POLICING AND CRIME BILL
EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134).

- These Explanatory Notes 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.

- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.

- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. So where a provision of the Bill does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.
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Overview of the Bill

1 In the 2010 to 2015 Parliament, the previous Government implemented a series of policing reforms, including the replacement of police authorities with directly elected Police and Crime Commissioners (“PCCs”), the creation of the National Crime Agency (“NCA”), the setting up of the College of Policing to drive professional standards, the strengthening of Her Majesty’s Inspectorate of Constabulary (“HMIC”), and extending the powers and resources of the Independent Police Complaints Commission (“IPCC”).

2 In May 2015, the Government was elected with manifesto commitments to “finish the job of police reform”, “enable fire and police services to work more closely together and develop the role of our elected and accountable Police and Crime Commissioners” and “overhaul the police complaints system”. This Bill contains a number of measures to support the delivery of those commitments.

3 The purpose of the Bill is to further improve the efficiency and effectiveness of police forces, including through closer collaboration with other emergency services; enhance the democratic accountability of police forces and fire and rescue services; build public confidence in policing; strengthen the protections for persons under investigation by, or who come into contact with, the police; ensure that the police and other law enforcement agencies have the powers they need to prevent, detect and investigate crime; and further safeguard children and young people from sexual exploitation.

4 The Bill is in nine parts:

5 Part 1 places a duty on police, fire and rescue and ambulance services to collaborate, and enables PCCs to take on responsibility for fire and rescue services.

6 Part 2 reforms the police complaints and disciplinary systems, provides for a new system of “super-complaints” and confers new protections on police whistle-blowers. This part also further strengthens the independence of HMIC and ensures that it is able to deliver end-to-end inspections of the police, including by inspecting contractors and third parties who carry out policing functions.

7 Part 3 enables chief officers of police to confer a wider range of policing powers on police civilian staff and volunteers (excluding those reserved for warranted police officers) and confers on the Home Secretary a power to specify police ranks in regulations. This part also updates the core purpose of the Police Federation for England and Wales and makes it subject to the Freedom of Information Act 2000.

8 Part 4 contains a number of reforms to police powers, including in relation to: pre-charge bail to introduce a presumption in favour of release without bail and statutory time limits and judicial oversight of extensions of bail beyond 28 days; the powers under sections 135 and 136 of the Mental Health Act 1983 (“the 1983 Act”) in respect of persons experiencing a mental health crisis, including banning the use of police cells for the detention of under-18s and reducing the maximum period of detention; the extension of police powers to investigate offences committed on vessels operating at sea; amendments to the Police and Criminal Evidence Act 1984 (“PACE”) to ensure that 17 year olds who are detained in police custody are treated as children for all purposes, and to enable greater use of video-link technology.

9 Part 5 makes further provision in respect of the term of office of Deputy PCCs to enable them to be eligible for appointment as an acting PCC in the event of the office of PCC falling vacant mid-term. This part also provides for changes to the names of police areas to be made by regulations.
10 Part 6 seeks to better protect the public by amending the Firearms Acts so as to close loopholes that can be exploited by criminals and terrorists and by ensuring that, through statutory guidance, there is a consistent approach by chief officers of police to the consideration of applications for firearms licences and shotgun certificates. This part also provides for the full cost recovery, through the levying of fees, of the Home Office’s (and Scottish Government’s) licensing functions in respect of companies trading in prohibited weapons, museums with firearms collections and shooting clubs.

11 Part 7 amends the Licensing Act 2003 to improve the effectiveness of the alcohol licensing regime in preventing crime and disorder.

12 Part 8 strengthens the enforcement regime for financial sanctions by increasing the maximum custodial sentence on conviction for breaching sanctions, expanding the range of enforcement options, including a new system of monetary penalties, and by providing for the immediate implementation of UN-mandated sanctions.

13 Part 9 contains miscellaneous and general provisions, including new requirements on arrestees and defendants to confirm nationality and an amendment to the Sexual Offences Act 2003 to provide that the offences in relation to child sexual exploitation cover the streaming or transmission of indecent images of children. This Part also contains provision to require arrested persons to state their nationality, for suspected foreign nationals to produce their nationality document(s) following arrest and for defendants in criminal proceedings to provide their name, date of birth and nationality to the court.

Policy background

Emergency services collaboration

14 In May 2015, the Government was elected with a manifesto commitment to “enable fire and police services to work more closely together and develop the role of our elected and accountable Police and Crime Commissioners”.

Governance

15 Directly elected PCCs are responsible for the governance of the police; Fire and Rescue Authorities (“FRAs”) are responsible for the fire and rescue service; and NHS trusts or NHS foundation trusts are responsible for ambulance services.

16 There are 37 PCCs in England (excluding London). In London, the equivalent to the PCC is the elected Mayor of London, and the Mayor’s Office for Policing and Crime (MOPAC) is the strategic oversight body which sets the direction and budget for the Metropolitan Police Service on behalf of the Mayor. The Common Council of the City of London is the police authority for the City of London police area.

17 There are 46 FRAs in England (this will reduce to 45 in April 2016 when an order merging Dorset and Wiltshire FRAs comes into force) comprising:

- 6 metropolitan authorities: stand-alone authorities, serving the communities of groupings of metropolitan district councils.
- 24 combined authorities: stand-alone authorities, serving the communities of combined county council and unitary authority areas.

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15 county authorities: integrated within an individual county council or unitary authority.

London Fire and Emergency Planning Authority (“LFEPA”): a body of the Greater London Authority.

18 Twenty-eight FRAs have coterminous boundaries with police forces FRAs and five police areas have coterminous boundaries with the FRAs in their area, when taken together. Annex B shows police areas and FRA areas in England.

19 There are ten regional ambulance trusts in England (and one in Wales). Five of the ten ambulance trusts have foundation status, where they are overseen by a council of governors.

Demand on the emergency services

20 Crime, as measured by the independent Crime Survey for England and Wales, has fallen by more than a quarter since June 2010. However, a College of Policing analysis of demands on policing (Estimating demand on the police service, College of Policing, 2015) found some evidence to suggest that an increasing amount of police time is directed towards public protection work such as managing high-risk offenders and protecting vulnerable victims. Such cases often require considerable police resource.

21 Incidents attended by fire and rescue services have been on a long-term downward trend and have fallen by 42% in England over the ten year period from 2004/5 to 2014/15. Fire-related deaths and casualties have also been on a long-term downward trend.1 Accidental fire deaths in the home in England (which account for two-thirds of all fire fatalities) have decreased by 30% over the last 10 years.2 This is attributed to a range of factors including fire prevention work, public awareness campaigns, standards to reduce flammability such as furniture regulations, and the growing prevalence of working smoke alarms in homes (rising from 8% in 1998 to 88% in 20113).

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

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

Collaboration

24 However, collaboration is patchy. The Public Accounts Committee’s 2011 report, Transforming NHS Ambulance Services (46th Report of Session 2010/12, HC1353), found varying levels of collaboration between NHS ambulance, fire and police services and recommended that collaboration should be strengthened. The report also found that, although NHS ambulance services collaborate with fire and rescue services and police forces in some areas, there is scope

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1 Fire Statistics Monitor: England, April 2014 to March 2015, DCLG
2 Ibid
3 Fire Statistics: Great Britain April 2013 to March 2014, DCLG
4 A&E departments are categorised as one of four types according to activity. Type 1 are major A&E departments, type 2 are single specialty (for example, ophthalmology)

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for a more systematic approach to sharing procurement and back office services across the emergency services.

25 In December 2012 the then Government commissioned Sir Ken Knight, the outgoing Chief Fire and Rescue Advisor (2007 to 2013), to conduct an independent review of efficiency in the provision of fire and rescue in England. His report Facing the future: findings from the review of efficiencies and operations in fire and rescue authorities in England, published May 2013, said: “Efficiency and quality can be driven through collaboration outside the fire sector, particularly with other blue-light services” and recommended that: “National level changes to enable greater collaboration with other blue-light services, including through shared governance, co-working and co-location, would unlock further savings.”

26 Since 2010, the Government has invested over £80 million in local blue light collaboration projects (Fire Transformation Fund, Transformation Challenge Award and 2015/16 Police Innovation Fund) and supports the Emergency Services Collaboration Working Group, formed in September 2014, which brings together senior leaders from the blue light services with the aim of improving collaboration. The group has stated: “with an increasing demand for some of our services, coupled with the current and expected restrictions on funding, collaboration provides opportunities to truly innovate and save money.”

27 The group has compiled a national overview of collaboration and published research to build the evidence base. The research has identified a number of collaboration opportunities ranging in scale of complexity from the sharing of control rooms and estates through to joint training programmes and the merging of local emergency service budgets and governance structures.

28 On 11 September 2015, the Home Secretary launched a joint Home Office, Department for Communities and Local Government and Department for Health consultation paper to seek views on proposals to improve joint working between the emergency services and enhance local accountability. (House of Commons, Official Report, columns 22WS to 23WS). In a written ministerial statement on 26 January 2016 (House of Commons, Official Report, HCWS489), the Home Secretary set out the Government’s response to the consultation, including a commitment to bring forward legislation:

- introducing a high level duty to collaborate on the three emergency services to improve efficiency or effectiveness;
- enabling PCCs to take on the functions and duties of fire and rescue authorities, where a local case is made;
- where a PCC takes on the responsibilities of a fire and rescue authority, enabling him or her to create a single employer for police and fire staff, facilitating the sharing of back office functions and streamlining management;
- enabling PCCs to be represented on fire and rescue authorities, in areas where such authorities remain in place;
- bringing fire and rescue services in London under the direct responsibility of the Mayor of London by abolishing the London Fire and Emergency Planning

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6 ibid.
7 Research into emergency services collaboration, Parry et al, 2015

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Authority.

29 Part 1 of the Bill gives effect to these reforms.

**Police complaints and discipline**

**The complaints system**

30 The police complaints system is the mechanism by which the public may raise their concerns about the service they receive from their police force. The operation of the complaints system and the outcomes it achieves play an important role in ensuring that the police continue to exercise their powers fairly and legitimately in the eyes of the public.

31 The IPCC oversees the whole of the police complaints system and it has a statutory duty to ensure that public confidence is established and maintained in the police complaints system.

32 Once a member of the public makes an allegation about someone serving with the police (the allegation may be raised with the force, the PCC or the IPCC), the force must take a decision about whether the allegation should be recorded as a complaint. Once a complaint is recorded by the police force, efforts are made to resolve the allegation raised by the member of public, either by local resolution, a local investigation or by referring to the IPCC for an investigation. If a member of the public is unhappy with the way their complaint has been handled, the system has a series of appeal points which allows them to challenge a decision. The appeal is usually dealt with by the chief constable or the IPCC depending on the circumstances. More detail on the complaints process is provided in annex D.

33 Police forces must refer certain complaints and incidents to the IPCC – for example, an allegation that an officer has seriously assaulted someone or committed a serious sexual offence, or if someone has died or been seriously injured following direct or indirect contact with the police.

34 A total of 37,105 complaints were recorded during 2014/15. This was a 6% increase compared to 2013/14 and represents a 62% increase since 2004/05.

35 It took on average 110 working days to finalise complaint cases in 2014/15, with the average time varying across police forces from 52 to 205 working days.

36 35% of people lack confidence in the ability of the police to deal with their complaint fairly (Public Confidence in the Police Complaints System, 2014, page 22) and 72% of people are not satisfied with how their complaint is handled (Crime Survey for England and Wales, 2014/15, 06 - supplementary tables.).

37 In 2014/15, 40% of appeals to the IPCC against decisions taken by police forces were upheld (up from 30% in 2010/11).

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8 Police Complaints, Statistics for England and Wales 2014/15, IPCC
9 ibid
10 ibid
11 Police Complaints, Statistics for England and Wales 2010/11, IPCC

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The disciplinary system

38 In carrying out their duties, members of police forces, including civilian staff, are expected to maintain the highest standards of professional behaviour, which are set out in The Police (Conduct) Regulations 2012 (SI 2012/2632, as amended) and detailed in the College of Policing’s Code of Ethics.\(^\text{12}\)

39 The police disciplinary system is designed to deal with circumstances where these professional standards are not met. Disciplinary action may arise as a result of a complaint from a member of the public, an internal complaint or an incident such as a death or serious injury, where there is evidence of misconduct (that is a breach of professional standards) or gross misconduct (a breach so serious that dismissal would be justified). More information on the disciplinary process is provided in [annex E](#).

40 Where behaviour falls short of these standards, it is the responsibility of the police force to conduct a formal investigation and take forward disciplinary action where appropriate. Where allegations arise that are serious or sensitive, the police force must refer those cases to the IPCC, which then decides how the investigation should be carried out and to what extent the police force should be involved.

41 Since 1 December 2013, the College of Policing has managed a national register of officers struck-off from the police (the “Disapproved Register”). The register is available to forces for vetting purposes.

42 Since 1 May 2015, police misconduct hearings (and appeals) are held in public and since 1 January 2016 misconduct hearings have an independent, legally qualified chair.

IPCC powers

43 The IPCC was established by Part 2 of the Police Reform Act 2002 (“the 2002 Act”) and started operating in 2004. It is responsible for overseeing the police complaints system in England and Wales, assessing appeals against complaints decisions and investigating serious matters involving the police, including deaths and serious injuries following police contact.

44 The 2002 Act sets out the detailed provision for the handling of recordable conduct matters, complaints, and Deaths and Serious Injuries (“DSI”) involving the police.

45 As the body that oversees police complaints, the IPCC sets the standards by which the police should handle complaints. Although the IPCC has statutory responsibility to oversee the police complaints system and to maintain public confidence, in reality, it is not in charge of the whole process, with a majority of cases being dealt with by police forces, unless considered serious, then police forces must refer to the IPCC.

46 In a statement to Parliament on police integrity on 12 February 2013, the Home Secretary committed to a major change programme to ensure that the IPCC has increased capacity and funding to investigate all serious and sensitive matters involving the police: “I want to make sure that the Independent Police Complaints Commission is equipped to do its important work… its role has been evolving and the proposals I announce today develop it further. Public concern about the IPCC has been based on its powers and its resources, and I want to address both issues.” (House of Commons, Official Report, columns 713 to 715)

47 Since then, the IPCC has recruited over 100 additional investigators (as of 31 March 2015 it had

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and by the end of 2014/15 had almost doubled the number of independent investigations it conducts (starting 241 new investigations compared with 126 in 2011/12).  

**Whistle-blowing**

48 One of the ways in which police misconduct, malpractice and corruption is brought to light is when police officers or staff report it themselves. However these reports are not always made. Anecdotal evidence suggests that some of the reasons for this may be because it is not believed that anything will be done, the reporting routes available are not trusted, or they fear an adverse reaction from the police force.

49 Following a Government consultation, *Improving Police Integrity: Reforming the Police Complaints and Disciplinary Systems*, which ended in January 2015, the Government made changes to the Police (Conduct) Regulations 2012 to make it clear that police whistleblowers are protected from unfair disciplinary action and reprisals against them will not be tolerated. This ensures that the principles set out in the Public Interest Disclosure Act 1998 are incorporated in the police disciplinary process.

50 In its response to the consultation document *Improving Police Integrity*, the Government also announced its intention to introduce a number of additional measures to strengthen protections for police whistleblowers in order to give police whistleblowers greater confidence to report their concerns. The College of Policing is developing National Guidance for Whistle-blowing, which will set out the support that should be provided, including providing feedback and updates to police whistleblowers, giving them the right to be consulted by the force (or IPCC) and outlining the reporting routes available.

**Review of complaints and disciplinary systems**

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

- a review of the police disciplinary system to be chaired by Major-General Chip Chapman (the “Chapman review”), with a consultation to follow which would include proposals to hold police misconduct hearings in public with legally-qualified panel chairs;
- a single national policy for police forces on whistle-blowing alongside a plan to publish more information on conduct issues raised by police officers and the action taken as a result;
- plans to consider the introduction of sealed investigations into serious misconduct and corruption by police officers;
- regulations to ensure that officers cannot resign or retire to avoid dismissal in misconduct hearings; and

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13 IPCC Annual Report and Statement of Accounts 2014/15

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• a review of the entire police complaints system, including the role, powers and funding of the IPCC and the local role played by PCCs that would be followed by a public consultation. The aim of the review was to put forward proposals for a system that is more independent of the police, easier for the public to follow, more focused on resolving complaints locally and that has a simpler system of appeals.

52 The Chapman Review was completed in October 2014 and concluded that the current police disciplinary system is too complex and lacked transparency and independence, with much of the system being managed by police forces themselves. The review made 39 recommendations for improving the current system. The Home Office has already implemented some of the recommendations through secondary legislation, including to provide for police misconduct hearings and appeals to be held in public. Independent legally-qualified chairs were introduced from January 2016, replacing senior police officers as chairs of misconduct hearing panels. In addition, the Police (Conduct) (Amendment) Regulations 2014 (SI 2014/3347) prevents officers from resigning or retiring to avoid investigation for gross misconduct.

53 In December 2014, the Government launched a public consultation, Improving police integrity: reforming the police complaints and disciplinary systems. The consultation found that elements of the police complaints system do not work efficiently or effectively and few of those involved with the system have confidence in it.

54 On 12 March 2015, the Home Secretary announced a range of reforms (House of Commons, Official Report, columns 36WS-38WS) as set out in the Government’s response to the consultation.

55 Changes to the police disciplinary system include:

• Extending the disciplinary regime to former officers for up to 12 months after they leave the police;
• Ensuring that the IPCC investigate all cases involving chief officers;
• Allowing the IPCC to present its own cases to disciplinary hearing panels.

56 Changes to the police complaints system include:

• Simplifying the complaints system;
• A stronger role for PCCs;
• Clarifying the definition of a complaint;
• Ending the practice of non-recording complaints;
• Measures to strengthen protections for police whistleblowers;
• Changes to the powers of the IPCC; and
• Introducing a system of super-complaints.

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

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

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

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

59 In July 2011, HMIC was commissioned by the Home Secretary to review police relationships with the media and other parties (announced in an oral statement in the House of Commons on 18 July 2011 (Official Report, columns 622 to 642)). The subsequent report, Without fear or favour: a review of police relationships (December 2011), and its follow-up, Revisiting police relationships: a progress report (December 2012), found that while some progress has been made to ensure forces operate in a transparent manner, more needed to be done. The report concluded that a more transparent and challenging environment needed to be created in order to improve public confidence. It recommended that in addition to scrutiny of chief officers by PCCs, there continued to be a need for independent external scrutiny by HMIC, including unannounced inspections. It also highlighted the increased use of outsourcing within policing, and the need for scrutiny to apply to all those delivering policing functions. Amongst other things, Chapter 5 of Part 2 extends the remit of HMIC to cover the scrutiny of contractors and staff engaged in the delivery of policing functions.

Police workforce and representative institutions

Powers of police civilian staff and volunteers

60 The office of constable sits at the heart of policing in England and Wales, and their powers are defined across a wide range of Acts and at common law.

61 Since the passage of the Special Constables Act 1831, it has been possible to vest the full powers of a constable on volunteers serving with the police. The Road Traffic and Roads Improvement Act 1960 introduced Traffic Wardens with certain road traffic-related policing powers and Part 4 of the 2002 Act conferred on chief officers of police the power to designate a member of police staff as a Police Community Support Officer (“PCS0”), investigating officer, detention officer or escort officer, each with a range of specified policing powers appropriate to their role. In the case of PCSOs, these powers include the power to request the name and address from a person acting in an anti-social manner, certain specified powers to search and seize, and powers to issue fixed penalty notices for a list of specified offences. The role of PCSOs in local policing is now well established. (See annex F for further details of the powers associated with each of these roles.)

62 Under the 2002 Act, a chief officer of police may designate a member of police staff as a PCSO, investigating officer, detention officer or escort officer, as the case may be, if satisfied that the individual is: a) suitable to carry out the role; b) capable of effectively carrying out the role; and c) has received adequate training. An individual may be designated in more than one role – for example, staff can be designated as both a detention officer and an escort officer to give greater
flexibility in managing detained persons. For each role, chief officers have the discretion to confer on a designated member of staff the mix of powers, taken from a specified list of powers, appropriate to the individual’s particular role and training although, in the case of PCSOs, there is a set of standard powers which form a minimum core appropriate to the role.

63 Police staff without such designation have no powers.

64 There are two main types of volunteer in policing: special constables, who have the full range of police powers and the attendant training requirement and Police Support Volunteers, who undertake support functions such as staffing an enquiry desk and have no powers.

65 The current position of staff and volunteers is summarised in the table below:

<table>
<thead>
<tr>
<th></th>
<th>Full powers</th>
<th>Some powers</th>
<th>No powers</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Paid, full-time or part-time</strong></td>
<td>Police Officer</td>
<td>Designated Staff (i.e. PCSO, Investigating Officer, Detention Officer, Escort Officer)</td>
<td>Other Police Staff</td>
</tr>
<tr>
<td><strong>Unpaid, part-time</strong></td>
<td>Special Constable</td>
<td>No Current Role</td>
<td>Police Support Volunteers</td>
</tr>
</tbody>
</table>

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

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

The Home Secretary announced the outcome of the consultation on 20 January 2016 (House of Commons, Official Report, HCWS478). Clauses 28, 29 and 33 and Schedules 7 and 8 give effect to these proposals.

**Police ranks**

67 Presently the police rank structure is set out in provisions of the Police Act 1996 ("the 1996 Act"), while the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”) provides that there must be at least one of each of the chief officer ranks in every police force. See annex G for the current list of designated ranks and numbers of officers at each rank.

68 In an oral statement on 22 July 2014 (House of Commons, Official Report, columns 1265 to 1277), the Home Secretary announced that she had asked the College of Policing to conduct a
fundamental review of police leadership. The Leadership Review June 2015 report included a recommendation to review the rank and grading structures in policing, stating that “ranks and grades in policing may need to be reformed as we move towards policing based on greater levels of practitioner autonomy and expertise”. The report highlighted that flatter structures can enable organisations to be more responsive and to communicate more effectively.

The review is being led by the National Police Chiefs’ Council ("NPCC"), reporting to the College of Policing-led Leadership Review Oversight Group and is expected to report in spring 2016.

Clause 35 will enable the review’s recommendations to be implemented and provide a more flexible model for policing by setting out rank structure in secondary rather than primary legislation. The ranks of constable and chief constable (or Commissioner in the case of the Metropolitan Police Service and City of London police) will continue to be provided for in primary legislation.

**Police Federation**

The Police Federation for England and Wales (“the Police Federation”) represents the interests of police officers below the rank of superintendent (namely, constables, sergeants, inspectors and chief inspectors). It was created in 1919 to represent officers, reflecting the fact that police officers are members of a disciplined service with an obligation to protect the public and, as such, are prohibited from joining a trade union or taking industrial action.

In Spring 2013 the Police Federation commissioned a review to consider whether any changes were required to its operation or structure in order to ensure that it continued to promote the public good as well as the interests and welfare of its members. This review was conducted by an independent panel, chaired by Sir David Normington GCB.

The panel’s final report, Police Federation Independent Review, was published in January 2014 and made 36 recommendations, to improve trust and public accountability, transparency, professionalism and member services, including:

- The adoption of a revised core purpose which reflects the Police Federation’s commitment to act in the public interest; and
- Greater national oversight and transparency of Police Federation finances, including a requirement to publish all accounts and income and to co-ordinate resources centrally.

The report recommended that: “the starting point should be a revised statutory purpose for the Federation which sets a new tone and commitment, recognises the reality of its accountability to its members and the public and incorporates a commitment to new standards of conduct and transparency...” and that in order to achieve this, a revised core purpose “should be incorporated in legislation as soon as practicable” (pages 16 and 17).

The final report was endorsed by the Home Affairs Select Committee (recommendation 3 of the Committee’s Report, Reform of the Police Federation, 18th Report of Session 2013/14, HC1163) and by the Home Secretary in her speech to the Police Federation annual conference in May 2014. At the conference the Police Federation accepted all 36 recommendations and has adopted a revised core purpose that includes acting “in the interests of the members of the public”.

In her speech at the Police Federation Annual Conference in May 2015, the Home Secretary...
committing the government to enshrining the revised core purpose in legislation.

77 The Home Secretary also stated in her speech that she would bring forward proposals to make the Police Federation subject to the Freedom of Information Act 2000 (“FOI Act”). The primary objective of the FOI Act is to increase the openness, transparency and accountability of those bodies subject to the Act. The provision of information under the FOI Act enables greater transparency about how public money is spent and greater scrutiny of public services. It allows the public to gain information about services and decisions that affect them and to hold bodies to account for those decisions. In a written ministerial statement (Official Report, 12 March 2015, WS387) the Home Secretary announced the publication of a draft clause setting out how the FOI Act could be applied to the Police Federation.

78 Clauses 37 and 38 give effect to these reforms of the Police Federation.

National Police Chiefs’ Council

79 There has been a representative body for chief officers of police since 1858. The Association of Chief Police Officers of England, Wales and Northern Ireland (“ACPO”) was formed in 1948. Its stated role was “to bring together the expertise and experience of chief police officers and senior police staff equivalents from across the United Kingdom, providing a professional forum to share ideas and best practice, develop national professional practice, co-ordinate resources and help deliver effective policing which keeps the public safe”. In addition to acting as the professional voice of policing, ACPO co-ordinated national police operations and provided national policing services, such as the National Ballistics Intelligence Service (“NABIS”).

80 In 2013, PCCs commissioned General Sir Nick Parker to undertake an independent review of ACPO, in the wake of the significant reforms to policing that had taken place since 2010. General Parker’s terms of reference were to “examine the standing structures and functions currently delivered by ACPO in the context of the radically different national environment of PCCs, the College of Policing and the National Crime Agency and make recommendations to PCCs”, including about the requirement for a collective national policing function akin to that fulfilled by ACPO. General Parker’s report was published in August 2013 (Independent Review of ACPO). He concluded that there was “a requirement for a Chief Constables’ Council with a full-time chair which should: conduct operational and managerial coordination between independent Chief Constables; act as the focus for command and leadership of the police service; maintain direct links to the National Business Areas to inform policing and implement practice; and speak with a coordinated and independent voice on the delivery of operational policing”. In July 2014, chief officers voted in support of the creation of the National Police Chiefs’ Council (“NPCC”) and ACPO was formally closed down on 31 March 2015 and replaced by the NPCC on 1 April 2015.

81 The NPCC was constituted as a result of a collaboration agreement, made under section 22A of the 1996 Act, between all chief officers of police and local policing bodies (PCCs and the equivalent in London) in England and Wales, the National Crime Agency, the College of Policing and other policing bodies; it is hosted by the Metropolitan Police Service. The NPCC’s functions are to:

- Co-ordinate national operations including defining, monitoring and testing force contributions to the Strategic Policing Requirement working with the National Crime Agency where appropriate;
- Command counter-terrorism operations and delivery of counter-terrorist

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policing;

- Co-ordinate the national police response to national emergencies and the mobilisation of resources across force borders and internationally;

- implement national operational standards and policy as set by the College of Policing and Government;

- Work with the College of Policing to develop joint national approaches on criminal justice, value for money, service transformation, information management, performance management and technology;

- Work with the College of Policing (where appropriate) to develop joint national approaches to staff and human resources issues (including misconduct and discipline) in line with chief constables’ responsibilities as employers.

82 There are a number of statutory references to ACPO which, for example, require the Home Secretary to consult with the association before exercising certain policing-related delegated powers. Clause 39 and Schedule 11 amend or repeal these provisions to take account of the replacement of ACPO by the NPCC.

Police powers

Pre-charge bail

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

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

- Where there is as yet insufficient evidence to charge a suspect with an offence and it is necessary to continue to investigate without them being held in custody.

- Where the police consider there is sufficient evidence to charge the suspect, but the case has been referred to the Crown Prosecution Service (“CPS”) for a charging decision.

85 The police may detain a suspect for up to 24 hours prior to charge. Where the offence being investigated is indictable (that is, the more serious offences which can be tried in the Crown Court) detention can be extended to 36 hours on the authority of a police officer of at least the rank of superintendent. A warrant of further detention issued by a magistrates’ court would be required to extend detention beyond 36 hours, to a maximum of 96 hours. ( Terrorist suspects detained under section 4 of, or Schedule 7 to, the Terrorism Act 2000 may be detained for up to 14 days.) In order to avoid prolonged periods of detention, the police have the power to grant bail to allow them to make further enquiries. This stops the detention clock while the police undertake outstanding enquiries, meaning that suspects can still be detained for the remaining period of time if necessary.

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

87 Commonly used police bail conditions include:

- not to contact the victim directly or indirectly;
- not to attend the home address of the victim/not to enter the victim’s street or a specific area marked out on a map;
- to live and sleep at a specified address; and
- to report to a named police station on specific days of the week at specified times.

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

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

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

- Providing for a presumption to release without bail, with bail only being imposed when it is both necessary and proportionate;
- Setting a clear expectation that pre-charge bail should not last longer than a specified finite period of 28 days (subject to the possibility of extension);
- Making provision for when that initial period might be extended further, and who should make that decision (including longer periods to be determined by the courts);
- Making clear that, where an individual has been released without bail while analysis takes place of large volumes of material, the police can make a further arrest where key evidence is identified as a result of the analysis of that material that could not reasonably have been done while the suspect was in custody or on

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bail;

- Providing a procedure to allow sensitive information to be withheld from a suspect where its disclosure could harm the investigation, such as where disclosure might enable the suspect to dispose of or tamper with evidence; and

- Providing for an exceptional case procedure.

Chapter 1 of Part 4 gives effect to these proposals.

**PACE: treatment of those aged 17**

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

In order to comply with the High Court ruling, the Government introduced changes to PACE Codes C and H (which deal with the detention, treatment and questioning of suspects by police officers under the Terrorism Act 2000) on 27 October 2013. The Government subsequently conducted a review of the way that 17 year olds were treated under the primary provisions of PACE. The review concluded that 17 year olds should be treated in the same way as 10 to 16 year olds under all of the relevant provisions. Section 42 of the Criminal Justice and Courts Act 2015 amended PACE so that where a 17 year old is charged and denied bail then, as with 10 to 16 year olds, the police are required to transfer him or her to local authority accommodation, unless a custody officer certifies that to do so is impracticable. Previously 17 year olds denied bail would be kept in police custody before appearing in court. This change came into force on 26 October 2015. Clause 53 of the Bill makes three further changes to the remaining provisions in PACE which still treat a 17 year old as an adult.

**Police powers under the Mental Health Act 1983**

The Mental Health Act 1983 ("the 1983 Act") provides for action to be taken, where necessary, to make sure that people with mental disorders get the care and treatment they need for their own health or safety, or for the protection of other people, even if the individual concerned does not consent to the action being taken. It sets out the criteria that must be met before such measures to compel compliance can be taken, along with protections and safeguards for patients. It also sets out the civil procedures under which people can be detained in hospital for assessment or treatment of mental disorder. In addition, the 1983 Act makes provision concerning the treatment and care of those accused of, and those convicted of, an offence.

It is intended to provide a balance between the need to detain a person, when this is necessary for health and safety reasons, while at the same time safeguarding the individual’s civil liberties. Sections 135 and 136 of the 1983 Act confer powers on the police to temporarily remove people from private premises (section 135) or a public place (section 136) who appear to be suffering from a mental disorder and who need urgent care to a ‘place of safety’ specified
in section 135(6), so that a mental health assessment can be carried out and appropriate arrangements made for their ongoing care if necessary.

96 In February 2014 the Government published the Mental Health Crisis Care Concordat for England to ensure that all those involved in supporting someone in a crisis work together to improve the system of care. In agreeing this Concordat, the 22 (now 27) national signatory organisations from across health, social care and policing signed up to a number of actions that can be found in the document. The Welsh Government has also published, in December 2015, a Concordat for Wales along a very similar set of principles. Both Concordats set out the standard of response that a person experiencing a mental health crisis should be able to expect.

97 Approaches, such as street triage schemes whereby mental health nurses and paramedics accompany police officers to such incidents or provide telephone support, have resulted in a more co-ordinated response. Improved local practice and access to services in some areas has led to a reduction in the number of times police cells were used for a person detained under section 136 in England from 8,667 in 2011/12 to 3,996 in 2014/15.

98 In December 2014, the Home Office and Department of Health published the outcomes of a joint review of the operation of sections 135 and 136. The review examined the practical implications of existing practice and was informed by a wide range of views (through over 1,000 survey responses). The published review included recommendations for a number of legislative changes to sections 135 and 136 (as well as some non-legislative recommendations).

99 The Department of Health included these recommendations in a wider public consultation announced on 6 March 2015 (House of Commons, Official Report, WS355 and House of Lords, Official Report, WS332) - No voice unheard, no right ignored: a consultation for people with learning disabilities, autism and mental health conditions (Cm 9007). The Government response to that consultation (Cm9142) was published on 10 November 2015 (House of Commons, Official Report, WS302 and House of Lords, Official Report, WS297) and included the following actions:

- “an end to the use of police cells as a place of safety for children and young people detained under sections 135 or 136 of the Mental Health Act 1983;

- no one detained under sections 135 or 136 to be held in a ‘place of safety’ for more than 24 hours without being assessed by a relevant professional and either discharged or admitted.”

100 The College of Policing ran a consultation on their new guidance for dealing with people with mental health problems between 11 November and 1 January 2016.

101 Chapter 3 of Part 4 gives effect to these actions and other changes to sections 135 and 136 recommended in response to the earlier review.

**Police powers: maritime enforcement**

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

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

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the UK or on the high seas.

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

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

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

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

106 Clause 45 of, and Schedule 11 to, the Immigration Bill currently before Parliament confers maritime enforcement powers on immigration officers, those powers will also be exercisable by police officers and certain members of the Armed Services. The maritime powers in the Immigration Bill are limited to the enforcement of three immigration offences in UK territorial waters, namely the offences of assisting unlawful immigration, assisting an asylum-seeker to arrive in the UK and assisting entry to the UK in breach of a deportation or exclusion order.

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

- UK ships anywhere on the high seas (’international waters’), in the territorial waters of another state (with permission from the relevant state), and in England and Wales waters;
- stateless vessels in England and Wales waters and international waters;
- foreign vessels in England and Wales waters subject to the same authorisation requirements as in section 35(5) and (6) of the 2015 Act; and

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

Firearms

108 Firearms controls in the UK are among the strictest in the world, and as a result firearms offences make up a small proportion (less than 0.2%) of recorded crime. The law regulating the possession and acquisition of firearms in England and Wales and Scotland is contained in the Firearms Act 1968 (“1968 Act”).

109 Section 5 of the 1968 Act prohibits especially dangerous weapons including handguns and automatic weapons. Firearms, shotguns and rifles are licensed and held on a firearm or shotgun certificate granted by a chief officer of police. Low powered air weapons are not licensed in England and Wales unless they are of a type declared specially dangerous by the Firearms (Dangerous Air Weapons) Rules 1969 (SI 1969/47) but there are restrictions on their sale. In Scotland, the Air Weapons and Licensing (Scotland) Act 2015 provides that any air weapons capable of discharging a missile with kinetic energy above one joule as measured at the muzzle of the weapon is subject to certification. (Similarly, any airgun capable of a discharge kinetic energy in excess of one joule is subject to certification in Northern Ireland.)

110 Permission to possess or to purchase or acquire a firearm will be granted to an individual who is assessed by the relevant licensing authority as not posing a threat to public safety and having good reason to own the firearm. Organisations such as target shooting clubs, museums and firearms dealers must also apply for licences if they wish to possess or use firearms. Persons who have been sentenced to a term of imprisonment of three years or more cannot possess a firearm or ammunition (including antique firearms) at any time.

111 The police are the licensing authority for firearm and shotgun certificates as well as for firearms dealers. Weapons prohibited under section 5 of the 1968 Act are authorised, in England and Wales, by the Home Office on behalf of the Secretary of State and in Scotland, by the Justice Department on behalf of the Scottish Ministers.

112 While the current licensing system is robust, the current legal framework has been the subject of a number of criticisms, including because loopholes are being exploited by those with criminal intent and key terms within the legislation have been left undefined.

113 To remedy these, and other, shortcomings, in July 2015, the Law Commission published a consultation paper, Firearms Law: A Scoping Consultation Paper, aimed at addressing five particular deficiencies in the current law, namely:

• the failure to define “lethal”;
• the failure to define “component part”;
• the failure to define “antique”;
• the failure to impose a legal obligation that firearms be certified as being deactivated to an approved standard; and

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16 Chapter 3: Violent Crime and Sexual Offences - Weapons, ONS, 12 February 2015
17 An air weapon is “specially dangerous” if it is capable of discharging a missile with kinetic energy in excess, in the case of an air pistol, of 6 foot lbs or, in the case of other air weapons, 12 foot lbs.

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the failure of the law to keep pace with technological developments in relation to whether an imitation firearm is ‘readily convertible’ into a live firearm.

114 Chapter 6 addresses the first three and the last of these deficiencies.

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

**Lethality**

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

117 Clause 77 gives effect to the Law Commission’s recommendations (at paragraphs 2.29 and 2.43 of its report) that for the purposes of section 57(1) a weapon should be considered lethal if:

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

and that an exempting provision should be created:

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

**Component parts**

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

119 However, the legislation does not define the term “component part” and although this is set out in [Home Office guidance](https://www.gov.uk/government/publications/home-office-guidance-uk-firearms-licence) the courts have decided that the meaning of this term is a question of fact for the jury.

