

# **ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Anti-social Behaviour, Crime and Policing Bill as introduced in the House of Commons on 9 May 2013. They have been prepared by the Home Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

3. A glossary of abbreviations and terms used in these Explanatory Notes is contained in Annex A to these Notes.

### **SUMMARY**

4. The Bill is in thirteen parts.

5. Part 1 makes provision for a civil injunction to prevent nuisance and annoyance. Part 2 makes provision for an order on conviction to prevent behaviour which causes harassment, alarm or distress. Part 3 contains a power for the police to disperse people causing harassment, alarm or distress. Part 4 covers the new powers to deal with community protection and makes provision for a community protection notice, a public spaces protection order and provisions to close premises associated with nuisance and annoyance. Part 5 makes provision for the possession of houses on anti-social behaviour grounds. Part 6 contains provisions on establishing a community remedy document and dealing with responses to complaints of anti-social behaviour.

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6. Part 7 amends the provisions of the Dangerous Dogs Act 1991. Part 8 introduces a new offence of possession of illegal firearms for sale or supply and increases the maximum penalties for the importation or exportation of illegal firearms. Part 9 introduces a new offence of forced marriage and criminalises the breach of a forced marriage protection order. Part 10 contains various measures in respect of policing, including conferring functions on the College of Policing, establishing a Police Remuneration Review Body, conferring additional powers on the Independent Police Complaints Commission and amending the counter-terrorism border security powers in Schedules 7 and 8 to the Terrorism Act 2000. Part 11 makes various amendments to the Extradition Act 2003. Part 12 contains a number of criminal justice measures, including revision of the test for determining eligibility for compensation following a miscarriage of justice. This Part also contains a placeholder clause for prospective measures in respect of the setting of court and tribunal fees. Part 13 contains minor and consequential amendments to other enactments and general provisions including provisions in respect of the parliamentary procedure to be applied to orders and regulations made under the Bill.

## **BACKGROUND**

### **Parts 1 to 6: Anti-social Behaviour**

#### **What is anti-social behaviour?**

7. The term “anti-social behaviour” describes the everyday nuisance, disorder and crime that has a huge impact on victims’ quality of life. In the year ending December 2012, over 2.3 million incidents of anti-social behaviour were recorded by the police in England and Wales, equivalent to around 6,300 incidents every day. However, many incidents are not reported at all, or are reported to other agencies such as local councils or social landlords.

8. Much of what is described as anti-social behaviour is criminal (for example, vandalism, graffiti, street drug dealing and people being drunk or rowdy in public), but current legislation also provides a range of civil powers, such as the anti-social behaviour order (“ASBO”) and the anti-social behaviour injunction (“ASBI”). These offer an alternative to criminal prosecution and give the police and other agencies the ability to deal with the cumulative impact of an individual’s behaviour, rather than focus on a specific offence. Some powers, such as the ASBI, have a lower standard of proof (that is, the civil “balance of probabilities” rather than the criminal “beyond reasonable doubt”). While the ASBO can be used by a number of agencies, the ASBI can currently only be used by social landlords.

9. In addition, informal interventions and out-of-court disposals are an important part of professionals’ toolkit for dealing with anti-social behaviour, offering a proportionate response to first-time or low-level incidents and a chance to intervene early and prevent behaviour from escalating. For example, tools such as warning letters and acceptable behaviour agreements are

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often used to deal with low-level anti-social behaviour, with one intervention frequently enough to stop the behaviour.

### **Consultation**

10. *The Coalition: Our Programme for Government* outlined a commitment to reform the powers available to deal with anti-social behaviour. Specifically it said:

“We will introduce effective measures to tackle anti-social behaviour and low-level crime”.

11. In response to this, a consultation document was published in February 2011.<sup>1</sup> The consultation outlined proposals to streamline radically the current range of powers available to tackle anti-social behaviour. In particular, the consultation sought views on the replacement of the current tools for tackling anti-social behaviour with a new suite of powers: the criminal behaviour order; the crime prevention injunction; the community protection order; the direction power; and the community trigger.

### **Putting victims first: More effective responses to anti-social behaviour**

12. In May 2012, the Home Office published a White Paper, *Putting victims first: More effective responses to anti-social behaviour* (the White Paper included a summary of responses to the earlier consultation).<sup>2</sup> This set out how the Government would support local areas to:

- a. **Focus the response to anti-social behaviour on the needs of victims** - helping agencies to identify and support people at high risk of harm, giving frontline professionals more freedom to do what they know works, and improving our understanding of the experiences of victims;
- b. **Empower communities to get involved in tackling anti-social behaviour** – including by giving victims and communities the power to ensure action is taken to deal with persistent anti-social behaviour through a new community trigger, and making it easier for communities to demonstrate in court the harm they are suffering;
- c. **Ensure professionals are able to protect the public quickly** – giving them faster, more effective formal powers, and speeding up the eviction process for the most anti-social tenants, in response to consultations by the Home Office and Department for Communities and Local Government; and
- d. **Focus on long-term solutions** – by addressing the underlying issues that drive anti-social behaviour, such as binge drinking, drug use, mental health issues, troubled family backgrounds and irresponsible dog ownership.

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<sup>1</sup> <https://www.gov.uk/government/consultations/more-effective-responses-to-anti-social-behaviour>

<sup>2</sup> Cm 8367, <http://www.official-documents.gov.uk/document/cm83/8367/8367.pdf>

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13. The reforms proposed are designed to ensure that professionals have effective powers that are quick, practical and easy to use, provide better protection for victims and communities and act as real deterrents to perpetrators – replacing 19 of the complex existing powers (see Annex B) with six simpler and more flexible new ones.

### **Pre legislative scrutiny**

14. On 13 December 2012, the draft Anti-social Behaviour Bill was published for pre-legislative scrutiny by the Home Affairs Select Committee. The Committee published its report on 15 February 2013 (Twelfth Report of Session 2012-13, HC836). The Government response to this was published on 16 April 2013 (Cm 8607). In its response to the Committee's recommendations, the Government indicated that it would make three main changes to the policy as set out in the draft Bill, namely:

- a. Provide for a limit on the maximum length of injunctions for under 18s of 12 months;
- b. Introduce a requirement for pre-approval of the use of a dispersal order by an officer of at least the rank of inspector; and
- c. Set a maximum threshold for the community trigger that local agencies could use when establishing their processes.

### **Recovery of possession of dwelling-houses on anti-social behaviour grounds**

15. Under current housing legislation, landlords may apply to the county court to evict tenants who are behaving anti-socially using the relevant “ground for possession”. These are ground 2 of Schedule 2 to the Housing Act 1985 for secure tenants (mostly tenants of local authorities) and ground 14 of Schedule 2 to the Housing Act 1988 for assured tenants (tenants of housing associations and landlords in the private rented sector) respectively.<sup>3</sup> These grounds are discretionary, that is the court must be satisfied that anti-social behaviour has occurred and that it would be reasonable to grant possession.

16. In practice, eviction for anti-social behaviour is exceptional: social landlords in England own around four million homes but only evict about 2,000 tenants for anti-social behaviour each year. Available evidence suggests that early interventions by social landlords successfully resolve over 80% of complaints about anti-social behaviour. However, where social landlords resort to eviction where all other intervention measures have been tried and failed, that process can be protracted (on average around seven months from the date of application to the court for a possession order to an outcome).

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<sup>3</sup> These relevant grounds on which a court may order repossession under these provisions are that: the tenant or a person residing in or visiting the dwelling-house: (a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality; or (b) has been convicted either of using the dwelling-house or allowing it to be used for immoral or illegal purposes, or of an indictable offence committed in, or in the locality of, the dwelling-house.

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17. In August 2011 the Department for Communities and Local Government (“DCLG”) consulted on proposals to expedite the possession process where serious housing related anti-social behaviour or criminality had already been proven in another court. In these circumstances landlords could choose to use, instead of existing discretionary grounds for possession, a new mandatory ground. This would provide the landlord with an unqualified right of possession, subject only to the court’s considering the proportionality of the decision to seek possession (where the landlord is a public authority) where this is required by the decision of the Supreme Court in *Manchester City Council v Pinnock* [2011] 2 AC 104.

18. The discretionary grounds for possession for anti-social behaviour (which also includes criminal behaviour) referred to above apply only where the behaviour has taken place in, or in the locality of the dwelling house.

19. Following the riots in August 2011, and concerns about “riot tourism”, DCLG broadened the consultation on the new mandatory power of possession to cover proposals to extend the scope of the discretionary ground so that landlords would have powers to seek to evict a tenant where they, or a member of their household are engaged in riot related offences anywhere in the UK.

20. Final proposals, in the light of consultation, were published alongside and as part of the May 2012 White Paper *Putting victims first: more effective responses to anti-social behaviour*. Part 5 gives effect to these.

### **The Community Remedy**

21. On 9 October 2012, the Home Secretary announced her intention to legislate to introduce a community remedy. This would be a Police and Crime Commissioner (“PCC”) (or in London, the Mayor’s Office for Policing and Crime and the Common Council of the City of London) sponsored menu of community sanctions for low level crime and anti-social behaviour. It would be used as part of informal and formal out-of-court disposals. The aim is to help PCCs make community justice more responsive and accountable to victims and the public, with proportionate but meaningful punishments. A consultation on the community remedy ran from December 2012 to March 2013. The results of the consultation were published on 9 May 2013.<sup>4</sup>

### **Part 7: Dangerous Dogs**

22. *The Coalition: Our Programme for Government* included a commitment to:

“ensure that enforcement agencies target irresponsible owners of dangerous dogs”.

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<sup>4</sup> <https://www.gov.uk/government/consultations/community-remedy-consultation>

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23. On 23 April 2012, the Department for Environment, Food and Rural Affairs announced a consultation<sup>5</sup> on a package of measures to tackle irresponsible dog ownership (House of Commons, Official Report, columns 30WS to 32WS). Amongst other things, the consultation sought views on amendments to the Dangerous Dogs Act 1991 (“the 1991 Act”) to extend the offence of a dog being dangerously out of control and to allow owners of dogs seized as suspected dangerous dogs or prohibited types to retain possession of their dogs until the outcome of court proceedings. The Secretary of State for Environment, Food and Rural Affairs published the response to the consultation and announced the Government’s response in a further written ministerial statement on 6 February 2013 (House of Commons, Official Report, columns 15WS to 18WS). Draft clauses to give effect to the proposed changes to the 1991 Act, and to clarify how the courts should interpret the test for dangerousness as a result of the High Court judgement in the case of *Sandhu*,<sup>6</sup> were published by the Department for pre-legislative scrutiny by the Environment, Food and Rural Affairs Select Committee on 9 April 2013.<sup>7</sup>

## **Part 8: Firearms**

### **Firearms control**

24. The use of illegal firearms by urban street gangs and organised criminal groups is a continuing cause of concern. In 2010 the Home Affairs Select Committee conducted an inquiry into firearms control. In its report (Third Report of Session 2010-2011, HC 447) the Committee recommended that the Government should “introduce new offences for supply and importation of firearms to ensure that those guilty of such offences face appropriate penalties”. In its report *Ending Gang and Youth Violence*,<sup>8</sup> published in November 2011, the Government undertook to consult “on the need for a new offence of possession of illegal firearms with intent to supply, and the penalty level for illegal firearms importation”. The consultation document, *Consultation on legislative changes to firearms control*, was published on 8 February 2012.<sup>9</sup> The Government’s response to the consultation was published on 22 October 2012. In a written ministerial statement (House of Commons, Official Report, column 44WS and House of Lords, Official Report, column WS1), the Minister for Policing and Criminal Justice announced that the Government would increase the maximum penalty for the illegal importation of firearms to life imprisonment and create a new offence of possession with intent to supply with a maximum sentence of life imprisonment. Clauses 100 and 101 give effect to this.

### **Firearms Licensing – British Transport Police**

25. The development of a British Transport Police (“BTP”) armed capability to respond as and when necessary to protect the public and avoid the need for other police forces, such as the

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<sup>5</sup> The consultation document ‘Promoting more responsible dog ownership: proposals to tackle irresponsible dog ownership’ is available at: <http://www.defra.gov.uk/consult/2012/04/23/dangerous-dogs-1204/>

<sup>6</sup> *R on the Application of Sandhu v Isleworth Crown Court and Defra* [2012] EWHC 1658 (Admin)

<sup>7</sup> The Draft Dangerous Dogs (Amendment) Bill, Cm 8601 - <http://www.official-documents.gov.uk/document/cm86/8601/8601.pdf>

<sup>8</sup> <http://www.homeoffice.gov.uk/publications/crime/ending-gang-violence/>

<sup>9</sup> <http://www.homeoffice.gov.uk/publications/about-us/consultations/firearms-legislation/>

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Metropolitan Police, to divert their armed resources at times of heightened threat, was announced in a written ministerial statement on 24 May 2011 (House of Commons, Official Report, column 51WS and House of Lords, Official Report, column WS109). The establishment of that capability has been hampered by the current firearms licensing arrangements which place British Transport Police officers in a different position to that enjoyed by officers from the territorial police forces in England and Wales and the Police Service of Scotland. The provisions of the Firearms Act 1968 (“the 1968 Act”) apply to “police forces” with modifications which mean that police forces are not required to obtain certificates for firearms under the 1968 Act. However, the term “police force” is not defined in the 1968 Act. The Interpretation Act 1978 provides a general definition that any reference to “police” within legislation takes its definition from the Police Act 1996 or in relation to Scotland, the Police and Fire Reform (Scotland) Act 2012, but neither Act includes BTP. The result of this anomaly is that BTP officers are not deemed “Crown Servants” for the purpose of the 1968 Act and therefore do not benefit from the modifications to the Act that apply to police officers.

26. Individual officers, who may be required to exercise deadly force in the execution of their statutory functions in the protection of the public, must therefore apply to their local police force in a private capacity for a firearms certificate to enable them to perform a role on behalf of the State. They must rely on the same legal authority to possess firearms, and follow the same licensing procedure as individuals holding firearms for the purposes of sport and recreation. Apart from this unsatisfactory legal position, there are operational and procedural disadvantages to the current approach, which limit the flexibility of deployment and potentially undermine the capability. Clause 102 brings BTP firearms officers within the modification in section 54 of the 1968 Act.

## **Part 9: Forced marriage**

27. The Forced Marriage (Civil Protection) Act 2007 inserted a new Part 4A in the Family Law Act 1996 which provides a specific civil remedy – the forced marriage protection order – against forced marriage in England and Wales. A forced marriage protection order may contain as many provisions as the court deems necessary to protect a person who is at risk of forced marriage or who has already been forced into a marriage. This could include, for example, provisions not to threaten, harass or use force against the person concerned; to surrender the person’s passport or other travel document; and not to enter into any arrangements for the engagement or marriage of the person to be protected, whether civil or religious, in the UK or abroad. Breach of a forced marriage protection order is currently dealt with as a civil contempt of court punishable with a fine or a custodial sentence of up to two years’ imprisonment.

28. On 10 October 2011, the Prime Minister announced the Government’s intention to make the breach of a forced marriage protection order a criminal offence. A consultation published in

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December 2011<sup>10</sup> sought views on how the new offence should be framed, specifically on a proposal to use as a model the existing offence of breaching a non-molestation order which a court may make to protect a person from domestic violence. That consultation also sought views on whether forcing someone to marry against their will should become a criminal offence, or whether the existing civil remedy, set-out in Part 4A in the Family Law Act 1996, was sufficient. A majority were in favour of the creation of a new offence and the Government concluded that criminal offences were necessary, in addition to the civil regime, to act as an effective deterrent, to properly punish perpetrators, and to fulfil the United Kingdom's international obligations under the Istanbul Convention signed in 2012. The Prime Minister announced on 8 June 2012 that forced marriage would be criminalised.<sup>11</sup> A summary of responses to the consultation was published in June 2012.

## **Part 10: Policing etc**

### **College of Policing**

29. The Home Office's plans for policing reform, published in July 2010, set out in *Policing in the 21st Century*<sup>12</sup> included proposals for strengthening the national structures in policing by, amongst other things, phasing out the National Policing Improvement Agency ("NPIA"). Among the functions undertaken by the NPIA was the provision of learning and development services to police forces. Following this commitment to phase out the NPIA, the Home Secretary commissioned Chief Constable Peter Neyroud to carry out a review of Police Leadership and Training. The outcome of his review was published on 15 April 2011.<sup>13</sup> The principal recommendation of the review was the creation of a professional body for the police in England and Wales. The Home Secretary published her response to this review on 15 December 2011 (House of Commons, Official Report, columns 125WS to 127WS) and signalled her intention to establish a professional body ("the College of Policing"). On 1 December 2012, some of the functions, assets and people that had previously worked for the NPIA transferred to the College of Policing (which has been established as a company limited by guarantee). The NPIA will be formally abolished later in 2013 when section 15(2) of the Crime and Courts Act 2013 is brought into force.

30. The purpose of the College of Policing is to support the fight against crime and protect the public by ensuring professionalism in policing. It aims to do this through the delivery of five key areas of responsibility. First, the College will have the responsibility for setting standards and developing guidance and policy for policing. Second, it will build and develop the research evidence base for policing. Third, it will support the professional development of police officers and staff. Fourth, it will support the police, other law enforcement agencies and those involved in crime reduction to work together. Fifth, it will identify and develop the ethics and value of the

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<sup>10</sup> <http://www.homeoffice.gov.uk/publications/about-us/consultations/forced-marriage/>

<sup>11</sup> <http://www.number10.gov.uk/news/forced-marriage-to-become-criminal-offence/>

<sup>12</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/118239/policing-21st-full-pdf.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118239/policing-21st-full-pdf.pdf)

<sup>13</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/118227/report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118227/report.pdf)



police. Where necessary, clauses 105 to 111 establish the legislative basis for the College to discharge its responsibilities.

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

31. The terms and conditions of service for police officers in the United Kingdom are set out in regulations made by the Secretary of State (for the police forces in England and Wales), Scottish Ministers (for the Police Service of Scotland) and the Department of Justice in Northern Ireland (for the Police Service of Northern Ireland). The current police pay machinery is made up of the Police Negotiating Board for the United Kingdom (“PNB”). The PNB’s remit is to facilitate negotiations between the Official and Staff Sides, which represent those with responsibility for governing and maintaining police forces in the UK<sup>14</sup> and those representing members of police forces respectively.<sup>15</sup> The PNB is specifically tasked with considering changes to police officer pay; allowances; hours of duty; leave; the issue, use and return of police clothing, personal equipment and accoutrements; and pensions; and making agreed recommendations to the various Ministerial authorities on these matters. Where agreement cannot be reached, the PNB’s constitution provides for reference of the disputed matter to an independent Police Arbitration Tribunal, which considers evidence from both sides and makes findings which have the status of an agreed recommendation from the PNB. There is a separate mechanism for consultation on regulations concerning other terms and conditions of service outside the remit of the PNB. In England and Wales, this is the Police Advisory Board for England and Wales (“PABEW”), a separate body which also has the function of advising the Secretary of State on general questions which affect the police. In Scotland and Northern Ireland, legislation provides for consultation with the bodies that govern and maintain the police forces, and the members of those forces.

32. On 1 October 2010 the Home Secretary appointed Tom Winsor to review the remuneration and conditions of service of police officers in England and Wales, and to make recommendations which will enable police forces to manage their resources to serve the public more cost effectively, taking account of the current state of the public finances. The second and final report of the review, containing reforms to be implemented in the longer term, was published on 15 March 2012.<sup>16</sup> Amongst other things, the review recommended that “the Police Negotiating Board should be abolished and replaced by an independent police officer review body”.<sup>17</sup> The

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<sup>14</sup> The Official side comprises, in the case of England and Wales, representatives of the Home Secretary, Police and Crime Commissioners (in London, the Mayor’s Office for Policing and Crime and the Common Council of the City of London police area) and chief constables. In Scotland and Northern Ireland the equivalent persons are the Scottish Cabinet Secretary for Justice, the Northern Ireland Minister of Justice, the Scottish Police Authority, the Northern Ireland Policing Board and the chief constables of the Police Service of Scotland and the Police Service of Northern Ireland.

<sup>15</sup> The Staff side comprises the Chief Police Officers’ Staff Association, Police Superintendents’ Association of England and Wales, the Police Federation of England and Wales and their equivalents in Scotland and Northern Ireland.

<sup>16</sup> <http://www.review.police.uk/>. Publication of the report was accompanied by a Written Ministerial Statement by the Home Secretary on 15 March 2012 (House of Commons, Official Report, column 38WS).

<sup>17</sup> Recommendation 115. Associated recommendations dealt with the membership and terms of reference of the new police pay review body (recommendation 116), the transfer to the Policy Advisory Boards of the responsibility for

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Home Secretary responded to the final report in a Written Ministerial Statement on 27 March 2012 (House of Commons, Official Report, columns 126WS to 128WS); in that statement she indicated that the Government would consult on proposals for implementing the Winsor recommendations on changes to the police officer pay machinery.

33. In October 2012, the Government launched a consultation to seek views on how best to implement recommendations made by Tom Winsor on replacing the current police pay machinery with an independent police pay review body. The Government's response to the consultation was published on 25 April 2013.<sup>18</sup> In a Written Ministerial Statement (House of Commons, Official Report, column 68WS and House of Lords, Official Report, column WS174 to WS175), the Home Secretary announced that, following consideration of consultation responses on how a new police pay review body should be implemented, the Government would establish a Police Remuneration Review Body to consider the remuneration of police officers of the rank of chief superintendent or below. This body will consider evidence from interested parties and make recommendations to Government on police officer remuneration. The remuneration of chief officers (that is, officers of the rank of Assistant Chief Constable and above, or the equivalent ranks in the Metropolitan Police Service and the City of London Police, and above) will be considered by the Senior Salaries Review Body. Clauses 112 to 115 and Schedule 5 give effect to these reforms by abolishing the PNB, establishing the Police Remuneration Review Body and modifying the functions of the PABEW. These measures apply in relation to police officers in England and Wales and Northern Ireland. It is expected that the police pay mechanism for Scotland will be set out in legislation to be made by the Scottish Parliament.

### **Independent Police Complaints Commission**

34. The Independent Police Complaints Commission ("the IPCC") was established by Part 2 of the Police Reform Act 2002 ("the 2002 Act") to provide an effective and independent means of overseeing the investigation of complaints and alleged misconduct relating to the police in England and Wales. It has a general duty to secure public confidence in the arrangements for handling complaints (and other matters). The IPCC came into being in April 2004, replacing its predecessor, the Police Complaints Authority.

35. The 2002 Act sets out the statutory framework within which the IPCC has oversight of police complaints, conduct matters and death and serious injury ("DSI") matters. Those are the three main routes for a matter to be considered by the IPCC: as a complaint, relating to the conduct of a person serving with the police; as a "conduct matter", where there is no complaint, but there is an indication that a person serving with the police may have either committed a criminal offence or behaved in a way which would justify disciplinary proceedings; or as an automatic referral where there has been a DSI following direct or indirect contact with the police.

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considering changes to police pensions (recommendation 117) and the arrangements for setting the pay of chief officers (recommendation 118).

<sup>18</sup> <https://www.gov.uk/government/consultations/consultation-on-implementing-a-police-pay-review-body>

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36. Chief officers and local policing bodies (that is Police and Crime Commissioners or, in London, the Mayor's Office for Policing and Crime and the Common Council of the City of London) have a duty under the 2002 Act to record complaints, conduct matters and DSI matters that fall within the 2002 Act and for which they are the appropriate authority. All DSI matters and certain categories of complaints and conduct matters (as set out in paragraphs 4 and 13 of Schedule 3 to the 2002 Act and regulations 4 and 7 of the Police (Complaints and Misconduct) Regulations 2013) must be referred to the IPCC. The IPCC also encourages appropriate authorities to refer complaints or incidents that do not come within these categories but where the gravity of the subject matter or exceptional circumstances justifies referral.

37. When cases are referred to the IPCC, it assesses the seriousness of the case and the public interest and determines the form of investigation. There are four types of investigation:

- **Independent investigations** - Carried out by IPCC investigators and overseen by an IPCC Commissioner. IPCC investigators have all the powers of the police.
- **Managed investigations** - Carried out by Professional Standards Departments ("PSDs") of police forces under the direction and control of the IPCC.
- **Supervised investigations** - Carried out by police PSDs under their own direction and control. The IPCC sets the terms of reference and receives the final report.
- **Local investigations** - Carried out entirely by police PSDs.

38. Following the publication of the Hillsborough Independent Panel's report<sup>19</sup> on 12 September 2012 and the subsequent debate in the House of Commons on 22 October 2012 (Official Report columns 719 to 804), the powers and capacity of the IPCC came into the spotlight. As a result, the Government gave a commitment to provide the IPCC with the powers and resources required to exercise its statutory functions in investigating complaints against those serving with the police.

39. The Police (Complaints and Conduct) Act 2012, and the Police (Complaints and Conduct) Regulations 2013 provided the IPCC with new powers to: (a) require an individual currently serving under the direction and control of a Chief Officer, who witnessed matters under investigation, to attend an (IPCC) interview; and (b) investigate a matter which was previously the subject of an investigation by its predecessor, the Police Complaints Authority.

