

# POLICING AND CRIME BILL

## EXPLANATORY NOTES ON LORDS AMENDMENTS

### What these notes do

- 1 These Explanatory Notes relate to the Lords Amendments to the Policing and Crime Bill as brought from the House of Lords on 19 December 2016.
- 2 These Explanatory Notes have been prepared by the Home Office in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to HL Bill 55, the Bill as first printed for the Lords.
- 4 These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 Most Lords Amendments were tabled in the name of the Minister.
- 6 Lords Amendments 24 and 159 were tabled by Baroness O'Neill of Bengarve, 96 and 302 by Lord Rosser, 134 and 305 by Baroness Royall of Blaisdon and 136 to 142 and 307 by Baroness Brinton and opposed by the Government.
- 7 Lords Amendments 124, 125 and 127, 160 and 304 were tabled by Lord Sharkey, 126 by Lord Cashman; 128 to 132, 152 (in part), 158, 164, 166 and 168 by Lord Lexden; 135 and 306 by Baroness Finlay of Llandaff and were supported by the Government.
- 8 In the following Commentary, an asterisk (\*) appears in the heading of any paragraph that deals with a non-Government amendment.

### Commentary on Lords amendments

#### Part 1: Emergency Services Collaboration

#### Lords Amendment to clause 2: Duties in relation to collaboration agreements

##### Lords Amendment 1

- 9 Part 1 Chapter 1 of the Bill places a duty on the police, fire and rescue and emergency ambulance services to enter into collaboration agreements where it would be in the interests of their “efficiency or effectiveness” to do so. **Lords amendment 1** would correct one instance where the test was incorrectly specified as “efficiency and effectiveness”.

## Lords Amendment to clause 3: Collaboration agreements: specific restrictions

### Lords Amendment 2

- 10 The Bill already provides that the duty on the emergency services to consider opportunities for entering into collaboration agreements does not apply if a service is of the view that the proposed collaboration would have an adverse effect on either its efficiency or effectiveness. **Lords amendment 2** would make it clear that there is no question of a service being required to collaborate where that would have a detrimental effect on public safety.

## Lords Amendment to clause 4: Collaboration agreements: supplementary

### Lords Amendment 3

- 11 Clause 4(8) of the Bill already provides for a collaboration agreement to be varied by a subsequent new agreement, the implication being that a new agreement is required for any change irrespective of its significance. **Lords amendment 3** would provide that changes to a collaboration agreement may be made either by varying the existing agreement or by replacing it with a new agreement. In either case the agreement of all parties would be needed.

## Lords amendment to clause 7: involvement of police and crime commissioner in fire and rescue authority

### Lords amendment 4

- 12 **Lords amendment 4** to clause 7(11) would limit the territorial application of the amendment made to section 3 of the 2004 Act (which relate to the appointment of a PCC to a combined fire and rescue authority) to England, in line with the other amendments made to that Act.

## Lords Amendments to Schedule 1: provision for police and crime commissioner to be fire and rescue authority and clause 8: combined authority mayors: exercise of fire and rescue functions

### Lords Amendments 5 to 22 and 170 to 223

- 13 Clause 6 of and Schedule 1 to the Bill provide for a police and crime commissioner ("PCC") to take responsibility for the fire and rescue authority ("FRA") in their area. New section 4H of the Fire and Rescue Services Act 2004 ("the 2004 Act") inserted by Schedule 1 to the Bill further provides for PCCs to implement the single employer model, by delegating fire and rescue functions to a single chief officer for policing and fire. Clause 8 makes similar provision for a combined authority mayor to operate the single employer model.
- 14 A PCC, before submitting a proposal to the Home Secretary to take on responsibility for the FRA, is required to "consult" each relevant local authority, and to "make arrangements to seek the views of people" in the police force area. **Lords amendments 193, 194 and 198** would substitute a strengthened duty to "consult" local people and include an explicit duty to consult with persons representing the views of affected employees and members of the police force. Where the relevant upper tier authorities do not agree with the PCC's proposal, the PCC would additionally be required to provide a summary of the views expressed by these

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- representatives to the Home Secretary with the material they provide regarding the summary of views expressed by the public and the representations of the relevant authorities. **Lords amendment 196** would make it clear that it is for the PCC to determine the manner in which to consult. **Lords amendment 195** would require a PCC to publish a response to the local consultation that he or she has undertaken. **Lords amendment 10** would make similar provision for combined authority mayors but only requires them to publish a consultation response where they had undertaken local consultation.
- 15 The Bill provides that an order creating a PCC-style FRA or implementing the 'single employer' model (where a single chief officer is appointed to manage the police force and fire and rescue service) under either a PCC-style FRA or combined authority mayor may only be made where such an order would be in the interests of economy, efficiency and effectiveness, or public safety. **Lords amendments 14, 170 and 180** would make it explicit that no order may be made where it would have an adverse effect on public safety, even if it would be in the interests of economy, efficiency and effectiveness.
  - 16 **Lords amendment 12** would make a drafting amendment.
  - 17 Where one or more relevant local authorities oppose a PCC's proposal, new Schedule A1 to the 2004 Act, inserted by clause 6 of and Schedule 1 to the Bill, requires the Home Secretary to commission an independent assessment of the proposal. In the interests of transparency, **Lords amendments 197 and 199** would place a duty on the Home Secretary to publish that assessment. Similarly where at least two-thirds of the constituent members of the combined authority indicate disagreement with a proposal made by the mayor of a combined authority, the Home Secretary is required under new section 107EB of the Local Democracy, Economic Development and Construction Act 2009, inserted by clause 8 of the Bill, to commission an independent assessment of the proposal. **Lords amendments 11 and 13** would place a duty on the Home Secretary to publish that assessment.
  - 18 New section 4D of the 2004 Act (inserted by paragraph 5 of Schedule 1) sets out further powers of a PCC-style FRA created by an order made under new section 4A of that Act. **Lords amendment 171** to new section 4D(9), which relates to the payment of pensions, would make it clear that this provision relates to an FRA created by an order under section 4A.
  - 19 Under the single employer model, a PCC may delegate the functions of an FRA to the chief constable. An order made under new section 4H of the 2004 Act (inserted by paragraph 5 of Schedule 1 to the Bill) would make provision for such delegation and enable the chief constable to sub-delegate such functions. **Lords amendments 176 to 179, 181 and 184 to 188** to new sections 4H and 4I of, and **Lords amendment 200** to paragraph 4 of new Schedule A2 to, the 2004 Act would ensure that a chief constable would have the flexibility to sub-delegate any functions conferred on him or her by a section 4H order or otherwise conferred on the chief constable by any other enactment. **Lords amendments 5 to 9 and 16 to 19** to clause 8 would achieve the same end where the single employer model is operated by a combined authority mayor.
  - 20 **Lords amendments 172 to 175** to new section 4D(10) and (11) of the 2004 Act (and the new subsection to be inserted after section 4D(11)) also relate to sub-delegation. In this instance the amendments would provide that an order made under new section 4A establishing a PCC-style FRA may provide for the fire and rescue functions of the PCC-style FRA to be sub-delegated to a member of staff of the FRA or to a member of staff of a PCC. In the interests of efficiency and effectiveness, it is expected that where a PCC is both PCC and an FRA, his or her staff would support the PCC in discharging both his or her policing, and fire and rescue functions, for example, there would be a single chief executive and single chief finance officer covering both PCC and FRA functions.