120 This has created a lack of clarity. For example, for a person lawfully in possession of a rifle and wishing to possess a spare firing pin, there is currently ambiguity over whether it must be included as a separate entry on his or her firearm certificate. The reforms will make it clear that only those items listed below will be a component part.

121 Clause 77 gives effect to the following Law Commission recommendations (at paragraphs 3.20, 3.28 and 3.44 of its report):

“that the term “component part” in the Firearms Act 1968 be defined as:

(1) The barrel, chamber, cylinder.

(2) Frame, body or receivers

(3) Breech block, bolt or other mechanism for containing the charge at the rear of the chamber.

“that the Secretary of State be given the power to amend the statutory list of component parts

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

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by way of statutory instrument, subject to the affirmative resolution procedure”; and
“that legislation be enacted to clarify that a component part shall remain classified as such so
long as it is capable of fulfilling its function as part of a lethal barrelled weapon”.

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

123 This is presenting a public safety risk as there is evidence from law enforcement agencies that
the law is failing to prevent the easy acquisition and possession of antique firearms by those
with criminal intent. The National Ballistics Intelligence Service (“NABIS”) report that between
1 September 2014 and 31 August 2015 59 antiques have been recovered from criminal
circumstances (Law Commission Firearms Symposium, 8 September 2015).

124 Clause 78 gives effect to the Law Commission recommendations (paragraphs 4.40 and 4.54 of
their report) “that an “antique firearm” be defined as:

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

- a firearm that is chambered for a cartridge type included on an amendable
statutory list of cartridge types that are no longer readily available and is
possessed as a curiosity or ornament” and

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

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

126 Section 8 of the Firearms (Amendment) Act 1988 provides that a firearm is presumed to have
been rendered incapable of discharging any shot bullet or other missile, and is no longer a
firearm if it bears a mark approved by the Secretary of State denoting that the work has been
carried out in a manner approved by the Secretary of State and one of the two Proof Houses20
have certified in writing that it has been deactivated to a standard approved by the Secretary of
State..

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20 The two Proof Houses (in London and Birmingham) provide a testing and certification service for firearms, provided for
127 In 1989 the Home Office produced a series of deactivation standards. These specify the physical changes that must be made to a firearm in order for it to be considered deactivated within the terms of section 8. These standards were revised in 1995 and in 2010. The more recent standards are more rigorous than those adopted in 1989. The new standards do not apply retrospectively, however. If a firearm was deactivated to the then approved standard, it remains lawful to possess it without the need to “upgrade” it to the most recent standard. These Home Office standards have no legal standing and, as such, cannot be mandated.

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

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

“Law enforcement authorities in the EU are concerned that firearm which have been deactivated are being illegally reactivated and sold for criminal purposes, [and that] items such as alarm guns, air weapons and blank-firers are being converted into illegal lethal firearms.21”


**Conversion of imitation firearms**

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

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

132 This provision is out of date because it does not take sufficient account of the range of tools and equipment that can now be readily purchased on the internet and used to convert imitation firearms into live firearms.

133 Clause 79 gives effect to the Law Commission recommendation (at paragraph 6.34 of its report) that anew offence is created “of being in possession of an article with the intention of using it unlawfully to convert an imitation firearm into a live firearm”.

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*These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)*
Fees

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

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

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

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

- Firearms dealers for the purpose of storing, manufacturing, trading or restoring prohibited weapons;
- Carriers for the purpose of transporting prohibited weapons;
- Private Maritime Security Companies for the purpose of the deployment of armed guards to protect UK ships from piracy in the high risk areas;
- Olympic (and Commonwealth) shooting squads so that they can possess pistols which are a prohibited weapon.

137 The cost to the Home Office and Scottish Government of the licensing regime for section 5 authorisations and museum and shooting club licences is currently an estimated £700,000 per annum. Clause 80 confers a power on the Secretary of State to set fees in connection with authorisations under section 5 of the 1968 Act, and updates existing powers to set fees in connection with museum firearm licences and shooting club licences.

Statutory Guidance

138 HMIC published a report in September 2015 on the outcome of their inspection of police firearms licensing departments. Police licensing departments deal primarily with the licensing of shotguns and other civilian firearms, for use by farmers and in recreational shooting. The report, Targeting the risk: An inspection of the efficiency and effectiveness of firearms licensing in police
forces in England and Wales, September 2015, HMIC, recommended strengthening the safeguards in the current licensing regime and improving consistency across forces in the procedures they follow. To this end, clause 81 introduces a power to issue statutory guidance to chief officers on the exercise of their firearms licensing functions, with a duty on chief officers to have regard to the guidance.

Alcohol: licensing

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

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

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

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

Powdered alcohol

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

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

145 Clause 82 amends the 2003 Act to ensure that the law is clear that both powdered and vaporised alcohol fall within the regulatory regime provided for in that Act.

Summary review: interim steps

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

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147 However, there is currently a legal ambiguity over whether or not interim steps remain in place until the process is complete, once appeal channels have been exhausted, or whether they can be withdrawn or amended at an earlier stage. Feedback from licensing authorities indicates that the legislation is being interpreted in some areas in a way which means that businesses are remaining closed or significantly restricted due to interim steps, sometimes for months, while an appeal is lodged. In other areas the opposite is happening and this can result in premises which pose a risk to the public continuing to operate during the appeal period. Either result can operate unfairly. Clause 84 amends the law to ensure that licensing authorities can take appropriate action to protect the public and businesses subject to summary reviews are treated fairly.

Forfeiture and suspension of licences on conviction of relevant offences

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

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

150 Clause 85 amends the 2003 Act to give licensing authorities the power to revoke or suspend a licence, and clause 86 updates the list of offences in Schedule 4.

Financial sanctions

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

152 The primary aim of all UN sanctions, as set out in Chapter VII of the UN Charter, is to implement decisions by its Security Council for the maintenance of international peace and security. The EU imposes sanctions to further its Common Foreign and Security Policy objectives.

153 Sanctions may be imposed on an individual or entity (‘the target’) to:

(a) Coerce the target into changing its behaviour, by increasing the cost on them to such an extent that they decide the offending behaviour is no longer optimal;

(b) Constrain the target, by trying to deny them access to key resources needed to continue their offending behaviour;

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(c) Signal disapproval of the target as a way of stigmatising and potentially isolating them, or as a way of sending broader political messages to international or domestic constituencies.

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

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

156 The UK currently has 26 international financial sanctions regimes in force including the sanctions regime targeting ISIL (Daesh) and Al-Qaida. Domestically, the UK also implements terrorist financing restrictions through the Terrorist Asset Freezing etc. Act 2010 (“TAFA”). A full list of financial sanctions regimes can be found online at HMT’s financial sanctions page.

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

**Enforcement**

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

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

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

161 There is also an apparent enforcement ‘gap’ between situations deemed serious enough to warrant prosecution for failure to comply with financial sanctions and cases where a cautionary letter may be sufficient to improve future compliance.

162 In the [Summer Budget 2015](https://www.gov.uk/government/publications/summer-budget-2015) (HC264), the Chancellor announced the creation of a new Office of Financial Sanctions Implementation, expected to be operational by April 2016. The Budget report stated the following:

> “The Office will provide a high quality service to the private sector, working closely with law enforcement to help ensure that financial sanctions are properly understood, implemented and enforced. This will ensure financial sanctions make the fullest possible contributions to the UK’s foreign policy and national security goals and help maintain the integrity of and confidence in the UK financial services sector. The government will also legislate early in this Parliament to increase the penalties for non-compliance with financial sanctions.”

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

- Provides for an uplift of criminal penalties for EU financial sanctions by applying a gloss to section 2(2) of the 1972 Act, and amending the Anti-Terrorism, Crime

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and Security Act 2001 and Counter Terrorism Act 2008. The changes will enable
the maximum custodial sentence for a criminal breach of financial sanctions to be
increased from two to seven years for conviction on indictment and from three
months to six months (12 months in Scotland) on summary conviction.

- Creates a monetary penalties regime for breaches of financial sanctions regimes.
- Includes financial sanctions in the list of offences to which Deferred Prosecution
  Agreements (“DPAs”) and Serious Crime Prevention Orders (“SCPOs”) apply.
- Enables the temporary implementation of UN Security Council Resolutions by
  UK legislation until their implementation via EU law.

Miscellaneous and General

National Crime Agency

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

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

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

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

168 Reflecting the experience of its initial two years of operations, clauses 102 and 103 and
Schedule 12 make changes to the arrangements under which the NCA may enter into
collaboration agreements with other law enforcement agencies and the enforcement powers
with which the Director General of the NCA can designate officers.

Requirements to confirm nationality

169 Foreign nationals comprise 12% of the prison population in England and Wales23. The
Government aims to remove as many Foreign National Offenders (“FNOs”) as quickly as
possible to their home countries, to protect the public, to reduce costs and to free up spaces in
prison. The number of FNOs removed from the UK has increased from 4,539 in 2011/1224 to
5,277 in 2014/15.25 More than 25,000 FNOs have been removed from the UK in the period 2010


23 Offender Management Statistics Quarterly Bulletin: July to September 2015, MoJ
24 Managing and removing foreign national offenders, October 2014, NAO

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February 2016 (Bill 134)
to 201526.

170 The Immigration Act 2014 provided for a revised deportation process so that, in cases where there is no real risk of serious irreversible harm to the individual, an FNO can only exercise his or her right of appeal from outside the UK, thereby allowing for the more rapid deportation of many FNOs. Most FNOs do not appeal once returned to their home country. By the end of 2015 more than 2,600 FNOs have been removed under the new ‘deport first, appeal later’ powers, since they came into force in July 2014.

171 However, the Public Accounts Committee (in its report Managing and removing foreign national offenders, 12 January 2015) has called for more to be done to identify FNOs earlier in the criminal justice process. The report stated: “Identifying FNOs early, including obtaining relevant documents such as passports, is crucial to speeding up removal at a later stage and managing the risk posed by the FNO while in prison.”

172 Establishing nationality at the earliest opportunity post-arrest is ideally achieved through seizing identity documents. Successfully establishing identity early post-arrest helps to facilitate overseas criminal records checks - if serious offending is revealed this can allow the Home Office to consider deportation action even in cases where an individual is released without charge. Missing opportunities to establish the nationality of individuals early in the process can cause significant delays later, when seeking to deport FNOs and illegal immigrants from the United Kingdom.

173 However, successful identification is particularly difficult where an individual is not carrying a document at the time of arrest. Although it is already possible for officers to search premises for identity documents, this is resource intensive and to require officers to do so in every case would be a disproportionate use of police resources. The provisions in clauses [x and y] will supplement these powers to give the police and immigration officers more opportunities to establish identity and nationality on arrest, and obtain documents from suspected FNOs where the police and immigration officers cannot utilise existing search powers or the individual cannot provide documents whilst in custody. A statutory requirement (backed by criminal sanction) on all defendants, regardless of their nationality, to state their name, date of birth and nationality in court will provide an added incentive for suspected foreign nationals to comply with the police in establishing their identity on arrest. It will also provide a second opportunity to capture this information for those who failed to give these details to the police.

26 Ibid.

These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)
Legal background

174 The legislation relating to policing in England and Wales is set out in a number of statutes. The principal enactments are as follows:

175 The 1996 Act provides for the organisation of police forces in England and Wales (including of the Metropolitan Police Service, the City of London Police (see also the City of London Police Act 1839) and the 41 police forces outside London (Schedule 1 to the Act lists the police areas outside London)); sets out the functions of the Secretary of State (in practice, the Home Secretary) in relation to policing; confers certain functions on the College of Policing, including in respect of the preparation of regulations made by the Home Secretary about the government, administration and conditions of service of police forces; provides for the inspection of forces by HMIC; provides for the Police Federation and the Police Remuneration Review Body; and makes provision in respect of disciplinary matters.

176 Part 1 of the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”) provides for the governance of police forces and, in particular, provides for the oversight of police forces outside London by directly elected PCCs and of the Metropolitan Police Force by MOPAC. The Common Council remains the police authority for the City of London Police (see section 6AZA of the 1996 Act). The Cities and Local Government Devolution Act 2016 enables the functions of a PCC to be undertaken by the directly elected mayor of a combined authority area. Collectively PCCs, the Mayor’s Office for Policing and Crime and the Common Council are referred to in the 2011 Act and elsewhere as local policing bodies.

177 Part 2 of the Police Reform Act 2002 (“the 2002 Act”) establishes the IPCC, sets out its functions and makes provision for the handling of complaints against the police.

178 Provisions in respect of the powers of police officers are contained in multiple statutes, but the core powers to prevent, detect and investigate crime are set out in PACE.

179 Part 4 of the 2002 Act makes provision in respect of the designation of police staff with certain specified powers of a police officer.

Emergency Services Collaboration

180 Sections 22A to 23I of the 1996 Act makes provision for collaboration agreements entered into either by two or more policing bodies (which includes local policing bodies) or by the chief officer of police of one or more police forces and two or more policing bodies. The governance of FRAs is provided for in the Fire and Rescue Services Act 2004 (“the 2004 Act”). Sections 13 to 15 of the 2004 Act require FRAs to enter into mutual assistance schemes with other FRAs and sections 16 and 17 enable FRAs to enter into agreements with other such authorities or other persons for that other authority or person to discharge certain of their statutory functions. The governance of ambulance services in England is provided for in the National Health Service Act 2006, under that Act the ten ambulance services in England are constituted as NHS Trusts of NHS Foundation Trusts.

Police complaints and discipline

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

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

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

**HMIC**

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

**Exercise of powers by civilian staff and volunteers**

185 Section 38 of the 2002 Act sets out the four roles that can be designated to police staff (that is, PCSO, investigating officer, detention officer and escort officer), while section 38A of, and Schedule 4 to, the 2002 Act set out the powers that must or may be conferred on designated staff in each of those roles.

186 Sections 95 to 97 of the Road Traffic Regulation Act 1984 provides for the appointment and powers of traffic wardens.

**Police ranks**

187 Sections 9H and 13 of the 1996 Act are the key current provisions in relation to police ranks.

188 Section 9H concerns the ranks that may be held in the Metropolitan Police. Subsection (1) provides that the ranks of that force are those prescribed in regulations made under section 50. However, the effect of subsection (2) is that such regulations must (in addition to the ranks of commissioner, deputy commissioner, assistant commissioner, deputy assistant commissioner and commander (see the provisions of the 2011 Act below)) include the ranks of chief superintendent, superintendent, chief inspector, inspector, sergeant and constable.

189 Section 13 concerns the ranks for the other police forces (those outside London maintained in accordance with section 2 of the 1996 Act). Again, the ranks of those forces are those prescribed in regulations made under section 50. However (in addition to the ranks of chief constable, deputy chief constable and assistant chief constable (see the provisions of the 2011 Act below)), these must include the ranks of chief superintendent, superintendent, chief inspector,
inspector, sergeant and constable (subsection (1)).

190 The 2011 Act makes provision for chief officer ranks, that is the ranks above that of chief superintendent. For forces outside London, sections 2, 39 and 40 of the 2011 Act require every force to have a chief constable, one or more deputy chief constables and one or more assistant chief constables respectively. In the case of the Metropolitan Police, sections 4, 43, 45, 46 and 47 of the 2011 Act require there to be a commissioner of police for the metropolis, one deputy commissioner, one or more assistant commissioners, one or more deputy assistant commissioners and one or more commanders respectively.

191 The City of London Police Act 1839 (“the 1839 Act”) makes provision for the City of London Police. Section 3 of that Act empowers the Common Council to appoint a Commissioner of the City of London Police. (That Act does not require the appointment of persons to any other particular rank.)

192 Section 50(1) of the 1996 Act provides the general power for the Secretary of State to make regulations as to the government, administration and conditions of service of police forces. Section 50(1)(a) specifies that this may include provision with respect to the ranks held by members of police forces.

193 The relevant regulations made under section 50 are the Police Regulations 2003 (S.I. 2003/527, as amended). Regulation 4 prescribes the ranks in relation to police forces maintained under section 2 of the 1996 Act, the Metropolitan Police and the City of London police. The prescribed ranks are the same as those provided for in the 1996 Act and 2011 Act.

**Police Federation for England and Wales**

194 The Police Federation was established by section 59 of the Police Act 1919. It has continued to exist since that time.

195 The core functions of the Police Federation are set out in sections 59(1) and (2) of the 1996 Act. Section 59(1) provides for the continuation of a "Police Federation for England and Wales and a Police Federation for Scotland for the purpose of representing members of the police forces in those countries respectively in all matters affecting their welfare and efficiency, except for (a) questions of promotion affecting individuals, and (b) (subject to subsection (2)) questions of discipline affecting individuals." (NB: The provisions of this Bill relating to the Police Federation apply to England and Wales only.)

196 Section 59(2) provides that a "Police Federation may represent a member of a police force at any proceedings brought under regulations made in accordance with section 50(3) above.... or on an appeal from any such proceedings". (Section 50(3) makes provision for the dismissal, demotion and other disciplinary measures of members of police forces.)

197 The Police Federation Regulations 1969 (SI 1969/1787, as amended), made under section 60 of the 1996 Act, set out the constitution of the Police Federation. These regulations were amended by the Police Federation (Amendment) Regulations 2015 (SI 2015/630) to give members of police forces the choice as to whether to be a member of the Police Federation, and to impose greater disclosure obligations on the Federation in relation to all monies held by the Federation and its branches and committees.

**NPCC**

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

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Pre-charge bail

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

Mental health

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

Maritime enforcement

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

202 Police maritime enforcement powers in respect of the investigation of drug trafficking and modern slavery offences are contained in section 20 of, and Schedule 3 to, the 1990 Act, and Part 3 of, and Schedule 2 to, the 2015 Act respectively.

PACE

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

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

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● Code H - requirements for the detention, treatment and questioning of suspects related to terrorism in police custody by police officers.

Firearms

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

Alcohol: licensing

205 The 2003 Act creates a regulatory regime for the sale and supply of alcohol. Alcohol is defined in section 191 of the 2003 Act.

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

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

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

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

Financial sanctions

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

211 The legal basis for EU financial sanctions regimes is Article 215 of the Treaty on the Functioning of the European Union. This Article sets out that the Council may, on receipt of a proposal from the High Representative for Foreign Affairs, interrupt or reduce financial or economic relations with third countries. This proposal might be prompted by a UN Resolution or the concerns of member States. The Council will then do so by way of a Decision or Regulation.

212 Section 2(2) of the 1972 Act enables provision to be made for the enforcement of all EU financial sanctions regulations. For example, SI 2014/507, the Ukraine (European Union Financial Sanctions) Regulations provides for asset freezes in relation to individuals and entities listed under the EU Council Regulation 208/2014.
213 The UK has also enacted domestic legislation to impose financial sanctions regimes, such as Part 2 of the Anti-terrorism, Crime and Security Act 2001 and Schedule 7 to the Counter-terrorism Act 2008.

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

215 SCPOs were introduced by Part 1 of the Serious Crime Act 2007 (“the 2007 Act”) in England and Wales and Northern Ireland. Section 46 of, and Schedule 1 to, the Serious Crime Act 2015 (which comes into force on 1 March 2016), will extend the provisions in Part 1 of the 2007 Act to Scotland.

**National Crime Agency**

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

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

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

**Requirements to confirm nationality**

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

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

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

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

223 Section 44 of the UK Borders Act 2007 (“UKBA”) also gives immigration and police officers the power to search premises in order to seize and retain nationality documents. It enables immigration or police officers to search specified premises where there is “reasonable suspicion” that an offence has been committed and the individual may not be a British Citizen.

224 Section 45 of the UKBA provides further powers to search other premises where there are reasonable grounds for believing that nationality documents may be found there. Documents

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

*These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)*
can be retained where officers suspect that the person “may be liable to removal from the United Kingdom” and where “retention of the document may facilitate the individual’s removal.”

225 New clause (NC) 20 and new schedule (NS) 6 of the Immigration Bill currently before Parliament amends the IAA so as to place a new duty on the police to send nationality documents to Immigration Enforcement upon request, provided certain conditions are met, namely where the Secretary of State has reasonable grounds to believe that the police are lawfully in possession of a nationality document; and suspects that the person to whom the document relates may be liable to removal from the UK and that the nationality document would assist this.

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

Live streaming of child sexual exploitation

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

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

Territorial extent and application

229 Clause 110 sets out the territorial extent of the Bill, that is the jurisdictions which the Bill forms part of the law of. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.

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

- Part 1: Emergency services collaboration – these provisions extend to England and Wales, but apply to England only;
- Part 2, clause 24(7): Appeals to Police Appeals Tribunal – this subsection extends and applies to the United Kingdom;
- Part 2, clause 26(6): duty on Director General of the NCA to respond to HMIC inspection report – this subsection extends and applies to the United Kingdom;
- Part 3, paragraph 17 of Schedule 9: exercise of powers by civilian staff of the British Transport Police - this paragraph extends and applies to Great Britain;
- Part 4, Chapter 4, clauses 62 (in part), 64 to 70 and 73: Police maritime powers: these provisions also apply to Scotland and Northern Ireland insofar as they provide for the hot pursuit of vessels into Scottish and Northern Ireland waters;

These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)
• Part 6: Firearms – these provisions extend and apply to England and Wales, and Scotland;

• Part 8: Financial sanctions – with the exception of clause 95 (which relates to DPAs and applies only to England and Wales), these provisions apply to the United Kingdom;

• Part 9, clause 103: NCA powers- these provisions extend and apply to the United Kingdom.

• Clauses 104 and 105: requirements to confirm nationality extend and apply to the United Kingdom.

231 Clause 101 also confers a power to extend the application of clause 88 and regulations made under clauses 97(1), 99 and 100 (temporary implementation of EU and UN financial sanctions), with any necessary modifications, to any of the Channel Islands, the Isle of Man and any of the British overseas territories, by Order in Council.

232 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned.

233 The provisions in Chapter 4 of Part 4 insofar as they relate to the hot pursuit of vessels into Scottish waters relate to matters within the legislative competence of the Scottish Parliament. To the extent that they relate to such matters, the Cabinet Secretary for Justice has confirmed that he will seek approval from the Scottish Parliament for the necessary legislative consent motion.

234 The provisions in Chapter 3 of Part 4 (powers under the Mental Health Act 1983) relate to a combination of reserved and devolved matters in Wales. To the extent that they relate to devolved matters, the Minister for Health and Social Services has confirmed that he will seek approval from the National Assembly for Wales for the necessary legislative consent motion.

235 The provisions in Chapter 4 of Part 4 insofar as they relate to the hot pursuit of vessels into Northern Ireland waters relate to matters within the legislative competence of the Northern Ireland Assembly. To the extent that they relate to such matters, the Minister for Justice has confirmed that he will seek approval from the Northern Ireland Assembly for the necessary legislative consent motion.

236 In the view of the UK Government, all the other matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.

237 If there are amendments relating to matters within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.

238 See the table in Annex H for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding the legislative consent motions and matters relating to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.
Commentary on provisions of Bill

Part 1: Emergency Services Collaboration

239 This Part forms part of the law of England.

Chapter 1: Collaboration Agreements

Clause 1: Collaboration Agreements

240 Clause 1 provides for collaboration agreements to be made between the emergency services – in this context that is, the ambulance service, fire and rescue and the police. The Bill does not apply to other bodies that may be considered an emergency service such as the Coastguard. However, as explained below the clauses do not prevent such other organisations from participating in a collaboration agreement. The intention is for these provisions to specifically enable innovative local collaboration that enhances the efficiency or effectiveness of local services. The Bill does not specify how the services should collaborate except for a few high level provisions and restrictions nor does it affect the scope of the existing powers of the emergency services to exercise their functions jointly or on behalf of one another or otherwise cooperate.

241 The effect of sub sections (1) and (2) is that a collaboration agreement that may be made under this section will include more than one of the emergency services. Such a collaboration agreement could include two services from the same limb (for example, two police forces) but must also contain a service from one or more of the other limbs (in this example it must also therefore include at least one ambulance or fire body).

242 Subsection (3) requires the collaboration agreement to be a written agreement which sets out the detail as to how the collaboration is to work. For example, it may set out the governance structures of the collaborative arrangement or detail the process through which the parties will work together.

243 Subsection (4) ensures that bodies other than those listed in subsection (2) can also be part of a collaboration agreement under subsection (1). This means that other bodies such as local government, health providers or the voluntary sector can join in collaboration agreements and their participation is positively encouraged. There will be no duty on these other partners to collaborate; the duties in relation to collaboration will only apply to the bodies listed in subsection (2).

Clause 2: Duties in relation to collaboration agreement

244 This clause introduces a statutory duty on the three emergency services to consider opportunities to collaborate and to give effect to collaboration proposals if it would be in the interests of the efficiency or effectiveness of at least two of the services. As defined in clause 6 subsection (3), the emergency services referred to as ‘relevant emergency services’ in the Bill are police bodies, fire and rescue bodies and ambulance trusts in England.

245 Subsection (1) requires the three emergency services to keep under consideration opportunities to collaborate with one another where it would be in the interests of the efficiency or effectiveness of their own service and one of the other emergency services. This duty is non prescriptive to allow for local innovation - local areas are best placed to determine what form of collaboration will improve local services. We would expect consideration to include examples of existing collaborations set out within the Emergency Services Collaboration Working Group National Overview Report (for example, sharing of estates, corporate services, procurement, co-responding etc.)

These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)
246 Subsections (2) and (3) set out a process where a service identifies an opportunity to collaborate. This requires an emergency service to notify other relevant emergency services of the proposed collaboration and for those other services to consider whether such a collaboration would be in the interests of efficiency or effectiveness of the proposed parties.

247 Subsections (4) and (5) taken together require an emergency service to collaborate where the proposed collaboration is within their powers and would be in the interests of their own efficiency or effectiveness and one or more other services take the same view, that is, that it would be in the interests of that other service to join the collaboration. These provisions do not prevent an emergency service from entering into a collaborative agreement where they would not benefit – they may still enter the collaboration if doing so has the potential to improve the efficiency or effectiveness of the other services, or the impact of the collaboration would be neutral but there would be no duty to do so.

248 Subsection (6) means that references to the efficiency or effectiveness of a local policing body include the efficiency or effectiveness of the police force for which that body is responsible, as well as the local policing body itself. (Local policing body means PCC (or elected mayor exercising those functions), Mayors Office for Policing And Crime for London, or Common Council of City of London for the City of London police area.)

Clause 3: Collaboration agreements: specific restrictions

249 This clause sets out the restrictions to the application of the duty to collaborate.

250 Subsection (1) provides that the duty to collaborate will only require an emergency service to collaborate where the collaboration agreement would be in the interests of its efficiency or effectiveness, holding all else equal. That is, if a collaboration agreement would improve efficiency but adversely impact effectiveness, or vice versa, the service would not be required to collaborate, although they may choose to.

251 Ambulance trusts have multiple functions and only one of these functions relates to emergency provision. For instance, ambulance services provide other services such as non-emergency patient transport and NHS 111, which are separate from responding 999 calls. Subsection (2) provides that an ambulance trust is not required to enter into collaboration if the collaboration has a negative impact on its other wider functions, even if the collaboration would improve the efficiency or effectiveness of the delivery of its emergency functions. This does not prevent the ambulance trust from voluntarily entering into a collaboration agreement in such a scenario, but they would not be required to do so.

252 Subsection (3) provides that the duties in relation to collaboration in [clause 2] only apply to the provision of the emergency functions of the ambulance trust. Ambulance trusts can still enter into collaboration agreements in regards to their non-emergency functions should they choose but they are not required to do so.

253 Subsections (4) and (5) provide that an ambulance trust is required to consider the effect a collaboration proposal would have on the exercise of its other functions or the wider NHS when considering whether it would be in the interests of its efficiency or effectiveness under the duty at Clause 2.

254 Subsection (6) requires the London Fire Commissioner to consult the Mayor of London before entering into a collaboration agreement unless the Mayor of London chooses to be a party to that collaboration.

255 Where there is an elected mayor of a combined authority such as the proposed plans for Greater Manchester, an order made by the Secretary of State may enable either the Mayor or the combined authority to exercise the functions of a fire and rescue authority. Subsections (7)
and (8) provide that the mayor or the combined authority may only enter into a collaboration agreement where they are entitled to exercise fire and rescue functions by virtue of such an order. Subsection (9) makes similar provision where PCC functions have been transferred to a Mayor. There is no corresponding provision for PCC functions to be exercised by a combined authority.

256 Subsection (9) provides that a chief officer of police (as defined in clause 6(8)) can only enter into a collaboration if the local policing body (a PCC, MOPAC and the Common Council of the City of London or an elected mayor exercising PCC functions— as defined at 6(9)) is also party to the agreement. This restricts a Chief Constable or the Metropolitan Police Commissioner from entering into a collaboration without the involvement of the PCC (or elected mayor exercising those functions), or MOPAC respectively.

257 Subsection (10) requires the local policing body to consult the chief officer of police before entering into a collaboration agreement, unless that chief officer is already a party to the agreement.

Clause 4: Collaboration agreements: supplementary

258 This clause sets out in very broad terms what a collaboration agreement might include.

259 Subsection (1) provides that the collaboration agreement may make arrangements for the joint exercise of functions or for one party to exercise another party’s functions. This does not confer new powers on the emergency services, but affirms the ability to rely on existing powers to collaborate. For example, if a fire and rescue authority was of the view that it was in the interests of its efficiency and effectiveness to jointly exercise some of its functions with a police body in England, the clauses may impose a duty to enter into a collaboration agreement (as per clause j163). However, in order to actually give effect to the agreement, and thereby jointly exercise their powers with the police body, the fire and rescue authority will need to rely on its current powers (for example section 16 of the Fire and Rescue Act 2004).

260 Subsection (2) provides that each of the services involved in collaboration will be able to make payments for the purposes of the agreement. These may be made between the parties themselves or others. This provision does not amend or affect the existing powers of the services where they already have powers to make payment.

261 The clause (Subsections (3) and (4)) also enables the collaborating parties to take necessary steps to facilitate a collaboration agreement, subject to any existing legal restrictions. The power at subsection (3) relates to the application of existing powers and is an incidental power to facilitate a collaboration agreement, rather than conferring new powers to perform functions. It provides the assurance that if, for example, an FRA is to carry out work which is incidental to a police body’s or an ambulance trusts’ functions and is not incidental to the FRA’s functions, the vires would be in place. Being involved in a collaboration does not give a service new powers to delegate a function. Nor can a service where it does have the powers to delegate a function absolve itself of responsibility for the exercise of that function. This is made clear by subsections (5) and (6).

262 Subsection (7) permits an emergency service to withdraw from a collaboration agreement if it is no longer in the interests of efficiency or effectiveness for them to remain party to that agreement. It requires that local agreements make provision for a party to withdraw. Although not prescriptive on the nature of these provisions, we would expect them to include provision for the financial consequences of withdrawal, any relevant notice period and consequences of termination of an agreement.

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263 Subsection (8) makes provision for a collaboration agreement to be amended by a subsequent collaboration agreement.

Clause 5: Collaboration agreements: definitions

264 Clause 5 defines the terms used in this chapter including ‘relevant emergency service’ and ‘police body’. ‘Fire and rescue body in England’ is defined to include fire and rescue authorities in England as well as combined authorities and elected mayors exercising fire and rescue functions. The definition of ‘relevant emergency service’ in subsection 6(3) applies to the chapter on emergency services collaboration, it is not intended to serve as a broader definition of emergency services.

Chapter 2: PCCs: Fire and Rescue Functions

265 This chapter forms part of the law of England.

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

266 This chapter provides for a PCC to take on responsibility for the fire and rescue service in their area where a local case is made (the ‘governance’ model), as well as to take the additional step to create a single employer for police and fire (the ‘single employer’ model) and sets out the effect of this.

267 Clause 6 and associated Schedule 1 make provision about enabling a person who is the police and crime commissioner for an area to be the FRA for that area.

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

268 Paragraphs (1) to (5) amend the 2004 Act to provide for new PCC-type FRAs, by inserting new sections 4A to 4J into that Act.

269 New section 4A(1) provides a power to create a new corporation sole as the FRA for the area covered by the order and for the PCC for that area to be that FRA. The Government does not intend to mandate the transfer of fire and rescue services to PCCs, rather PCCs will be enabled to seek responsibility for their local FRA where a local case is made. Given this approach, it is necessary to confer on the Secretary of State delegated powers to give effect to changes in the governance arrangements in a particular area, where a local proposal is made.

270 Subsection (2) has the effect that the police area of the PCC must be coterminous with the area of the FRA proposed to be created by the order or, where a PCC takes on more than one FRA within their area, the police the same as the areas of those FRAs when taken together.

271 Subsection (3)(a) of new section 4A ensures that these provisions are only applicable to FRAs wholly within England while (3)(b) provides that this section does not apply to the Metropolitan or the City of London police areas. Separate provisions will apply to London - see Chapter 3 of Part 1.

272 Subsection (4) provides that the Secretary of State may only make an order creating a new PCC-type FRA if a local case has been made and subsection (5) sets out the test that the Secretary of State may only make an order if she is satisfied that it would be in the interests of economy, efficiency, effectiveness or public safety to do so.

273 New section 4B(1) provides for changes to the boundaries of existing FRAs to be included in the order under section 4A(1) creating a new PCC-type FRA, where they are necessary, to ensure the PCC’s police area and the fire and rescue boundaries are coterminous.

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274 These powers only apply to FRAs in England, not including Greater London.

275 Subsection (2) provides for the number of FRAs in England to change, either through mergers or de-mergers.

276 Subsection (3) provides that an order under section 4A(1) can abolish an existing FRA of any type, including a PCC-type FRA where the proposal is to merge that FRA with another PCC-type FRA.

277 New section 4C enables the Secretary of State to make schemes transferring property, rights and liabilities from an existing FRA to the new PCC type FRA.

278 Subsection (3) clarifies things which may be transferred under a scheme including buildings, debt and any criminal cases that involve the existing FRA. Any criminal liabilities transferred would fall to the office of PCC, not the person occupying that post.

279 Subsection (4)(a) provides for the transfer scheme to make provision about new rights the PCC may have in respect of things transferred from the previous FRA and similarly for that transfer scheme to impose new liabilities.

280 Subsection (4)(b) ensures continuity by providing that the transfer scheme can make provision for things done by the previous FRA to remain in effect following the transfer. For example, if the existing FRA was party to an agreement, that agreement would continue to have effect in relation to the new PCC-type FRA.

281 Similarly, (4)(c) ensures the new FRA can continue with anything the existing FRA has started or may be involved in such as any ongoing legal proceedings.

282 (4)(d) allows for references to the FRA to be read as references to the new PCC-style FRA in any instruments or documents relating to things that have been transferred to the PCC.

283 New section 4(e) allows for a new FRA to have either shared use of or shared ownership of property.

284 New section 4D provides further detail about transferring responsibility for a fire and rescue authority to a PCC.

285 Subsection (1) of new section 4D provides for a PCC to be paid expenses in their capacity as an FRA and subsection (2) provides that the Secretary of State may make different determinations about such allowances in different cases. Subsection (3) provides that all such payments are to be made by the FRA.

286 Subsection (4) provides for a PCC to appoint staff in their capacity as a FRA and pay remuneration, allowances and gratuities to those members of staff.

287 Subsection (5) defines allowances in this context as relating only to expenses incurred in the course of their employment as a member of staff of the PCC-type FRA.

288 Subsection (6) provides that a PCC may make arrangements for, and pay pensions to, members of their staff in their capacity as an FRA.

289 Subsection (7) provides for an order creating a PCC-type FRA to make provisions about the delegation of the PCC’s fire and rescue functions. The order may make provisions enabling the PCC to delegate FRA functions to their deputy (as defined in subsection (8)), and for the deputy PCC to in turn delegate those functions to a member of staff working for the new FRA. It may also make provisions for the PCC to directly delegate the functions to an employee of the new FRA.

290 Subsection (9) provides for an order creating a PCC-type FRA to include provision for which

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functions can or cannot be delegated.

291 Subsection (10) provides that an order may make provisions about the personal liabilities of the new FRA and their staff.

292 New section 4E provides that a PCC may not act as an FRA unless they have made a declaration of acceptance of office as PCC.

293 Subsection (2) provides that subsections (3) and (4) only apply when a PCC has taken responsibility for an FRA and an acting commissioner has been appointed.

294 The effect of this is that an acting commissioner acts as the FRA for the period for which they are appointed and can exercise all the functions of the PCC and has the same rights.

295 Subsections (5) and (6) provide that even if a PCC is disqualified, any acts they had undertaken whilst PCC would still be valid. For example, if the PCC had entered into an agreement with a local partner, the agreement would still be valid even if the PCC was disqualified from their post.

296 New section 4F provides for the functions of a new PCC-type FRA to be delegated by the PCC to the chief constable who would employ all police and fire personnel – the ‘single employer’ model. That chief constable may be operationally known as the ‘Chief Officer’.

297 The powers in subsection (1) and (3) also enable provision to be made for the chief constable to further delegate those functions to both police and fire and rescue personnel (that is, to members of their police force, to the civilian staff of their police force, to members of FRA staff appointed by the chief constable or to any staff transferred to the chief constable from the existing FRA to the new FRA under a transfer scheme in this Bill). This is subject to subsection (6) which provides for section 37 of the 2004 Act, which restricts the employment of police in fire-fighting to apply.

298 Subsection (2) provides that the order made by the Secretary of State can determine which functions of the FRA can or cannot be delegated by the PCC to the chief constable.

299 Subsections (4) and (5) provides that the Secretary of State may only make an order implementing the single employer model where a proposal has been brought forward by a relevant PCC and it would be in the interests of economy, efficiency, effectiveness or public safety for the order to be made.

