearms licence' as a licence granted under the Schedule to the Firearms (Amendment) Act 1988.
- 962 The offence is triable either way, that is (in England and Wales) in a magistrates' court or the Crown Court. New section 8A(11) sets out the maximum penalties for the offence. In England and Wales, until section 154(1) of the Criminal Justice Act 2003 comes into force, the maximum penalty on summary conviction will be six months' imprisonment and/or a fine. After section 154(1) is commenced, the maximum penalty will be 12 months' imprisonment and/or a fine. In Scotland the maximum penalty on summary conviction will be 12 months' imprisonment and/or a fine of up to the statutory maximum. In both jurisdictions, the maximum penalty on conviction on indictment will be five years' imprisonment and/or a fine.

Section 129: Controls on ammunition which expands on impact

963 Section 5 of the 1968 Act provides that the possession, purchase or acquisition, sale or transfer, without authority⁴⁵ of “ammunition which incorporates a missile designed or adapted to expand on impact” is an offence. The legislation does make provision for certain circumstances where expanding ammunition can be held but this requires police to then issue a certificate with additional conditions.

964 This section amends the existing arrangements for the possession, purchase or acquisition or, sale or transfer of “expanding ammunition” in respect of rifles. Expanding ammunition designed to be used with a pistol or revolver remains prohibited. This is in order to maintain compliance with the Weapons Direction (91/477 EEC).

965 *Subsection (2)* amends section 5(1A)(f) of the 1968 Act (weapons subject to general prohibition) by restricting the prohibition of expanding ammunition to pistols.

966 *Subsection (3)* amends section 5A(8)(a) of the 1968 Act (exemptions from requirement of authority under section 5) to provide that any references to expanding ammunition are references to ammunition designed to be used with pistols.

967 In consequence of the amendment made at subsection (2), *subsection (4)* omits section 9 of the Firearms (Amendment) Act 1997 which is the general prohibition of expanding ammunition.

Section 130: Authorised lending and possession of firearms for hunting etc

968 Currently, a firearm certificate holder can lend a gun to a non-certificate holder only if they are on private land of which they are the ‘occupier’. In very broad terms, this means having legal rights over the land and does not cover individuals with permission from the land owner to shoot.

969 Section 130 inserts new section 11A into the 1968 Act.

970 New section 11A(1) provides that a non-certificate holder may borrow and possess a rifle or a shotgun from another person on private premises if the four conditions set out in subsections (2) to (5) are met and in the case of a rifle, the borrower is aged 17 or over.

971 New section 11A(2) sets out the first condition which is the purpose of the borrowing and possession which can be for (a) hunting animals or shooting game or vermin or (b) shooting at artificial targets.

972 New section 11A(3) sets out the second condition, which is that the lender must be 18 or over, a certificate holder, and is either (i) a person who has a right to allow others to enter premises for the purposes of hunting animals or shooting game or vermin or (ii) a person who is authorised in writing by the person at (i) above to lend the rifle or shotgun on the premises.

973 New section 11A(4) sets out the third condition which is that the borrower’s possession and use of the rifle or shotgun must comply with the conditions on the lender’s certificate.

974 New section 11A(5) sets out the fourth condition which is that the borrower must always be in the presence of the lender or, in respect of a rifle, in the presence of a person who is a certificate holder for that rifle and is a person described in new section 11A(3)(c) or, in respect of a shotgun, in the presence of a person who is a certificate holder for that shotgun and is a person described in new section 11A(3)(c).

975 New section 11A(6) provides for the purchase or acquisition and possession of ammunition

⁴⁵ Sections 5 and 5(1A) set out that authority means an authority of either the Secretary of State in England and Wales, or the Scottish Ministers in Scotland.

when a rifle is borrowed on the premises and is for use with the firearm according to conditions on the lender's certificate.

976 *Subsection (2)* omits section 11(5) of the 1968 Act and section 16 of the 1988 Act, as a consequence of new section 11A.

Section 131: Limited extension of firearm certificates etc

977 In September 2015 HMIC reported⁴⁶ on the findings of the inspections of forces' firearms licensing departments it had undertaken, and made recommendations for a more consistent and efficient approach to reduce the risks arising from late applications for the renewal of a firearm and shotgun certificate and decisions made by police on those applications after the certificate expires. HMIC considered delays in renewal applications of particular concern by leaving firearms in the possession of those who might no longer be fit to possess them, or leaving applicants in unlawful possession of a firearm without a licence through no fault of their own.

978 *Subsection (1)* inserts a new section 28B (certificates: limited extension) into the 1968 Act. This provides for the validity and conditions of a certificate which is subject to renewal to be extended, in limited circumstances, if the police have not made a decision on the application for renewal by the time when the certificate is due to expire.

979 New section 28B(1)(a) provides for an extension to be limited to certificates that are subject to an application for renewal made at least eight weeks before the date on which the certificate is due to expire. New section 28B(1)(b) provides for the extension to take effect if the police have not made a decision on the application for renewal by the time the original certificate has expired.

980 New section 28B(2) provides that the certificate remains in force until either the police make a decision on the application for renewal, or the extension period ends.

981 New section 28B(3) defines the extension period as the period of eight weeks from the day after the day on which the certificate was due to expire.

982 New section 28B(4) provides for the period of extension of a certificate which would have expired to count towards the five-year duration of the renewed certificate in cases where the application for renewal is granted by the police during this period.

983 New section 28B(5) provides that the section does not apply in relation to the renewal of a certificate granted or last renewed in Northern Ireland.

984 *Subsection (2)* inserts a new section 28A(1A) which provides for the extension of validity of a certificate under new section 28B without prejudice to section 28A(1) (certificates: supplementary), which limits the duration of new and renewed certificates to five years.

Section 132: Applications under the Firearms Acts: fees

985 The Firearms Acts contain a number of powers to charge fees. For example, section 32 of the 1968 Act sets out the fees payable for the grant, renewal or replacement of a firearms or shotgun certificate, and paragraph 3 of the Schedule to the 1988 Act provides for specified fees to be paid on the grant, renewal or extension of a licence issued under that Schedule to a museum to exempt it from certain provisions of the 1968 Act. There is currently no provision to charge a fee for the grant of an authorisation under section 5 of the 1968 Act for the possession of

⁴⁶"Targeting the risk - An inspection of the efficiency and effectiveness of firearms licensing in police forces in England and Wales" published at www.justiceinspectors.gov.uk/hmic/wp-content/uploads/firearms-licensing-targeting-the-risk.pdf (HMIC)

prohibited weapons and ammunition and there is no explicit power to charge different fees for different categories of applicant for a licence under the Schedule to the 1988 Act.

986 *Subsection (1)* inserts new section 32ZA into the 1968 Act to provide a power to require payment of fees for the grant, variation or renewal of an authority under section 5 of the 1968 Act, and to specify the level of any such fees. A section 5 authorisation allows the holder to possess prohibited weapons as defined under that section. New section 32ZA(3) allows for the regulations to make different provision for different cases which would, for example, allow different fees to be set in respect of applications made by firearms dealers, transportation companies involved in the carriage of prohibited weapons and private maritime security companies in accordance with the differential costs of considering such applications. The regulation-making power is subject to the negative resolution procedure (new section 32ZA(6)).

987 Section 15(6) of the 1988 Act sets out the fee to be paid (currently £84) on the grant or renewal of an approval for an approved rifle or muzzle-loading pistol club. *Subsection (5)* repeals section 15(6) of the 1988 Act. In its place, *subsection (2)* inserts a new section 15B of the 1988 Act which confers a new power to require and set fees for the grant, renewal or variation of an approval for an approved rifle or muzzle-loading pistol club. Unlike section 15(6) of the 1988 Act, the replacement regulation-making power (which is subject to the negative resolution procedure - see new section 15B(6)) enables the Secretary of State to set differential fees, for example, so that higher fees could be charged in respect of larger shooting clubs.

988 *Subsection (3)* repeals existing paragraph 3 of the Schedule to the 1988 Act. That paragraph provides for a maximum fee of £200 for the grant or renewal of a museum firearms licence exempting the museum from certain provisions of the 1968 Act, for example the requirement to hold a firearms or shot gun certificate or an authorisation under section 5 of the 1968 Act in respect of prohibited weapons; paragraph 3 also currently provides for a fee of £75 for the extension of a licence to additional premises. *Subsection (4)* inserts new paragraph 3A into the Schedule to the 1988 Act, which is structured on the same basis as new section 32ZA of the 1968 Act and new section 15B of the 1988 Act so that the Secretary of State's regulation-making power enables differential fees to be set so that, for example, museums with larger firearms collections may pay a higher fee. The regulation-making power is subject to the negative resolution procedure (new paragraph 3A(6)).

Section 133: Guidance to police officers in respect of firearms

989 Under the 1968 Act, chief officers of police have a number of functions, including in respect of:

- The grant or renewal of a firearms certificate (section 27);
- The grant or renewal of a shot gun certificate (section 28);
- The revocation of a firearms certificate (section 30A) or a shot gun certificate (section 30C); and
- The maintenance of a register of firearms dealers (section 33).

990 Currently the Home Office issues guidance to chief officers of police on some of their functions under the 1968 Act on a non-statutory basis.

991 *Subsection (2)* inserts new section 55A into the 1968 Act which confers a power on the Secretary of State (in practice, the Home Secretary) to issue statutory guidance to chief officers on the exercise of their functions under, or in connection with, the 1968 Act. Functions "in connection with" the 1968 Act will include the role of the police in supporting the Home Secretary and the Scottish Ministers in discharging their functions under the 1968 Act, for example, in carrying

out background checks on applicants for an authorisation under section 5 of the 1968 Act in respect of prohibited weapons. The reference to chief officers' functions under the 1968 Act will include their functions under the 1988 Act. 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.

992 Chief officers are under a duty to have regard to any statutory guidance (new section 55A(4)). Such a duty requires a chief officer, in deciding any case, to bear in mind the approach as set out in the guidance. Any departure from the guidance should not be on the basis of a general disagreement with the guidance but only on the basis of considerations relevant to the particular case in hand that seems to require a different approach.

993 *Subsection (3)* inserts a new subsection (3A) into section 44 of the 1968 Act which provides for a right of appeal to the Crown Court (in England and Wales) or to the sheriff (in Scotland) against a decision of a chief officer. New section 44(3A) requires the court to have regard to relevant aspects of the guidance in deciding an appeal. This will ensure chief officers and appeal courts apply the same broad criteria to licensing decisions, which will improve consistency across the system.

Section 134: Possession of pyrotechnic articles at musical events

994 This section forms part of the law of England and Wales.

995 The music industry and others have raised concerns around the misuse of fireworks, flares and smoke bombs at live music events. Such items are dangerous when misused. There is already an offence of possession of pyrotechnic articles at football matches, under section 2A of the Sporting Events (Control of Alcohol etc.) Act 1985, in recognition of the specific dangers the misuse of such articles pose in football stadia. This section makes similar provision for the misuse of such articles at live music events.

996 *Subsection (1)* makes it an offence for someone to be in possession of pyrotechnic articles at a qualifying musical event. The offence will apply where a person is in possession of a pyrotechnic article at a place where a qualifying musical event is being held or any other place where persons enter or exit that event, or any areas used for providing facilities to those attending that event. The offence does not apply to the organiser of the musical event or to a person who is authorised by the organiser (*subsection (2)*). This exemption ensures that authorised persons putting on a pyrotechnic display as part of a musical event are not caught by the offence.

997 The maximum penalty for the offence is three months' imprisonment or a level 3 fine (currently £1,000), or both (*subsection (3)*).

998 *Subsection (4)* provides a definition of pyrotechnic articles which includes fireworks, flares and smoke bombs. As matches would otherwise be caught by this definition, they are specifically exempt. (Cigarette lighters are not caught by this definition, so no exemption is necessary.) *Subsection (4)* also includes a regulation-making power (subject to the negative procedure) for the Home Secretary to exclude further articles from this offence, should it become clear that the definition includes everyday items that ought not to be covered by the offence.

999 *Subsection (5)* enables the Secretary of State to define 'qualifying musical event' by regulations, subject to the negative procedure (*subsection (6)*).

Part 7: Alcohol licensing

1000 This Part forms part of the law of England and Wales.

Section 135: Meaning of "alcohol": inclusion of alcohol in any state

1001 Section 191 of the 2003 Act defines alcohol as "spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor". This section amends section 191 so as to clarify that the alcoholic substances referred to in section 191 are included whatever state they are in. This will make it clear that powdered alcohol and vaporised alcohol are to be regulated in the same way as liquid alcohol under the provisions of the 2003 Act.

Section 136: Interim steps pending review: representations

1002 When a licensing authority considers an application for a summary review, it may take interim steps without first giving the holder of the premises licence an opportunity to make representations. This is because in instances of serious crime and serious disorder it may be necessary to take immediate action in order to protect the public. Section 53B of the 2003 Act allows the licence holder to make representations after the interim steps have been taken. It requires the licensing authority to hold a hearing to consider those representations within 48 hours of receipt. The 2003 Act does not limit the number of times that a premises licence holder may make representations, with the result that the licensing authority must hold a hearing each time that relevant representations are received.

1003 This section amends section 53B so that after the licensing authority has held a hearing to consider the interim steps, the premises licence holder may only make further representations if there has been a material change in circumstances since that hearing. For example, if the licensee has employed additional door staff or increased security at the premises this could mean that a restriction on the hours during which alcohol may be sold may no longer be necessary. There may also be changes in circumstance, for example if the summary review application has arisen from gang-related violence or drug offences on the premises and the individuals involved are being dealt with by the criminal justice system.

Section 137: Summary reviews of premises licences: review of interim steps

1004 Section 53A of the 2003 Act provides for the police to make an application for a summary review of a premises licence, if the relevant premises are associated with serious crime or serious disorder. It provides that the licensing authority (that is, the local district or unitary council) must consider the application within 48 hours and impose 'interim steps' (temporary conditions) if necessary. Subsection (3) of section 53B sets out the interim steps which the licensing authority is required to consider taking, namely: the modification of the conditions of the premises licence (for example, a restriction on the hours during which alcohol can be sold); the exclusion of the sale of alcohol from the scope of the licence; the removal of the designated premises supervisor from the licence; or the suspension of the licence.

1005 Section 53A requires the review of the premises licence to take place within 28 days of receipt of the application, the review takes the form of a hearing at which the licensing authority will determine what action should be taken on a permanent basis. Section 53C sets out the actions the licensing authority is required to consider taking in order to promote the licensing objectives: the exclusion of a licensable activity from the scope of the licence; the removal of the designated premises supervisor from the licence; the suspension of the licence for a period not exceeding three months; or the revocation of the licence.

1006 The decision made at the review hearing does not take effect until the expiry of the time limit for appealing (21 days) (during which the decision may be appealed by the licensee or the police to a magistrates' court), or until an appeal is disposed of. There is currently an

ambiguity in the 2003 Act about whether the interim steps remain in place after the review hearing, and whether they can be withdrawn or amended by the licensing authority. The amendments made by this section will address the ambiguity about what happens to the interim steps between the review hearing and the review decision coming into effect.

1007 *Subsection (5)* inserts a new section 53D to require the licensing authority, at the review hearing, to review any interim steps that have been taken. The licensing authority must consider whether the interim steps are appropriate for the promotion of the crime prevention objective, consider any relevant representations, and determine whether to withdraw or modify the steps taken. For example, there may have been a change in circumstances or further evidence provided at the hearing which means that the interim steps originally imposed are no longer necessary for the period of time between the review hearing and the review decision coming into effect.

1008 *Subsection (7)* amends Part 1 of Schedule 5 to the 2003 Act to provide for an appeal to be made by the police or licensee, against the decision regarding the interim steps, taken at the review hearing. This appeal must be heard within 28 days.

1009 Upon commencement the changes will apply to all applications for a summary review which have been received by the licensing authority but which have not yet reached the review hearing stage.

Section 138: Personal licences: licensing authority powers in relation to convictions

1010 Currently a personal licence may be suspended or forfeited by a court on conviction for a relevant offence (that is, one listed in Schedule 4 to the 2003 Act). This section provides a similar power to licensing authorities, and courts will retain their existing powers.

1011 When the licensing authority that has granted a personal licence becomes aware that the licence holder has been convicted of a relevant offence, foreign offence or been required to pay an immigration penalty, the licensing authority may revoke the licence or suspend it for a period of up to six months. Section 36 of and Schedule 4 to the Immigration Act 2016 add immigration offences to the list in Schedule 4 to the 2003 Act. The new provisions will apply to convictions received at any time before or after the licence was granted and after the date of commencement.