- 21 New section 4L of the 2004 Act confers a power to apply (with any necessary modifications) relevant legislation relating to PCCs to a PCC-style FRA (new section 107EF of the Local Democracy, Economic Development and Construction Act 2009 ("the 2009 Act") makes equivalent provision in respect of the single employer model operated by a combined authority mayor). **Lords amendment 189** would confer similar powers to apply, with any necessary modifications, relevant provisions of fire and rescue related-legislation where the single employer model is in operation. **Lords amendment 20** would make similar provision for combined authority mayors. These new order-making powers would be used, in particular, to ensure that references to employees of an FRA can continue to operate as intended under the single employer model (where they will become employees of the chief constable).
- 22 **Lords amendments 21, 22, 190 and 191** to new section 107EF of the 2009 Act (inserted by clause 8(2)) and to new section 4L of the 2004 Act (inserted by paragraph 5 of Schedule 1) would clarify the meaning of an enactment for the purposes of these provisions.
- 23 Section 21 of the 2004 Act requires the Secretary of State to prepare a Fire and Rescue National Framework which, amongst other things, "must set out priorities and objectives for fire and rescue authorities in connection with the discharge of their functions". **Lords amendment 192** to section 21 would enable the framework to make different provision for PCC-style FRAs than for other FRAs. This provision would recognise that under the single employer model there will be a split between strategic functions discharged by the PCC and operational functions discharged by the chief constable.
- 24 Where a PCC takes on the responsibilities of an FRA, the Bill extends the functions of the corresponding Police and Crime Panel so that it can also scrutinise the PCC in his or her capacity as an FRA. The powers of Police and Crime Panels as set out in the Police Reform and Social Responsibility Act 2011("the 2011 Act") are appropriately modified to this end. **Lords amendments 201 to 203** to paragraph 8 of new Schedule 2A to the 2004 Act would make some technical refinements to these modifications.
- 25 **Lords amendments 216 to 218** would enable a PCC who is both PCC and FRA to issue (in a single document) a joint police and crime plan and fire and rescue plan.
- 26 Where a PCC takes on the responsibilities of an FRA, it is necessary to provide for any complaints against the PCC acting in his or her capacity as an FRA to be dealt with in the same way as complaints against the PCC in relation to the discharge of his or her policing functions. Currently, complaints made about a PCC are dealt with by the relevant Police and Crime Panel or by the Independent Police Complaints Commission ("IPCC"), depending on the nature of the complaint. In order that complaints can be dealt with effectively where they are made against a PCC in respect of their fire and rescue responsibilities, the existing complaints system must be mirrored in regulations so that it can apply in the same way. **Lords amendments 204 and 205** applying section 31 of, and Schedule 7 to, the 2011 Act would provide for this.
- 27 **Lords amendments 206 to 208, 210 to 214 and 223** would make further consequential provision to enactments relating to FRAs to ensure that PCC-style FRAs will have the same powers and duties as other FRAs. **Lords amendment 143** would make a consequential amendment to the extent clause 149.
- 28 **Lords amendment 209** to paragraph 55 of Schedule 1 would make a further consequential amendment to the Local Government and Housing Act 1989 to reflect the definition of the PCC-style FRA's chief finance officer.
- 29 Where a PCC (or combined authority mayor) decides to move to the single employer model,

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- assets, liabilities and staff can be transferred from the former FRA or the PCC-style FRA to the chief officer under a transfer scheme to be made by the Home Secretary. **Lords amendments 15, 182 and 183** would additionally enable the transfer of assets, staff and liabilities back from the chief officer to the PCC-style FRA (or the chief officer to the combined authority).
- 30 Where a PCC takes on the functions of an FRA, the person holding the office of PCC will legally be both a PCC and FRA, the PCC and FRA remaining separate legal bodies. **Lords amendment 215** would amend the legal title of a police and crime commissioner in such cases to: “police, fire and crime commissioner”.
- 31 Similarly, **Lords amendment 219** would amend the legal title of Police and Crime Panels (PCPs) for the police areas where the PCC is also the fire and rescue authority to: “Police, Fire and Crime Panel”.
- 32 **Lords amendments 220 to 222** to paragraph 82 of Schedule 1 would make further consequential amendments to the Localism Act 2011 to provide that a PCC-style FRA is required, in similar manner to other FRAs, to prepare a pay policy statement as required by section 38 of that Act.

## **Lords amendments to Schedule 2: The London Fire Commissioner and new clause: Deputy Mayor for Policing and Crime as member of local authority**

### **Lords amendments 95, 149, 224 to 235 and 301**

- 33 **Lords amendments 224 and 225** to paragraphs 4 and 6 of Schedule 2 would further amend sections 45 (Mayor’s periodic report to the Assembly) and 61 (Power to require attendance at Assembly meetings) of the Greater London Authority Act 1999 in their application to the London Fire Commissioner and, in the case of section 45, to the Mayor’s Office for Policing and Crime.
- 34 **Lords amendment 226** to paragraph 8 of Schedule 2 and new clause 'Deputy Mayor for Policing and Crime as member of local authority', inserted by **Lords amendment 95**, would remove the bar on the Deputy Mayor for Fire and the Deputy Mayor for Policing and Crime becoming or continuing to be a local councillor; there will continue to be a bar on other dual mandates, for example, a Deputy Mayor also being an MP. **Lords amendments 149 and 301** would make consequential amendments to the extent clause and the long title.
- 35 Schedule 2 makes provision for the new London Fire Commissioner. **Lords amendment 233** to paragraph 71 of that Schedule would ensure that the consequential amendment to subsection (5) of section 72 of the Local Government Act 1985 (which relates to the accounts of the London Fire and Emergency Planning Authority) operates on that subsection as amended by the Cities and Local Government Devolution Act 2016. **Lords amendments 232, 234 and 235** would make further minor technical amendments.
- 36 **Lords amendments 230 and 231** to new sections 327H and 327I of the Greater London Authority Act 1999, inserted by paragraph 10 of Schedule 2, would bring the functions of the new Fire and Emergency Committee of the Greater London Assembly more closely into line of those of the Assembly’s Policing and Crime Panel so that the Committee can investigate and report on the actions and decisions of the Deputy Mayor for Fire or on other matters of importance to fire and rescue services in Greater London. **Lords amendments 227 to 229** would replace inadvertent references in new section 327H of the Greater London Authority

Act 1999 to the fire and emergency “panel” rather than the fire and emergency “committee”.