300 Orders under section 4F implementing the single employer model can be combined with or made subsequent to an order under section 4A. Subsection (65) provides for new schedule A1 to apply a different procedure to an order implementing the single employer model that is made subsequent to a new PCC-type FRA being created, recognising that a PCC has already taken on the governance of the FRA in such a scenario.

301 Subsection (7) makes the provisions in new section 4F subject to section 37 of the 2004 Act, which restricts who can perform fire fighting functions. This is to preserve the operational distinction between police and fire.

302 New section 4G provides for the transfer property, rights, liabilities and personnel to the chief constable under the single employer model.

303 Subsection (1) of 4G enables the Secretary of State to make a transfer scheme which transfers property, rights and liabilities from an FRA to the chief constable for the police area which corresponds to the FRA area where FRA functions have been delegated to that chief constable.

304 Subsection (2) provides that the transfer may be made from a PCC-type FRA to the chief constable or directly from the previous FRA to the chief constable where the PCC’s proposal is

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to implement the single employer model at the same time as they take on governance of the FRA.

305 Subsection (3) makes further provision in respect of such transfer schemes, including applying the provisions in new section 4C(3) to (6).

306 Subsection (4) enables the relevant chief constable to appoint staff to exercise fire functions where an order delegating fire functions has been made. Subsections (5) and (6) further provide for the relevant chief constable to make provisions for the pay, allowances and pensions of any such staff in such a case.

307 Subsection (7) provides that a person cannot be jointly appointed by the chief constable as a member of fire and rescue staff and of the police force.

308 Subsections (8) and (9) provide for the costs involved in any proceedings or claims made against the chief constable or their staff in relation to their delivery of fire and rescue functions to be paid by the FRA.

309 Subsection (10) defines a member of the chief constable’s fire and rescue staff to mean both those who have transferred to the chief constable from the FRA and those the chief constable may have appointed to exercise fire and rescue functions.

310 New section 4H applies where FRA functions have been delegated to the chief constable under the ‘single employer’ model.

311 New section 4H(2) provides that the FRA must ensure that the chief constable exercises the duties which have been delegated to him or her and that these are exercised efficiently and effectively.

312 Subsection (3) requires the PCC, in their role as FRA, to hold the chief constable to account for their performance of their FRA duties. This mirrors the duties on PCCs under the 2011 Act.

313 Where an order is made under new section 4F to provide for the “single employer” model, it is intended that the complaints procedures for police officers and police staff should, so far as possible, also apply to fire and rescue staff in the same way as they apply to police force personnel. New section 4I(1) confers a power on the Home Secretary, by order (subject to the affirmative procedure), to amend Part 2 of the 2002 Act as a consequence of an order being made under new section 4F. Such consequential amendments might include, for example, broadening the definition of ‘serious injury’ in section 29(1) of the 2002 Act to reflect the differing nature of a ‘serious injury’ when police officers and staff undertake a fire and rescue authority-related function.

314 New section 4I(2) enables the Home Secretary by order (subject to the negative procedure) to make provision for the handling of complaints about fire and rescue service authority staff so that the approach broadly mirrors, with any necessary modifications, that of the complaints procedure for police officers and police staff under Part 2 of the 2002 Act. This applies to staff transferred to a chief constable under a scheme made under new section 4G(1) or members of staff appointed by a chief constable under new section 4G(4).

315 New section 4I(4) enables the Home Secretary by order (subject to the affirmative procedure) to make any necessary amendments to Part 2 of the 2002 Act as a consequence of an order made under new section 4I(2). Such amendments might include an extension to the IPCC’s functions under section 10 of the 2002 Act and an expansion of the list of persons to whom the IPCC must send its annual report (section 11(6) of that Act).

316 Before exercising these powers, the Home Secretary must consult the Police Advisory Board, the IPCC, persons considered by the Home Secretary to represent the views of PCCs and fire
and rescue authorities, and other persons considered appropriate (new section 4l(5)).

317 Subsection (1) of new section 4j Application of local policing provisions etc provides for schedule A2 which makes provision about the application of existing legislation that relates to a PCC, to a PCC in relation to their capacity as an FRA.

318 Subsection (2) confers a power on the Secretary of State to make further provisions applying legislation that relates to a PCC (with or without modifications) or to make new provisions that are corresponding or similar to existing PCC legislation to a PCC in their capacity as an FRA.

319 Subsection (3) provides that this includes a power to apply or make provision corresponding or similar to any provisions made by an order or regulations.

320 Subsection (4) is self explanatory.

321 Paragraph 7 inserts new sections 5M and 5N.

322 New section 5M confers on PCC-type FRAs broad general powers to do anything related to their purposes as an FRA. Equivalent provision for other FRAs is contained in section 5A of the 2004 Act.

323 Subsection (3) subjects the power conferred by section 5M to restrictions under the Bill or any other relevant Act. For example, this power would not enable a PCC to delegate any functions that may be restricted in the order made by the Secretary of State under section 4D.

324 New section 5N defines the references used in Part 1.

325 Paragraph 8 inserts new section 25A into the 2004 Act. New section 25A provides that a PCC who is also a new type FRA must have regard to the priorities of their police and crime plan (see section 7 of the 2011 Act) when carrying out their FRA functions.

326 Paragraph 9 amends section 34 of the 2004 Act, which makes provision for pensions. New subsection (11) provides that existing references in that section to those who are employed or have been employed by an FRA includes those who are transferred to or appointed by a chief constable under the single employer model. New subsection (12) modifies section 34 so that its pensions also apply when a chief constable has been delegated FRA functions.

327 Section 37 of 2004 Act prevents a member of a police force from being employed by an FRA to exercise any of the core fire fighting functions of the FRA. Paragraph 10 substitutes a new section 37.

328 Subsection (1) of new section 37 prohibits a police officer from being employed by an FRA or a chief constable who has been delegated FRA functions to extinguish a fire or to protect life and property in the event of a fire. This preserves the operational distinction between police and fire.

329 Subsection (2) ensures that a chief constable, who has been delegated fire functions under the single employer model, can exercise all functions of the FRA, including those restricted by section 7 and can further delegate them to a deputy chief constable. This is to ensure the chief constable and their deputy can exercise strategic management of all fire functions.

330 Subsection (3) provides that a relevant chief constable is a chief constable who has been delegated FRA functions by the PCC-type FRA. This means that not all chief constables are able to exercise the core functions of an FRA, only those under the ‘single employer’ model.

331 Paragraph 11 inserts schedules A1 and A2 into the 2004 Act.

332 New schedule A1 sets out the process by which a PCC can make a proposal to take on responsibility for fire in their local area.

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333 Paragraph 1 of new schedule A1 sets out that a proposal must contain an assessment of the why it is in the interests of economy, efficiency and effectiveness or public safety for the order to be made.

334 A proposal to delegate FRA functions to a single employer of both police and fire personnel may be combined with an order creating a new PCC-type FRA or made subsequent to it. Subsection (2) requires that a PCC must set out their reasons for proposing the single employer model if it is combined with an order creating the new type FRA.

335 Paragraph 2 sets out duties on the relevant FRA to cooperate with the PCC in the preparation of their proposal.

336 Paragraph 2 requires that such FRA(s) must provide the PCC with any information the PCC might reasonably require. This might include data on FRA budgets or future spending commitments, for example.

337 Paragraph 3 requires the PCC to consult on their proposal, including with the upper tier local authorities in their area, before they submit it to the Secretary of state. This is to ensure the PCC has secured, and taken into account, local opinion on their proposal before making a request to the Secretary of State.

338 Paragraph 4 sets out the information a PCC must provide to the Secretary of State in cases where one of more of the upper tier local authorities in the area do not support the PCC’s proposal.

339 Paragraph 4(3) requires that where a relevant local authority does not agree with the PCC’s proposal, the Secretary of State must seek an independent assessment of the PCC’s proposal. The Secretary of State must have regard to that assessment and consider the material provided to them in accordance with subparagraph (2) when deciding whether or not to make an order. Such an independent assessment may be secured from HMIC, the Chief Fire and Rescue Adviser or any other such independent person as the Secretary of State deems appropriate.

340 Paragraph 5(1) provides that the Secretary of State may give effect to the PCC’s proposals with any modifications that they think appropriate. However, before doing so, they must consult the PCC that made the proposal and the local authorities within the area of the FRA proposed to be created in accordance with paragraph 5(3).

341 Paragraph 5(2) prevents the Secretary of State from only giving the PCC responsibility for fire when their proposal went further and sought the single employer model and delegation of fire functions to the chief constable.

342 Paragraph 6(2) provides that for a PCC to bring forwards a proposal as a relevant PCC, their police area must correspond to the new PCC-type FRA they propose to create. That is, their police area must be the same as or contain all of the FRA they propose to create or in the case of a proposal that also requires police area boundary changes, all or part of the PCC’s police area must fall within the FRA area proposed to be created. In the case of proposals that require police boundary changes or a de-merger of an FRA that is currently in more than one police area, there could be more than one relevant PCC.

343 Paragraph 6(3) provides that any changes to the police areas are not to be considered when determining the relevant PCC in the proposal. For example, if the proposal includes the merger of two police areas the relevant PCCs would be determined based on the existing police areas, rather than the new area created.

344 Paragraph 6(4) provides for PCCs to act jointly where more than one PCC would be affected by the proposals. For instance, where a proposal requires police area boundary changes there

These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)
would be more than one relevant PCC and both would be required to act jointly when preparing a proposal, seeking the views of those in their area and submitting a case to the Secretary of State,

345 Paragraph 6(5) provides that a relevant FRA for the purposes of new schedule A1 is an FRA whose area is the same as or falls wholly or partly within the area of the PCC making the proposal and so would be affected by their proposals.

346 Paragraph 6(6) defines that a relevant local authority for the purposes of this schedule is a local authority whose area is the same as or falls within the FRA that the PCC proposes to create.

347 Paragraph 6(7) defines local authority for the purposes of subparagraph (6), the definition covers upper tier local authorities.

348 Paragraph 7 modifies the application of new schedule A1 in cases where a PCC is only putting forward a proposal to move to a 'single employer model' having previously adopted the governance model.

349 New schedule A2 makes provisions about the application of existing legislation which relates to PCCs in their capacity as FRA.

350 Paragraph (1) provides for the definitions that apply within schedule A2. The effect of subparagraph (3) is that references to the "fire and rescue plan" within schedule A2 are to the Integration Risk Management Plan FRAs produce in accordance with the Fire and Rescue National Framework. The effect of subparagraph (4) is that references to a "fire and rescue statement" within schedule A2 are to the statement of assurance FRAs produce in accordance with the Fire and Rescue National Framework.

351 Paragraph 2 requires a PCC-type FRA to obtain the views of the community in relation to their fire and rescue functions.

352 Paragraph 3 sets out how the PCC-type FRA’s fire and rescue plan is to be scrutinised by the police and crime panel.

353 Paragraph 4 provides that the provisions for what information should be available to the public and how it should be published set out in section 11 of the Police Reform and Social Responsibility Act 2011 will also apply to the PCC as an FRA in relation to their fire and rescue functions. The intention is to apply the Specified Information Order 2011 to a PCC in their capacity as an FRA, subject to any necessary modifications.

354 Paragraph 5 sets out how the ‘fire and rescue statement’ issued by the PCC as FRA should be scrutinised. The process will be the same as when a PCC issues an annual report, as set out in section 12 of the Police Reform and Social Responsibility Act 2011. The PCC type FRA must send the statement to the relevant police and crime panel and attend a public meeting to present the statement and answer any questions the panel raise on the statement. They must then provide and publish a response to any report or recommendations arising from the statement. The PCC type FRA may decide themselves how to respond to any subsequent report.

355 Paragraph 6 sets out the obligation on the PCC type FRA to provide the police and crime panel with any information which the panel may reasonably require in order to carry out its functions in relation to fire and rescue, as set out in section 13 of the Police Reform and Social Responsibility Act 2011.

356 Paragraph 7 requires a PCC type FRA to have regard to the views of the people in the area in relation to their fire and rescue functions as well as the views expressed in any report or recommendations made by the police and crime panel on the PCC-type FRA’s annual
Paragraph 8 sets out the powers of police and crime panels in relation to the PCC exercising fire and rescue functions. The effect is that the functions of the police and crime panel must be exercised with a view to support the effective exercise of the fire and rescue functions of the PCC as FRA; a police and crime panel must review the fire and rescue plan and make recommendations on it, scrutinise the fire and rescue statement, review or scrutinise the decisions and actions of the PCC in relation to discharge of their functions and make any necessary reports or recommendations. The panel must publish any such reports (subsection 7) in the manner they determine most appropriate (subsection 9).

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

Paragraph 10 provides for the process by which the police and crime panel scrutinises the issuing of a precept by the PCC in their role as the FRA, to be the same as that of the PCC in relation to policing. The process is set out in Schedule 5 of the Police Reform and Social Responsibility Act 2011.

Part 2 of Schedule 2 makes amendments to other Acts.

Paragraph 12 amends the Fire Services Act 1947 to ensure that the provisions can properly apply to fire and rescue staff transferred to, or appointed by, a relevant chief constable.

Paragraph 13 has the effect that the local government transparency code will not apply to a PCC-type FRA. The PCC will instead be under a duty to publish specified information in relation to their FRA functions in accordance with section (4) of schedule A2.

Paragraph 14 amends the Local Government Finance Act 1992 to provide for a new PCC-type FRA to be a major precepting authority.

Paragraph 15 amends the Police Act 1996 to provide that the Secretary of State is required to consult the Police Advisory Board for England and Wales before making an order under new section 41 about police complaints provisions to fire and rescue personnel under the single employer model.

Paragraph 16 amends the Local Government Act 1999 to make a PCC-type FRA a best value authority. As a result a PCC type FRA is required to make arrangements to secure continuous improvement in the way in which its fire and rescue functions are exercised, having regard to economy efficiency and effectiveness.

Paragraph 17 amends the Police Reform Act to enable workforce flexibility under the single employer model. It provides that the chief constable under the single employer may delegate police powers, other than the core powers that can only be exercised by an officer, to fire and rescue staff.

Paragraph 19 amends the 2011 Act to provide that a PCC who is also a PCC-type FRA must have regard to the Fire and Rescue National Framework and the Integrated Risk Management Plan that they issue as an FRA, when they issue or vary their Police and Crime Plan.

Paragraph 20 inserts new subsection (11) to section 66 of the 2011 Act to provide that a person

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employed by an FRA of any kind cannot stand for election or hold the office of a PCC.

369 Paragraph 21 amends subsection (4) of schedule 1 of the 2011 Act to provide that the Secretary of State may take into account the FRA functions of a PCC when making a determination on PCC pay. This does not require the Secretary of State to make an additional payment in relation to those functions.

370 Paragraph 22 amends schedule 6 of the 2011 Act to make provisions about police and crime panels which exercise functions in relation to PCC-type FRAs. Sub-paragraph (2) amends paragraph 4(6) of schedule 6 to make clear that a panel can have functions under both the 2011 Act and the 2004 Act. Subparagraph (3) amends paragraph 22 of schedule 6 to provide that a member of staff of a PCC-type FRA or a member of staff of the chief constable to whom FRA functions have been delegated under the single employer model cannot be a co-opted member of a Police and Crime Panel which exercises functions in relation to that PCC-type FRA. Sub paragraph (4) amends paragraph 27 of schedule 27 to provide that a panel which exercises function in relation to a PCC-type FRA cannot delegate scrutiny of the PCC-type FRAs fire and rescue plan or annual statement of assurance to a committee or sub-committee. Subparagraph (5) introduces a new paragraph 32A into schedule 6 that requires that the relevant panel reviews its membership and to make any required changes to its membership, when a PCC-type FRA is created by an order under section 4A, to ensure it has the necessary skills, expertise and knowledge to fulfil its functions in relation to fire and rescue.

371 Paragraph 23 amends schedule 8 of the 2011 Act to enable a senior fire officer to apply to be the head of the organisation employing both police and fire personnel. It provides that a chief constable under the single employer model, who may be known as the ‘chief officer’, does not need to have held the office of constable if they have fire experience at a senior level and they have met the standards for the role set by the College of Policing. This may include having completed the Senior Police National Assessment Centre and the Strategic Command Course. This is to ensure fairness that the role of ‘chief officer’ can be held by people from both the police and the fire service, whilst also ensuring that those eligible to apply have relevant experience and training. It is for the PCC to appoint the best person for the job.

372 Paragraph 24 amends the Public Service Pensions Act 2013 to ensure that the provisions of that Act apply to fire and rescue personnel transferred or appointed by a chief constable under the single employer model.

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

373 These provisions enable a PCC to be represented on an FRA (outside of London) with voting rights, where the FRA agrees. They reflect the different governance arrangements that apply to the different kinds of FRA. The basic position under section 1 of the 2004 Act is that in England the FRA is, in a non metropolitan area, either the district council where there is no county council or where there is a county council that county council. In a metropolitan county it is the metropolitan county fire and rescue authority. The Secretary of State may by order make a scheme constituting a fire and rescue authority for the combined area of two or more existing fire and rescue authorities and these are called combined fire and rescue authorities.

374 An FRA which is a non-metropolitan county council may operate “executive arrangements” or a “committee system” in order to provide governance for fire and rescue services. Executive arrangements involve either an elected mayor or council leader; and 2 or more councillors of the authority area as appointed by the elected mayor/ council leader. The committee system operates a decision making process in accordance with the Local Government Act 1972. The authority may appoint a committee and that committee may appoint sub-committees. Members of the committee or sub-committee are not required to be members of the appointing authority or committee.

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375 Metropolitan county FRAs are established under section 26 of the Local Government Act 1985 and their membership is comprised of councillors appointed from the constituent councils of the authority. The FRA is able to establish committees and sub-committees to provide governance functions and members of these committees are not required to be members of the authority. Decisions are made by a majority of members of the authority voting with the person presiding having a casting vote if necessary.

376 It is also possible under the provisions of the Local Democracy, Economic Development and Construction Act 2009 (as amended by the Cities and Local Government Devolution Act 2016) for a combined authority to exercise FRA functions. Currently no combined authorities exercise FRA functions. Powers in the 2009 Act would enable similar provision for PCC representation where that position changes and the provisions here do not therefore apply to combined authorities.

377 Subsection (2) inserts new subsections (6) to (10) into section 102 of the Local Government Act 1972 to provide for a PCC to be represented on a committee of a relevant FRA.

378 The effect is that where a PCC makes a request to be represented on an FRA within their police area, the appointing authority or authorities may make arrangements for them to be appointed to committees to attend, speak and vote at committee meetings to the extent that their contribution relates to fire and rescue functions.

379 New subsection (8) of section 102 requires that the appointing authority or committee must consider a request made by a PCC to be represented on the FRA, give reasons for either accepting or refusing that request and publish their decision in a manner they think appropriate.

380 New subsections (10) and (11) define a relevant PCC for the purposes of this section as a PCC whose area is the same as, or contains all or part of the FRA. This means that a PCC could sit on more than one FRA and more than one PCC could sit on a relevant FRA.

381 Subsection (3) inserts new paragraph 6ZA into schedule 12 of the 1972 Act.

382 New paragraph 6ZA(2) provides that a PCC may attend, speak at and vote at a meeting of a principal council which is an FRA only where that council has agreed to that PCC’s request to be represented on the FRA, and only in so far as the business of a meeting relates to the functions of the FRA.

383 New paragraph 6ZA(3) sets out the process for a PCC to seek representation. It requires that a principal council must consider a request made by a PCC, give reasons for their decision to agree or refuse the request and publish those reasons in a manner they deem appropriate.

384 New paragraph 6ZA(4) provides that if the principal council agrees to the request, the PCC is to be treated as if they were a member of the council or as a member in relation to FRA functions for the purposes of the listed paragraphs of schedule 12 of the 1972 Act.

385 New paragraph 6ZA(5) clarifies that the PCC referred to within this section means a PCC whose area is the same as, contains all of, or contains part of the principal council. This could mean that a PCC could sit on more than one FRA and more than one PCC could sit on a relevant FRA.

386 Subparagraph (6) provides for amendments to section 26 of the Local Government Act 1985 to enable a PCC to be represented on a metropolitan FRA.

387 Subparagraph (7) amends section 34 of the 1985 Act to provide that if a PCC is a chairman of the FRA, the FRA and authority can, by mutual agreement, agree a date for the PCC to cease to be the chairman.

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388 Subparagraph (8) amends section 13 of the Local Government and Housing Act 1989 to ensure that a PCC can be appointed to an FRA with voting rights.

389 New section 13 (5ZA) is inserted to ensure that a PCC has voting rights on any local authority committee or sub-committee that delivers the functions of the FRA. Some local authorities may appoint a joint committee and the PCC would have voting rights on this as well as sub-committee as long as the committee’s purpose was for discharging the functions of an FRA.

390 5ZB has the effect that section 5ZA applies to county councils and district councils

391 Subparagraph (9) amends Schedule A1 to the Local Government Act 2000 to insert new paragraph 4A which allows a PCC to attend, speak and vote at a meeting of an executive of a local authority (such as a Mayor) or a committee as long as the business of the meeting related to FRA functions and the executive agrees to the PCC’s participation.

392 Subparagraphs (10), (11) and (12) amend section 3 of the Fire and Rescue Services Act 2004 to provide for a PCC to be represented on a combined authority.

393 Subparagraphs (13) to (15) amend the Localism Act 2011 to ensure that a PCC represented on an FRA is subject to the local authority code of conduct. New section (11B) of section 28 provides that the local authority’s monitoring officer is under a duty to refer any allegation made against a PCC in relation to their role on the FRA to the police and crime panel for the PCC’s police area. New section (11C) provides that the panel may make a report or recommendation on the allegation to the PCC and to the relevant local authority which appointed the PCC to the FRA. New section (11D) provides that the FRA is required to take any such report or recommendation into account when determining whether the PCC has failed to comply with the code of conduct and what, if any, action to take in relation to the PCC.

Chapter 3: London Fire Commissioner

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

Clause 8: The London Fire Commissioner

395 This clause abolishes LFEPA and transfers the residual functions to the new London Fire Commissioner. Schedule 2 makes consequential amendments to the Greater London Authority Act 1999 and to other Acts.

Schedule 2: The London Fire Commissioner

396 Part 1 provides for the amendment of the Greater London Authority Act 1999 to enable the abolition of the London Fire Emergency and Planning Authority.

397 Paragraph 4 provides for the appointment of the London Fire Commissioner to be subject to confirmation hearings provided for under the Greater London Authority Act 1999.

398 Paragraph 5 provides for the substitution of power to require attendance at Assembly meetings which might require giving evidence, produce documents which discloses advice given to the Mayor from the London Fire and Emergency Planning Authority to the London Fire Commissioner.

399 Paragraph 6 amends the power of the Mayor to appoint members of staff in addition to the

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Mayor’s political advisors from ten to eleven. This increase is provided so that the staff other than political advisers may number more than ten.

400 Paragraph 7 provides for a person appointed as the Deputy Mayor for Fire to be or to remain a member of the Assembly.

401 Paragraph 8 provides for a person appointed as the Deputy Mayor for Fire who is an Assembly Member to continue to perform any work or services in that capacity.

402 Paragraph 9 inserts new Part 6A on the London Fire Commissioner into the 1999 Act, comprising new sections 327A to 327I.

403 Subsection (1) of new section 327A allows for there to be the London Fire Commissioner and Subsection (2) allows for the London Fire Commissioner to be a corporation sole. Subsection (3) requires the Mayor to appoint the London Fire Commissioner.

404 Subsections (4)(a) and (b) confer on the London Fire Commissioner functions of a fire and rescue authority for Greater London under the Fire and Rescue Services Act 2004 and also the functions conferred on fire and rescue authorities under other enactment. Subsection (5) requires that the London Fire Commissioner must ensure that the ‘London Fire Service’ is efficient and effective.

405 Subsection (6) refers to the meaning of the London Fire Service as mentioned in subsection (5) which is for the personnel, services and equipment secured by the London Fire Commissioner for the purposes of meeting the commissioner’s duties. These duties are as in subsection (6) (a), (b), (c) and (d) – fire safety, firefighting, road traffic accidents and emergencies as set out in sections 6, 7, 8 and 9 of the Fire and Rescue Services Act 2004. Subsection 6 (e) includes any other functions conferred on a fire and rescue authority by law.

406 Subsection (7) provides for the Mayor to hold the London Fire Commissioner to account for the exercise of the Commissioners functions.

407 Subsection (11) refers to the further provisions about the London Fire Commissioner made under Schedule 27A.

408 Subsection (1) of new Section 327B disqualifies a person from being appointed as the London Fire Commissioner unless the person has reached the age of 18. Subsection (2) disqualifies a person from being appointed as, or being, the London Fire Commissioner if they are a member of the Assembly or a London borough council. Subsection (3) disqualifies a person from being appointed as, or being, the London Fire Commissioner subject to restrictions set in subsections (3)(a)(b)(c) and (d) of the Bill which are financial or criminal in nature.

409 Subsections (4) (a) and (b) explains the meaning of an imprisonable offence” for the purpose of subsection (3)(c) as an offence for which a person who has reached the age of 18 may be imprisoned for a term, or given life imprisonment. Subsection (5) (a) and (b) explains how a person is to be treated as being convicted if being disqualified from being the London Fire Commissioner.

410 New section 327C provides for the suspension and removal of the London Fire Commissioner from office.

411 Subsection (1) allows the Mayor to suspend the London Fire Commissioner from duty with the approval of the Secretary of State.

412 Subsection (2) requires the Mayor to notify the Secretary of State if the Mayor suspends the London Fire Commissioner under subsection (1).

413 Subsection (3) allows the Mayor to call upon the London Fire Commissioner to resign or retire.
subject to the approval of the Secretary of State and the conditions set in subsections (5) and (6).

414 Subsection (4) requires the London Fire Commissioner to resign or retire if called do so by the Mayor as in subsection (3).

415 Subsection (5) puts certain requirements on the Mayor before they can call upon the London Fire Commissioner to retire or resign. Subsection (5)(a) requires the Mayor to give the London Fire Commissioner a written explanation of the reasons why the Mayor is proposing to call for the resignation or retirement, Subsection (5)(b) gives the Commissioner the opportunity to make written representations to the Mayor, and Subsection (5)(c) requires the Mayor to consider any written representation made by the Commissioner.

416 Subsection (6) requires the Mayor to comply with the requirements in subsection (5) before seeking the approval of the Secretary of State to call upon the London Fire Commissioner to retire or resign.

417 New Section 327D(1)(a) allows the Mayor to issue the London Fire Commissioner guidance on how the Commissioner is to exercise their functions, subsection (1)(b) allows the Mayor to give general directions as to the manner in which the Commissioner is to exercise his or her functions, and subsection (1)(c) allows the Mayor to give specific directions as to the Commissioner’s functions.

418 Subsection (2) allows that any specific directions given by the Mayor under subsection (1)(c) may include a direction for the London Fire Commissioner to not exercise a specified power.

419 Subsection (3) allows the Mayor under subsection (1) to include guidance or directions on how the London Fire Commissioner is to perform their duties or conduct any legal proceedings.

420 Subsection (4) requires the Mayor to have regard to the Fire and Rescue National Framework, and fire safety enforcement guidance when exercising the powers under section 327D.

421 New section 327E allows the Secretary of State, where they think any guidance or directions issued under section 327D by the Mayor are inconsistent with the Fire National Framework or fire safety enforcement guidance, to direct the Mayor to remove the inconsistency. The Mayor must comply with any such directions from the Secretary of State.

422 New Section 327F provides for the appointment of a Deputy Mayor for Fire to carry out any fire and rescue function of the Mayor.

423 Subsection (2) defines the Deputy Mayor for Fire.

424 Subsection (3) defines the functions of the Mayor in relation to fire and rescue and applies these to the Deputy Mayor for Fire under subsection (1)

425 Subsection (4) provides that the Secretary of State can issue guidance or directions to the Deputy Mayor for Fire if the Secretary of State considers that a Direction issued by the Deputy Mayor for Fire, when exercising the fire and rescue functions of the Mayor, are inconsistent with the Fire and Rescue National Framework or fire safety enforcement guidance.

426 New section 327G makes provision for the scrutiny of documents prepared by London Fire Commissioner

427 Subsection (1) deals with the preparation and publication by the London Fire Commissioner of a document in accordance with the Fire and Rescue National Framework which sets out the Commissioner’s priorities and objectives in connection with the discharge of the Commissioner’s functions or contains a statement of the way in which the Commissioner has had regard to any document in connection with the discharge of the Commissioner’s functions.
428 Subsection (2) requires the Commissioner to send a copy of the document or revision in draft to the Mayor and the Assembly fire and emergency committee before publishing.

429 Subsection (3) states that the Commissioner may not publish the document or any revision to it unless the Assembly has had an opportunity to review the draft document or revision, make a report on to the Mayor, and the Mayor has approved the draft document or revision.

430 Subsection (4) defines the Fire and Rescue National Framework.

431 New section 327H makes provision for the Assembly fire and emergency committee.

432 Subsection (1) requires the Assembly to appoint a committee, to be known as the fire and emergency committee, to carry out a range of functions on its behalf.

433 Subsection (2) describes the functions which the fire and emergency committee must discharge. These are in relation to the appointment of the London Fire Commissioner and the Deputy Mayor for Fire and are in respect of the functions which are conferred on the Assembly in respect of confirmation hearings etc under the Greater London Authority Act 1999 and the functions set out in 327I of the 1999 Act.

434 Subsection (3) prevents the Assembly from using another means to discharge the fire and emergency committee functions – it can only discharge them through the committee established under subsection (1).

435 Subsection (4) prevents the Assembly from using the fire and emergency committee to carry out other functions of the Assembly.

436 Subsection (5) refers to “special scrutiny functions”. These are defined in subsection (13) and are the functions set out in 327H(1) and in relation to the appointment of the London Fire Commissioner and the Deputy Mayor for Fire. This subsection requires a meeting of the whole panel when exercising the special scrutiny functions but without prejudice to rules of procedure about the quorum of a meeting of the whole panel.

437 Subsections (6) to (9) when read together provide that section 54 of the Greater London Act 1999, which provides for the delegation of the discharge of the functions of the Assembly, applies to the fire and emergency committee and any sub-committee which discharges its functions, apart from the excluded provisions in sections 54(5) and 55 of the 1999 Act.

438 Subsection (10) provides for the Assembly to fix the number of members of the committee and their term of office. It also allows for non-members of the Assembly to be part of the panel.

439 Subsection (11) deals with any sub-committee which discharges the functions of the fire and emergency committee. It provides for the fire and emergency committee to fix the number of members of the sub-committee and their term of office. It also allows for non-members of the Assembly to be members of the sub-committee.

440 Subsection (12) requires the fire and emergency committee to exercise its functions so that they support the effective exercise of the functions of the London Fire Commissioner.

441 Subsection (13) defines “special scrutiny functions” which are the functions set out in 327H(1) and in relation to the appointment of the London Fire Commissioner and the Deputy Mayor for Fire.

442 New section 327I provides for functions to be discharged by the fire and emergency committee. Subsection (1) requires the fire and emergency committee to review draft documents presented to it by the London Fire Commissioner, and to make a report or recommendation to the Mayor.

443 Subsections (2) to (4), when read together, require the fire and emergency committee to review

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how the London Fire Commissioner is exercising their functions and the committee has the power to investigate and prepare reports on the Commissioner’s actions and decisions. The power also extends to investigating the actions and decisions of an officer of the London Fire Commissioner.

444 Subsections (5) and (6) when read together allow the fire and emergency committee to require the persons listed to attend proceedings to give evidence or to provide documents in their possession which can be considered at the proceedings.

445 Subsection (7) considers the position of an officer of the London Fire Commissioner in relation to subsection (5) requirements. An officer is not required to give evidence or produce documents if they would disclose advice they had given to the London Fire Commissioner.

446 Subsection (8) applies relevant provisions under sections 61 to 65 of the Greater London Authority Act 1999 to the requirements under subsection (5).

447 Paragraphs 10 to 12 make relevant changes to the 1999 Act by substituting London Fire Commissioner for London Fire and Emergency Planning Authority

448 Paragraph 13 makes an amendment to Schedule 4A to the 1999 Act inserting new provisions in respect of the confirmation hearings etc for the appointment of the London Fire Commissioner and Deputy Mayor for Fire. New paragraph 11 of schedule 4A provides the Assembly with the power to veto any such appointment but only if it has held a confirmation meeting and notifies the Mayor within a period of 3 weeks beginning with the day on which the Assembly receives the notification from the Mayor. New paragraph 11 makes clear that the Mayor cannot appoint a candidate who has been vetoed by the Assembly. New paragraph 11 confirms that in reaching the decision to veto a candidate the Assembly must have a required majority of at least two thirds of the votes in favour of that decision.

449 Paragraph 14 inserts new Schedule 27A into the 1999 Act.

450 Paragraph 1 of new schedule 27A deals with the appointment of the London Fire Commissioner and the tenure of office. The Mayor determines the terms and conditions of the appointment and the tenure of office is subject to the provisions set out in 327C regarding the suspension and removal of London Fire Commissioner.

451 Paragraph 2 of new schedule 27A provides for the remuneration of the London Fire Commissioner. All remuneration will be provided for under the Commissioner’s terms and conditions and can include allowances for expenses incurred in the performance of their functions. Paragraph 2(3) allows for a pension to be paid to the London Fire Commissioner in accordance with the terms and conditions of the Commissioner’s appointment. Paragraph 2(5) requires the Mayor to have regard to the financial resources of the Commissioner when determining the terms and conditions of the appointment.

452 Paragraph 3 deals with the appointment of a Deputy London Fire Commissioner. Paragraph 3(1) enables the London Fire Commissioner to appoint a deputy and paragraph 3(2) for that deputy to exercise any or all of the Commissioner’s powers and duties. However, in the case of the Commissioner’s absence, incapacity or suspension from duty or where there is a Commissioner vacancy, paragraph 3(3) restricts the powers and duties of the deputy to 3 months unless the Mayor consents to a longer period.

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

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

These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)
Clause 9: Transfer of property, rights and liabilities to the London Fire Commissioner

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

Part 2: Police Complaints, Discipline and Inspection

This Part forms part of the law of England and Wales.

Chapter 1: Police Complaints

Clause 10: Local policing bodies: functions in relation to complaints

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

This Chapter confers, or allows local policing bodies to choose to take on, direct responsibility for a number of statutory functions in the police complaints system. The Bill also makes it explicit that local policing bodies are to hold chief officers to account for the exercise of their functions in relation to the handling of police complaints (see clause 16).

Local policing bodies will be the review body for reviews/appeals currently heard by chief officers (see Schedule 4). This clause, which inserts new section 13A into the 2002 Act, covers those other complaints functions under Part 2 of (including Schedule 3 to) the 2002 Act (as amended, including by this Bill) for which local policing bodies can assume responsibility. It allows a local policing body to give a notice to the relevant chief officer that the local policing body, rather than the chief officer, will exercise certain functions in the process for handling complaints. A local policing body can take responsibility for the functions detailed under subsection (2) or both subsections (2) and (3) of new section 13A of the 2002 Act. These are set out at A and B below.

<table>
<thead>
<tr>
<th>Functions</th>
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<tbody>
<tr>
<td>A. Receiving &amp; Recording complaints</td>
<td>If a local policing body gives a notice that it will exercise the functions listed in subsection (2), it will take on the following functions:</td>
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<td></td>
<td>- The duty to make initial contact with complainants to understand how best their issues might be resolved.</td>
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<tr>
<td></td>
<td>- The ability to resolve complaints otherwise than in accordance with Schedule 3 (which will likely be appropriate for low-level customer service related issues).</td>
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28 "local policing body" means a police and crime commissioner or the Mayor’s Office for Policing and Crime in relation to the metropolitan police district; or the Common Council (in relation to the City of London police area);

29 The chief officer refers to the chief constable of the relevant police force, or in the case of the Metropolitan police, the Commissioner.

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<table>
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<tr>
<th><strong>B. Single Point of Contact</strong></th>
<th><strong>- The recording of complaints (and related notification duties)</strong></th>
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<tbody>
<tr>
<td>If a local policing body gives a notice that it will exercise the functions listed in subsections (2) and (3), in addition to the functions above, it will, as far as is possible, become the single point of contact throughout the handling of complaints (in cases which are not investigated independently by the IPCC or through a directed investigation). This means that they must keep a complainant informed on the progress of the handling of their complaint, the outcome of the handling of their complaint, any right of review or any other factor specified in regulations. Where the IPCC is investigating a complaint, or the investigation is a directed investigation, the duty to keep the complainant informed lies with the IPCC.</td>
<td></td>
</tr>
</tbody>
</table>

460 Local policing bodies will be able to delegate their complaints handling functions where appropriate – see clause 17.

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

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

**Clause 11: Definition of police complaint**

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

464 Clause 11 replaces this definition with ‘any expression of dissatisfaction with a police force’. This means that where a member of the public raises an issue that does not directly relate to the conduct of an individual officer or member of police staff it will be considered a complaint for the purposes of Part 2 of, and Schedule 3 to, the 2002 Act (Schedule 3 sets out how complaints made against the police should be handled). This could include a purely customer service related complaint or a complaint about an issue of policing policy.

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

466 Schedule 3 makes a number of consequential amendments to Part 2 of, and Schedule 3 to, the 2002 Act to reflect that complaints under the new definition will not always be complaints.