1012 The licensing authority may not take action if the licence holder has appealed against the conviction or the sentence imposed in relation to the relevant offence or foreign offence, until the appeal is disposed of. Where an appeal is not lodged, the licensing authority may not take action until the time limit for making an appeal has expired.

1013 *Subsection (3)* inserts new section 132A into the 2003 Act which sets out the process which must be undertaken by the licensing authority to suspend or revoke a personal licence. If the licensing authority is considering whether to suspend or revoke a licence, the authority must give notice to the licence holder. This notice must invite the licence holder to make representations about the conviction, any decision of a court in relation to the licence, or any decision by an appellate court if the licence holder has appealed such a decision. The licence holder may also include any other relevant information, for example, about their personal circumstances. The licence holder will have 28 days to make these representations, beginning on the day the notice was issued.

1014 Before deciding whether to revoke the licence the licensing authority must consider any representations made by the licence holder, any decisions made by a court or appellate court in respect of the personal licence and about which the licensing authority is aware, and any other information which the licensing authority considers relevant.

1015 If the licensing authority decides not to revoke the licence it must give notice to the chief officer of police that it intends not to do so, and invite the chief officer to make representations about whether the licence should be suspended or revoked, having regard to the prevention of crime. The chief officer may make representations within the period of 14 days from the day the notice was received. Any representations made by the chief officer of police must be taken into account by the licensing authority in deciding whether to suspend or revoke the licence.

1016 The licensing authority must notify the licence holder and the chief officer of the decision made (even if the police did not make representations). A decision to revoke or suspend the licence does not take effect until the end of the period allowed for appealing the decision (namely 21 days), or if the decision is appealed against, until the appeal is disposed of.

1017 *Subsection (4)* amends paragraph 17 of Schedule 5 to the 2003 Act to enable the licence holder to appeal the licensing authority's decision to a magistrates' court to revoke or suspend their personal licence.

1018 Section 10 of the 2003 Act provides for a licensing authority to delegate the discharge of its functions to a sub-committee or to a licensing officer. Section 10(4) lists the functions that may not be delegated to a licensing officer. *Subsection (2)* requires that the decision to revoke or suspend a personal licence may not be delegated to a licensing officer; the decision must be made by the licensing committee or its sub-committee.

1019 The change will apply from the date of commencement, so that anyone convicted of an offence before the commencement date will not be liable to have his or her personal licence revoked or suspended by the licensing authority on the basis of that conviction.

Section 139: Licensing Act 2003: addition of further relevant offences

1020 Schedule 4 to the 2003 Act lists relevant offences, a conviction for which can be grounds for refusing a new personal licence, or for suspending or revoking an existing licence. (A conviction for an equivalent foreign offence or requirement to pay an immigration penalty can also lead to the refusal, suspension or forfeiture of a personal licence.)

1021 Where an applicant is found to have an unspent conviction for a relevant offence (or a foreign offence or has been required to pay an immigration penalty) the licensing authority is required to notify the police, who may object to the application on crime prevention grounds. (Whether a conviction is spent or unspent is provided for under the terms of the Rehabilitation of Offenders Act 1974.)

1022 A personal licence may be suspended or forfeited by a court on conviction for a relevant offence. Section 138 will give the licensing authority the power to revoke or suspend a personal licence where there has been a conviction for a relevant offence.

1023 This section expands the list of relevant offences to include:

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

2008.

Section 140: Licensing Act 2003: guidance

- 1024 Section 182 of the 2003 Act provides that the Secretary of State must issue guidance to licensing authorities on the discharge of their functions under the Act, and the guidance must be approved by Parliament before it can be issued. The procedure involves the draft guidance being laid before both Houses of Parliament for a period of 40 days, during which Parliament may disapprove the guidance. If Parliament does not strike down the guidance it can be issued. The guidance is published on the Government website.
- 1025 This section removes the parliamentary procedure. The guidance will take effect as soon as it is published.

Section 141: Cumulative impact assessments

- 1026 Section 141 amends the 2003 Act to make provision for cumulative impact assessments.
- 1027 *Subsection (2)* inserts new sections (6D) and (6E) into section 5 of the 2003 Act. New section 5(6D) requires a licensing authority to have regard to any cumulative impact assessments it has published when determining or revising its statement of licensing policy. New section 5(6E) requires a statement of licensing policy to summarise any cumulative impact assessments published in its area and explain how it has had regard to such assessments.
- 1028 *Subsection (3)* inserts new section 5A into the 2003 Act, which allows a licensing authority to publish a cumulative impact assessment if it considers that the number of relevant authorisations in an area is such that it is likely that granting further relevant authorisations would be inconsistent with its duty to promote the licensing objectives.
- 1029 Publication of a cumulative impact assessment does not automatically prevent the authority granting new licences or variations of licences. As with all applications under the 2003 Act, if no representations are made and the application is made lawfully, the licensing authority must grant the application. Anyone wishing to challenge an application would need to make a relevant representation. However, anyone making a representation may use the evidence published in the cumulative impact assessment, or the fact that a cumulative impact assessment has been published, as the basis for the representation. The power under new section 5A is discretionary, so licensing authorities will not be required to consider the cumulative impact of licensed premises in their area.
- 1030 New section 5A(3) provides that, for the purposes of section 5A, “relevant authorisations” means premises licences or club premises certificates. New section 5A(4) enables a licensing authority to restrict a cumulative impact assessment to certain relevant types of authorisations described in the assessment, for example, it could include all licensed premises or it may only include off-licences or only the on-trade (for example pubs and nightclubs).
- 1031 New section 5A(5) provides that the licensing authority must consult the list of persons set out at section 5(3) of the 2003 Act (including relevant responsible authorities and local businesses) before publishing the assessment, which must include the evidential basis for its opinion. In consulting with these persons the licensing authority must provide the reasons why it is considering publishing a cumulative impact assessment; a general indication of the part or parts of its area which it is considering describing in the assessment; and whether it considers that the assessment will relate to all relevant authorisations or only to relevant authorisations of a particular kind.

1032 New section 5A(7) to (12) requires the licensing authority to consider, at least every three years, whether it remains of the opinion set out in the cumulative impact assessment. The licensing authority must publish a statement on whether it remains or no longer remains of the opinion in the assessment, and must consult relevant local business and authorities, as set out in section 5(3) of the 2003 Act, before it does so. If it does remain of the opinion, it must publish supporting evidence as to why this is the case. A licensing authority must also publish any revision to a cumulative impact assessment.

Section 142: Late night levy requirements

1033 Currently, the late night levy (see Policy Background, page 36) may only apply to premises selling alcohol and must apply to the whole of the licensing authority's area. Section 142 amends section 125 of the 2011 Act to allow a licensing authority to decide that a late night levy will apply to the whole licensing authority area or part of the area only. The licensing authority may decide to apply the levy only to those authorised to sell alcohol, or to also charge those authorised to sell late night refreshment.

Schedule 18: Late night levy requirements

1034 *Subsection (5)* of section 142 introduces Schedule 18, which makes amendments to Chapter 2 of Part 2 of the 2011 Act. The amendments relate to "relevant late night refreshment authorisations"; these are authorisations which do not also authorise the supply of alcohol during the late night supply period.

1035 Where a licensing authority decides to apply a late night levy to both alcohol authorisations and late night refreshment authorisations, they may either determine a single late night supply period (the times at which the levy is payable) or have two different late night supply periods.

1036 If the levy requirement relates to late night refreshment, the licensee is not liable to pay if only hot drinks are supplied. This would, for example, exclude service stations that supply hot drinks from the requirement to pay the levy.

1037 *Paragraph 7(3)* of Schedule 18 places a requirement on the licensing authority to publish information about how it spends its portion of the revenue raised from the levy. The information must be published annually, and the licensing authority may determine the manner in which the information is published.

1038 *Paragraph 12* of Schedule 18 inserts a new section 136A into the 2011 Act, and gives PCCs the right to request that a licensing authority formally propose a levy, triggering a consultation on whether to introduce such a levy. In deciding whether to make a request, the PCC must consider the costs of policing and other arrangements for the reduction of crime and disorder in connection with the supply of alcohol between midnight and 6am, and the desirability of raising revenue via the levy. The request must be accompanied by any evidence that the PCC has in support of the request. The licensing authority is not obliged to carry out a consultation but must publish its response to the request including reasons for its decision, along with the PCC's request and accompanying evidence.

Part 8: Financial sanctions

1039 This Part forms part of the law of the United Kingdom, save for section 150 which forms part of the law of England and Wales only.

Section 143: Interpretation

1040 This section sets out the definitions that apply to this Part of the Act.

1041 *Subsection (2)* defines an "EU financial sanctions Regulation" as an EU Regulation that imposes restrictions for the purpose of freezing funds or economic resources of persons to whom the regime applies, restricting the ability of those persons to access financial markets and services, or which make supplementary provisions about the extent, prohibitions, exemptions and requirements of those financial sanctions. For example, Council Regulation (EU) No. 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaida network.

1042 *Subsection (3)* defines a "UN financial sanctions Resolution" as a Resolution of the Security Council of the UN that imposes or alters similar restrictions. For example UNSCR 1267 adopted on 15 October 1999, which imposed restrictions in relation to Osama bin Laden, Al Qaida and the Taliban.

1043 *Subsection (4)* defines "financial sanctions legislation".

1044 The definition includes an EU financial sanctions Regulation, and a statutory instrument made under section 2(2) of the 1972 Act to implement it into UK domestic law. For example, the Iran (European Union Financial Sanctions) Regulations 2016 (SI 2016/36), which implement the financial sanctions regime contained in EU Regulation 267/2012, as amended.

1045 The definition includes UK legislation which is enacted in order to directly implement a UN financial sanctions Regulation. For example, the Libya (Financial Sanctions) Order 2011 (SI 2011/548), which implemented UNSCR 1970 adopted on 26 February 2011.

1046 The definition includes a freezing order made under section 4 of the Anti-terrorism, Crime and Security Act 2001. An example of such an order is the Andrey Lugovoy and Dmitri Kovtun Freezing Order 2016 (SI 2016/67), which froze the assets of the two men assessed by a public inquiry on 21 January 2016 to have been responsible for the poisoning of Alexander Litvinenko.

1047 The definition also includes a direction given under paragraph 13 of Schedule 7 to the Counter-Terrorism Act 2008 which includes requirements not to enter into or continue business transactions with a designated person. An example of such a direction is contained in the Financial Restrictions (Iran) Order 2012 (SI 2012/2904), which prohibited British businesses from dealing with Iranian banks. (This order was subsequently revoked by the Financial Restrictions (Iran) (Revocation) Order 2013 (SI 2013/162).)

Section 144: Powers to create offences under section 2(2) ECA 1972: maximum term of imprisonment

1048 This section modifies the application of the 1972 Act, to increase the maximum term of imprisonment for offences relating to financial sanctions, bringing them into line with breaches of the UK domestic and EU terrorist asset freezing regimes.

1049 Section 2(2) of the 1972 Act confers a regulation-making power for the purposes of implementing EU obligations. Paragraph 1(1)(d) of Schedule 2 to that Act confines the exercise of these powers for the creation of any new criminal offence punishable with imprisonment to a sentence of two years on indictment or three months on summary conviction. *Subsection (2)*

disapplies these limitations in the case of any section 2(2) regulations implementing EU financial sanctions Regulations, while *subsection (3)* extends these limits for offences relating to EU financial sanctions to a maximum of seven years' imprisonment on indictment (applying to all of the UK) and, on summary conviction, to a maximum of six months' imprisonment in England, Wales and Northern Ireland, and twelve months in Scotland.

1050 *Subsections (4) and (5)* enable the regulation-making power in section 2(2) of the 1972 Act to be used to extend the maximum criminal penalties for breaches of EU financial sanctions regimes in respect of criminal offences that have already been created.

1051 *Subsection (6)* provides that any extension of the maximum term of imprisonment only applies to offences taking place after these provisions come into force.

Section 145: Other offences: maximum term of imprisonment

1052 This section increases the maximum penalties in respect of offences under the Anti-terrorism Crime and Security Act 2001 (*subsections (1) to (3)*), and the Counter Terrorism Act 2008 (*subsections (4) to (9)*). In respect of these Acts, the offences include breaching the prohibition on making funds available to, or dealings with the funds of, a person named on a freezing order, and breach of any prohibition upon doing business with a designated individual or entity. The current maximum term of imprisonment for offences under either Act is two years' imprisonment on conviction on indictment, or six months on summary conviction. This section extends the maximum term of imprisonment for these offences to seven years' on conviction on indictment, in line with the new maximum penalties provided for by section 144.

Section 146: Power to impose monetary penalties

1053 *Subsection (1)* enables the Treasury to impose a monetary penalty in cases where it is satisfied that, on the balance of probability (that is, the civil standard of proof), a person has breached a requirement or prohibition of any financial sanctions legislation (as defined in section 143(4)). Monetary penalties will be used to deal with cases where the extent and circumstances of the breach means it is not in the public interest to pursue a criminal prosecution and where the level of the breach or conduct of the individual or organisation is such that a mere warning letter is unlikely to bring about a sufficient change in behaviour. Requirements or prohibitions included in financial sanctions legislation typically include the following: not making funds or other economic resources available to, or for the benefit of, a designated person; directly or indirectly, and not dealing with their funds or economic resources, without a licence from the Treasury; failing to comply with the terms of the licence or provide information as requested.

1054 *Subsections (3) and (4)* set out the permitted maximum of a monetary penalty at either £1,000,000 or 50% of the total value of the breach, whichever is the greater. So, for example, where the total value of the breach was £600,000 the maximum monetary penalty would be £1 million, but in a case where the total value of the breach was £10 million, the maximum monetary penalty would be £5 million.

1055 *Subsection (5)* defines funds and economic resources in accordance with the financial sanctions legislation which has been breached. Generally funds include, but are not limited to, cash, cheques, money orders, bills of sale and so on. Economic resources are any asset which is not funds but which can be used to obtain funds, goods or services.

1056 *Subsections (6) to (10)* require the Treasury to keep the permitted maximum amount under review and enable it to amend the amounts specified, consulting other bodies or persons as appropriate. The £1 million limit may be varied by regulations, subject to the affirmative procedure.

1057 *Subsections (11) and (12)* provide that monetary penalties are to be recoverable as civil debts, and are to be paid into the Consolidated Fund. *Subsection (13)* provides that no monetary penalty can be imposed upon the Crown.

Section 147: Monetary penalties: procedural rights

1058 This section sets out the procedure that the Treasury must follow when imposing, or intending to impose, a monetary penalty and provides for a review.

1059 Before imposing a monetary penalty, the Treasury must notify a person that they intend to do so, and their reasons why. The person suspected of breaching financial sanctions will be given an opportunity to make representations as to their conduct, which the Treasury must consider before making a final decision to impose a monetary penalty.

1060 A person upon whom a monetary penalty is imposed has the right to request a review of the decision by a Minister (in person). The Minister has the power to uphold the decision, change the amount of the monetary penalty, or cancel the decision. The outcome of a Ministerial review can be appealed (on any ground) to the Upper Tribunal. The Upper Tribunal may quash the outcome of the Minister's review and if it does so, may also quash the Treasury's decision to impose the penalty or uphold it but substitute a different amount to that determined by the Treasury or the Minister.

Section 148: Monetary penalties: bodies corporate and unincorporated associations

1061 This section deals with cases where financial sanctions have been breached by corporate bodies or unincorporated associations, and that breach is also attributable to an individual person. In such cases, the Treasury may impose a monetary penalty upon the individual person as well as on the body corporate or unincorporated association.

1062 *Subsection (1)* provides that a monetary penalty can be imposed on any officer of the body (as defined in *subsection (2)*) who consented to or took part in any conduct which results in a breach of financial sanctions or whose negligence has caused a breach of financial sanctions.

Section 149: Monetary penalties: supplementary

1063 *Subsection (1)* requires the Treasury to issue guidance as to the circumstances in which a monetary penalty may be issued, and how the amount of such a penalty might be determined. While the Treasury will consult on the content of the guidance, it will cover the process by which breaches are considered, the factors that will be taken in to account, how the level of penalty will be calculated, the processes for making representations and seeking a review and what details will be published. *Subsection (2)* also requires the Treasury to publish periodic reports on monetary penalties that have been imposed.