40. Separately, the IPCC made the case for a further enhancement of its powers in its May 2012 report on *Corruption in the Police Service in England and Wales*.<sup>20</sup> In that report the IPCC argued that in order to investigate directly and tackle more cases of corruption, it would need to be

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<sup>19</sup> <http://hillsborough.independent.gov.uk/>

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[http://www.ipcc.gov.uk/news/Pages/pr\\_240512\\_corruptionreport.aspx?auto=True&l1link=pages%2Fnews.aspx&l1title=News%20and%20press&l2link=news%2FPages%2Fdefault.aspx&l2title=Press%20Releases](http://www.ipcc.gov.uk/news/Pages/pr_240512_corruptionreport.aspx?auto=True&l1link=pages%2Fnews.aspx&l1title=News%20and%20press&l2link=news%2FPages%2Fdefault.aspx&l2title=Press%20Releases)

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able to investigate “contracted out employees, to gain access to data held by third parties and to require formal response to our recommendations”.

41. The Home Affairs Select Committee (“HASC”) subsequently conducted an enquiry into the IPCC. In their report, published on 1 February 2013,<sup>21</sup> HASC concluded that “it is vital to have a body that is truly independent and competent to get to the truth of the matter and ensure that misconduct and criminality in the police force cannot go unpunished”. In identifying weaknesses in the IPCC’s ability to inspire public confidence, HASC concluded that “the Commission must bring the police complaints system up to scratch and the Government must give it the powers it needs to do so”. Clauses 116 to 120 implement two of the specific recommendations of the HASC report and confer other powers on the IPCC intended to enable it to discharge its statutory functions more effectively.

42. In addition to addressing the shortfall in the IPCC’s powers, the Home Secretary announced in an oral statement on Police Integrity on 12 February 2013 (House of Commons, Official Report, column 713 to 714) that she would transfer to the IPCC responsibility for dealing with all serious and sensitive allegations and, as a corollary to this, transfer resources from individual forces’ professional standards departments and other relevant areas to the IPCC in order to ensure that it has the budget and the manpower that will enable it to do its work. Annex D sets out details of the number of complaints made against police forces in England and Wales in 2011/12 and how these, and other conduct and DSI matters, were dealt with by forces and the IPCC.

### **Financial arrangements for chief officers of police**

43. The Police Reform and Social Responsibility Act 2011 (“the 2011 Act”) established chief constables (and the Commissioner of Police of the Metropolis) as corporations sole. Subject to the consent of their Police and Crime Commissioner (in London, the Mayor’s Office for Policing and Crime), these chief officers of police are able to spend and invest money and enter into contracts on their own behalf.

44. The 2011 Act does not apply local government legislation to chief officers of police, other than requiring them to have a qualified chief finance officer in the same manner as a local authority (or a Police and Crime Commissioner). In particular, Part 1 of the Local Government Act 2003, which sets out a framework of capital finance controls, was not applied. It is now considered desirable for this control framework to apply to chief officers of police. Clause 121 achieves this. The clause does not apply to the City of London Police as the 2011 Act did not change the policing arrangements in the City, and in particular did not establish the Commissioner of the City of London Police as a corporate entity.

### **Local commissioning of services**

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<sup>21</sup> House of Commons Home Affairs Select Committee report, ‘Independent Police Complaints Commission’, Eleventh Report of Session 2012–13: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/494/494.pdf>

*These notes refer to the Anti-social Behaviour, Crime and Policing Bill as introduced in the House of Commons on 9 May 2013 [Bill 7]*

45. The 2011 Act established directly elected local Police and Crime Commissioners with responsibility for maintaining the police force in their area and holding the chief constable to account for the full range of their responsibilities. The first Police and Crime Commissioners were elected, and took up their posts, in November 2012.

46. Since the establishment of Police and Crime Commissioners opportunities for them to assume additional responsibilities on behalf of local communities have been identified. In particular, on 2 July 2012 the Government published its response to the consultation *Getting it Right for Victims and Witnesses*.<sup>22</sup> The response set out a package of reforms to the way the Government commissions support services for victims and witnesses of crime, outside of those directly provided by criminal justice agencies. These are services which support victims in coping with the immediate impacts of crime and, as far as is possible, to recover from the harm experienced. The intention is to move from the current centrally commissioned arrangements to a mixed model of national and local commissioning with support targeted at those who have suffered the greatest impact from crime: victims of serious crime, the most persistently targeted and the most vulnerable. Local policing bodies (that is, Police and Crime Commissioners and, in London, the Mayor's Office for Policing and Crime and the Common Council of the City of London) are regarded as the most appropriate bodies to take on the local commissioning role, using grant funding provided to them by the Government for the purpose.

47. The kinds of services that Police and Crime Commissioners may provide or commission for victims of crime include practical support such as the provision of information, refuges or shelters, financial support and guidance, and advice and assistance on security measures. They may also include emotional support services such as counselling, treatment for post-traumatic stress disorder and peer support groups.

48. Clause 123 expands Police and Crime Commissioners' existing powers to provide or arrange for the provision of services which secure, or contribute to securing, crime and disorder reduction and creates a clear statutory basis upon which all local policing bodies can provide or commission services for the support of victims of, and witnesses to, crime and anti-social behaviour as well as for other persons affected by offences or anti-social behaviour.

### **Port and border controls**

49. Schedule 7 to the Terrorism Act 2000 ("the 2000 Act") provides for counter-terrorism border security powers. It enables an examining officer (that is, a constable, or an immigration officer or customs officer designated for the purpose of the Schedule by the Secretary of State or the Commissioners for Revenue and Customs) to stop, question, search and detain a person travelling through a port, airport or the border area. Such an examination is for the purpose of determining whether the person is or appears to be someone who is or has been concerned with the commission, preparation or instigation of acts of terrorism. This is a "no suspicion" power;

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<sup>22</sup> <https://consult.justice.gov.uk/digital-communications/victims-witnesses>

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accordingly stopping an individual does not necessarily mean that the examining officer believes the person to be a terrorist.

50. An examining officer may require a person to answer questions or provide certain documents. If a person refuses to cooperate with the examination, they can be detained by the examining officer for a maximum of nine hours. A failure to comply with requests made by the examining officer is an offence under the 2000 Act.

51. Fewer than three people in every 10,000 are examined as they pass through UK borders. Most examinations, over 97%, last under one hour. Between 2004 and 2009, the number of terrorist-related arrests that resulted directly from a Schedule 7 stop has been about 20 per year. In addition, Schedule 7 examinations have produced information that has contributed to long and complex intelligence-based counter-terrorism investigations.<sup>23</sup>

52. The Home Secretary launched a public consultation on 13 September 2012 on the review of the operation of Schedule 7 (House of Commons, Official Report, column 15WS) with a view to ensuring that the powers struck a proper balance between the need to maintain the protection of the UK Border and respect for individuals' civil liberties.<sup>24</sup> The response to the consultation was published on 10 May 2013. Clause 124 and Schedule 6 give effect to the changes to Schedule 7 arising from the consultation.

### **Inspection of the Serious Fraud Office**

53. The Serious Fraud Office ("SFO") was created in 1988 by the Criminal Justice Act 1987 to investigate and prosecute serious or complex fraud. That Act provides the Director of the SFO with the power to investigate and prosecute any suspected offence which involves serious or complex fraud, and gives the Director the power to require a person to answer questions or provide information and documents in relation to matters under investigation.

54. HM Crown Prosecution Service Inspectorate ("HMCPPI"), established under the Crown Prosecution Service Inspectorate Act 2000, is an independent inspectorate for the Crown Prosecution Service ("CPS"), the principal prosecuting authority for criminal cases in England and Wales. The purpose of HMCPPI is to enhance the quality of justice through independent inspection and assessment of prosecution services, and in so doing improve their effectiveness and efficiency.

55. In a Written Ministerial Statement on 4 December 2012 (House of Commons, Official Report, column 51WS-52WS) the Attorney General announced his intention to extend the statutory power of HMCPPI to inspect the SFO. In his statement, the Attorney General noted that the first voluntary inspection of the SFO by HMCPPI, which took place in November 2012, was

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<sup>23</sup> Data about the exercise of Schedule 7 is included in Annex D and is published in the Home Office Bulletin available at: <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/counter-terrorism-statistics/hosb1112/>.

<sup>24</sup> <http://www.homeoffice.gov.uk/publications/about-us/consultations/schedule-7-review/>

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an important step in building the effectiveness of the SFO and showed the benefits to both the SFO and the Government of independent external inspection.<sup>25</sup> Providing a statutory duty for HMCPSI to inspect the SFO is intended to ensure the continued delivery of these benefits. Clause 125 gives effect to this extension of HMCPSI's statutory remit.

## **Part 11: Extradition**

56. The extradition of persons to and from the United Kingdom is governed by the provisions of the Extradition Act 2003 ("the 2003 Act").

57. Part 1 of the Act deals with the surrender of people from the UK to other EU Member States following a European Arrest Warrant ("EAW").<sup>26</sup>

58. The process in a Part 1 case is, in summary, as follows:

- On receipt of an EAW from a Part 1 territory, the appropriate authority (currently the Serious Organised Crime Agency ("SOCA"), but from autumn 2013, the National Crime Agency) must decide whether to issue a certificate.
- Where SOCA issues a certificate the person is arrested pursuant to the EAW.
- The person is brought before a judge as soon as practicable and, at this initial hearing, the judge must decide whether the person is the person named in the EAW. In cases where the judge decides that the person is the correct person, the judge must fix a date for the extradition hearing.
- The extradition hearing takes place. At the hearing, the judge must decide whether the offence listed in the EAW is an "extradition offence" and, if the judge is satisfied that it is, must consider whether the person's extradition is barred by any of a number of reasons. If the judge is satisfied that the person's extradition is not barred, he or she must order extradition.

59. The person may appeal the decision of the judge to order extradition. The right of appeal lies first to the High Court<sup>27</sup> and (in England, Wales and Northern Ireland) then, with leave, to the Supreme Court.

60. If the district judge decides that extradition is barred, and discharges the person, the requesting state also has a right to appeal against this decision.

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<sup>25</sup> The report of the inspection is available at: [http://www.hmcpai.gov.uk/inspections/inspection\\_no/526/](http://www.hmcpai.gov.uk/inspections/inspection_no/526/)

<sup>26</sup> The provisions in Part 1 give effect to Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States 2002/584/JHA, as amended by Council Framework Decision 2009/299/JHA.

<sup>27</sup> In Scotland, references to the High Court are read as references to the High Court of Justiciary.

61. Part 2 of the Act deals with extradition from the UK to territories which are designated by order for the purposes of that Part. Those territories are territories with which the UK has entered into extradition arrangements (but excluding other EU Member States). Part 2 territories currently include the USA and many Commonwealth countries; a full list of such territories is set at in Annex E.

62. The process in a Part 2 case is, briefly, as follows:

- On receipt of a request from a Part 2 territory, the Secretary of State<sup>28</sup> must decide whether to issue a certificate. Subject to limited exceptions, the Secretary of State must issue a certificate (and send the certificate and request to a judge) if the request is valid.
- Where the Secretary of State issues a certificate and sends it and the request to a judge, the judge may issue a warrant for the arrest of the person concerned if certain conditions are satisfied.
- Where the judge issues a warrant, the person is arrested and brought before the judge, and the judge fixes a date for the extradition hearing.
- An extradition hearing then takes place. At the hearing, the judge must consider a number of factors including whether the person's extradition is barred for any of the reasons set out in the Act. Provided the judge is satisfied that none of the bars to extradition apply and that the person's extradition is compatible with the Convention rights (and nothing else in the relevant sections of Part 2 demands the person's discharge), they must send the case to the Secretary of State for a decision on whether to order extradition.
- The Secretary of State must decide whether he or she is prohibited from ordering extradition on any of the grounds set out in the 2003 Act. Provided the Secretary of State is satisfied that the person's extradition is not prohibited, he or she must order to person's extradition, unless certain limited exceptions apply.

63. A person may appeal the decision of the judge to send the case to the Secretary of State and/or the decision of the Secretary of State to order extradition. It is open to the requesting state to appeal any decision not to send the case to the Secretary of State. As in Part 1 cases, the right of appeal lies first to the High Court and then, with leave, to the Supreme Court.

64. Part 3 of the 2003 Act deals with extradition to the UK and Part 4 covers police powers.

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<sup>28</sup> In Scotland, most of the functions which the Secretary of State performs in England, Wales and Northern Ireland are performed by the Scottish Ministers.



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65. The Coalition Programme for Government included a commitment to “review the operation of the Extradition Act – and the US/UK extradition treaty – to make sure it is even handed”. The Government commissioned such a review by the Rt. Hon. Sir Scott Baker in September 2010 (House of Commons, Official Report, 8 September 2010 column 18WS). The review Report<sup>29</sup> was published by the Home Secretary on 18 October 2011 (House of Commons, Official Report, column 62WS to 63WS) and she announced the Government’s response in an oral statement on 16 October 2012 (House of Commons, Official Report, columns 164 to 180 and House of Lords, Official Report, columns 1373 to 1383). The review recommended a number of changes to the 2003 Act including relating to asylum (see paragraphs 9.47-9.59 of the Report), time limits for notice of appeal (see paragraphs 10.3-10.9), and leave to appeal (see paragraphs 10.10-10.16). The provisions in Part 11 give effect to these changes and make other miscellaneous changes to the 2003 Act.

## **Part 12: Criminal Justice and Court Fees**

### **Compensation for miscarriages of justice**

66. Article 14(6) of the International Covenant on Civil and Political Rights (which was ratified by the United Kingdom in May 1976) requires State Parties to compensate those who have suffered a “miscarriage of justice”. Section 133 of the Criminal Justice Act 1988 (“the 1988 Act”), which extends throughout the United Kingdom, gives effect to that obligation. Section 133 of the 1988 Act provides for the payment of compensation to a person whose conviction has been reversed as a result of a new, or newly discovered fact which shows beyond reasonable doubt that a “miscarriage of justice” has occurred. In England and Wales, the Secretary of State for Justice determines applications under section 133. The Scottish Ministers determine such applications in Scotland. The Department of Justice in Northern Ireland determines all applications under section 133 in that jurisdiction save for certain cases involving sensitive national security information which are determined by the Secretary of State for Northern Ireland.

67. Section 132 of the 1988 Act has given rise to a significant body of case law and the way section 133 has been interpreted by the courts has changed over time. Prior to May 2011, the test applied was that of “clear innocence”, following the judgment of Lord Steyn in *Mullen*.<sup>30</sup> However, in May 2011, the majority of the Supreme Court in *Adams*<sup>31</sup> held that the meaning of miscarriage of justice under section 133 was wider than that. Lord Phillips identified two categories of case which would qualify as miscarriages of justice: the first, a case where the new (or newly discovered) fact showed the applicant to be “clearly innocent”; the second, where the new fact “so undermines the evidence against the applicant that no conviction could possibly be

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<sup>29</sup> <http://www.homeoffice.gov.uk/publications/police/operational-policing/extradition-review>

<sup>30</sup> <http://www.bailii.org/uk/cases/UKHL/2004/18.html>

<sup>31</sup> [http://www.supremecourt.gov.uk/decided-cases/docs/UKSC\\_2010\\_0012\\_Judgment.pdf](http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2010_0012_Judgment.pdf)

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based on it". In January 2013, the Divisional Court, in the case of *Ali and others*,<sup>32</sup> redefined the second category test to be: "has the claimant established, beyond reasonable doubt, that no reasonable jury (or magistrates) properly directed as to the law, could convict on the evidence now to be considered?"

68. Clause 132 reverses the effect of the judgments in *Adams* and *Ali*, and restores the law to the pre-2011 position, by providing a statutory definition of a miscarriage of justice as a case where the new or newly discovered fact shows beyond reasonable doubt that the applicant was innocent. This new definition will apply to decisions taken by the Secretary of State in England and Wales, and to decisions taken by the Secretary of State for Northern Ireland in relation to applications involving sensitive national security information.

69. At present in England and Wales some 40 to 50 applications under section 133 are received each year; of these some 2 or 3 are found to be eligible for compensation. Once an application has been accepted as eligible for compensation, the amount to be paid is decided by an Independent Assessor, based on information provided by the applicant. The Secretary of State has no influence over the amount paid, although there are statutory limits (see sections 133A and 133B of the 1988 Act) which restrict the maximum payable to £500,000 where the applicant spent less than 10 years in prison, and £1,000,000 where the period of imprisonment was more than 10 years. These limits were introduced by the Criminal Justice and Immigration Act 2008, and came into force on 1<sup>st</sup> December 2008.

70. The table below shows awards of miscarriages of justice compensation made under either section 133 of the Criminal Justice Act 1988 or the ex gratia scheme (which was abolished by the Home Secretary in 2006) between 2001 and 2012 in England and Wales.

71. There is no correlation between the numbers of people who have been granted eligibility to the two schemes in any one year by the Secretary of State and the amount of compensation paid by the Government in that year. The process by which the independent assessor decides the amount of compensation that is payable can take some time, so payments may not be made in the same year that the applicant was granted eligibility. The table also shows that one applicant was found eligible for compensation under the ex gratia scheme in 2010/11, well after the scheme was abolished. This application had initially been refused, but the decision was reversed following Judicial Review proceedings.

	No Applications Granted (England & Wales)	Section 133	Ex-Gratia	Paid £M
2001-02	27	17	10	6.2
2002-03	36	25	11	8.2

<sup>32</sup> <http://www.bailii.org/ew/cases/EWHC/Admin/2013/72.html>

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	No Applications Granted (England & Wales)	Section 133	Ex-Gratia	Paid £M
2003-04 -	31	23	8	6.3
2004-05	47	39	8	6.5
2005-06	27	21	6	8.3
2006-07	28	23	5	12.3
2007-08	9	7	2	8.2
2008-09	7	7	0	12.6
2009-10	1	1	0	11.5
2010-11	1	0	1	11.3
2011-12	3	3	N-A	13.2

### **Low-value shoplifting**

72. The police are empowered to prosecute directly a number of uncontested, low level cases without the involvement of the CPS, and a best practice model for police-led prosecutions is being implemented in a number of pathfinder areas. Police-led prosecutions are designed to be a simpler and more proportionate response to high-volume, low-level offences where the case is uncontested, increasing police discretion to tackle crime in their area, freeing up CPS resource to focus on more complex cases and generating efficiencies in the criminal justice system. On 16 May 2012, as part of the Government’s commitment to improve the efficiency of the criminal justice system, the Home Secretary announced her intention in a Written Ministerial Statement to simplify and extend the police-led prosecutions model (House of Commons, Official Report, column 36WS and House of Lords, Official Report, column WS37).

73. Shoplifting is a high-volume crime that causes significant harm in local communities. Under current law the police may choose to deal with such offences by means of a Penalty Notice for Disorder,<sup>33</sup> where this is deemed appropriate. However, approximately 80,000 cases of shoplifting come to court each year and the fact that the vast majority of these are dealt with in magistrates’ courts (where most cases result in a guilty plea) makes shoplifting a suitable offence for the simpler, more proportionate police-led process. In addition, the value of goods stolen is

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<sup>33</sup> A Penalty Notice for Disorder (“PND”) is a type of fixed penalty notice that can be issued for a specified range of minor disorder offences, introduced in the Criminal Justice and Police Act 2001. An “upper tier” PND (attracting an £80 penalty) may be issued for theft from a shop (section 1 of the Theft Act 1968) where the goods stolen are below the value of £100. Although a penalty notice is not a conviction it will be recorded in police records and may be disclosed under an enhanced criminal records check.

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typically low. Research into shop theft in 2006<sup>34</sup> showed that the median value of goods stolen was £40, and that 90% of cases involved property worth less than £200. Shoplifting has, therefore, been identified as a suitable offence for police-led prosecutions. However, the police-led model is designed for summary-only offences, that is, cases that are dealt with in the magistrates' courts rather than the Crown Courts. In order to extend the benefits of this simpler, police-led model to uncontested cases of low-value shoplifting, clause 133 enables minor offences of shoplifting in England and Wales to be treated as summary only for most purposes.

### **Victim Surcharge**

74. The duty to order the Victim Surcharge was introduced through section 161A of the Criminal Justice Act 2003 ("the Criminal Justice Act") which requires a court when dealing with a person for one or more offences to order him or her to pay a surcharge. Section 161B of the Criminal Justice Act gave the Secretary of State the power to specify the amount of Surcharge, which was originally set at £15 whenever an offender was dealt with by way of a fine in the Criminal Justice Act 2003 (Surcharge) (No 2) Order 2007 (SI 2007/1079).

75. The Victim Surcharge has raised approximately £41.9 million over the last five years (£3.8 million in 2007/08, £8.1 million in 2008/09, £9.2 million in 2009/10, £10.5 million in 2010/11 and £10.3 million in 2011/12) with all revenue being used by the Government to fund victim support services.

76. In the response to the consultation, *Getting it right for Victims and Witnesses*,<sup>35</sup> the Government set out proposals to ensure that offenders are responsible for making greater reparation to victims and for contributing more to the cost of victim support services.

77. Under the Criminal Justice Act 2003 (Surcharge) Order 2012 (SI 2012/1696) ("the 2012 Order"), which came into force on 1 October 2012, courts are now required to order an adult offender sentenced to a fine to pay a surcharge equating to 10% of the fine subject to a minimum of £20 and a maximum of £120. The 2012 Order also requires the court to order a surcharge of £60 where an adult offender is sentenced to a community order and a surcharge as determined in the table below where an adult offender is sentenced to imprisonment (including a suspended custodial sentence):

<b>Period of custody</b>	<b>Amount of surcharge</b>
Six months or less	£80
More than six months and up to and including 2 years	£100
More than 2 years	£120

<sup>34</sup> Research for the Sentencing Advisory Panel in 2006  
<http://www.lccsa.org.uk/assets/documents/consultation/researchreport-theft0806.pdf>

<sup>35</sup> <https://consult.justice.gov.uk/digital-communications/victims-witnesses>

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78. The 2012 Order specifies lower surcharge amounts where the offender is under the age of 18. The approach to ordering the surcharge as set out in the 2012 Order ensures that the amount to be paid is linked to the seriousness of the sentence. The arrangements for payments of the Victim Surcharge in the 2012 Order are expected to raise up to an additional £50 million per year for victim support services.

79. Currently magistrates' courts (but not the Crown Court) in sentencing a person to immediate custody have the power to add additional days to be served in default of payment of the Surcharge. The response to the consultation, *Getting it Right for Victims and Witnesses* (paragraphs 141 and 142) set out the Government's intention to legislate to remove this power. Clause 135 gives effect to this change in magistrates' courts sentencing powers.

### **Court and tribunal fees**

80. On 26 March 2013 the Lord Chancellor and Secretary of State for Justice announced his intention to explore proposals for the reform of the resourcing and administration of courts and tribunals (House of Commons, Official Report, column 95WS and House of Lords, Official Report, column WS84 to WS85). This included the contributions litigants make to proceedings and the necessity of raising revenue and investment to modernise court and tribunal infrastructure and deliver a better and more flexible service to court users.

81. The civil and family courts are mostly funded by court fees paid by those people using court services. Fees are charged in the civil and family courts and in some tribunals. For example fees are charged in civil courts for those making money claims, in family courts for those seeking divorce and in the commercial court for arbitration disputes. The cost of running the civil and family courts in England and Wales is approximately £620m a year. Of this amount, 82 per cent is funded through court fees. The remaining 18 per cent is met by the taxpayer. A system of remissions (fee waivers) exists to ensure that those unable to afford fees are not denied access to justice. As part of Spending Review 2010 the Ministry of Justice is committed to delivering, by 2014/15, a fee strategy that delivers full-cost recovery, excluding remissions.

82. The Ministry of Justice is considering the detailed mechanism by which court and tribunal fees may be set beyond full cost-recovery and therefore at a level which exceeds the cost of the activities for which the fees are charged. Clause 136 is designed as a placeholder to allow the Lord Chancellor to bring forward substantive provisions by amendment in the light of this further work.

### **TERRITORIAL EXTENT AND APPLICATION**

83. Subject to certain exceptions the provisions in the Bill extend to England and Wales only. The provisions in clauses 98(2)(a)(ii) and (6), 99, 100, 102 and 134 extend to Great Britain, whilst those in clauses 101, 112, 124 and 136, Schedule 6 and in Part 11 extend to the whole of the

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United Kingdom. Clauses 113 and 132 and Schedule 5 also extend to Northern Ireland (as well as to England and Wales) and clause 115 extends only to Northern Ireland. In relation to Scotland and Wales the Bill addresses both devolved and non-devolved matters. In relation to Northern Ireland the provisions relate to excepted or reserved matters or to matters not considered to be within the legislative competence of the Northern Ireland Assembly.

84. The following provisions in the Bill which extend to Scotland relate to matters which are reserved or otherwise not within the legislative competence of the Scottish Parliament:

- The increase in the maximum penalty for the illegal importation/exportation of firearms and the creation of a new offence of “possession for sale or transfer” (clauses 100 and 101);
- The amendment of the counter-terrorism border security powers contained in Schedules 7 and 8 to the Terrorism Act 2000 (clause 124 and Schedule 6);
- The removal of the requirement for BTP officers and their civilian staff who are under the direction and control of the Chief Constable to obtain firearms certificates under the Firearms Act 1968 (clause 102);
- The amendments to the Extradition Act 2003 (Part 11); and
- The power to make regulations about court and tribunal fees (clause 136).

85. In addition, on introduction this Bill contains provisions that trigger the Sewel Convention. The relevant provisions are certain of the amendments to the Dangerous Dogs Act 1991 (clauses 98 and 99), the provision that abolishes the UK-wide Police Negotiating Board (clause 112) and the amendments to the Serious Organised Crime and Police Act 2005 in respect of the protection of persons at risk (clause 134). The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. Insofar as the provisions in the Bill relate to devolved matters or confer functions on the Scottish Ministers, the Scottish Government has confirmed that it will seek the necessary legislative consent motion. If there are amendments relating to such matters which further trigger the Convention, the consent of the Scottish Parliament will be sought for them.