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*These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)*
about the conduct of a person serving with the police. These include an amendment (Schedule 3 paragraph (2)) to the description of a complaint in section 10 of the 2002 Act which sets out the IPCC’s functions and a number of changes to provisions relating to the handling of complaints in Schedule 3 to clarify that the complaint may not always relate to the conduct of an individual.

467 In the current system, certain complaints can be classified as relating to a ‘direction and control matter’, as defined at paragraph 29 of Schedule 3. This includes complaints relating to operational decision making about deployment of resources and strategic decisions about how policing powers should be exercised. Such complaints are treated differently to complaints about the conduct of an individual – in particular, there are limited appeal rights. Schedule 4 paragraph 43 amends Schedule 3 to remove ‘direction and control matter’ as a separate category of complaint. In future, complaints about those matters will be captured in the new definition of complaint provided for by clause 11 and will be treated exactly the same as any other complaint.

Clause 12: Duty to keep complainant and other interested persons informed

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

469 Clause 12 creates an over-arching duty to keep the complainant and interested parties informed about the handling of a complaint or matter, whether or not it is being investigated. New subsection (3A) of section 20 of the 2002 Act extends the current general duty on the appropriate authority to keep the complainant informed in cases where (i) the complaint is being handled by the appropriate authority in accordance with Schedule 3 otherwise than by way of an investigation and (ii) the complaint is being handled by the appropriate authority otherwise than in accordance with Schedule 3 (i.e. resolved informally, as it relates to a low-level issue). New subsection (8A) of section 21 of the 2002 Act extends the current general duty on the appropriate authority to keep interested persons informed to cases where the complaint or matter is being handled by the appropriate authority in accordance with Schedule 3 otherwise than by way of an investigation.

470 Subsections (3) and (7) replace the current lists of matters on which complainants and interested parties must be kept informed with lists of matters that apply in all cases, whether or not there is an investigation. Provision is also made for the Secretary of State to specify further matters in regulations.

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

472 Sub-paragraph 9 of Clause 3 repeals the notification duties of Paragraph 23 and 24 of Schedule 3 as these are now captured by the overarching duties to keep the complainant and interested persons informed under the amended Sections 20 and 21 of Part 2 of the PRA 2002. Given these
repeals, sub-paragraphs 4 and 8 of Clause 3 replicates the existing provisions within the existing paragraphs 23(12) and 24(10) of Schedule 3 in Sections 20 and 21 of the PRA 2002 which allow the Commission and the appropriate authority to (subject to exceptions, although notwithstanding any obligation of secrecy imposed by any rule of law or otherwise) provide the complainant and any interested persons with a copy of any investigation report submitted under Paragraph 22 of the amended Schedule 3.

**Clause 13: Complaints, conduct matters and DSI matters: procedure**

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

474 This clause introduces Schedule 4 to the Bill which makes substantial revisions to Schedule 3 to the 2002 Act to provide for a number of changes to the way complaints, conduct matters and DSI matters are handled and investigated.

**Schedule 4: Handling of complaints**

475 Schedule 4 makes a number of changes to the current processes for handling complaints.

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

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

478 Under the changes made by Schedule 4, the only circumstances in which a complaint does not have to be recorded are:-

- If the complainant withdraws the complaint.
- If the appropriate authority determines that it should be handled outside of the formal system set out in legislation. But, even here, the appropriate authority must record the complaint if the complainant makes clear his/her wish for that to happen.

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

- The complainant wants his or her complaint recorded (and thus dealt with under Schedule 3).

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• The complaint is one alleging that the conduct or other matter complained of has resulted in death or serious injury;

• The complaint is one alleging that there has been conduct by a person serving with the police which (if proved) might constitute the commission of a criminal offence or justify the bringing of disciplinary proceedings.

• The conduct or other matter complained of (if proved), might have involved the infringement of a person’s rights under Article 2 or 3 of the Convention (within the meaning of the Human Rights Act 1998).

• The complaint is of a description specified in regulations made by the Secretary of State for the purposes of paragraph 4 of Schedule 3 to the 2002 Act (which deals with the referral of complaints to the IPCC).

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

481 Schedule 4 also introduces an explicit provision in paragraph 2(6) of Schedule 3 to the 2002 Act for the appropriate authority to contact the complainant before it records a complaint to understand how it might best be resolved to the complainant’s satisfaction.

482 Paragraph 2(5) of schedule 4 removes the Secretary of State’s ability to make regulations under paragraph 2(8) of Schedule 3 to the 2002 Act. These set out cases in which the appropriate authority can decide not to record (for example, where a complaint is deemed fanciful or repetitive).

483 Given that these changes to paragraph 2 of Schedule 3 to the 2002 Act mean that whenever a complainant wants his/her complaint recorded it will be, paragraph 3 of schedule 4 removes the current appeal right against non-recording (currently dealt with in paragraph 3 of Schedule 3 to the 2002 Act).

484 Paragraph 2(6) of schedule 4 outlines what action is required by the appropriate authority when it determines that something which purports to be a complaint (as defined in section 12 of the 2002 Act) is not a complaint. This replicates and replaces the existing paragraphs 3(1) and (2) of Schedule 3.

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

• Local resolution – this means complaint is handled is handled in accordance with a procedure which does not involve a formal investigation and is laid down by regulations made under paragraph 8 of Schedule 3.

• Investigation – this means the complaint is investigated in accordance with the requirements set out in Part 3 of Schedule 3.

• Disapplication – this means the complaint is handled otherwise than in accordance with Schedule 3. Grounds for disapplication (which are set out in regulations) include that there has been a delay of over 12 months between the incident and the subsequent complaint and that the complaint is viewed to be vexatious or oppressive.
486 Schedule 4 replaces these options with an over-arching duty, in the new paragraph 6(2A) of Schedule 3 (as inserted by paragraph 6(3) of Schedule 4), on the appropriate authority to handle the complaint in such reasonable and proportionate manner as it determines. However, where it appears to the appropriate authority that there is an indication that an individual has committed a criminal offence or behaved in a way that would justify disciplinary proceedings, or that there may have been the infringement of a person’s rights under Article 2 or 3 of the Convention (within the meaning of the Human Rights Act 1998), the appropriate authority must discharge its duty by undertaking an investigation on its own behalf (unless any of the exceptions detailed in regulations under the new paragraph 6(2F) of Schedule 3 applies).

Where there is no such indication, the appropriate authority has the flexibility to handle the matter in such ‘reasonable and proportionate’ manner as it determines, within the bounds of any statutory guidance issued by the IPCC. Consequently, no specific process of ‘local resolution’ is required and Schedule 4 repeals these provisions of Schedule 3 to the 2002 Act, including paragraph 8 which sets out arrangements for local resolution (removed by Schedule 4 paragraph 17). Similarly, the provisions of Schedule 3 on ‘disapplication’ are no longer needed, as the appropriate authority has the ability to deal with cases that don’t require investigation in a ‘reasonable and proportionate’ manner, and this may mean that no further action should be taken – these provisions are also repealed (chiefly by paragraph 8 of Schedule 4).

487 Investigations: Schedule 4 makes a number of changes to the provisions in Schedule 3 that govern how investigations by the IPCC and appropriate authority should be undertaken and the steps to take following an investigation. These are described below.

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

489 Schedule 4 makes a number of changes to how the IPCC determines the form of investigation, including removing the option of a ‘supervised’ investigation and replacing ‘managed’ investigations with ‘directed’ investigations.

490 Currently, once the IPCC has decided that a complaint or matter must be investigated, paragraph 15(2) and (3) of Schedule 3 requires the IPCC to determine the form of the investigation and to have regard to the seriousness of the case and the public interest test in so doing. Sub-paragraph 13(6) of Schedule 4 modifies this test so that the IPCC must first consider whether, having regard to the seriousness of the case and the public interest, it is appropriate for the appropriate authority to conduct the investigation on its own behalf (or, to put it another way, that there should be no IPCC involvement)If the IPCC determines that it is not appropriate for the appropriate authority to conduct the investigation on its own behalf, the IPCC must investigate itself, unless it decides that a ‘directed’ investigation would be more appropriate. There is no longer an option for the IPCC to opt for a ‘supervised’ investigation.

491 If the IPCC determines that there must be IPCC involvement in an investigation, the expectation (as reflected in the new paragraph 15(4B) of Schedule 3 to the 2002 Act) is that the investigation should be an independent investigation. It is only where the IPCC is clear that it

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would be more appropriate for the investigation to be a ‘directed’ investigation that the
investigation can then take that form (as set out in new paragraph 15(4C)). For example, the
IPCC may determine under new paragraph 15(4A) that it must have some involvement in an
investigation into serious allegations of corruption against a police officer. However, the IPCC
may then decide that it is more appropriate for the investigation to take the form of a ‘directed’
investigation because the investigation requires extensive covert surveillance of the officer in
question – a specialist capability that the IPCC does not possess.

Paragraph 13(9) of Schedule 4 places a new duty on the IPCC to inform the complainant and
interested parties of its determination and the reasons for its determination, subject to
exceptions to be set out in regulations. The IPCC must also inform the appropriate authority of
the reasons for its determination (paragraph 13(8) of Schedule 4).

Paragraph 26 of Schedule 4 amends paragraph 18 of Schedule 3 to the 2002 Act, replacing
provisions for ‘managed’ investigations with those for ‘directed’ investigations. A ‘directed’
investigation retains some of the features of a ‘managed’ investigation, but includes a number
of additional features that allow the IPCC to exert greater control over the investigation.

As with a ‘managed’ investigation, a ‘directed’ investigation is undertaken by an investigator
appointed by the appropriate authority who is under the ‘direction and control’ of the IPCC.
As with ‘managed’ investigations, the IPCC can require the appropriate authority to select
another investigator to conduct the ‘directed’ investigation (paragraph 26(3) of Schedule 4).

Paragraph 26(4) of Schedule 4 places a new duty on the investigator to keep the IPCC informed
of the progress of the investigation.

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

- whether to certify the investigation as subject to special requirements under
paragraph 19B of Schedule 3 (i.e. that there is an indication of criminality or
behaviour which would justify the bringing of disciplinary proceedings);

- whether to proceed in accordance with the ‘accelerated procedure’ under
paragraph 20A (i.e. that there is sufficient evidence to establish gross misconduct
and it is in the public interest for the person whose conduct it is to cease to be a
member of a police force or special constable without delay);

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

Provisions regarding the ‘special procedure’ (which applies where the investigation is certified
as being subject to special requirements) and ‘accelerated procedure’ are currently set out at
paragraphs 19A-19E and 20A-20I respectively of Schedule 3. Paragraphs 20 and 24 of Schedule
4 repeal these provisions, substituting them with new paragraphs 19A and 20A, which provide
powers for the Secretary of State to provide for these procedures in regulations. New
paragraph 19A allows the IPCC, in the case of a ‘directed’ investigation, to determine that the
‘special procedure’ (the details of which will be set out in regulations) should apply.

Similarly, paragraph 20A allows the IPCC, in the case of a ‘directed’ investigation, to determine
that the ‘accelerated procedure’ (the details of which will be set out in regulations) should
apply. Therefore, a ‘directed’ investigation will afford the IPCC more control that a ‘managed’
investigation currently does.
499 In the current system, under paragraph 15(5) of Schedule 3 to the 2002 Act, the IPCC may at any point decide to change the form of an investigation following a referral (e.g. choose to change an investigation by the appropriate authority to an independent investigation). Schedule 4 places an ongoing duty on the IPCC, in cases where the investigation is a ‘directed’ investigation, to consider whether a ‘directed’ investigation continues to be the right form of investigation (new paragraph 15(5) of Schedule 3). The IPCC must switch to an independent investigation if at any time it considers that a ‘directed’ investigation is no longer the most appropriate form of investigation (as per new paragraph 15(5A) of Schedule 3). Returning to the example above, were the investigation to reach a stage where covert surveillance is no longer required, such that it is no longer more appropriate for the investigation to be a ‘directed’ investigation, the IPCC would have to switch to an independent investigation.

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

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

502 Subparagraphs 10(3), 11(3) and 12(3) of Schedule 4 insert new subparagraphs 5(4), 14(4) and 14D(3) respectively into Part 3 of Schedule 3 to the PRA 2002. These provide new powers to enable the Secretary of State to specify in regulations that the IPCC must independently investigate all complaints, recordable conduct matters and DSI matters which relate to the conduct of a chief officer or the Deputy Commissioner of Police of the Metropolitan Police.

503 Matters relating to disciplinary proceedings following an IPCC investigation: Under the existing system, following an independent investigation by the IPCC (or a ‘managed’ investigation) the IPCC notifies the appropriate authority that it must determine certain matters relating to discipline, including whether any person to whose conduct the investigation related has a ‘case to answer’ in respect of misconduct or gross misconduct or has no case to answer, and whether or not the person’s performance is unsatisfactory. The appropriate authority must make those determinations and notify the IPCC of its determinations by way of a memorandum. The IPCC must then make recommendations and may ultimately direct that disciplinary action be brought.

504 Subparagraph 23(2) of Schedule 4 inserts new sub-paragraphs 23(5A) to 23(5E) into Part 3 of Schedule 3 of the 2002 Act to amend this process. In future, following an independent investigation or a ‘directed’ investigation, the IPCC will determine matters relating to discipline, including whether any person to whose conduct the investigation related has a case to answer in respect of misconduct or gross misconduct or has no case to answer. This new power will simplify and streamline the current process. The IPCC will have to seek the appropriate authority’s views before making determinations on disciplinary matters.

505 Schedule 4 also enables the IPCC to direct the appropriate authority to determine what other action (if any) it will in its discretion take in respect of the matters dealt with in the report (new sub-paragraph 23(5A)(f) of Part 3 of Schedule 3 of the 2002 Act). The appropriate authority will be required to notify the IPCC as to its decision; the IPCC would not be able to overturn the appropriate authority’s decision as regards such non-disciplinary matters.

506 Discontinuing an investigation: Under the existing system (paragraph 21 of Schedule 3 to the
23002 Act), the appropriate authority or IPCC can stop or ‘discontinue’ an investigation into a complaint, conduct matter or DSI matter. The circumstances in which investigations can be discontinued are set out in regulations. For example, an investigation can be discontinued if the complainant is not co-operating and it is not reasonably practicable to continue or if it is discovered, after an investigation is launched, that the matter is suitable for local resolution. Schedule 4 paragraph 22 repeals paragraph 21 of Schedule 3, ending the ability of the IPCC and appropriate authority to discontinue an investigation. Instead, an investigation report under paragraph 22 or paragraph 24A of Schedule 3 will have to be produced in all cases (with investigators simply wrapping up their investigation and reporting on the investigation to date in cases where they are unable to proceed any further).

507 Paragraph 10(3) of Schedule 4 provides that in cases where (i) the appropriate authority has decided to investigate a complaint on its own behalf, (ii) it is then required to refer the complaint to the IPCC, and (iii) the IPCC decides that it is not necessary for the complaint to be investigated, the IPCC must refer the complaint back to the force for the appropriate authority to complete its investigation.

508 Paragraphs 12(3) and 14(3) of Schedule 4 replicate this arrangement for conduct matters and DSI matters. In the case of the amendment to paragraph 14(D) of Schedule 3 (DSI matters), this will only apply where (i) the DSI matter is referred to the IPCC, (ii) the IPCC determines that it is not necessary for the matter to be investigated, (iii) it is referred back to the appropriate authority, (iv) the appropriate authority decides to investigate on its own behalf, (v) the IPCC requires the matter to be referred to it again, and (vi) the IPCC again determines that it is not necessary for the matter to be investigated. In these circumstances, the IPCC must refer the matter back to the appropriate authority and the appropriate authority must conclude its investigation.

509 Determinations: Paragraph 23 of Schedule 4 inserts paragraph 23(5A)(c) into Schedule 3 of the 2002 Act. This allows the IPCC to make a determination on those matters covered in an investigation report which do not relate to the commission of a criminal offence by, or the conduct or performance of, a person to whose conduct the investigation related.

510 Reviews: Schedule 4 makes a number of changes to the provisions in Schedule 3 to the 2002 Act that govern what recourse a complainant has if he/she remains dissatisfied at the outcome of his/her complaint. These are described below.

- Rights of Review: There are five appeal points in the existing complaints system. A complainant may appeal against:
  - A failure to notify or record a complaint.
  - A decision by the appropriate authority to disapply the requirements of Schedule 3 in relation to the handling of a complaint.
  - The outcome of a complaint dealt with through local resolution.
  - A decision by the appropriate authority to discontinue an investigation into a complaint.
  - The outcome of an investigation into a complaint.

511 Schedule 4 requires complaints to be recorded where the complainant wants that to happen, and removes the ability of the appropriate authority to disapply the requirements of Schedule 3 and discontinue an investigation. The associated appeal rights are therefore also removed.
512 Schedule 4 also replaces the categorisation of a complaint as suitable for either local resolution or local investigation with a new duty in paragraph 6(2A) of Schedule 3 (inserted by sub-paragraph 15(3) of Schedule 4) requiring the appropriate authority to take reasonable and proportionate action to resolve a complaint. In some cases, the only way in which the appropriate authority can discharge this duty is by conducting an investigation – see paragraph 6(2D) and (2E) of Schedule 3 (inserted by sub-paragraph 15(3) of Schedule 4).

513 Subparagraphs 6A(2) and 25(1B) of Schedule 3 to the 2002 Act (inserted by paragraphs 33 and 36 of Schedule 4 respectively) provide for the complainant to have a right to apply to the relevant review body for a review of the outcome of the complaint.

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

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

516 New paragraphs 25(1A) and 25(4H) of Schedule 3 (inserted by Schedule 4 paragraphs 30(2) and (5) respectively) ensure that, in cases where the ‘accelerated procedure’ has applied (paragraph 20A of Schedule 3 to the 2002 Act refers) there is only a right of review if the investigator has continued his/her investigation. In such cases, the right of review applies only with respect to the paragraph 22 report produced at the end of that investigation.

Clause 14: Initiation of investigations by IPCC

517 Under the existing arrangements in Schedule 3 to the 2002 Act, the IPCC cannot consider a matter until that matter has been recorded and referred to them by the police. The IPCC can require a force to record a matter and to refer it them but they cannot make a decision about the form of investigation (if one is necessary) until the referral has taken place.

518 This clause amends Schedule 3 to the 2002 Act, so that where a complaint comes to the attention of the IPCC, it may consider the form of investigation – and commence an investigation – without the need for a referral. In such cases the IPCC is required to direct the appropriate authority to record the matter but no referral is necessary. The IPCC is also required to notify complainant of its decision.

519 Subsections (4) to (6) make similar provision for the IPCC to consider conduct and DSI matters without the need for referral.

520 Taken with changes made by Schedule 4 that allow the IPCC to change the form of any investigation once it has commenced, these provisions will allow the IPCC to investigate any matter that has come to its attention without the need for a referral.

Clause 15: IPCC power to require re-investigation

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

522 Such a decision can only be taken if the original investigation has concluded, with the report of

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that investigation submitted to the IPCC as set out in paragraphs 22(3), 24A or 22(5) of Schedule 3 to the 2002 Act.

523 If the IPCC decide to re-investigate, the usual duties to notify the appropriate authority of the report (of the original investigation), and to consider criminal or disciplinary action – as set out in paragraphs 23, 24A, 27 and 28B of Part 3 of Schedule 3 to the 2002 Act – cease to apply (see amendments made to these paragraphs by subsection (3) to (8)).

524 The IPCC is however obliged to notify the appropriate authority, complainant (if any), and any person entitled to be kept properly informed of any decision to re-investigate (unless it might, in the opinion of the IPCC, prejudice the re-investigation to do so).

Clause 16: Oversight functions of local policing bodies

525 Sections 1 and 3 of the 2011 Act and section 6ZA of the 1996 Act set out that the relevant local policing body in a police area in England and Wales, must hold to account the chief officer of an area in the exercise of a number of functions.

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

Clause 17: Delegation of functions by local policing bodies

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

528 These provisions contain a list of people to whom certain functions cannot be delegated by the local policing body or his/her deputy. This clause amends those provisions so that they may delegate certain functions relating to the police complaints system. These functions are those parts of the complaints handling process that local policing bodies can undertake (see clause 10) and the role of the appeal body for complaints formerly heard by the chief officer (see schedule 4).

529 Subsections (5), (6) and (7) make equivalent amendments to section 19 of the 2012 Act to enable MOPAC similarly to delegate its functions.

530 These provisions will give the local policing body flexibility so that if they wish, they may outsource some of the functions they can undertake as part of the complaints system.

Chapter 2: Police Super-Complaints

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

532 This Chapter, which inserts a new Part 2A into the 2002 Act (comprising new sections 29A to 29C), provides for the creation of a system of police super-complaints. A policing super-complaints system would allow organisations, such as charities and advocacy groups, to raise issues on behalf of the public about patterns or trends in policing that could undermine legitimacy. There are three existing super-complaints systems in operation relating to competition and markets and the financial sector. These are run by the Competition and Markets Authority (section 11 of the Enterprise Act 2002), the Financial Conduct Authority (sections 234C to 234H of the Financial Services and Markets Act 2000 (inserted by section 43 of
the Financial services Act 2012)), and the Payment Systems Regulator (sections 68 to 70 of the Financial Services (Banking Reform) Act 2013).

Clause 18: Power to make super-complaints

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

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

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

Clause 19: Bodies who may make super-complaints

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

Clause 20: Regulations about super-complaints

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

These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)
Chapter 3: Whistle-blowing: Power of IPCC to Investigate

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

539 This Chapter provides for a new power for the IPCC to investigate concerns raised by an individual police whistle-blower without the concern having to be raised with their force. The clauses also enable further provision to be made by regulations to protect the identity of the whistle-blower.

Clause 21: Investigations by the IPCC: whistle-blowing

540 Subsection (1) inserts a new Part 2B into the 2002 Act (comprising new sections 29E to 29L) to provide a power for the IPCC to investigate any concern raised by a police whistle-blower.

541 New section 29E defines a whistle-blower as an individual who is under the direction and control of a chief officer of police (this includes officers, police staff, PCSOs, special constables and volunteers) and raises a concern about a police force or a person serving with the police. The concern must not relate to the conditions of service of persons serving with the police or be about a matter that could be dealt with as a complaint under Part 2 of the 2002 Act.

542 The IPCC may only investigate a concern if consent is provided by the whistle-blower. The power to investigate a concern is discretionary but the IPCC must take into account the public interest.

543 New section 29F makes provision for dealing with a decision by the IPCC not to investigate a concern raised by a whistle-blower. The IPCC must inform the whistle-blower of the decision. If the whistle-blower consents, the IPCC may disclose the nature of the concern to the appropriate authority, usually the chief officer of a police force, and make recommendations in the light of the concern. For example, the IPCC could recommend to the appropriate authority to improve training in a certain area.

544 New section 29F(4) and (5) confer a power on the Secretary of State (in practice, the Home Secretary), to set out in regulations (subject to the negative procedure) the kinds of recommendations the IPCC could make, the persons to whom the recommendation may be made and permit the IPCC to seek a response to any recommendation made. It is envisaged the recommendations would include additional training, updates to guidance or a change to operating procedures.

545 New section 29G sets out how the IPCC should handle a whistle-blowing allegation where they consider the concern is about a conduct matter under Part 2. On receipt of information from a whistle-blower, the IPCC must decide if the information provided triggers a conduct investigation. If the IPCC decides that the information warrants a conduct investigation it must not carry out a whistle-blowing investigation under new section 29E(2) but notify the appropriate authority and the investigation should be handled as conduct matter under Schedule 3 to the 2002 Act.

546 New section 29G(4) confers a power on the Secretary of State (in practice, the Home Secretary) to make provision modifying Schedule 3 of the 2002 Act by regulations (subject to the negative procedure) insofar as it relates to conduct matters. Any such modifications are intended to protect the identity of the whistle-blower (subject to the exceptions that can be made in regulations under new section 29L(1)).

547 New section 29H provides for the handling of a whistle-blowing investigation where the whistle-blower dies before the IPCC becomes aware of the concern or where the individual dies during an investigation. This section ensures that despite the death of the whistle-blower the IPCC may either start or continue an investigation. In such an eventuality the IPCC would seek consent from an approved representative, for example, a widow or widower (or surviving
civil partner) of the whistle-blower. Any requirement to protect the identity of the whistle-blower ceases to apply in the event of the death of the whistle-blower.

548 New section 29I makes provision for the protection of the identity of a whistle-blower. Section 29I(3) provides a duty on the IPCC not to disclose particular information, namely the identity of the whistle-blower, information which may reveal the whistle-blower’s identity or the nature of the concern raised. Section 29I(1) confers a power on the Secretary of State, by regulations (subject to the negative procedure), to authorise disclosure of this information in certain circumstances. It is envisaged any such exceptions would include where the whistle-blower gives consent, in the interests of national security, for the purpose of the prevention or detection of crime, when required by actual or prospective criminal proceedings or otherwise necessary in the public interest.

549 New section 29J makes provision for the protection of information relating to the investigation or information relating to the outcome of an investigation. Section 29J(1) confers a regulation-making power (subject to the negative procedure) on the Secretary of State to authorise disclosure in certain circumstances. It is envisaged any such exceptions would include where the whistle-blowers gives consent, in the interests of national security, for the purpose of the prevention or detection of crime, required in any actual or prospective criminal proceedings or otherwise necessary in the public interest.

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

551 New section 29L sets out an obligation on the Secretary of State to consult with specific groups before making regulations under new Part 2B. The list of bodies mirrors those set out in section 24 of Part 2 to the 2002 Act.

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

553 Subsection (3) amends section 10 of the 2002 Act, which sets out the functions of the IPCC, so as to include functions in relation to whistle-blowing conferred by the new Part 2B.

**Schedule 5: New Schedule 3A to the Police Reform Act 2002**

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

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

556 Paragraph 2 stipulates that the person in charge of a whistle-blowing investigation and others involved in the investigation (under new section 29E(2)) may not disclose the identity of the whistle-blower. Sub-paragraph (3) sets out exceptions to disclosure including where the whistle-blower gives consent. The paragraph confers a regulation-making power (subject to the negative procedure) on the Secretary of State to permit the person in charge of the investigation to impose requirements to ensure that those involved in the investigation do not disclose information without the consent of the person in charge.

557 Paragraph 3 provides for the IPCC to obtain information during a whistle-blowing investigation; mirrors the powers available to the IPCC in an independent investigation under Schedule 3 to the 2002 Act.
558 Paragraph 4 sets out the procedure when it becomes apparent in the course of a whistle-blowing investigation (under new section 29E(2)) that misconduct may have taken place. In such circumstances, the whistle-blowing investigation would cease and a conduct investigation under Part 2 would begin. Paragraph 4(5) confers a power on the Secretary of State (in practice, the Home Secretary), by regulations (subject to the negative procedure) to modify Schedule 3 for the purpose of protecting the anonymity of the whistle-blower during the subsequent conduct investigation.

559 Paragraph 5 sets out the arrangements at the end of a whistle-blowing investigation. The person in charge of the investigation must submit a report to the IPCC. A copy of the report must be sent to the whistle-blower and, subject to approval by the whistle-blower, to the appropriate authority. Paragraph 5(3) confers a power on the Secretary of State to set out in regulations (subject to the negative procedure) circumstances when the report must not be shared with the whistle-blower or the appropriate authority; and when the report should be shared with the appropriate authority where the whistle-blower refuses to consent.

560 Paragraph 6 sets out the ability of the IPCC to make recommendations to the force concerned at the end of a whistle-blowing investigation (under section 29E(2)). The paragraph confers a power on the Secretary of State to set out in regulation (subject to the negative procedure) the kinds of recommendations the IPCC could make, the persons to whom the recommendation may be made and permit the IPCC to seek a response to any recommendation made. It is envisaged the recommendations would include additional training, update to guidance or a change to operating procedures.

Chapter 4: Police Discipline

Clause 22: Disciplinary proceedings: former members of police forces and former special constables

561 Section 50 of the 1996 Act, provides a power to make regulations with respect to “the conduct, efficiency and effectiveness of members of police forces and the maintenance of discipline”, applying to police officers. Section 51 provides a power to make similar provision in respect of special constables. In exercise of these powers, the Police (Conduct) Regulations prescribe, amongst other matters, the standards of professional behaviour for officers and special constables and procedures for investigating breaches of these standards and any subsequent misconduct proceedings. Further regulations prescribe rules in relation to police complaints, police performance and police appeal tribunals. These provisions do not apply to civilian police staff as their conditions of service and procedures linked to their conduct and performance are set locally and administered by individual forces.

562 The existing legislation and regulations apply to serving officers and special constables and therefore cease to apply when the officer has left the force through retirement or resignation. At present, existing regulations (Regulation 10A of the Police (Conduct) (Amendment) Regulations 2014) stipulate that any officer or special constable who is under investigation or subject to disciplinary proceedings may not resign or retire whilst those proceedings are ongoing.

563 Subsection (2) inserts new subsection 3A into section 50 of the 1996 Act which allows for the regulations concerning disciplinary proceedings to be extended to former members of police forces where an allegation of misconduct relates to their time whilst serving as a police officer. The regulations will extend where an allegation comes to the attention of the chief officer of the force either prior to the individual leaving the force (Subsection (3A)(c)(i)) or within a...
prescribed period of time after the individual has left (Subsection (3A) (c)(ii)). It is intended that this period will be 12 months. Subsection (3) replicates these provisions for special constables.

564 These changes will mean that misconduct proceedings can take place after the police officer or special constable concerned has left the force. In such cases, if the individual’s conduct is found to amount to gross misconduct then they cannot be discharged (having already left the force) but a finding could be made that they would have been dismissed and, as a consequence, would be barred from policing and placed on the police barred list (See Schedule 6). These changes will allow for the removal of the current restrictions on those under investigation or subject to disciplinary proceedings from resigning or retiring.

Example 1:
Sergeant G is alleged to have committed gross misconduct because of offensive and inappropriate language used against a member of the public on social media, following an incident on-duty.

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

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

565 Subsections (4), (5) and (6) allow provisions relating to representation at proceedings, appeals against findings of misconduct hearings and Police Appeals Tribunals respectively to apply to former officers or special constables. For these procedures, the relevant chief officer or local policing body is the current incumbent in the former officer or special constable’s last force.

Example 2:
Superintendent K retires from their police force. Two months later it comes to light that Superintendent K submitted fraudulent expense claims over a period of five years, totalling several thousand pounds.

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

566 Subsection (7) contains a transitional provision so that the provisions of the clause do not have retrospective effect and, as such, will only apply to officers serving with the force on or after

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commencement.

Clause 23: Police barred list and police advisory list

567 Clauses 23 and Schedule 6 combined create a new statutory list of persons barred from policing called the “Police Barred List”, held by the College of Policing. This is achieved by inserting new Part 4A into the Police Act 1996 which set out the various provisions and requirements on those affected. The provisions created by new Part 4A require that any dismissals from a police force are reported to the College of Policing which will hold this information and maintain a list of people barred from policing activity. Any person on this list will be prevented from being employed by or appointed to a position in a police force, the IPCC, HMIC and any other organisation specified in regulations.

568 Where Police Officers and Special Constables have been dismissed following disciplinary proceedings, their names will be published by the College of Policing for a period of five years. The provisions also provide mechanisms for the removal of names from the list in certain circumstances. An example of how these provisions will work in practice is below.

Example 1

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

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

The Officer’s name and details of the case are made publically available for a period of 5 years.

569 Subsection (1) of clause 23 introduces Schedule 6 which inserts a new Part 4A (comprising sections 88A to 88M) into the 1996 Act, which includes the duties, procedures and provisions related to the administration and maintenance of the police barred list and the police advisory list, as well as the effects of being an individual included on the lists or removal from them., Subsections (3) to (5) make consequential amendments for these provisions within the 2011 Police Reform and Social Responsibility Act to ensure that a person who appears on the police barred list cannot be appointed as a Chief Constable, or as Commissioner, or Deputy Commissioner of the Metropolitan Police.

570 New Schedule 6 section 88A creates a duty for the ‘relevant authority’ to report the name of an individual to the College of Policing who has been, or would have been, dismissed from a

30 For Chief Officers, the relevant authority is the Police and Crime Commissioner, as the local policing body. In London this function falls to the Mayor’s Office of Policing and Crime (MOPAC) for the Metropolitan Police and the Police Committee of the City of London Corporation for the City of London Police. For all other police officers, the relevant authority is the chief officer of the police force in which they serve.

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police force (subsection (1)), within a specified period (subsection (2)). Subsection (1)(c) and (d) creates corresponding procedures for civilian staff\(^{31}\) to be reported to the college following dismissal.

571 New sections 88I to 88M create similar provisions for the “Police Advisory List”, which (section 88I) requires a relevant authority to report to the College of Policing if an individual resigns or retires whilst under investigation for gross misconduct or before the disciplinary process concludes; or where an allegation relating to gross misconduct is received within 12 months of an individual leaving the force. This list is effectively an interim list to record information about people under investigation or subject to proceedings. Once that process has concluded, if the person is dismissed (or would have been dismissed) they are effectively transferred to the barred list, however if the matter is not proven or does not amount to gross misconduct they are simply removed.

572 If an individual leaves the force whilst under investigation, this information will be provided to the College for inclusion on the police advisory list (Section 88I). The police advisory list does not bar a person from being appointed but is made available for vetting purposes (88K) should the individual seek employment with another policing body, who are under a duty to consult the list. A further report detailing whether gross misconduct was proven or no case was found is required at the conclusion (Section 88L). Subsection (1)(b) creates similar provisions for the dismissal to be reported, where the individual had left the force if they would have been dismissed had they still been a member of the force before the process had concluded.

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**Example 2**

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

An investigation is initiated by the force Professional Standards Department, however in the early stages of the investigation Inspector B resigns from the force.

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

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

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

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31 Civilian Staff, i.e. those employed by a police force but do not hold the office of constable, are not subject to the Police Conduct Regulations including the regulated disciplinary system but are employees of the force, subject to contractual conditions and employment law. Subsection (4) defines who is classed as a civilian member of a police force, as a the chief finance officer of the force or any other employee, according to Schedule 2 or 4 of the Police Reform and Social Responsibility Act 2011.

*These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)*

77
appoint Inspector B.

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

With reference to the interim report made during the investigation, the appropriate authority provides a further report to the College of Policing including the former Inspector’s name, rank, date of birth, warrant card number and details of conduct that led to the dismissal. Inspector B is added to the police barred list.

The Inspector’s name and details of the case are made publically available for a period of 5 years from the date of publication.

573 Section 88B places a duty on the College of Policing to maintain a list of people who are reported to it (Subsection (1)) and for that list of individuals to be known as the police barred list (subsection (2)) including provision to make regulations for specified information to be included within the list (subsection (3) and (4)). Section 88C sets out the effects and consequences of being included as an individual on the police barred list, which is to become a “barred person” from policing, as set out in subsection (1).

574 To achieve the result of being “barred” subsection (2) places a requirement on certain individuals and bodies (subsection (5)) including chief officers and local policing bodies, HMIC and the IPCC to consult the police barred list held by the College of Policing before employing or appointing any person and so cannot employ or appoint any named individual32 by virtue of subsection (3). Subsection (5)(e) allows regulations to specify additional persons or bodies which carry out policing or law enforcement functions who must not appoint barred persons to those organisations. This is to prevent individuals who have been dismissed from policing from undertaking similar roles or functions similar to that of police in other organisations. Section 88K sets out the effects of inclusion on the police advisory list, but does not bar an individual. However it requires the bodies named above to consult the information as part of their vetting process.

575 New section 88D places similar duties to those imposed by new section 88C on organisations which carry out both policing/law enforcement functions, as well as other functions. This is to ensure that if an individual is to be transferred internally or seconded to a role which relates to policing or law enforcement functions, the organisation must check with the College of Policing before making the appointment (Subsection (4)). For example, if a person was carrying out a back-office or non-public function not related to policing and law enforcement but sought to transfer to a front-line or operational role which meets the specified criteria and is on the barred list, they could not take up that role or carry out those functions. Section 88E makes similar provisions in respect of contractor relations so that a chief constable or local policing body must not enter into a contract with a person who would permit someone who was barred

32 Subsection (3) and (4) of Clause J303, replicates the duties and responsibilities in terms of not appointing or recruiting individuals who have been barred from Policing for the Metropolitan Police for the Commissioner and Deputy Commissioner of that force who are recommended for appointment by the Home Secretary, (5) places as similar duty on Police and Crime Commissioners for the appointment of Chief Constables for police forces outside of London.

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from carrying out a role from which they would be barred if they were directly employed. It is expected that contracts between police forces and private sector providers of policing related services will include standard clauses to prevent barred persons from being engaged as part of such a contract.

576 New section 88F sets out the conditions and process for removal of an individual’s name from the police barred list where an individual has been successful upon appeal to the Police Appeals Tribunal (subsection (1)(a) and (b)) or following a finding of unfair dismissal (subsection (1)(c)) on appeal or by the employment tribunal.

577 The relevant authority must report such an appeal or decision to set aside to the College of Policing (subsection (2)), within a period of time and containing information to be specified in regulations (subsection (3)). Subsection (4) requires the College to remove the person from the list where such a report is received. Additional processes and processes and other circumstances where a person is to be removed from the barred list may be made in regulations to allow an individual to be removed from the list (6), for example following a court order or Judicial Review.