1064 Such guidance will inform individuals and organisations about how the power to impose monetary penalties will be used, ensure that the monetary penalties act as a deterrent against poor compliance by individuals and organisations operating in the UK, and promote increased awareness of good practice. The details of any penalties imposed will be published for the same reasons.

Section 150: Deferred prosecution agreements

1065 This section amends Part 2 of Schedule 17 to the 2013 Act to include breaches of financial sanctions legislation within the list of offences in respect of which a Deferred Prosecution Agreement ("DPA") can be made.

1066 DPAs are court-approved agreements between an organisation (a corporate body or unincorporated association, but not an individual person) and a prosecutor who is considering

prosecuting the organisation for an offence. They only apply to persons in England and Wales. In order for a DPA to be entered into, the prosecutor must be satisfied that there is sufficient evidence to prove beyond reasonable doubt that a criminal offence has been committed by the organisation. A DPA can be entered into once the organisation is charged with that offence, with the effect that proceedings are automatically suspended subject to certain conditions. If the conditions of the DPA are breached, the prosecution may resume.

Section 151: Serious crime prevention orders

- 1067 This section amends Schedule 1 to the Serious Crime Act 2007 ("the 2007 Act") to include a breach of financial sanctions legislation in the list of offences in respect of which Serious Crime Prevention Orders ("SCPOs") may be made. These orders are intended to be used against those involved in serious crime, with the terms attached to an order designed to protect the public by preventing, restricting or disrupting involvement in serious crime.
- 1068 An SCPO may be made by the Crown Court (in Scotland, the High Court of Justiciary or the sheriff) where it is sentencing a person who has been convicted of a serious offence (including when sentencing a person convicted of such an offence in the magistrates' court but committed to the Crown Court for sentencing). Orders may also be made by the High Court (in Scotland, the Court of Session or a sheriff) where it is satisfied that a person has been involved in serious crime, whether that involvement was in England and Wales, Scotland or Northern Ireland (as the case may be), or elsewhere, and where it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the subject of the order in serious crime in England and Wales, Scotland or Northern Ireland (as the case may be). A serious offence is one which is listed in Schedule 1 to the 2007 Act, or an offence which is sufficiently serious that the court considers it should be treated as it were part of the list. This section extends this list of trigger offences.
- 1069 The 2007 Act allows for SCPOs to be made against individuals (aged 18 or over), bodies corporate, partnerships or unincorporated associations. SCPOs may contain such prohibitions, restrictions, or requirements or such other terms that the court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting serious crime. Section 5 of the 2007 Act contains an illustrative list of the type of prohibitions, restrictions, or requirements that may be attached to an order. For example, these might relate to a person's travel, financial dealings or the people with whom he or she is allowed to associate. Orders can last for up to five years. Breach of the order is a criminal offence, subject to a maximum sentence of five years' imprisonment or an unlimited fine, or both.
- 1070 Sections 6 to 15 of the 2007 Act contain a number of safeguards, including conferring rights on affected third parties to make representations during any proceedings and protection for information subject to legal professional privilege.

Section 152: Implementation of UN financial sanctions Resolutions: temporary regulations

- 1071 This section enables the UK to comply with its international treaty obligations under the UN Charter by putting UN-mandated financial sanctions regimes into place "without delay". While there is no definition of "without delay", the Financial Action Task Force have said that this should be ideally "within hours" and indicated this should be at most "within 48 hours". Historically the EU has taken significantly longer than 48 hours to implement new UN-mandated financial sanctions regimes. This delay exposes the UK to asset flight from UN listed persons and places the UK in breach of its international obligations. In order to avoid both of these issues, *subsection (1)* provides the Treasury with the power, by regulations (subject to the negative procedure), to create a temporary financial sanctions regime to implement a UN-mandated financial sanctions regime.

1072 *Subsection (2)* requires the temporary regime to contain a provision ensuring that they cease to have effect either when EU implements the UN-mandated regime, or after the end of the default period, whichever is shorter. *Subsection (2)(b)* provides for the default period to commence when the relevant UN Security Council Resolution is adopted and to end no more than 30 days after this date. *Subsection (3)* enables the Treasury to make a further regulation to extend this the default period by a further 30 days, and *subsection (4)* limits the use of this extension power to one occasion, with the result that the default period can never be more than 60 days from the date of adoption of the UN Security Council Resolution.

Section 153: Content of regulations under section 152

1073 This section sets out the extent of the Treasury's power to impose a temporary regime. It provides that such a regime may make provision for the freezing of funds and economic resources of persons subject to the regime (designated persons) and prohibitions upon making funds and economic resources available to those persons.

1074 *Subsection (2)* enables the prohibitions set out in the temporary regime to apply to those persons who are designated under the UN-mandated regime that the temporary regime is implementing.

1075 *Subsection (3)* enables the temporary regime to do so by way of ambulatory references to UN measures, so that persons added to the list after the temporary regime has been enacted will automatically be caught by the temporary regime.

1076 *Subsection (4)* provides for the Treasury to create exceptions to the prohibitions contained within the temporary regime, such as provisions for the Treasury to license the unfreezing of funds for various purposes. This will enable a proportionate approach to allow designated persons access to sufficient funds to maintain their basic needs, to access legal representation, to honour contracts and judgments made prior to their designation, and to pay extraordinary expenses.

1077 *Subsection (5)* enables the Treasury to require a designated person to supply information to the Treasury, and for the Treasury to authorise or restrict the disclosure of such information. This information would commonly include receipts for their expenditure and their bank statements, so that the Treasury can monitor compliance with the temporary regime and make proportionate licensing decisions.

1078 *Subsections (6) and (7)* provide for the temporary regime to include enforcement provisions, such as criminal offences and civil sanctions. *Subsection (8)* sets limits on the maximum sentences for convictions for criminal offences for breach of the temporary regime, which are aligned with the maximum sentences in section 144.

Section 154: Linking of UN financial sanctions Resolutions with EU financial sanctions Regulations

1079 *Subsection (1)* enables the Treasury to make regulations (subject to the negative procedure) linking UN financial sanctions Resolutions to EU financial sanctions Regulations, in order that the deeming provisions in section 135 can apply. This means that when the UN makes a listing that would, when implemented by the EU, fall under a current EU Regulation, that listing can take effect automatically.

Section 155: Implementation of UN financial sanctions Resolutions: temporary listing

1080 This section enables the UK to swiftly implement UN requirements to include individuals and bodies on the list of designated persons to whom financial sanctions apply. Historically the EU has taken longer than 48 hours to implement new UN listings. This exposes the UK to the risk of asset flight from UN listed persons and placing the UK in breach of its

international obligations under the UN Charter.

1081 *Subsections (1) and (2)* set out that where regulations under section 134 linking an EU financial sanctions Regulation to a UN financial sanctions Resolution, persons who are listed as designated persons under the latter are temporarily deemed to be designated persons under the former. This has the effect that the financial sanctions regimes established by the EU financial sanctions Regulation apply automatically to persons designated by the UN for the extent of the temporary deemed designation.

1082 *Subsections (3) and (4)* provide that the temporary deemed designation will be effective until the person is designated under the EU financial sanctions Regulation, or for a period of up to 30 days, whichever is shorter.

1083 *Subsection (6)* deals with persons who have been designated by the UN before this section comes into force, but who have not been designated by the EU financial sanctions Regulation. In such a case the temporary deemed designation will commence when the section comes into force.

Section 156: Extension to the Bailiwick of Guernsey, Isle of Man and BOTs

1084 Sections 152 to 155 provide for the swift implementation of UN-mandated measures within the UK. The UK's international treaty obligations and risk of asset flight are also issues for the Crown Dependencies and British Overseas Territories. This section enables the temporary deemed designation and temporary regime measures to be extended, insofar as that is necessary, to Guernsey, the Isle of Man and the 14 British Overseas Territories ("BOTs"). Jersey has enacted its own legislation dealing with temporary deemed designations and temporary regimes: the United Nations Financial Sanctions (Jersey) Law 201, passed on 29 November 2016.

1085 *Subsection (1)* provides for temporary regimes, as provided for in section 152, to be extended to the Guernsey, the Isle of Man and the BOTs, with or without modification, by Order in Council.

1086 *Subsection (2)* provides for the temporary deemed designation of UN designated persons not yet designated by the EU, as provided for in sections 154 and 155, to be extended, insofar as that is necessary, to Guernsey, the Isle of Man and the BOTs, with or without modification, by Order in Council.

1087 Currently, due to the need for an EU financial sanctions Regulation, an Order in Council to extend that Regulation to Guernsey, the Isle of Man and the BOTs (if necessary), and for any subsequent legislative steps in those territories to be taken in order to implement a UN financial sanctions Resolution in those territories, there is a risk that more than 60 days may be required to put a new regime in place. In recognition of that, *subsections (4) and (5)* enable an Order in Council to extend the duration of a temporary regime made under section 152 for up to 120 days, in Guernsey, the Isle of Man and the BOTs only. This will ensure that there is no gap in UN-mandated financial sanctions in Guernsey, the Isle of Man and the BOTs.

Part 9: Miscellaneous and General

Chapter 1: Miscellaneous

Section 157: Power to enter into police collaboration agreements

1088 This section, and accompanying Schedule 19, form part of the law of England and Wales.

1089 Section 22A of the 1996 Act provides that a collaboration agreement between one or more police forces and an 'other person' (such as the NCA) requires at least two policing bodies (such as a PCC) to be party to the agreement. In order to have two policing bodies, the agreement would need to be made by at least two police forces. Policing bodies are party to collaboration agreements to ensure oversight of force activity. The effect of needing two policing bodies in all collaboration agreements is restrictive, impractical and considered to be an unintended error.

1090 *Subsections (1) and (2)* amend section 22A of the 1996 Act to allow 'other persons' to enter into collaboration agreements with one or more police forces and one or more policing bodies. This amendment puts 'other persons', including bodies such as the NCA, on the same footing as police forces as it removes the previous requirement for there to be at least two policing bodies party to a collaboration agreement with 'other persons'. This will give the NCA more flexibility by, in effect, allowing it to enter into a collaboration agreement with a single police force, which it has previously been prevented from doing.

1091 Sections 23F and 23G of the 1996 Act enable the Secretary of State to issue guidance and directions to chief constables and local policing bodies about collaboration agreements and related matters. *Subsections (3) and (4)* insert new subsections (3) and (2A) in sections 23F and 23G respectively, which provide that the Secretary of State may give guidance and directions about collaboration agreements to bodies (such as the NCA) who exercise functions of a public nature.

1092 *Subsection (5)* introduces Schedule 19, which makes amendments to the Police Act 1997 and to RIPA, where the NCA is a party to collaboration agreements under section 22A of the 1996 Act (as amended).

Schedule 19: Amendments where NCA is party to police collaboration agreements

1093 Schedule 19 amends Part 3 the Police Act 1997 (which provides for the authorisation of action in respect of property) and Part 2 of RIPA (which provides for inter alia the authorisation of covert surveillance, covert human intelligence sources and intrusive surveillance) consequential upon the provisions in section 157.

1094 The consequential amendments to the Police Act 1997 provide for the following:

- that where a collaboration agreement under section 22A of the 1996 Act is made between the NCA and one or more police forces, an NCA authorising officer can authorise applications for property interference from both NCA officers and members of the police collaborative force who are part of that agreement;
- that a police authorising officer can similarly authorise property interference on application from members of the police collaborative force(s) and NCA officers; and
- that authorisations given by a police authorising officer and authorisations given

to members of the police collaborative force(s) can only be given for activity to take place in a "relevant area", which will usually be the (combined) area of operation of the police collaborative force(s).

1095 The amendments do not alter the area of operation of the NCA and do not limit the geographic area for authorisations for property interference given by the NCA authorising officer to an NCA applicant. However the NCA will be subject to the provisions of the collaboration agreement.

1096 For example: in a collaboration agreement between Surrey Police, Sussex Police and the NCA, an authorising officer from either Surrey or Sussex Police or the NCA will be able to authorise property interference applications made by an officer from either of those police collaborative forces or from the NCA who is part of the collaboration agreement.

1097 A key benefit of entering into a collaboration agreement is that it removes the requirement for the applicant and authorising person to be from the same police force/body. This provides a more collaborative approach when the NCA is working with a police force on a joint operation.

1098 The consequential amendments to RIPA similarly allow for the authorisation of other covert techniques by either NCA or police authorising officers on application from a member of the collaborative police force or the NCA.

1099 This includes the use of Covert Human Intelligence Sources ("CHIS") (undercover officers or informants) and the use of directed surveillance. This also includes intrusive surveillance (which is in relation to residential premises, private cars or similar non-public areas).

1100 Similarly to the amendments to the Police Act 1997, consequential amendments to RIPA in relation to authorisations for intrusive surveillance provide that:

- where a collaboration agreement under section 22A of the 1996 Act is made between the NCA and one or more police forces, an NCA authorising officer can authorise applications for intrusive surveillance from both NCA officers and members of the police collaborative force(s) who are part of that agreement;
- a police authorising officer can similarly authorise applications for intrusive surveillance from members of the police collaborative force(s) and NCA officers; and
- where the surveillance is to be carried out in relation to any residential premises, the authorisation granted by a police authorising officer and authorisations given to members of the police collaborative force(s) can only be given for activity in relation to residential premises which are in the area of operation of the police collaborative force(s).

1101 The amendments do not alter the area of operation of the NCA and do not limit the geographic area for authorisations given for intrusive surveillance by the NCA authorising officer to an NCA applicant. However the NCA will be subject to the provisions of the collaboration agreement.

1102 The use of such techniques remains subject to existing oversight arrangements including, for example, prior approval by the surveillance commissioners for the use of intrusive surveillance or certain kinds of property interference.

1103 Whilst the provisions in the Police Act 1997 and RIPA have UK-wide extent, the application of these amendments is limited to England and Wales because they are consequential to an agreement made under section 22A of the 1996 Act, which is limited to England and Wales.

Section 158: Powers of NCA officers in relation to customs matters

1104 This section forms part of the law of the United Kingdom.

1105 Section 10 of the 2013 Act enables the Director General of the NCA to designate NCA officers with three different sets of powers:

- the powers and privileges of a constable;
- the powers of an officer of Revenue and Customs; and
- the powers of an immigration officer.

1106 Section 9 of the 2013 Act similarly enables the Home Secretary to designate the Director General with the same set of powers.

1107 *Subsections (2) and (3)* amend sections 9 and 10 of the 2013 Act respectively to provide for the Director General and NCA officers to be designated with the powers of a general customs official (as defined in the Borders, Citizenship and Immigration Act 2009).

1108 New powers in relation to general customs matters are now ordinarily conferred on "general customs officials" (who are usually Border Force officials).

1109 This is because Border Force officials have taken over "general customs" work and HMRC officers no longer require access to newly created general customs powers, for example, powers in relation to drug-cutting agents and psychoactive substances.

1110 However the effect of this is that the automatic conferral mechanism, set out in the 2013 Act, of the "powers of an officer of Revenue and Customs" is no longer an effective mechanism by which to ensure NCA officers have access to new general customs powers.

1111 This amendment will allow a suitably designated NCA officer to access only the general customs official powers that they need to pursue NCA functions in respect of customs matters.

1112 *Subsection (4)* amends Schedule 5 to the 2013 Act to set out the limitations on the powers that NCA officers receive via this designation.

1113 NCA officers are limited to exercising powers in relation to their NCA functions (as set out in section 1 of the 2013 Act). The NCA's core functions, are crime reduction function to combat serious and organised crime and a criminal intelligence function to combat serious and organised crime and any other kind of crime.

1114 This amendment mirrors the current approach to limiting the powers that NCA officers receive via their designation as an officer of Revenue and Customs. As a result, NCA officers designated with the powers of a 'general customs official' may exercise these powers in relation to 'customs matters only' (as defined section 9(8) of the 2013 Act) and solely for the purpose of carrying out a NCA function.

Section 159: Requirement to state nationality

1115 Section 159 forms part of the law of England, Wales and Northern Ireland.

1116 This section inserts new sections 43A and 43B into the UK Borders Act 2007.

1117 New section 43A requires an individual who is arrested for an offence to state his or her nationality if required to do so by an immigration officer or constable. The officer or constable must suspect that the individual may not be a British citizen. New section 43B provides that an offence is committed if, without reasonable excuse, the person fails to comply with the requirement, either by providing false information, or not providing any information. The offence will be summary only subject to a maximum penalty (in England and Wales) of six months' imprisonment, an unlimited fine, or both. Corresponding penalties in Northern Ireland will apply. (The section does not extend to Scotland on the basis of existing powers in Scottish law that allow officers to ask questions about nationality.)