86. In relation to Wales, the provisions in respect of community protection notices (Chapter 1 of Part 4), public spaces protection orders (Chapter 2 of Part 4) and the community trigger (clauses 96 and 97) relate to a mix of reserved and transferred matters, whilst those in respect of the recovery of possession of dwelling-houses on anti-social behaviour grounds (Part 5) and the application of financial controls in Local Government Act 2003 to chief officers of police (clause 121) relate to devolved matters or confer functions on the Welsh Ministers. All other provisions relate, in the view of the United Kingdom Government, to non-devolved matters. Insofar as the provisions in the Bill relate to devolved matters or confer functions on the Welsh Ministers, the Welsh Government has confirmed that it will seek the necessary legislative consent motion. If amendments are made to the Bill that trigger a requirement for a legislative consent motion, the consent of the National Assembly for Wales will be sought for them.

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87. The provisions of the Bill relating to the following excepted or reserved matters also extend to Northern Ireland:

- The increase in the maximum penalty for the illegal importation/exportation of firearms (clause 101);
- The amendment of the counter-terrorism border security powers contained in Schedules 7 and 8 to the Terrorism Act 2000 (clause 124 and Schedule 6);
- The amendments to the Extradition Act 2003 (Part 11);
- Establishing in law a test that it must be shown beyond reasonable doubt that a person was innocent for the purpose of determining eligibility for compensation for miscarriages of justice insofar as applications fall to be determined by the Secretary of State for Northern Ireland (clause 132); and
- The power to make regulations about court and tribunal fees (clause 136).

88. In addition, the Northern Ireland Department of Justice has indicated that the provisions in Part 10 abolishing the UK-wide Police Negotiating Board and establishing, in England and Wales and Northern Ireland, the Police Remuneration Review Body, are not within the legislative competence of the Northern Ireland Assembly. If amendments are made to the Bill that trigger a requirement for a legislative consent motion, the consent of the Northern Ireland Assembly will be sought from them.

## **COMMENTARY ON CLAUSES**

### **Part 1: Injunctions to prevent nuisance and annoyance**

89. The injunction to prevent nuisance and annoyance (presented as the crime prevention injunction in the White Paper) is a purely civil injunction available in the county court for adults and in the youth court for those under the age of 18. The injunction replaces a range of current tools including the anti-social behaviour order (“ASBO”) on application, the anti-social behaviour injunction (“ASBI”), the drinking banning order on application, intervention orders and individual support orders. The injunction can be used to tackle a range of anti-social behaviour problems. For example, an individual regularly hangs around inside local hospital waiting areas. He is always drunk and aggressive to hospital staff, often allowing his dog to jump at staff and others in an uncontrolled manner. Under the new system, NHS Protect (or its successor), the body responsible for protecting NHS staff, property and resources against crime and disorder and the body in Wales carrying out corresponding functions, could apply for an injunction directly to immediately prevent the individual’s anti-social behaviour. The injunction could also include positive requirements to get the individual to deal with the underlying cause of his behaviour, that is, his misuse of alcohol and require him to attend dog training classes so he can learn how to control his dog and understand its welfare needs.

90. Clause 1 sets out a two-part test for granting an injunction. An injunction may be made against a person aged 10 or over if the court is satisfied, on the balance of probabilities (the civil

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standard of proof), that the person has engaged in, or is threatening to engage in, anti-social behaviour and that it is just and convenient to grant the injunction. This is in line with the current ASBI, which is used by private registered providers of social housing and local authorities (in relation to their housing management functions) to stop anti-social behaviour.

91. The injunction could include prohibitions or requirements that assist in the prevention of future nuisance or annoyance (clause 1(4)). Such prohibitions may include, for example, not being in possession of a can of spray paint in a public place, not entering a particular area, or not being drunk in a public place. Requirements would be designed to deal with the underlying causes of an individual's anti-social behaviour and could include, for example, attendance at an alcohol or drugs misuse course or dog training in the case of irresponsible dog owners.

92. Where an injunction imposes requirements on the respondent, it must specify the person (an individual or an organisation) who is responsible for supervising compliance (clause 2). The court must receive evidence on the suitability and enforceability of a requirement from this person. Such individuals or organisations could include the local authority, youth offending teams, recognised providers of substance misuse recovery or dog training providers for irresponsible dog owners.

93. There is no minimum or maximum term for the injunction for adults, so the court may decide that the injunction should be for a specified period or an indefinite period. However, in the case of injunctions against under 18s, the maximum term is 12 months (clause 1(6)). The duration of any prohibitions or requirements may be shorter than the duration of the injunction itself.

94. There will be a wider range of potential applicants for the new injunction than the current ASBI to bring it more in line with the breadth of the ASBO. This is intended to help reduce the burden falling on any particular agency to make applications on behalf of others. The following agencies would be able to apply (clause 4): a local authority; a housing provider; a chief officer of police (including of the British Transport Police); Transport for London; the Environment Agency; and NHS Protect in England (or its successor) and the relevant body in Wales exercising corresponding functions or other body in Wales exercising any such functions on the direction of the Secretary of State or Welsh Ministers.

95. The list of bodies that may apply for an injunction may be varied by order, subject to the negative resolution procedure (clause 4(4)).

96. There is a formal requirement for the applicant to consult with the local youth offending team if an injunction is against someone under the age of 18. The consultation requirement does not give a veto power to the local youth offending team ("YOT"). The applicant must also inform any other body or individual about the application that they think appropriate (clause 14). This could include a social landlord (when an application is made by another body against one of their tenants) or mental health team.



97. Applications for an injunction would normally be made following the giving of notice to the respondent. However, clause 5 allows an application for an injunction to be made without notice. Without notice applications would, in practice, only be made in exceptional or urgent circumstances and the applicant would need to produce evidence to the court as to why a without notice hearing was necessary. Where a without notice application is made, the court would be able to grant an interim injunctions pending a full hearing and following the giving of notice to the respondent (clauses 5 and 6). The consultation requirements in clause 14 do not apply to without notice applications.

98. A court may vary or discharge an injunction upon application by the applicant or respondent (clause 7). A variation may take a number of forms including the addition of a new prohibition or requirement or the removal of an existing one, the extension or reduction of the duration of an existing prohibition or requirement, or the attachment of a power of arrest.

99. A power of arrest may be attached to any prohibition or requirement contained in an injunction if the court believes that the individual has used violence, or threatened violence against another person when they committed the anti-social behaviour, or if there is risk of significant harm by the respondent to others (clause 3). A power of arrest attached to an injunction allows a police officer to arrest the respondent without a warrant if the respondent breached a condition in the injunction, that is, a prohibition or a requirement (clause 8). Where no power of arrest is attached to the injunction, the applicant may apply to the court to issue a warrant of arrest of a respondent if the applicant thinks that the respondent has breached the injunction (clause 9). Clause 10 and Schedule 1 make provision for the remand, whether on bail or in custody, of a person arrested for breach of an injunction.

100. Breach of an injunction by an adult will be contempt of court, punishable in the usual way by the county court by a term of imprisonment of up to two years or an unlimited fine. Breach of an injunction by someone aged under 18 could result in the youth court imposing a supervision order or a detention order. A detention order can be made for breaching the injunction or for breaching a supervision order that was imposed for breaching the injunction. The court may revoke the supervision order and impose a new one or it may revoke the supervision and make a detention order. The court can only impose a detention order where it considers that the severity or extent of the behaviour warrants it and that no other sanction available to it is appropriate. The court must be satisfied beyond reasonable doubt that the under 18 has, without reasonable excuse, breached the injunction or breached a supervision order that was imposed for breaching the injunction before it can make the detention order. The court must also consider any representations from the YOT specified in the supervision order before imposing a detention order. The maximum duration of a detention order is three months and it cannot be imposed on under 14s (clause 11 and Schedule 2). A supervision order may contain one or more of the following requirements: a supervision requirement, an activity requirement or a curfew requirement. An electronic monitoring requirement may be attached to a curfew requirement in order to monitor compliance.

*These notes refer to the Anti-social Behaviour, Crime and Policing Bill as introduced in the House of Commons on 9 May 2013 [Bill 7]*

101. In granting an injunction to a housing provider (or local authority carrying out its housing management function), the court may attach a power to exclude the respondent from their home or a specified area. The home must be owned or managed by the local authority or housing provider and exclusion can only be applied for by the relevant local authority or housing provider. The court may exclude the respondent if it thinks that they have been violent or threatened violence to other persons or if there is a significant risk of harm from the respondent to other persons (clause 12).

102. Clause 13 deals with breaches or anticipated breaches of the tenancy agreement by the tenant. These injunctions can only be applied for by a local authority (acting in its housing management function) or a housing provider. Tenancy injunctions relate to breaches or anticipated breaches of tenancy agreements between the respondent and the local authority or housing provider if the respondent has committed or is threatening to commit anti-social behaviour, or is allowing, inciting or encouraging others to commit or threaten to commit anti-social behaviour. The court may attach a power of arrest to a tenancy injunction as under clause 3 and can exclude a respondent from their home or a specified area in the injunction as under clause 12. A tenancy agreement could contain a prohibition against subjecting the staff of the housing provider or local authority to anti-social behaviour, even where such behaviour has nothing to do with the housing provider's or local authority's housing management functions. This clause reproduces the effect of section 153D of the Housing Act 1996, which is repealed by the Bill.

103. There is a right of appeal against a decision of the youth court under this Part (clause 15). A decision of the county court is appealable to the High Court.

104. Clause 16 enables the court to give a special measures direction to protect vulnerable or intimidated witnesses in injunction proceedings. Such measures may include giving evidence behind a screen or by video link or in private.

105. The automatic restriction on reporting legal proceeding in relation to someone aged under 18 (section 49 of the Children and Young Persons Act 1933) does not apply to proceedings for an injunction under clause 1 (clause 17). However, section 39 of that Act does apply to these proceedings and gives the court the discretion to restrict the publication of certain information in order to protect the identity of the child or young person, for example: his or her name; address; school, etc.

106. Clause 20 makes certain saving and transitional provisions in respect of ASBOs on application, anti-social behaviour injunctions and drinking banning orders made before the commencement of the provisions in the Bill repealing the legislation providing for such orders and injunctions. Five years after the commencement of Part 1 of the Bill any of these orders or injunctions still in force will automatically be treated as an injunction under Part 1.

## **Part 2: Criminal Behaviour Orders**

*These notes refer to the Anti-social Behaviour, Crime and Policing Bill as introduced in the House of Commons on 9 May 2013 [Bill 7]*

107. The criminal behaviour order (“CBO”) will be an order on conviction, available following a conviction for any criminal offence and in the Crown Court, a magistrates’ court or a youth court. This would replace the ASBO on conviction and the drinking banning order on conviction. A court will be able to make a criminal behaviour order against an offender only if the prosecutor applies for it. This would normally be at the instigation of the police or local authority. Unlike the current process, local authorities would be able to apply directly to the prosecution without requesting the permission of the police.

108. Clause 21 sets out the two-part test for granting an order. An order may be made against a person over the age of 10 if the court is satisfied that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as the offender and that the court considers that making the order will assist in preventing the offender from engaging in such behaviour. As the order would be made on conviction, the standard of proof would be “beyond reasonable doubt”.

109. The order could include prohibitions and/or positive requirements that assist in preventing the offender from engaging in behaviour that could cause harassment, alarm and distress in the future (clause 21(5)). Such prohibitions could include not being in possession of a can of spray paint in a public place, not entering a particular area, or not being drunk in a public place. The requirements in an order could include attendance at a course to educate offenders on alcohol and its effects.

110. An order may only be made against an offender when he or she has been sentenced for the offence or given a conditional discharge (clause 21(6)). No order may be made where the offender has been given an absolute discharge or has only been bound over to keep the peace.

111. A court may only make a criminal behaviour order against an offender if the prosecution applies for an order; it may not make an order on its own volition (clause 21(7)).

112. Where the offender is under the age of 18, the police or local authority must consult the local youth offending team and must inform the prosecutor of the views of the youth offending team. The consultation requirement does not give the youth offending team a veto power over applications for criminal behaviour orders (clause 21(8)). We will also recommend in guidance that the young person is given the chance to express their views, in line with their rights under the UN Convention on the Rights of the Child.

113. The court can consider evidence which was inadmissible in the criminal proceedings, which could include hearsay or bad character evidence (clause 22(2)). The automatic reporting restrictions of certain information (such as the name, address or school of a child or young person) that normally apply in respect of legal proceedings in relation to a person under 18 (section 49 of the Children and Young Persons Act, 1933) do not apply to proceedings in which a CBO is made (clause 22(7) and (8)). However, section 39 of that Act does apply which gives the court the

discretion to prohibit the publication of certain information that would identify the child or young person.

114. Clause 23 provides that if an order includes a requirement it must specify the person responsible for supervising compliance. The court must receive evidence on the enforceability and suitability of the requirement from the individual specified or, in the case of an organisation, an individual representing that organisation. Such individuals or organisations could be the local authority, recognised providers of substance misuse recovery or dog training providers for irresponsible dog owners.

115. Where a criminal behaviour order is made against a person under 18 years of age the order must be for a fixed period of between one and three years. In the case of an adult, a criminal behaviour order must be for either a fixed period of two years or more or for an indefinite duration – there is no maximum length (clause 24).

116. Where the court adjourns a hearing for an order, it can place an interim order on the offender that lasts until the final hearing of the application if the court thinks it is just to do so (clause 25).

117. A court can vary or discharge an order upon the application of the offender or the prosecution (clause 26). However, where a previous application has been dismissed, that party cannot make a further application to vary or discharge the order without the consent of the court or agreement of the other party (the offender or prosecution).

118. Reviews must be held every 12 months for offenders under the age of 18 (clause 27). The 12 month period starts from the date the order was made, or from the date it was subsequently varied. The review must consider the offender's compliance with the order and the support provided to help him or her comply with the order, and give consideration to whether an application should be made to vary or discharge the order. The review should be carried out by the police with the local authority and any other relevant person or body (clause 28).

119. The automatic restriction on reporting legal proceeding in relation to someone aged under 18 (section 49 of the Children and Young Persons Act 1933) does not apply to CBO breach proceedings (clause 29(5)). However, section 45 of the Youth Justice and Criminal Evidence Act 1999 applies to CBO breach proceedings against someone aged under 18. That section gives the court the discretion to restrict the publication of certain information in criminal proceedings in order to protect the identity of the child or young person, for example: his or her name; address; school, etc. The court must give reasons if it decides to give a direction and exercise its discretion under section 45. (Section 45 applies to criminal proceedings and allows the court to restrict reporting of this kind of information if it feels that the reporting would lead to the identification of the child in question.)

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120. In any proceedings in relation to a CBO it is open to the court to make a special measures direction in relation to vulnerable and intimidated witnesses. Such measures may include the physical screening of a witness, enabling evidence to be given in private or the use of a video-recorded interview.

121. Clause 31 makes certain saving and transitional provisions in respect of ASBOs on conviction, individual support orders and drinking banning orders on conviction made before the commencement of the provisions in Part 1 of Schedule 7 to the Bill repealing the legislation providing for such orders. Five years after the commencement of Part 2 of the Bill any such orders still in force will be automatically treated as criminal behaviour orders.

### **Part 3: Dispersal powers**

122. The dispersal power will enable officers (constables in uniform and police community support officers (“PCSOs”)) to direct a person who has committed, or is likely to commit, anti-social behaviour to leave a specified area and not return for a specified period of up to 48 hours. The test would be that the officer has reasonable grounds for suspecting that the person’s behaviour is contributing, or is likely to contribute to anti-social behaviour or crime or disorder in the area and that the direction is necessary to prevent the same (clause 33(2) and (3)). Police officers would have access to all elements of the power, and PCSOs could have access to some, or all elements of the power at the discretion of the Chief Constable (clause 38)).

123. The dispersal power can only be used where an officer of at least the rank of inspector has authorised its use in a specified locality (clause 32(1)). The authorisation can last a maximum of 48 hours although it can be extended. That authorisation can only be given where the police officer of or above the rank of inspector reasonably believes that, in respect of any locality within his police area, the exercise by a constable in uniform or PCSO of the dispersal powers in Part 3 of the Bill may be required in order to remove or reduce the likelihood of the events mentioned in subsection (3)(a) or (b) of clause 32 occurring. For instance, the inspector may have intelligence to indicate that there is likely to be anti-social behaviour on a particular housing estate during the weekend and authorise the use of the dispersal for 48 hours. Alternatively, in a situation where an officer needs to use the dispersal power in an area that has not been authorised, the officer can contact an inspector for an authorisation and describe the circumstances to him or her.

124. The direction would in most instances be given in writing to ensure that those individuals being dispersed are clear where they are being dispersed from. Where this is not reasonably practicable, the direction could be given orally (clause 33(5)(a)) and the officer would keep a written record of the direction (clause 36). Any constable can vary or withdraw a direction and must do this in writing to the person originally issued with the order unless not reasonably practicable (clause 33(8) and (9)).

125. The officer must specify the area from which the person is excluded, and may specify when and by which route they must leave the area (clause 33(5)(b) and (c)). Where the officer

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believes an individual is under the age of 16, an officer can remove that individual to a place where he or she lives or to a place of safety (clause 33(7)).

126. Failure to comply with the direction would be a criminal offence and would carry a maximum penalty of up to £2,500 and/or three months imprisonment (clause 37).

127. An officer would also be able to require an individual to hand over items causing, or likely to cause anti-social behaviour – for instance, alcohol or a can of spray paint (clause 35). Failure to comply with the requirement is a criminal offence, the maximum penalty for which is a fine of up to £500 (clause 37(4)). These sanctions are in line with current equivalent powers, and are designed to ensure there is an appropriately serious consequence to failing to comply.

128. However, the officer does not have power under this provision to retain any seized item indefinitely. The officer must give the person information in writing about how and when they can recover the item, which must not be returned before the exclusion period is over. If the person is under 16 the officer can require that person to be accompanied by an adult when collecting the item.

129. As a safeguard to ensure that the power is used proportionately, and to protect civil liberties, guidance will suggest that data on its use should be published locally. This would be via a website or other locally agreed media. Police and Crime Commissioners (or in London, the relevant policing body) would have a role in holding forces to account on their exercise of these powers to ensure that they are being used proportionately. Publication of data locally would also help highlight any “hot-spot” areas that may need a longer-term solution (for example, diversionary activities for young people or the introduction of CCTV cameras to help “design out” crime and anti-social behaviour).

130. Clause 39 makes saving provisions for authorisations given under section 30(2) of the Anti-social Behaviour Act 2003, and directions given under section 27 of the Violent Crime Reduction Act 2006 before the commencement day of Part 3 of the Bill.

#### **Part 4, Chapter 1: Community protection notices**

131. The community protection notice is intended to deal with unreasonable, ongoing problems or nuisances which negatively affect the community’s quality of life by targeting the person responsible (clause 40(1)). The notice can direct any individual over the age of 16, business or organisation responsible to stop causing the problem and it could also require the person responsible to take reasonable steps to ensure that it does not occur again (clause 40(3)). For instance, where a dog was repeatedly escaping from its owner’s back garden due to a broken fence, the owner could be issued with a notice requiring that they fix the fence to avoid further escapes and also, if appropriate, ensure that the owner and dog attended training sessions to improve behaviour (if this was also an issue).

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132. This notice will replace current measures such as litter clearing notices, defacement removal notices and street litter control notices. It is not meant to replace the statutory nuisance regime – and where the behaviour is such as to amount to a statutory nuisance under section 79 of the Environmental Protection Act 1990, it should be dealt with as such (clause 40(5)). Part 3 of the Environmental Protection Act 1990 places a duty on a local authority to investigate complaints of statutory nuisance from people living within its area.

133. The following issues may constitute statutory nuisances:

- a. Noise;
- b. Artificial light;
- c. Odour;
- d. Insects;
- e. Smoke;
- f. Dust;
- g. Premises;
- h. Fumes or gases;
- i. Accumulation or deposit;
- j. Animals kept in such a place or manner as to be prejudicial to health or a nuisance;
- k. Any other matter declared by any enactment to be a statutory nuisance.

134. Where a local authority establishes any one of these issues constitutes a nuisance (that is, is unreasonably interfering with the use or enjoyment of someone's premises) or is prejudicial to health they must generally serve an abatement notice on the person responsible. Failure to comply with the notice could result in the person being prosecuted.

135. If environmental anti-social behaviour meets the threshold for statutory nuisance, it must be dealt with accordingly through that route. Where there is a likelihood that this could be the case, the authorised person should contact the relevant local authority officer to discuss whether the matter should be dealt with as a statutory nuisance before issuing a CPN. Further guidance will be issued to ensure that this distinction is understood by practitioners.

136. The notice should be issued to someone who can be held responsible for the anti-social behaviour (clause 41). For instance, if a small shop were allowing litter to be deposited outside the property and not dealing with the issue, a notice could be issued to the business owner, whereas if a large national supermarket were to cause a similar issue, the company itself or the store manager could be issued with a notice. An appeal can be made to a magistrates' court within 21 days of the notice being issued (clause 43).

137. The power to issue a notice will be available to the police (and PCSOs, if designated by the Chief Constable) (clause 50(5) and (6)), authorised persons within the local authority and staff of registered providers of social housing (if designated by the relevant local authority) (clause 50(1)).

138. Before issuing a notice, an authorised person is required to inform whatever agencies or persons he or she considered appropriate (for example the landlord of the person in question, or the local authority), partly in order to avoid duplication (clause 40(7)). The person would also have to have issued a written warning in advance and allowed an appropriate amount of time to pass (clause 40(6)). This is to ensure that the perpetrator is aware of their behaviour and allows them time to rectify the situation. It will be for the person issuing the written warning to decide how long is appropriate before serving a notice. In the example above where a dog owner's fence needs to be fixed, this could be days or weeks, in order to allow the individual to address the problem. However, it could be minutes or hours in a case where, for example, skateboarders were causing nuisance to a local community.

139. Wherever possible, the notice should be issued in person. However, where this is not possible, it can be posted or left at the proper address (clause 52(1)). In the case of the latter when it relates to a business, the address may be different from the location of the anti-social behaviour.

140. Remedial works or works in default can be added to the notice immediately or once the individual, business or organisation has had sufficient time to comply with any requirements (clause 42). For instance, if the behaviour related to a front garden full of rubbish, the individual could be given a period of 7 days to clear the waste. The issuing officer could also make clear on the face of the notice that if this were not complied with, they would authorise the works in default on a given date and at a given cost. Consent would only be required when that work necessitated entry to the perpetrator's property – those issuing a notice would be able to carry out remedial works in default in areas "open to the air" (clause 44(5)), for instance clearing rubbish from a front garden. This is in line with current provision in section 92 of the Environmental Protection Act 1990.

141. In undertaking remedial works or works in default, the local authority is exempted from liability in the event of any damage, as long as due care and attention has been exercised (clause 51).

142. Breach of any requirement in the notice, without reasonable excuse, would be a criminal offence, subject to a fixed penalty notice (which attracts a penalty of £100) (clause 49) or prosecution. On summary conviction an individual would be liable to a fine not exceeding £2,500. An organisation such as a company is liable to a fine not exceeding £20,000. On conviction, the magistrates' court would have the power to order forfeiture and destruction of any item used in the commission of the offence – for instance, noise equipment (clause 47). Where necessary, the court can also issue a warrant allowing a constable to seize such items (clause 48).

143. Community protection notices will be different from the powers they replace in the following ways:



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- a. They cover a wider range of behaviour (all behaviour that is detrimental to the local community's quality of life) rather than specifically stating the behaviour covered (for example, litter or graffiti);
- b. Noise disturbance could be tackled, particularly if it is demonstrated to be occurring in conjunction with other anti-social behaviour;
- c. The notices can be issued by a wider range of agencies: the police, local authorities and private registered providers of social housing (if approved by local authorities), thereby enabling the most appropriate agency to deal with the situation;
- d. The notices can apply to businesses and individuals (which is the same as for some of the notices they will replace but not all); and
- e. It would be a criminal offence if a person did not comply, with a sanction of a fine (or fixed penalty notice) for non-compliance. This is the case at the moment for litter-related notices but not defacement removal notices.

#### **Part 4, Chapter 2: Public space protection orders**

144. The public spaces protection order (referred to as the community protection order (public spaces) in the White Paper) is intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area. The order could also be used to deal with likely future problems. It will replace designated public place orders, gating orders and dog control orders. Examples of where a new order could be used include prohibiting the consumption of alcohol in public parks or ensuring dogs are kept on a leash in children's play areas. It could also prohibit spitting in certain areas (if the problem were persistent and unreasonable). This is currently covered in local byelaws.

145. Only a local authority can issue the order, and before doing so, they must consult with the chief officer of police, the Police and Crime Commissioner and any representatives of the local community they consider appropriate – for example, a local residents group or a community group that regularly uses the public place (clause 55(7)).

146. Orders will last for up to three years before requiring a review (clause 56(1)), however there is no limit on the number of times an order can be reviewed and renewed. There is a requirement to inform the chief of police and any other community representatives on review and renewal (as with the original order) (clause 56(5)). The review requirements will be different depending on the prohibitions or requirements being applied – for instance, an order requiring dogs are kept on their leash in a children's play area is unlikely to necessitate the same level of review as an order prohibiting any access to a public place to deal with a short-term issue such as localised crime. An order can be varied or discharged at any time by the local authority (clause 57).