578 Section 88L creates similar provisions for an individual to be removed from the police advisory list where it is found that the person had not committed gross misconduct and would not have been dismissed (subsection (1)) or in other cases specified in regulations (subsection (6) to (7), in particular for police staff and police volunteers. In these circumstances, the relevant authority must make a report to the College of Policing (2) of a nature specified in regulations (3).

579 Section 88G sets out provisions for a list of individuals on the police barred list to be published and made publically available (with the detail to be specified in regulations). Subsection (1) limits this to individuals included on the police barred list (1)(a) and of a description in regulations ((1)(b)), which will limit publication to certain categories of those on the police barred list, i.e. only apply to police officers and not civilian police staff. Subsections (2) and (3) require the College to publish specified information, within a set period ((3)(b)). The period of publication is limited to five years from the date the individual is added to the list (subsection (3)(c)) after which name must no longer be published (subsection (3)(d)).

580 Subsection (4) allows for regulations to be made which will describe exceptions to the publication requirements in certain circumstances where the details will remain on the private police barred list but not be published. As set out in subsection (5), these regulations may relate to information that should never be released (a) or when information should be removed from publication (b) following an application to the College in certain limited circumstances, which may include following the death of an individual on the named list or in response to a court order, for example.

581 Section 88H allows the College to disclose information contained on the police barred list, where it is considered to be in the public interest to do so.

Clause 24: Appeals to Police Appeals Tribunals

582 Paragraphs 1 and 2 of Schedule 6 of the Police Act 1996 determine the composition of Police Appeals Tribunals “PAT”. Such tribunals hear appeals made by police officers against any disciplinary finding and/or outcome imposed at a misconduct hearing or special case hearing under the Police (Conduct) Regulations 2012. Senior police officers (defined in the Police (Conduct) Regulations 2012 as a ‘member of a police force holding a rank above that of chief superintendent’) also have a right of appeal following misconduct meetings. In addition, non-senior police officers have a right of appeal to a PAT against the finding and/or certain outcomes imposed following a third stage meeting under the Police (Performance) Regulations.
583 At present, a PAT consists of three panel members who are appointed by the local policing body (for non-senior officers) or the Secretary of State (for senior officers). Under Schedule 6 to the 1996 Act, a PAT which considers an appeal by a senior police officer must comprise of a chair chosen from a list of persons nominated by the Lord Chancellor and appointed by the Home Secretary; a panel member from Her Majesty’s Inspectorate of Constabulary; and a panel member who is a Home Office director. In the case of the consideration of appeals by non-senior officers, the panel must have a chair chosen from a list of persons nominated by the Lord Chancellor and appointed by the Home Secretary; a panel member who is a serving police officer; and a panel member who is a retired police officer.

584 Subsection (4)(a) repeals paragraphs 1 and 2 of Schedule 6 of the 1996 Act. In their place, new sections 85(1A) and (1B) of the 1996 Act (inserted by subsection (2)) enable the Secretary of State to set out in rules how the PATs will be constituted. New paragraph 5(2) of Schedule 6 (inserted by subsection (4)(b)(iii)) enables such rules to make provision governing the appointment of the chair of a PAT. The amendments will also enable changes to the composition of the PAT panel. The intention is to retain the current requirement for a PAT to be chaired by a legally-qualified person nominated by the Lord Chancellor and appointed by the Home Secretary. However, in relation to PATs which consider appeals by non-senior officers, the Government intends to replace the existing retired police officer panel member with a lay member who is independent of the police.

585 The new power to make rules also allows the Secretary of State to make rules enabling the appropriate authority (namely, chief officers of police or the Secretary of State) to delegate their existing responsibility for administering appeal hearings to another person. Rules could allow the delegation of this responsibility to the appropriate authority of another force, or an external partner, to facilitate collaboration on the administration of PATs across multiple forces.

586 Ministry of Defence police officers may appeal to a police appeals tribunal through section 4A of the Ministry of Defence Police Act 1987 following proceedings under the Ministry of Defence (Conduct) etc Regulations 2015 and the MOD Police (Performance) Regulations 2012, against being dismissed, required to resign or reduced in rank. Section 4A(3) of the 1987 Act enables the Secretary of State to make regulations about such appeals, including making provisions to correspond to those in Schedule 6 of the 1996 Act. Clause 24 (7) therefore inserts the same powers as in the new section 85(1B) of the 1996 Act into the 1987 Act.

Clause 25: Guidance concerning disciplinary proceedings and conduct etc

587 Subsections (1) to (6) amend section 87 and subsection (7) inserts new section 87A into the 1996 Act, to allow the Home Secretary to issue guidance about disciplinary proceedings about police officers, special constables, members of the civilian staff of a police force and designated policing volunteers, and the IPCC to take account for the changes the Bill introduces to the designation of policing powers and allow the creation of centralised guidance. Section 87 relates to individuals who are responsible for the administration of the conduct and discipline system. Section 87A relates to guidance issued to individuals who are subject to the discipline system about the processes they are subject to. This guidance is binding and failure to follow the specified processes can be used in evidence against a person who fails to follow it.

588 Subsection (3) and the equivalent subsection (2) of new part 87A also gives the College of Policing the power, with the approval of the Home Secretary, to issue guidance in relation to police discipline and other matters related to the conduct, efficiency and effectiveness of members of police forces. This guidance can be issued to local policing bodies; chief officers of police; other members of police forces; and special constables. Currently the power to issue

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such guidance rests solely with the Home Secretary.

Chapter 5: Inspection

Clause 26: Powers of inspectors to obtain information, access to police premises etc

589 Section 54(2) of the 1996 Act provides for HMIC to inspect and report on the efficiency and effectiveness of police forces in England and Wales. Schedule 4A to the 1996 Act gives the inspectors of constabulary powers to require information from a chief officer and access to force premises in support of this function.

590 Subsection (1) replaces paragraphs 6A and 6B of Schedule 4A to the 1996 Act and inserts in their place, new paragraphs 6A to 6E. The existing paragraph 6A requires the chief officer of a police force to provide information to inspectors of constabulary for the purposes of a section 54 inspection. Similarly, paragraph 6B requires the chief officer of a police force to allow inspectors access to any premises occupied by the force for the purposes of a section 54 inspection.

591 The revised paragraph 6A extends the inspectors of constabulary’s ability to obtain information that they reasonably require for the purposes of a section 54 inspection from any person by serving them with a notice requiring the provision of that information. This is intended to reflect the fact that policing is delivered in increasingly diverse ways by multiple organisations, including in partnership with other local agencies, private sector companies and potentially in future by staff in PCCs’ offices.

592 The revised paragraph 6B extends the types of premises to which the inspectors of constabulary can require access, to include the premises of persons providing services to assist the police force under a contractual arrangement, and to the premises of local policing bodies, in so far as the inspectors of constabulary can reasonably require such access for the purposes of the section 54 inspection.

593 New paragraph 6C enables HMIC to certify to the High Court that a person has failed to comply with a notice under revised paragraphs 6A or 6B. It enables the High Court to inquire into the matter and, where appropriate, deal with the person as if they had committed a contempt of court. Under the Contempt of Court Act 1981 the maximum penalty for contempt of court is two years’ imprisonment.

594 New paragraph 6D provides that a person, on whom a notice is served under paragraphs 6A or 6B, may appeal against that notice on the ground that the notice is not in accordance with the law. If an appeal is brought, the notice has no effect until the appeal is withdrawn or determined. The Tribunal may quash the notice, or give directions regarding the service of a further notice.

595 New paragraph 6E sets out that, should an inspector receive sensitive information, they must not disclose that information or the fact that they have received it without the relevant authority’s consent. The new paragraph 6E also sets out the type of information that the restrictions relate to.

Clause 27: Inspectors and inspections: miscellaneous

596 Subsection (1) inserts a new subsection (7) into section 54 of the 1996 Act. New subsection (7) defines a ‘police force’ for the purposes of section 54 of the 1996 Act and therefore the scope of HMIC’s remit. The new definition includes staff appointed by the chief officer of the police force; PCC staff if, or to the extent that, they are employed to assist the police force, and persons contracted to assist the police force.

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Section 55 of the 1996 Act provides for the publication of HMIC reports. Subsection (2) insert new subsections (5A) and (5B) into section 55. New subsection (5A) introduces a 56 day time limit for a PCC to prepare and publish their comments on HMIC reports. New subsection (5B) introduces a new requirement for a PCC’s comments to address each recommendation made in an HMIC report. These new provisions will bring the requirements relating to HMIC reports into line with those relating to IPCC reports and Coroners’ ‘Action to prevent other deaths notices.’

Subsection 55(6) currently requires PCCs to send a copy of their comments in response to an HMIC report to a Secretary of State (in practice, the Home Secretary). Subsection (3) amends this to require PCCs to also send a copy of their comments to HMIC. This will ensure that HMIC is aware of all PCCs’ responses to their reports.

Currently section 56 of the 1996 Act requires the Home Secretary to appoint Assistant Inspectors of Constabulary (“AICs”). Subsection (4) amends section 56 to transfer responsibility for AIC appointments to the chief inspector of constabulary. This will enable HMIC to respond more flexibly to emerging resource requirements.

Subsection (5) amends paragraph 2 of Schedule 4A to the 1996 Act. Paragraph 2 currently requires HMIC to prepare an inspection programme and inspection framework. Subsections (5) (a) and (b) move the requirement from HMIC to the inspectors of constabulary. This is intended to reflect the fact that HMIC inspections are undertaken by all of the HMIs rather than HMIC specifically. Subsection (5)(c) inserts new subparagraphs (6) and (7) into paragraph 2 of Schedule 4A, these will enable HMIC to initiate inspections outside of the inspection programme referred to in paragraph 2(1)(a). This is intended to allow HMIC greater flexibility to respond to emerging risks and issues.

Subsection (6) inserts new subsections (1A) and (1B) into paragraph 4 of Schedule 6 to the 2013 Act. Paragraph 4 of that Act requires the Director General of the NCA to prepare comments on any HMIC inspection of the NCA. New paragraph 4(1A) requires these comments to be prepared within 56 days of the report being published by the Secretary of State (in practice the Home Secretary). New paragraph 4(1B) requires these comments to address each recommendation made by HMIC. This is intended to bring the requirements relating to NCA responses to HMIC reports into line with the new requirements relating to PCC comments as provided for in subsection (2).

Part 3: Police Workforce and Representative Institutions

Chapter 1: Police workforce

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

Clause 28: Powers of civilian staff and police volunteers

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

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

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police volunteer as either or both of a community support volunteer or a policing support volunteer.

605 Subsections (3) and (9) repeal section 38(5A) to (6A) and 3A of the 2002 Act, which provides for PCSOs to be designated, as a minimum, with a list of standard powers. In future, it will be a decision for each chief officer as to which powers their PCSOs will have.

606 Subsection (4) inserts new subsections (6B) to (6F) into section 38 of the 2002 Act, regarding the powers and duties that can be conferred on a person designated under section 38 of the 2002 Act. New subsection (6B)(a) provides that such a person may be given any power or duty of a constable, other than a 'core' power or duty specified in Part 1 of new Schedule 3B to the 2002 Act (excluded powers and duties), inserted by Schedule 7. Part 2 of new Schedule 3B makes sure that, when a designated staff member or volunteer is given a power of a constable, the various statutory provisions are interpreted in such a way as to ensure the power works as intended.

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

608 New subsection (6B)(b) provides that, where the person is designated as a PCSO or a community support volunteer, they may be given any power or duty set out in new Schedule 3C to the 2002 Act (inserted by Schedule 8). New Schedule 3C carries over, with minor modifications, those powers currently set out in Part 1 of Schedule 4 to the 2002 Act (which is repealed by paragraph 5(3) of Schedule 9) that are available to be designated to PCSOs and that are not powers of a constable (for example, the power in paragraph 7 of new Schedule 3C to the 2002 Act to detain a person in certain circumstances pending the arrival of a constable).

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

610 New section 38(6D) introduces Part 2 of new Schedule 3B to the 2002 Act, which sets out how the new designation of powers will work in practice, including providing a regulation-making power (subject to the negative procedure) at paragraph 8(2) to modify an enactment to ensure that a constable power works as intended when used by a designated member of police staff or volunteer.

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

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

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

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

615 Subsection (7) inserts new section 38(12) into the 2002 Act, to define a “police volunteer” as a person who is under the direction and control of the chief officer making a designation under section 38(1A) and who is not a constable, a special constable or a relevant employee.

616 Subsection (7) also inserts new section 38(13) into the 2002 Act, which provides that, for the purpose of subsection 38(12), a person is to be treated as a relevant employee only in relation to times when the person is acting in the course of their employment with that employer; in other words they cannot use any powers designated to them as an employee if they are not “on duty”.

Clause 29: Training etc of police volunteers

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

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

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

620 In consequence of these provisions, paragraph 3 of Schedule 9 repeals the obsolete section 45 of the 2002 Act, which enabled the Secretary of State to issue a Code of Practice around the designation process for staff, but which was never brought into force. Schedule 9 also makes a number of other consequential changes to other legislation to take account of the changes made by clause 28, including to provisions relating to collaboration agreements between forces (paragraphs 1 and 10).

Clause 30: Police volunteers: complaints and disciplinary matters

621 In the current police complaints system, police volunteers are not subject to the provisions for dealing with complaints under Part 2 and Schedule 3 of the PRA 2002. This means that any complaints made against a volunteer or any conduct issues identified are handled how the relevant force sees fit.

622 Clause 30 amends section 12 of the PRA 2002 to bring volunteers designated as community support volunteers or investigation support volunteers (and who have certain powers of the constable conferred on them - see clause 28) within the definition of individuals serving with

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the police. This means that those volunteers will be subject to the police complaints system as set out in Part 2 and Schedule 3 of the PRA 2002.

623 Subsections (2) makes amendments to those introduced by clause 2 (see above) to the Police Act 1996 to allow the Secretary of State to issue statutory guidance about functions in relation to the conduct, efficiency and effectiveness of community support volunteers and investigation support volunteers. Subsection (3) provides that, where such guidance is issued, those to whom the guidance is issued must have regard to it and a failure to have regard to the guidance will be admissible as evidence in the disciplinary proceedings.

Clause 31: Police volunteers: police barred list and police advisory list

624 This clause amends the new Part 4A of the 1996 Act inserted into that Act by Schedule 6 to the Bill.

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

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

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

Clause 32: Restrictions on designated persons acting as covert human intelligence sources

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

Clause 33: Further amendments consequential on clause 28 etc

629 This clause introduces Schedule 9 which makes consequential amendments on clause 28.

Schedule 9: Powers of civilian staff and volunteers: further amendments

630 Part 1 of Schedule 9 makes further amendments to the 2002 Act consequential on the provisions in clause 28.

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631 Part 2 makes further amendments to other enactments consequential on the provisions in clause 28.

632 Part 3 makes minor correcting amendments.

633 Paragraph 33 makes minor correcting amendments to the 2002 Act to take account of the new definition of anti-social behaviour introduced by section 2(1) of the Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”). That section defined anti-social behaviour for the purposes of Part 1 of the 2014 Act as:

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

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

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

**Clause 34: Removal of powers of police in England and Wales to appoint traffic wardens**

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

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

**Clause 35: Power to make regulations about police ranks**

638 Presently the police rank structure is set out in the 1996 Act, the 2011 Act and regulations made under the 1996 Act. This clause inserts new sections 50A and 50B into the 1996 Act to replace existing powers to make regulations as to police ranks with new powers for the Secretary of
State to make regulations, subject to the affirmative procedure, setting out the rank structure (not including chief officers) for police forces in England and Wales. Under current legislation, the Secretary of State has very little flexibility in the rank structure that may be provided for in regulations as the ranks are effectively stipulated in primary legislation. The powers in clause 39 (combined with the consequential amendments in clause 40) will provide such flexibility.

639 These powers will enable the Secretary of State, through regulations, to implement as appropriate the findings of the College of Policing rank review (which is due to report in spring 2016). The review might, for example, recommend the abolition of certain ranks, the creation of new ranks and/or that certain ranks that are currently mandatory for each force under the 2011 Act (for example, assistant chief constable) should become discretionary.

640 Subsection (1) of new section 50A provides the basic power for the Secretary of State to specify police ranks (other than chief officers of police) in regulations. This must include the rank of constable. Subsection (3) enables the Home Secretary, by regulations, to make provision that is consequential, incidental or supplemental provision to regulations about police ranks. This includes the power to repeal, revoke or otherwise amend legislation that refers to abolished ranks or make other amendments consequential on regulations about ranks. Regulations can also include transitional, transitory or saving provision or make different provision for different cases. These powers will enable amendments to be made to any primary or secondary legislation that refers to a specific rank (for example, certain police powers under PACE must be exercised by an officer of at least the rank of inspector or superintendent) that may no longer exist as a result of changes to the rank structure so as to substitute the nearest equivalent rank. The powers may also be used, as necessary, to repeal or otherwise amend relevant provisions in the 2011 Act so as to remove references to any abolished rank or, where a rank mentioned there continues, to make it discretionary as whether to appoint one or more persons at that rank.

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

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

Clause 36: Clause 35: consequential amendments

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

644 Clauses 37 and 38 form part of the law of England and Wales.

Clause 37: Duties of Police Federation for England and Wales in fulfilling its purpose
645 Subsection (1) of section 59 of the 1996 Act provides for the purpose of the Police Federation, namely to represent members of the police forces in England and Wales in all matters affecting their welfare and efficiency (subject to certain specified exceptions which relate to individual promotions and disciplinary matters). This clause inserts a new subsection (1A) into section 59 of the 1996 Act, the effect of which is to place a duty on the Police Federation, in fulfilling its core purpose, to act to protect the public interest, maintain high standards of conduct and maintain high standards of transparency.

Clause 38: Freedom of Information Act etc: Police Federation for England and Wales
646 This clause provides for the Police Federation to be treated as a public authority for the purposes of the Freedom of Information Act 2000 ("the FOI Act"), the Data Protection Act 1998 ("the 1998 Act") and section 18 of the Inquiries Act 2005, which includes provision in respect of the disclosure of information by public authorities about public inquiries established under that Act.

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

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

Clause 39: Removal of references to ACPO
649 Clause 39 and Schedule 11 extends in the main to England and Wales, with a few provisions extending to Northern Ireland and to Scotland as well.

650 This clause gives effect to Schedule 11 which repeals or amends statutory references to ACPO following its abolition and replacement, in part, by the NPCC.

Schedule 11: Removal of references to ACPO
651 Paragraph 1 amends section 101(1) of the 1996 Act to replace the definition of ACPO with a definition of the NPCC. The NPCC was formed on 1 April 2015 to replace ACPO as the body which provides national police coordination and leadership.

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

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

- before issuing a code of practice under PACE;
- before issuing a code of practice for police interviews of witnesses identified by the accused under the Criminal Procedure and Investigations Act 1996;

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

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

Part 4: Police Powers

Chapter 1: Pre-charge Bail

655 The provisions of this Chapter form part of the law of England and Wales.

Clause 40: Arrest elsewhere than at a police station: release before charge

656 Clause 40 concerns section 30A of PACE, which provides for a power for a constable to release on bail a person who is arrested other than at a police station (known as ‘street bail’). The clause amends section 30A to enable such a release without bail. Subsection (3) amends section 30A(1), the effect of which is to establish a presumption that, where a police officer decides that it is appropriate to release an arrested person rather than take them to a police station, that release will be without bail, unless the requirements in new section 30A(1A) (inserted by subsection (4)) are met. Those requirements are that that the constable is satisfied that bail is necessary and proportionate in all the circumstances (having regard, in particular, to any bail conditions that would be imposed) and bail is authorised by a police officer of the rank of inspector or above.

Clause 41: Section 40: Consequential amendments

657 Clause 41 makes a number of amendments to PACE as a consequence of the changes made by clause 40.

Clause 42: Release from detention at a police station

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658 This clause amends sections 34 and 37 of PACE to establish a presumption that release of a person whilst an investigation continues should be without bail unless the pre-conditions of bail are satisfied. These are defined in new section 50A of PACE (inserted by clause 46) as the custody officer being satisfied that bail is necessary and proportionate in all the circumstances (having regard, in particular, to any bail conditions that would be imposed) and bail is authorised by a police officer of the rank of inspector or above (having considered any representations made by the person or their legal representative).

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

Clause 43: Release following arrest for breach of bail

660 Subsection (2) amends section 37CA of PACE to provide that, where a person was bailed for a police charging decision and then arrested for breach of that bail, release from such custody will only be on bail if the pre-conditions of bail are met.

Clause 44: Release from further detention at police station

661 Section 41 of PACE provides for limits on the time a person can be detained without charge. This is (subject to certain exceptions) 24 hours, which is calculated from a point known in PACE as the “relevant time” (normally, the time detention was authorised). A person who has been in detention for 24 hours after the ‘relevant time’ and who has not been charged must be released (unless further detention is authorised or permitted under subsequent provisions of PACE). Subsection (1) amends section 41(7) so that such a release should normally be without bail, unless the pre-conditions for bail are satisfied. Subsections (3) and (4) amend section 42(10) and insert new section 42(10A) to make equivalent provision in respect of a person whose continued detention is authorised to 36 hours and is then released at that point.

Clause 45: Warrants of further detention: release

662 This clause makes equivalent provision to clause 44 in respect of those persons being released from police detention under section 43 or 44 of PACE, that is those who have had their extended detention authorised by a warrant of further detention (up to a maximum of 72 hours) issued by a magistrates’ court or where the court refused to grant such a warrant.

Clause 46: Meaning of “pre-conditions for bail”

663 This clause inserts new section 50A into Part 4 of PACE to define the ‘pre-conditions for bail’ referred to above.

Clause 47: Bail before charge: conditions of bail etc

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

Clause 48: Limit on period of street bail under section 30A

665 This clause amends sections 30B, 30CA and 30D of PACE in order to set a time limit for ‘street bail’ (bail granted under section 30A of PACE elsewhere than at a police station). The clause requires that the bail notice given under section 30B must, in addition to the existing

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requirements, set out the date, time and place at which bail must be answered. The date is required to be 28 days from the day after arrest. Because any extension of bail would be granted under Part 4, there is no provision to extend bail granted under section 30A. Subsections (6) and (7) provide that the police’s existing power to alter a bail return date (the time at which the person is to attend at the police station to answer bail) may not be used to extend street bail beyond the 28-day limit.

**Clause 49: Limits on period of bail without charge under Part 4 of PACE**

666 Clause 49 inserts thirteen new sections 47ZA to 47ZM into Part 4 of PACE. The new sections set out the regime of time limits and extensions being introduced in respect of pre-charge bail under that Part of that Act. The first new section, section 47ZA, underpins the other new sections by providing in subsection (2) that a person given bail must always be required to answer that bail on the day the relevant time limit (known in the Bill as “the applicable bail period”) expires. Subsections (3) and (4) provide an exception to that general rule, permitting (but not requiring) a custody officer to set an earlier (but not later) date to return to the police station where the person is already on pre-charge bail for another offence and the custody officer believes it to be appropriate to set the same return date for all cases. Subsection (7) defines the phrase ‘relevant offence’ as the offence for which the person has been arrested and subsequently bailed.

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

668 New section 47ZC of PACE set out the four conditions that a senior police officer or prosecutor must consider in making a decision as to whether to extend bail under new sections 47ZD or 47ZE. When a magistrates’ court is considering extending bail under new section 47ZF and 47ZG, the court will only consider Conditions B to D. Condition A is that there are reasonable grounds to suspect that the person on bail is guilty of the offence for which they were arrested and are on bail. Condition B is that there are reasonable grounds for believing either that further time is needed for the police to make a charging decision under police-led prosecution arrangements (where the person has been bailed for that purpose) or that further investigation is necessary. Condition C is that there are reasonable grounds for believing that the charging decision or investigation (as applicable) is being conducted diligently and expeditiously. Condition D is that releasing the person on bail continues to be both necessary and proportionate in all the circumstances of the particular case (having regard, in particular, to any bail conditions that are or would be imposed).

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

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

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

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

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

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

675 New section 47ZI of PACE provides further detail on the procedures to be followed by 
magistrates’ courts in considering applications under new sections 47ZF, 47ZG and 47ZH. 
Applications to extend bail under new sections 47ZF and 47ZG will normally be considered by 
a single magistrate on the basis of written evidence only, unless either the magistrate decides 
that the interests of justice require an oral hearing (in cases where bail would be extended to a 
point no later than twelve months from arrest) or the application would result in bail being 
extended beyond twelve months and either party has requested such a hearing. Subsection (4) 
provides that, as with an application for a warrant of further detention under section 43 of 
PACE, any such hearing will be before at least two magistrates and the proceedings will not be 
open to public (in order to avoid any potential prejudice to a subsequent trial).

676 Subsections (5) and (6) permits the court to exclude the person on bail and their legal 
representatives from any part of an oral hearing to extend bail where sensitive information 
might be disclosed (as defined in new section 47ZH(4)).

677 New section 47ZI also provides for a single magistrate to decide an application under new 
section 47ZH (withholding sensitive information) on the papers, unless that magistrate decides 
that the interests of justice require an oral hearing. Where such an oral hearing takes place, it 
will be before at least two magistrates and the proceedings will not be open to public. The court 
must exclude the person on bail and their legal representatives from that oral hearing.

678 New section 47ZJ sets out that, if the police application to extend bail cannot be determined by 
the court before the end of a bail period, that bail period will be treated as extended until such 
time as the application can be determined. The court should determine such applications as
soon as practicable. However, the court can refuse such an application if it considers that it would have been reasonable for the application to have been made in time for the court to have determined it before the end of that bail period.

679 New section 47ZK enables Criminal Procedure Rules to make provision in relation to applications under new sections 47ZF, 47ZG and 47ZH and proceedings relating to such applications.

680 New section 47ZL deals with the position of pre-charge bail in those cases where the police refer a case to the Director of Public Prosecutions (“DPP”) (in practice, a Crown Prosecutor) for a charging decision. The effect of subsections (2) and (3) is that the bail time limits do not apply in cases where an individual is bailed under sections 37(7)(a) or 37(2)(b) of PACE while waiting for a charging decision to be made by the DPP. However, where a charging decision has been requested from the DPP, but the DPP requests further information from the police before reaching that decision, the effect of subsections (4) to (11) is that the bail time limits will re-apply during the period that the police are gathering that information (subsection (6)) and, accordingly, the police must set a new bail return date that is not after the end of the person’s applicable bail period (subsection (5)). If, at the point that the DPP makes the request for further information, the person’s applicable bail period would end within 7 days of the DPP’s request, the effect of subsection (8) is that the person’s applicable bail period is extended to 7 days from that request in order to give the police time to gather the information, seek a bail extension or release the suspect from bail. Subsections (9) and (10) provide that, where the information requested by the DPP is provided, the bail time limit is again suspended.

681 New section 47ZM makes provision in respect of ‘street bail’ (bail under section 30A of PACE) and persons on bail who are hospitalised. Where a person was initially given ‘street bail’ for 28 days under section 30A of PACE, new section 47ZM(2) treats that period as the first 28 days of bail under Part 4 of PACE and any further bail would need to be authorised under Part 4 as amended by this Bill, in the same way as when the initial period had been granted at a police station. Subsections (4) and (5) of new section 47ZM provide that, if on the day that a person’s applicable bail period would end, they are in hospital as an in-patient, any time that person spent in hospital as an in-patient while on pre-charge bail would not be included in the time period calculations.

Clause 50: Clause 49: Consequential amendments

682 This clause makes a number of consequential amendments to Part 4 of PACE to take account of the time limit provisions set out in clause 49. In particular, subsection (7) inserts new subsections (4A) to (4E) into section 47 of PACE; new subsection (4D) provides that that the police’s power to alter a bail return date may not be used to extend bail beyond the relevant bail time limit.

Clause 51: Release under provisions of PACE: re-arrest

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

Chapter 2: Powers Under PACE: Miscellaneous

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

Clause 52: PACE: entry and search of premises for the purpose of arrest

These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)
685 Section 17 of PACE provides the police with the power to enter and search premises for the purposes of arrest. This clause amends section 17 to provide the police with the power of entry to premises to exercise their existing power to make an arrest for breach of bail, whether pre- or post-charge, under any of the powers set out in the clause.

Clause 53: PACE: treatment of those aged 17

686 This clause amends PACE to extend current safeguards for 14 to 16 year olds to 17 year olds.

687 Subsection (2) amends section 30A of PACE (bail elsewhere than at police station) which provides for a police officer to release an arrested person on bail, subject to certain conditions. Currently, such conditions may include requirements which appear to the officer to be necessary for a person’s welfare or own interests, in cases where the person is under the age of 17. Subsection (1) extends this provision to young persons aged 17.

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

689 Section 62 of PACE provides for taking an intimate sample (namely, a sample of blood, semen or any other tissue fluid, urine or pubic hair, a dental impression or a swab taken from any part of a person’s genitals (including pubic hair) or from a person’s body orifice other than the mouth) from a person in police detention if ‘appropriate consent’ is obtained. Section 65(1)(a) PACE defines ‘appropriate consent’ in this context to mean, in the case of a person over 17, the consent of that person. Subsection (4) amends section 65(1)(a) to raise the age threshold for independent consent to persons aged 18 years and above. As a result, a 17 year old and his or her parent or guardian would need to consent to the taking of an intimate sample (as is already the case with 14 to 16 year olds).

Clause 54: PACE: detention: use of live links

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

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

These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)
a custody officer considers that the use of the live link is appropriate. This could be in circumstances where it would take the authorising officer a significant amount of time to arrive at the police station either because of duties or requirements elsewhere or due to the proximity of police station,

- the arrested person has had advice from a solicitor on the use of the live link, and

- the appropriate consent (as defined in new section 45ZA(2)) to the use of the live link has been given.

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

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

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

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

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

- a custody officer considers that the use of the live link is appropriate,

- the arrested person has had advice from a solicitor on the use of the live link,

- the appropriate consent (as defined in new section 45ZB(2)) to the use of the live link has been given, and

- it is not contrary to the interests of justice to give the direction.

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

698 Subsections (4) and (5) of new section 45ZB defines various terms used in new section 45ZB. As to the meaning of ‘police purposes’ see paragraph 684 above).

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

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

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

Clause 55: PACE: interviews: use of live links

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

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

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

Clause 56: PACE: audio recording of interviews

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

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

Clause 57: PACE: consultation on codes of practice

707 Section 66 of PACE provides for the Secretary of State to issue codes of practice which govern the use of police powers under PACE. Sections 60 and 60A separately provide for the Secretary
of State to issue codes of practice specifically relating to the tape-recording and visual recording of interviews. Section 67 of PACE makes further provision in respect of the procedure for making of codes of practice, including a duty to consult specified consultees (including persons representing the views of PCCs, the NPCC (see paragraph 5(a) of Schedule 11 to the Bill) and the Law Society of England and Wales) before issuing or revising a code of practice.

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

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

Clause 58: Definition of “appropriate adult” in criminal justice legislation

710 Section 63B of PACE provides for taking a sample of urine or non-intimate sample (see paragraph 675) from a person in police detention for the purposes of testing for the presence of Class A drugs. Section 63B(5A) PACE provides that if the person is a child, such testing may only take place in the presence of an appropriate adult.

711 Section 63B(10)(c) of PACE provides that a police officer or person employed by the police cannot be an appropriate adult in this context. Subsection (1) widens this restriction so that anyone employed for, or engaged on, police purposes cannot be an appropriate adult. This restriction will apply to any police officers, police civilian staff, contractors or volunteers engaged in police activities.

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

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

Chapter 3: Powers under the Mental Health Act 1983

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

715 This Chapter makes changes to sections 135 and 136 of the 1983 Act, inserts new sections 136A and 136B, and makes other consequential amendments to that Act. Sections 135 and 136 give the police powers to detain and remove persons who appear to the officer to be suffering from a mental disorder and take them to a designated “place of safety” until such time as their

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mental health can be assessed and, where appropriate, arrangements made for their ongoing care and/or treatment.

Clause 59: Extension of powers under sections 135 and 136 of the Mental Health Act 1983

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

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

Clause 60: Restrictions on places that may be used as places of safety

718 Section 135(6) of the 1983 Act defines “place of safety” for the purposes of both sections 135 and 136. Subsections (2) and (3) amend section 135(6) and insert new subsection (7) (respectively). The requirement for the occupier to be ‘willing to temporarily receive the patient’ is removed, thus removing ambiguity around the use of places for which it may be difficult to identify a sole or main occupier (such as community centres or other multiple use buildings). Subsection (3) enables a private dwelling to be used as a place of safety, where the person believed to be suffering from a mental disorder and an occupier of the property consent to its use. Subsections (4) and (5) amend sections 135 and 136 respectively to make each of those sections subject to a new section 136A of the 1983 Act, inserted by subsection (6).

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

Clause 61: Periods of detention in places of safety etc

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

These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)
721 Subsection (4) inserts new section 136B into the 1983 Act. This makes provision for the responsible medical practitioner to authorise the extension of the permitted period of detention (24 hours) by a maximum of 12 hours where the condition of the detainee makes it necessary to do so. Where both the place of safety at which the detainee is being held and the intended place of assessment is a police station, authorisation to extend the permitted period of detention will also require the approval of a police officer of the rank of superintendent or above. This brings the maximum period of detention under sections 135 and 136 of the 1983 Act into line with that which can be authorised by a superintendent under PACE.

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

Chapter 4: Police Powers: Maritime Enforcement

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

Clause 62: Application of maritime enforcement powers: general

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

725 Subsection (1) provides that the police and others (generically termed “law enforcement officers”) may exercise what are collectively termed "the maritime enforcement powers" (as defined in subsection (2)) for the purposes of preventing, detecting, investigating or prosecuting offences under the law of England and Wales in the maritime context and specifies the categories of ship upon which these powers can be exercised. These include certain categories of ship operating in "England and Wales waters", “international waters” and “foreign waters”, these terms are defined in clause 73(1).

726 Subsection (3) defines “law enforcement officers” for the purpose of exercising the maritime enforcement powers. This includes provision at subsection (3)(f) for the Secretary of State to specify in regulations made by statutory instrument (subject to the negative procedure) other categories of person who may be allowed to exercise these powers. Although not expressly included within the definition of a law enforcement officer, NCA officers will be able to exercise these powers by virtue of being designated with the powers of a constable.

727 Subsection (6) limits the exercise of powers under this clause by reference to clause 63.. This requires authority from the Secretary of State before the maritime enforcement powers are exercised in relation to a foreign ship in the territorial waters of England and Wales.

Clause 63: Restriction on exercise of maritime enforcement powers

728 Subsection (1) sets out that the authority of the Secretary of State is required before a law enforcement officer exercises any of the maritime enforcement powers provided for in clause 62 in relation to a UK ship in foreign waters.

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

These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)
730 Similarly, subsection (3) requires that the authority of the Secretary of State is required before these powers are used in the territorial waters of England and Wales in respect of a foreign ship, or a ship registered under the law of a relevant territory, in the territorial waters of England and Wales.

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

Clause 64: Hot pursuit of ships in Scotland or Northern Ireland waters

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

733 Subsection (1) sets out a that a law enforcement officer may exercise the maritime enforcement powers in relation to a ship in Scotland waters or in Northern Ireland waters, provided that the conditions in this subsection are met. Subsection (2) provides that for the purpose of subsection (1)(b), relevant waters means England and Wales waters or international waters (in the case of a UK ship or a ship without nationality) or England and Wales waters (in the case of a foreign ship or a ship registered under the law of a relevant territory).

734 Subsection (3) provides that, for the purposes of subsection (1)(e), pursuit is not interrupted simply because the method of carrying out the pursuit, or the identity of the ship or aircraft carrying out the pursuit, changes during the course of the pursuit. For example, where a speed boat is pursued initially by a police helicopter and then by a border force clipper, this represents an uninterrupted pursuit.

Clause 65: Restriction on exercise of maritime enforcement powers in hot pursuit

735 Subsection (1) requires that the authority of the Secretary of State is given before maritime enforcement powers are exercised under clause 66 (hot pursuit) in relation to a foreign ship, or a ship registered under the law of a relevant territory, within the territorial sea adjacent to Scotland or Northern Ireland. Subsection (2) sets out the circumstances under which the Secretary of State may give authority under subsection (1) in relation to a foreign ship.

Clause 66: Power to stop, board, divert and detain

736 This clause provides a power to stop and board a ship, and to direct the vessel to be taken to a port in England and Wales, or elsewhere, and detained there, where a law enforcement officer has reasonable grounds to suspect that an offence under the law of England and Wales is being or has been committed on that ship, or that that ship is being used in connection with the commission of an offence under the law of England and Wales.

737 It notes that if the enforcement officer is acting on the authority of the Secretary of State, as set out in clause 65(3) or 67(1), the officer can require the vessel to be taken to a port in that vessel’s flag state or in another country willing to take the vessel. In exercising this power an enforcement officer has the power to require any member of a vessel’s crew to take action necessary to support their enforcement activity in relation to the powers set out in subsection (2)(c). Written notice must be provided to the master of any vessel detained under this paragraph, which must state the ship is to be detained until withdrawn via a further written notice, signed by a constable or a law enforcement officer.

Clause 67: Power to search and obtain information

738 This clause provides a law enforcement officer with the power to search a ship, and anyone or anything found on the ship. This power may be exercised when the officer has reasonable grounds to suspect that there is evidence relating to an offence under the law of England and Wales.
Wales (other than items subject to legal privilege) on a ship upon which the maritime enforcement powers are exercisable. The power extends to requiring a person found on the ship to provide information about him or herself or about anything found on the ship.