## Lords Amendments to Schedule 3 and clauses 35 and 36: inspection

### Lords Amendments 43 to 46 and 236 to 238

- 37 Chapter 6 of Part 2 confers new powers on Her Majesty's Inspectorate of Constabulary ("HMIC") to access premises and require information for the purpose of an inspection. **Lords amendments 43, 45 and 46** to clauses 35 and 36 would broaden the definition of the premises that HMIC may access for the purposes of inspection to ensure that the new powers apply where police services are being provided by joint working arrangements, for example with another emergency service.
- 38 The amendments would also extend the definition of a police force to ensure that non-policing bodies delivering policing functions are subject to inspection by HMIC, even when they are not acting under formal contractual arrangements.
- 39 **Lords amendment 237** to Schedule 3 would similarly ensure that new inspectors of fire and rescue authorities in England may access premises occupied wholly or partly by a fire and rescue authority.
- 40 **Lords amendments 236 and 238** to Schedule 3 would extend the definition of “relevant persons” required to provide an inspector with information for the purpose of an inspection to ensure it covers all persons undertaking fire and rescue functions. **Lords amendment 44** to clause 35 would make corresponding provision in respect of the inspection of police forces.

## New clause: Fire Safety inspections

### Lords amendment 23

- 41 The Regulatory Reform (Fire Safety) Order 2005 (SI 2005/1541), which relates to non-domestic premises, places a general duty on employers and others to ensure the safety of employees and others on the premises. **Lords amendment 23** would insert new clause 'Fire Safety inspections' to amend the inspection arrangements in respect of Crown and UK Atomic Energy Authority premises as provided for in this Order. It is intended that powers of inspectors set out in article 27 of the Fire Safety Order are available to those inspectors who will, in future, be persons authorised by the Secretary of State to act for the purposes of this Order, rather than fire inspectors or assistant inspectors appointed under the amended section 28 of the 2004 Act. This will ensure that those authorised to act in this capacity have the powers of inspection necessary to carry out their function effectively.

## Part 2: Complaints, Discipline and Inspection

### **\*New clause: Inquiry into complaints alleging corrupt relationships between police and newspaper organisations**

\*Lords amendment 24 and 159

- 42 **Lords amendment 24** would require the Government to instigate an independent inquiry into the police handling of complaints relating to allegations of corrupt relationships between the police and newspaper organisations (similar to Part 2 of the Leveson inquiry). The amendment would require the inquiry to begin within one month of a determination by the Attorney-General that the inquiry would not be likely to prejudice any ongoing relevant criminal investigations or court cases. **Lords amendment 159** would make a consequential amendment to the commencement clause.

### **Lords Amendments to clause 27 and Schedule 6: investigations by the IPCC: whistle-blowing**

Lords Amendments 25 to 29, 239 and 240

- 43 Clause 27, together with Schedule 6, provide the IPCC with a new power to investigate whistle-blowing concerns, strengthening the protections afforded to police whistle-blowers, including the protection of their identity. **Lords amendments 25 and 26** would modify the definition of a 'whistle-blower' to include those raising a concern about matters that occurred in a police force prior to them joining the police, ensuring that where appropriate, historic cases of police misconduct and malpractice may be brought to light by those who were not in the service at the time. In addition, these **Lords amendments** would exclude from the definition of 'whistle-blower' members of a police force who raise a concern about a matter which is already being investigated, for example under the provisions of Part 2 of the Police Reform Act 2002 ("the 2002 Act"). **Lords amendments 27 to 19 and 239 and 240** would clarify that, where a whistle-blower raises a concern about a death or serious injury matter (as defined in the 2002 Act), the concern must be handled under the existing provisions in Part 2 of the 2002 Act, modified to protect the identity of the whistle-blower.

### **Lords Amendments to clause 28 and Schedule 7: disciplinary action against former police officers**

Lords Amendment 30 to 33, 241 and 242, 262, 267 and 268

- 44 Clause 28 extends the police discipline regulations to former officers and special constables after they have resigned or retired from the force. This has the effect of extending the investigation and disciplinary proceedings in limited circumstances where an individual resigns or retires during the course of an investigation or disciplinary proceedings, or where an allegation is made within a specified time limited period after the individual has left policing (the Government intends to specify a 12 month time limit in regulations). The purpose of these provisions is to prevent officers from resigning or retiring in order to evade the outcome of disciplinary or avoid accountability.
- 45 **Lords amendments 30 to 33** would allow investigations to take place outside of the time-limited period and for disciplinary proceedings to be brought in the most serious and exceptional cases.

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- 46 The “exceptional circumstances” test will be applied by the IPCC (and, in due course, the Independent Office for Police Conduct once the reforms to the IPCC’s governance and structure (provided for in Chapter 5 of Part 2 of the Bill) have been commenced). Disciplinary proceedings outside the standard 12 month time limit could only be instigated in cases where the alleged misconduct, inefficiency or ineffectiveness is such that, if proved, the former officer could have been dealt with by dismissal if he or she had still been serving and the IPCC determines that such proceedings would be reasonable and proportionate having regard to:
- the seriousness of the alleged misconduct, inefficiency or ineffectiveness;
  - the impact of the allegation on public confidence in the police; and
  - the public interest.
- 47 Regulations will set out the matters to be taken into account by the IPCC in making this determination. As with the original provisions set out in clause 28 (and the regulations to be made under it), the “exceptional circumstances” test will not operate retrospectively.
- 48 **Lords amendments 241 and 242** would make similar provision in respect of former Ministry of Defence police officers. **Lords amendments 262, 267 and 268** would make consequential amendments to Schedule 9.

## Lords Amendment to clause 29 and Schedule 8: police barred list and police advisory list

### Lords Amendments 34, 243 to 246

- 49 **Lords amendment 34** would respond to a recommendation made by the Delegated Powers and Regulatory Reform Committee (paragraph 18 of the third report of session 2016/17) to provide that regulations made under clause 29(6) may make provision that corresponds or is similar to that made by or under Part 4A of the 1996 Act (inserted by Schedule 8 to the Bill).
- 50 **Lords amendment 243** would respond to a recommendation made by the Delegated Powers and Regulatory Reform Committee (paragraph 15 of the report) to provide that the power conferred by new section 88C(5)(e) of the Police Act 1996 (inserted by Schedule 8 to the Bill) is subject to the affirmative procedure.
- 51 **Lords amendment 244** would clarify the circumstances in which a chief officer is subject to the duty to report resignations and retirements to the College of Policing with a view to the officer’s name being included on the police advisory list. The intention is that the duty to report should only apply in cases where an officer is under active investigation at the time of leaving the force. The amendment would make clear that the duty does not apply in situations where, before the person resigns or retires, the investigation concluded that no disciplinary proceedings should be brought.
- 52 **Lords amendments 245 and 246** are consequential on the amendments to clause 28, so that the provisions for the police advisory list take account of the “exceptional circumstances” test (see paragraph 46 above).