147. The two-part test for issuing the order will be that the local authority is satisfied on reasonable grounds that that activities carried on or likely to be carried on are detrimental to the

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local community's quality of life, and that the impact justifies restrictions being put in place in a particular area. The behaviour must also be ongoing and unreasonable (clause 55(2) and (3)).

148. The order can prohibit certain things (for example, drinking alcohol), require specific things to be done (for example, keeping dogs on leashes), or both (clause 55(4)). Unlike the orders this power will replace, only one order will be required to deal with a specific place, with one consultation. For instance, a single order could be used to prohibit drinking in a specific park as well as ensuring dogs were kept under control, through either being kept on a leash or limiting the number of dogs an individual can walk at one time.

149. An order prohibiting the consumption of alcohol cannot be used against licensed premises (clause 58). Clause 59 provides that breach of the order not to consume alcohol which can result in a conviction only occurs when an individual does not cease drinking or surrender alcoholic drinks when challenged by an enforcement officer (clause 59(2) and (6)). This could be a police officer, PCSO or local authority officer. This ensures that officers are able to exercise discretion in each situation. Where there is no threat of anti-social behaviour, they need not challenge the individuals, for example a family picnic with a bottle of wine.

150. Where an order restricts access to a public right of way, the local authority should also consider the wider impact on those in the locality and the availability of other routes (clause 60(1)). For instance, an alleyway between houses and a key local amenity (shops, etc.) should not be closed where there is no other reasonable route for people to use. The local authority must also inform those in the locality of any proposed order (clause 60(2)).

151. The appeal route for an order is through the High Court and is only open to someone who lives in the area or regularly visits the area (clause 62(1)) and must be made within six weeks of the order being applied for (clause 62(3)).

152. Breach of the order, without reasonable excuse, is a criminal offence, subject to a fixed penalty notice (of £100) (clause 64) or prosecution. On summary conviction, an individual would be liable to a fine not exceeding £1,000. It is also an offence to fail to comply with a request to cease drinking or surrender alcohol in a controlled drinking zone punishable on summary conviction to a fine not exceeding £500. If alcohol is confiscated, it can also be disposed by the person who confiscates it.

153. Clause 68 provides for the transitional arrangements associated with the new orders. It outlines that current orders will remain in place for three years following the commencement of this legislation. During that period it is expected that local authorities will have had time to review current orders and consider the appropriateness of the new order to replace them.

154. Clause 66 makes clear that an order under this clause takes precedence over a byelaw where the byelaw prohibits an activity in the restricted area.

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155. The public spaces protection order will be different from the powers it will to replace in the following ways:

- a. It can prohibit a wider range of behaviour, which makes the new order more like the “good rule and government byelaws” made under the Local Government Act 1972, but with a fixed penalty notice available on breach (although some current byelaws do allow for fixed penalty notices to be issued). This is following feedback in the consultation from local authorities that current byelaws are hard to enforce as the only option available to local agencies is to take an individual to court if they fail to comply, which can be costly and time-consuming;
- b. There is intended to be less central government oversight than with byelaws, and no central government reporting requirements as with designated public place orders. This would reduce bureaucracy; and
- c. There will be lighter touch consultation requirements to save costs (for example, there is no duty to advertise in local newspapers). This is following feedback in the consultation from local authorities that the current processes for consultation outlined in secondary legislation are costly and time-consuming.

#### **Part 4, Chapter 3: Closure of premises associated with nuisance or disorder etc**

156. The closure of premises associated with nuisance or disorder (referred to as the community protection order (closure) in the White Paper) has two stages – the closure notice and the closure order. It would consolidate various existing closure powers relating to licensed and non-licensed premises which are causing, or are likely to cause, anti-social behaviour.

157. The two-part test for issuing a notice will be that the police or local authority reasonably believes that there is, or is likely soon to be, a public nuisance or there is, or is likely soon to be, disorder in the vicinity of, and related to the premises; and that the notice is necessary in the interest of preventing the continuation or occurrence or reoccurrence of such disorder or behaviour (clause 69(1)). For example, closing a nightclub where police have intelligence to suggest that disorder is likely in the immediate vicinity on a specific night or over a specific period.

158. A notice is issued out of court, initially for up to 24 hours, and cannot prohibit access by the owner of the premises or people who habitually live on the premises (clause 69(4)). The notice can be designed to prohibit access to particular people at particular times. For example, where a property is closed in anticipation of a party publicised through social media, the family would not be prohibited, but additional people could be exempted (such as other family members) where appropriate.

159. The initial notice lasts for up to 24 hours and has to be issued by a police officer of at least the rank of inspector or a local authority (clause 69(1)). The notice can be extended for a further 24 hours out of court if agreed by a police officer of at least the rank of superintendent or

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someone designated by the chief executive officer of a local authority. In total the closure notice cannot exceed 48 hours (clause 70 (2)).

160. Before issuing the notice, the police or local authority must consult any person or agency they consider appropriate, as well as informing the owner, landlord, licensee and anyone who appears to be residing in the premise (clause 69(6) and (7)). The police or local authority must also take into account any special considerations arising from the presence, or likely presence, of any children or vulnerable adults on the premises. Authorised persons will have a power of entry to the premises, using reasonable force if necessary, to secure the notice to the premises (clause 72(4)). The service of the notice on relevant people is required of the constable or local authority if possible to do so (clause 72 (2)). Where a notice issued by a local authority requires cancellation or variation, it must be signed off by the person who originally issued the notice or, if they are not available, the chief executive of the local authority or a person delegated by him (clause 71(4) and (5)).

161. Unless the police or local authority cancels the notice within the 48 hours period, they must apply to the magistrates' court for a court order (clause 73(1)). The court can make a closure order for a maximum period of three months (clause 73(5)) if it is satisfied that: a person has engaged in disorder, anti-social or criminal behaviour on the premises (or that such behaviour is likely if the order is not made) or the use of the premises is associated with the occurrence of disorder or serious nuisance to members of the public (or that such disorder or serious nuisance is likely if the order is not made); and that the order is necessary to prevent the continuation or occurrence or reoccurrence of such disorder or behaviour (clause 73(4)). Unlike the closure notice, a closure order can prohibit access to anyone, including the landlord, owner or habitual residents (clause 73(6)).

162. The court can decide to allow a short-term closure notice to continue during a period of adjournment – but not for more than 14 days (clause 74). This could allow the person issued with the closure notice time to show that the order should not have been made, without increasing the risk of anti-social behaviour to those in the immediate vicinity of the premises.

163. Before the closure order expires, the police or local authority could apply to the magistrates' court for an extension of the order if this were deemed necessary. The order can be extended for up to three months and the maximum period a closure order could last for overall would be six months (clause 75(7) and (8)). Clause 76 allows the person who has been issued with a closure order to request a discharge at any time. This discharge hearing would take place in the magistrates' court.

164. If the individual believes that the closure order was issued incorrectly, they can appeal to the Crown Court (clause 77). This appeal must be made within 21 days of the original court order (clause 77(5)).

*These notes refer to the Anti-social Behaviour, Crime and Policing Bill as introduced in the House of Commons on 9 May 2013 [Bill 7]*

165. For the duration of the closure order, authorised persons can enter the premises to carry out essential maintenance (clause 78). This would allow access, for example, to service a boiler or fix a leak. A power of entry is provided to enable this. The body managing the closure can also make a claim for reimbursement of costs as a result of such work (clause 81) and their officers are exempt from liability should there be unavoidable damage as a result of the activity (clause 82). Clause 83 allows for a compensation claim for financial loss associated with an order. However, compensation would not be available to those associated with the behaviour on the premises that caused the closure (clause 83(5)).

166. Breach of the notice or the order, without reasonable excuse, would be a criminal offence (clause 79). On summary conviction, a person would be liable to an unlimited fine and/or up to three months imprisonment if in breach of a notice and up to 6 months imprisonment if in breach of an order (or 51 weeks following the commencement of section 281(5) of the Criminal Justice Act 2003). Organisations and businesses would be subject to an unlimited fine. A person guilty of obstructing an officer in the process of closing a property also commits an offence and is liable to a fine and/or up to three months imprisonment.

## **Part 5: Recovery of possession of dwelling-houses: anti-social behaviour grounds**

### **Clause 86: New ground for serious offences or breach of requirements etc**

167. Under the provisions of the Housing Act 1985 (“the 1985 Act”) the county court may only make an order for possession of a secure tenancy if it considers it reasonable to do so and/or suitable alternative accommodation is available and one of the grounds in Schedule 2 to that Act is met. Under ground 2 of Schedule 2 to that Act, the court may grant possession for anti-social behaviour if it considers it reasonable to do so.

168. This clause introduces a new absolute ground for possession of a dwelling that is the subject of a secure tenancy (in general, most secure tenants are local authority tenants although other social landlords, such as private registered providers of social housing (“PRPs”) in England and registered social landlords (“RSLs”) in Wales may have secure tenants). This new ground is an addition to the existing discretionary grounds for possession in Schedule 2 to the 1985 Act.

169. *Subsection (1)* inserts a new section 84A into the 1985 Act which provides that the court will be required to grant possession if any one of five conditions is met, the notice requirements have been met, and, where relevant, the review procedures have been followed. (New section 84A(1) clarifies that this is subject to any available defence based upon the tenant’s Convention rights, within the meaning of the Human Rights Act 1998. This is a statement of the law as established by *Manchester City Council v Pinnock* [2010] UKSC 45, which held that tenants of public authorities have the right to raise proportionality as a defence to possession proceedings.)

170. The five conditions in new section 84A relate to anti-social behaviour by the tenant, a member of the tenant’s household or a visitor to the property.

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171. Condition 1, 2 or 3 will be met if the tenant, a member of the tenant's household or a person visiting the property has been:

- a. convicted of a serious offence (which is one of the offences set out in new Schedule 2A to the 1985 Act as inserted by *subsection (2)* of clause 86 and Schedule 3 to the Bill);
- b. found by a court to have breached an injunction to prevent nuisance and annoyance obtained under clause 1 of the Bill; or
- c. convicted for breach of a criminal behaviour order obtained under clause 21 of the Bill.

172. The offence or anti-social conduct must have been committed in the dwelling-house or in the locality of the dwelling-house, affected a person with a right to live in the locality of the dwelling-house or affected the landlord or a person connected with the landlord's housing management functions.

173. Condition 4 will be met if the tenant's property has been closed under a closure order obtained under clause 73 of the Bill as a result of anti-social behaviour in or near the property and the total period of closure (under the order or under a preceding closure notice) was more than 48 hours.

174. Condition 5 will be met if the tenant, a member of the tenant's household or a person visiting the property has been convicted for breach of a notice or order to abate noise in relation to the tenant's property under the Environmental Protection Act 1990.

175. New section 84A(10) and (11) confers power on the Secretary of State in relation to England and the Welsh Ministers in relation to Wales to amend new Schedule 2A to the 1985 Act by order (subject to the negative resolution procedure) by adding an indictable offence or removing an offence.

**Clause 87: Notice requirements for new ground**

176. This clause inserts a new section 83ZA into the 1985 Act which sets out the notice requirements where a landlord of a secure tenant wishes to seek possession for anti-social behaviour on the absolute ground or the absolute ground alongside one or more of the discretionary grounds. The new section prescribes the minimum notice that the landlord must give to a tenant and the time limits in which possession proceedings must begin. In the notice, landlords must also give the reason for applying for possession and the condition, or conditions, on which they propose to rely and let the tenants know where and how they can seek advice. Landlords whose tenants have a statutory right to request a review of the decision must also inform their tenants about this right.

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177. New section 83ZA also sets out the time limits within which a notice must be served following a conviction, finding of the court, closure of premises, or the conclusion of any appeal process.

**Clause 88: Review requirements for new ground**

178. This clause, which inserts a new section 85ZA into the 1985 Act, provides secure tenants of local housing authorities and housing action trusts with a right to request a review of the landlord's decision to seek possession on the absolute ground. The landlord must review the decision, if the tenant requests it. New section 85ZA specifies how requests should be made, the time limits that apply to the review procedure and how the outcome of the review should be communicated to the tenant.

179. New sections 85ZA(7) and (8) confer a power on the Secretary of State in relation to England and the Welsh Ministers in relation to Wales to make regulations (subject to the negative resolution procedure) setting out the procedure for carrying out such reviews.

**Clause 89: Corresponding new ground and notice requirements for assured tenancies**

180. Most tenants in the private sector and most tenants of PRPs and RSLs have assured tenancies. With assured tenancies, the court must grant the landlord possession if a ground in Part 1 of Schedule 2 to the Housing Act 1988 ("the Housing Act") is met and may grant possession if one of the grounds in Part 2 of Schedule 2 to that Act is met and it is reasonable to grant possession. Under ground 14 of Schedule 2, the court may grant possession on the grounds of anti-social behaviour if it considers it reasonable to do so.

181. Clause 89 inserts a new ground for possession of a dwelling that is the subject of an assured tenancy into Part 1 of Schedule 2 to the Housing Act.

182. *Subsection (1)* amends Schedule 2 to the Housing Act so that the court will be required to grant possession under the new ground (ground 7A) if any of one of the five conditions in that ground, which are identical to those in the new section 84A of the 1985 Act (as inserted by clause 86), is met

183. Section 7(3) of the Housing Act, as amended by paragraph 18 of Schedule 7 to the Bill, clarifies that the grounds in Part 1 of Schedule 2 to that Act (including new ground 7A) are subject to any available defence based upon the tenant's Convention rights. Since this reflects the position already, following the judgments in *Manchester City Council v Pinnock* [2010] UKSC 45 and *London Borough of Hounslow v Powell* [2011] UKSC 8 (where the court found that landlords who are public authorities must consider the proportionality of their decisions), this amendment is merely clarificatory and has no substantive legal effect.

184. *Subsection (2)* amends section 8 of the Housing Act to modify the notice requirements for possession under assured tenancies to take account of the new ground 7A. It sets the time limits within which notices under ground 7A must be served.

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**Clause 90: Conduct causing nuisance to landlords etc**

185. This clause amends the existing discretionary grounds for possession for anti-social behaviour (ground 2 in Schedule 2 to the 1985 Act and ground 14 in Schedule 2 to the Housing Act) so that they also apply where anti-social behaviour occurs outside the locality of the dwelling-house. The amendments allow a landlord to apply for possession of a secure or assured tenant's property where the tenant or a person living in or visiting the tenant's property has been guilty of conduct that is likely to cause nuisance or annoyance to the landlord, or a person employed in connection with the exercise of the landlord's housing management functions.

**Clause 91: Offences connected with riot**

186. This clause adds a new discretionary ground for possession into Schedule 2 to the 1985 Act (*subsection (1)*) and Schedule 2 to the 1988 Housing (*subsection (2)*) so that a landlord can apply for possession of a secure or assured tenant's property where the tenant or a person living in the tenant's property has been convicted of an offence committed at the scene of a riot which took place anywhere in the UK. This clause applies only to dwelling houses in England.

**Clause 92: Restrictions where new possession proceedings in progress etc**

187. *Subsection (1)* amends section 138 of the 1985 Act so that, as with the existing ground for possession for anti-social behaviour, if proceedings on the absolute or the new discretionary ground of possession for anti-social behaviour are pending before any court, the landlord has no duty to convey the freehold or grant a lease to a tenant who has applied to exercise the right to buy.

188. The amendments made by clause 92 will also mean that a landlord may also refuse to allow a tenant to take part in mutual exchange under the 1985 Act (which applies to secure tenants) (*subsection (2)*) or a transfer of tenancy under the Localism Act 2011 (which applies to certain secure and assured tenants) (*subsection (3)*). Landlords may already withhold consent where possession is being sought on the existing discretionary ground for anti-social behaviour.

**Part 6: Local involvement and accountability**

**Clause 93: The community remedy document**

189. Clauses 93 to 95 provide for the victim of low-level crime or anti-social behaviour to have a say in the determination of the punishment imposed on or actions required of the offender where he or she is dealt with by way of an out-of-court disposal. Clause 93 requires the local policing body, namely the Police and Crime Commissioner or, in London, the Mayor's Office for Policing and Crime and the Common Council of the City of London, to prepare a "community remedy document" (*subsection (1)*).

190. *Subsection (2)* defines a community remedy document as a list of actions that might be carried out by an offender or a perpetrator of anti-social behaviour as a sanction without going to court. The local policing body must ensure that the actions in the community remedy document



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are reasonable and proportionate. The community remedy document could include actions such as paying compensation to the victim, making good any damage caused or mediation to resolve a dispute.

191. *Subsection (3)* requires the local policing body to consult with the chief officer of police for the area, community representatives and the public when preparing the community remedy document. This might include consulting with local faith leaders or leaders of community groups, holding public meetings, or putting up notices in prominent places within the community.

192. *Subsection (5)* requires the local policing body to publish the community remedy document in whatever way is considered appropriate which might be, for example, on its and the police force's website.

#### **Clause 94: Anti-social behaviour etc: out of court disposals**

193. *Subsection (1)* ensures that the community remedy can only be used where a constable (or other person listed under *subsection (2)*) thinks there is enough evidence to apply for an injunction to prevent nuisance and annoyance under clause 1 of the Bill or to take other court proceedings and when it is not considered that a conditional caution would be appropriate (see clause 95 where a conditional caution is considered appropriate).

194. Before determining the appropriate action to require of the perpetrator, the constable or other relevant person must make reasonable efforts to ascertain the views of the victim or victims who will be able to indicate which of the actions listed in the community remedy document they consider appropriate in that case (*subsection (3)*). There is no requirement on the victim or victims to express a view if he or she does not wish to do so. *Subsection (4)* provides that where the victim has expressed a view as to the appropriate action there is a presumption that the constable (or other person) would invite the perpetrator to carry out that action unless the action was considered by the constable (or other person) to be inappropriate. For example, where it would be unreasonable to ask an offender to carry out an action that was incompatible with their disability. However, if the perpetrator did not agree to the sanction, this could lead to more formal sanctions.

#### **Clause 95: Criminal behaviour: conditional cautions**

195. *Subsections (1) and (2)* insert new section 23ZA into the Criminal Justice Act 2003 (which provides for conditional cautions) and new section 66BA into the Crime and Disorder Act 1998 (section 66A of which provides for youth conditional cautions) respectively. A conditional caution is available for any offence although for adults some offences including domestic violence or hate crime are excluded from being offered a conditional caution. New section 23ZA of the Criminal Justice Act 2003 and new section 66BA of the Crime and Disorder Act 1998 make equivalent provision in respect of conditional cautions and youth conditional cautions as clause 94 does in respect of other out-of-court disposals.

#### **Clause 96: Review of response to complaints**

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196. This clause provides for the community trigger. The community trigger is a mechanism for victims of persistent anti-social behaviour to request that relevant bodies undertake a case review. A case review would entail the relevant bodies sharing information in relation to the case, discussing what action has previously been taken, and collectively deciding whether any further action could be taken. Relevant bodies are set out in clause 97 and include local authorities, the police, health providers and providers of social housing. Any individual, community or business can make an application for a case review, and the relevant bodies must carry out a case review if the threshold is met. The threshold will be set by the relevant bodies and could, for example, be three reports of separate incidents of anti-social behaviour in a six month period, where there has not been an adequate response to that behaviour. The threshold may also be set with reference to the persistence of the behaviour, the potential for harm to the victim, and the adequacy of response from agencies. *Subsection (4)* provides that the threshold should be set no higher than three complaints, but agencies may choose to set a lower threshold. *Subsection (11)* defines a “qualifying complaint” as one which is made within one month of the incident occurring and that the application for the case review should be made within six months of the original complaint. The community trigger is intended as a backstop safety net for the victims of anti-social behaviour who consider that there has not been an appropriate response to their complaints about such behaviour.

197. The relevant bodies in each local government area must make and publish arrangements for review procedures (*Subsection (2)*). *Paragraph 8* of Schedule 4 allows for joint arrangements to be made for a larger area such as the police force area. The procedures must include the point of contact for making applications and ensure that applications are passed to all the relevant bodies in the area. The bodies carrying out the review must inform the applicant of their decision on whether or not the threshold for review is met, the outcome of the review and any recommendations made as a result of the review (*Subsections (6) to (8)*). The bodies carrying out the review may make recommendations to a person who carries out public functions, including any of the bodies that have taken part in the community trigger review, and the person must have regard to the recommendations.

198. *Subsection (9)* requires relevant bodies to publish information about the number of community trigger applications they receive, the number of times the threshold was not met, the number of case reviews carried out and the number of reviews that resulted in further action.

#### **Schedule 4: ASB case reviews: supplementary provision**

199. Schedule 4 makes additional provisions for the community trigger. The review procedures must include:

- a. what happens when the applicant is dissatisfied with the way their application was dealt with or the review carried out (*paragraph 3*);
- b. an assessment of the effectiveness of the procedures and revising them (*paragraph 4*).

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200. In making and revising the procedures, the relevant bodies must consult the PCC (or Mayor's Office for Policing and Crime or Common Council of the City of London), and the appropriate local providers of social housing (*paragraphs 1 and 2*).

201. *Paragraph 7* sets out the information sharing requirements. The relevant bodies may request any person to disclose information in order to carry out the case review. If the information relates to a public function, agencies must comply with the request for information unless it contravenes the Data Protection Act 1998 or Part 1 of the Regulation of Investigatory Powers Act 2000.

202. Part 2 of the Schedule sets out arrangements for co-opting local providers of social housing to be included among the relevant bodies. In practice this may mean that larger housing providers play a regular part in community trigger case reviews in their area, and in setting up the procedure; whereas smaller housing providers would be consulted on the procedures and be involved in community triggers which relate to their tenants. The providers of social housing must co-operate with the relevant bodies for the purpose of the case reviews.

#### **Clause 97: ASB case reviews: interpretations**

203. This clause defines terms used in clause 96 and Schedule 4.

### **Part 7: Dangerous Dogs**

#### **Clause 98: Keeping dogs under proper control**

204. This clause amends the Dangerous Dogs Act 1991 ("the 1991 Act").

205. *Subsection (2)(a)(i)* amends section 3 of the 1991 Act so as to extend the current offence of having a dog that is dangerously out of control in a public place, or a private place where the dog is not permitted to be, to all places including private property.

206. *Subsection (2)(b)*, which inserts subsections (1A) and (1B) into section 3 of the 1991 Act, creates an exemption for "householder cases". These are cases where a dog becomes dangerously out of control when a trespasser is inside, or is in the process of entering, a building that is a place where a person lives. It does not matter whether the person actually was a trespasser; if the owner is in the building when the dog becomes out of control and believes that the person is a trespasser, that is sufficient. "Trespasser" takes its common law meaning, as someone trespassing against the occupier of the land. Whether a building is a "dwelling" is a question of fact that will be determined by the court in each case.

207. The provisions of section 76(8B) to (8F) of the Criminal Justice and Immigration Act 2008, as inserted by section 43 of the Crime and Courts Act 2013, define the meaning of a "householder case" where a court is considering whether the level of force used by a defendant who claims to have acted in self defence was reasonable in the circumstances as he or she believed

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them to be. Subsection (8B) ensures that people who live in buildings which serve a dual purpose as a place of residence and a place of work (for example, a shopkeeper and his or her family who live above the shop) can rely on the defence regardless of which part of the building they were in when they were confronted by an intruder, providing that there is internal means of access between the two parts of the building. Subsection (8C) creates a similar provision for the armed forces whose living or sleeping accommodation may be in the building they work in and where there is internal access between the two parts.

208. *Subsection (2)(c)* repeals section 3(3) of the 1991 Act which differentiates between private places where the dog has a right to be and private places where the dog does not have a right to be. This provision is no longer required as all places, regardless of whether they are public or private, will now be covered by the offence. *Subsections (2)(d) to (4)* make other amendments to the 1991 Act consequential upon the repeal of section 3(3).

209. *Subsection (5)* extends the rights of enforcement officers (for example, a local authority dog warden) to seize dogs from both public and private places if it appears to such an officer that the dog is dangerously out of control.

210. *Subsections (6) and (2)(a)(ii)* together make it an offence under section 3 for a dog to be dangerously out of control when there are grounds for reasonable apprehension that it will injure any assistance dog, whether or not it actually does so. Where an out of control dog injures an assistance dog, an aggravated offence will be committed under section 3, thereby attaching the high maximum penalty for an aggravated offence provided for in section 3(4) (namely, a sentence of imprisonment of two years or an unlimited fine following a conviction on indictment). *Subsection (6)* applies the definition of an assistance dog in section 173(1) of the Equality Act 2010, that is a dog which has been trained to provide assistance to a deaf or blind person or certain other specified categories of person with a disability.

#### **Clause 99: Whether a dog is a danger to public safety**

211. This clause amends the 1991 Act in relation to the test which the court must consider when assessing whether a dog is dangerous and therefore liable to be destroyed.

212. The amendments clarify the requirement that a court must consider the character of the owner or keeper, as well as the temperament of the dog and its past behaviour along with any other relevant circumstances when deciding whether the dog poses a danger to public safety. If the court decides that the dog would pose a danger to public safety, this constitutes a reason for making an order for destruction as opposed to a contingent destruction order.

213. *Subsection (2)* inserts a new subsection (6A) into section 1 of the 1991 Act so as to enable the Secretary of State, when making a scheme under subsections (5) and (6) of that section<sup>36</sup>, to include provision requiring a court to make an assessment of suitability as part of the

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<sup>36</sup> The current scheme was enacted under the Dangerous Dogs Compensation and Exemption Scheme Order 1991 <http://www.legislation.gov.uk/ukxi/1991/1744/contents/made>

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process of deciding whether a person should be entitled to keep a section 1 dog (namely a dog of the type known as a Pit Bull Terrier, Japanese Tosa, *Dogo Argentino* or *Fila Brasileiro*).