739 This power is restricted to a search only for evidence relating to an offence under the law of England or Wales.

740 Subsection (8) provides that the powers to search anyone or anything on the ship or to require a person on the ship to provide information may be exercised on the ship or elsewhere. ‘Elsewhere’ is included to cover circumstances where persons leave the ship or where items which could amount to evidence relating to an offence under the law of England and Wales are thrown overboard.

Clause 68: Power of arrest and seizure

741 Subsections (1) and (2) provides a power of arrest to a law enforcement officer. An arrest may be made when the officer has reasonable grounds to suspect that an offence has been committed on a ship under investigation.

742 Subsection (3) allows a law enforcement officer to seize and retain anything which appears to be evidence of that offence, with the exception of any items believed to be subject to legal privilege. Such items are items as defined by section 10 of PACEs items that relate to communications between a professional legal adviser and his/her client, or any person representing his client.

743 Subsection (4) provides for the powers set out in subsection (2) or (3) to be exercisable on the ship “or elsewhere”. “Elsewhere” is included for the same reason as in clause 69 (see paragraph 727 above).

Clause 69: Maritime enforcement powers: supplementary: protective searches

744 Where the power to stop, board, divert and detain a ship is exercised under clause 66., this clause allows ‘protective searches’ to be carried out. Subsection (2) enables a law enforcement officer to search any person found on the ship for anything (for example, weapons or tools, which might be used to cause physical injury, damage to property, or endanger the safety of any ship. Subsection (3) provides for a protective search to be undertaken on board the ship or elsewhere.

745 Subsection (4) allows the officer carrying out the search to seize and retain anything found if the officer believes that the person might use it to cause injury or damage to property, or endanger the safety of the ship. A seized item may only be retained for so long as there are reasonable grounds to believe that it might be used in such a manner.

746 Subsection (6) limits the power to search a person under subsection (2) to the removal of an outer coat, jacket or gloves, where that search takes place in public view.

Clause 70 – Maritime enforcement powers: other supplementary provision

747 Subsection (1) provides that a law enforcement officer may take other persons (“assistants”) or equipment or materials on board a ship to assist them in exercising the powers set out in this Chapter. Subsection (3) makes clear that the assistant may perform functions on behalf of the constable or officer if under the supervision of the officer.

748 Subsection (2) allows the officer to, if necessary, use reasonable force in performing any of the functions under this Chapter.

749 Subsection (4) provides that, if asked to do so, a law enforcement officer must provide evidence of their authority. That evidence may be in the form of a warrant, badge or written
Clause 71: Maritime enforcement powers: offences

750 This clause creates two offences, set out in subsections (1) and (2), where a person impedes or frustrates the exercise of the functions of a law enforcement officer under this Chapter. Both offences are summary only and on conviction the defendant is liable to a fine (subsection (4)).

751 Subsection (3) provides a power of arrest without warrant for these offences.

Clause 72: Maritime enforcement powers: code of practice

752 This clause imposes an obligation on the Secretary of State to provide a code of practice for law enforcement officers who use the power of arrest conferred by clause 68. This code must provide guidance on the information (for example, procedural rights) to be given to a person at the time of their arrest.

753 The code will be made by regulations and will be subject to the affirmative procedure.

Clause 73: Interpretation

754 Subsection (1) of this clause sets out the definitions used throughout Chapter 4. The subsection sets out the relevant definitions, including those related to maritime matters (ships and waters).

755 Subsection (3) makes clear that references to the United Nations Convention on the Law of the Sea (UNCLOS) include references to any modifications of that Convention agreed after the passing of this Act that have entered into force in relation to the United Kingdom.

Part 5: Police and Crime Commissioners and Police Areas

756 This Part forms part of the law of England and Wales.

Clause 74: Term of office of deputy police and crime commissioner

757 Paragraph 8 of Schedule 1 to the 2011 Act provides for the term of office of a deputy PCC to end “not later than the day when the current term of office of the appointing PCC ends.”

758 Subsection (2) amends paragraph 8 of Schedule 1 to provide greater flexibility concerning a deputy PCC’s term of office. The amendment covers two situations: the first following an ordinary PCC election (where no by-election has been called), the second where a by-election is called due to a vacancy in the office of the PCC. In the first case, the PCC will be required to include in the terms and conditions of the deputy PCC that the latter’s term of office will end no later than six days after the day of the poll at the next ordinary PCC election. That is the same date as the day on which the term of office of the appointing PCC would, if there were no vacancy (leading to a by-election) in the office before then, end in accordance with section 50(7)(b). This ensures the deputy PCC is able to remain in post until a new PCC takes office.

759 In the second case, the deputy PCC’s term of office will automatically end when, in the event of a by-election, the new PCC makes and delivers a declaration of acceptance of office. The newly elected PCC may then decide whether to re-appoint the existing deputy PCC, replace them or discontinue the post altogether. This will enable the deputy PCC to remain in post until the new PCC takes office following the by-election, whilst allowing the new PCC flexibility about whether he appoints a deputy PCC or not. This amendment also ensures that a deputy PCC is eligible to be appointed as the acting PCC, if the relevant Police and Crime Panel chooses to do so. This is because an acting PCC must be appointed from the existing staff of the PCC.
760 New paragraph 8(3B) of Schedule 1 to the 2011 Act allows a PCC, subject to the provisions above, to make such provisions about termination of the appointment of a deputy PCC in the terms and conditions of appointment as the appointing PCC thinks appropriate. This will allow a degree of local flexibility to enable the PCC, for example, to make a short term appointment.

761 Subsections (4) to (6) contain transitional provisions so that the change in the term of office of a deputy PCC has retrospective effect, save where on the date this clause comes into force a by-election is in progress.

Clause 75: Eligibility of deputy police and crime commissioner for election

762 Section 65 of the 2011 Act disqualifies a deputy PCC, by virtue of being a member of the PCC’s staff, from being elected as a PCC. This clause amends section 65 to allow a deputy PCC to stand for election at an ordinary PCC election.

763 This clause also enables a deputy PCC to stand for election as PCC at a by-election, but only where the deputy PCC has been appointed as acting PCC by the relevant Police and Crime Panel, and remains in that post from the time they are nominated as a candidate until the declaration of the result of the by-election.

Clause 76: Amendments to the names of police areas

764 Section 1 of the 1996 Act provides for England and Wales to be divided into police areas, the name and geographical extent of the 41 police areas outside London are then specified in Schedule 1 to the 1996 Act.

765 Section 1 of the 2011 Act provides for a PCC for every police area listed in Schedule 1 to the 1996 Act. Section 1(3) provides that the name of the PCC is “the Police and Crime Commissioner for [name of police area]”.

766 Section 32 of the 1996 Act contains an order-making power which enables geographical alterations to be made to a police force area, together with any consequential change to the name of an altered area, but this power cannot be exercised so as to simply to change the name of a police area.

767 Subsection (1) inserts new section 31A into the 1996 Act which enables the Secretary of State (in practice, the Home Secretary) to amend the name of a police force area by regulations (subject to the affirmative procedure).

768 New section 31A of the 1996 does not stipulate any criteria for the exercise of the regulation-making power, but it is envisaged that the Home Secretary will only exercise the power in response to local representations, for example from the PCC, where there is evidence of local support and the proposed change of name represents value for money (having regard, for example, to the cost of changing force logos).

769 Subsection (2) makes a consequential amendment to section 1 of the 1996 Act which draws out the distinction between the power in new section 31A of the 1996 Act (which is limited to changing the name of a police area in the first column of Schedule 1 to the 1996 Act) and the existing powers in section 32 of the 1996 Act and in various local government enactments (which enable both the name of a police force area and its geographical extent or description (as set out in the second column of Schedule 1) to be amended).

770 This clause extends to England and Wales.

These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)
Part 6: Firearms

771 This Part forms part of the law of England, Wales and Scotland.

Clause 77: Firearms Act 1968: meaning of "firearm" etc.

772 Section 57(1) of the 1968 Act (Interpretation) defines a firearm as a “lethal barreled weapon” but does not define “lethal” in this context. It also provides that the definition of firearm includes any “component part” but without defining this term.

773 Subsection (2) amends section 57(1) of the 1968 Act so as to define a firearm as: (a) a lethal barreled weapon; (b) a prohibited weapon; (c) a relevant component part of either a lethal barreled or prohibited weapon; or (d) an accessory which is designed or adapted to diminish the noise or flash caused by firing the weapon.

774 Subsection (3) inserts new subsections (1B) and (1C) into section 57 of the 1968 Act. Subsection 1B defines a lethal barreled weapon by reference to a threshold of one joule for muzzle kinetic energy. Muzzle kinetic energy is the power of a discharged projectile as it leaves the barrel of a weapon.

775 This means that a weapon with a muzzle kinetic energy below the lethality threshold of one joule is not a firearm for the purposes of the 1968 Act. An air pistol with a muzzle kinetic energy above the lethality threshold but below 6 ft lb (or 12 ft lb for other air weapons) is a firearm but does not need to be held on a firearms certificate by virtue of s1(3)(b) of the 1968 Act. An air pistol with a muzzle kinetic energy in excess of 6 ft lb, or any other air weapon with a muzzle kinetic energy in excess of 12 ft lb, needs to be held on a firearms certificate. (Converted into SI units, these figures are 8.13 joules and 16.27 joules. The conversion factor from foot-pounds to joules is to multiply by 1.3558.)

776 Subsection 1C provides that the definition of firearm is subject to section 57A of the 1968 Act (exception for airsoft guns).

777 Subsection (4) inserts a new subsection (1D) into section 57 of the 1968 Act which defines a relevant component part of a lethal barreled weapon or a prohibited weapon. The following items are relevant component parts:

a) a barrel, chamber or cylinder;

b) a frame, body or receiver; and

c) a breech block, bolt or other mechanism for containing the pressure of discharge at the rear of a chamber.

778 This provision will ensure that those parts that have the potential for criminal misuse are subject to control, whilst not requiring that every pin or screw be listed separately on a firearms certificate.

779 These terms are not defined further but will take their commonly understood meanings, namely:

- Barrel – that part of a firearm through which a projectile or shot charge travels under the impetus of powder gasses, compressed air, or other like means. A barrel may be rifled or smooth;

- Chamber – the rear part of the barrel bore that has been formed to accept a specific cartridge or shotshell. In a revolver the holes in the cylinder represent multiple chambers;

These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)
- Cylinder – the rotating part of a revolver, that contains the chambers;
- Frame – in revolvers, pistols, and break-open guns, the basic unit of a firearm which houses the firing and breech mechanism and to which the barrel and grips are attached;
- Body – another word for receiver or frame;
- Receiver – the basic unit of a firearm which houses the firing and breech mechanism and to which the barrel and stock are assembled;
- Breech block – the locking and cartridge head support mechanism of a firearm that does not operate in line with the axis of the bore;
- Bolt – on a rifle, this is a component which slides into an extension to the barrel at the breech end and rotates to lock.

780 Subsection (5) inserts a new section 57A (exception for airsoft guns) into the 1968 Act. This provides that airsoft guns are not to be regarded as firearms, and defines what an airsoft gun is.

781 Subsection (6) inserts a new section 57B into the 1968 Act which confers on the Secretary of State (in practice, the Home Secretary) a power to amend by regulations made by statutory instrument (subject to the affirmative procedure) the definition of component part set out in the new section 57(1D).

Clause 78: Firearms Act 1968: meaning of “antique firearm”

782 Section 58 of the 1968 Act exempts antique firearms from most of the prohibitions and restrictions imposed by that Act, but does not define “antique” firearm. Home Office guidance (Guidance on Firearms Licensing, Home Office, December 2015, Appendix 5) currently includes a list of obsolete calibres.

783 Subsection (2) inserts new subsections (2A), (2B) (2C) and (2D) into section 58 of the 1968 Act to define an antique firearm by reference to either a description of the cartridge with which its chamber is capable of being used or a description of its ignition system. These descriptions will be specified in regulations. Subsection (2C) provides that these regulations will be made by statutory instrument subject to the affirmative procedure when first made and when an ignition system or cartridge is added to the list. Subsection (2D) provides that a statutory instrument that only amends regulations previously made by way of removing a description of a cartridge or an ignition system from these regulations will be subject to the negative procedure.

784 Subsection (3) amends section 58(2) of the 1968 Act to provide that the offences in section 19 (carrying a firearm in a public place) and section 20 (offence of trespassing with a firearm) of that Act may be committed when in possession of an antique firearm.

785 Subsections (4) to (7) set out the transitional arrangements for any firearms that will no longer fall within the definition of an antique firearm following the coming into force of regulations made as described above.

786 Subsection (5) disapplies section 5 of the 1968 Act (which makes it an offence to possess a prohibited weapon) for personal possession of a firearm previously considered to be an antique, except for those who are in possession of such firearms for the purposes of trade or business, who will have to apply for a section 5 authority in the usual way.

787 Subsections (6) and (7) provide that a person who is in possession of a firearm that is no longer
considered to be an antique firearm must not be refused a certificate (or be refused an application to renew a certificate) on the grounds that he does not have a good reason for possessing the firearm. This is to enable someone whose firearm no longer qualifies as an antique to retain it provided that it is held on certificate.

Clause 79: Possession of articles for conversion of imitation firearms

788 The law does not currently criminalise possession of equipment with the intention of using it to convert imitation firearms into live firearms. Currently a person does not commit an offence until they are in possession of an imitation firearm that is in fact readily convertible, without an appropriate certificate or authority.

789 An imitation firearm is defined in section 57(4) of the 1968 Act as meaning any thing which has the appearance of being a firearm (other than such a weapon as is mentioned in section 5(1)(b) of this Act) whether or not it is capable of discharging any shot, bullet or other missile.

790 This clause inserts new section 4A into the 1968 Act which provides for a new offence of being in possession of an article with the intention of using it to convert an imitation firearm into a firearm. The new offence, as set out in new section 4A(1), applies to any person other than a registered firearms dealer.

791 A firearms dealer is defined at section 57(4) of the 1968 Act as a person or a corporate body who, by way of trade or business: manufactures, sells, transfers, repairs, tests or proves firearms or ammunition to which section 1 of this Act applies, or shotguns; or sells or transfers air weapons. Firearms dealers registered under section 33 of that Act are excluded from the offence because they are able to lawfully carry out conversions as part of their trade or business.

792 New section 4A(1)(a) provides for the conduct (actus reus) element of the offence, namely that a person has in his or her possession of an article, or an article is under his or her control, that is capable of being used to convert an imitation firearm into a live firearm, whether by itself or in conjunction with other articles. Such an article may, for example, be a machine tool. New section 4A(1)(b) sets out the mental (mens rea) element of the offence, namely that the person intends to use the article to convert an imitation firearm into a firearm. It follows that mere possession of such an article is not sufficient on its own to determine guilt.

793 The offence is triable either way, that is (in England and Wales) in a magistrates’ court or the Crown Court. New section 4A(2) sets out the maximum penalties for the offence namely. In England and Wales, until section 154(1) of the Criminal Justice Act 2003 comes into force, the maximum penalty on summary conviction will be six months’ imprisonment and/or a fine. After section 154(1) is commenced, the maximum penalty will be 12 months’ imprisonment and/or a fine. In Scotland the maximum penalty on summary conviction will be 12 months’ imprisonment and/or a fine of up to £10,000. In both jurisdictions, the maximum penalty on conviction on indictment will be five years’ imprisonment and/or a fine.

Clause 80: Applications under the Firearms Acts: fees

794 The Firearms Acts contain a number of powers to charge fees. For example, section 32 of the 1968 Act sets out the fees payable for the grant, renewal or replacement of a firearms or shot gun certificate, and paragraph 3 of the Schedule to the 1988 Act provides for specified fees to be paid on the grant, renewal or extension of a licence issued under that Schedule to a museum exempting it from certain provisions of the 1968 Act. There is currently no provision to charge a fee for the grant of an authorisation under section 5 of the 1968 Act for the possession of prohibited weapons and ammunition and there is no explicit power to charge different fees for different categories of applicant for a licence under the Schedule to the 1988 Act.
795 Subsection (1) inserts new section 32ZA into the 1968 Act to provide for the payment of fees for the grant, variation or renewal of an authority under section 5 of the 1968 Act. A section 5 authorisation allows the holder to possess prohibited weapons as defined under that section, where there is a legitimate reason to do so. Regulations setting out such fees may confer discretion on the Secretary of State, or in the case of an authority granted in Scotland, Scottish Ministers, to require a fee to be paid for the grant, renewal or variation of an authorisation under section 5 of the 1968 Act (new section 32ZA(1)). New section 32ZA(3) allows the regulations to set different fees, for example for different categories of applicant or different sizes of applicant organisation, or both. This would allow, for example, different fees to be set in respect of applications made by firearms dealers, transportation companies involved in the carriage of prohibited weapons and private maritime security companies in accordance with the differential costs of considering such applications. The regulation-making power is subject to the negative resolution procedure (new section 32ZA(6)).

796 Section 15(6) of the 1988 Act sets out the fee to be paid (currently £84) on the grant or renewal of an approval for an approved rifle or muzzle-loading pistol club. Subsection (4) repeals section 15(6) of the 1988 Act. In its place, subsection (2) inserts a new section 15B of the 1988 Act which confers a new power to set fees for the grant, renewal or variation of an approval for an approved rifle or muzzle-loading pistol club. Unlike section 15(6) of the 1988 Act, the replacement regulation-making power (which is subject to the negative resolution procedure (see new section 15B(6)) enables the Secretary of State to set differential fees, for example, so that higher fees could be charged in respect of larger shooting clubs.

797 Subsection (3) substitutes a new paragraph for the existing paragraph 3 of the Schedule to the 1988 Act. That paragraph provides for a maximum fee of £200 for the grant or renewal of a museum firearms licence exempting the museum from certain provisions of the 1968 Act, for example the requirement to hold a firearms or shot gun certificate or an authorisation under section 5 of the 1968 Act in respect of prohibited weapons; paragraph 3 also currently provides for a fee of £75 for the extension of a licence to additional premises. New paragraph 3 of the Schedule to the 1988 Act is structured on the same basis as new section 32ZA of the 1968 Act and new section 15B of the 1988 Act so that the Secretary of State’s regulation-making power enables differential fees to be set so that, for example, museums with larger firearms collections may pay a higher fee. The regulation-making power is subject to the negative resolution procedure (new paragraph 3(6)).

Clause 81: Guidance to police officers in respect of firearms

798 Under the 1968 Act, chief officers of police have a number of functions, including in respect of:

- The grant or renewal of a firearms certificate (section 27);
- The grant or renewal of a shot gun certificate (section 28);
- The revocation of a firearms certificate (section 30A) or a shot gun certificate (section 30C); and
- The maintenance of a register of firearms dealers (section 33).

799 Currently the Home Office issues guidance to chief officers of police on some of their functions under the 1968 Act on a non-statutory basis.

800 Subsection (2) inserts new section 55A into the 1968 Act which confers a power on the Secretary of State (in practice, the Home Secretary) to issue statutory guidance to chief officers on the exercise of their functions under, or in connection with, the 1968 Act. Functions “in connection with” the 1968 Act will include the role of the police in supporting the Home Secretary and the

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Scottish Ministers in discharging their functions under the 1968 Act, for example, in carrying out background checks on applicants for an authorisation under section 5 of the 1968 Act in respect of prohibited weapons. The reference to chief officers’ functions under the 1968 Act will include their functions under the 1988 Act. Section 25(6) of that Act provides for sections 53 to 56 of the 1968 Act (which would include the new section 55A) to apply as if the 1988 Act were contained in the 1968 Act.

801 Chief officers are under a duty to have regard to any statutory guidance (new section 55A(4)). Such a duty requires a chief officer, in deciding any case, to bear in mind the approach as set out in the guidance. Any departure from the guidance should not be on the basis of a general disagreement with the guidance but only on the basis of considerations relevant to the particular case in hand that seems to require a different approach.

802 Subsection (3) inserts a new subsection (3A) into section 44 of the 1968 Act which provides for a right of appeal to the Crown Court (in England and Wales) or to the sheriff (in Scotland) against a decision of a chief officer. New section 44(3A) requires the court to consider whether the chief officer followed the guidance. If the court concluded that the chief officer had not followed the guidance, the appellant could seek to rely on that. Equally, if the court concluded that the chief officer had followed the guidance that too would be a material factor. But in either case, a finding by the court that the chief officer had or had not followed the guidance would not be determinative of the appeal.

Part 7: Alcohol licensing

803 This Part forms part of the law of England and Wales.

Clause 82: Meaning of “alcohol”: inclusion of alcohol in any state

804 Section 191 of the 2003 Act defines alcohol as “spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor”. This clause amends section 191 so as to clarify that the alcoholic substances referred to in section 191 are included whatever state they are in. This will make it clear that powdered alcohol and vaporised alcohol are to be regulated in the same way as liquid alcohol under the provisions of the 2003 Act.

Clause 83: Interim steps pending review: representations

805 When a licensing authority considers an application for a summary review, it may take interim steps without first giving the holder of the premises licence an opportunity to make representations. This is because in instances of serious crime and serious disorder it may be necessary to take immediate action in order to protect the public. Section 53B of the 2003 Act allows the licence holder to make representations after the interim steps have been taken. It requires the licensing authority to hold a hearing to consider those representations within 48 hours of receipt. The 2003 Act does not limit the number of times that a premises licence holder may make representations, with the result that the licensing authority must hold a hearing each time that relevant representations are received.

806 This clause amends section 53B so that after the licensing authority has held a hearing to consider the interim steps, the premises licence holder may only make further representations if there has been a material change in circumstances since that hearing. For example, if the licensee has employed additional door staff or increased security at the premises this could mean that a restriction on the hours during which alcohol may be sold may no longer be necessary. There may also be changes in circumstance, for example if the summary review application has arisen from gang-related violence or drug offences on the premises and the individuals involved are being dealt with by the criminal justice system.
Clause 84: Summary reviews of premises licences: review of interim steps

807 Section 53A of the 2003 Act provides for the police to make an application for a summary review of a premises licence, if the relevant premises are associated with serious crime or serious disorder. It provides that the licensing authority (that is, the local district or unitary council) must consider the application within 48 hours and impose ‘interim steps’ (temporary conditions) if necessary. Subsection (3) of section 53B sets out the interim steps which the licensing authority is required to consider taking, namely: the modification of the conditions of the premises licence (for example, a restriction on the hours during which alcohol can be sold); the exclusion of the sale of alcohol from the scope of the licence; the removal of the designated premises supervisor from the licence; or the suspension of the licence.

808 Section 53A requires the review of the premises licence to take place within 28 days of receipt of the application, the review takes the form of a hearing at which the licensing authority will determine what action should be taken on a permanent basis. Section 53C sets out the actions the licensing authority is required to consider taking in order to promote the licensing objectives: the exclusion of a licensable activity from the scope of the licence; the removal of the designated premises supervisor from the licence; the suspension of the licence for a period not exceeding three months; or the revocation of the licence.

809 The decision made at the review hearing does not take effect until the expiry of the time limit for appealing (21 days) (during which the decision may be appealed by the licensee or the police to a magistrates’ court), or until an appeal is disposed of. There is currently an ambiguity in the 2003 Act about whether the interim steps remain in place after the review hearing, and whether they can be withdrawn or amended by the licensing authority. The amendments made by this clause will address the ambiguity about what happens to the interim steps between the review hearing and the review decision coming into effect.

810 Subsection (5) inserts a new section 53D to require the licensing authority, at the review hearing, to review any interim steps that have been taken. The licensing authority must consider whether the interim steps are appropriate for the promotion of the crime prevention objective, consider any relevant representations, and determine whether to withdraw or modify the steps taken. For example there may have been a change in circumstances or further evidence provided at the hearing which means that the interim steps originally imposed are no longer necessary for the period of time between the review hearing and the review decision coming into effect.

811 Subsection (7) also amends Part 1 of Schedule 5 to the 2003 Act to provide for an appeal to be made by the police or licensee, against the decision regarding the interim steps, taken at the review hearing. This appeal must be heard within 28 days.

812 Upon commencement the changes will apply to all applications for a summary review which have been received by the licensing authority but which have not yet reached the review hearing stage.

Clause 85: Personal licences: licensing authority powers in relation to convictions

813 Currently a personal licence may be suspended or forfeited by a court on conviction for a relevant offence (that is, one listed in Schedule 4 to the 2003 Act). Clause 85 provides a similar power to licensing authorities, and courts will retain their existing powers.

814 When the licensing authority that has granted a personal licence becomes aware that the licence holder has been convicted of a relevant offence, foreign offence or been required to pay an immigration penalty, the licensing authority may revoke the licence or suspend it for a period of up to six months. The Immigration Bill, currently before Parliament, will add immigration offences to the list in Schedule 4. The new provisions will apply to convictions.
received at any time before or after the licence was granted and after the date of commencement.

815 The licensing authority may not take action if the licence holder has appealed against the conviction or the sentence imposed in relation to the relevant offence or foreign offence, until the appeal is disposed of. Where an appeal is not lodged, the licensing authority may not take action until the time limit for making an appeal has expired.

816 Subsection (3) inserts new section 132A into the 2003 Act which sets out the process which must be undertaken by the licensing authority to suspend or revoke a personal licence. If the licensing authority is considering whether to suspend or revoke a licence, the authority must give notice to the licence holder. This notice must invite the licence holder to make representations about the conviction, any decision of a court in relation to the licence, or any decision by an appellate court if the licence holder has appealed such a decision. The licence holder may also include any other relevant information, for example, about their personal circumstances. The licence holder will have 28 days to make these representations, beginning on the day the notice was issued.

817 Before deciding whether to revoke the licence the licensing authority must consider any representations made by the licence holder, any decisions made by a court or appellate court in respect of the personal licence and about which the licensing authority is aware, and any other information which the licensing authority considers relevant.

818 If the licensing authority decides not to revoke the licence it must give notice to the chief officer of police that it intends not to do so, and invite the chief officer to make representations about whether the licence should be suspended or revoked, having regard to the prevention of crime. The chief officer may make representations within the period of 14 days from the day the notice was received. Any representations made by the chief officer of police must be taken into account by the licensing authority in deciding whether to suspend or revoke the licence.

819 The licensing authority must notify the licence holder and the chief officer of the decision made (even if the police did not make representations). A decision to revoke or suspend the licence does not take effect until the end of the period allowed for appealing the decision (namely 21 days), or if the decision is appealed against, until the appeal is disposed of.

820 Subsection (4) amends Paragraph 17 of Schedule 5 to the 2003 Act to enable the licence holder to appeal the licensing authority’s decision to a magistrates’ court to revoke or suspend their personal licence.

821 Section 10 of the 2003 Act provides for a licensing authority to delegate the discharge of its functions to a sub-committee or to a licensing officer. Section 10(4) lists the functions that may not be delegated to a licensing officer. Subsection (2) of this clause requires that the decision to revoke or suspend a personal licence may not be delegated to a licensing officer; the decision must be made by the licensing committee or its sub-committee.

822 The change will apply from the date of commencement, so that anyone convicted of an offence before the commencement date will not be liable to have his or her personal licence revoked or suspended by the licensing authority on the basis of that conviction.

Clause 86: Licensing Act 2003: addition of further relevant offences

823 Schedule 4 to the 2003 Act lists relevant offences, a conviction for which can be grounds for refusing a new personal licence, or for suspending or revoking an existing licence. (A conviction for an equivalent foreign offence or requirement to pay an immigration penalty can also lead to the refusal, suspension or forfeiture of a personal licence.)

824 Where an applicant is found to have an unspent conviction for a relevant offence (or a foreign...
offence or has been required to pay an immigration penalty) the licensing authority is required to notify the police, who may object to the application on crime prevention grounds. (Whether a conviction is spent or unspent is provided for under the terms of the Rehabilitation of Offenders Act 1974.)

825 A personal licence may be suspended or forfeited by a court on conviction for a relevant offence. Clause 85 will give the licensing authority the power to revoke or suspend a personal licence where there has been a conviction for a relevant offence.

826 This clause expands the list of relevant offences to include:

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

Clause 87: Licensing Act 2003: guidance

827 Section 182 of the 2003 Act provides that the Secretary of State must issue guidance to licensing authorities on the discharge of their functions under the Act, and the guidance must be approved by Parliament before it can be issued. The procedure involves the draft guidance being laid before both Houses of Parliament for a period of 40 days, during which Parliament may disapprove the guidance. If Parliament does not strike down the guidance it can be issued. The guidance is published on the Government website.

828 This clause removes the parliamentary procedure. The guidance will take effect as soon as it is published.

Part 8: Financial sanctions

829 This Part forms part of the law of the UK, save for clause 95 which forms part of the law of England and Wales.

Clause 88: Interpretation

830 This clause sets out the definitions that apply to this Part of the Bill.

831 Subsection (2) defines an “EU financial sanctions Regulation” as an EU Regulation that imposes restrictions for the purpose of freezing funds or economic resources of persons to whom the regime applies, restricting the ability of those persons to access financial markets and services, or which make supplementary provisions about the extent, prohibitions, exemptions and requirements of those financial sanctions. For example, Council Regulation (EU) No. 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaida network.

832 Subsection (3) defines a “UN financial sanctions Resolution” as a Resolution of the Security Council of the United Nations that imposes or alters similar restrictions. For example UNSCR 1267 adopted on 15 October 1999, which imposed restrictions in relation to Osama bin Laden, Al Qaida, and the Taliban.
833 Subsection (4) defines “financial sanctions legislation”.

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

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

836 The definition includes a freezing order made under section 4 of the Anti-terrorism, Crime and Security Act 2001. An example of such an order is the Andrey Lugovoy and Dmitri Kovtun Freezing Order 2016 (SI 2016/67), which froze the assets of the two men assessed by a public inquiry on 21 January 2016 to have been responsible for the poisoning of Alexander Litvinenko.

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

Clause 89: Powers to create offences under section 2(2) ECA 1972: maximum term of imprisonment

838 This clause modifies the application of the European Communities Act 1972 (“the ECA 1972”), to increase the maximum term of imprisonment for offences relating to financial sanctions, bringing them into line with breaches of the UK domestic and EU terrorist asset freezing regimes.

839 Section 2(2) of the ECA 1972 confers a regulation-making power for the purposes of implementing EU obligations. Paragraph 1(1)(d) of Schedule 2 to that Act confines the exercise of these powers for the creation of any new criminal offence punishable with imprisonment to a sentence of two years on indictment or three months on summary conviction. Subsection (2) disapplies these limitations in the case of any section 2(2) regulations implementing EU financial sanctions Regulations, while subsection (3) extends these limits for offences relating to EU financial sanctions to a maximum of seven years’ imprisonment on indictment (applying to all of the UK) and, on summary conviction, to a maximum of six months’ imprisonment in England, Wales and Northern Ireland, and twelve months in Scotland.

840 Subsections (4) and (5) enable the regulation-making power in section 2(2) of the ECA 1972 to be used to extend the maximum criminal penalties for breaches of EU financial sanctions regimes in respect of criminal offences that have already been created.

841 Subsection (6) provides that any extension of the maximum term of imprisonment only applies to offences taking place after these provisions come into force.

Clause 90: Other offences: maximum term of imprisonment

842 This clause increases the maximum penalties in respect of offences under the Anti-Terrorism Crime and Security Act 2001 (subsections (1) to (3)), and the Counter Terrorism Act 2008 (subsections (4) to (9)). In respect of these Acts, the offences include breaching the prohibition on makings funds available to, or dealings with the funds of, a person named on a freezing order, and breach of any prohibition upon doing business with a designated individual or entity. The current maximum term of imprisonment for offences under either Act is two years’
imprisonment on conviction on indictment, or six months on summary conviction. This clause extends the maximum term of imprisonment for these offences to seven years’ on conviction on indictment, in line with the new maximum penalties provided for by clause 89.

Clause 91: Power to impose monetary penalties

843 Subsection (1) enables the Treasury to impose a monetary penalty in cases where it is satisfied that, on the balance of probability (that is, the civil standard of proof), a person has breached a requirement or prohibition of any financial sanctions legislation (as defined in clause 88(4)). Monetary penalties will be used to deal with cases where the extent and circumstances of the breach means it is not in the public interest to pursue a criminal prosecution and where the level of the breach or conduct of the individual or organisation is such that a mere warning letter is unlikely to bring about a sufficient change in behaviour. Requirements or prohibitions included in financial sanctions legislation typically include the following; not making funds or other economic resources available to, or for the benefit of, a designated person; directly or indirectly, and not dealing with their funds or economic resources, without a licence from the Treasury; failing to comply with the terms of the licence or provide information as requested.

844 Subsections (3) and (4) set out the permitted maximum of a monetary penalty at either £1,000,000 or 50% of the total value of the breach, whichever is the greater. So, for example, where the total value of the breach was £600,000 the maximum monetary penalty would be £1 million, but in a case where the total value of the breach was £10 million, the maximum monetary penalty would be £5 million.

845 Subsection (5) defines funds and economic resources in accordance with the financial sanctions legislation which has been breached. Generally funds include, but are not limited to, cash, cheques, money orders, bills of sale and so on. Economic resources are any asset which is not funds but which can be used to obtain funds, goods or services.

846 Subsections (6) to (10) require the Treasury to keep the permitted maximum amount under review and enable it to amend the amounts specified, consulting other bodies or persons as appropriate. The £1 million limit may be varied by regulations, subject to the affirmative procedure.

847 Subsections (11) and (12) provide that monetary penalties are to be recoverable as civil debts, and are to be paid into the Consolidated Fund. Subsection (13) provides that no monetary penalty can be imposed upon the Crown.

Clause 92: Monetary penalties: procedural rights

848 This clause sets out the procedure that the Treasury must follow when imposing, or intending to impose, a monetary penalty and provides for a review.

849 Before imposing a monetary penalty, the Treasury must notify a person that they intend to do so, and their reasons why. The person suspected of breaching financial sanctions will be given an opportunity to make representations as to their conduct, which the Treasury must consider before making a final decision to impose a monetary penalty.

850 A person upon whom a monetary penalty is imposed has the right to request a review of the decision by a Minister (in person). The Minister has the power to uphold the decision, change the amount of the monetary penalty, or cancel the decision. All decisions and reviews are capable of being challenged by way of judicial review.

Clause 93: Monetary penalties: bodies corporate and unincorporated associations

851 This clause deals with cases where financial sanctions have been breached by corporate bodies or unincorporated associations, and that breach is also attributable to an individual person. In
such cases, the Treasury may impose a monetary penalty upon the individual person as well as on the body corporate or unincorporated association.

852 Subsection (1) provides that a monetary penalty can be imposed on any officer of the body (as defined in subsection (2)) who consented to or took part in any conduct which results in a breach of financial sanctions or whose negligence has caused a breach of financial sanctions.

Clause 94: Monetary penalties: supplementary

853 Subsection (1) requires the Treasury to issue guidance as to the circumstances in which a monetary penalty may be issued, and how the amount of such a penalty might be determined. While Treasury will consult on the content of the guidance, it will cover the process by which breaches are considered, the factors that will be taken in to account, how the level of penalty will be calculated, the processes for making representations and seeking review and what details will be published. Subsection (2) also requires the Treasury to publish periodic reports on monetary penalties that have been imposed.

854 Such guidance will inform individuals and organisations about how the power to impose monetary penalties will be used, ensure that the monetary penalties act as a deterrent against poor compliance by individuals and organisations operating in the UK, and promote increased awareness of good practice. The details of any penalties imposed will be published for the same reasons.

Clause 95: Deferred prosecution agreements

855 This clause amends Part 2 of Schedule 17 to the Crime and Courts Act 2013 to include breaches of financial sanctions legislation within the list of offences in respect of which a Deferred Prosecution Agreement (“DPA”) can be made.

856 DPAs are court-approved agreements between an organisation (a corporate body or unincorporated association, but not an individual person) and a prosecutor who is considering prosecuting the organisation for an offence. They only apply to persons in England and Wales. In order for a DPA to be entered into, the prosecutor must be satisfied that there is sufficient evidence to prove beyond reasonable doubt that a criminal offence has been committed by the organisation. A DPA can be entered into once the organisation is charged with that offence, with the effect that proceedings are automatically suspended subject to certain conditions. If the conditions of the DPA are breached, the prosecution may resume.

Clause 96: Serious crime prevention orders

857 This clause amends Schedule 1 to the Serious Crime Act 2007 (“the 2007 Act”) to include a breach of financial sanctions legislation in the list of offences in respect of which Serious Crime Prevention Orders (“SCPOs”) may be made. These orders are intended to be used against those involved in serious crime, with the terms attached to an order designed to protect the public by preventing, restricting or disrupting involvement in serious crime.

858 An SCPO may be made by the Crown Court (in Scotland, the High Court of Justiciary or the sheriff) where it is sentencing a person who has been convicted of a serious offence (including when sentencing a person convicted of such an offence in the magistrates’ court but committed to the Crown Court for sentencing). Orders may also be made by the High Court (in Scotland, the Court of Session or a sheriff) where it is satisfied that a person has been involved in serious crime, whether that involvement was in England and Wales, Scotland or Northern Ireland (as the case may be), or elsewhere, and where it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the subject of the order in serious crime in England and Wales, Scotland or Northern Ireland (as the case may be). A serious offence is one which is listed in Schedule 1 to the 2007 Act, or an offence which is
sufficiently serious that the court considers it should be treated as it were part of the list. This clause extends this list of trigger offences.