1118 The purpose of the section is to help establish identity early in the process, in order to facilitate immigration checks, as well as direct overseas criminal records checks to the right country.

Section 160: Requirement to produce nationality document

1119 This section forms part of the law of the United Kingdom.

1120 The section inserts new sections 46A to 46C into the UK Borders Act 2007, after section 46 (seizure of nationality documents).

1121 New section 46A allows an immigration officer or constable searching premises under section 44 or 45 of that Act to seize and retain a document which an immigration officer or constable thinks is a nationality document in relation to the arrested individual, and the person may be liable to removal from the United Kingdom. However, it is not always feasible for the authorities to search premises in every case where a foreign national is arrested for an offence.

1122 New section 46B enables an immigration officer or constable to obtain documents from persons not remanded in custody, and retain them where a search cannot be undertaken (or the individual is not in possession at the time of arrest). The new power will require an individual to produce a nationality document within 72 hours, where required to do so. The officer or constable must suspect that the individual may not be a British citizen before issuing a notice to the person. The notice will be given in writing and will set out the time by which the document must be produced; the person to whom it must be produced; and the means by which it is to be produced. The officer may accept alternative documentary evidence that a person is a British national if they are unable to adduce a passport to an officer within 72 hours of request.

1123 An offence is committed if, without reasonable excuse, the person fails to comply with the requirement (new section 46C). The wilful destruction of documents will not constitute a reasonable excuse, unless it can be demonstrate that it was done for a reasonable cause, or was beyond the control of the individual. The offence will be summary only subject to a maximum penalty (in England and Wales) of six months' imprisonment, an unlimited fine, or both. Corresponding penalties in Scotland and Northern Ireland will apply.

1124 The purpose of the section is twofold. Firstly, it will help to verify any statement made on arrest by the individual - should they comply with the notice. Secondly, a document provides the means by which immigration action may be enforced, should the person be deportable or removable under immigration powers.

Section 161: Pilot schemes

1125 This section forms part of the law of the United Kingdom.

1126 This section enables the Secretary of State to make regulations to bring sections 159 and 160 into force for a specified period of time in limited areas, to allow the section to be piloted on a limited basis before a national roll out. This is to ensure that police processes are

robust and there are no adverse consequences on black and ethnic minority British nationals who are arrested on suspicions of having committed a criminal offence. Following the pilot, a report will be laid before Parliament on its outcome and effectiveness. This will include a full equality impact assessment.

Section 162: Requirement to give information in criminal proceedings

- 1127 Section 162 forms part of the law of England and Wales.
- 1128 This section introduces a new section 86A into the Courts Act 2003, requiring all defendants in a magistrates' court or the Crown Court to provide their name, date of birth and nationality (new section 86A(1)). Currently rule 5.4 of the Criminal Procedure (Amendment) Rules 2016 (SI 2016/120) requires the court to record, amongst other things, a defendant's identity, address and date of birth. No sanction applies if the defendant fails or refuses to provide this information, nor is there any requirement to record information on nationality. A defendant who fails to provide their name, date of birth and/or nationality when requested by the court, or provides false or incomplete information, will commit an offence (new section 86A(3)) punishable by a maximum of six months' imprisonment or an unlimited fine, or both (new section 86A(5)).
- 1129 How and when this information will be requested by the court will be set out in the Criminal Procedure Rules (new section 86A(2)), with a requirement for the Rules to specify a point in proceedings when this information must be requested, while also allowing a discretion for the rules to set out other occasions on which the information may be requested. This is to ensure that every defendant who appears in court is asked for this information at least once as their case progresses. The means by which this information is requested/given (for example, in writing or by oral questions) will also be set out in the Criminal Procedure Rules.
- 1130 New section 86A(4) ensures that information provided in compliance with the requirement in new section 86A(1) cannot be used as evidence in any other criminal proceedings against the defendant. This is to ensure that the defendant's privilege against self-incrimination is upheld in respect of any other proceedings against him or her, should the information collected be of relevance to those other proceedings.
- 1131 New section 86A(6) allows, should the court wish, for the offence under new section 86A(3) to be dealt with at the same time as the underlying offence for which the person is before the court. This enables a court to deal with proceedings efficiently in terms of both cost and time as and when they may arise.

Section 163: Powers to seize etc invalid travel documents

- 1132 This section forms part of the law of the United Kingdom.
- 1133 The section amends Schedule 8 to the Anti-social Behaviour, Crime and Policing Act 2014, which sets out powers to seize invalid passports and other invalid travel documents.
- 1134 *Subsection (2)* changes the heading of paragraph 3 of Schedule 8 to make it clear that it provides powers of search and seizure away from a port.
- 1135 *Subsection (3)* substitutes paragraph 3(1) of Schedule 8. New paragraph 3(1) changes the previous reference to a "constable" to an "examining officer", a wider term defined in paragraph 1 of Schedule 8, which covers immigration officers as well as police officers. This reflects the extension of the seizure power to foreign passports, which are likely to be encountered by immigration officers as well as by constables.
- 1136 New paragraph 3(1) also extends the existing seizure power from a British passport that has been cancelled on public interest grounds to an invalid travel document (whether or

not British). The power will therefore cover identity cards issued by countries that use them, as well as passports. The effect of this is that an "examining officer", away from a port, will be able to:

- require a person to hand over travel documents for inspection;
- to search for travel documents and take possession of them;
- to inspect any travel document taken from the person and to retain it while its validity is checked; and
- to retain any document that the officer believes to be invalid.

- 1137 *Subsection (4)* repeals paragraph 3(2)(c), which requires the Home Secretary to authorise the exercise of the seizure power and so enable the police to act without delay. Any decision to cancel a British passport on public interest grounds would continue to require the Home Secretary's agreement.
- 1138 *Subsection (7)* inserts new paragraph 3A into Schedule 8. This provides a constable (only) with a power to enter premises and search for an invalid travel document, to take possession of and inspect any travel document found and to retain any document that the constable believes to be invalid. This means that, although a constable and immigration officer would have power to require a person to hand over travel documents, to search for those documents and to retain any that they believe to be invalid, only a constable would have power to enter premises to do this.
- 1139 *Subsection (8)* extends the existing safeguards that cover travel documents seized either at port or away from a port to documents seized following the exercise of the new power to enter and search premises. Thus, documents retained for checking will need to be checked as soon as possible, a travel document that is in fact valid, or is invalid only because it has expired, must be returned to the bearer straight away and a document must be returned within seven days, unless it is established during that period that the document is invalid for a reason other than having expired.
- 1140 Subsection (8)(d), (e) and (f) provides (as is already the case for documents seized either at port or away from a port) that a document seized following a search of premises need not be returned where it is believed that it is intended to be used for purposes for which it is no longer valid, and that the duty to return is subject to any other provisions outside the Schedule that allow a document to be retained.
- 1141 *Subsection (9)* extends the existing criminal offence in paragraph 5(2) of Schedule 8 to cover a search of premises following exercise of the power of entry conferred by subsection (7). This means that it will be an offence, punishable by up to six months' imprisonment or a fine, intentionally to obstruct, or to seek to frustrate, such a search or the power of entry.
- 1142 Subsection (10) extends the power of arrest vested in an immigration officer under paragraph 2 of Schedule 8 to the amended paragraph 3 of the same Schedule. This reflects the fact that the section extends the power of search, seizure and retention in paragraph 3 from a constable alone to an examining officer (constable or immigration officer).

Pardons for certain abolished offences etc

1143 Sections 164 to 167 and 168(3) and (4) form part of the law of England and Wales; while sections 168(1) and (2) and 169 to 172 form part of the law of Northern Ireland.

Section 164: Posthumous pardons for convictions etc of certain abolished offences: England and Wales

1144 *Subsection (1)* automatically confers a posthumous pardon on any person who died before the section comes into force and who was convicted of, or cautioned for, a specified offence, where certain conditions are met. *Subsection (2)* sets out those conditions, namely that the relevant conduct was consensual and involved another person aged 16 or over (the current age of consent) and that conduct would not constitute an offence of sexual activity in a public lavatory under section 71 of the Sexual Offences Act 2003.

1145 *Subsections (3) and (4)* set out the offences eligible for a pardon, namely those in sections 12 (buggery) and 13 (gross indecency between men) of the Sexual Offences Act 1956 and similar historical offences, including those applicable to the armed services.

1146 *Subsection (6)* provides for the interpretation of the condition for a posthumous pardon in subsection (2)(b). *Subsection (7)* applies definitions used in Chapter 4 of Part 5 of the 2012 Act.

Section 165: Other pardons for convictions etc of certain abolished offences: England and Wales

1147 *Subsections (1) to (3)* automatically confer a pardon on any living person who has had, or in future has, a conviction or caution disregarded under the provisions of Chapter 4 of Part 5 of the 2012 Act (See Policy Background, page 40). *Subsection (4)* applies definitions used in that Act.

Section 166: Power to provide for disregards and pardons for additional abolished offences: England and Wales

1148 Section 92 of the 2012 Act specifies which offences can be considered for a disregard; the scheme is currently limited to the repealed offences of buggery, gross indecency between men and similar historical offences, including those applicable to the armed services.

1149 *Subsection (1)* enables the Secretary of State, by regulations subject to the affirmative procedure, to amend section 92 of the 2012 Act so as to add further offences. *Subsection (2)* provides that an offence may only be added if:

- it was an offence under the law of England and Wales;
- it is no longer such an offence;
- the offence expressly regulated homosexual activity, or it appears to the Secretary of State that those responsible for investigating occurrences of the offence targeted occurrences involving, or connected with, homosexual activity.

1150 *Subsection (3)* allows regulations made under this section to vary the conditions which must appear to the Secretary of State to apply in order for a conviction or caution for the added offence to be disregarded.

1151 *Subsections (5) and (6)* provide that regulations made under this section must automatically confer a posthumous pardon on any person who was convicted of, or cautioned for, an offence which the regulations add to the disregard scheme and has died within six months of the offence being added, provided they would have met the conditions for a

disregard in respect of that offence.

1152 A living person whose conviction or caution is disregarded under the amended scheme will automatically receive a pardon by virtue of section 165. *Subsection (7)* provides that any person whose conviction or caution for an offence added to section 92 of the 2012 Act is disregarded, and therefore received a pardon under section 165, does not also receive a posthumous pardon by virtue of regulations made under this section.

Section 167: Sections 164 to 166: Supplementary

1153 This section provides that a pardon under sections 164 or 165, or under regulations made under section 166, does not affect any conviction, caution or sentence, or give rise to any right, entitlement or liability. It also preserves the power of the Crown to grant a Royal pardon.

Sections 168 to 172: Disregards and pardons for certain convictions etc for abolished offences: Northern Ireland

1154 Sections 168 to 172 make provision for Northern Ireland that corresponds with the disregard scheme in the 2012 Act as well as the pardons provisions and the power to extend the disregard scheme in sections 164 to 167. One substantive difference is that a person only qualifies for a disregard or pardon if the other person involved in the conduct consented and was aged 17 or over (rather than, as is the case in England and Wales, aged 16 or over). This difference reflects the fact that, in 2000, the age of consent was equalised at 16 in England and Wales, whereas in Northern Ireland it was equalised at 17.

1155 In addition, the Northern Ireland scheme is slightly modified compared to the scheme in England and Wales:

- to reflect the relevant offences in Northern Ireland;
- to place the responsibility for determining applications for a disregard on the Department of Justice rather than the Secretary of State.

Section 173: Anonymity of victims of forced marriage: England and Wales

1156 This section forms part of the law of England and Wales.

1157 The section inserts new section 122A into Part 10 of the 2014 Act, which in turn inserts new Schedule 6A into that Act. New Schedule 6A makes provision for the anonymity for victims of forced marriage in England and Wales. These provisions are modelled on those in the Female Genital Mutilation ("FGM") Act 2003 which provides for anonymity for victims of FGM.

1158 Paragraph 1 of new Schedule 6A to the 2014 Act prohibits the publication of any matter that would be likely to lead members of the public to identify a person as the alleged victim of an offence under section 121 of the 2014 Act (that is, the offence of forcing someone to marry). The prohibition lasts the lifetime of the alleged victim. The prohibition covers not just immediate identifying information, such as the name and the address or a photograph of the alleged victim, but also any other information which, whether on its own or together with other information, would help identify the alleged victim. "Publication" is given its broad meaning (see paragraph 9(1) of new Schedule 6A) and includes traditional print media, broadcasting media, and online and social media platforms (for example, Twitter, Facebook).

1159 Paragraph 1(3) to (7) of new Schedule 6A makes provision for a trial judge to disapply the restrictions on publication. The power to waive the restrictions is in effect limited to the circumstances necessary to allow a court to ensure that a defendant receives a fair trial or to safeguard freedom of expression in accordance with Articles 6 and 10 of the ECHR

respectively.

- 1160 Paragraph 2 of new Schedule 6A makes it a summary offence to contravene the prohibition on publication. The maximum penalty is an unlimited fine. It will not be necessary for the prosecution to show that the defendant intended to identify the victim. In relation to newspapers or other periodicals (whether in print form or online), and radio and television programmes, the offence is directed at proprietors, editors, publishers, or broadcasters (rather than individual journalists). Any prosecution for the offence requires the consent of the Attorney General.
- 1161 Paragraph 3 of new Schedule 6A provides for two defences. The first is where the defendant had no knowledge of the content of the publication or of the allegation. The second is where the victim, aged 16 or over, has given freely given written consent to the publication. These defences impose a reverse burden on the defendant, that is, it is for the defendant to prove that the defence is made out on a balance of probabilities, rather than imposing a requirement on the prosecution to show beyond reasonable doubt that that the defence does not apply. The policy aim behind the offence is to encourage victims to report forced marriage offences committed against them and to, in turn, increase the number of prosecutions for this crime. The reverse burden imposed allows the defendant in a particular case to justify their publication of the information identifying the alleged victim on the basis that they were not aware and did not suspect or have reason to suspect that an allegation had been made or that the publication contained information likely to lead members of the public to identify the alleged victim. These matters to be proved on the balance of probabilities are matters within the knowledge of the defendant.
- 1162 Paragraphs 4 to 8 of new Schedule 6A are designed to ensure that the offence provided for in paragraph 2 of the Schedule is consistent with the UK's obligations under the E-Commerce Directive. Under paragraphs 4 to 8, providers of information society services who are established in England and Wales are covered by the new offence even when they are operating in other European Economic Area states. (Non-UK based service providers could held liable in certain, more limited circumstances.) Paragraphs 6 to 8 of new Schedule 6A provide exemptions for internet service providers from the offence in limited circumstances (such as where they are acting as mere conduits for the prohibited material or are storing it as caches or hosts).

Section 174: Anonymity of victims of forced marriage: Northern Ireland

- 1163 Section 174 forms part of the law of Northern Ireland.
- 1164 The section inserts a new Part 4A and section 24A into the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, which in turn inserts a new Schedule 3A into that Act. New Schedule 3A makes anonymity for victims of forced marriage in Northern Ireland. These provisions mirror the provisions in section 173.
- 1165 Paragraph 1 of new Schedule 3A of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 prohibits publication of any matter that would be likely to lead members of the public to identify a person as the alleged victim of an offence under section 16 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.
- 1166 Paragraphs 1(3) to (7) of new Schedule 3A makes provision for a trial judge to disapply the restrictions on publication.
- 1167 Paragraph 2 of the new Schedule 3A makes it a summary offence to contravene the prohibition on publication. The maximum penalty is level 5 on the standard scale (currently £5,000). Any prosecution for the offence requires the consent of the Director of Public

Prosecutions for Northern Ireland.

- 1168 Paragraph 3 of new Schedule 3A provides for two defences, mirroring those provided for in section 173. Paragraphs 4 to 8 of new Schedule 3A replicate the provisions in section 173 in relation to special rules for information society services for Northern Ireland.

Section 175: Sentences for offences of putting people in fear of violence etc

- 1169 Section 4A of the Protection from Harassment Act 1997 provides for the offence of stalking involving fear of violence or serious alarm or distress. Section 4 of that Act provides for the offence of putting people in fear of violence. These are the most serious forms of such offences. This section increases the maximum sentence for these two offences from five to ten years' imprisonment (*subsection (1)*).
- 1170 *Subsection (2)* amends the Crime and Disorder Act 1998 in order to increase the maximum sentence for the racially or religiously aggravated version of both these offences from seven to 14 years' imprisonment.
- 1171 The increase in penalties applies only to offences committed on or after the date that this section comes into force (*subsection (3)*). Where the offence took place over more than one day, for the purposes of *subsection (3)* the offence must be taken to have been committed on the last of those days (*subsection (4)*).