214. *Subsection (3)* amends section 4 of the 1991 Act (which enables a court to order the destruction of a dangerous dog where a person has been convicted of an offence under sections 1 or 3 or of an offence under an order made under section 2) so as to require the court, in making an assessment of dangerousness under that section, to assess the character of the owner as well as the temperament of the dog, its past behaviour and any other relevant circumstances in order to decide whether to make a contingent destruction order under section 4A of the 1991 Act.

215. *Subsection (4)* requires the same test of danger to public safety to apply when the court considers the need for a destruction order under section 4B of the 1991 Act (destruction orders otherwise than on a conviction). It also amends section 4B to enable civil proceedings to be brought in respect of dogs seized under any enactment.

## **Part 8: Firearms**

### **Clause 100: New offence of possessing firearm for supply etc**

216. *Subsections (2) and (3)* amend section 5 of the Firearms Act 1968, subsections (1) and (1A) of which makes it an offence to possess, purchase, acquire, manufacture, sell or transfer, without the authority of the Secretary of State or Scottish Ministers in Scotland, firearms or ammunition of particular types (such as handguns, sub-machine guns and assault rifles). The offence attracts a maximum sentence of 10 years. Subsections (2) and (3) separate the existing section 5(1) and 5(1A) offences into two component parts. One component part covers simple possession, purchase or acquisition of an unauthorised firearm or ammunition, which will carry the existing maximum penalty of 10 years. The other component part covers the manufacture, sale or transfer, or purchasing or acquiring for sale or transfer of an unauthorised firearm or ammunition, which will carry a maximum penalty of life imprisonment (see new section 5(2A)(a), (b) and (d) of the Firearms Act inserted by subsection (3) of the clause). In addition, new section 5(2A)(c) of the Firearms Act creates a new offence of possession for sale or transfer of an unauthorised firearm or ammunition, which will similarly carry a maximum penalty of life imprisonment (as provided for by the amendment to Part 1 of Schedule 6 to the Firearms Act made by *subsection (6)*).

217. *Subsection (4)* amends section 51A of the Firearms Act so that the offences in new section 5(2A) of that Act attract the mandatory minimum sentences provided for in that section, namely five years imprisonment in the case of an offender aged 18 years or over when he or she committed the offence (21 years or over in Scotland) or three years imprisonment in the case of an offender under 18 years (21 years in Scotland).

### **Clause 101: Increased penalty for improper importation of firearms etc**

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218. *Subsections (2) and (3)* amend section 50 of the Customs and Excise Management Act 1979 (“the 1979 Act”). Section 50 of that Act makes it an offence to import prohibited goods. The importation of firearms is restricted under the Import of Goods (Control) Order 1954 (SI 1954/23), made under section 1 of the Import, Export and Customs Powers (Defence) Act 1939. This prohibits importation other than in accordance with a licence issued by the Department for Business, Innovation and Skills. The maximum penalty for an offence under section 50 is normally seven years, but where it relates to prohibited firearms and certain other specified goods (including counterfeit currency notes and coins) it is 10 years. The amendments to section 50 increase the maximum penalty for the unlawful importation of firearms prohibited under section 5 of the Firearms Act 1968 from 10 years to life imprisonment. Subsection (3) makes consequential amendments to section 50 in order to preserve the existing maximum penalty of 10 years for the improper importation of counterfeit currency notes and coins.

219. *Subsections (4) and (5)* make similar amendments to section 170 of the 1979 Act. Section 170 of that Act makes it an offence knowingly to acquire possession of goods or knowingly to be concerned in carrying, removing, depositing, harbouring, keeping or concealing goods where the importation of the goods is restricted or prohibited under any enactment, and there is an intention to evade the restriction or prohibition. It is also an offence to be knowingly concerned in the fraudulent evasion of the restriction or prohibition on the importation of such goods. It is usual practice to deal with smuggling of prohibited goods by charging an offence under section 170, even when the conduct falls within the specific importation offence in section 50. The effect of the amendments to section 170 is that the maximum penalty for the importation of firearms prohibited under section 5 of the Firearms Act 1968 will be increased from 10 years to life imprisonment.

220. *Subsections (6) and (7)* make similar amendments to section 68 of the 1979 Act. Section 68 of that Act makes it an offence for a person to be knowingly concerned in the exportation of any goods with the intent to evade the prohibition or restriction on their exportation. The effect of the amendments to section 68 is that the maximum penalty for exportation of firearms prohibited under section 5 of the Firearms Act 1968 will be increased from 10 years to life imprisonment.

**Clause 102: British Transport Police: Crown status under Firearms Act 1968**

221. *Subsection (1)* amends section 54(3) of the Firearms Act 1968 which identifies those persons deemed to be in the service of the Crown, and for which the provisions of the Act relating to the possession, purchase or acquisition of firearms are modified, to include a member of the British Transport Police Force or a person employed by the British Transport Police Authority who is under the direction and control of the Chief Constable of the British Transport Police Force. The effect of bringing British Transport Police officers and employees of the British Transport Police Authority under the control of the Chief Constable of British Transport Police, within the definition of a Crown servant is that such officers and employees are no longer required to obtain certificates for firearms under the 1968 Act in connection with the exercise of their duties. Consequent on that amendment, *subsection (2)* repeals subsections (3A) and (3B) of section 54 which currently provide a limited modification to those provisions relating to weapons

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of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing.

## **Part 9: Forced marriage**

### **Clause 103: Offence of breaching of a forced marriage protection order**

222. Part 4A of the Family Law Act 1996 empowers a court to make an order for the purpose of protecting: a person from being forced into a marriage or from any attempt to be forced into a marriage; or a person who has been forced into a marriage. A forced marriage protection order may contain such prohibitions, restrictions or requirements and any other such terms as the court considers appropriate for the purposes of the order. Currently, a breach of such an order is punishable only as a civil contempt of court. Speedy enforcement depends on whether the court attaches a power of arrest to the order. If no power of arrest is attached, the victim has to go to the civil court to get an arrest warrant.

223. *Subsection (2)* inserts into Part 4A of the Family Law Act 1996 a new section 63CA which makes breach of a forced marriage protection order a criminal offence with a maximum penalty of 5 years' imprisonment. This means that the police will always be able to arrest for breach of a forced marriage protection order, without the need for the courts to attach a power of arrest, or for the victim to apply to the civil court for an arrest warrant. Under new section 63CA(2), an individual would only be guilty of a criminal offence if aware of the existence of the order at the time of the breach. For a victim who does not want to pursue criminal proceedings, the option will still remain of applying for an arrest warrant for breach of a forced marriage protection order in the civil court.

224. Subsections (3) and (4) of the new section 63CA make provision to preclude double jeopardy so that where a person has been convicted of a breach of a forced marriage protection order, that person cannot be punished subsequently for contempt in relation to the same conduct, and vice versa.

225. *Subsections (3) to (8)* make provision which is consequential on the insertion into the Family Law Act 1996 of new section 63CA. Subsection (3) amends section 63E of that Act to enable the court, as an alternative to making a forced marriage protection order, to accept an undertaking (a promise given to the court to do or not to do certain things) from the respondent. But a court may not accept an undertaking where it appears to the court that the respondent has used or threatened violence against the person to be protected and it is necessary for that person's protection to make the order so that breach may be punishable as an offence.

226. *Subsection (4)* amends section 63J(2), which refers to "the order", to make it clear that it is a forced marriage protection order that is being referred to.

*These notes refer to the Anti-social Behaviour, Crime and Policing Bill as introduced in the House of Commons on 9 May 2013 [Bill 7]*

227. *Subsection (5)* repeals various provisions which relate to the attachment of a power of arrest to a forced marriage protection and to arrest pursuant to such a power. Those provisions are no longer required because, as with non-molestation orders when the offence of breach of the order was introduced, the respondent may be arrested for breach without the need for a power of arrest to be attached to the order.

228. *Subsection (6)* makes transitional provision, so that the changes only apply in relation to conduct occurring on or after the day on which the clause comes into force. Pre-commencement breach of a forced marriage protection will accordingly not retrospectively be made an offence; but post-commencement breach of a forced marriage protection order will be an offence.

#### **Clause 104: Offence of a forced marriage**

229. The new offence of forced marriage catches a person who intentionally forces a person to enter into marriage, believing the person does not consent, or a person who deceives someone into going abroad for the specific purpose of forcing them to marry. An offence is committed whether or not the forced marriage goes ahead.

230. *Subsection (1)* makes it a criminal offence for a person to use violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage without their free and full consent.

231. *Subsection (2)* additionally captures as a criminal offence, if a person practices any form of deception with the intention of causing another person to leave the United Kingdom (UK) to travel to another country and intends the other person to be subjected to conduct that is an offence under subsection (1) or would be an offence if the victim were in England and Wales.

232. *Subsections (3)* provides that marriage means any religious or civil ceremony of marriage recognised by the customs of the parties to it, or the laws of any country in which it is carried out, as constituting a binding agreement, whether or not it would be a legally binding according to the law of England and Wales.

233. *Subsection (4)* provides that an offence is committed whether the violence, threats or other forms of coercion are directed at the victim of a forced marriage or another person.

234. *Subsection (5) and (6)* make provision to take extra-territorial jurisdiction over both the forcing and deception elements of the new offence. Any of the prohibited acts in subsections (1) and (2) done outside the UK by a UK national or permanent UK resident, or to a UK national or permanent UK resident, will be an offence under domestic law and triable in the courts of England and Wales. The effect of subsection (5)(b) is that it will also be an offence under domestic law if the prohibited acts in subsection (1) or (2) are conducted by or against a person habitually resident in England and Wales, but take place in Scotland or Northern Ireland.



*These notes refer to the Anti-social Behaviour, Crime and Policing Bill as introduced in the House of Commons on 9 May 2013 [Bill 7]*

235. *Subsections (7) and (8)* set out that the maximum penalties for the new offences in subsections (1) and (2). On summary conviction the maximum penalty is a fine or six months imprisonment (rising to 12 months once the increase in magistrates' courts sentencing powers in section 154(1) of the Criminal Justice Act 2003 is commenced), or both and on conviction on indictment the maximum penalty is seven years imprisonment.

## **Part 10: Policing etc**

### **College of Policing**

#### **Clause 105: Regulations to be prepared or approved by the College**

236. *Subsection (1)* inserts new subsections (2ZA) and (2ZB) into section 50 of the 1996 Act. Section 50 of the 1996 Act confers on the Home Secretary the power to make regulations (subject to the negative resolution procedure) regarding the government, administration and conditions of service of members of police forces. Subsection (2)(a), (b), (c) and (g) of that section, read with subsection (1), gives the Home Secretary the power to make regulations regarding the ranks held by members of police forces (that is police officers), the qualifications for appointment and promotion of members of police forces, the periods spent on probation and the maintenance of personal records of members of police forces. New section 50(2ZA) and (2ZB) give responsibility for determining such matters to the College of Policing. The power to make regulations on such matters would continue to reside with the Home Secretary, but in future decisions as to the content will rest with the College. New section 50(2ZA) sets out the circumstances in which the Home Secretary is able to decline to make police regulations proposed by the College. The power to decline to make regulations on the grounds that "it would for some other reason be wrong to do so" (in new section 50(2ZA)(c)) should be read as covering similar kinds of things to those covered by new section 50(2ZA)(a) and (b). This limb could be used to cover a case where it would not be unlawful to make the regulations in the terms proposed by the College but it would be undesirable to do so because, for example, the drafting was obscure or defective.

237. *Subsection (2)* inserts new subsections (2ZA), (2ZB) and (2ZC)) into section 51 of the 1996 Act. Section 51 of that Act gives the Home Secretary the power to make regulations (subject to the negative resolution procedure) regarding the government, administration and conditions of service of special constables. The new subsections give the College of Policing responsibility for determining the same list of matters in respect of special constables as it will have under section 50 of the 1996 Act in respect of members of police forces. Again responsibility for making regulations under section 51 will continue to reside with the Home Secretary but responsibility for the content of those regulations insofar as it relates to matters specified in new section 51(2ZA) will rest with the College. New section 51(2ZB) sets out the circumstances in which the Home Secretary is able to decline to make police regulations proposed by the College.

238. *Subsection (3)(a)* inserts new subsections (1A) and (1B) into section 53A of the 1996 Act. Section 53A of that Act gives the Home Secretary the power to make regulations (the first

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exercise of the power is subject to the affirmative resolution procedure, with any subsequent regulations being subject to the negative resolution procedure) requiring all police forces in England and Wales to adopt particular practices or procedures. New subsections (1A) and (1B) give the responsibility for determining the content of those regulations to the College of Policing. Responsibility for making regulations under section 53A will continue to reside with the Home Secretary. New section 53A(1A) set out the circumstances in which the Home Secretary is able to decline to make police regulations proposed by the College.

239. *Subsection (3)(b)* repeals provisions in section 53A of the Police Act 1996 concerning the preparation of, and consultation on, regulations about police practices and procedures. These provisions are no longer necessary in light of the role of the College of Policing, as set out in new section 53A(1A) and (1B).

240. *Subsection (4)* amends section 63 of the Police Act 1996. Section 63 requires the Home Secretary, prior to making regulations under section 50 or 51, to consult the Police Advisory Board for England and Wales (“the PABEW”) on changes she intends to make to police regulations. In consulting the PABEW, the Home Secretary must provide a draft copy of those regulations. Subsection (3) removes that requirement in respect of those regulations made under the new section 50(2ZB).

241. *Subsection (5)* amends section 97 of the Criminal Justice and Police Act 2001 (“the 2001 Act”). Section 97(1) of the 2001 Act gives the Home Secretary the power to make regulations (subject to the negative resolution procedure) regarding police training, and the qualifications for deployment to perform particular tasks of individuals serving or employed for policing purposes in England and Wales. Subsection (5)(a) inserts new subsections (1A) and (1B) into section 97 which confers responsibility for determining the content of such regulations to the College of Policing. Responsibility for making regulations under section 97 will continue to reside with the Home Secretary. New section 97(1A) sets out the circumstances in which the Home Secretary is able to decline to make police regulations proposed by the College.

#### **Clause 106: Codes of Practice issued by the College**

242. This clause amends section 39A of the 1996 Act. Section 39A of the 1996 Act gives the Home Secretary the power to issue Codes of Practice relating to the way in which chief constables discharge their functions. Using the powers given to her under section 39A, the Home Secretary has issued Codes of Practice on the following issues: police use of firearms and less lethal weapons; national intelligence model; management of police information; serious crime analysis section; collecting and sharing data on missing persons with public authorities; and management of police pursuits.

243. *Subsection (2)* substitutes a new subsection (1) of section 39A so as to provide that the College of Policing, rather than the Home Secretary, may issue such Codes of Practice but subject to the Home Secretary’s approval. New section 39A(1) also broadens the circumstances in which a Code of Practice under this section may be issued. At present, the Home Secretary may only issue

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a Code of Practice if she considers it necessary to do so for the purpose of promoting the efficiency and effectiveness of police forces. Under the new section 39A(1) the College may issue a Code of Practice if one of three tests are satisfied, namely that it considers it necessary to do so in order to improve the efficiency and effectiveness of the police, to facilitate joint or co-ordinated activity by two or more police forces, or if the College otherwise considers that it would be in the national interest for it to issue a Code of Practice.

244. *Subsections (3) to (5)* makes consequential and supplementary amendments to: section 39A(2), to confer power on the College to revise in whole or in part a Code of Practice; section 39A(4), to require the College to consult with the National Crime Agency prior to issuing a Code of Practice; and section 39A(5) to maintain the requirement for the Home Secretary to lay Codes of Practice before Parliament, even though they will be issued by the College.

#### **Clause 107 Guidance by the College about employment etc of civilian staff**

245. This clause inserts a new section 53E into the 1996 Act, which provides for the College of Policing to issue, revise and publish guidance with regard to the experience or qualifications of police civilian staff, the training they should undertake and the Human Resources practices and procedures to be adopted in relation to such staff. The new section applies to private sector staff providing services under contract, as well as employed staff.

246. New section 53E(5) imposes a duty on chief constables, Police and Crime Commissioners, the Mayor's Office of Policing and Crime in London and the Common Council for the City of London Police to have regard to any such guidance issued by the College under new section 53E.

#### **Clause 108: Power to give directions to the College**

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

#### **Clause 109: Appointment of senior officers as members of staff of the College**

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

#### **Clause 110: Disclosure of information to the College**

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

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### **Clause 111: The College and the IPCC**

250. This clause inserts a new section 26BA into Part 2 of the Police Reform Act 2002 (“the 2002 Act”) which requires the Independent Police Complaints Commission (“the IPCC”) and the College to enter into an agreement for the establishment of procedures for the handling of complaints against College staff that is akin to the procedures in Part 2 of that Act. Part 2 confers functions on the IPCC in respect of complaints about, or matters indicating, misconduct or death or serious injury involving persons serving with police forces in England and Wales. Such functions include the examination of police forces’ complaint handling procedures and undertaking, managing or supervising investigations into complaints or other matters. The purpose of these provisions is not simply to replicate Part 2 of the 2002 Act, because the arrangements will need to be tailored to the circumstances of the College, but they will ensure that the IPCC has oversight of the College in broadly the same way as it has in relation to the police. The intention is that such an agreement would only relate to those staff of the College who hold the office of constable.

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

#### **Clause 112: Abolition of Police Negotiating Board for the United Kingdom**

251. *Subsection (1)* abolishes the Police Negotiating Board (“PNB”) for the United Kingdom and *subsection (2)* repeals sections 61 and 62 of the Police Act 1996, which provided for the existence and constitution of the PNB and its functions in respect of police workforce regulations.

#### **Clause 113: Establishment of Police Remuneration Review Body**

252. *Subsection (1)* inserts a new Part 3A (comprising new sections 64A and 64B and new Schedule 4B) into the Police Act 1996 which provides for the “Police Remuneration Review Body” (“PRRB”). New section 64A(1) establishes the PRRB. New section 64A(2) sets out the composition of the PRRB; it is to comprise a chair appointed by the Prime Minister and five or more other members appointed by the Secretary of State, one of whom may be appointed by the Secretary of State as a deputy chair. New section 64A(3) requires the Prime Minister or Secretary of State to consult the Department of Justice in Northern Ireland before making an appointment to the PRRB. New section 64A(4) and (5) enables the Secretary of State to change the name of the PRRB by order subject to the negative resolution procedure.

253. New section 64B(1) requires the PRRB to consider and report on any matter which is referred to it by the Secretary of State that relates to hours of duty; leave; pay and allowances; and the issue, use and return of clothing, personal equipment and accoutrements of police officers of or below the rank of chief superintendent in England and Wales, or police cadets appointed under section 28 of the Police Act 1996. New section 64B(2) requires the PRRB to submit such reports to the Prime Minister and Secretary of State which the latter must then arrange to be published.

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254. New section 64B(3) and (4) make similar provision for Northern Ireland to new section 64B(1) and (2).

255. New section 64B(5) sets out the directions that the Secretary of State and/or the Northern Ireland Department of Justice may give to the PRRB. The PRRB can be directed to: report within a specified time period; have regard to particular considerations; obtain specific evidence such as data from police forces; and make recommendations on specific matters referred to it such as named allowances, for example the Northern Ireland Transitional Allowance. New section 64B(6) enables the PRRB to include in its report any recommendations it considers to be appropriate, which it considers to arise out of the matters referred to it under section 64B(5) regardless of whether or not it is directly given a direction to do so under new section 64B(5). New section 64B(7) enables the Secretary of State or Department of Justice to vary or revoke any references or directions to the PRRB.

256. *Subsection (2)* gives effect to Schedule 5 which inserts new Schedule 4B into the Police Act 1996.

**Schedule 5: Schedule to be inserted as Schedule 4B to the Police Act 1996**

257. Paragraphs 1 to 11 of new Schedule 4B make further provision for: the membership of the PRRB; for the appointment, resignation and dismissal of its members and for its procedures. Paragraph 12 enables the Secretary of State to give directions to the PRRB about the matters that it is to consider when making decisions. Such directions may, for example, require the PRRB to consider the Government's public sector pay policy or the impact of its recommendations on recruitment and retention.

258. Paragraph 13 of new Schedule 4B sets out the persons and bodies the Secretary of State must consult before making or revising a determination about the number of members or the kinds of experience the members of the PRRB should possess (under paragraph 2); issuing or revising a statement of principles relating to the conduct of members (issued under paragraph 4); giving or revising a direction as to the persons or bodies from whom it should gather evidence; the procedure for obtaining evidence; or the matters it should consider when making recommendations.

259. Paragraph 14 of new Schedule 4B requires the Secretary of State to publish statements of determinations (and revised determinations); statements of principles (and revised statements) and directions (and revised directions) issued in relation to paragraphs 2, 4, 11(2) or 12 as the case may be.

260. Paragraph 15 of new Schedule 4B enables the Secretary of State and Department of Justice in Northern Ireland to defray the costs of the PRRB.

**Clause 114: Consultation about regulations: England and Wales**

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261. *Subsection (1)* inserts new section 52A into the Police Act 1996. New section 52A(1) and (2) requires the Secretary of State to refer matters relating to the hours of duty, leave, pay, allowances, and the issue, use and return of clothing, personal equipment and accoutrements of police officers of or below the rank of chief superintendent and police cadets in England and Wales to the PRRB for consideration under new section 64B(1) before making regulations under section 50 or 52 of the Police Act 1996, unless new section 52A(5) applies. New section 52A(2)(b) requires the Secretary of State to consider the PRRB's report on the matters referred.

262. New section 52A(3)(a) requires the Secretary of State to refer matters relating to the hours of duty; leave; pay; allowances; and the issue, use and return of clothing, personal equipment and accoutrements of police officers above the rank of chief superintendent in England and Wales to the Senior Salaries Review Body ("SSRB") before making regulations under section 50 or 52 of the Police Act 1996, unless new section 52A(4) or (5) apply. New section 52A(4) applies where the subject matter of the regulations being considered would affect police officers above the rank of chief superintendent as well as those at or below that rank and the Secretary of State considers it preferable for the matter to be considered by one review body; in such cases the matter must be referred to the PRRB to consider. For example, this provision might apply in a case where consideration is being given to introducing a new allowance payable to all ranks and it is sensible for the Secretary of State to obtain a single "strategic" view on the impact across the police.

263. New section 52A(5) sets out the circumstances in which the Secretary of State's duty to refer matters to the PRRB and/or to consider advice from the SSRB does not apply. If the Secretary of State considers that either there is not enough time refer the matter to the PRRB or SSRB before making regulations because the need is so urgent, or considers that it is unnecessary to refer the matter because of the nature of the proposed regulations, the duty does not apply. However, the default position is that the Secretary of State will not make regulations without first referring the matter to the PRRB or SSRB. The Secretary of State might, for example, consider that it is unnecessary to consult the PRRB or SSRB because the proposed changes to the regulations were of a minor or technical nature, or corrected some previous drafting error in the regulations, or it is proposed to use regulations to implement some uncontroversial benefit conferred on other workers by means of legislation that does not apply to police officers because they are not employees.

264. New section 52A(6) requires the Secretary of State to supply a draft of any proposed regulations to persons whom the Secretary of State considers to represent the interests of: the persons or bodies who between them maintain police forces; chief officers of police; members of police forces; and police cadets appointed under section 28 of the Police Act 1996, and consider any representations made by them before making regulations. This provision applies in all cases, even where the Secretary of State has not referred a matter to the PRRB or SSRB, as set out under new section 52A(5). The purpose is to ensure that in every case the Secretary of State has the benefit of the technical knowledge of these interested parties in arriving at a final version of the regulations.

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265. New section 52A(7) and (8) provides the Secretary of State with the power to amend by order (subject to the negative resolution procedure) the reference to the SSRB in new section (3)(a) and replace it, if the name or the functions of the SSRB changes.

266. *Subsection (2)* makes a consequential amendment to section 63 of the Police Act 1996 to ensure that, as now, there is no requirement on the Secretary of State to refer draft regulations relating to matters within the remit of the PRRB to the Police Advisory Board for England and Wales.

267. *Subsection (3)* amends section 1 of the Police Pensions Act 1976 by removing reference to the Police Negotiating Board in subsection (1) and replacing it with reference to the Police Advisory Board for England and Wales. This replaces the requirement for the Secretary of State to consult the PNB before making changes to police pensions regulations with a requirement to consult the Police Advisory Board for England and Wales. A new subsection (1A) is also inserted in section 1 of the Act, making provision for the Secretary of State also to invite the views of the Northern Ireland Policing Board and the Police Association of Northern Ireland. It is intended that in practical terms representatives of those bodies will join the PABEW for the purposes of the PABEW's consideration of police pension regulations, in order to promote consistency of approach as between England and Wales on the one hand and Northern Ireland on the other.

268. *Subsection (4)* inserts a new subsection (3) into section 52 of the Police Act 1996 the effect of which is to require the Secretary of state to consult the PABEW, and invite the views of the Northern Ireland Policing Board and Police Association of Northern Ireland, before making regulations about the pension arrangements for police cadets.

269. *Subsection (5)* amends Schedule 3 to the Police and Justice Act 2006 the effect of which is to require the Secretary of state to consult the PABEW, and invite the views of the Northern Ireland Policing Board and Police Association of Northern Ireland, before exercising the power to merge police pension schemes.