859 The 2007 Act allows for SCPOs to be made against individuals (aged 18 or over), bodies corporate, partnerships or unincorporated associations. SCPOs may contain such prohibitions, restrictions, or requirements or such other terms that the court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting serious crime. Section 5 of the 2007 Act contains an illustrative list of the type of prohibitions, restrictions, or requirements that may be attached to an order. For example, these might relate to a person’s travel, financial dealings or the people with whom he or she is allowed to associate. Orders can last for up to five years. Breach of the order is a criminal offence, subject to a maximum sentence of five years’ imprisonment or an unlimited fine, or both.

860 Sections 6 to 15 of the 2007 Act contain a number of safeguards, including conferring rights on affected third parties to make representations during any proceedings and protection for information subject to legal professional privilege.

Clause 97: Implementation of UN financial sanctions Resolutions: temporary regulations

861 This clause enables the UK to comply with its international Treaty obligations under the United Nations Charter by putting UN-mandated financial sanctions regimes into place “without delay”. While there is no definition of “without delay”, the Financial Action Task Force have said that this should be ideally “within hours” and indicated this should be at most “within 48 hours”. Historically the EU has taken significantly longer than 48 hours to implement new UN-mandated financial sanctions regimes. This delay exposes the UK to asset flight from UN listed persons and places the UK in breach of its international obligations. In order to avoid both of these issues, subsection (1) provides the Treasury with the power, by regulations (subject to the negative procedure), to create a temporary financial sanctions regime to implement a UN-mandated financial sanctions regime.

862 Subsection (2) requires the temporary regime to contain a provision ensuring that they cease to have effect either when EU implements the UN-mandated regime, or after the end of the default period, whichever is shorter. Subsection 2(b) provides for the default period to commence when the relevant UN Security Council Resolution is adopted and to end no more than 30 days after this date. Subsection (3) enables the Treasury to make a further regulation to extend this the default period by a further 30 days, and Subsection (4) limits the use of this extension power to one occasion, with the result that the default period can never be more than 60 days from the date of adoption of the UN Security Council Resolution.

Clause 98: Content of regulations under clause 97

863 This clause sets out the extent of the Treasury’s power to impose a temporary regime. It provides that such a regime may make provision for the freezing of funds and economic resources of persons subject to the regime (designated persons) and prohibitions upon making funds and economic resources available to those persons.

864 Subsection (2) enables the prohibitions set out in the temporary regime to apply to those persons who are designated under the UN-mandated regime that the temporary regime is implementing.

865 Subsection (3) enables the temporary regime to do so by way of ambulatory references to UN measures, so that persons added to the list after the temporary regime has been enacted will automatically be caught by the temporary regime.

866 Subsection (4) provides for the Treasury to create exceptions to the prohibitions contained

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within the temporary regime, such as provisions for the Treasury to license the unfreezing of funds for various purposes. This will enable a proportionate approach to allow designated persons access to sufficient funds to maintain their basic needs, to access legal representation, to honour contracts and judgments made prior to their designation, and to pay extraordinary expenses.

867 Subsection (5) enables the Treasury to require a designated person to supply information to the Treasury, and for the Treasury to authorise or restrict the disclosure of such information. This information would commonly include receipts for their expenditure and their bank statements, so that the Treasury can monitor compliance with the temporary regime and make proportionate licensing decisions.

868 Subsections (6) and (7) provide for the temporary regime to include enforcement provisions, such as criminal offences and civil sanctions. Subsection (8) sets limits on the maximum sentences for convictions for criminal offences for breach of the temporary regime, which are aligned with the maximum sentences in clause 89.

Clause 99: Linking of UN financial sanctions Resolutions with EU financial sanctions Regulations

869 Subsection (1) enables the Treasury to make regulations (subject to the negative procedure) linking UN financial sanctions Resolutions to EU financial sanctions Regulations, in order that the deeming provisions in clause 100 can apply. This means that when the UN makes a listing that would, when implemented by the EU, fall under a current EU Regulation, that listing can take effect automatically.

Clause 100: Implementation of UN financial sanctions Resolutions: temporary listing

870 This clause enables the UK to swiftly implement UN requirements to include individuals and bodies on the list of designated persons to whom financial sanctions apply. Historically the EU has taken longer than 48 hours to implement new UN listings. This exposes the UK to the risk of asset flight from UN listed persons and placing the UK in breach of its international obligations under the UN Charter.

871 Subsections (1) and (2) set out that where regulations under clause 99 linking an EU financial sanctions Regulation to a UN financial sanctions Resolution, persons who are listed as designated persons under the latter are temporarily deemed to be designated persons under the former. This has the effect that the financial sanctions regimes established by the EU financial sanctions Regulation apply automatically to persons designated by the UN for the extent of the temporary deemed designation.

872 Subsections (3) and (4) provide that the temporary deemed designation will be effective until the person is designated under the EU financial sanctions Regulation, or for a period of up to 30 days, whichever is shorter.

873 Subsection (6) deals with persons who have been designated by the UN before this clause comes into force, but who have not been designated by the EU financial sanctions Regulation. In such a case the temporary deemed designation will commence when the clause comes into force.

Clause 101: Extension to the Channel Islands, Isle of Man and BOTs

874 Clauses 97 to 100 provide for the swift implementation of UN-mandated measures within the UK. The UK’s international treaty obligations and risk of asset flight are also issues for the Crown Dependencies and British Overseas Territories. This clause enables the temporary deemed designation and temporary regime measures to be extended, insofar as that is necessary, to the Crown Dependencies (Jersey, Guernsey and the Isle of Man) and the 14 British Overseas Territories (“BOTs”).

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875 Subsection (1) provides for temporary regimes, as provided for in section 93, to be extended to the Crown Dependencies and BOTs, with or without modification, by Order in Council.

876 Subsection (2) provides for the temporary deemed designation of UN designated persons not yet designated by the EU, as provided for in clauses 95 and 96, to be extended, insofar as that is necessary, to the Crown Dependencies and BOTs, with or without modification, by Order in Council.

877 Currently, due to the need for an EU financial sanctions Regulation, an Order in Council to extend that Regulation to the Crown Dependencies and BOTs (if necessary), and for any subsequent legislative steps in those territories to be taken in order to implement a UN financial sanctions Resolution in those territories, there is a risk that more than 60 days may be required to put a new regime in place. In recognition of that, subsections (4) and (5) enable an Order in Council to extend the duration of a temporary regime made under clause 97 for up to 120 days, in the Crown Dependencies and British Overseas Territories only. This will ensure that there is no gap in UN-mandated financial sanctions in the Crown Dependencies and British Overseas Territories.

**Part 9: Miscellaneous and General**

**Chapter 1: Miscellaneous**

Clause 102: Power to enter into police collaboration agreements

878 This clause, and accompanying Schedule 12, form part of the law of England and Wales.

879 Section 22A of the 1996 Act provides that a collaboration agreement between one or more police forces and an ‘other person’ (such as the NCA) requires at least two policing bodies (such as a PCC) to be party to the agreement. In order to have two policing bodies, the agreement would need to be made by at least two police forces. Policing bodies are party to collaboration agreements to ensure oversight of force activity. The effect of needing two policing bodies in all collaboration agreements is restrictive, impractical and considered to be an unintended error.

880 Subsections (1) and (2) amend section 22A to allow ‘other persons’ to enter into collaboration agreements with one or more police forces and one or more policing bodies. This amendment puts ‘other persons’, including bodies such as the NCA, on the same footing as police forces as it removes the previous requirement for there to be at least two policing bodies party to a collaboration agreement with ‘other persons’. This will give the NCA more flexibility by, in effect, allowing it to enter into a collaboration agreement with a single police force, which it has previously been prevented from doing.

881 Section 23F and G of the 1996 Act enable the Secretary of State to issue guidance and directions to chief constables and local policing bodies about collaboration agreements and related matters. Subsection (4) inserts new subsection (3) and (2A) in sections 23F and 23G respectively, which provide that the Secretary of State may give guidance and directions about collaboration agreements to bodies (such as the NCA) who exercise functions of a public nature.

882 Subsection 5 introduces Schedule 12, which makes amendments to the Police Act 1997 and to RIPA, where the NCA is a party to collaboration agreements under section 22A of the 1996 Act (as amended).

**Schedule 12: Amendments where NCA is party to police collaboration agreements**

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883 Schedule 12 amends Part 3 the Police Act 1997 (which provides for the authorisation of action in respect of property) and Part 2 of RIPA (which provides for inter alia the authorisation of covert surveillance, covert human intelligence sources and intrusive surveillance) consequential upon the provisions in section 104.

884 The consequential amendments to the Police Act 1997 provide for the following:

- that where a collaboration agreement under section 22A of the 1996 Act is made between the NCA and one or more police forces, an NCA authorising officer can authorise applications for property interference from both NCA officers and members of the police collaborative force who are part of that agreement;

- that a police authorising officer can similarly authorise property interference on application from members of the police collaborative force(s) and NCA officers; and

- that authorisations given by a police authorising officer and authorisations given to members of the police collaborative force(s) can only be given for activity to take place in a “relevant area”, which will usually be the (combined) area of operation of the police collaborative force(s).

885 The amendments do not alter the area of operation of the NCA and do not limit the geographic area for authorisations for property interference given by the NCA authorising officer to an NCA applicant. However the NCA will be subject to the provisions of the collaboration agreement.

886 For example: in a collaboration agreement between Surrey Police, Sussex Police and the NCA, an authorising officer from either Surrey or Sussex Police or the NCA will be able to authorise property interference applications made by an officer from either of those police collaborative forces or from the NCA who is part of the collaboration agreement.

887 A key benefit of entering into a collaboration agreement is that it removes the requirement for the applicant and authorising person to be from the same police force/body. This provides a more collaborative approach when the NCA is working with a police force on a joint operation.

888 The consequential amendments to RIPA similarly allow for the authorisation of other covert techniques by either NCA or police authorising officers on application from a member of the collaborative police force or the NCA.

889 This includes the use of Covert Human Intelligence Sources (CHIS) (undercover officers or informants) and the use of directed surveillance. This also includes intrusive surveillance (which is in relation to residential premises, private cars or similar non-public areas).

890 Similarly to the amendments to the Police Act 1997, consequential amendments to RIPA in relation to authorisations for intrusive surveillance provide that:

- where a collaboration agreement under section 22A of the 1996 Act is made between the NCA and one or more police forces, an NCA authorising officer can authorise applications for intrusive surveillance from both NCA officers and members of the police collaborative force(s) who are part of that agreement;

- a police authorising officer can similarly authorise applications for intrusive surveillance from members of the police collaborative force(s) and NCA officers; and
where the surveillance is to be carried out in relation to any residential premises, the authorisation granted by a police authorising officer and authorisations given to members of the police collaborative force(s) can only be given for activity in relation to residential premises which are in the area of operation of the police collaborative force(s).

891 The amendments do not alter the area of operation of the NCA and do not limit the geographic area for authorisations given for intrusive surveillance by the NCA authorising officer to an NCA applicant. However the NCA will be subject to the provisions of the collaboration agreement.

892 The use of such techniques remains subject to existing oversight arrangements including, for example, prior approval by the surveillance commissioners for the use of intrusive surveillance or certain kinds of property interference.

893 Whilst the provisions in the Police Act 1997 and RIPA have UK-wide extent, the application of these amendments is limited to England and Wales because they are consequential to an agreement made under s.22A of the Police Act 1996, which is limited to England and Wales.

Clause 103: Powers of NCA officers in relation to customs matters

894 This clause forms part of the law of the United Kingdom.

895 Section 10 of the 2013 Act enables the Director General of the NCA to designate NCA officers with three different sets of powers:

- the powers and privileges of a constable;
- the powers of an officer of Revenue and Customs; and
- the powers of an immigration officer.

896 Section 9 of the 2013 Act similarly enables the Home Secretary to designate the Director General with the same set of powers.

897 Subsections (2) and (3) amend sections 9 and 10 of the 2013 Act respectively to provide for the Director General and NCA officers to be designated with the powers of a general customs official (as defined in the Borders, Citizenship and Immigration Act, 2009).

898 New powers in relation to general customs matters are now [ordinarily] conferred on “general customs officials” (who are [usually] Border Force officials).

899 This is because Border Force officials have taken over “general customs” work and HMRC officers no longer require access to new created general customs powers, for example, powers in relation to drug-cutting agents and psychoactive substances.

900 However the effect of this is that the automatic conferral mechanism, set out in the 2013 Act, of the “powers of an officer of Revenue and Customs” is no longer an effective mechanism by which to ensure NCA officers have access to new general customs powers.

901 This amendment will allow a suitably designated NCA officer to access only the general customs official powers that they need to pursue NCA functions in respect of customs matters.

902 Subsection (4) amends Schedule 5 to the 2013 Act to set out the limitations on the powers that NCA officers receive via this designation.

903 NCA officers are limited to exercising powers in relation to their NCA functions (as set out in section 1 of the Crime and Courts Act 2013). The NCA’s core functions, are crime reduction

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function to combat serious and organised crime and a criminal intelligence function to combat serious and organised crime and any other kind of crime.

904 This amendment mirrors the current approach to limiting the powers that NCA officers receive via their designation as an officer of Revenue and Customs. As a result, NCA officers designated with the powers of a ‘general customs official’ may exercise these powers in relation to ‘customs matters only’ (as defined section 9(8) of the 2013 Act) and solely for the purpose of carrying out a NCA function.

Clause 104: Requirement to state nationality
905 Clauses 104 and 105 form part of the law of the United Kingdom. Clause 106 forms part of the law of England and Wales.

906 This clause inserts new sections 46D and 46E into the UK Borders Act 2007, after section 46B (offence of failing to produce nationality documents).

907 The clause will require an individual who is arrested for an offence to state his/her nationality if required to do so by an immigration officer or constable. The officer or constable must suspect that the individual may not be a British citizen. An offence is committed if, without reasonable excuse, the person fails to comply with the requirement, either by providing false information, or not providing any information. The offence will be summary only subject to a maximum penalty (in England and Wales) of six months’ imprisonment, an unlimited fine, or both. Corresponding penalties in Scotland and Northern Ireland will apply.

908 The purpose of the clause is to help establish identity early in the process, in order to facilitate immigration checks, as well as direct overseas criminal records checks to the right country.

Clause 105: Requirement to produce nationality document
909 This clause inserts new sections 46A to 46C into the UK Borders Act 2007, after section 46 (seizure of nationality documents).

910 Section 46A allows an immigration officer or constable searching premises under section 44 or 45 of that Act to seize and retain a document which an immigration officer or constable thinks is a nationality document in relation to the arrested individual, and the person may be liable to removal from the United Kingdom. However, it is not always feasible for the authorities to search premises in every case where a foreign national is arrested for an offence.

911 New clause 105 enables an immigration officer or constable to obtain documents from persons not remanded in custody, and retain them where a search cannot be undertaken (or the individual is not in possession at the time of arrest) (new section 46B). The new power will require an individual to produce a nationality document within 72 hours, where required to do so. The officer or constable must suspect that the individual may not be a British citizen before issuing a notice to the person. The notice will be given in writing and will set out the time by which the document must be produced; the person to whom it must be produced; and the means by which it is to be produced.

912 An offence is committed if, without reasonable excuse, the person fails to comply with the requirement (new section 46C). The wilful destruction of documents will not constitute a reasonable excuse, unless it can be demonstrate that it was done for a reasonable cause, or was beyond the control of the individual. The offence will be summary only subject to a maximum penalty (in England and Wales) of six months’ imprisonment, an unlimited fine, or both. Corresponding penalties in Scotland and Northern Ireland will apply.

913 The purpose of the clause is twofold. Firstly, it will help to verify any statement made on arrest by the individual - should they comply with the notice. Secondly, a document provides the
means by which immigration action may be enforced, should the person be deportable or removable under immigration powers.

Clause 106: Requirement to give information in criminal proceedings

914 This clause introduces a new section 86A into the Courts Act 2003, requiring all defendants in a magistrates’ court or the Crown Court to provide their name, date of birth and nationality (subsection 1). Currently Criminal Procedure Rule 5.4 requires the Court to record, amongst other things, a defendant’s identity, address and date of birth. No sanction applies if the defendant fails or refuses to provide this information, nor is there any requirement to record information on nationality. A defendant who fails to provide their name, date of birth and/or nationality when requested by the court, or provides false or incomplete information, will commit an offence (subsection 3) punishable by a maximum of six months’ imprisonment or an unlimited fine, or both (subsection 5).

915 How and when this information will be requested by the Court will be set out in the Criminal Procedure Rules (subsection 2), with a requirement for the rules to specify a point in proceedings when this information must be requested, while also allowing a discretion for the rules to set out other occasions on which the information may be requested. This is to ensure that every defendant is asked for this information at least once as their case progresses through the court. The means by which this information is requested/given (for example, in writing, by oral questions) will also be set out in the Criminal Procedure Rules.

916 Subsection 4 ensures that information provided in compliance with the requirement in subsection 1 cannot be used as evidence in any other criminal proceedings against the defendant. This is to ensure that the defendant’s privilege against self-incrimination is upheld in respect of any other proceedings against him, should the information collected be of relevance to those other proceedings.

917 Subsection 6 allows, should the court wish, for the offence under subsection 3 to be dealt with at the same time as the underlying offence for which the person is before the court. This enables a court to deal with proceedings efficiently in terms of both cost and time as and when they may arise.

Clause 107: Child sexual exploitation: streaming indecent images

918 Section 51 of the SOA defines “sexual exploitation” for the purpose of the offences at sections 48 to 50 of that Act, which respectively criminalise causing or inciting the sexual exploitation of a child, controlling a child in relation to sexual exploitation and arranging or facilitating the sexual exploitation of a child. The definition of “sexual exploitation” as given in section 51 of the SOA currently covers situations where indecent images of the child are recorded, and this clause amends it to ensure that it also covers situations where such images are streamed (such as via the internet) or transmitted by some other technological means, such as CCTV.

Commencement

919 Clause 111(3) provides for the following provisions of the Bill to come into force on Royal Assent:

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920 Clause 111(4) provides for the following provisions to come into force two months after Royal Assent:

- Clause 56 (PACE: audio recording of interviews);
- Clause 102 and Schedule 12 (Powers of NCA to enter into collaboration agreements);
- Clause 103 (Power of NCA offers in relation to customs matters);
- Clause 107 (Child sexual exploitation: streaming indecent images).

921 All other provisions will be brought into force by commencement regulations made by the Secretary of State or, in the case of the provisions in Part 8 (Financial sanctions), by the Treasury.

Financial implications of the Bill

922 The main financial implications of the Bill lie in the following areas. The figures set out in the paragraphs below are estimates, based on a number of assumptions about implementation which are subject to change. The assessment of the financial impact will continue to be updated as further information is made available and the assumptions are refined. A number of the measures in the Bill are designed to enable police forces and other emergency services to improve effectiveness while achieving further efficiency savings. Further details of the costs and benefits of individual provisions are set out in the impact assessments published alongside the Bill.

Part 1: Emergency services collaboration

923 Part 1 of the Bill will enable police, fire and ambulance services to drive deeper collaboration locally in the interests of efficiency, effectiveness, economy or public safety. The scale of any costs and benefits will be determined and realised locally and will vary from area to area depending on the extent of joint working already taking place in the area, and the extent of the proposed collaboration.

Part 2: Police complaints, discipline and inspection

924 Chapters 1 to 4 of Part 2 provide for changes to the police complaints and disciplinary systems and strengthen the protections for police whistleblowers. The changes will involve moving certain administrative costs from forces to PCCs and the IPCC but, taken overall, these reforms are expected to result in an average net benefit of £8.5 million per year.

925 The IPCC’s expenditure in 2014/15 was £54 million, up from £41 million in 2013/14, reflecting the expansion of its role to take on all serious and sensitive allegations. (This includes £10.6 million expenditure on the Hillsborough investigation.)
926 The introduction of a policing super-complaints system (Chapter 2 of Part 2) will involve costs to HMIC of around £150,000 per year to administer the system. HMIC’s resource budget for 2014/15 was £21.4 million. Any additional costs associated with the extension of HMIC’s powers and remit are expected to be met from its existing budget.

Part 3: Police workforce and representative institutions

927 The provisions in Chapter 1 of Part 3 giving chief officers of police greater scope to designate staff and volunteers with police powers and providing for a more flexible approach to the rank structure will enable forces to make more efficient use of staffing resources.

928 Where chief constables choose to designate staff and/or volunteers with (additional) powers, there will be costs associated with training (and where relevant uniforms).

929 Enabling volunteers to be designated in the same way as staff will give chief officers more flexibility to shape their workforce to meet local need.

930 It is assumed that forces will use these powers where there is a net benefit to the force to do so.

Part 4: Police Powers

Pre-charge bail

931 Chapter 1 of Part 4 provides for a 28-day limit for pre-charge bail, with senior police authorisation required for extensions up to three months in extenuating circumstances and judicial authorisation thereafter.

932 It is estimated that, as a result of these changes, there will be 211,000 cases reviewed by superintendents and 104,000 cases brought to a magistrates’ court for extension, resulting in annual costs of £3.9 million to the police and £6.6 million to the criminal justice system.

933 There are also expected to be costs to the Legal Aid Agency in providing legal aid for a proportion of these pre-charge bail hearings, with an estimated annual cost of £10.8 million. These costs are subject to significant uncertainty. If the police reduce the use of bail by more than has been assumed then the actual costs incurred should be lower.

PACE: use of video-technology

934 Clauses 54 and 55 provide for the use of video-technology for the authorisation of extensions of detention and for interviewing suspects. While it has not been possible to monetise all of the impacts, it is estimated that the maximum possible saving from authorising extensions of detention is presently £1 million per year.

Police powers under the Mental Health Act

935 Chapter 3 of Part 4 makes changes to police powers under the 1983 Act. The changes will eliminate the use of police stations as places of safety for children and young people aged under 18 detained under section 135 or 136 of the 1983 Act, and ensure that police stations are only used as a place of safety for adults in exceptional circumstances (to be prescribed in regulations).

936 Additional beds will be required to provide health-based places of safety as an alternative to police cells. It is estimated that 33 beds per year will be required, at a cost of £15.2 million in the first year (which includes one-off transition costs of £5.1 million). The costs in the following year are £10.1 million (then rising each year to allow for population growth, reaching £10.7 million in 2025). There are also costs to the police of remaining at the health-based place of safety while the detainee is booked in, estimated to be about £260,000 per year. Reducing the maximum length of detention is expected to increase the number of occasions that a second
health professional is called out, estimated to be a cost of £170,000 per year.

937 The associated reduction in the use of policy custody and saving of police time is estimate to result in an annual saving of approximately £1.9 million.

Part 6: Firearms

938 Clause 80 will enable full cost recovery for the licensing of prohibited firearms under section 5 of the 1968 Act. The fees will meet the costs incurred by the public bodies involved the licensing activity as follows: Home Office - £570,000 per year; police - £78,000 per year; Scottish Government - £42,000 per year; and Police Scotland - £6,000 per year.

939 The amendments made to the 1968 Act by clauses 77 to 79 could lead to an increase in prosecutions for offences under that Act resulting in additional costs for criminal justice agencies. The effect on prosecutions cannot be fully predicted so it is not possible to quantify the effects.

Part 7: Alcohol: licensing

940 Clause 82 ensures that powdered and vapourised alcohol are within the legal definition of alcohol and therefore subject to the provisions of the 2003 Act. Any increase in licence applications as a result of the changes would be covered by the fees, which are set at the level necessary to recover the costs incurred by licensing authorities.

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

Parliamentary approval for financial costs or for charges imposed

942 The additional expenditure arising from the Bill is subject to a Money Resolution. The House of Commons will be asked to agree that any expenditure arising out of the Bill that is incurred by the Government will be taken out of money provided by Parliament. The Money Resolution will also authorise payments into the Consolidated Fund.

Compatibility with the European Convention on Human Rights

943 The Home Secretary, the Rt Hon Theresa May MP, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

"In my view the provisions of the Policing and Crime Bill are compatible with the Convention rights."

944 The Government has published a separate ECHR memorandum with its assessment of compatibility of the Bill’s provisions with the Convention rights: this memorandum is available on the Government website.

Related documents

945 The following documents are relevant to the Bill:

- Overarching Impact Assessment

These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)
- Police Complaints System Impact Assessment
- Police Disciplinary Measures Impact Assessment
- Pre-charge Bail Impact Assessment
- Amendments to the Mental Health Act 1983 Impact Assessment
- Firearms fees Impact Assessment
- Amendments to Firearms Act 1968 Impact Assessment
- Licensing powdered and vaporised alcohol Impact Assessment
- Alcohol licensing: summary reviews Impact Assessment
- Delegated Powers Memorandum

**Emergency Services Collaboration**

- Sir Ken Knight, *Facing the Future: Findings from the review of efficiencies and operations in fire and rescue authorities in England*, 17 May 2013
- Research into emergency services collaboration, Parry et al, 2015
- Consultation: Enabling closer working between the Emergency Services, September 2015.

Enabling closer working between emergency services: summary of consultation responses and next steps, HM Government, January 2016.

**Police complaints and discipline**

  
- College of Policing’s Code of Ethics

**HMIC**

- HMIC, *Without fear or favour: a review of police relationships*, 13 December 2011

**Powers of staff and volunteers**

*These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)*
These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)

- Reforming the Powers of Police Staff and Volunteers: A Consultation on the way Chief Officers Designate the Powers and Roles of Police Staff and Volunteers, Home Office, September 2015

Police Federation
- Home Secretary’s speech to the Police Federation Annual Conference 2015
- Police Federation reform: Written statement - HCWS387.

NPCC

Pre-charge bail
- Pre-Charge Bail: A Consultation on the Introduction of Statutory Time Limits and Related Changes, Home Office, December 2014
- Pre-Charge Bail: Summary of Consultation Responses and Proposals for Legislation, Home Office, March 2015
- Use of Pre-Charge Bail: Improving Standards for the Police Forces of England and Wales, College of Policing, 27 March 2014
- Response to the Consultation on the Use of Pre-Charge Bail: Improving Standards for the Police Forces of England and Wales, College of Policing, 17 December 2014

Mental health
- Mental Health Crisis Care Concordat, Home Office and Department of Health, February 2014
- Mental Health Crisis Care Concordat (Wales), Welsh Government, December 2015
- Government response to No voice unheard no right ignored – a consultation with people with learning difficulties, autism and mental health conditions, Department of Health, November 2015
College of Policing consultation on guidance for dealing with people with mental health problems

Treatment of 17 year olds

- High Court Judgment, Hughes Chang vs. Secretary of State for the Home Department and Commissioner of Police for the Metropolis, 25 April 2013
- Home Office, PACE Codes of Practice

Firearms

- Targeting the risk: An inspection of the efficiency and effectiveness of firearms licensing in police forces in England and Wales, HMIC, September 2015.

Financial sanctions

- List of financial sanctions regimes currently in force.

National Crime Agency

- National Crime Agency: a plan for the creation of a national crime fighting capability
### Annex A - Glossary

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACPO</td>
<td>Association of Chief Police Officers</td>
</tr>
<tr>
<td>Affirmative procedure</td>
<td>Statutory instruments that are subject to the &quot;affirmative procedure&quot; must be approved by both the House of Commons and House of Lords to become law.</td>
</tr>
<tr>
<td>Air gun</td>
<td>A weapon which uses compressed air to fire a projectile. Only a firearm if it is considered to be lethal, and even if it is lethal, it is exempt from regulation if under certain power limits by section 1(3)(b) of the Firearms Act 1968.</td>
</tr>
<tr>
<td>Airsoft</td>
<td>An activity employing low-powered air weapons in acting out military or law enforcement scenarios, where the participants shoot at each other with 6mm plastic pellets. The weapons in question are not rifled and made from low density metal.</td>
</tr>
<tr>
<td>Appropriate Adult</td>
<td>An appropriate adult is responsible for protecting (or 'safeguarding') the rights and welfare of a child or vulnerable adult who is either detained by police or is interviewed under caution voluntarily. The appropriate adult role can be filled by a number of different types of people, including: parents or guardians, other family members, friends or carers, specialist appropriate adults either paid or voluntary. The person must be a responsible person who is neither a police officer or a member of civilian staff, nor employed for or engaged on police purposes.</td>
</tr>
<tr>
<td>ASBO</td>
<td>Anti-Social Behaviour Order</td>
</tr>
<tr>
<td>CPS</td>
<td>Crown Prosecution Service</td>
</tr>
<tr>
<td>DPA</td>
<td>Deferred Prosecution Agreement</td>
</tr>
<tr>
<td>DSI</td>
<td>Deaths and Serious Injuries</td>
</tr>
<tr>
<td>ECHR</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>FOI Act</td>
<td>The Freedom of Information Act 2000</td>
</tr>
<tr>
<td>FRA</td>
<td>Fire and Rescue Authority</td>
</tr>
<tr>
<td>HMIC</td>
<td>Her Majesty's Inspectorate of Constabulary</td>
</tr>
<tr>
<td>HMRC</td>
<td>Her Majesty's Revenue and Customs</td>
</tr>
<tr>
<td>IPCC</td>
<td>Independent Police Complaints Commission</td>
</tr>
<tr>
<td>Joule</td>
<td>The SI, or metric, unit for kinetic energy. Technically, it is the energy transferred in applying 1 Newton of force through 1 metre</td>
</tr>
<tr>
<td>LFEPA</td>
<td>London Fire and Emergency Planning Authority</td>
</tr>
<tr>
<td>MOPAC</td>
<td>Mayor's Office for Policing and Crime</td>
</tr>
<tr>
<td>Muzzle energy</td>
<td>The kinetic energy of a projectile at the point it leaves the muzzle.</td>
</tr>
<tr>
<td>NABIS</td>
<td>National Ballistics Intelligence Service</td>
</tr>
<tr>
<td>NCA</td>
<td>National Crime Agency</td>
</tr>
<tr>
<td>NPCC</td>
<td>National Police Chiefs' Council</td>
</tr>
<tr>
<td>Term</td>
<td>Description</td>
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<tr>
<td>------</td>
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</tr>
<tr>
<td>NPIA</td>
<td>National Policing Improvement Agency</td>
</tr>
<tr>
<td>Negative procedure</td>
<td>Statutory instruments that are subject to the “negative procedure” automatically become law unless there is an objection from the House of Commons or the House of Lords.</td>
</tr>
<tr>
<td>Police Federation</td>
<td>Police Federation for England and Wales</td>
</tr>
<tr>
<td>PACE</td>
<td>Police and Criminal Evidence Act 1984</td>
</tr>
<tr>
<td>PATs</td>
<td>Police (Discipline) Appeals Tribunals</td>
</tr>
<tr>
<td>PCSO</td>
<td>Police Community Support Officer</td>
</tr>
<tr>
<td>PCC</td>
<td>Police and Crime Commissioner</td>
</tr>
<tr>
<td>PSV</td>
<td>Police Support Volunteer</td>
</tr>
<tr>
<td>SCPO</td>
<td>Serious Crime Prevention Order</td>
</tr>
<tr>
<td>SI</td>
<td>Statutory Instrument</td>
</tr>
<tr>
<td>SOA</td>
<td>Sexual Offences Act 2003</td>
</tr>
<tr>
<td>TAFA</td>
<td>Terrorist Asset Freezing etc. Act 2010</td>
</tr>
<tr>
<td>The 1839 Act</td>
<td>City of London Police Act 1839</td>
</tr>
<tr>
<td>The 1946 Act</td>
<td>The United Nations Act 1946</td>
</tr>
<tr>
<td>The 1968 Act</td>
<td>Firearms Act 1968</td>
</tr>
<tr>
<td>The 1972 Act</td>
<td>European Communities Act 1972</td>
</tr>
<tr>
<td>The 1982 Act</td>
<td>Firearms Act 1982</td>
</tr>
<tr>
<td>The 1983 Act</td>
<td>Mental Health Act 1983</td>
</tr>
<tr>
<td>The 1988 Act</td>
<td>The Firearms (Amendment) Act 1988</td>
</tr>
<tr>
<td>The 1996 Act</td>
<td>Police Act 1996</td>
</tr>
<tr>
<td>The 1998 Act</td>
<td>Data Protection Act 1998</td>
</tr>
<tr>
<td>The 2002 Act</td>
<td>Police Reform Act 2002</td>
</tr>
<tr>
<td>The 2003 Act</td>
<td>Licensing Act 2003</td>
</tr>
<tr>
<td>The 2004 Act</td>
<td>Fire and Rescue Services Act 2004</td>
</tr>
<tr>
<td>The 2007 Act</td>
<td>Serious Crime Act 2007</td>
</tr>
<tr>
<td>The 2009 Act</td>
<td>Policing and Crime Act 2009</td>
</tr>
<tr>
<td>The 2011 Act</td>
<td>Police Reform and Social Responsibility Act 2011</td>
</tr>
<tr>
<td>The 2013 Act</td>
<td>Crime and Courts Act 2013</td>
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<tr>
<td>The 2015 Act</td>
<td>Modern Slavery Act 2015</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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</tbody>
</table>

*These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)*
### Annex B - Police force areas and fire and rescue authorities in England (excluding London)

<table>
<thead>
<tr>
<th>Police Force</th>
<th>FRA within whole or part of area</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. FRA and police area coterminous</strong></td>
<td></td>
</tr>
<tr>
<td>Bedfordshire Police</td>
<td>Bedfordshire FRA</td>
</tr>
<tr>
<td>Cambridgeshire Police</td>
<td>Cambridgeshire FRA</td>
</tr>
<tr>
<td>Cheshire Police</td>
<td>Cheshire FRA</td>
</tr>
<tr>
<td>Cleveland Police</td>
<td>Cleveland FRA</td>
</tr>
<tr>
<td>Cumbria</td>
<td>Cumbria FRA</td>
</tr>
<tr>
<td>Derbyshire Police</td>
<td>Derbyshire FRA</td>
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<tr>
<td>Durham Police</td>
<td>Durham FRA</td>
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<tr>
<td>Essex Police</td>
<td>Essex FRA</td>
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<tr>
<td>Gloucestershire Police</td>
<td>Gloucestershire FRA</td>
</tr>
<tr>
<td>Greater Manchester Police</td>
<td>Greater Manchester FRA</td>
</tr>
<tr>
<td>Hertfordshire Police</td>
<td>Hertfordshire FRA</td>
</tr>
<tr>
<td>Humberside Police</td>
<td>Humberside FRA</td>
</tr>
<tr>
<td>Kent Police</td>
<td>Kent Police FRA</td>
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<tr>
<td>Lancashire Police</td>
<td>Lancashire FRA</td>
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<tr>
<td>Leicestershire Police</td>
<td>Leicestershire FRA</td>
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<tr>
<td>Lincolnshire Police</td>
<td>Lincolnshire FRA</td>
</tr>
<tr>
<td>Merseyside Police</td>
<td>Merseyside FRA</td>
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<tr>
<td>Norfolk Police</td>
<td>Norfolk FRA</td>
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<tr>
<td>North Yorkshire Police</td>
<td>North Yorkshire FRA</td>
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<tr>
<td>Northamptonshire Police</td>
<td>Northamptonshire FRA</td>
</tr>
<tr>
<td>Nottinghamshire Police</td>
<td>Nottinghamshire FRA</td>
</tr>
<tr>
<td>South Yorkshire Police</td>
<td>South Yorkshire FRA</td>
</tr>
<tr>
<td>Staffordshire Police</td>
<td>Staffordshire FRA</td>
</tr>
<tr>
<td>Suffolk Police</td>
<td>Suffolk FRA</td>
</tr>
<tr>
<td>Surrey Police</td>
<td>Surrey FRA</td>
</tr>
<tr>
<td>Warwickshire Police</td>
<td>Warwickshire FRA</td>
</tr>
<tr>
<td>West Midlands Police</td>
<td>West Midlands FRA</td>
</tr>
<tr>
<td>West Yorkshire Police</td>
<td>West Yorkshire FRA</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>2. More than one FRA in police force area, but borders co-terminous</strong></td>
<td></td>
</tr>
<tr>
<td>Sussex Police</td>
<td>West Sussex FRA</td>
</tr>
<tr>
<td></td>
<td>East Sussex FRA</td>
</tr>
<tr>
<td>Police Force</td>
<td>FRA Area</td>
</tr>
<tr>
<td>------------------------------</td>
<td>-----------------------------------------</td>
</tr>
<tr>
<td>Thames Valley Police</td>
<td>Buckinghamshire FRA</td>
</tr>
<tr>
<td></td>
<td>Oxfordshire FRA</td>
</tr>
<tr>
<td></td>
<td>Berkshire FRA</td>
</tr>
<tr>
<td>West Mercia Police</td>
<td>Shropshire FRA</td>
</tr>
<tr>
<td></td>
<td>Hereford and Worcester FRA</td>
</tr>
<tr>
<td>Northumbria Police</td>
<td>Northumberland FRA</td>
</tr>
<tr>
<td></td>
<td>Tyne and Wear FRA</td>
</tr>
<tr>
<td>Hampshire Police</td>
<td>Hampshire FRA</td>
</tr>
<tr>
<td></td>
<td>Isle of Wight FRA</td>
</tr>
</tbody>
</table>

3. More than one police force in FRA area but borders are co-terminous

<table>
<thead>
<tr>
<th>Police Force</th>
<th>FRA Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wiltshire Police</td>
<td>Dorset and Wiltshire FRA (from April 2016)</td>
</tr>
</tbody>
</table>

4. Police area spans more than one FRA and the boundaries do not align

<table>
<thead>
<tr>
<th>Police Force</th>
<th>FRA Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Devon and Cornwall Police</td>
<td>Cornwall FRA</td>
</tr>
<tr>
<td></td>
<td>Devon and Somerset FRA</td>
</tr>
<tr>
<td>Avon and Somerset Police</td>
<td>Avon FRA</td>
</tr>
<tr>
<td></td>
<td>Devon and Somerset FRA</td>
</tr>
</tbody>
</table>
Annex C - Process for PCC taking on governance of a Fire and Rescue Authority

PCC prepares and publishes a business case having consulted locally

If the PCC and relevant authorities agree

PCC requests the Government to introduce secondary legislation

Home Secretary approves

Order made

If not all parties are in agreement

The PCC submits business case to the Home Secretary

Home Secretary does not approve

The Home Secretary must seek independent assessment of business case

Home Secretary approves

These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)
Annex D - Summary of the complaints system

Police complaints procedures are laid down under Part 2 of the 2002 Act to ensure that police officers and staff are fully answerable for their actions. The Act also sets out the role of the IPCC.