Section 176: Child sexual exploitation: streaming indecent images

- 1172 Section 176 forms part of the law of England and Wales.
- 1173 Section 51 of the SOA defines "sexual exploitation" for the purpose of the offences at sections 48 to 50 of that Act, which respectively criminalise causing or inciting the sexual exploitation of a child, controlling a child in relation to sexual exploitation and arranging or facilitating the sexual exploitation of a child. The definition of "sexual exploitation" as given in section 51 of the SOA currently covers situations where indecent images of the child are recorded, and this section amends it to ensure that it also covers situations where such images are streamed (such as via the internet) or transmitted by some other technological means, such as CCTV.

Section 177: Licensing functions under taxi and PHV legislation: protection of children and vulnerable adults

- 1174 Section 177 forms part of the law of England and Wales.
- 1175 Section 177 empowers the Secretary of State (in practice the Secretary of State for Transport) to issue statutory guidance to local taxi and PHV licensing authorities in relation to the safeguarding of children (that is, persons under 18 years) and vulnerable adults and requires such authorities to have due regard to the guidance when exercising their taxi and PHV licensing functions.
- 1176 *Subsection (5)* requires the Secretary of State to consult with the NPCC and other appropriate parties such as those who represent the interests of public authorities and those whose livelihood is affected by the changes before issuing the guidance.

Section 178: Coroners' investigations into deaths: meaning of "state detention"

- 1177 Section 178 forms part of the law of England and Wales.
- 1178 This section removes the duty on coroners under section 1 of the Coroners and Justice Act 2009 to conduct an inquest in all cases where the deceased had an authorisation for the deprivation of their liberty in place either under Deprivation of Liberty Safeguards or a Court

of Protection Order or the deprivation of liberty was otherwise authorised by the Mental Capacity Act 2005.

1179 The effect of this section will mean that a coroner will no longer have a duty to undertake an investigation of a death because that person was, at the time of their death, otherwise in state detention by virtue of their liberty being deprived under Mental Capacity Act 2005.

1180 *Subsections (2) and (3)* amend section 48 of the Coroners and Justice Act 2009 to provide that the definition of state detention in section 1 of that Act should be read alongside new section 48(2A).

1181 *Subsection (4)* inserts new subsection (2A) into section 48 of the Coroners and Justice Act 2009 to provide that a person is not considered to be under state detention for the purposes of that Act when they are deprived of their liberty under sections 4A(3) or (5) or 4B of the Mental Capacity Act 2005. These sections apply to those under an order of the Court of Protection or a Deprivation of Liberty Safeguard authorisation, or where the deprivation of liberty was urgently required pending a decision of the Court of Protection on the authority to deprive the person of their liberty.

1182 Coroners will continue to have a duty under section 1 of the Coroners and Justice Act 2009 to hold an investigation into the death of any person who was in custody or otherwise in state detention, or whose death was violent, unnatural, or of unknown cause including where the deceased was also deprived of their liberty under the Mental Capacity Act 2005 at the time of their death.

Section 179: Powers of litter authorities in Scotland

1183 This section forms part of the law of Scotland.

1184 The 2014 Act introduced a range of new powers to tackle anti-social and nuisance behaviour (Parts 1 to 6). The new powers replaced a number of previous ones, including the power to serve litter abatement notices under section 92 of the Environmental Protection Act 1990 ("the EPA") and street litter control notices under section 93 of that Act (supplemented by section 94). The intention was that the Community Protection Notice (provided by sections 43 to 58 of the 2014 Act) would replace these notices and provide more flexibility in dealing with littering issues in England and Wales.

1185 Accordingly, the relevant provisions of the EPA were repealed by paragraph 21 of Schedule 11 to the 2014 Act. However, an unintended effect of section 184(8) of the 2014 Act was that the repeal of sections 92, 93 and 94 of the EPA extended to Scotland, as well as to England and Wales (as this provision provides that any repeal has the same extent as the relevant part of the Act or instrument amended, repealed or revoked).

1186 The Community Protection Notice is not available in Scotland and this has therefore left a gap in the powers available in Scotland to tackle littering. *Subsection (1)* reinstates the power of local authorities in Scotland to issue litter abatement notices and street litter control notices by re-enacting, with minor changes, sections 92, 93 and 94 of the EPA.

1187 New section 92 (as with its predecessor) enables a Scottish local authority to issue a litter abatement notice. Litter abatement notices allow the local authority where it is satisfied that relevant land (including Crown land) has been defaced by litter or that this is likely to recur, the power to issue a notice to the relevant person or body. The notice will specify the time within which the litter must be cleared and/or prohibit further littering. If the body does not comply with the notice, an offence is committed which, on conviction, may result in a fine up to level 4 (currently £2,500) plus an additional fine for each day on which the offence

continues (new section 92(6)). Further, in the event of non-compliance, the local authority may enter the land to clear it of litter and recover expenses for doing so (except in respect of Crown land or land of statutory undertakers).

1188 New section 93 (similar to its predecessor) enables a Scottish local authority to issue a street litter control notice on the occupier or owner of commercial or retail premises of a kind specified in secondary legislation. Street litter control notices give the local authority the power to require that various types of businesses, such as takeaway fast food enterprises, clean up the area in front of, or close to, their premises. The notice allows the council to enforce the instalment and maintenance of litter bins, and anything else that may be necessary to remove or reduce the amount of litter in a particular area. A person commits an offence if, without reasonable excuse, he or she fails to comply with a requirement imposed by a notice (punishable with a fine up to level 4 on conviction).

1189 New section 94(1) confers on the Scottish Ministers the power, by order (subject to the negative procedure), to prescribe the different types of commercial or retail premises in relation to 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 (new section 94(2)).

1190 *Subsection (2)* revives the Street Litter Control Notices Order 1991 (SI 1991/1324), as amended by SI 1997/632, which was made under the original section 94 of the EPA. Amongst the descriptions of premises specified in that Order as it applies in Scotland are: service stations, cinemas and theatres, banks and building societies with automated teller machines and betting offices.

Section 181: Financial provision

1191 Section 181 recognises that, as a matter of House of Commons procedure, a financial resolution needed to be agreed for the Bill from which the Act resulted.

Commencement

1192 Section 183(5) provides for the following provisions to come into force on Royal Assent:

- Section 124 (amending the names of police areas);
- Sections 164, 165 and 167 (pardons for certain abolished offences: England and Wales);
- Section 179 (powers of litter authorities in Scotland);
- Sections 180 to 184 (general provisions);
- Any powers to make regulations, orders, rules, codes of practice and guidance. In relation to the power to make orders under new section 4A of the 2004 Act, an example of an effect of section 183(5)(e) is also to bring into force on Royal Assent new Schedule A1 to the 2004 Act (inserted by paragraph 13 of Schedule 1) which sets out the procedure for an order under new section 4A.

1193 Section 183(6) provides for the following provisions to come into force two months after Royal Assent:

- Section 76 (PACE: audio recording of interviews);
- Section 157 and Schedule 19 (Powers of NCA officers to enter into collaboration agreements);
- Section 158 (Power of NCA officers in relation to customs matters);
- Section 173 and 174 (Anonymity of victims of forced marriage);
- Section 176 (Child sexual exploitation: streaming indecent images).

1194 All other provisions will be brought into force by commencement regulations made by the Secretary of State or, in the case of the provisions in Chapter 7 of Part 4 (Maritime Enforcement) and sections 168 to 170 and 172 (Pardons for certain abolished offences etc) by the Northern Ireland Department of Justice and in the case of Part 8 (Financial sanctions), by the Treasury.

Related documents

1195 The following documents are relevant to the Act:

- Overarching Impact Assessment
- Police Complaints System Impact Assessment
- Police Disciplinary Measures Impact Assessment
- Pre-charge Bail Impact Assessment
- Amendments to the Mental Health Act 1983 Impact Assessment
- Firearms fees Impact Assessment
- Amendments to Firearms Acts Impact Assessment
- Licensing powdered and vaporised alcohol Impact Assessment
- Alcohol licensing: summary reviews Impact Assessment
- Alcohol licensing: cumulative impact assessments Impact Assessment
- Alcohol licensing: late night levy Impact Assessment
- Delegated Powers Memorandum

Emergency Services Collaboration

- [Sir Ken Knight, Facing the Future: Findings from the review of efficiencies and operations in fire and rescue authorities in England, 17 May 2013](#)
- [Emergency Services Collaboration: The current picture: an overview of collaboration in England and Wales \(2014\)](#), Public Services Transformation Network.
- [Research into emergency services collaboration](#), Parry et al, 2015

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- [Consultation: Enabling closer working between the Emergency Services, September 2015.](#)
- [Enabling closer working between emergency services: summary of consultation responses and next steps, HM Government, January 2016.](#)

Police complaints and discipline

- [Major General Chip Chapman, An Independent Review of the Police Disciplinary System in England and Wales, October 2014](#)
- [Home Office, Improving police integrity: reforming the police complaints and disciplinary systems: Summary of consultation responses and next steps, 12 March 2015](#)
- [Home Office, Triennial Review of the Independent Police Complaints Commission \(IPCC\), 12 March 2015](#)
- [College of Policing's Code of Ethics](#)
- [Reforming the Independent Police Complaints Commission: structure and governance: Summary of consultation responses and next steps, Home Office, 2016](#)

HMIC

- [HMIC, Without fear or favour: a review of police relationships, 13 December 2011](#)
- [HMIC, Revisiting police relationships: a progress report, 18 December 2012](#)

Powers of staff and volunteers

- [College of Policing, Leadership Review, Interim Report, 20 March 2015](#)
- [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, Home Office, September 2015](#)
- [Reforming the Powers of Police Staff and Volunteers: Summary of consultation responses and proposals for legislation, Home Office, January 2016.](#)

Police Federation

- [Police Federation Independent Review, January 2014.](#)
- [Home Secretary's speech to the Police Federation Annual Conference 2015](#)
- [Police Federation reform: Written statement - HCWS387.](#)

NPCC

- [Independent Review of ACPO, Sir General Nick Parker, 2013](#)
- [National Police Collaboration Agreement – in relation to the setting up of a Co-ordinating Body known as the National Police Chiefs' Council](#)

[\("NPCC"\), March 2015.](#)

Pre-charge bail

- [Pre-Charge Bail: A Consultation on the Introduction of Statutory Time Limits and Related Changes, Home Office, December 2014](#)
- [Pre-Charge Bail: Summary of Consultation Responses and Proposals for Legislation, Home Office, March 2015](#)
- [Use of Pre-Charge Bail: Improving Standards for the Police Forces of England and Wales, College of Policing, 27 March 2014](#)
- [Response to the Consultation on the Use of Pre-Charge Bail: Improving Standards for the Police Forces of England and Wales, College of Policing, 17 December 2014](#)

Mental health

- [Mental Health Crisis Care Concordat, Home Office and Department of Health, February 2014](#)
 - [Mental Health Crisis Care Concordat \(Wales\), Welsh Government, December 2015](#)
 - [Review of the Operation of Sections 135 and 136 of the Mental Health Act 1983: Report Summary and Recommendations, Home Office and Department of Health, December 2014](#)
 - [Government response to No voice unheard no right ignored – a consultation with people with learning difficulties, autism and mental health conditions, Department of Health, November 2015](#)
- [College of Policing consultation on guidance for dealing with people with mental health problems](#)
- [Mental health Authorised Professional Practice, College of Policing](#)

PACE: Treatment of 17 year olds

- [High Court Judgment, Hughes Chang vs. Secretary of State for the Home Department and Commissioner of Police for the Metropolis, 25 April 2013](#)
- [Home Office, PACE Codes of Practice](#)

Firearms

- [The Law Commission, Firearms Law: A Scoping Consultation Paper, 21 July 2015](#)
- [The Law Commission, Firearms Law: Reforms to Address Pressing Problems, 16 December 2015.](#)
- [Targeting the risk: An inspection of the efficiency and effectiveness of firearms licensing in police forces in England and Wales, HMIC, September 2015.](#)

Financial sanctions

These Explanatory Notes relate to the Policing and Crime Act 2017 (c. 3) which received Royal Assent on 31 January 2017

- [HM Treasury, 'Summer Budget 2015', July 2015](#)
- [List of financial sanctions regimes currently in force.](#)

National Crime Agency

- [National Crime Agency: a plan for the creation of a national crime fighting capability](#)

Annex A - Glossary

ACPO	Association of Chief Police Officers
Affirmative procedure	Statutory instruments that are subject to the "affirmative procedure" must be approved by both the House of Commons and House of Lords to become law.
BTP	British Transport Police
CNC	Civil Nuclear Constabulary
CPS	Crown Prosecution Service
DPA	Deferred Prosecution Agreement
DPP	Director of Public Prosecutions
DSI	Death or serious injury
ECHR	European Court of Human Rights
EPA	Environmental Protection Act 1990
EU	European Union
FOI Act	The Freedom of Information Act 2000
FCA	Financial Conduct Authority
FGM	Female genital mutilation
FRA	Fire and Rescue Authority
HMCIC	Her Majesty's Chief Inspector of Constabulary
HMIC	Her Majesty's Inspectorate of Constabulary
HMRC	Her Majesty's Revenue and Customs
IOCC	Independent Office for Police Conduct
IPCC	Independent Police Complaints Commission
LFEPA	London Fire and Emergency Planning Authority
MDP	Ministry of Defence Police
MOPAC	Mayor's Office for Policing and Crime
NABIS	National Ballistics Intelligence Service
NCA	National Crime Agency
NPCC	National Police Chiefs' Council
NPIA	National Policing Improvement Agency
Negative procedure	Statutory instruments that are subject to the "negative procedure" automatically become law unless there is an objection from the House of Commons or the House of Lords.
Police Federation	Police Federation for England and Wales
PACE	Police and Criminal Evidence Act 1984
PATs	Police (Discipline) Appeals Tribunals

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PCP	Police and Crime Panel
PCSO	Police Community Support Officer
PCC	Police and Crime Commissioner
SCPO	Serious Crime Prevention Order
SFO	Senior Fraud Office
SI	Statutory Instrument
SOA	Sexual Offences Act 2003
TAFA	Terrorist Asset Freezing etc. Act 2010
The 1839 Act	City of London Police Act 1839
The 1946 Act	United Nations Act 1946
The 1968 Act	Firearms Act 1968
The 1972 Act	European Communities Act 1972
The 1982 Act	Firearms Act 1982
The 1983 Act	Mental Health Act 1983
The 1987 Act	Ministry of Defence Police Act 1987
The 1988 Act	Firearms (Amendment) Act 1988
The 1989 Act	Local Government and Housing Act 1989
The 1990 Act	Criminal Justice (International Co-operation) Act 1990
The 1994 Act	Criminal Justice and Public Order Act 1994
The 1996 Act	Police Act 1996
The 1998 Act	Data Protection Act 1998
The 1999 Act	Greater London Authority Act 1999
The 2002 Act	Police Reform Act 2002
The 2003 Act	Licensing Act 2003
The 2004 Act	Fire and Rescue Services Act 2004
The 2007 Act	Serious Crime Act 2007
The 2009 Act	Local Democracy, Economic Development and Construction Act 2009
The 2011 Act	Police Reform and Social Responsibility Act 2011
The 2012 Act	Protection of Freedoms Act 2012
The 2013 Act	Crime and Courts Act 2013
The 2014 Act	Anti-social Behaviour, Crime and Policing Act 2014
The 2015 Act	Modern Slavery Act 2015
UKBA	UK Borders Act 2007
UN	United Nations

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Annex B - Police force areas and fire and rescue authorities in England (excluding London)