## Lords Amendment to clause 30: Appeals to Police Appeals

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## Tribunals and clause 40: police volunteers: complaints and disciplinary matters

### Lords Amendments 35, 47, 144

- 53 In response to conclusions and recommendations made by the Delegated Powers and Regulatory Reform Committee (paragraph 21 of the third report of session 2016/17), **Lords amendments 35 and 47** would provide for the composition of Police Appeals Tribunals ("PATs") to continue to be specified in primary legislation. As a result of this change, it is no longer necessary to make separate provision for the composition of PATs hearing appeals from Ministry of Defence police officers - accordingly the whole of the revised clause 30 extends to England and Wales only, and **Lords amendment 144** would amend the extent clause accordingly.

## Lords Amendments to clause 32 and Schedule 9: Office for Police Conduct and clause 34: Public records

### Lords Amendments 36 to 42, 247 to 248, 250 to 261, 263 to 266 and 269 to 286

- 54 **Lords amendments 250, 255 and 257** are of a technical nature and would provide for consequential changes to legislation when the structure and governance of the IPCC is reformed and renamed as "The Office for Police Conduct". **Lords amendments 36 to 42, 247, 248, 251 to 254, 258 to 261, 263 to 266 and 269 to 285** would further amend the title to "The Independent Office for Police Conduct".
- 55 **Lords amendment 286** would make technical amendments to the Investigatory Powers Act 2016 to take account of the reforms to the governance and structure of the IPCC. **Lords amendment 145** would make a consequential amendment to the extent clause.
- 56 **Lords amendment 255** would make a drafting amendment.
- 57 Paragraph 56 of Schedule 9 makes certain amendments to Schedule 3 to the 2002 Act which are only to apply if those changes are brought into force before certain other reforms to the police complaints system (as provided for in Schedule 5 to the Bill); **Lords amendment 256** would make a technical amendment to paragraph 56 to adjust these transitional provisions.

## Part 3: Police workforce and representative institutions

### Lords Amendments to Schedules 10, 11 and 12: powers of civilian staff and volunteers

#### Lords Amendments 287 to 291

- 58 Paragraph 7 of the new Schedule 3B to the Police Reform Act 2002, inserted by Schedule 10 to the Bill, provides that civilian staff and volunteers designated under section 38 of the Police Reform Act 2002 by the Metropolitan Police Commissioner may not be authorised to make an application on behalf of the Commissioner for an interception warrant under the Regulation of Investigatory Powers Act 2000. **Lords amendment 287** to paragraph 7 would remove the reference to that Act and replace it with a reference to the Investigatory Powers Act 2016 which makes provision for applications for warrants relating to the interception of communications (and, in consequence, repeals Chapter 1 of Part 1 of the Regulation of Investigatory Powers Act 2000).

- 59 Schedule 11 to the Bill lists bespoke powers that may be conferred on police staff and volunteers in addition to any of the powers of a constable which are not contained in the list of excluded powers. These bespoke powers include a power to search for and seize alcohol which build on the existing power of a constable to require a person to surrender alcohol where it is being consumed in a designated public place. In cross-referencing this existing power, the Bill refers to provisions in section 12 of the Criminal Justice and Police Act 2001 which have been repealed. **Lords amendment 290** to paragraph 4 of Schedule 11 would refer instead to the relevant power of constable in the Anti-social Behaviour, Crime and Policing Act 2014.
- 60 The list of bespoke powers also includes a power to require a person to give his or her name and address, including where that person has committed an offence under a relevant byelaw. **Lords amendments 288 and 289** to paragraph 3 of Schedule 11 would incorporate such a definition (by reference to the definition of a “listed byelaw” in paragraph 3(6)).
- 61 Schedule 12 to the Bill makes amendments to various enactments as a consequence of the provisions enabling chief constables to confer police powers on volunteers as well as civilian employees. **Lords amendment 291** would make a consequential amendment to the Police Act 1996 to ensure that, where forces enter into collaboration agreements, they are able to designate volunteers as well as staff to exercise their powers across the area covered by the collaboration agreement.

## Part 4: Police Powers

### Lords Amendments to clause 62: limits on period of bail without charge under Part 4 of PACE and new clause: PACE: duty to notify person interviewed that not to be prosecuted

#### Lords Amendments 48 to 50, 52

- 62 Chapter 1 of Part 4 of the Bill reforms pre-charge bail to strengthen the protections for persons under investigation by the police but who, at this early stage of the criminal justice process, have not been charged with any offence. **Lords amendments 48 to 50** to clause 62 would confer flexibility on the police so that they can set a bail period within the statutory maximum. **Lords amendment 52** would insert new clause: ‘PACE: duty to notify person interviewed that not be prosecuted’ into the Bill, which would place a duty on the police to notify (in writing) a suspect who has not been arrested when a decision has been taken to conclude the investigation (the Bill already provides for such a duty where a person has been arrested).

### Lords Amendments to clauses 82, 84, 85, 93, 94, 96, 97, 104, 149 and 150 and new Chapter 6A: maritime enforcement

#### Lords Amendments 53 to 73, 146, 150, 154 (in part), 156, 157, 162 (in part), 163, 165, 167 and 169 (in part)

- 63 Chapters 5 and 6 of Part 4 of the Bill strengthen the maritime enforcement powers of the police and other law enforcement agencies. These powers currently apply to the police and other specified law enforcement agencies in England and Wales and Scotland. At the request of the Minister for Justice in Northern Ireland, **Lords Amendments 65 to 73** would insert new Chapter 6A into Part 4 “Police powers: Maritime enforcement: Northern Irish Offences”, which makes analogous provision for law enforcement officers in Northern Ireland to exercise

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the maritime enforcement powers in Northern Ireland waters. **Lords amendments 54 to 56, 58, 60 to 62 and 64** to clauses 84, 85, 93, 96, 97 and 104 would modify the provisions to remove the powers of 'hot pursuit' from England and Wales waters or Scottish waters into Northern Ireland waters. **Lords amendments 146 and 150** would make consequential amendments to the extent clause. **Lords amendments 156, 157, 163, 165, 167 and 169** to the commencement clause would enable the provisions in new Chapter 6A of Part 4 to be brought into force by commencement regulations made by the Department of Justice in Northern Ireland, and enable transitional provision.

- 64 Clause 138 of the Bill enables the Director General of the National Crime Agency (NCA) to designate NCA officers with the powers of a general customs official. **Lords amendments 53, 57, 59 and 63** would make consequential amendments to enable an NCA officer so designated to exercise the maritime enforcement powers in Part 4 of the Bill.