Who can complain?
A complaint may be made by any of the following:

- An individual to whom the conduct took place;
- A member of the public indirectly affected by the conduct;
- A member of the public who witnessed the conduct;
- A person acting on behalf of someone who falls within the above.

Officers and staff cannot make complaints about individuals in the same force. Instead these are addressed by internal force grievance processes.

Categories of complaints
When a complaint is received by a force, a recording decision is made (see ‘Appeal Rights’). If the force deems the issue comes under the definition provided for in the 2002 Act it is recorded as a complaint. The current definition defines a complaint in terms of a complaint about the conduct of a person serving with the police.

If the complaint relates to an operational, organisational or management decisions then the complaint can be categorised as a ‘direction and control’ complaint. These are handled in the same way as normal complaints but do not have an appeal right.

Types of handling
When the force receives a complaint, they can, if they deem it necessary or if it meets the mandatory referral criteria, refer a case to the IPCC for its assessment. If a complaint alleges death or serious injury relating to police contact, then this comes under the mandatory referral criteria and must be referred by the force to the IPCC.

A case handled by the force can be categorised as suitable for local resolution. This means that the case is handled locally and that the issues are not serious enough to require full investigation. If the force deems that the complaint warrants it, they may decide to initiate a local investigation. If a complaint meets certain criteria, they may also disapply the legislation and take whatever action they choose in regards to the complaint. This will usually be to take no further action.

If the IPCC decides to take on a case after it has been referred, they have three options. They can take on the full investigation themselves; they can take on the management of the investigation; or they can supervise the investigation. A supervised investigation sees the force investigate within prescribed terms of reference set by the IPCC, while a managed investigation gives the IPCC greater “direction and control” over the investigation.

Appeal rights
There are currently five rights of appeal. An appeal may be bought against a decision not to record a complaint, against a decision to disapply the complaint (that is, to proceed no further beyond recording it), against the outcome of any complaint handled by local resolution, against a decision to discontinue an investigation into a complaint, and against various factors in relation to the conducting of an appeal.

*These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)*
These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)
Annex E - Summary of the disciplinary system

Regulated framework

Police officers, as holders of the office of constable in a police force, have certain protections in terms of their employment status, their discipline and how they can be dismissed from the force. As a result of this status, the police disciplinary system is regulated and set out in secondary legislation. The Home Office is responsible for the maintenance of the system and produces guidance which explains the extent and procedures related to the regulated discipline, performance and attendance systems for police. Police staff who do not hold the office of constable are not included in the regulated police discipline system and are instead governed by local policy set within each police force.

The process for misconduct proceedings is set out in the Police (Conduct) Regulations 2012, which applies to all police officers and special constables. These regulations set out the process and steps that must be followed where an allegation comes to the attention of the Appropriate Authority which indicates that the conduct of a police officer may amount to misconduct or gross misconduct. This includes an allegation contained within a complaint or conduct matter referred to the IPCC in accordance with the 2002 Act.

<table>
<thead>
<tr>
<th>Appropriate Authority Definitions</th>
</tr>
</thead>
<tbody>
<tr>
<td>For chief officers</td>
</tr>
<tr>
<td>All other police officers</td>
</tr>
</tbody>
</table>

Assessment of conduct

When an allegation that an officer may have breached the standards of professional behaviour comes to light, the Appropriate Authority will make an assessment of its severity. This assessment determines the seriousness of the alleged breach and therefore the course of proceedings that should be followed.

<table>
<thead>
<tr>
<th>Discipline Definitions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Misconduct</td>
</tr>
<tr>
<td>Gross Misconduct</td>
</tr>
<tr>
<td>Professional Standards</td>
</tr>
</tbody>
</table>

The severity assessment and whether to commence formal disciplinary proceedings can either be triggered by an internal allegation about an officer’s conduct; following an investigation into a death or

34 As the professional body for policing in England and Wales, the College of Policing is responsible for setting standards of policing practice and for identifying, developing and promoting ethics, values and integrity. The Code of Ethics, issued by the College of Policing, sets out in detail the principles and expected behaviours that underpin the standards of professional behaviour for everyone working in the policing profession in England and Wales.

These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)
serious injury following contact with the police; or from a public complaint.

Investigation
All matters assessed as gross misconduct matters are investigated. The chief officer will normally determine whether a misconduct matter warrants investigation. The IPCC sets out cases that must be referred to it for a mode of investigation decision; these include all death or serious injury cases and cases involving, serious assault, serious sexual offences, serious corruption, behaviour aggravated by discriminatory behaviour and any relevant offences. (For these purposes, a relevant offence is any offence for which the sentence is fixed by law or for which a person of 18 years and over (not previously convicted) may be sentenced to imprisonment for seven years or more.)

Under existing regulations, once an allegation comes to the attention of the Appropriate Authority whilst an investigation or disciplinary proceedings are being undertaken, an officer is prevented from resigning or retiring from the force, until the matter has been concluded. This provision was introduced in 2014 to prevent officers from leaving the force in order to evade disciplinary outcomes.

At the conclusion of an investigation, the Appropriate Authority must make a decision as to whether there is a “case to answer” in respect of misconduct or gross misconduct and therefore whether to refer the matter to the misconduct proceedings.

Where an investigation has been conducted by the IPCC, they can recommend to the Appropriate Authority whether in their view there is a case to answer. Where the Appropriate Authority disagrees with the IPCC recommendation, it can respond and make further representations, however if the Commission remains of the view that there is a case to answer for (gross) misconduct, it can direct the force to instigate misconduct proceedings.

Misconduct proceedings
Misconduct proceedings follow an investigation; any criminal proceedings are concluded separately. The presumption is that action for misconduct should be taken prior to, or in parallel with, any criminal proceedings, but if necessary action can be delayed until criminal proceedings are complete.

There are two types of misconduct proceedings:

- Misconduct meetings, for cases where there is a case to answer in respect of misconduct.
- Misconduct hearings, for cases where there is a case to answer in respect of gross misconduct or where the police officer has a live final written warning and there is a case to answer in respect of a further act of misconduct. These hearings are held in public.

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35 Where a public complaint amounts to an allegation against the conduct of an officer, the complaint becomes subject to ‘special requirements’, to ensure it is handled in a manner consistent with the conduct regulations.

These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)
Disciplinary outcomes
At a misconduct meeting the outcomes are:

- Misconduct not found;
- No further action;
- Management advice;
- Written warning;
- Final written warning.

At a misconduct hearing, the following additional outcomes are also available:

- Dismissal with notice;
- Dismissal without notice.

If an officer is dismissed, the details of individual and the case are collected by the College of Policing on the Disapproved Register, which is a list which records details of all officers who have been dismissed in order to prevent them from re-entering the police service.

Staff association/legal representation
Police officers have a right to representation by a police friend at misconduct meetings; in addition they have a right to legal representation at misconduct hearings and Police (Discipline) Appeals Tribunals ("PATs").

Appeal mechanism
There is a statutory appeal mechanism to a PAT against either the finding or outcome of a misconduct hearing on the basis that the finding or action was unreasonable, that there is new evidence or that there was a breach of procedure. Appeals arising from misconduct meetings are heard internally.

The composition of a PAT is as follows:

<table>
<thead>
<tr>
<th>PAT Composition</th>
</tr>
</thead>
<tbody>
<tr>
<td>SENIOR OFFICERS</td>
</tr>
<tr>
<td>NON-SENIOR OFFICERS</td>
</tr>
</tbody>
</table>

These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)
A PAT can dismiss the appeal, remit the matter to be determined at a fresh hearing, or reinstate the officer.
Annex F - Existing powers of designated police staff

Community Support Officers - Standard powers

- to issue fixed penalty notices for cycling on a footpath;
- to issue fixed penalty notices for littering;
- to require name and address of a person who the PCSO has reason to believe has
  i) committed an offence; ii) been acting, or to be acting, in an anti-social manner;
  or iii) failure to obey lawful traffic directions of a police constable or PCSO;
- to require persons drinking in restricted areas to surrender alcohol;
- to require persons aged under 18 to surrender alcohol;
- to seize tobacco or cigarette papers from a person aged under 16 and to dispose of
  the tobacco/papers;
- to seize controlled drugs (including power to require name and address of person
  in possession);
- to enter and search any premises, in their police area, for the purposes of saving
  life and limb or preventing serious damage to property;
- to seize vehicles used to cause alarm or distress (i.e. careless and inconsiderate
  driving or prohibited off-road driving);
- to remove abandoned vehicles;
- to stop bicycles;
- to control traffic for purposes other than escorting a load of exceptional
  dimensions;
- to carry out road checks;
- to place traffic signs;
- to enforce areas cordoned under section 36 of the Terrorism Act 2000; and
- to photograph persons away from a police station

Discretionary powers

- to issue penalty notices in respect of offences of disorder;
- to issue fixed penalty notices for truancy;
- to issue fixed penalty notices for excluded pupil found in a public place;
- to issue fixed penalty notices for dog fouling on designated land;
- to issue fixed penalty notices for graffiti and fly-posting;
- to issue fixed penalty notice for relevant byelaw offences;

These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)
• to detain a person for up to 30 minutes who fails to comply with a requirement to give their name and address, or who gives an answer which the PCSO reasonably suspects to be false or inaccurate, in order to wait for the arrival of a police officer (or alternatively to accompany the detained person to a police station);

• to search detained persons for dangerous items or items that could be used to assist escape and to seize and retain any items found;

• to enforce byelaws, including removing a person from a place if a constable would also have the power to enforce a bylaw in that way;

• to deal with begging;

• to enforce certain licensing offences (including a limited power of entry to investigate such offences);

• to serve closure notice for licensed premises persistently selling to children;

• to use reasonable force to prevent a detained person making off and to keep that person under control;

• to disperse groups and remove persons under 16 to their place of residence;

• to remove truants and excluded pupils to designated premises etc;

• to use reasonable force in relation to detained persons to enforce their handover to a police officer or transfer to a police station;

• to search for and seize alcohol and tobacco from minors;

• to take possession of items used in the commission of offences under the Royal Parks (Trading) Act 2000 (Metropolitan PCSOs only);

• to stop vehicles for testing of roadworthiness; and

• to direct traffic for the purposes of escorting a load of exceptional dimensions.

• to issue a fixed penalty notice for cycling without lights;

• to issue a fixed penalty notice for failing to comply with traffic signs;

• to issue a fixed penalty notice for carrying a passenger on a cycle;

• to issue a fixed penalty notice to a cyclist for failing to comply with a traffic direction;

• to issue a fixed penalty notice for parking in a restricted area outside schools;

• to issue a fixed penalty notice for failing to stop for a police constable;

• to issue a fixed penalty notice for driving the wrong way down a one-way street;

• to issue a fixed penalty notice for sounding a horn when stationary or at night;

• to issue a fixed penalty notice for not stopping engine when stationary;

These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)
to issue a fixed penalty notice for causing unnecessary noise with a motor vehicle;

- to issue a fixed penalty notice for contravening bus lane prohibition or restriction;

- to issue a fixed penalty notice for opening door so as to cause injury or danger;

- to confirm the identity of a charity collector;

- to issue a fixed penalty notice to an unlicensed street vendor;

- to stop cycles;

- to give a dispersal direction;

- to direct a person to surrender any item in possession or control

- to detain a person for up to 30 minutes failing to comply with either of the above directions, in order to wait for the arrival of a police officer;

- to issue a Community Protection Notice;

- Power to issue a fixed penalty notice for failure to comply with a Community Protection Notice; and

- to issue a fixed penalty notice for failure to comply with Public Space Protection Order.

**Investigating Officers (discretionary powers)**

- to obtain a search warrant under PACE or the Misuse of Drugs Act 1971;

- to execute a search warrant under PACE or the Misuse of Drugs Act 1971;

- to seize and retain things i) for which a search warrant has been authorised, or ii) on any premises where the officer is lawfully present;

- to accompany named, undesignated individuals (e.g. forensic IT or accountancy specialists) in the execution of a search warrant;

- to obtain a production order under PACE;

- to enter and search for evidence of an offence any premises under the control of an arrested person (PACE section 18);

- to enter and search premises for evidence of nationality any premises under the control of an arrested person, or where that person was at the time of, or immediately before, their arrest (sections 44 to 46 of the UK Borders Act 2007);

- to make a further arrest of an arrested person (i.e. for a fresh offence);

- to take custody of an arrested person at a police station for the purpose of progressing the investigation (e.g. conducting an interview); and
● to issue Special Warnings under the Criminal Justice and Public Order Act 1994, to require a person to account for i) any object, substance or mark, or ii) their presence at a particular place, where the officer believes that may be attributable to the participation of the person arrested in an offence.

Detention Officers (discretionary powers)
● to require a person to attend a police station to have i) their fingerprints or ii) other sample (e.g. DNA) taken;
● to take i) fingerprints or ii) non-intimate samples without consent;
● to give warnings to detained persons in connection with i) the taking of samples, ii) the conduct of intimate searches or iii) the taking of investigative x-rays;
● to conduct searches of persons answering to live link bail at a police station;
● to conduct non-intimate searches of detained persons;
● to conduct searches and examinations at police stations to ascertain an arrested person’s identity, including photographing any identifying mark;
● to take photographs of detained persons;
● to take impressions of a detained person’s footwear without consent;
● to keep control of detained person; and
● where necessary, to use force to carry out any of the above powers.

Escort Officers (discretionary powers)
● to take a person arrested by a constable to a police station; and
● to escort persons in police detention.
## Annex G - Police workforce, England and Wales

<table>
<thead>
<tr>
<th>Rank</th>
<th>All staff (FTE)</th>
<th>Staff available for duty (FTE)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief officers(1)</td>
<td>201</td>
<td>200</td>
</tr>
<tr>
<td>Chief superintendents</td>
<td>337</td>
<td>332</td>
</tr>
<tr>
<td>Superintendents</td>
<td>820</td>
<td>808</td>
</tr>
<tr>
<td>Chief inspectors</td>
<td>1,657</td>
<td>1,625</td>
</tr>
<tr>
<td>Inspectors</td>
<td>5,701</td>
<td>5,548</td>
</tr>
<tr>
<td>Sergeants</td>
<td>19,148</td>
<td>18,511</td>
</tr>
<tr>
<td>Constables</td>
<td>98,954</td>
<td>94,063</td>
</tr>
<tr>
<td>Total police ranks</td>
<td>126,818</td>
<td>121,078</td>
</tr>
<tr>
<td>Police staff(2)</td>
<td>63,719</td>
<td>61,073</td>
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<tr>
<td>Police community support officers</td>
<td>12,331</td>
<td>11,719</td>
</tr>
<tr>
<td>Designated officers(3)</td>
<td>4,254</td>
<td>4,122</td>
</tr>
<tr>
<td>Traffic wardens</td>
<td>18</td>
<td>17</td>
</tr>
<tr>
<td>Total police workforce</td>
<td>207,140</td>
<td>198,009</td>
</tr>
<tr>
<td>Special constabulary(4)</td>
<td>16,101</td>
<td>-</td>
</tr>
</tbody>
</table>

### Table notes
- NB: All figures relates to the 43 forces of England and Wales only. Figures as of 31 March 2105.
- 1. Includes Assistant Chief Constables, Deputy Chief Constables and Chief Constables, and their equivalents in the Metropolitan Police and City of London Police.
- 2. Excludes police community support officers, designated officers and traffic wardens.
- 3. Excludes police community support officers.
- 4. Headcount only.

Source: Home Office, Police workforce, data tables.
Annex H - Territorial extent and application

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

- Part 1: Emergency services collaboration – these provisions extend to England and Wales, but apply to England only;
- Part 2, clause 24(7): Appeals to Police Appeals Tribunal – this subsection extends and applies to the United Kingdom;
- Part 2, clause 27(6): Duty on Director General of the National Crime Agency to respond to inspection report – this subsection extends and applies to the United Kingdom;
- Part 4, clauses 62 (in part), 64 to 70 and 73: Maritime enforcement powers: these provisions extend and apply to the United Kingdom insofar as they provide for hot pursuit of vessels into Scotland or Northern Ireland waters;
- Part 6: Firearms – these provisions extend and apply to Great Britain;
- Part 8: Financial sanctions – with the exception of clause 95 (which relates to deferred prosecution agreements and which extends and applies to England and Wales only), these provisions extend and apply to the United Kingdom;
- Part 9, clause 103: Powers of NCA in relation to customs matters - this clause extends and applies to the United Kingdom;
- Part 9, clauses 104 and 105: Requirements to state nationality and produce nationality documents – these clauses apply to the United Kingdom.

In the view of the Government of the United Kingdom, provision corresponding to that contained in clauses 1 to 9 and Schedules 1 and 2 (emergency services collaboration), clauses 10 to 17 and Schedule 3 and 4 (police complaints), clauses 18 to 20 (super-complaints), clause 21 and Schedule 5 (whistle-blowing), clauses 22, 23 and 25 and Schedule 6 (police discipline), clauses 28 to 31 and 33 and Schedule 9 (powers of police civilian staff), clause 34 and Schedule 10 (traffic wardens), clauses 35 and 36 (police ranks), clause 37 (Police Federation), clause 39 and Schedule 11 (ACPO), clauses 40 to 51 (pre-charge bail), clauses 52 to 55, 57 and 58 (PACE), clauses 59 to 61 (powers under Mental Health Act), clauses 63, 71 and 72 (maritime powers), clauses 74 and 75 (Deputy PCCs), clause 76 (police areas), clauses 82, 83, 84 and 87 (alcohol), and clause 107 (child sexual exploitation) would be within the legislative competence of the Scottish Parliament and Northern Ireland Assembly

36 References in Annex H to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purpose of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)
<table>
<thead>
<tr>
<th>Provision</th>
<th>Extends to E &amp; W and applies to England?</th>
<th>Extends to E &amp; W and applies to Wales?</th>
<th>Extends and applies to Scotland?</th>
<th>Extends and applies to Northern Ireland?</th>
<th>Would corresponding provision be within competence of Welsh Assembly?</th>
<th>Would corresponding provision be within competence of Scottish Parliament?</th>
<th>Would corresponding provision be within competence of NI Assembly?</th>
<th>Legislative Consent Motion needed?</th>
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<td>Part 1: Emergency services collaboration – Chapter 1: Collaboration agreements</td>
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*These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)*

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These Explanatory Notes relate to the Policing and Crime Bill as introduced in the House of Commons on 10 February 2016 (Bill 134)

<table>
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<th>Schedules 7 and 8</th>
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Part 3: Police workforce and representative institutions – Chapter 2: Representative institutions

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<tr>
<th>Clause 37</th>
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Part 4: Police powers – Chapter 1: Pre-charge bail

| Clauses 40 to 51 | Yes | Yes | No | No | No | Yes | Yes | No |

Part 4: Police powers – Chapter 2: Powers under PACE: Miscellaneous

<table>
<thead>
<tr>
<th>Clauses 52 to 55</th>
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Part 4: Police powers – Chapter 3: Powers under the Mental Health Act 1983

| Clauses 59 to 61 | Yes | Yes | No | No | No | Yes | Yes | Yes (W) |

Part 4: Police powers – Chapter 4: Police powers: Maritime enforcement

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Part 5: Police and Crime Commissioners and police areas

| Clauses 74 to 76 | Yes | Yes | No | No | No | Yes | Yes | No |

Part 6: Firearms
Minor and consequential effects

a) The following provisions that apply to England, or England and Wales, have effects outside England, or England and Wales, all of which are, in the view of the Government of the United Kingdom, minor or consequential.

b) Schedule 1 amends the Fire and Rescue Services Act 2004, and makes consequential amendments to other enactments, to make provision for a PCC to be a fire and rescue authority in England. Clause 7 provides for the appointment of PCCs to fire and rescue authorities in England as they are currently constituted; subsection (8) of that clause amends section 13 of the Local Government and Housing Act 1989 to afford PCCs so appointed voting rights on certain local government committees. Part 2 of Schedule 2 makes amendments to other enactments consequential upon the transfer of the functions of the London Fire and Emergency Planning Authority to the London Fire Commissioner. In each case, the amendments have the same extent as the provisions in those other Acts being amended. A number of these Acts extend to Scotland and/or Northern Ireland as well as to England and Wales, for example...
the amendment to Schedule 1 to the Freedom of Information Act 2000, however any such amendments will have no effect in Scotland, Wales or Northern Ireland given that the provisions impact only the governance of fire and rescue authorities in England (outside London) and the functions of the London Fire Commissioner.

c) Paragraphs 21 and 43(g)(i) of Schedule 4 amend paragraph 19F of Schedule 3 to the Police Reform Act 2002 which extends to the United Kingdom. The amendments made by paragraph 21(1) and (2) and 43(g)(i) are consequential upon other amendments to Schedule 3 to the 2002 Act made by Schedule 4 to the Bill, while the amendments made by paragraph 21(3) relate to section 26BA of the 2002 Act which only forms part of the law in England and Wales. As such, the amendments to paragraph 19F of Schedule 3 to the 2002 Act will have no material effect in Scotland or Northern Ireland.

d) Clause 24(1) to (4) amends the 1996 Act to make changes to the composition of police appeals tribunals in England and Wales. Clause 24(5) and (6)(b) make consequential amendments to other enactments which extend to the United Kingdom, they have no material effect on the law in Scotland and Northern Ireland.

e) Schedule 9 makes amendments to other enactments consequential on clause 28 (which relates to the powers of police civilian staff and police volunteers in forces in England and Wales). A number of these Acts extend to Scotland and Northern Ireland as well as to England and Wales, for example the amendment to Schedule 1 to the Representation of the People Act 1983, however any such amendments will have no material effect in Scotland or Northern Ireland.

f) Clause 34(1) abolishes the office of traffic warden in England and Wales by repealing sections 95 to 97 of the Road Traffic Regulations Act 1984 (“the 1984 Act”) so far as extending to that jurisdiction. Subsections (2) to (9) of the clause, which extends to Scotland only, make consequential amendments to sections 95 to 97 of the 1984 Act to preserve the existing law in Scotland. Schedule 10 makes consequential amendments to other enactments, those to the Aviation Security Act 1982 extends to the UK; the amendments made to that Act do not change the law as it applies in Scotland or Northern Ireland given that they relate to the abolition of the office of traffic warden in England and Wales.

g) Clause 35 confers a power on the Secretary of State, by regulations, to specify the ranks that may be held by members of police forces in England and Wales (new section 50A(1) of the Police Act 1996). A second regulation-making power (in new section 50A(3)) enables provision to be made that is consequential on, or incidental or supplemental to, regulations made under new section 50A(1). While the regulation-making power in new section 50A(3) (together with new sections 50A(3) to (7) and 50B) extends to the UK its effect in Scotland and Northern Ireland is consequential.

h) Clause 37 amends section 59 of the Police Act 1996 to make further provision in respect of the purpose of the Police Federation for England and Wales. Section 59 of that Act also makes provision in respect of the Police Federation for Scotland, but the amendment only applies to the Police Federation for England and Wales.

i) Clause 39 and Schedule 11 amend or repeal various enactments to reflect the abolition of the Association of Chief Police Officers of England, Wales and Northern Ireland and its replacement by the National Police Chiefs’ Council as the representative body for chief officers in England and Wales. Whilst some of the enactments amended by Schedule 11 extend and apply to Scotland and Northern Ireland, there is no substantive effect on the law in those jurisdictions.

j) Clause 102(1) to (4) amends provisions in the Police Act 1996 relating to collaboration agreements

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between the NCA and other law enforcement agencies; the extent of those provisions is limited to England and Wales only. Clause 102(5) and Schedule 12 makes consequential amendments to provisions in the Police Act 1997 and the Regulation of Investigatory Powers Act 2000 which have UK-wide extent. However, given the territorial limitation of the amendments to the 1996 Act to which they relate, these consequential amendments have no application in Scotland and Northern Ireland.

Subject matter and legislative competence of devolved legislatures

k) Parts 1 to 5 and clauses 104 and 105 (which relate to the NCA) of the Bill deal with policing. Policing is not devolved to the Welsh Assembly under the Government of Wales Act 2006 (Schedule 7). In relation to Scotland, the governance and administration of Police Scotland is not generally reserved to the UK Government under the Scotland Act 1998 (Schedule 5), although certain aspects of the criminal law and therefore the enforcement of such laws by the police (for example, offences which fall within the subject matter of the Misuse of Drugs Act 1971 and special powers for dealing with terrorism) are reserved; however, such reservations are not generally relevant to the subject matter of this Bill. In relation to Northern Ireland, the governance and administration of the Police Service of Northern Ireland is not generally an excepted or a reserved matter under the Northern Ireland Act 1998 (Schedules 2 and 3), although certain aspects of the criminal law and therefore the enforcement of such laws by the police (for example, offences which fall within the subject matter of the Misuse of Drugs Act 1971 and special powers for dealing with terrorism) are excepted or reserved; however, with the exception of the reservation in relation to the National Crime Agency (paragraph 9(1)(g) of Schedule 3 to the Northern Ireland Act 1998), those reservations are not generally relevant to the subject matter of this Bill.

l) There are examples of policing legislation made by the devolved administration in Scotland, including the Police and Fire Reform (Scotland) Act 2012. Policing and justice was devolved in Northern Ireland in 2010, no substantive legislation on policing has been enacted by the Northern Ireland Assembly since that date.

m) Part 1 of the Bill provides for greater collaboration between police, fire and ambulance services. Fire and rescue services fall within paragraph 7 of Part 1 of Schedule 7 to the Government of Wales Act 2006 and NHS ambulance services within paragraph 9 of Part 1 of Schedule 7 to the Government of Wales Act 2006 (not being on the excepted list in that paragraph). They are therefore both devolved to Wales, however, given that Part 1 of the Bill also makes provision in respect of policing, the National Assembly for Wales would not have the legislative competence to make corresponding provision. Fire and rescue services and NHS ambulance services are not reserved to the UK Government under the Scotland Act 1998, neither are they specified as an excepted or reserved matter under the Northern Ireland Act 1998, accordingly given that policing is not generally reserved (or excepted) in either jurisdiction, it would be open to the Scottish Parliament and Northern Ireland Assembly to make provision corresponding to that in Part 1.

n) Clause 24(7) makes provision in respect of Ministry of Defence police officers for appeals against dismissal to a Police Appeals Tribunal. The armed forces are a reserved matter in Scotland (paragraph 9 of Part 1 of Schedule 3 to the Scotland Act 1998) and an excepted matter in Northern Ireland (paragraph 4 of Schedule 2 to the Northern Ireland Act 1998). Accordingly, the Scottish Parliament and the Northern Ireland Assembly could not make corresponding provision in respect of the Ministry of Defence police.

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o) Clause 26 makes provision for Her Majesty’s Inspectors of Constabulary to obtain information. Those provisions include restrictions on the disclosure of information that originates or relates to the intelligence agencies and Her Majesty’s forces. The Crown (including the intelligence agencies) and the armed forces of the Crown are reserved matters in Scotland (paragraphs 1 and 9 of Schedule 5 to the Scotland Act 1998) and national security (including the intelligence agencies) and the armed forces of the Crown are excepted matters in Northern Ireland (paragraphs 17 and 4 of Schedule 2 to the Northern Ireland Act 1998), as such, the Scottish Parliament and the Northern Ireland Assembly could not make corresponding provision in respect of the inspection of Police Scotland and the Police Service of Northern Ireland respectively.

p) Chapter 1 of Part 3 enables chief officers of police in England and Wales to confer a greater range of policing powers on police staff and volunteers. Amongst other things, clause 28 amends section 38 of the Police Reform Act 2002 to prevent a chief officer of police authorising a designated member of police staff to use a firearm. The subject matter of the Firearms Acts 1968 to 1997 is a reserved matter in Scotland (section B4 of Schedule 5 to the Scotland Act 1998), as such, the Scottish Parliament could not make corresponding provision in respect of police staff in Scotland. Schedule 7 sets out a list of “excluded powers and duties of constables” which cannot be conferred on designated police staff and volunteers. The list of excluded powers includes the powers of a constable under various specified enactments relating to counter-terrorism and those under the Official Secrets Acts. Special powers for dealing with terrorism and the subject matter of the Official Secrets Acts are reserved matters in Scotland (section B8 of Schedule 5 to the Scotland Act 1998) and an excepted matters in Northern Ireland (paragraph 17 of Schedule 2 to the Northern Ireland Act 1998), as such, the Scottish Parliament and the Northern Ireland Assembly could not make corresponding provision in respect of the powers of police staff employed by Police Scotland and the Police Service of Northern Ireland respectively. Schedule 8 lists additional powers and duties which may be conferred on police community support officers (“PCSO”). The specified powers include powers to search for and seize controlled drugs and psychoactive substances. The subject matter of the Misuse of Drugs Act 1971 is a reserved matter in Scotland (section B1 of Schedule 5 to the Scotland Act 1998) and in Northern Ireland (paragraph 9(1)(f)(i) of Schedule 3 to the Northern Ireland Act 1998), as such, the Scottish Parliament and the Northern Ireland Assembly could not make wholly corresponding provision in respect of the powers of PCSOs employed by Police Scotland and the Police Service of Northern Ireland respectively.

q) Clause 32 amends Part 2 of RIPA to restrict the circumstances in which designated police staff and volunteers in England and Wales can operate as a covert human intelligence source and to prevent such staff and volunteers acting as authorisation officers for directed surveillance and covert human intelligence sources. The subject matter of Part 2 of RIPA is a reserved matter in Northern Ireland (see paragraph 9 of Schedule 3 to the Northern Ireland Act 1998); accordingly the Northern Ireland Assembly could not make corresponding provision in respect of the powers of PCSOs employed by the Police Service of Northern Ireland.

r) Part 2 of Schedule 9 amends various enactments consequential upon the provisions in Chapter 1 of Part 3 extending the powers of designated police staff and volunteers. Paragraph 17 of that Schedule amends section 28 of the Railways and Transport Safety Act 2003 which relates to the exercise of policing powers by the civilian staff of the British Transport Police. Section 28 of that Act extends to Scotland. Rail transport security is a reserved matter in Scotland (section E2 of Schedule 5 to the Scotland Act 1998), as such the Scottish Parliament could not make provision corresponding to paragraph 17 of Schedule 9 (or clause 35 insofar as it relates to that Schedule).

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s) Clause 37 requires the Police Federation for England and Wales, in fulfilling its statutory purpose, to protect the public interest and maintain high standards of conduct and transparency. It would be open to the Scottish Parliament and Northern Ireland Assembly to make corresponding provision in respect of the Police Federation for Scotland and the Police Federation for Northern Ireland respectively, provided such a duty did not encroach on reserved matters. In Scotland, matters in respect of occupational and personal pensions and health and safety are reserved by virtue of sections F3 and H2 of Schedule 5 to the Scotland Act 1998 respectively.


u) Clause 39 and Schedule 11 amend or repeal various enactments to reflect the abolition of the Association of Chief Police Officers of England, Wales and Northern Ireland and its replacement by the National Police Chiefs’ Council (NPCC) as the representative body for chief officers in England and Wales. The majority of the relevant provisions, as amended by the Bill, place a duty on the Secretary of State to consult the NPCC in respect of specified matters. The relevant provisions include provisions in the Firearms Acts 1968 to 1997. The subject matter of those Acts is a reserved matter in Scotland (section B4 of Schedule 5 to the Scotland Act 1998); accordingly the Scottish Parliament could not make corresponding provision requiring Scottish Ministers to consult with a representative body for chief officers in Scotland in relation to matters falling within the Firearms Acts.

v) Clause 56(3) amends section 113 of PACE which deals with the application of that Act to the armed forces; section 113 has UK extent. The armed forces are a reserved matter in Scotland (paragraph 9 of Part 1 of Schedule 3 to the Scotland Act 1998) and an excepted matter in Northern Ireland (paragraph 4 of Schedule 2 to the Northern Ireland Act 1998). Accordingly, the Scottish Parliament and the Northern Ireland Assembly could not make corresponding provision in respect of the application of PACE to the armed forces.

w) Part 6 of the Bill deals with firearms. The subject matter of the Firearms Acts 1968 to 1997 is not devolved to the Welsh Assembly under the Government of Wales Act 2006 (Schedule 7) or to the Scottish Parliament under the Scotland Act 1998 (paragraph B4 of Schedule 5 to the Scotland Act 1998 includes an exception for air weapons which is not engaged by the provisions in the Bill). In relation to Northern Ireland, firearms legislation is generally devolved but there is a reservation for prohibited weapons (paragraph 12 of Schedule 3 to the Northern Ireland Act 1998 reserves items for the time being specified in Article 45(1) or (2) of the Firearms (Northern Ireland) Order 2004, and the subject-matter of Article 45(10) of that Order) which is relevant to the provisions in clause 80 and the amendments to the definition of a firearm and component parts in 77 insofar as they relate to prohibited weapons. Firearms was devolved in Northern Ireland in 2010, no substantive legislation on firearms has been enacted by the Northern Ireland Assembly since that date.

x) Part 7 of the Bill deals with alcohol licensing. The licensing of the sale and supply of alcohol is not devolved to the Welsh Assembly under the Government of Wales Act 2006 (see the exception in paragraph 12 of Schedule 7). In relation to Scotland, the licensing of the sale and supply of alcohol is not generally reserved to the UK Government under the Scotland Act 1998, although changes to the

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alcohol licensing regime in Scotland for a reserved purpose (for example, immigration) would be reserved. In relation to Northern Ireland, the licensing of the sale and supply of alcohol is not generally excepted or reserved to the UK Government under the Northern Ireland Act 1998, although changes to the alcohol licensing regime in Northern Ireland for an excepted or reserved purpose (for example, immigration) would be excepted or reserved as the case may be. Clause 85 confers power on a licensing authority to suspend or revoke a personal licence where the licensee has been convicted of a relevant offence or has incurred an immigration penalty. Clause 86 adds certain firearms offences and terrorism offences to the list of relevant offences which a licensing authority may take into account when determining whether to grant or revoke a personal license. As immigration, the subject matter of the Firearms Acts 1968 to 1997 and special powers for dealing with terrorism are reserved matters in Scotland, and immigration and special powers for dealing with terrorism are excepted matters in Northern Ireland, the Scottish Parliament and Northern Ireland Assembly could not make provision corresponding to that in clauses 85 and 86. There are examples of alcohol licensing legislation made by the devolved administration in Scotland and Northern Ireland: the Alcohol etc. (Scotland) Act 2010 and the Licensing and Registration of Clubs (Amendment) Act (Northern Ireland) 2011.

y) Part 8 of the Bill deals with EU, UN and other financial sanctions. These provisions relate to international relations which is a not a matter devolved to the Welsh Assembly, is a reserved matter in Scotland (paragraph 7 of Schedule 5 to the Scotland Act 1998) and an excepted matter in Northern Ireland (paragraph 3 of Schedule 2 to the Northern Ireland Act 1998). In relation to clause 95, which extends and applies to England and Wales only, while it would be within the legislative competence of the Scottish Parliament and the Northern Ireland Assembly to make provision for deferred prosecution agreements, it would not be within the legislative competence of either legislature to make such provision where it relates, as here, to the enforcement of reserved/excepted matters.

z) Clause 106 places a requirement on a defendant in criminal proceeding to provide his or her name, date of birth and nationality to the court. Criminal proceedings are generally a devolved matter in Scotland and Northern Ireland and, to the extent that the provision confers a power on the court to require the name and date of birth of a defendant, it would be open to the Scottish Parliament and Northern Ireland Assembly to make corresponding provision. Nationality and immigration are reserved matters in Scotland (section B6 of Schedule 5 to the Scotland Act 1998) and excepted matters in Northern Ireland (paragraph 8 of Schedule 2 to the Northern Ireland Act 1998), accordingly to the extent that the clause enables a court to require a defendant to provide his or her nationality, it would not be within the legislative competence of the Scottish Parliament and Northern Ireland Assembly to enact corresponding provision.

aa) Clause 107 deals with the prevention, detection and investigation of offences to tackle child sexual exploitation. The prevention, detection and investigation of crime are not devolved to the Welsh Assembly under the Government of Wales Act 2006. In relation to Scotland, the prevention, detection and investigation of sexual offences is not reserved to the UK Government under the Scotland Act 1998. In relation to Northern Ireland, the prevention, detection and investigation of sexual offences is not excepted or reserved to the UK Government under the Northern Ireland Act 1998. There are examples of legislation relating the prevention, detection and investigation of sexual offences made by the devolved administration in Scotland and Northern Ireland: the Protection of Children and Prevention of Sexual offences (Scotland) Act 2005 and the Criminal Justice Act (Northern Ireland) 2013.

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POLICING AND CRIME BILL
EXPLANATORY NOTES

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