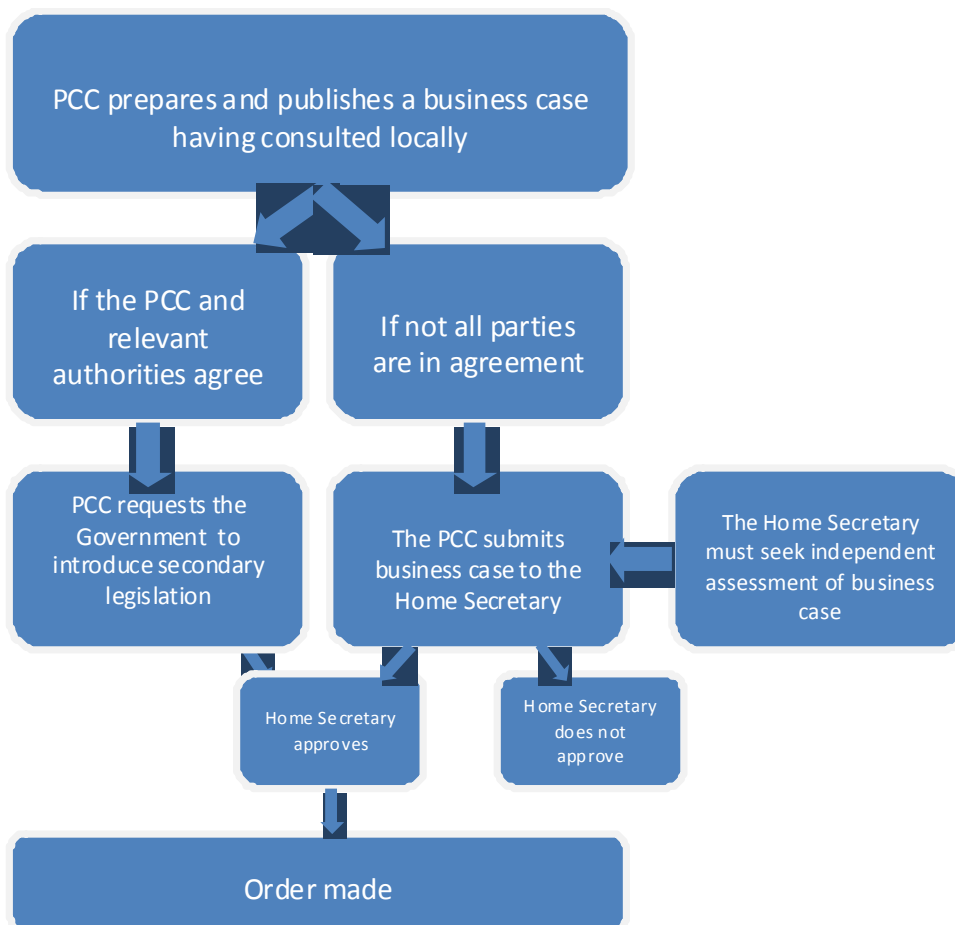
Police Force	FRA within whole or part of area
1. FRA and police area coterminous	
Bedfordshire Police	Bedfordshire FRA
Cambridgeshire Police	Cambridgeshire FRA
Cheshire Police	Cheshire FRA
Cleveland Police	Cleveland FRA
Cumbria	Cumbria FRA
Derbyshire Police	Derbyshire FRA
Durham Police	Durham FRA
Essex Police	Essex FRA
Gloucestershire Police	Gloucestershire FRA
Greater Manchester Police	Greater Manchester FRA
Hertfordshire Police	Hertfordshire FRA
Humberside Police	Humberside FRA
Kent Police	Kent Police FRA
Lancashire Police	Lancashire FRA
Leicestershire Police	Leicestershire FRA
Lincolnshire Police	Lincolnshire FRA
Merseyside Police	Merseyside FRA
Norfolk Police	Norfolk FRA
North Yorkshire Police	North Yorkshire FRA
Northamptonshire Police	Northamptonshire FRA
Nottinghamshire Police	Nottinghamshire FRA
South Yorkshire Police	South Yorkshire FRA
Staffordshire Police	Staffordshire FRA
Suffolk Police	Suffolk FRA
Surrey Police	Surrey FRA
Warwickshire Police	Warwickshire FRA
West Midlands Police	West Midlands FRA
West Yorkshire Police	West Yorkshire FRA
2. More than one FRA in police force area, but borders co-terminous	
Sussex Police	West Sussex FRA

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	East Sussex FRA
Thames Valley Police	Buckinghamshire FRA Oxfordshire FRA Berkshire FRA
West Mercia Police	Shropshire FRA Hereford and Worcester FRA
Northumbria Police	Northumberland FRA Tyne and Wear FRA
Hampshire Police	Hampshire FRA Isle of Wight FRA
3. More than one police force in FRA area but borders are co-terminous	
Wiltshire Police Dorset Police	Dorset and Wiltshire FRA
4. Police area spans more than one FRA and the boundaries do not align	
Devon and Cornwall Police	Cornwall FRA Devon and Somerset FRA
Avon and Somerset Police	Avon FRA Devon and Somerset FRA

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Annex C - Process for PCC taking on governance of a Fire and Rescue Authority



Note: where a relevant local authority has indicated that it does not support the proposals, a PCC can submit its business case to the Home Secretary, but is also required to submit: consultation documents, representations made by a relevant local authority in response, a summary of views expressed by people in the commissioner's police area and those representing employees, and the commissioner's response to those representations and views.

Annex D - Summary of the complaints system

Police complaints procedures are laid down under Part 2 of the 2002 Act to ensure that police officers and staff are fully answerable for their actions. The Act also sets out the role of the IPCC.

Who can complain?

A complaint may be made by any of the following:

- An individual to whom the conduct took place;
- A member of the public indirectly affected by the conduct;
- A member of the public who witnessed the conduct;
- A person acting on behalf of someone who falls within the above.

Officers and staff cannot make complaints about individuals in the same force. Instead these are addressed by internal force grievance processes.

Categories of complaints

When a complaint is received by a force, a recording decision is made (see 'Appeal Rights'). If the force deems the issue comes under the definition provided for in the 2002 Act it is recorded as a complaint. The current definition defines a complaint in terms of a complaint about the conduct of a person serving with the police.

If the complaint relates to an operational, organisational or management decisions then the complaint can be categorised as a 'direction and control' complaint. These are handled in the same way as normal complaints but do not have an appeal right.

Types of handling

When the force receives a complaint, they can, if they deem it necessary or if it meets the mandatory referral criteria, refer a case to the IPCC for its assessment. If a complaint alleges death or serious injury relating to police contact, then this comes under the mandatory referral criteria and must be referred by the force to the IPCC.

A case handled by the force can be categorised as suitable for local resolution. This means that the case is handled locally and that the issues are not serious enough to require full investigation. If the force deems that the complaint warrants it, they may decide to initiate a local investigation. If a complaint meets certain criteria, they may also disapply the legislation and take whatever action they choose in regards to the complaint. This will usually be to take no further action.

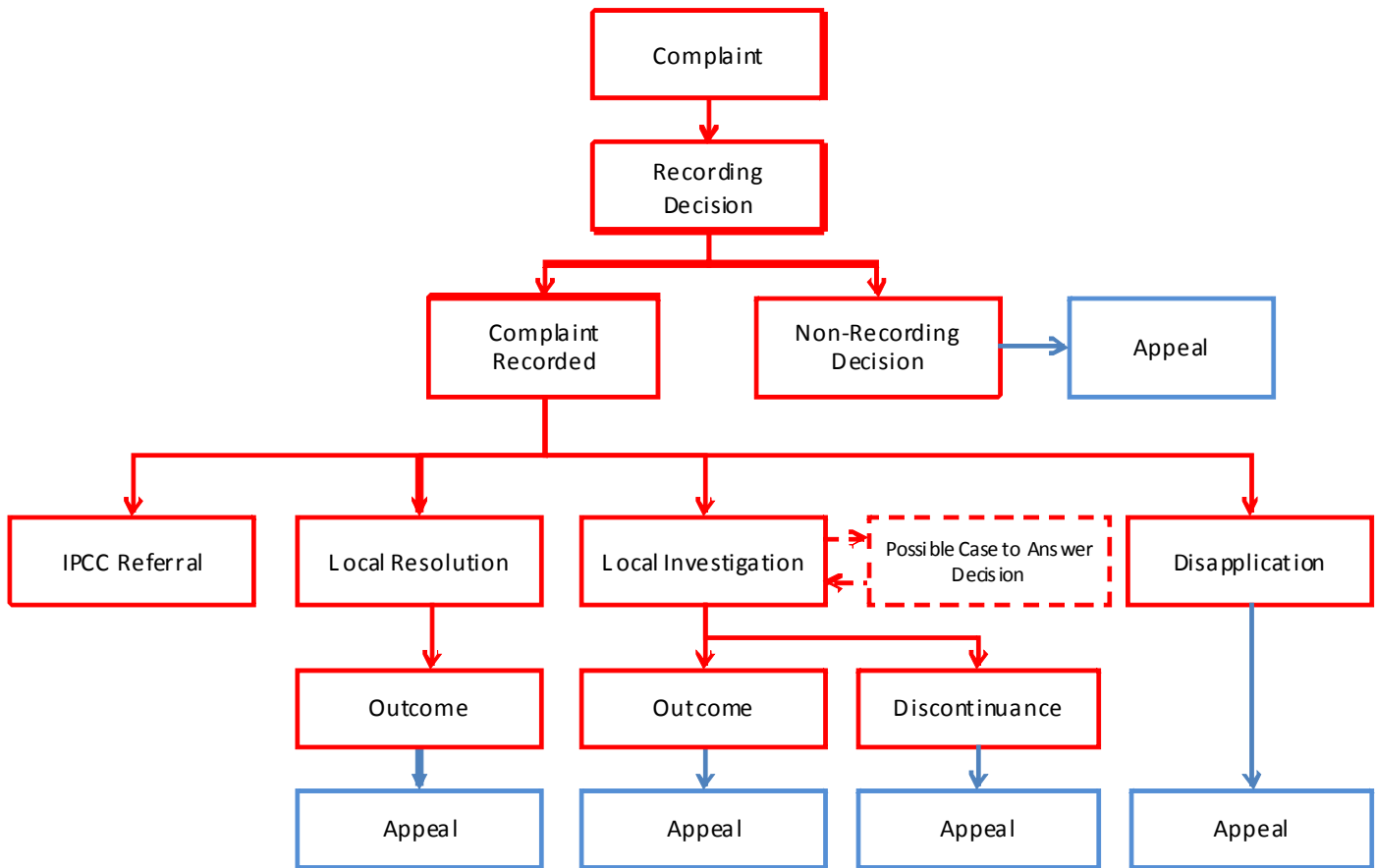
If the IPCC decides to take on a case after it has been referred, they have three options. They can take on the full investigation themselves; they can take on the management of the investigation; or they can supervise the investigation. A supervised investigation sees the force investigate within prescribed terms of reference set by the IPCC, while a managed investigation gives the IPCC greater "direction and control" over the investigation.

Appeal rights

There are currently five rights of appeal. An appeal may be bought against a decision not to record a complaint, against a decision to disapply the complaint (that is, to proceed no further beyond recording it), against the outcome of any complaint handled by local resolution, against a decision to discontinue an investigation into a complaint, and against various factors in relation to the conducting of an

investigation into a complaint.

Current Complaints Process Overview



These Explanatory Notes relate to the Policing and Crime Act 2017 (c. 3) which received Royal Assent on 31 January 2017

Annex E - Summary of the disciplinary system

Regulated framework

Police officers, as holders of the office of constable in a police force, have certain protections in terms of their employment status, their discipline and how they can be dismissed from the force. As a result of this status, the police disciplinary system is regulated and set out in secondary legislation. The Home Office is responsible for the maintenance of the system and produces guidance which explains the extent and procedures related to the regulated discipline, performance and attendance systems for police⁴⁷. Police staff who do not hold the office of constable are not included in the regulated police discipline system and are instead governed by local policy set within each police force.

The process for misconduct proceedings is set out in the Police (Conduct) Regulations 2012 (SI 2012/2632), which applies to all police officers and special constables. These regulations set out the process and steps that must be followed where an allegation comes to the attention of the Appropriate Authority which indicates that the conduct of a police officer may amount to misconduct or gross misconduct. This includes an allegation contained within a complaint or conduct matter referred to the IPCC in accordance with the 2002 Act.

Appropriate Authority Definitions	
For chief officers	The elected local PCC (or MOPAC for the Metropolitan Police, and the Common Council for the City of London police)
All other police officers	The chief officer (chief constable or commissioner) of the police force where the officer is serving. The Appropriate Authority power is often delegated to a less senior rank in practice, for example to the head of the Professional Standards Department within the force.

Assessment of conduct

When an allegation that an officer may have breached the standards of professional behaviour comes to light, the Appropriate Authority will make an assessment of its severity. This assessment determines the seriousness of the alleged breach and therefore the course of proceedings that should be followed.

Discipline Definitions	
Misconduct	A breach of professional standards
Gross misconduct	A breach of professional standards so serious that dismissal (being sacked) would be justified.
Professional standards	The standards of professional behaviour ⁴⁸ are set out in Schedule 2 to the Police (Conduct) Regulations 2012.

The severity assessment and whether to commence formal disciplinary proceedings can either be triggered by an internal allegation about an officer's conduct; following an investigation into a death or

⁴⁷ The relevant Home Office guidance can be accessed:

<https://www.gov.uk/government/publications/circular-0212015-changes-to-home-office-guidance-on-police-misconduct-unsatisfactory-performance-and-attendance-management-procedures>

⁴⁸ As the professional body for policing in England and Wales, the College of Policing is responsible for setting standards of policing practice and for identifying, developing and promoting ethics, values and integrity. The Code of Ethics, issued by the College of Policing, sets out in detail the principles and expected behaviours that underpin the standards of professional behaviour for everyone working in the policing profession in England and Wales.

serious injury following contact with the police; or from a public complaint⁴⁹.

Investigation

All matters assessed as gross misconduct matters are investigated. The chief officer will normally determine whether a misconduct matter warrants investigation. The IPCC sets out cases that must be referred to it for a mode of investigation decision; these include all death or serious injury cases and cases involving, serious assault, serious sexual offences, serious corruption, behaviour aggravated by discriminatory behaviour and any relevant offences. (For these purposes, a relevant offence is any offence for which the sentence is fixed by law or for which a person of 18 years and over (not previously convicted) may be sentenced to imprisonment for seven years or more.)

Under existing regulations, once an allegation comes to the attention of the Appropriate Authority whilst an investigation or disciplinary proceedings are being undertaken, an officer is prevented from resigning or retiring from the force, until the matter has been concluded. This provision was introduced in 2014 to prevent officers from leaving the force in order to evade disciplinary outcomes.

At the conclusion of an investigation, the Appropriate Authority must make a decision as to whether there is a "case to answer" in respect of misconduct or gross misconduct and therefore whether to refer the matter to the misconduct proceedings.

Where an investigation has been conducted by the IPCC, they can recommend to the Appropriate Authority whether in their view there is a case to answer. Where the Appropriate Authority disagrees with the IPCC recommendation, it can respond and make further representations, however if the IPCC remains of the view that there is a case to answer for (gross) misconduct, it can direct the force to instigate misconduct proceedings.

Misconduct proceedings

Misconduct proceedings follow an investigation; any criminal proceedings are concluded separately. The presumption is that action for misconduct should be taken prior to, or in parallel with, any criminal proceedings, but if necessary action can be delayed until criminal proceedings are complete.

There are two types of misconduct proceedings:

- Misconduct meetings, for cases where there is a case to answer in respect of misconduct.
- Misconduct hearings, for cases where there is a case to answer in respect of gross misconduct or where the police officer has a live final written warning and there is a case to answer in respect of a further act of misconduct. These hearings are held in public.

⁴⁹Where a public complaint amounts to an allegation against the conduct of an officer, the complaint becomes subject to 'special requirements', to ensure it is handled in a manner consistent with the conduct regulations.

Misconduct Hearing Composition	
Senior officers	Legally qualified chair, HMI, Independent member
Non-senior officers	Legally qualified chair, Member of the force (Superintendent or above or HR equivalent), Independent member from a list provided by the PCC.

Disciplinary outcomes

At a misconduct meeting the outcomes are:

- Misconduct not found;
- No further action;
- Management advice;
- Written warning;
- Final written warning.

At a misconduct hearing, the following additional outcomes are also available:

- Dismissal with notice;
- Dismissal without notice.

If an officer is dismissed, the details of individual and the case are collected by the College of Policing on the [Disapproved Register](#), which is a list which records details of all officers who have been dismissed in order to prevent them from re-entering the police service.

Staff association/legal representation

Police officers have a right to representation by a police friend at misconduct meetings; in addition they have a right to legal representation at misconduct hearings and Police (Discipline) Appeals Tribunals ("PATs").