## **Lords Amendments to clause 105 and two new schedules: extension of cross border powers of arrest and new clause: Cross-border enforcement: officers of Revenue and Customs**

### **Lords Amendments 51, 74 to 93, 147, and 292 to 298**

- 65 Chapter 7 of Part 4 of the Bill includes measures to strengthen the existing cross-border powers of arrest contained in Part 10 of the Criminal Justice and Public Order Act 1994 ("the 1994 Act"). The provisions close a gap in the cross-border arrest powers to ensure that a person who commits an offence in one UK jurisdiction can be arrested without a warrant by an officer from the jurisdiction in which the person is found. **Lords amendments 75, 76 and 80** would amend new section 137B of the 1994 Act, while **Lords amendments 92 and 292** would insert a new Schedule 7A to the 1994 Act, to include the specified offences on the face of the 1994 Act. As a consequence, **Lords amendments 77 to 79** would modify the regulation-making power in new section 137B of the 1994 Act, so that it becomes a power to add an offence to, or remove an offence from, the list of offences specified in new Schedule 7A to the 1994 Act. **Lords amendment 147** would make a consequential amendment to the extent clause.
- 66 The list of specified offences includes that in clause 67 of the Bill (offence of breach of pre-charge bail conditions relating to travel). The related **Lords amendment 51** to that clause would clarify that, if a travel-related breach of pre-charge bail conditions is committed, anywhere in the United Kingdom, it will be regarded as having been committed in either England and Wales or Northern Ireland, depending on where the bail was granted. This will ensure that the breach can be prosecuted in the relevant UK courts and will also make sure that the cross-border powers set out in clause 105 to 107 are available to enforce the offence.
- 67 Clause 105 applies certain existing statutory rights to persons arrested under the new power of arrest (for example, in respect of the information to be given to the arrestee), but includes a power to disapply or modify specified enactments. **Lords amendments 82 to 89, 91, 92** and new Schedule 7B to the 1994 Act, inserted by **Lords amendment 293**, would set out the necessary modifications of those enactments on the face of the 1994 Act. The amendments would also modify the regulation-making power in new section 137D so that it becomes a power to add, remove, alter and disapply statutory rights.
- 68 **Lords amendments 81, 90, 297 and 298** would extend the cross border powers of arrest so that they are exercisable by immigration officers and officers of revenue and customs. **Lords amendments 74** would provide that the powers are exercisable by British Transport Police

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officers in respect of offences wherever committed in the UK. **Lords amendments 93 and 294 to 296** would further provide that all of the cross-border powers of arrest will be exercisable by revenue and customs officers in relation to both tax and customs matters, consistent with their functions. Designated customs officials and NCA officers will also be able to exercise cross border powers of arrest.

## **New clause: “Powers to require removal of disguises: oral authorisation”**

### **Lords Amendments 94 and 300**

- 69 **Lords amendment 94** would insert new clause: 'Powers to require removal of disguises: oral authorisation', which would refine the existing police powers in section 60AA of the 1994 Act to require the removal of disguises. The new clause would clarify that the required authorisation by a senior officer to enable an officer on the ground to exercise the powers need not be in writing where it would not be practicable to do so. In such a case, the oral authorisation would need to specify appropriate matters (such as the location where the powers could be exercised) and subsequently be recorded in writing. **Lords amendment 300** would make a consequential amendment to the long title.

## **Part 5: Police and crime commissioners and police areas**

### **\*New clause: Police and crime commissioners: parity of funding at inquests**

#### **\*Lords amendments 96, 302**

- 70 **Lords amendment 96** would require a PCC to make recommendations to the Secretary of State (in practice the Home Secretary) as to whether an individual family or group of families require financial support for legal representation at an inquest to ensure parity of funding between the family or families and other parties to the inquest. The amendment would apply where the PCC's police force is an 'interested person' (as defined by section 47 of the Coroners and Justice Act 2009) for the purposes of the inquest. If the PCC makes such a recommendation, then the amendment would require the Secretary of State to provide financial assistance to the family (or group of families) to ensure parity of funding between the family and any other party. **Lords amendment 302** would make a consequential amendment to the long title.

## **Part 6: Firearms**

### **Lords amendments to clause 111: Firearms Act 1968: meaning of "firearm" etc.**

#### **Lords amendment 97 to 100**

- 71 Clause 111 amends the Firearms Act 1968 ("the 1968 Act") to define a firearm with reference to a "lethal barrelled weapon"; the clause also provides an exception for airsoft guns. To benefit from this exemption, an airsoft gun must discharge a small plastic missile no larger than 6mm in diameter. **Lords amendment 97** would amend the exemption so that it applied to weapons *designed* to discharge only a small plastic missile, regardless of whether they were capable of discharging other kinds of missile. **Lords amendment 98** would clarify that an airsoft weapon

*These Explanatory Notes relate to the Lords Amendments to the Policing and Crime Bill as brought from the House of Lords on 19 December 2016 [Bill 118]*

must have been designed to discharge only *spherical* plastic missiles, while **Lords amendment 99** would increase the maximum permitted diameter of the missile to 8mm. **Lords amendment 100** would make a technical amendment to define automatic fire airsoft weapons.

## Lords amendments to clause 112: Firearms Act 1968: meaning of "antique firearm"

### Lords Amendments 101 to 106

- 72 Clause 112 provides a definition for an antique firearm for the purposes of the 1968 Act, by reference to regulations made by the Secretary of State. **Lords amendments 101 to 104 and 106** would amend this clause to provide that the content of these regulations will relate to the chamber that the firearm had when it was manufactured, or an identical replacement chamber, and to the propulsion system of the firearm.
- 73 The amendments would also amend the regulation-making power to enable the Secretary of State to specify a number of years since the date of manufacture which must have elapsed for a firearm to be an antique firearm, or to specify that the firearm must have been manufactured before a specified date. This will guard against modern reproductions benefiting from the exemption for antique firearms from the controls in the legislation.
- 74 **Lords amendment 105** would further refine the definition of an antique firearm by reference to the propulsion system used, so that it captures antique air weapons (as the regulation of air weapons is a devolved matter in Scotland, this change would apply only in England and Wales).

## Lords amendments to clause 114: controls on defectively deactivated weapons

### Lords Amendments 107 to 110

- 75 In order to be able to enforce any non-compliance with new European deactivation standards for firearms, clause 114 creates a new offence of selling or gifting, or making available for sale or gift, a deactivated firearm within the EU which does not meet the EU standards. **Lords amendments 107 and 108** would remove the link to the EU standards in primary legislation and instead provide for the standards to be specified by the Secretary of State. (While the UK remains a member of the EU, the Government would continue to abide by the EU standards, but these amendments would afford flexibility in the longer term to set our own standards.) **Lords amendments 109 and 110** would also exclude from the ambit of the offence any sale or gift of a defectively deactivated firearm (or an offer to sell or gift such a firearm) from one museum to another, provided that both museums hold a museum firearms licence under the Firearms (Amendment) Act 1988.

## New clause: Controls on ammunition which expands on impact

### Lords Amendments 111 and 152

- 76 The possession of expanding ammunition is generally prohibited under the 1968 Act. However, the 1968 Act allows for expanding ammunition to be held on a suitably conditioned firearm certificate, issued by the police, providing the individual is engaged in a lawful activity such as deer management (indeed the Deer Act 1991, and the equivalent legislation in Scotland, requires the use of such ammunition for the shooting of deer).
- 77 **Lords amendment 111** would insert a new clause to remove the additional requirement in the 1968 Act for special authority for expanding ammunition for rifles. The requirement for special authority in respect of pistol ammunition would remain in place, since it is a requirement of the European Weapons Directive. **Lords amendment 152** would amend the extent clause to provide for the new clause to extend to England, Wales and Scotland.