#### **Clause 115: Consultation about regulations: Northern Ireland**

270. *Subsection (1)* amends section 25 of the Police (Northern Ireland) Act 1998. That section confers power on the Northern Ireland Department of Justice to make regulations about the conditions of service of members of the Police Service of Northern Ireland. There is a requirement to consult the Northern Ireland Policing Board before making such regulations save where they relate to the duty, leave, pay, allowances, or pensions of police officers and the issue, use and return of equipment. The amendments maintain this saving, but require the Department of Justice to invite the views of the PABEW in relation to draft regulations in respect of police pension arrangements.

271. *Subsection (2)* inserts new section 25A into the Police (Northern Ireland) Act 1998 which makes similar provision about regulations governing the duty, leave, pay or equipment of

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members of the Police Service of Northern Ireland as new section 52A of the Police Act 1996 (as inserted by clause 116) does in relation to police officers in England and Wales. *Subsection (3)* amends section 41 of into the Police (Northern Ireland) Act 2000 to make like provision about regulations governing the hours, leave, pay or equipment of police trainees (the changes do not affect regulations made under section 41 in relation to police reserve trainees).

## **Independent Police Complaints Commission**

### **Clause 116: Application of IPCC provisions to contractors**

272. Part 2 of the Police Reform Act 2002 establishes the framework under which the IPCC operates to handle police complaints and misconduct. Section 12 of the Act sets out the complaints, matters and persons to which Part 2 of the 2002 Act applies. For the purposes of this section, individuals “serving with the police” fall within IPCC oversight.

273. Currently, only certain private sector contractors who are “designated” by a Chief Officer pursuant to section 39 of the Act (to carry out escort and detention functions) fall within Part 2 and therefore are subject to IPCC oversight. However, the police (whether chief officers or local policing bodies) increasingly enter into agreements with private sector contractors to carry out other types of functions, including the provision of staff to operate emergency call centres, provide front counter services (dealing with members of the public who call at police stations or offices) and provide business support services as required (for example, finance and procurement, human resources, facilities management). The anomaly is, however, that although they are providing services traditionally carried out by police officers and staff, such individuals and their employees fall outside IPCC oversight as they are not, for the purposes of the Act, defined as “serving with the police”.

274. To provide parity between private sector contractors in these roles and police officers and staff, and to reflect this increased contracting out of functions, this clause inserts a regulation-making power (subject to the negative resolution procedure) into section 12 of the 2002 Act, enabling the Secretary of State to provide for a contractor, sub-contractor or an employee of a contractor or sub-contractor to be treated as a person serving with the police. New section 12(10) defines a contractor as a person who contracts with a local policing body or a chief officer of police for the provision of services to the chief officer. The effect of this clause is that all contractors, sub-contractors and their employees of a class specified in regulations as providing services to the police will be required to cooperate with investigations by or under the auspices of the IPCC.

275. Where services provided by private sector contractors have no connection to what are essentially policing functions, and where it would serve no useful purpose for Part 2 to apply, the category of employee will be limited by regulations (section 105(4) of the 2002 Act enables regulations to make different provisions for different cases). The IPCC’s oversight will continue in relation to employees who are designated under section 39 of the 2002 Act and the provisions in



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that section about the process of designation will continue to apply. However, paragraph 59 of Schedule 7 provides for the repeal of sections 39(9) to (11) of the 2002 Act which will have the effect of avoiding the future possibility of creating a different complaints system for contracted out staff.

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

**Clause 117: Application to IPCC of provisions about investigation of offences**

277. This clause amends paragraph 19 of Schedule 3 to the 2002 Act which relates to those investigations carried out by the IPCC. Paragraph 19(6) already confers a power on the Secretary of State to make an order specifying the provisions in the Police and Criminal Evidence Act 1984 (“the 1984 Act”) relating to the investigation of criminal offences by police officers which will apply, subject to any specified modifications, to the investigation of offences by members of staff of the IPCC.

278. *Subsection (1)* amends paragraph 19(6) to extend the scope of this order-making power so that an order may also specify the provisions of the 1984 Act relating to the investigation of criminal offences by police officers and the provisions of a code of practice issued under sections 60 (tape-recording of interviews), 60A (visual recording of interviews) or 66 (Codes of practice) of that Act which will apply, subject to any specified modifications, to the investigation of offences by members of the IPCC’s staff.

279. *Subsection (2)* inserts new sub-paragraph (6A) into paragraph 19 of Schedule 3 to the 2002 Act. This enables the power conferred by sub-paragraph (6) to provide, in particular, that a member of the IPCC’s staff may exercise a power under the 1984 Act in respect of which authorisation would otherwise be required by a police officer of or above a particular rank if authorisation is given by a member of the IPCC’s staff of or above a specified grade.

280. An order is expected to be made in respect of a number of powers relating to entry and search of premises and the questioning of persons in the 1984 Act and the codes of practice issued under sections 60, 60A and 66 of the 1984 Act. For example, if the IPCC seeks authority to interview a suspect who wishes to have legal advice but has not yet received it pursuant to paragraph 6.6(b)(i)/(ii)/*Note 6A* of PACE Code C (Code of Practice for the detention, treatment and questioning of persons by police officers<sup>37</sup>), it must seek authorisation from a police officer

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<sup>37</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/117589/pace-code-c-2012.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117589/pace-code-c-2012.pdf)

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ranked Superintendent or above. It is proposed that under the new power, a senior member of the IPCC will be able to authorise the use of this power in an investigation.

281. The purpose of this power is to maintain the IPCC's ability to investigate matters independently and expeditiously, in particular in investigations which involve alleged criminality on the part of those serving with the police.

**Clause 118: Provision of information to IPCC**

282. This clause inserts new paragraphs 19ZA to 19ZD in Schedule 3 to the 2002 Act, dealing with the handling of police complaints and conduct matters. The effect of this clause is to provide the IPCC with a power to serve an information notice on a person, where the information is reasonably required for the discharge of the IPCC's statutory functions, that is where it is necessary and relevant to a matter under investigation by the IPCC. For example, the IPCC may use this power to request passenger travel information (such as Oyster card data) which would reveal the identity of witnesses to an event or provide evidence of passenger movements, central to an investigation about a complaint, conduct or death or serious injury matter. It may also request unbroadcast news footage from broadcasting organisations.

283. New paragraph 19ZA(1) sets out that the IPCC may serve a notice in accordance with any investigation carried out by it under paragraph 19 of Schedule 3. The effect of this is that the power will only be exercisable by the IPCC when conducting an independent investigation. The requirements as to the content of the notice are set out at new paragraph 19ZA(2).

284. It is expected that the IPCC will seek the information it requires by first making an informal request to a relevant person. However there may be occasions when it would be more appropriate or convenient for the IPCC to be able to serve a notice immediately, without having to be required to first make an informal request. New paragraph 19ZA(1) therefore provides for this. Where information requested is no longer required, the IPCC may cancel a notice pursuant to new paragraph 19ZA(5).

285. Certain information is excluded from the requirement which is intended to act as an important safeguard to persons on whom an information notice may be served. An information notice must not – as set out at new paragraph 19ZA(2) – require a person to disclose information which may reveal evidence of the commission of an offence by the person concerned, reflecting the approach taken in provisions contained within section 43(8) to (8C) of the Data Protection Act 1998. As such, this amounts to a protection from self-incrimination. The notice must also not require disclosure of information which is legally privileged within the meaning of section 10 of the Police and Criminal Evidence Act 1984. Further, under new paragraph 19ZA(2)(c), the IPCC cannot require disclosure of communications data within the meaning of Chapter 2 of Part 1 of the Regulation of Investigatory Powers Act ("RIPA") 2000, or make a disclosure that is prohibited by Part 1 of the 2000 Act (new paragraph 19ZA(2)(d)). This is to ensure that the IPCC's existing duties in respect of RIPA material are not altered.

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286. New paragraph 19ZB(1) provides that a failure to comply with the notice, or knowingly or recklessly making a false statement in connection with it, will enable the IPCC to certify the failure to the High Court which may then deal with the matter as a contempt of court; this reflects the approach set out in section 54 of the Freedom of Information Act 2000.

287. A person has a right of appeal against the notice by virtue of new paragraph 19ZC to the First-tier Tribunal on the ground that the notice is not in accordance with the law. If the Tribunal considers that it is not, it is required to quash the notice and may give direction to the IPCC so that it may serve a further notice. Given that the IPCC may only request information or serve a notice in accordance with the new paragraph 19ZA where it is reasonably required, this acts as a further safeguard to ensure all data requests are necessary, proportionate and justified.

288. New paragraph 19ZD provides for the handling of intelligence and intercept information, obtained under an information notice. Where the IPCC receives intelligence service information or intercept material directly or indirectly from, or relating to an intelligence service, it is prohibited from onwardly disclosing that material unless it has express consent from the “relevant authority” (defined at 19ZD(3)). The IPCC is also prohibited from disclosing – without consent– the fact that it has received such material. This is the effect of new paragraph 19ZA(1). The absolute prohibition on the IPCC disclosing without consent intelligence service information, intercept information or the fact that it has received such information will mean that it must take all reasonable steps to avoid such disclosure, including inadvertent disclosure.

289. Where the intelligence service (defined at new paragraph 19ZD(3)) provides consent and the Commission discloses information to other persons, a similar bar on onward disclosure is placed on the recipient of that information from the Commission (new paragraph 19ZD(2)), unless consent has been granted by the relevant authority.

290. New paragraph 19ZD(3) defines “intelligence service” to mean the Security Service, the Secret Intelligence Service, the Government Communication Headquarters or any part of Her Majesty’s forces or the part of the Ministry of Defence which engages in intelligence activities.

291.

**Clause 119: Unsatisfactory performance procedures following investigation of death or serious injury matter**

292. *Subsection (1)* amends paragraph 24C of Schedule 3 to the Police Reform Act 2002 which relates to a death or serious injury matter where there is no indication that a person serving with the police may have behaved in a manner which would justify the bringing of disciplinary proceedings. New paragraph 24C(3) to (5) provides the IPCC with a power to recommend that a person’s performance is unsatisfactory (as opposed to treated as misconduct) and that the appropriate authority should take recommended action in relation to it where the investigation is in respect of a death or serious injury matter.

*These notes refer to the Anti-social Behaviour, Crime and Policing Bill as introduced in the House of Commons on 9 May 2013 [Bill 7]*

293. *Subsections (2) to (4)* links this power with paragraph 27 of Schedule 3. Paragraph 27 makes provision for the process in accordance with which the IPCC may make a recommendation or a direction to the appropriate authority in relation to disciplinary proceedings in respect of a conduct matter. The effect is that the IPCC may also recommend and direct the appropriate authority to take steps in relation to a person's unsatisfactory performance in respect of a death or serious injury matter.

294. This clause will result in parity in respect of the IPCC's existing powers to recommend and direct unsatisfactory performance procedures in complaint and conduct matters investigated by the IPCC.

#### **Clause 120: Recommendations by IPCC and requirement to respond**

295. This clause inserts new paragraphs 28A and 28B into Schedule 3 to the 2002 Act which makes provision in respect of the handling of police complaints and conduct matters. Currently, recipients of recommendations issued by the IPCC pursuant to paragraphs 22(3), 22(5) and 24A(2) and matters that come before the IPCC to consider under paragraphs 8A and 25(2) of Schedule 3, that is those issued about institutional or systemic failings at the end of an independent, managed or supervised investigation or on appeal from a local investigation, are not statutorily required to respond. This results in a situation which adversely affects public confidence in the police complaints system. The effect of this clause is to establish a statutory framework obliging recipients of such recommendations to respond within a specified time period (56 days, beginning on the day on which the recommendation was made).

296. For example, following an independent investigation into a fatal shooting, the IPCC issued a national recommendation that radio channels used by firearms officers should be audio recorded.<sup>38</sup> The IPCC has also issued local recommendations to the effect that a force should review its system for storing files for investigations that are both active and closed and that it should ensure that all files are readily accessible.<sup>39</sup> Under this new statutory framework, the police forces concerned would be required to respond. However, it should be noted that the issue of recommendations issued by the IPCC in the normal course of an investigation under its general power to make recommendations pursuant to section 10(1)(e) of the Act, are beyond the scope of this provision.

297. New paragraph 28A(4) and (5) sets out the categories of recipient from whom the IPCC may require a response to its recommendations. Given the gravity and seriousness of DSI matters and other matters of sufficient seriousness which will be prescribed within regulations (such as those listed in regulation 4(2)(b) of the Police (Complaints and Misconduct) Regulations 2012), new paragraph 28A(4)(a) will require response from "any person" and includes natural persons. In the interests of proportionality, new paragraph 28A(5) limits the category of recipients to persons

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<sup>38</sup> IPCC independent investigation into the fatal shooting of Mark Saunders on 6 May 2008. Investigation report available at: [www.ipcc.gov.uk](http://www.ipcc.gov.uk).

<sup>39</sup> Southwark Sapphire Unit's local practices for the reporting and investigation of sexual offences, July 2008 – September 2009, Independent Investigation Learning Report, available at: [www.ipcc.gov.uk](http://www.ipcc.gov.uk)

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serving with the police and local policing bodies; however, as this provision will be amending Part 2 of the 2002 Act, it will by implication, also include additional policing bodies, that is, bodies of constables which are not maintained by a local policing body, police forces and other categories of persons over which the IPCC exercises oversight. It will also extend to private sector contractors who will be brought within the IPCC's oversight by virtue of clause 116.

298. New paragraph 28A(6) places a requirement on the IPCC to publish its recommendations. Where the recipient of a recommendation is a local policing body, the IPCC is also required to provide a copy to the chief officer and similarly, where a recommendation is directed at a chief officer, the IPCC must send a copy to the local policing body. This is to reflect the reality of local policing arrangements and the interest of both parties in policing matters within their force area. Where the recipient of a recommendation is a contractor, sub-contractor or an employee of such a person, both the local policing body and the chief officer must also be provided with a copy. The IPCC may also copy in other bodies as it deems appropriate.

299. Recipients of IPCC recommendations are required to respond in writing by virtue of new paragraph 28B(1). This response must include the action the recipient has taken or proposes to take in response or why they have not taken or do not propose to take any action in response. A recipient is required to provide the response within 56 days but may be granted an extension at the discretion of the IPCC pursuant to new paragraph 28B(3). It is also extended where proceedings are commenced for judicial review of the IPCC's decision to make a recommendation as set out at new paragraph 28B(4).

300. The IPCC has a duty, under new paragraph 28B(5), to publish responses received within 21 days of receipt and provide a copy of the response to those copied into its initial recommendations. New paragraph 28B(6) provides however, for recipients of IPCC recommendations to make representations so that the requirements of publication and disclosure do not apply to their response. This could – at the discretion of the IPCC – result in either non-publication or part-publication but if the IPCC makes such a decision, it must be communicated to the recipient prior to whole or part publication pursuant to new paragraph 28B(7).

301. New paragraphs 28B(8) and (9) set out the IPCC's obligations to publish responses following representations being made by recipients under 28B(6) and provide for publication following judicial review proceedings to review the IPCC's decision to reject representations made about publication.

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

#### **Clause 121: Financial arrangements for chief officers of police**

*These notes refer to the Anti-social Behaviour, Crime and Policing Bill as introduced in the House of Commons on 9 May 2013 [Bill 7]*

303. This clause amends the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”) insofar as it relates to the financial controls on chief officers of police. It should be read with paragraphs 60 and 61 of Schedule 7 to the Bill. Those paragraphs repeal paragraph 7(3) of Schedule 2 and paragraph 4(3) of Schedule 4 to the 2011 Act, which prohibit chief constables and the Metropolitan Police Commissioner respectively from borrowing.

304. *Subsection (1)* inserts a new paragraph 7A into Schedule 2 to the 2011 Act. New paragraph 7A sets out the circumstances under which a chief constable will be able to borrow. A chief constable will only be able to borrow to cover immediate short term expenditure (it will therefore enable chief constables to have an overdraft facility on their bank account). This borrowing must be in sterling and can only take place with the consent of the relevant Police and Crime Commissioner. New paragraph 7A(2)(b) prohibits chief constables from entering into credit arrangements. New paragraph 7A(3) sets out the circumstances under which a chief constables will be able to invest. A chief constable will only be able to invest for a purpose relevant to his or her functions or for the purpose of prudent financial management, and with the consent of the relevant PCC. New paragraph 7A(4) also applies a number of provisions of Part 1 of the Local Government Act 2003, and any regulations made under them, to chief constables as they apply currently to local authorities. Part 1 of the Local Government Act 2003 sets out the legal framework within which local authorities may undertake capital expenditure and central Government may regulate that activity. The effect of each of the applied provisions is as follows:

- section 6 (protection of lenders): provides that lenders do not need to check whether chief constables have the power to borrow;
- section 7 (meaning of “credit arrangements”): sets out what constitutes a credit arrangement (for the purposes of the prohibition in the new paragraph 7A(2)(b) of Schedule 2 to the 2011 Act);
- sections 9 to 11 (capital receipts): set out what constitutes a capital receipt, how it can be used and areas where the Secretary of State can make regulations. Provisions relating to housing land are not included as they are not relevant to chief constables;
- section 13 (security for money borrowed etc): sets out further conditions around borrowing arrangements for chief constables, including not using property as security against the sum being borrowed;
- section 14 (information): stipulates that chief constables must provide the Secretary of State with any information he or she requires on capital finance etc and accounts;

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- section 15 (guidance): stipulates that chief constables shall have regard to guidance and regulations issued by the Secretary of State relating to capital finance etc and accounts;
- section 16 (meaning of “capital expenditure”): defines what constitutes capital expenditure and how the Secretary of State can classify an item of expenditure as being capital expenditure;
- section 17 (external funds); sets out that borrowing by a chief constable for the purposes of an external fund (for example a trust fund) will not be considered to be borrowing in the usual sense;
- section 18 (local authority companies etc): allows the Secretary of State to make regulations applying the other provisions of Part 1 to a company set up by a chief constable;
- section 20 (directions): sets out the conditions under which directions should be given;
- sections 21 and 22 (accounts): sets out that the Secretary of State can make regulations relating to accounting arrangements which would apply to chief constables. This ensures that the statutory accounting framework that applies to Police and Crime Commissioners also applies to chief constables; and
- section 24 (application to Wales): enables Welsh Ministers to make regulations in respect of chief constables in Wales (rather than the Secretary of State).

305. New paragraph 7A(5) provides that regulations made by the Secretary of State under any of the provisions in new paragraph 7A(4) will apply to the chief constable of a police force in England in the same way as they apply to a local authority in England.

306. New paragraph 7A(6) provides that regulations made by Welsh Ministers under any of the provisions in new paragraph 7A(4) will apply to the chief constable of a police force in Wales in the same way as they apply to a local authority in Wales.

307. New paragraph 7A(7) provides that any of the provisions specified in new paragraph 7A(4) (and regulations made under them) also apply, so far as relevant, for the purposes of the borrowing powers conferred and restrictions imposed by new paragraph 7A(1) and (2), as well as for the purposes of Part 1 itself.

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308. New paragraph 7A(8) provides that any order made under section 217 or 218 of the Local Government and Public Involvement Health Act 2007 (which relate to entities etc. controlled by local authorities), as far as relevant, should be applied to chief constables.

309. *Subsection (2)* amends the provisions of the 2011 Act applying to the Metropolitan Police Commissioner by making changes corresponding to those set out in subsection (1) for chief constables.

#### **Clause 122: Grants to local policing bodies**

310. Clause 122 changes the terms under which the Police Main Grant<sup>40</sup> is paid to local policing bodies (namely, Police and Crime Commissioners or, in London, the Mayor's Office for Policing and Crime and the Common Council of the City of London).

311. *Subsection (1)* amends section 46(1) of the 1996 Act. Section 46(1) current enables the Home Secretary to make grants to local policing bodies "for policing purposes". As amended, the Home Secretary will be able to make grants to local policing bodies "for the purpose of their functions". This wider scope for paying grants to local policing bodies is in recognition of their wider responsibilities for commissioning services under the provisions of clause 123.

312. *Subsection (2)* makes a corresponding change to 47(1) of the 1996 Act, which makes provision for the Home Secretary to make grants to local policing bodies for the purpose of capital expenditure; and section 92(2), which enables London Boroughs to make grants to the Mayor's Office for Policing and Crime for policing purposes (section 92(1), which enables local authorities to make grants to Police and Crime Commissioners is not constrained by a reference to "for police purposes").

313. Paragraph 66 of Schedule 7 to the Bill includes consequential repeals of provisions which previously amended section 46(1) of the 1996 Act and are therefore now spent.

#### **Clause 123: Powers of local policing bodies to provide or commission services**

314. Clause 123 gives local policing bodies power to provide or commission services, in particular support services for victims and witnesses of, and those affected by, crime and anti-social behaviour ("ASB").

315. *Subsection (1)* describes the types of services that may be provided or commissioned by a local policing body. Specifically paragraphs (a) and (b) refer to services that the local policing body believes will reduce crime and disorder, and services for victims or witnesses of crime and ASB and services for other persons affected by crime or ASB. The express reference to ASB enables local policing bodies to fund, provide or commission services to victims, witnesses and other affected persons whether or not the anti-social behaviour constitutes a criminal offence.

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<sup>40</sup> Police Main Grant funding to the police is distributed by the Home Office and derived from the Police Allocation Formula and the Formula Funding published by the Department for Communities and Local Government. The police also receive funding from the relevant precept component of council tax.



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316. Additionally, subsection (1)(c) provides for potential future expansion of the scope of the services that may be commissioned, by way of an order made by the Secretary of State (subject to the negative resolution procedure). *Subsection (2)* enables any order made under subsection (1)(c) to make different provision for different police areas; this will allow any new commissioning powers to be piloted.

317. *Subsection (3)* provides that, as well as entering into contracts for the provision of relevant services, local policing bodies may make grants in connection with those services and can attach conditions to these grants, should that be necessary. Such conditions may, for example, require repayment of the grant in the event of non-provision of the service and periodic reporting of the service provided.

## **Port and border controls**

### **Clause 124: Port and border controls**

318. Clause 124 introduces Schedule 6, which makes amendments to the port and border security powers in Schedule 7 to the Terrorism Act 2000 (“the 2000 Act”) and the associated Schedule 8 to that Act which governs the detention of persons detained under Schedule 7.

### **Schedule 6: Port and border controls**

319. *Paragraph 1(2)* of Schedule 6 amends paragraph 1 of Schedule 7 to the 2000 Act, subparagraph (1) of which defines an examining officer for the purpose of Schedule 7 to the 2000 Act, that is persons who have the powers conferred by Schedule 7 to the 2000 Act to conduct examinations at ports. Paragraph 1(1) of that Schedule currently defines an examining officer as a constable, immigration officer, or customs officer designated for the purpose of the Schedule by the Secretary of State and the Commissioners of Revenue and Customs. Paragraph 1(2) amends paragraph 1(1)(b) of Schedule 7 to the 2000 Act so as to place similar limitations on those immigration officers who may exercise the Schedule 7 to the 2000 Act powers to those that already apply to customs officers. Henceforth, only those immigration officers who have been designated for the purposes of Schedule 7 to the 2000 Act by the Secretary of State will be eligible to exercise the Schedule 7 powers. Paragraph 1(3) inserts new paragraph 1A into Schedule 7 to the 2000 Act which places a duty on the Secretary of State to issue a code of practice which will specify the details of the requisite training to be undertaken by officers who are to act as examining officers or exercise other functions under Schedule 7 and the procedure for making designations. The code of practice must be laid before Parliament and brought into force by an order subject to the affirmative resolution procedure.

320. *Paragraph 2* repeals paragraph 6(4) and inserts a new paragraph 6A into Schedule 7 to the 2000 Act so as to further restrict the period of time a person may be questioned and detained under Schedule 7. At present paragraph 6(4) permits detention for up to nine hours from the time a person’s examination begins. New paragraph 6A of Schedule 7 to the 2000 Act introduces a separate limit of one hour on the period during which a person may be examined without being

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detained and then introduces an overall limit of six hours on the period a person may be examined and detained. Detention of a person under these powers triggers the provisions of Part 1 of Schedule 8 to the 2000 Act which govern the treatment of persons detained under Schedule 7; amongst other things these provisions confer on a detainee the right to inform a person of his or her detention and to consult a solicitor.

321. *Paragraph 3* amends paragraph 8 of Schedule 7 to the 2000 Act which relates to the searching of persons examined under that Schedule. New paragraph 8(4) of Schedule 7 prohibits an intimate search of a person, such a search is defined in new paragraph 8(7) of Schedule 7. New paragraph 8(5) prevents a person from being stripped searched (again as defined in new paragraph 8(7)) unless: the person has been detained; an examining officer has reasonable grounds to suspect that the person is concealing something which may be evidence that the person is concerned in the commission, preparation or instigation of acts of terrorism; and a strip search has been authorised by a senior officer (as defined in new paragraph 8(6) of Schedule 7).