Appeal mechanism

There is a statutory appeal mechanism to a PAT against either the finding or outcome of a misconduct hearing on the basis that the finding or action was unreasonable, that there is new evidence or that there was a breach of procedure. Appeals arising from misconduct meetings are heard internally.

The composition of a PAT is as follows:

PAT Composition	
Senior officers	Legally-qualified chair, HMI, Home Office Permanent Secretary, Director General or Director.
Non-senior officers	Legally-qualified chair, Serving senior officer, Retired police officer.

A PAT can dismiss the appeal, remit the matter to be determined at a fresh hearing, or reinstate the officer.

These Explanatory Notes relate to the Policing and Crime Act 2017 (c. 3) which received Royal Assent on 31 January 2017

Annex F - Existing powers of designated police staff

Community Support Officers - Standard powers

- to issue fixed penalty notices for cycling on a footpath;
- to issue fixed penalty notices for littering;
- to require name and address of a person who the PCSO has reason to believe has
i) committed an offence; ii) been acting, or to be acting, in an anti-social manner;
or iii) failure to obey lawful traffic directions of a police constable or PCSO;
- to require persons drinking in restricted areas to surrender alcohol;
- to require persons aged under 18 to surrender alcohol;
- to seize tobacco or cigarette papers from a person aged under 16 and to dispose of
the tobacco/papers;
- to seize controlled drugs (including power to require name and address of person
in possession);
- to enter and search any premises, in their police area, for the purposes of saving
life and limb or preventing serious damage to property;
- to seize vehicles used to cause alarm or distress (that is, careless and inconsiderate
driving or prohibited off-road driving);
- to remove abandoned vehicles;
- to stop bicycles;
- to control traffic for purposes other than escorting a load of exceptional
dimensions;
- to carry out road checks;
- to place traffic signs;
- to enforce areas cordoned under section 36 of the Terrorism Act 2000; and
- to photograph persons away from a police station.

Discretionary powers

- to issue penalty notices in respect of offences of disorder;
- to issue fixed penalty notices for truancy;
- to issue fixed penalty notices for excluded pupil found in a public place;
- to issue fixed penalty notices for dog fouling on designated land;
- to issue fixed penalty notices for graffiti and fly-posting;
- to issue fixed penalty notice for relevant byelaw offences;

- to detain a person for up to 30 minutes who fails to comply with a requirement to give their name and address, or who gives an answer which the PCSO reasonably suspects to be false or inaccurate, in order to wait for the arrival of a police officer (or alternatively to accompany the detained person to a police station);
- to search detained persons for dangerous items or items that could be used to assist escape and to seize and retain any items found;
- to enforce byelaws, including removing a person from a place if a constable would also have the power to enforce a byelaw in that way;
- to deal with begging;
- to enforce certain licensing offences (including a limited power of entry to investigate such offences);
- to serve closure notice for licensed premises persistently selling to children;
- to use reasonable force to prevent a detained person making off and to keep that person under control;
- to disperse groups and remove persons under 16 to their place of residence;
- to remove truants and excluded pupils to designated premises etc;
- to use reasonable force in relation to detained persons to enforce their handover to a police officer or transfer to a police station;
- to search for and seize alcohol and tobacco from minors;
- to seize psychoactive substances;
- to take possession of items used in the commission of offences under the Royal Parks (Trading) Act 2000 (Metropolitan PCSOs only);
- to stop vehicles for testing of roadworthiness; and
- to direct traffic for the purposes of escorting a load of exceptional dimensions.
- to issue a fixed penalty notice for cycling without lights;
- to issue a fixed penalty notice for failing to comply with traffic signs;
- to issue a fixed penalty notice for carrying a passenger on a cycle;
- to issue a fixed penalty notice to a cyclist for failing to comply with a traffic direction;
- to issue a fixed penalty notice for parking in a restricted area outside schools;
- to issue a fixed penalty notice for failing to stop for a police constable;
- to issue a fixed penalty notice for driving the wrong way down a one-way street;
- to issue a fixed penalty notice for sounding a horn when stationary or at night;

These Explanatory Notes relate to the Policing and Crime Act 2017 (c. 3) which received Royal Assent on 31 January 2017

- to issue a fixed penalty notice for not stopping engine when stationary;
- to issue a fixed penalty notice for causing unnecessary noise with a motor vehicle;
- to issue a fixed penalty notice for contravening bus lane prohibition or restriction;
- to issue a fixed penalty notice for opening door so as to cause injury or danger;
- to confirm the identity of a charity collector;
- to issue a fixed penalty notice to an unlicensed street vendor;
- to stop cycles;
- to give a dispersal direction;
- to direct a person to surrender alcohol or a container for alcohol in their possession or control in breach of a public spaces protection order;
- to detain a person for up to 30 minutes failing to comply with either of the above directions, in order to wait for the arrival of a police officer;
- to issue a Community Protection Notice;
- Power to issue a fixed penalty notice for failure to comply with a Community Protection Notice; and
- to issue a fixed penalty notice for failure to comply with Public Space Protection Order.

Investigating Officers (discretionary powers)

- to obtain a search warrant under PACE or the Misuse of Drugs Act 1971;
- to execute a search warrant under PACE or the Misuse of Drugs Act 1971;
- to seize and retain things i) for which a search warrant has been authorised, or ii) on any premises where the officer is lawfully present;
- to accompany named, undesignated individuals (for example, forensic IT or accountancy specialists) in the execution of a search warrant;
- to obtain a production order under PACE;
- to enter and search for evidence of an offence any premises under the control of an arrested person (PACE section 18);
- to enter and search premises for evidence of nationality any premises under the control of an arrested person, or where that person was at the time of, or immediately before, their arrest (sections 44 to 46 of the UK Borders Act 2007);
- to make a further arrest of an arrested person (that is, for a fresh offence);
- to take custody of an arrested person at a police station for the purpose of

progressing the investigation (for example, conducting an interview); and

- to issue Special Warnings under the Criminal Justice and Public Order Act 1994, to require a person to account for i) any object, substance or mark, or ii) their presence at a particular place, where the officer believes that may be attributable to the participation of the person arrested in an offence.

Detention Officers (discretionary powers)

- to require a person to attend a police station to have i) their fingerprints or ii) other sample (for example, DNA) taken;
- to take i) fingerprints or ii) non-intimate samples without consent;
- to give warnings to detained persons in connection with i) the taking of samples, ii) the conduct of intimate searches or iii) the taking of investigative x-rays;
- to conduct searches of persons answering to live link bail at a police station;
- to conduct non-intimate searches of detained persons;
- to conduct searches and examinations at police stations to ascertain an arrested person's identity, including photographing any identifying mark;
- to take photographs of detained persons;
- to take impressions of a detained person's footwear without consent;
- to keep control of detained person; and
- where necessary, to use force to carry out any of the above powers.

Escort Officers (discretionary powers)

- to take a person arrested by a constable to a police station; and
- to escort persons in police detention.

Annex G - Police workforce, England and Wales

Rank	All staff (FTE)	Staff available for duty (FTE)
Chief officers(1)	201	200
Chief superintendents	337	332
Superintendents	820	808
Chief inspectors	1,657	1,625
Inspectors	5,701	5,548
Sergeants	19,148	18,511
Constables	98,954	94,053
Total police ranks	126,818	121,078
Police staff(2)	63,719	61,073
Police community support officers	12,331	11,719
Designated officers(3)	4,254	4,122
Traffic wardens	18	17
Total police workforce	207,140	198,009
Special constabulary(4)	16,101	-

Table notes

NB: All figures relates to the 43 forces of England and Wales only. Figures as of 31 March 2015.

1. Includes Assistant Chief Constables, Deputy Chief Constables and Chief Constables, and their equivalents in the Metropolitan Police and City of London Police.
2. Excludes police community support officers, designated officers and traffic wardens.
3. Excludes police community support officers.
4. Headcount only.

Source: Home Office, Police workforce, data tables.

Annex H - Biometric Material Retention Schedule

Biometric retention periods as defined under Part 5 of PACE

Individuals convicted of an offence

Situation	Fingerprint & DNA Retention Period
Adult convicted (including cautions) of any recordable offence	Indefinite
Under 18 convicted (including cautions, reprimands and final warnings) of a qualifying offence	Indefinite
Under 18 convicted of a minor offence	<p>1st conviction: Five years (plus length of any custodial sentence), or indefinite if the custodial sentence is five years or more.</p> <p>2nd conviction: indefinite</p>

Individuals not convicted of an offence

Situation	Fingerprint & DNA Retention Period
Any age charged with but not convicted of a qualifying offence	Three years + two year extension if granted by District Judge (or indefinite if previously convicted of a recordable offence which is not excluded)
Any age arrested for but not charged with a qualifying offence	Three years if granted by Biometrics Commissioner + two year extension if granted by District Judge (or indefinite if previously convicted or a recordable offence which is not excluded)
Any age arrested for or charged with a minor offence	None (or indefinite if there is a previous conviction for a recordable offence which is not excluded) but speculatively searched against National DNA Database and national fingerprint database
Penalty Notice for Disorder	Two years

Source: National Police Chiefs' Council, ACRO Criminal Records Office, [Retention Schedule](#)

These Explanatory Notes relate to the Policing and Crime Act 2017 (c. 3) which received Royal Assent on 31 January 2017

Annex I - Territorial extent and application

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Part 1: Emergency services collaboration – Chapter 1: Collaboration agreements				
Sections 1 to 5	Yes	No	No	No
Part 1: Emergency services collaboration – Chapter 2: Police and Crime Commissioners etc: Fire and rescue functions				
Sections 6 to 8	Yes	No	No	No
Schedule 1	Yes	No	No	No
Part 1: Emergency services collaboration – Chapter 3: London Fire Commissioner				
Sections 9 and 10	Yes	No	No	No
Schedule 2	Yes	No	No	No
Part 1: Emergency services collaboration – Chapter 4: Inspection of fire and rescue services				
Section 11	Yes	No	No	No
Schedule 3	Yes	No	No	No
Section 12	Yes	No	No	No
Part 2: Police complaints, discipline and inspection – Chapter 1: Police complaints				
Sections 13 and 14	Yes	Yes	No	No
Schedule 4	Yes	Yes	No	No
Sections 15 and 16	Yes	Yes	No	No
Schedule 5	Yes	Yes	No	No
Sections 17 and 18	Yes	Yes	No	No
Section 19	Yes	Yes	No	No
Section 20	Yes	Yes	No	No
Section 21	Yes	Yes	In part	In part
Sections 22 to 24	Yes	Yes	No	No
Part 2: Police complaints, discipline and inspection – Chapter 2: Police super-complaints				
Sections 25 to 27	Yes	Yes	No	No
Part 2: Police complaints, discipline and inspection – Chapter 3: Whistle-blowing: Power of IPCC to investigate				
Section 28	Yes	Yes	No	No
Schedule 6	Yes	Yes	No	No

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Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Part 2: Police complaints, discipline and inspection – Chapter 4: Police discipline				
Section 29	Yes	Yes	In part	In part
Schedule 7	Yes	Yes	Yes	In part
Section 30	Yes	Yes	No	No
Schedule 8	Yes	Yes	No	No
Section 31	Yes	Yes	No	No
Section 32	Yes	Yes	No	No
Part 2: Police complaints, discipline and inspection – Chapter 5: IPCC: re-naming and organisation change				
Sections 33 to 35	Yes	Yes	No	No
Schedule 9	Yes	Yes	No	No
Part 2: Police complaints, discipline and inspection – Chapter 6: Inspection				
Section 36	Yes	Yes	No	No
Section 37	Yes	Yes	In part	In part
Part 3: Police workforce and representative institutions – Chapter 1: Police workforce				
Section 38	Yes	Yes	No	No
Schedules 10 and 11	Yes	Yes	No	No
Section 39	Yes	Yes	In part	No
Sections 40 to 44	Yes	Yes	No	No
Section 45	Yes	Yes	In part	No
Schedule 12	Yes	Yes	In part	No
Section 46	In part	In part	No	No
Schedule 13	Yes	Yes	No	No
Sections 47 and 48	Yes	Yes	No	No
Part 3: Police workforce and representative institutions – Chapter 2: Representative institutions				
Sections 49 to 51	Yes	Yes	No	No
Schedule 14	Yes	Yes	No	No
Part 4: Police powers – Chapter 1: Pre-charge bail				
Sections 52 to 67	Yes	Yes	No	No
Sections 68 and 69	Yes	Yes	No	Yes
Part 4: Police powers – Chapter 2: retention of biometric material				
Section 70	Yes	Yes	No	No

These Explanatory Notes relate to the Policing and Crime Act 2017 (c. 3) which received Royal Assent on 31 January 2017

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Section 71	Yes	Yes	Yes	Yes
Part 4: Police powers – Chapter 3: Powers under PACE: Miscellaneous				
Sections 72 to 75	Yes	Yes	No	No
Section 76	Yes	Yes	In part	In part
Section 77 to 79	Yes	Yes	No	No
Part 4: Police powers – Chapter 4: Powers under the Mental Health Act 1983				
Sections 80 to 83	Yes	Yes	No	No
Part 4: Police powers – Chapter 5: Maritime enforcement: English and Welsh offences				
Section 84	Yes	Yes	In part	No
Section 85	Yes	Yes	No	No
Sections 86 to 92	Yes	Yes	Yes	No
Sections 93 and 94	Yes	Yes	In part	No
Section 95	Yes	Yes	Yes	No
Part 4: Police powers – Chapter 6: Maritime enforcement: Scottish offences				
Section 96	In part	In part	Yes	No
Section 97	No	No	Yes	No
Sections 98 to 104	Yes	Yes	Yes	No
Section 105	No	No	Yes	No
Section 106	Yes	Yes	Yes	No
Part 4: Police powers – Chapter 7: Maritime enforcement: Northern Irish offences				
Sections 107 to 115	No	No	No	Yes
Part 4: Police powers – Chapter 8: Cross-border enforcement				
Section 116	Yes	Yes	Yes	Yes
Schedules 15 and 16	Yes	Yes	Yes	Yes
Sections 117 to 119	Yes	Yes	Yes	Yes
Schedule 17	Yes	Yes	Yes	Yes
Part 4: Police powers – Chapter 9: Miscellaneous				
Section 120	Yes	Yes	No	No
Part 5: Police and Crime Commissioners and police areas				
Sections 121 and 122	Yes	Yes	No	No

These Explanatory Notes relate to the Policing and Crime Act 2017 (c. 3) which received Royal Assent on 31 January 2017

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Section 123	Yes	No	No	No
Sections 124 and 125	Yes	Yes	No	No
Part 6: Firearms and pyrotechnic articles				
Sections 125 to 133	Yes	Yes	Yes	No
Section 134	Yes	Yes	No	No
Part 7: Alcohol: Licensing				
Sections 135 to 142	Yes	Yes	No	No
Schedule 18	Yes	Yes	No	No
Part 8: Financial sanctions				
Sections 143 to 149	Yes	Yes	Yes	Yes
Section 150	Yes	Yes	No	No
Sections 151 to 156	Yes	Yes	Yes	Yes
Part 9: Miscellaneous and general				
Section 157	Yes	Yes	No	No
Schedule 19	Yes	Yes	No	No
Section 158	Yes	Yes	Yes	Yes
Sections 159	Yes	Yes	No	Yes
Section 160	Yes	Yes	Yes	Yes
Section 161	Yes	Yes	Yes	Yes
Section 162	Yes	Yes	No	No
Section 163	Yes	Yes	Yes	Yes
Sections 164 to 167	Yes	Yes	No	No
Section 168	In part	In part	No	Yes
Sections 169 to 172	No	No	No	Yes
Section 173	Yes	Yes	No	No
Section 174	No	No	No	Yes
Sections 175 to 178	Yes	Yes	No	No
Section 179	No	No	Yes	No

These Explanatory Notes relate to the Policing and Crime Act 2017 (c. 3) which received Royal Assent on 31 January 2017