## New clause: Authorised lending and use of firearms for hunting etc

### Lords amendment 112

- 78 **Lords amendment 112** would insert a new clause: 'Authorised lending and use of firearms for hunting etc', which would extend the effect of section 11(5) of the 1968 Act and section 16 of the Firearms (Amendment) Act 1988 to allow a person to borrow a shotgun or a rifle from a certificate holder for use on private premises for the specific purposes of hunting animals, shooting game or vermin or shooting artificial targets. Both certificate holders with the right to invite guests onto private premises for shooting purposes, and other certificate holders with the written authorisation of such a person, will be able to lend a firearm to a non-certificate holder. A certificate holder who has the written authority of a person with a right to invite guests onto the property for the purposes mentioned above will be able to lend his or her shotgun or rifle to another person. The written authority may be given in general terms, with or without time limit, or be specific to a particular occasion or location.
- 79 The person lending the firearm must be aged 18 or over and the borrower must not be prohibited from possessing a firearm. The borrower of the firearm will have to remain in the presence of either the lender or another relevant certificate holder for the duration of their possession of the firearm.

## New clause: limited extension of firearms certificates etc

### Lords Amendments 113 and 153

- 80 If a firearm certificate expires before the police have completed the renewal process, they either allow the certificate holder to continue with an expired certificate (technically leaving them in unlawful possession of their firearms), or issue a section 7 temporary permit. To improve the efficiency in the firearm certificate renewal process, **Lords amendment 113** would insert a new clause to remove the need to grant temporary certificates and instead provide for the automatic extension of a current certificate's validity until the police reach a decision on renewal. Such an automatic extension would only apply where the application for renewal is made at least eight weeks before the expiry of the existing certificate. Any automatic extension of the life of a certificate would be for a maximum of eight weeks after the expiry date of the certificate. **Lords amendment 153** would amend the extent clause to provide for the new clause to extend to England, Wales and Scotland.

## New clause: possession of pyrotechnic articles at musical events

### Lords Amendments 114, 151 and 303

- 81 **Lords amendment 114** would insert a new clause: 'possession of pyrotechnic articles at musical events' to make it an offence, in England and Wales, to be in possession (without the consent of the organiser of the event) of a firework, flare or other pyrotechnic article at a place where a qualifying musical event is being held, any other place that is being used to regulate entry to or departure from the event, or any other place providing facilities to attendees of the event. A qualifying music event would be defined in regulations (subject to the negative procedure). The maximum penalty for this summary only offence would be three months' imprisonment or a level 3 fine (currently £1,000). **Lords amendments 151 and 303** make consequential amendments to the extent clause and long title.

## Part 7: Alcohol Licensing

### Lords Amendments to clause 119: Summary review of premises licenses: review of interim steps

#### Lords Amendment 115

- 82 Under the Licensing Act 2003 ("the 2003 Act") the police may make an application for a summary review of a premises licence, if the relevant premises are associated with serious crime or serious disorder. Clause 119 requires the licensing authority to determine at the review hearing what interim steps should be in place pending the outcome of any appeal, or the expiry of the time limit for making an appeal. The Bill as brought forward from the Commons provided that the licensing authority must determine whether to withdraw or modify the interim steps that have been imposed; **Lords amendment 115** would make it clear that conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

### Lords Amendments to clause 120: Personal licences: licensing authority powers in relation to convictions

#### Lords Amendments 116

- 83 The provisions in clause 120 enable licensing authorities to review a personal licence where the licence holder has been convicted of a relevant offence or, in the case of relevant immigration offence, has been required to pay an immigration penalty. **Lords amendment 116** would make an amendment to the 2003 Act consequential to the Immigration Act 2016.

## New clause: Cumulative impact assessments

### Lords Amendment 117

- 84 Cumulative Impact Policies ("CIPs") assist licensing authorities in carrying out their functions in relation to controlling the number or type of licence applications granted in an area where there is evidence of problems. CIPs are currently set out in the statutory guidance<sup>1</sup> and there

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<sup>1</sup> <https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued->

are over 200 in place in England and Wales. The Modern Crime Prevention Strategy<sup>(2)</sup> committed to putting cumulative impact policies on a statutory footing in order to provide greater clarity and certainty about their use.

- 85 **Lords amendment 117** would insert a new clause: Cumulative impact assessments, which would provide that a licensing authority may publish a cumulative impact assessment if it considers that the number of licensed premises in an area is such that it is likely that granting further licences would be inconsistent with its duty to promote the licensing objectives. The licensing authority must publish the evidence for its opinion and consult the list of persons set out at section 5(3) of the 2003 Act before publishing the assessment. A cumulative impact assessment does not prevent the grant or variation of licences, and a responsible authority or other person will need to make a representation if they wish to challenge the application. If no representations are made, the licence would be granted, if the other relevant conditions are met, as is the case for all applications under the 2003 Act. The licensing authority would be required to consider whether it still holds the opinion which forms the basis of the cumulative impact assessment at least every three years, and set out the evidence for its opinion. This new clause would confer a discretionary power; licensing authorities would not be required to consider the cumulative impact of licensed premises in their area.

## New clause and new Schedule: Late night levy requirements

### Lords Amendment 118 and 299

- 86 The late night levy allows licensing authorities to charge licensed premises operating between midnight and 6am, based on consideration of the costs of policing the night time economy. Late night levies were introduced in 2012, but only seven licensing authorities have implemented a levy. **Lords amendments 118 and 299** would insert new clause and new Schedule 'Late night levy requirements', which would make a number of changes to the way the levy operates in order to increase the uptake and thereby increase the revenue raised towards the cost of policing. The changes would:

- allow licensing authorities to target specific geographical locations (rather than, as now, the whole of the local authority area);
- extend the levy to include late night refreshment outlets;
- enable PCCs to request the licensing authority to propose introducing a levy; and
- require licensing authorities to publish information about how funds raised by the levy are spent so that those paying it are clearer about how it is being used.

## Part 8: Financial sanctions

### Lords amendments to clause 127: Monetary penalties: procedural rights

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under-s-182-of-licensing-act-2003 - see in particular paragraph 13.20-13.39

2 Modern Crime Prevention Strategy, Home Office, March 2016

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## Lords amendment 119

- 87 Part 8 of the Bill strengthens the arrangements for implementing and enforcing financial sanctions, including new powers to impose monetary penalties on those that breach sanctions in the UK. The clauses provide no right of appeal against a monetary penalty, although decisions to impose penalties are subject to Judicial Review. **Lords amendment 119** would provide a right of appeal against a monetary penalty to the Upper Tribunal (this will enable a full merits hearing on points of law and fact).

## Lords amendments to clause 136: extension to the Channel Islands, Isle of Man and BOTs

### Lords amendments 120 and 121

- 88 Clauses 132 to 135 enable the UK to take measures to bridge the time gap between the adoption of relevant UN Security Council resolutions requiring asset freezes to be put in place "without delay" and EU transposition of those measures. Clause 136 enables the extension of the "without delay" measures to the Crown Dependencies and the Overseas Territories by Order in Council, where they do not have "without delay" measures of their own in place. The Government of Jersey has taken its own legislative steps to implement sanctions "without delay" and so the power to extend is no longer necessary in respect of them; accordingly **Lords amendments 120 and 121** would exclude Jersey from the scope of clause 136.