322. *Paragraph 4* amends the provisions in Schedule 8 to the 2000 Act which relate to the rights of persons detained under Schedule 7. Currently the rights conferred by Schedule 8, for example the right to consult a solicitor, only apply to persons detained at a police station or places designated as such. Ports do not generally include areas designated as police stations. The amendments made to Schedule 8 by this paragraph extend certain rights conferred under that Schedule to persons detained at ports or airports under Schedule 7. The rights are: the right of a detained person in England and Wales or Northern Ireland to have a named person informed of the fact of his or her detention (paragraph 6 of Schedule 8); the right of a detained person in England and Wales or Northern Ireland to consult a solicitor (paragraph 7 of Schedule 8); and the right of a detained person in Scotland to have a solicitor or another person informed of the fact of his or her detention and to consult a solicitor (paragraph 16 of Schedule 8). These rights may be qualified by paragraphs 8 and 9 of Schedule 8 in relation to England and Wales and Northern Ireland, and paragraph 17 in relation to Scotland in that a police officer of at least the rank of superintendent may authorise a delay in the exercise of these rights or a non-private legal consultation in certain specified circumstances, for example where informing a person of the fact of someone's detention under Schedule 7 could lead to interference with or harm to evidence of a serious offence. Paragraph 5 amend these paragraphs of Schedule 8 so that the power of a senior police officer to qualify the rights conferred by paragraphs 6, 7 and 16 of Schedule 8 apply where a person is detained at a port or airport other than at a police station.

323. *Paragraph 5* amends paragraph 10 of Schedule 8 to the 2000 Act so as to remove the power to take an intimate sample from a person detained under Schedule 7.

324. *Paragraph 6* inserts a new paragraph 20K into Schedule 8 to the 2000 Act which provides that a person's detention under Schedule 7 must be periodically reviewed by a review officers at such intervals as may be specified in a code of practice which the Secretary of State must issue. The review officer may only authorise continued detention only if satisfied that it remains necessary for the purposes of exercising a power conferred by Paragraphs 2 or 3 (questioning for

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the purpose of determining whether the person appears to be a person who is or was involved in the commission, preparation or instigation of acts of terrorism). If the review officer does not authorise continued detention then the person must be released. The code of practice must be laid before Parliament and brought into force by an order subject to the affirmative resolution procedure.

325. It is proposed to amend the Examining Officers Under the Terrorism Act 2000: Code of Practice<sup>41</sup> in order to update it in the light of the above changes and it will incorporate the matters referred to at Paragraphs 296 and 301 above.

### **Clause 125: Inspection of the Serious Fraud Office**

326. *Subsection (1)* amends section 2 of the Crown Prosecution Service Inspectorate Act 2000 so that the Chief Inspector of the Crown Prosecution Service has the same powers of inspection for the SFO as he or she has for the CPS. This will include inspection of the SFO's investigative work. The Chief Inspector will also have the same duty to report to the Attorney General on matters connected with the operation of the SFO as he or she has for the CPS and RCPO.

327. *Subsection (2)* amends section 3 of the Criminal Justice Act 1987 so that information that has been disclosed to the SFO by HM Revenue and Customs can be disclosed to HMCPSI for the purposes of an inspection. It also ensures the SFO can disclose information to HMCPSI which would otherwise be covered by an obligation of secrecy imposed by or under any enactment, other than the Taxes Management Act 1970.

## **Part 11: Extradition**

### **Clause 126: Date of extradition hearing**

328. This clause amends section 8 of the Extradition Act 2003 ("the 2003 Act"). That section obliges the judge to fix a date for the extradition hearing to begin, inform the person of the contents of the warrant, give the person information about consent and remand the person in custody or on bail. The date fixed for the extradition hearing to begin must not be later than 21 days after arrest. Clause 126 inserts a new subsection (4A) into section 8 of the 2003 Act, the effect of which is that in cases where extradition proceedings have been deferred because the person has been charged with an offence in the UK or is in custody serving a sentence of imprisonment or other form of detention in the UK, the obligation to fix a date for the extradition hearing to begin which is not later than 21 days after arrest does not apply.

### **Clause 127: Appeals**

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<sup>41</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/143824/Code-of-Practice-for-Examin1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/143824/Code-of-Practice-for-Examin1.pdf)

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329. *Subsections (1), (2) and (3)* amend sections 26 (appeal against a judge's decision to order extradition in Part 1 cases), 103 (appeal against the decision of a judge to send a case to the Secretary of State in part 2 cases) and 108 (appeal against decision of the Secretary of State to order extradition) of the 2003 Act respectively.

330. The effect of the amendments is two fold. First, they make the right of appeal under each of these sections lie only with the leave of the High Court. Second, they set out that the High Court must not refuse to entertain an application for leave to appeal solely because it has been submitted outside the normal time period, if the person did everything reasonably possible to ensure that the notice was given as soon as it could be. Normally, notice of appeal must be given within seven days of the extradition order being made, in Part 1 cases, and within 14 days of the date on which the Secretary of State informs the person of the order, in Part 2 cases.

#### **Clause 128: Asylum etc**

331. *Subsections (1) and (2)* amend sections 39 and 121 of the 2003 Act respectively, to ensure that a person who has made an asylum claim (either before or after the initiation of extradition proceedings) must not be extradited before that claim has been finally determined. Sections 39 and 121 currently apply only as regards an asylum claim made after the start of extradition proceedings.

332. *Subsection (3)* amends section 93 of the 2003 Act (which deals with the Secretary of State's consideration of Part 2 cases, once the judge has sent the case to the Secretary of State). It gives the Secretary of State the power to discharge the person if the person has been granted: (i) refugee status, or (ii) leave on the ground that it would be a breach of Article 2 or 3 of the Human Rights Convention to remove him or her to the requesting territory. This mirrors the powers which the Secretary of State has under section 70 of the 2003 Act, which applies at the initial stage of proceedings (that is, when the Secretary of State receives a request and must decide whether to issue a certificate). This amendment will ensure that people who are granted status or leave after the certificate has been issued can be discharged.

#### **Clause 129: Proceedings on deferred warrant or request etc**

333. This clause amends sections 180 and 181 of the 2003 Act to ensure that in cases where there are competing extradition requests and one case has been deferred pending the outcome of the other, a judge can only resume proceedings in the deferred cases, or order that extradition is no longer deferred, in cases where the competing request has been discharged in the requested person's favour.

#### **Clause 130: Non-UK extradition: transit through the United Kingdom**

334. This clause inserts new sections 189A to 189E into the 2003 Act.

335. New section 189A makes provision for the issue of certificates to facilitate the transit through the United Kingdom of a person who is being extradited from one territory to another territory (where neither of those territories is the United Kingdom). Where the destination territory

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is a Part 1 territory, it will be for the National Crime Agency to issue a certificate. In any other case, it will be for the Secretary of State to issue a certificate. A certificate authorises a constable or other authorised officer to escort the person from one form of transportation to another, to take the person into custody to facilitate the transit and/or to search the person (and any item in his or her possession) for any item which the person may use to cause physical injury (or, in a case where he or she has been taken into custody, to escape from custody).

336. New section 189B deals with cases where a person is being extradited from one territory to another (where neither of those territories is the United Kingdom) and he or she makes an unscheduled arrival in the United Kingdom. It allows a constable to take the person into custody, for a maximum period of 72 hours, to facilitate the transit of the person through the United Kingdom. There are similar search and seizure powers as appear in new section 189A.

337. New section 189C sets out that the powers in sections 189A and 189B include power to use reasonable force where necessary. It also makes clear that the search powers in those sections do not allow a constable or other authorised officer to require a person to remove any clothing other than an outer coat, jacket, headgear or gloves. Finally, it allows any item seized under those sections to be retained while the person is in transit.

338. New section 189D places a duty on the Secretary of State to issue a code of practice governing the exercise of the powers in new sections 189A and 189B and the retention, use and return of anything seized under those sections. The Secretary of State is required to publish the code in draft form, consider any representations made on the draft and, if considered appropriate, amend the code accordingly. The Secretary of State can then bring the code into effect by order which, by virtue of the amendment made to section 223 of the 2003 Act by paragraph 67 of Schedule 8, is subject to the affirmative resolution procedure. The Secretary of State may revise any such code, using the same procedures as described above. Failure by a police constable or other authorised officer to adhere to any code issued under new section 189D will not of itself make the officer liable under either criminal or civil proceedings. A code of practice made under this section can be admitted in court as evidence. Finally, new section 189D makes provision to deal with the case where the Secretary of State publishes a draft code before the section comes into force.

339. New section 189E defines various terms used in new sections 189A to 189D.

**Clause 131: Extradition to a territory that is party to an international Convention**

340. Clause 131 substitutes a new section 193 of the 2003 Act to enable the Secretary of State to designate international conventions and specify conduct in relation to those conventions. The original section 193 allowed the Secretary of State to designate territories which are parties to conventions. As territories frequently sign up to conventions, the section proved difficult to operate. The new section will deal with this problem by allowing for the designation of conventions rather than territories. Under the new section 193, the Secretary of State will only be able to designate conventions to which the UK is a party and only specify conduct to which the

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relevant convention applies. In the event that a party to one of those conventions then made an extradition request for a person, it would be open to the Secretary of State to certify that: (i) the requesting State was a party to a convention designated under section 193; and (ii) the conduct in the request was conduct specified in the designation order for the relevant convention. The effect would be that the 2003 Act would apply to the person's extradition as if the requesting territory were a territory designated under Part 2 of the Act. Examples of conventions that could be designated include the UN Conventions on terrorism, the UN Convention against corruption and the UN Convention on transnational organised crime.

## **Part 12: Criminal Justice and Court Fees**

### **Clause 132: Compensation for miscarriages of justice**

341. Section 133 of the Criminal Justice Act 1988 requires the Secretary of State to pay compensation where a person's conviction for a criminal offence has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice.

342. *Subsection (1)* inserts new subsection (1ZA) into section 133 of the Criminal Justice Act 1988, providing a statutory definition of "miscarriage of justice". In accordance with this new provision, the Secretary of State would only pay compensation for a "miscarriage of justice" where the new or newly discovered fact (on the basis of which the conviction was reversed) shows beyond reasonable doubt that the person was innocent of the offence of which they were convicted. This will have effect for cases where the conviction took place in England and Wales, or for Northern Ireland cases where section 133(6H) of the 1988 Act applies. Section 133(6H) applies to those applications for compensation in Northern Ireland involving sensitive national security information which are determined by the Secretary of State rather than the Department of Justice in Northern Ireland.

343. *Subsection (2)(a)* specifies that the new provision will apply to the determination of any application for compensation made on or after the date on which the section comes into force. *Subsection (2)(b)* provides the new provision will also apply to an application made before the date the clause comes into force, but which has not been finally determined by the Secretary of State by that date. This will include applications which, though originally determined before the clause comes into force, subsequently fall to be reconsidered by the Secretary of State, for example, following a successful application for judicial review.

### **Clause 133: Low-value shoplifting**

344. *Subsection (3)* inserts in the Magistrates' Courts Act 1980 new section 22A, which provides that low-value shoplifting is a summary offence (new section 22A(1)). This is subject to one exception: an adult defendant is to be given the opportunity to elect Crown Court trial, and if the defendant so elects, the offence is no longer summary and will be sent to the Crown Court

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(new section 22A(2)). Otherwise, the effect of new section 22A is that offences of low-value shoplifting cannot be sent to the Crown Court for trial or committed there for sentence; they will attract a maximum penalty of 6 months' custody; and they will be brought within the procedure in section 12 of the Magistrates' Courts Act 1980 that enables defendants in summary cases to be given the opportunity to plead guilty by post. Shoplifting is not a specific offence as such but constitutes theft under section 1 of the Theft Act 1968; accordingly new section 22A(3) defines shoplifting for the purposes of this provision, which applies if the value of the stolen goods is £200 or less. New section 22A(4) provides that for these purposes the value of the goods is to be determined by the price at which they were offered for sale rather than the intrinsic value, and also for the value involved in several shoplifting offences to be aggregated where they are charged at the same time. So, for example, where a person is charged with three counts of shoplifting having allegedly taken £80 worth of goods from three separate shops, the new procedure would not apply in that case as the aggregate sum exceeds the £200 threshold.

345. New section 22A(5) provides that for offences of low-value shoplifting tried summarily (as they must be unless the defendant elects), the maximum penalty is six months' imprisonment or a fine. New section 22A(6) prevents appeals from being brought on the basis of disputed decisions as to whether the offence was low-value shoplifting. New section 22A(7) provides that an offence of shoplifting includes secondary offences such as aiding and abetting. It also includes attempts; consequential amendments to the Criminal Attempts Act 1981 are set out in *subsection (5)*.

346. *Subsection (4)* amends section 143 of the Magistrates' Court Act 1980 to enable the £200 threshold to be updated in line with inflation. An order made under section 143 is subject to the negative resolution procedure.

347. *Subsection (6)* provides that the amendments do not apply to cases in which proceedings have been instituted before the date of commencement.

#### **Clause 134: Protection arrangements for persons at risk**

348. Chapter 4 of Part 1 of the Serious Organised Crime and Police Act 2005 ("SOCPA") makes provision for the protection of persons involved in investigations and legal proceedings. Section 82 enables a "protection provider" (usually in practice the police) to make appropriate protection arrangements for a person whose safety is at risk by virtue of being a person specified in Schedule 5 to SOCPA. Those specified in Schedule 5 include witnesses, jurors and other people who are or have been involved in legal proceedings, law enforcement officers and other persons involved in the administration of justice, and the family of such persons or others with a close personal relationship with them.

349. Clause 134 amends section 82 of SOCPA so as to enable a protection provider to make protection arrangements for anyone whose safety may be at risk by virtue of another person's possible or actual criminal conduct. The making of such arrangements will not be dependant on being a person specified in Schedule 5. In particular, this would enable arrangements to be made

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to prevent a person from becoming a victim of a crime where the nature of the threat is such that they do not come within any of the categories in Schedule 5 (e.g. an actual or potential witness in legal proceedings) but protection arrangements are nonetheless considered to be necessary.

350. *Subsection (2)(b)* amends section 82(1) of SOCPA so as to allow protection arrangements to be made in respect of any person the protection provider reasonably believes is at risk from the criminal conduct, or possible criminal conduct, of another person. Criminal conduct is defined in new section 82(5A) (inserted by *subsection (2)(c)*) as conduct which would constitute an offence in England and Wales or Scotland (regardless of whether it was committed there).

351. New section 82(5B) (also inserted by *subsection(2)(c)*) makes clear that there is nothing to prevent arrangements being made under this provision in respect of a person who has formerly been subject to non-statutory protection arrangements. *Subsection (5)* makes clear that the provisions in this clause will not affect protection arrangements made under section 82 of SOCPA before the coming into force of the clause.

352. *Subsections (2)(d), (3) and (4)* make consequential repeals to Chapter 4 of Part 1 of SOCPA, in particular they repeal Schedule 5 to SOCPA (made redundant by the wider power to make protection arrangements) and the redundant transitional provisions in sections 91 and 92 of SOCPA.

### **Clause 135: Imprisonment in default and remission of fines**

353. Under section 82(1) of the Magistrates' Court Act 1980 ("the 1980 Act"), a magistrates' court may at the point that it convicts a person, commit the offender to prison in a limited number of circumstances for a default in paying certain financial impositions including the Victim Surcharge payable under section 161A of the Criminal Justice Act 2003. These circumstances include, under section 82(1)(c), a case where the offender is sentenced to a term of immediate imprisonment or detention in a young offenders' institution, or is serving such a term at the time he or she is convicted.

354.

355. *Subsection (1)* inserts a new subsection (1A) into section 82 of the 1980 Act to disapply section 82(1)(c) as it applies to the Victim Surcharge. This will ensure that the Victim Surcharge may not be discharged as extra days added to an immediate sentence of imprisonment.

356. Where a fine has been imposed following conviction in either a magistrates' court or the Crown Court, they can currently use the powers in section 85 of the 1980 Act and section 165 of the 2003 Act to remit the whole or any part of the fine when the court believes, for example, that a change of circumstances of the offender warrants such action. These provisions currently determine what should happen to other impositions which are dependant on the amount of a fine where it is remitted (for example, number of hours of unpaid work a person may be required to undertake to discharge an unpaid fine). However, no provision is currently made for making a corresponding reduction in the amount of the Victim Surcharge where the associated fine has been



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reduced or nullified in exercise of these powers to remit a fine. *Subsections (2) and (3)* amend section 85 of the 1980 Act and section 165 the 2003 Act respectively to address this lacuna. New section 85(3A) of the 1980 Act and new section 165(5) of the 2003 Act direct the court when remitting a fine to make a consequential adjustment of the previously ordered Surcharge. Thus, for example, where the court originally ordered a fine of £500, with an accompanying Surcharge of £50, and that fine is subsequently reduced to £300, the Surcharge must be reduced by the court to £30.

#### **Clause 136: Court and tribunal fees**

357. This clause confers on the Lord Chancellor a power to make regulations in connection with court and tribunal fees. This is a placeholder clause which will be superseded by a substantive provision during the passage of the Bill.

### **Part 13: General**

#### **Clause 137: Amendments**

358. *Subsection (1)* introduces Schedule 7 which contains minor and consequential amendments to other enactments.

359. *Subsection (2)* enables the Secretary of State, by order, to make provision consequential upon the Bill, including consequential amendments to other enactments. Any such order which amends primary legislation is subject to the affirmative resolution procedure; otherwise the negative resolution procedure applies (see clause 138(2) and (4)).

360. *Subsection (3)* enables the Welsh Ministers, by order, to make provision consequential upon the provisions in clauses 86 to 90 and 92 of the Bill (and the associated provisions in Schedule 7), including consequential amendments to other enactments. Any such order which amends primary legislation is subject to the affirmative resolution procedure; otherwise the negative resolution procedure applies (see clause 138(3) and (5)).

#### **Schedule 7: consequential amendments**

361. *Paragraphs 51 and 52* amend the Police Pensions Act 1976 to enable any individual appointed to the College of Policing and to which clause 109 applies to continue to remain a member of the police pension scheme.

362. *Paragraph 57* amends Part 6 of Schedule 1 to the Freedom of Information Act 2000 to include the College of Policing and the Police Remuneration Review Body as a body subject to that Act.

363. *Paragraph 61* amends Part 1 of Schedule 19 to the Equality Act 2010 to include the College of Policing as one of the bodies subject to the equality duty.

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364. *Paragraph 62* makes consequential amendments to section 7 of the Police Reform and Social Responsibility Act 2011, arising from the provisions in clause 123. The effect is to broaden the scope of what must be included in the annual Police and Crime Plan that elected local policing bodies are required to publish under section 6 of the 2011 Act. At present section 6(1)(f) of the 2011 Act requires the Police and Crime Plan to specify the crime and disorder reduction grants which the elected local policing body is to make in accordance with the powers in section 9 of that Act. The new section 7(1)(ea) and substituted section 7(1)(f) instead requires the Police and Crime Plan to specify the services commissioned and provided under the new powers in subsection (1) of clause 123 and any grants made under that clause.

365. *Paragraph 63* repeals section 9 of the 2011 Act which enables local policing bodies to make crime and disorder reduction grants. Such power is now superseded by the commissioning power conferred by clause 123(3).

#### **Clause 138: Orders and regulations**

366. This clause sets out the parliamentary procedure in respect of various order- and regulation-making powers provided for in the Bill.

#### **Clause 140: Extent**

367. This clause set out the extent of the provisions in the Bill (see paragraphs 83 to 88 for further details).

#### **Clause 141: Commencement**

368. This clause provides for commencement (see paragraphs 373 and 374 for further details).

369. *Subsections (6) and (7)* enable the Secretary of State and the Welsh Ministers respectively, by order, to make transitional, transitory or saving provisions in connection with the coming into force of the provisions of the Bill. Such an order is not subject to any parliamentary procedure.

#### **Clause 142: Short title**

370. This clause sets out the short title for the Bill.

### **COMMENCEMENT**

371. Clauses 132, 137(2) and (3), and 138 to 142 of the Bill (general) come into force on Royal Assent.

372. All other provisions will be brought into force by means of commencement orders made by the Secretary of State or, in the case of the provisions in clauses 86 to 90 and 92 (and the

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associated provisions in Schedule 7), by the Welsh Ministers, and in the case of clause 125, by the Attorney General.

## **FINANCIAL EFFECTS OF THE BILL**

373. The main financial implications of the Bill for the public sector lie in the following areas. The figures set out in the paragraphs below are based on a number of assumptions about implementation which are subject to change. Further details of the costs and benefits of individual provisions are set out in the impact assessments published alongside the Bill.

### **Parts 1 to 4 and 6: Reform of anti-social behaviour powers and local involvement**

374. Reforming the powers available to frontline professionals in dealing with anti-social behaviour will require some additional training – in total, transition costs are expected to be no more than £13.2 million, the majority of which relates to training with some small costs associated with the purchase of equipment. However, the new powers are designed, in many cases, to be quicker, and more effective to use for the police, local authorities and other relevant bodies. As such, it is expected that there will be savings to practitioners once initial transition costs are removed; such savings will start to accrue in the first year following commencement of the new powers. It has not been possible to calculate the full impact of these proposals as many of the benefits are non-quantifiable, for instance because no central data is available to cost accurately current practices or because it is not possible to estimate accurately the level of future usage. However, as an example, it has been calculated that replacing the gating orders with public spaces protection orders (Chapter 2 of Part 4) will result in saving of £2.2m over 10 years for local authorities.

375. In response to the consultation, the community trigger has been designed to minimise the financial effects on frontline professionals. However, there will be some additional costs arising from placing a duty on community safety partnerships and social landlords to assess interventions once a community trigger is activated. This additional cost falls mostly to social landlords and is expected to be £0.6 million a year. A summary report covering lessons identified by the four pilot trigger areas has been published alongside the Bill and goes into more detail. In addition, the Home Office is working closely with the police to ensure that the community remedy does not result in unnecessary bureaucracy. The transition cost associated with this reform will be a small training requirement of around £1.3 million – although this is included in the wider transition costs outlined above.

376. There are also potential savings associated with the whole package of reforms as frontline professionals will be able to deal with anti-social behaviour more quickly and effectively, nipping issues in the bud before they escalate. It is expected that the savings associated with not having to undertake more expensive interventions at a later date will fall to the agencies tasked with tackling anti-social behaviour – although it is not possible to calculate these savings due to the number of variables involved.

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### **Part 5: Recovery of possession of dwelling houses**

377. Part 5 of the Bill introduces a new absolute ground for possession, which will provide that the court must grant possession on application from a landlord, where serious housing related anti-social behaviour or criminality has already been proven in another court. Where landlords choose to seek possession on this absolute ground the possession process should be expedited, saving costs both for the court and the landlord. Based on an estimated 250 evictions annually for anti-social behaviour using the new absolute ground rather than discretionary grounds, Part 5 of the Bill is expected to result in estimated annual savings for Her Majesty's Courts and Tribunals Service, net of marginal increases from extensions to the discretionary ground for possession, of about £720,000 and for local authorities (who own approximately 45% of the social housing stock) of about £400,000.

### **Part 7: Dangerous dogs**

378. These provisions are estimated to result in an annual net cost of between £0.25 million and £1.32 million, with a best estimate of £0.79 million.

379. Of this £0.42 million is the cost to the police of kennelling, £0.13 million is prison service costs for custodial sentences, £0.09 million is magistrates' court costs for DDA cases, £0.08 million is legal aid for defendants, £0.05 million is the cost of Dog Legislation Officers employed by local authorities, £0.03 million is the cost to the Crown Prosecution Service, £0.01 million is the cost to the probation service, and £0.01 million is the cost of administering community sentences. These costs are mitigated by a £0.02 million reduction in the court costs associated with civil cases and £0.01 million in additional fines and penalties.

### **Part 8: Firearms**

380. Part 9 creates a new offence of possession of a prohibited firearm for sale or transfer with a maximum sentence of life imprisonment, and increase the maximum penalty for the illegal importation or exportation of firearms to life imprisonment. It is estimated that the increased cost to the prison and probation services will be an average of £1.7 million per annum.

### **Part 9: Forced marriage**

381. The new criminal offences (clause 104) will result in an estimated £1.18 million additional annual costs for the Criminal Justice System as a result of the additional prison places and probation costs, legal aid and HM Courts and Tribunals Service costs.

### **Part 10: Policing etc**

382. Clauses 105 to 111 provide for various powers of the College of Policing. In 2013/14, the College will receive a resource budget from the Home Office of £53 million. The College is able to supplement this funding through charging for some of its products and services, for example, the provision of training courses. The provisions in the Bill will not impact on these funding arrangements.

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383. Clauses 112 to 115 and Schedule 5 abolish the UK-wide Police Negotiating Board (“PNB”) and establish the Police Remuneration Review Body with a remit extending to England and Wales, and Northern Ireland. A separate police pay mechanism for Scotland will be established by legislation to be made by the Scottish Parliament. The estimated budgets of the PNB (which is funded jointly by the Home Office, Scottish Government and Northern Ireland Department of Justice) and the Police Advisory Board for England and Wales (“PABEW”) in 2013/14 are £435,000 and £25,000 respectively. These figures do not include the costs associated with recruiting the chair or deputy chair of PNB or PABEW. The estimated costs associated with recruiting the full complement of chair and members of the PRRB is £70,000. The estimated cost associated with running the PRRB and having the Senior Salaries Review Body consider the equivalent issues for chief officer ranks in England, Wales and Northern Ireland is £450,000 per annum. The PABEW (which will now consider regulations in relation to police pensions, which were previously considered by the PNB) will continue to require funding of some £25,000 per annum.

384. Clauses 116 to 120 confer additional powers on the Independent Police Complaints Commission (“IPCC”) as well as placing a duty on police forces to respond to recommendations made by the IPCC in their reports. The IPCC has a planned resource budget of £33 million for 2013/14. The provisions in this Bill are not expected in themselves to result in any increase in public expenditure. The resource implications for the IPCC will depend on the extent and frequency with which they exercise the additional powers.