Annex J - Hansard references

1196 The following table sets out the dates and Hansard references for each stage of the Bill's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	10 February 2016	Vol. 605 Col. 1581 (Bill 134 as introduced)
Second Reading	7 March 2016	Vol. 607 Col. 37
Public Bill Committee - 1st sitting	15 March 2016	Vol. 607 Col. 1
Public Bill Committee - 2nd sitting	15 March 2016	Vol. 607 Col. 37
Public Bill Committee - 3rd sitting	22 March 2016	Vol. 607 Col. 85
Public Bill Committee - 4th sitting	22 March 2016	Vol. 607 Col. 119
Public Bill Committee - 5th sitting	24 March 2016	Vol. 607 Col. 197
Public Bill Committee - 6th sitting	12 April 2016	Vol. 608 Col. 229
Public Bill Committee - 7th sitting	12 April 2016	Vol. 608 Col. 263
Report and Third Reading	13 June 2016	Vol. 611 Col. 1454 (Bill 158 as amended in Committee)
<i>House of Lords</i>		
Introduction	14 June 2016	Vol. 773 Col. 1107 (HL Bill 55 as introduced)
Second Reading	18 July 2016	Vol. 774 Col. 438
Grand Committee - 1st sitting	14 September 2016	Vol. 774 Col. 1467
Grand Committee - 2nd sitting	26 October 2016	Vol. 776 Col. 207
Grand Committee - 3rd sitting	2 November 2016	Vol. 776 Col. 661
Grand Committee - 4th sitting	9 November 2016	Vol. 776 Col. 1154
Grand Committee - 5th sitting	16 November 2016	Vol. 776 Col. 1436
Report - 1st sitting	30 November 2016	Vol. 777 Col. 205 (HL Bill 72 amended in Committee)
Report - 2nd sitting	7 December 2016	Vol. 777 Col. 738
Report - 3rd sitting	12 December 2016	Vol. 777 Col. 1009
Third Reading	19 December 2016	Vol. 777 Col. 1473 (HL Bill 84 amended on Report)
Commons Consideration of Lords Amendments	10 January 2017	Vol. 619 Col. 243 (Lords Amendments to the Bill)
Lords Consideration of Commons Reasons and Amendments	18 January 2017	Vol. 778 Col. 218 (Commons Reasons and Amendments)
Royal Assent	31 January 2017	House of Commons Vol. 620 Col. 793 House of Lords Vol. 778 Col. 1085

These Explanatory Notes relate to the Policing and Crime Act 2017 (c. 3) which received Royal Assent on 31 January 2017

Annex K - Progress of Bill Table

1197 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2	Clause 2	Clause 2
Section 3	Clause 3	Clause 3	Clause 3	Clause 3	Clause 3
Section 4	Clause 4	Clause 4	Clause 4	Clause 4	Clause 4
Section 5	Clause 5	Clause 5	Clause 5	Clause 5	Clause 5
Section 6	Clause 6	Clause 6	Clause 6	Clause 6	Clause 6
Section 7	Clause 7	Clause 7	Clause 7	Clause 7	Clause 7
Section 8		Clause 8	Clause 8	Clause 8	Clause 8
Section 9	Clause 8	Clause 9	Clause 9	Clause 9	Clause 9
Section 10	Clause 9	Clause 10	Clause 10	Clause 10	Clause 10
Section 11			Clause 11	Clause 11	Clause 11
Section 12					Clause 12
Section 13	Clause 10	Clause 11	Clause 12	Clause 12	Clause 13
Section 14	Clause 11	Clause 12	Clause 13	Clause 13	Clause 14
Section 15	Clause 12	Clause 13	Clause 14	Clause 14	Clause 15
Section 16	Clause 13	Clause 14	Clause 15	Clause 15	Clause 16
Section 17	Clause 14	Clause 15	Clause 16	Clause 16	Clause 17
Section 18	Clause 15	Clause 16	Clause 17	Clause 17	Clause 18
Section 19		Clause 17	Clause 18	Clause 18	Clause 19
Section 20		Clause 18	Clause 19	Clause 19	Clause 20
Section 21		Clause 19	Clause 20	Clause 20	Clause 21
Section 22	Clause 16	Clause 20	Clause 21	Clause 21	Clause 22
Section 23	Clause 17	Clause 21	Clause 22	Clause 22	Clause 23
Section 24		Clause 22	Clause 23	Clause 23	Clause 24
Section 25	Clause 18	Clause 23	Clause 24	Clause 24	Clause 25
Section 26	Clause 19	Clause 24	Clause 25	Clause 25	Clause 26
Section 27	Clause 20	Clause 25	Clause 26	Clause 26	Clause 27
Section 28	Clause 21	Clause 26	Clause 27	Clause 27	Clause 29
Section 29	Clause 22	Clause 27	Clause 28	Clause 28	Clause 30
Section 30	Clause 23	Clause 28	Clause 29	Clause 29	Clause 31
Section 31	Clause 24	Clause 29	Clause 30	Clause 30	Clause 32
Section 32	Clause 25	Clause 30	Clause 31	Clause 31	Clause 33

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Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 33		Clause 31	Clause 32	Clause 32	Clause 34
Section 34		Clause 32	Clause 33	Clause 33	Clause 35
Section 35			Clause 34	Clause 34	Clause 36
Section 36	Clause 26	Clause 33	Clause 35	Clause 35	Clause 37
Section 37	Clause 27	Clause 34	Clause 36	Clause 36	Clause 38
Section 38	Clause 28	Clause 35	Clause 37	Clause 37	Clause 39
Section 39			Clause 38	Clause 38	Clause 40
Section 40	Clause 29	Clause 36	Clause 39	Clause 39	Clause 41
Section 41	Clause 30	Clause 37	Clause 40	Clause 40	Clause 42
Section 42	Clause 31	Clause 38	Clause 41	Clause 41	Clause 43
Section 43			Clause 42	Clause 42	Clause 44
Section 44	Clause 32	Clause 39	Clause 43	Clause 43	Clause 45
Section 45	Clause 33	Clause 40	Clause 44	Clause 44	Clause 46
Section 46	Clause 34	Clause 41	Clause 45	Clause 45	Clause 47
Section 47	Clause 35	Clause 42	Clause 46	Clause 46	Clause 48
Section 48	Clause 36	Clause 43	Clause 47	Clause 47	Clause 49
Section 49	Clause 37	Clause 44	Clause 48	Clause 48	Clause 50
Section 50	Clause 38	Clause 45	Clause 49	Clause 49	Clause 51
Section 51	Clause 39	Clause 46	Clause 50	Clause 50	Clause 52
Section 52	Clause 40	Clause 47	Clause 51	Clause 51	Clause 53
Section 53	Clause 41	Clause 48	Clause 52	Clause 52	Clause 54
Section 54	Clause 42	Clause 49	Clause 53	Clause 53	Clause 55
Section 55	Clause 43	Clause 50	Clause 54	Clause 54	Clause 56
Section 56	Clause 44	Clause 51	Clause 55	Clause 55	Clause 57
Section 57	Clause 45	Clause 52	Clause 56	Clause 56	Clause 58
Section 58	Clause 46	Clause 53	Clause 57	Clause 57	Clause 59
Section 59		Clause 54	Clause 58	Clause 58	Clause 60
Section 60		Clause 55	Clause 59	Clause 59	Clause 61
Section 61	Clause 47	Clause 56	Clause 60	Clause 60	Clause 62
Section 62	Clause 48	Clause 57	Clause 61	Clause 61	Clause 63
Section 63	Clause 49	Clause 58	Clause 62	Clause 62	Clause 64
Section 64	Clause 50	Clause 59	Clause 63	Clause 63	Clause 65
Section 65	Clause 51	Clause 60	Clause 64	Clause 64	Clause 66
Section 66		Clause 61	Clause 65	Clause 65	Clause 67
Section 67		Clause 62	Clause 66	Clause 66	Clause 68

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Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 68		Clause 63	Clause 67	Clause 67	Clause 69
Section 69		Clause 64	Clause 68	Clause 68	Clause 70
Section 70			Clause 69	Clause 69	Clause 71
Section 71			Clause 70	Clause 70	Clause 72
Section 72	Clause 52	Clause 65	Clause 71	Clause 71	Clause 73
Section 73	Clause 53	Clause 66	Clause 72	Clause 72	Clause 74
Section 74	Clause 54	Clause 67	Clause 73	Clause 73	Clause 75
Section 75	Clause 55	Clause 68	Clause 74	Clause 74	Clause 76
Section 76	Clause 56	Clause 69	Clause 75	Clause 75	Clause 77
Section 77					Clause 78
Section 78	Clause 57	Clause 70	Clause 76	Clause 76	Clause 79
Section 79	Clause 58	Clause 71	Clause 77	Clause 77	Clause 80
Section 80	Clause 59	Clause 72	Clause 78	Clause 78	Clause 81
Section 81	Clause 60	Clause 73	Clause 79	Clause 79	Clause 82
Section 82	Clause 61	Clause 74	Clause 80	Clause 80	Clause 83
Section 83		Clause 75	Clause 81	Clause 81	Clause 84
Section 84	Clause 62	Clause 76	Clause 82	Clause 82	Clause 85
Section 85	Clause 63	Clause 77	Clause 83	Clause 83	Clause 86
Section 86	Clause 64	Clause 78	Clause 84	Clause 84	Clause 87
Section 87	Clause 65	Clause 79	Clause 85	Clause 85	Clause 88
Section 88	Clause 66	Clause 80	Clause 86	Clause 86	Clause 89
Section 89	Clause 67	Clause 81	Clause 87	Clause 87	Clause 90
Section 90	Clause 68	Clause 82	Clause 88	Clause 88	Clause 91
Section 91	Clause 69	Clause 83	Clause 89	Clause 89	Clause 92
Section 92	Clause 70	Clause 84	Clause 90	Clause 90	Clause 93
Section 93	Clause 71	Clause 85	Clause 91	Clause 91	Clause 94
Section 94	Clause 72	Clause 86	Clause 92	Clause 92	Clause 95
Section 95	Clause 73	Clause 87	Clause 93	Clause 93	Clause 96
Section 96		Clause 88	Clause 94	Clause 94	Clause 97
Section 97		Clause 89	Clause 95	Clause 95	Clause 98
Section 98		Clause 90	Clause 96	Clause 96	Clause 99
Section 99		Clause 91	Clause 97	Clause 97	Clause 100
Section 100		Clause 92	Clause 98	Clause 98	Clause 101
Section 101		Clause 93	Clause 99	Clause 99	Clause 102
Section 102		Clause 94	Clause 100	Clause 100	Clause 103

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Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 103		Clause 95	Clause 101	Clause 101	Clause 104
Section 104		Clause 96	Clause 102	Clause 102	Clause 105
Section 105		Clause 97	Clause 103	Clause 103	Clause 106
Section 106		Clause 98	Clause 104	Clause 104	Clause 107
Section 107					Clause 108
Section 108					Clause 109
Section 109					Clause 110
Section 110					Clause 111
Section 111					Clause 112
Section 112					Clause 113
Section 113					Clause 114
Section 114					Clause 115
Section 115					Clause 116
Section 116			Clause 105	Clause 105	Clause 117
Section 117			Clause 106	Clause 106	Clause 118
Section 118					Clause 119
Section 119			Clause 107	Clause 107	Clause 120
Section 120					Clause 121
Section 121	Clause 74	Clause 99	Clause 108	Clause 108	Clause 122
Section 122	Clause 75	Clause 100	Clause 109	Clause 109	Clause 123
Section 123					Clause 124
Section 124	Clause 76	Clause 101	Clause 110	Clause 110	Clause 125
Section 125	Clause 77	Clause 102	Clause 111	Clause 111	Clause 127
Section 126	Clause 78	Clause 103	Clause 112	Clause 112	Clause 128
Section 127	Clause 79	Clause 104	Clause 113	Clause 113	Clause 129
Section 128		Clause 105	Clause 114	Clause 114	Clause 130
Section 129				Clause 115	Clause 131
Section 130					Clause 132
Section 131				Clause 116	Clause 133
Section 132	Clause 80	Clause 106	Clause 115	Clause 117	Clause 134
Section 133	Clause 81	Clause 107	Clause 116	Clause 118	Clause 135
Section 134				Clause 119	Clause 136
Section 135	Clause 82	Clause 108	Clause 117	Clause 120	Clause 137
Section 136	Clause 83	Clause 109	Clause 118	Clause 121	Clause 138
Section 137	Clause 84	Clause 110	Clause 119	Clause 122	Clause 139

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Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 138	Clause 85	Clause 111	Clause 120	Clause 123	Clause 140
Section 139	Clause 86	Clause 112	Clause 121	Clause 124	Clause 141
Section 140	Clause 87	Clause 113	Clause 122	Clause 125	Clause 142
Section 141				Clause 126	Clause 143
Section 142				Clause 127	Clause 144
Section 143	Clause 88	Clause 114	Clause 123	Clause 128	Clause 145
Section 144	Clause 89	Clause 115	Clause 124	Clause 129	Clause 146
Section 145	Clause 90	Clause 116	Clause 125	Clause 130	Clause 147
Section 146	Clause 91	Clause 117	Clause 126	Clause 131	Clause 148
Section 147	Clause 92	Clause 118	Clause 127	Clause 132	Clause 149
Section 148	Clause 93	Clause 119	Clause 128	Clause 133	Clause 150
Section 149	Clause 94	Clause 120	Clause 129	Clause 134	Clause 151
Section 150	Clause 95	Clause 121	Clause 130	Clause 135	Clause 152
Section 151	Clause 96	Clause 122	Clause 131	Clause 136	Clause 153
Section 152	Clause 97	Clause 123	Clause 132	Clause 137	Clause 154
Section 153	Clause 98	Clause 124	Clause 133	Clause 138	Clause 155
Section 154	Clause 99	Clause 125	Clause 134	Clause 139	Clause 156
Section 155	Clause 100	Clause 126	Clause 135	Clause 140	Clause 157
Section 156	Clause 101	Clause 127	Clause 136	Clause 141	Clause 158
Section 157	Clause 102	Clause 128	Clause 137	Clause 142	Clause 159
Section 158	Clause 103	Clause 129	Clause 138	Clause 143	Clause 160
Section 159	Clause 104	Clause 130	Clause 139	Clause 144	Clause 161
Section 160	Clause 105	Clause 131	Clause 140	Clause 145	Clause 162
Section 161					Clause 163
Section 162	Clause 106	Clause 132	Clause 141	Clause 146	Clause 164
Section 163			Clause 142	Clause 147	Clause 165
Section 164				Clause 148	Clause 166
Section 165				Clause 149	Clause 167
Section 166					Clause 168
Section 167				Clause 150	Clause 169
Section 168					Clause 170
Section 169					Clause 171
Section 170					Clause 172
Section 171					Clause 173
Section 172					Clause 174

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Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 173			Clause 143	Clause 151	Clause 175
Section 174				Clause 152	Clause 176
Section 175					
Section 176	Clause 107	Clause 133	Clause 144	Clause 153	Clause 178
Section 177			Clause 145	Clause 154	Clause 179
Section 178				Clause 155	Clause 180
Section 179			Clause 146	Clause 156	Clause 188
Section 180	Clause 108	Clause 134	Clause 147	Clause 157	Clause 189
Section 181	Clause 109	Clause 135	Clause 148	Clause 158	Clause 190
Section 182	Clause 110	Clause 136	Clause 149	Clause 159	Clause 191
Section 183	Clause 111	Clause 137	Clause 150	Clause 160	Clause 192
Section 184	Clause 112	Clause 138	Clause 151	Clause 161	Clause 193
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2
Schedule 3			Schedule 3	Schedule 3	Schedule 3
Schedule 4	Schedule 3	Schedule 3	Schedule 4	Schedule 4	Schedule 4
Schedule 5	Schedule 4	Schedule 4	Schedule 5	Schedule 5	Schedule 5
Schedule 6	Schedule 5	Schedule 5	Schedule 6	Schedule 6	Schedule 6
Schedule 7		Schedule 6	Schedule 7	Schedule 7	Schedule 7
Schedule 8	Schedule 6	Schedule 7	Schedule 8	Schedule 8	Schedule 8
Schedule 9		Schedule 8	Schedule 9	Schedule 9	Schedule 9
Schedule 10	Schedule 7	Schedule 9	Schedule 10	Schedule 10	Schedule 10
Schedule 11	Schedule 8	Schedule 10	Schedule 11	Schedule 11	Schedule 11
Schedule 12	Schedule 9	Schedule 11	Schedule 12	Schedule 12	Schedule 12
Schedule 13	Schedule 10	Schedule 12	Schedule 13	Schedule 13	Schedule 13
Schedule 14	Schedule 11	Schedule 13	Schedule 14	Schedule 14	Schedule 14
Schedule 15				Schedule 15	Schedule 15
Schedule 16				Schedule 16	Schedule 16
Schedule 17			Schedule 15	Schedule 17	Schedule 17
Schedule 18				Schedule 18	Schedule 18
Schedule 19	Schedule 12	Schedule 14	Schedule 16	Schedule 19	Schedule 19

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