## Part 9: Miscellaneous and general

## Lords amendments to clause 140: Requirement to produce nationality document and new clause "Pilot schemes"

### Lords amendments 122, 123 and 148

- 89 Clauses 139 and 140 amend the UK Borders Act 2007 to confer on the police and immigration officers the power to require a person to provide their nationality following arrest and to require suspected foreign nationals to produce their nationality document(s). **Lords amendment 122** would respond to recommendations from the Joint Committee on Human Rights (third report of session 2016/17) by providing, on the face of the Bill, that a person may produce alternative documentary evidence, to a passport, to establish their entitlement to British citizenship. **Lords amendment 123** would insert new clause: 'pilot schemes', which will enable these provisions to be piloted in one or more police force areas. **Lords amendment 148** would make a consequential amendment to the extent clause.

## \*New clauses: Pardons for certain abolished offences etc

- 90 **Lords amendments 124 to 132** would insert nine new clauses to provide pardons, subject to conditions, for individuals, living or deceased, who were convicted of, now repealed, gay sex offences.

## \*Lords Amendment 124: Posthumous pardons for convictions etc of certain abolished offences: England and Wales

- 91 *Subsections (1) and (2)* of the new clause would automatically confer a posthumous pardon on any person who died before the clause comes into force and who was convicted of, or

cautioned for, a specified offence, where the relevant conduct was consensual and involved another person aged 16 or over (the current age of consent) and that conduct would not constitute an offence of sexual activity in a public lavatory under section 71 of the Sexual Offences Act 2003.

92 *Subsections (3) and (4)* set out the offences eligible for a pardon, namely those in sections 12 (buggery) and 13 (gross indecency between men) of the Sexual Offences Act 1956 and similar historical offences, including those applicable to the armed services.

93 *Subsection (6)* would apply definitions used in Chapter 4 of Part 5 of the Protection of Freedoms Act 2012 ("the 2012 Act").

#### \*Lords Amendment 125: Other pardons for convictions etc of certain abolished offence: England and Wales

94 *Subsections (1) to (3)* of the new clause would automatically confer a pardon on any living person who has had, or in future has, a relevant conviction or caution disregarded under the provisions of Chapter 4 of Part 5 of the 2012 Act. *Subsection (4)* would apply definitions used in that Act.

#### \*Lords Amendment 126: Power to provide for disregards and pardons for additional abolished offences in England and Wales

95 **Lords Amendment 126** would enable the Secretary of State, by regulations subject to the affirmative procedure, to add further offences to the list which can be considered for a disregard under section 92 of the Protection of Freedoms Act 2012. An offence may only be added if:

- it was an offence under the law of England and Wales;
- it is no longer such an offence;
- the offence expressly regulated homosexual activity, or it appears to the Secretary of State that those responsible for investigating occurrences of the offence targeted occurrences involving, or connected with, homosexual activity.

96 Regulations adding an offence must also make provision for pardons for that offence.

#### \*Lords Amendment 127: Supplementary

97 This clause would provide that the pardon does not affect any conviction, caution or sentence, or give rise to any right, entitlement or liability. It would also preserve the power of Her Majesty to grant a Royal pardon.

#### \* Lords Amendments 128 to 132: disregards and pardons for certain abolished offences: Northern Ireland

98 **Lords Amendments 128 to 132** would make corresponding provision for Northern Ireland in respect of the disregard scheme in the 2012 Act, posthumous pardons for persons with historical convictions for offences involving consensual gay sexual activity between persons aged 17 or over, and pardons to living persons whose conviction(s) for such an offence is disregarded under provisions of the 2012 Act, as amended.

99 The amendments would provide that a person only qualifies for a disregard or pardon if the other person involved in the conduct consented and was aged 17 or over (rather than aged 16 or over as is the case for England and Wales). The Northern Ireland Scheme would be slightly modified from the England and Wales scheme to reflect relevant offences in Northern Ireland

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and to place the responsibility for determining applications for a disregard on the Department of Justice rather than the Secretary of State.

**\*Lords Amendments 154, 158, 160, 164, 166, 168, 169 and 304**

100 **Lords amendment 154, 158, 160, 164, 166, 168, 169 and 304** would make consequential amendments to the extent and commencement clauses and to the long title of the Bill.

## **New clause: Anonymity of victims of forced marriage: Northern Ireland**

**Lords Amendments 133, 154 and 161**

101 Clause 143 confers lifelong anonymity on the victims of forced marriage in England and Wales. At the request of the Northern Ireland Minister of Justice, **Lords amendments 133** would make equivalent provision for Northern Ireland. **Lords amendments 154 and 161** would make consequential amendments to the extent and commencement clauses.

## **\*New clause: Sentencing for stalking offences**

**\*Lords Amendments 134 and 305**

102 **Lords amendment 134** would increase the maximum penalty for the offence of stalking involving fear of violence or serious alarm or distress under section 4A of the Protection from Harassment Act 1997 from the current term of five years to ten years' imprisonment. Where the offence is racially or religiously aggravated the maximum penalty would be increased from seven to fourteen years' imprisonment. **Lords amendment 305** would make a consequential amendment to the long title.

## **\*New clause: Coroners investigations into deaths: meaning of "state detention"**

**\*Lords Amendment 135 and 306**

103 **Lords amendment 135** would insert a new clause to amend section 48 of the Coroners and Justice Act 2009 ("the 2009 Act"). The amendment would remove the duty on coroners under section 1 of the 2009 Act to conduct an inquest in all cases where the deceased had an authorisation for the deprivation of their liberty in place either under Deprivation of Liberty Safeguards or a Court of Protection Order or the deprivation of liberty was otherwise authorised by the Mental Capacity Act 2005. **Lords amendment 306** would make a consequential amendment to the long title.

## **\*New clauses: Victims**

**\*Lords amendment 136: Police observance of the Victims' Code: enforcement**

104 **Lords amendment 136** would amend the Parliamentary Commissioner Act 1967 to provide a direct route of complaint by a member of the public to the Parliamentary Commissioner for Administration (known as the 'Parliamentary Ombudsman'). Such complaints would relate to the failure of a police officer or police service employee to perform a duty owed to the

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complainant under the Victim's Code. *Subsection (3)* would enable the Secretary of State, by regulations, to amend the categories of person against which such a complaint could be brought.

105 *Subsection (9)* would enable the Parliamentary Commissioner to investigate such complaints and issue a report to specified individuals, including the Commissioner for Victims and Witnesses. *Subsection (10)* would provide that if the complaint is upheld but not remedied, the Parliamentary Commissioner must lay a special report before both Houses of Parliament, and may send the report to anyone he or she considers appropriate.

106 **Lords amendment 307** would make a consequential amendment to the long title to take account of the new clauses that would be inserted by Lords amendments 136 to 142..