385. The provisions in clause 121 do not have any direct financial effects. However, they strengthen the overall financial control framework for the police (for example, by preventing chief constables and the Metropolitan Police Commissioner from entering into any form of uncontrolled borrowing or undertaking high risk investment). They also improve the ability of chief constables and the Commissioner of Police of the Metropolis to manage their day to day cash flow more effectively.

386. The impact of clause 123 is cost neutral as it neither increases nor decreases the funds available for victims’ services. Instead it merely changes the way in which they are provided or commissioned.

387. There may be some additional administrative costs incurred as a result of the provisions in clause 124 and Schedule 6, which amend Schedules 7 and 8 to the Terrorism Act 2000. These costs arise from training, legal aid and recording facilities and are not likely to exceed £0.5 million annually. All persons detained under Schedule 7 to the 2000 Act, regardless of location, are already within the scope of criminal legal aid, subject to means testing.

## **Part 12: Criminal Justice and Court Fees**

388. Clause 132 introduces a statutory definition of what constitutes a “miscarriage of justice” for the purposes of the award of compensation for a miscarriage of justice under section 133 of the Criminal Justice Act 1988. The new test would be simpler to apply, reducing the administrative

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costs associated with the consideration of applications. The narrower definition may also reduce the number of applications, and the number that succeed. In addition, it is likely that the Secretary of State would be faced with fewer judicial reviews of his decisions. It is estimated that contesting judicial review proceedings in miscarriage of justice cases costs the Ministry of Justice approximately £50,000 per case. As of 17 April 2013, there were 20 judicial reviews before the courts.

389. Clause 133 provides for offences of shoplifting of goods worth less than £200 to be treated as summary only. This will enable these offences to be added to those that can be directly prosecuted by the police without involvement of the Crown Prosecution Service where the case is not contested. CPS resources currently devoted to such cases will be reallocated to work on more complex cases.

390. Clause 135, in removing the power of magistrates' courts to add additional days onto a custodial sentence in lieu of payment of the Victim Surcharge, will help to maximise the estimated revenue from the Surcharge. Once the Criminal Justice Act 2003 (Surcharge) Order 2012 (SI 2012/1696) has been amended to require a magistrates' court to order the Surcharge when imposing an immediate custodial sentence, it is estimated that up to £5-6 million per annum will be raised from those offenders so sentenced.

391. The other provisions in the Bill are not expected to have a material financial impact on public sector bodies.

## **EFFECTS OF THE BILL ON PUBLIC SECTOR MANPOWER**

392. The main implications of the Bill for public sector manpower lie in the following provisions from Part 10.

393. The College of Policing had a staffing complement of 670 as at 1 April 2013. The provisions in the Bill will not impact on staffing levels.

394. The Police Negotiating Board and the Police Advisory Board for England and Wales ("PABEW") are representative bodies and therefore composed of representatives of constituent organisations. The Office of Manpower Economics ("OME") provides the Secretariat function to the two bodies, which as at 1 April 2013 comprised one full time equivalent member of staff. The Police Remuneration Review Body will also be hosted and administered by the OME. This support is likely to comprise 3.25 full time equivalent staff. Following the changes to its functions, the PABEW will continue to have its Secretariat function provided by the OME; this resource commitment is expected to be one full time equivalent member of staff or less. The Senior Salaries Review Body is also supported by the OME and expected to require an additional 1.3 full time equivalent members of staff when it takes on responsibility for considering the remuneration of officers above the rank of chief superintendent.

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395. As at 1 April 2013 the Independent Police Complaints Commission had a staff of 391. The provisions in this Bill are not expected in themselves to result in any increase in staffing numbers. Following the Home Secretary's statement of 12 February 2013 that the IPCC will take on responsibility for investigating all serious and sensitive allegations made against the police, the Commission's staff is expected to increase during 2013/14.

396. No other provisions are expected to have an impact on public sector manpower.

## **SUMMARY OF IMPACT ASSESSMENTS**

397. The Bill is accompanied by an overarching impact assessment. A further ten impact assessments are available on individual provisions. The impact assessments, signed by Ministers, are available on the Bill website.<sup>42</sup> The individual impact assessments deal with the following provisions:

- New powers to deal with anti-social behaviour (Parts 1 (the injunction to prevent nuisance and annoyance), 2 (the criminal behaviour order) and 3 (the police dispersals power));
- The community protection order and community trigger (Part 4 and clauses 96 and 97);
- Recovery of possession of tenancies on anti-social behaviour grounds (Part 5);
- The community remedy (clauses 93 to 95);
- Measures relating to dangerous dogs (extending the offence of having a dog that is dangerously out of control to all places including private property (clause 98), and the test which the court must consider when assessing whether a dog is dangerous and therefore liable to be destroyed (clause 99));
- Changes to firearms controls (introducing a new offence of possession of an illegal firearm for supply or transfer (clause 100), and increasing the penalty for improper importation/exportation of firearms (clause 101);
- Criminalisation of the breach of a forced marriage protection order (clause 103);
- Powers for Police and Crime Commissioners to commission witness services (clause 123); and
- Clarification of the definition of "miscarriages of justice" (clause 132).

398. The provisions of the Bill impact mainly on the public sector (primarily the police, Police and Crime Commissioners, the Independent Police Complaints Commission, local authorities, Transport for London, the Environment Agency, the NHS Business Services Authority, customs and immigration officers exercising counter-terrorism border security powers, Her Majesty's Crown Prosecution Service Inspectorate, the Serious Fraud Office, the Crown Prosecution Service and the courts). The provisions in respect of anti-social behaviour will also impact on housing providers.

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<sup>42</sup> <https://www.gov.uk/government/organisations/home-office/series/anti-social-behaviour-crime-and-police-bill>

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## **EUROPEAN CONVENTION ON HUMAN RIGHTS**

399. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). The Secretary of State for the Home Department, the Rt. Hon. Theresa May MP, has made the following statement:

"In my view the provisions of the Anti-social Behaviour, Crime and Policing Bill are compatible with the Convention rights."

400. The Government has published a separate ECHR memorandum with its assessment of the compatibility of the Bill's provisions with the Convention rights; the memorandum is available on the Bill webpage of the Home Office website.<sup>43</sup>

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<sup>43</sup> <https://www.gov.uk/government/organisations/home-office/series/anti-social-behaviour-crime-and-police-bill>



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## ANNEX A

### GLOSSARY

1968 Act	Firearms Act 1968
1979 Act	Customs and Excise Management Act 1979
1985 Act	Housing Act 1985
1988 Act	Criminal Justice Act
Housing Act	Housing Act 1988
1991 Act	Dangerous Dogs Act 1991
1996 Act	Police Act 1996
2000 Act	Terrorism Act 2000
2002 Act	Police Reform Act 2002
2003 Act	Extradition Act
2011 Act	Police Reform and Social Responsibility Act
2012 Order	Criminal Justice Act 2003 (Surcharge) Order 2012 (SI 2012/1696)
ASBI	Anti-Social Behaviour Injunction
ASBO	Anti-Social Behaviour Order
BTP	British Transport Police
CBO	Criminal Behaviour Order
CPN	Community Protection Notice
CPS	Crown Prosecution Service
Criminal Justice Act	Criminal Justice Act 2003
DCLG	Department for Communities and Local Government
DSI	Death and Serious Injury
EAW	European Arrest Warrant
FPN	Fixed Penalty Notice
HASC	Home Affairs Select Committee
HMCPSI	HM Crown Prosecution Service Inspectorate
IPCC	Independent Police Complaints Commission
NPIA	National Police Improvement Agency
PABEW	Police Advisory Board for England and Wales
PCC	Police and Crime Commissioner
PCSO	Police Community Support Officer
PNB	Police Negotiating Board
PRPs	Private registered providers of social housing
PSDs	Professional Standards Departments
RSLs	Registered social landlords
SOCA	Serious Organised Crime Agency

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## **ANNEX B**

### **SUMMARY OF POWERS TO TACKLE ANTI-SOCIAL BEHAVIOUR TO BE REPLACED BY THE PROVISIONS IN PARTS 1 TO 4 OF THE BILL**

#### **The anti-social behaviour order**

Anti-Social Behaviour Orders (“ASBOs”) are civil orders to protect the public from behaviour that causes, or is likely to cause, harassment, alarm or distress. The Order prohibits the individual from going to specified places or from doing specified things and was established by sections 1 to 4 of the Crime and Disorder Act 1998 (as amended by the Police Reform Act 2002).

Since 2002 the criminal burden of proof (beyond reasonable doubt) has been required to grant an ASBO (the *McCann* ruling). An ASBO can be granted to anyone above the age of 10. The ASBO must be granted for a minimum of 2 years, there is no maximum term and Orders can be of indefinite duration.

Breach of an ASBO is a criminal offence and can be heard in the Crown Court, magistrates’ court, or Youth Court. On summary conviction the individual may be liable to imprisonment for up to six months and/or a fine not exceeding the statutory maximum (£5,000); or on conviction on indictment the individual may be liable to imprisonment for up to five years.

There are two different types of ASBO – the ASBO on conviction and the ASBO on application. The ASBO on conviction is a civil order attached to a criminal conviction in the Crown Court, magistrates’ court or youth court and is applied for by the prosecutor at the request of the local authority or police. The ASBO on application can be used where someone has not been convicted of a criminal offence but is causing harassment, alarm or distress to others.

The ASBO on conviction will be replaced by the Criminal Behaviour Order, whilst the ASBO on application will be replaced by the injunction to prevent nuisance and annoyance.

#### **The drinking banning order**

Drinking Banning Orders (“DBOs”) are used to tackle alcohol-related criminal or disorderly behaviour and were established by Chapter 1 of Part 1 of the Violent Crime Reduction Act 2006.

The Drinking Banning Order is a civil order attached to a criminal conviction in the Crown Court, magistrates’ court or Youth Court. It is considered automatically alongside a conviction for alcohol-related crime or disorder. They can be made either on application to the courts by the police or local authority.

The test for granting a DBO is that the order is necessary to protect others from criminal or disorderly conduct. There is no requirement to prove past anti-social behaviour.

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DBOs can be made against an individual aged 16 years and over. They can be granted for a minimum term of six months and a maximum of two years. Breach of a DBO without reasonable excuse is an offence punishable by a fine of up to £2,500.

As with the ASBO, there are two different types of DBO – a DBO on conviction and a DBO on application. The DBO on conviction will be replaced by the criminal behaviour order, whilst the DBO on application will be replaced by the injunction to prevent nuisance and annoyance.

### **The anti-social behaviour injunction**

The Anti-Social Behaviour Injunction (“ASBI”) was established by sections 153A to 157 of the Housing Act 1996 (as amended by Part 2 of the Anti-Social Behaviour Act 2003 and section 26 of the Police and Justice Act 2006).

The ASBI is used to prevent anti-social behaviour being committed by a tenant, and can be applied for by registered providers of social housing, housing action trusts and local housing authorities. It is a civil order applied for in the County Court, and the individual must be over the age of 18. The test is that conduct is capable of causing nuisance or annoyance to a person in the premises or the locality of the premises; and that the individual has used or threatened to use violence and there is a significant risk of harm if the injunction is not granted. The injunction can also be granted if the individual’s behaviour directly or indirectly relates to or affects the housing providers’ management functions. The civil standard of proof applies, namely the balance of probabilities. There is no statutory minimum or maximum term for the Injunction. A power of arrest can be attached to one or more of the provisions in an ASBI if the individual has used or threatened to use violence and there is a significant risk of harm. Breach of an ASBI is not a criminal offence, it is a contempt of court heard in the County Court. Contempt of court carries an unlimited fine and/or up to two years in prison.

### **Individual support orders and intervention orders**

Individual support orders (“ISOs”) are civil orders which can be attached to ASBOs for 10 to 17 year olds. They can last up to six months and impose positive requirements to tackle underlying causes of anti-social behaviour – for instance, attendance at alcohol treatment centres or anger management counselling). A court is required to consider attaching an ISO when issuing an ASBO to a young person. Intervention orders perform a similar function for adults.

### **The litter clearing notice**

Established by the Clean Neighbourhoods and Environment Act 2005 (which inserted sections 92A to 92C into the Environmental Protection Act 1990), the litter clearing notice is used by local authorities to require businesses and individuals to remove litter from land in their area. It must be served on the occupier or owner of the land and requires the clearance of litter and specific steps to

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prevent its recurrence. Non-compliance with a litter clearing notice is a criminal offence, and on summary proceedings the individual may be liable to a fixed penalty notice of £100 or a fine of up to £2,500.

### **The street litter clearing notice**

Established by sections 93 and 94 of the Environmental Protection Act 1990 (as amended by section 20 of the Clean Neighbourhoods and Environment Act 2005), the Street Litter Clearing Notice is used by the local authority to place requirements on businesses to remove litter from the area around their business premises. It can be used against specified retail and commercial premises where there is a persistent problem with litter. Failure to comply with a Street Litter Control Notice is a criminal offence and can result in a fixed penalty notice or a fine of up to £2,500.

### **The defacement removal notice**

Established by sections 48 to 52 of the Anti-social Behaviour Act 2003, the defacement removal notice is issued by the local authority and can be served on bodies that are responsible for a surface defaced by graffiti or fly-posting. This can include the owner of street furniture (bus shelters, street signs and phone boxes and property belonging to “statutory undertakers” such as Network Rail, and educational institutions). The notice gives a minimum of 28 days for the removal of the graffiti or fly-posters. If after that time it has not been removed, the local authority can remove it and recover its costs.

### **The designated public place order**

Established by section 13 of the Criminal Justice and Police Act 2001, designated public place orders (“DPPOs”) are orders made by local authorities. The DPPO is used to place restrictions on public drinking in areas that have experienced alcohol-related disorder or nuisance. The local authority must consult the police, parish council and licensees of any premises which may be affected before making the order. They must also take reasonable steps to consult the owners or occupiers of any land within the area, and are required to consider any representations received. The local authority must publish details of the DPPO in a newspaper and put up signs in the area.

Where a member of the public is caught drinking in an area designated by a DPPO, a police officer, police community support officer or person designated under a Community Safety Accreditation Scheme can require the individual to stop drinking and ask them to hand over any alcohol. If the person fails to comply with the request they commit a criminal offence punishable by a Penalty Notice for Disorder or, on conviction, a fine of up to £500.

*These notes refer to the Anti-social Behaviour, Crime and Policing Bill as introduced in the House of Commons on 9 May 2013 [Bill 7]*

### **The gating order**

Established by section 2 of the Clean Neighbourhoods and Environment Act 2005, gating orders enable local authorities to prevent crime or anti-social behaviour by restricting public access to a public highway with a gate or barrier. The local authority must consult on the proposed order and anyone may comment. There is no penalty for breach.

### **The dog control order**

Established by sections 55 to 67 of the Clean Neighbourhoods and Environment Act 2005, local authorities and parish councils can use dog control orders (“DCOs”) to cover the five offences below:

- a. failing to remove dog faeces;
- b. not keeping a dog on a lead;
- c. not putting, and keeping, a dog on a lead when directed to do so by an authorised officer;
- d. permitting a dog to enter land from which dogs are excluded; or
- e. taking more than a specified number of dogs onto land.

The local authority must publish a notice describing the proposed order in a local newspaper and invite representations on the proposal. Breach of the DCO is an offence punishable by a fixed penalty notice or, on conviction, a fine of up to £1,000.

### **The anti-social behaviour premises closure order**

The anti-social behaviour premises closure order was established by the Criminal Justice and Immigration Act 2008 (which inserted new Part IA into the Anti-social Behaviour Act 2003).

Premises may be closed for up to three months (extendable for up to six months) by a magistrates’ court on an application made by the police or a local authorities. A magistrates’ court may make such an order if satisfied that: a person has engaged in anti-social behaviour on the premises in question; the use of the premises is associated with significant and persistent disorder or persistent serious nuisance to members of the public; and that the making of the order is necessary to prevent the occurrence of such disorder or nuisance for the period specified in the order.

Breach of the closure order is an offence. A person guilty of an offence is liable on summary conviction to imprisonment for a period not exceeding six months, a fine of up to £5,000, or both.

### **The “crack house closure order”**

Established by Part I of the Anti-social Behaviour Act 2003, the crack house closure order is used by police to close any premises (business or residential), where the unlawful use, production or supply of Class A drugs is taking place and causing disorder or serious nuisance to the local

*These notes refer to the Anti-social Behaviour, Crime and Policing Bill as introduced in the House of Commons on 9 May 2013 [Bill 7]*

community. The initial notice closes the premises for 48 hours and within this time the police must make an application to the magistrates' court to issue a closure order for three months. The test is that there is a reasonable belief that the premises is being used for the unlawful use, production or supply of Class A drugs, and is associated with disorder or serious nuisance. The closure order can be extended to a maximum of six months.

It is an offence for any person including the owner, tenant or licensee landlord of the premises to obstruct the police or breach the order by remaining in the property or entering the property. Breach of the order can result in up to six months imprisonment, a fine of up to £5,000, or both.

### **The “noisy premises closure order”**

Established by sections 40 to 41 of the Anti-Social Behaviour Act 2003, a noisy premises closure order requires the premises to be kept closed for a specified period not exceeding 24 hours, starting from when the manager of the premises receives written notice of the order.

This gives a local authority's chief executive, or an authorised environmental health officer, the power to close noisy premises where these cause a public noise nuisance. These can be licensed premises or premises operating under a temporary event notice.

It is a criminal offence to allow the premises to open when a closure order is in place. The offence is punishable on summary conviction by a maximum fine of £20,000 and/or a maximum prison sentence of three months.

### **The section 161 closure order**

Established by sections 161 to 170 of the Licensing Act 2003, this extends the existing powers of the police to instantly close, for up to 24 hours, licensed premises that are associated with disorder or causing noise nuisance, or to apply to the magistrates' court to close all licensed premises within a geographical area in anticipation of disorder.

A closure order requires the premises to be kept closed for a specified period not exceeding 24 hours.

It is a criminal offence to allow the premises to open when a closure order is in place. The offence is punishable on summary conviction by a maximum fine of £20,000 and/or a maximum prison sentence of three months.

### **The section 30 dispersal order**

Established by sections 30 to 36 of the Anti-social Behaviour Act 2003, this gives the police, working with local authorities, powers to target action in problem areas to help communities remove intimidation and anti-social behaviour from their streets.

*These notes refer to the Anti-social Behaviour, Crime and Policing Bill as introduced in the House of Commons on 9 May 2013 [Bill 7]*

The powers enable a senior police officer to designate an area where there is persistent anti-social behaviour and a problem with groups causing intimidation.

The local authority must also agree the designation; usually this decision will be made as part of the strategic work of a Crime and Disorder Partnership.

The decision to designate an area must be published in a local newspaper or by notices in the local area. The designation can then last for up to six months.

Police officers and police community support officers can use this power.

A refusal to follow the officer's directions to disperse is a summary offence. The penalty on conviction for this offence is a fine not exceeding £2,500 or a maximum of three months' imprisonment (for adults).

### **The section 27 direction to leave**

Established by section 27 of the Violent Crime Reduction Act 2006 this provides a constable in uniform with a power to issue a direction to an individual aged 16 years or over to leave a locality.

The constable can apply the direction if they are satisfied that the individual's presence is likely to contribute to the occurrence, repetition or continuance of alcohol-related crime and disorder. The direction can prohibit the person's return for up to 48 hours. Failure to comply with a direction is a criminal offence, punishable by a fine of up to £2,500.

*These notes refer to the Anti-social Behaviour, Crime and Policing Bill as introduced in the House of Commons on 9 May 2013 [Bill 7]*

## ANNEX C

### DATA ON THE USE OF SCHEDULE 7 TO THE TERRORISM ACT 2003

Table A1

Number of examinations		Great Britain		
Year and ethnicity	Under the hour examinations	Over the hour examinations	Total Schedule 7 examinations	Number of detentions
<b>2009/10</b>	<b>82,870</b>	<b>2,687</b>	<b>85,557</b>	
<b>2010/11</b>	<b>63,396</b>	<b>2,288</b>	<b>65,684</b>	<b>913</b>
<i>Of which:</i> White	26,121	325	26,446	75
Mixed	1,874	95	1,969	21
Black or Black British	5,636	338	5,974	194
Asian or Asian British	18,342	1,032	19,374	407
Chinese or Other	10,772	461	11,233	188
Not Stated	651	37	688	28
<b>2011/12</b>	<b>61,662</b>	<b>2,240</b>	<b>63,902</b>	<b>680</b>
<i>Of which:</i> White	26,491	266	26,757	55
Mixed	2,004	70	2,074	23
Black or Black British	5,068	321	5,389	157
Asian or Asian British	16,444	810	17,254	237
Chinese or Other	10,663	527	11,190	155
Not Stated	992	246	1,238	53

Source: ACPO(TAM) National Coordinator's Office Protect & Prepare.

1. Does not include examinations of unaccompanied freight.

2. In 2009/10 reliable data on those detained were not recorded separately; estimated data are included in the total of over the hour examinations.

Table A2



*These notes refer to the Anti-social Behaviour, Crime and Policing Bill as introduced in the House of Commons on 9 May 2013 [Bill 7]*

The table below illustrates a breakdown of the period of examination for the period April 2009 to March 2012.

<b>Period of Examination</b>	<b>% of <u>all</u> examinations</b>
<b>Less than 1</b>	97.2
<b>1-3 Hrs</b>	2.2
<b>3-6 Hrs</b>	0.6
<b>&gt;6 Hrs</b>	0.06

*These notes refer to the Anti-social Behaviour, Crime and Policing Bill as introduced in the House of Commons on 9 May 2013 [Bill 7]*

## **ANNEX D**

### **INFORMATION ON COMPLAINTS RECEIVED BY THE INDEPENDENT POLICE COMPLAINTS COMMISSION IN 2011/12**

#### *Complaints cases recorded by the Commission*

A total of **30,143** complaints were recorded during 2011/12. This represents a 9% reduction compared to 2010/11<sup>44</sup> and a 12% decrease since 2009/10.

#### *Complaints cases finalised<sup>45</sup>*

A total of **29,639 complaint cases were finalised** during 2011/12. This is 14% fewer than the previous year.

#### *Allegations recorded*

A complaint case may have one or more allegations attached. For example, a person may allege that a police officer pushed them and that the officer was rude to them. This would be recorded as two separate allegations forming one complaint case.

During 2011/12, a total of **54,714 allegations** were recorded.

#### *Allegations finalised*

An allegation can be dealt with in a number of ways. It may be investigated, withdrawn, dispensed, discontinued, or dealt with through local resolution. There are also different forms of investigation.

Of the allegations recorded in 2011/12, **52,019 allegations** were finalised.

#### *Appeals to the Commission*

A complainant has the right to appeal to the IPCC if they are not happy about the way in which a police force has handled their complaint. An appeal can be made about a decision to not record a complaint case, or about the process used to conduct a local resolution. They can also appeal about the handling of a local or supervised investigation on the grounds of not being informed about the findings; the information used in the investigation; the outcome; or the decision not to refer to the Crown Prosecution Service (CPS).

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<sup>44</sup> These figures include those for the British Transport Police.; *Police Complaints: Statistics for England and Wales 2011/12*, IPCC Research and Statistics Series: Paper 25.

<sup>45</sup> A complaint case is deemed finalised once all action, including criminal proceedings has been concluded.

*These notes refer to the Anti-social Behaviour, Crime and Policing Bill as introduced in the House of Commons on 9 May 2013 [Bill 7]*

During 2011/12, **6,339 appeals** were made to the IPCC about the handling of a complaint by a police force. This represented a 3% increase compared to the previous year.

There were 1,374 appeals made against the decision by police forces **not to record a complaint** in 2011/12.

There were **426 local resolution appeals** made to the IPCC during 2011/12.

In 2011/12, the IPCC received **4,539 investigation appeals**, a slight increase (2%) compared to last year.

#### *Profile of complainants*

During 2011/12, **30,624 people complained** about the conduct of someone serving with the police – a fall of 9% compared to the previous year.

#### *Profile of those subject to complaints*

A total of **35,382 people serving with the police** were subject to a recorded complaint during 2011/12 – a 6% fall compared to the previous year.

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## **ANNEX E**

### **EXTRADITION: LIST OF TERRITORIES DESIGNATED FOR THE PURPOSES OF PART 2 OF THE 2003 ACT AS AT 1 MAY 2013**

Albania, Algeria, Andorra, Antigua and Barbuda, Argentina, Armenia, Australia, Azerbaijan, the Bahamas, Bangladesh, Barbados, Belize, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei, Canada, Chile, Colombia, Cook Islands, Croatia, Cuba, Dominica, Ecuador, El Salvador, Fiji, the Gambia, Georgia, Ghana, Grenada, Guatemala, Guyana, Hong Kong SAR, Haiti, Iceland, India, Iraq, Israel, Jamaica, Kenya, Kiribati, Lesotho, Liberia, Libya, Liechtenstein, Macedonia FYR, Malawi, Malaysia, Maldives, Mauritius, Mexico, Moldova, Monaco, Montenegro, Nauru, New Zealand, Nicaragua, Nigeria, Norway, Panama, Papua New Guinea, Paraguay, Peru, Russian Federation, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Serbia, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, Swaziland, Switzerland, Tanzania, Thailand, Tonga, Trinidad and Tobago, Turkey, Tuvalu, Uganda, Ukraine, Uruguay, the United Arab Emirates, the United States of America, Vanuatu, Western Samoa, Zambia and Zimbabwe.

# ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL

## EXPLANATORY NOTES

*These notes refer to the Anti-social Behaviour, Crime and Policing Bill as introduced in the House of Commons on 9 May 2013 [Bill 7]*

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