#### \* **Lords amendment 137: Police etc. provision for victims' entitlement: framework**

107 **Lords amendment 137** would confer various entitlements on victims of crime. *Subsection (1)* would require the Code of Practice for Victims of Crime, as provided for by section 32 of the Domestic Violence, Crime and Victims Act 2004, to set out entitlements in respect of the accurate and timely provision of information from criminal justice agencies. *Subsections (2) to (10)* would provide for other entitlements, including in relation to the information victims are to receive; the treatment of victims during criminal justice proceedings; special measures in court for children and vulnerable adults, and access to advice and support, including financial support.

#### \* **Lords amendment 138: Police etc. training on treatment of victims: strategy**

108 **Lords amendment 138** would require the Secretary of State to publish and implement a strategy for providing training on the impact of crime on victims and victims' rights for the police, Crown Prosecution Service and any other body the Secretary of State considers appropriate.

109 *Subsection (2)* would enable the Secretary of State, by regulations, to provide for judges, barristers and solicitors involved in criminal cases involving stalking, coercive control, and sexual and domestic violence to undertake specialist training.

110 *Subsection (3)* would require the Secretary of State to publish a timetable for delivery and completion of the training.

#### \* **Lords amendment 139: Training on treatment of victims: duty to report**

111 **Lords amendment 139** would place a duty on the Secretary of State to collect data and report on the training of the police and Crown Prosecutors on the subjects of stalking, coercive control and the Victim's Code, and on instances of non-compliance with the Victims' Code.

112 *Subsection (2)* would require the Justice Secretary to lay the report annually before both Houses of Parliament; *subsection (3)* would require the first such report to be published within a year of this new clause coming into force.

#### \* **Lords amendment 140: Statutory duty on elected policing bodies**

113 **Lords amendment 140** would require PCCs (and, in London, the Mayor's Office for Policing and Crime, and the City of London) to assess the needs of victims and the adequacy and effectiveness of victims' services in their police areas. *Subsection (2)* would require the PCC to consult on an Area Victims' Plan for his or her area, setting out how victims' needs will be met by the available victims' services, taking into account any responses to the consultation and any Quality Standard provided for under **Lords amendment 141**. *Subsection (2)(c)* would

require the PCC to submit the plan to the Victims' Commissioner annually.

#### \*Lords amendment 141: Duties of the Commissioner for Victims and Witnesses

114 **Lords Amendment 141** would amend the Domestic Violence Crime and Victims Act 2004 to extend the Victims' Commissioner's role, by requiring them to:

- assess PCC's Area Victims' Plans provided under **Lords amendment 140** and make recommendations;
- following public consultation, to publish a statement of standards (the 'Quality Standard') in relation to the provision of victims' services, to be reviewed every five years;
- assess support for victims and witnesses giving evidence and make recommendations; and
- publish guidance on the conduct of homicide reviews, as provided for under **Lords amendment 142**.

#### \*Lords amendment 142: Establishment and conduct of homicide reviews

115 **Lords amendment 142** would establish a framework for reviews in homicide cases where no offender has been brought to justice or there has been an acquittal.

116 *Subsections (1) and (2)* would provide that, where someone over 16 years old may have been a victim of a homicide and no one has been charged with the homicide, or the person(s) charged has been acquitted, the Secretary of State (in practice the Home Secretary) may direct a police force - or other bodies stipulated in *subsection (5)* - to establish a homicide review. The new clause would also enable the Secretary of State to direct a police force or other person or body to participate in a review.

117 *Subsection (3)* would place a statutory duty on persons or bodies establishing or participating in a homicide review to have regard to any guidance and standards issued by the Commissioner for Victims and Witnesses as to the establishment and conduct of such reviews.

118 The other bodies set out in subsection (5) include local authorities and health bodies including clinical commissioning groups, local health boards and NHS trusts.

## Lords Amendments to Clause 149: Extent

### Lords Amendment 155

119 Clauses 139 and 140 amend the UK Borders Act 2007 ("the 2007 Act") to confer on the police and immigration officers the power to require a person to provide their nationality following arrest and to require suspected foreign nationals to produce their nationality document(s). The 2007 Act includes a power to extend the provisions of that Act to the Crown Dependencies by Order in Council; **Lords amendment 155** would ensure that that power applies to the 2007 Act as amended by the Bill.

## Financial Effects of Lords Amendments

- 120 **Lords amendment 24** inserting new clause: 'Inquiry into complaints alleging corrupt relationships between police and newspaper organisations' would incur costs in setting up and running an inquiry. This could be expected to cost a similar amount to Part 1 of the Leveson inquiry, which was £5.4m.
- 121 **Lords amendment 96** inserting new clause: 'Police and crime commissioners: parity of funding at inquests' would impose significant costs on the Secretary of State. Although these cannot be quantified at this stage, an indication of scale is given by the fact that, in 2015/16, there were 200 deaths following contact with the police, all of which would have been subject to an inquest. It should also be noted that, while an exceptional case, the cost of the legal representation for the 103 families at the Hillsborough inquests was £63.6m.
- 122 **Lords amendment 114** inserting new clause 'Possession of pyrotechnic articles at musical events' can be expected to lead to a small number of prosecutions for the new offence. The cost of the new offence to the criminal justice system is estimated to be £0.3m per annum.
- 123 **Lords amendment 117** inserting new clause 'Cumulative impact assessment' would result in an estimated annual cost to local authorities of £29,000, due to the requirement on licensing authorities to conduct and publish the outcome of a review of the evidence supporting cumulative impact policies at least every three years. The expected benefits will be to assist local authorities and the police to more effectively manage alcohol-related crime and disorder, with the potential to reduce monitoring and enforcement costs in the longer-term.
- 124 **Lords amendments 118 and 299** inserting new clause and new Schedule 'Late Night Levy' is expected to entail a one-off cost to local authorities for running consultations of approximately £0.22m; this will be offset by the benefits to local authorities and police forces of an estimated £8.6m per year. The licensing authority's administrative expenses are deducted from the money raised, so that the levy is not an additional burden on the licensing authority's budget.
- 125 **Lords amendments 128 to 132** inserting new clause 'Disregarding certain convictions etc for abolished offences: Northern Ireland' would incur some costs associated with the administration of a disregard scheme in Northern Ireland.
- 126 **Lords amendment 134** inserting new clause: 'Sentencing for stalking offences' would result in an estimated requirement for an additional 10 prison places per year in steady state, costing some £250,000 per year (steady state would be expected to be reached some two years following commencement).
- 127 **Lords amendment 135** inserting new clause: 'Inquests into deaths of persons subject to registered deprivation of liberty safeguards' would reduce the number of inquests undertaken by coroner services back to levels seen before the increase in inquests that resulted from the Supreme Court decision in the Cheshire West case. That produced an unfunded pressure on coroner services which this amendment would remove.
- 128 **Lords amendments 136 to 142** inserting seven new clauses relating to victims would place new responsibilities on the Parliamentary Ombudsman (that is, the Parliamentary Commissioner for Administration), police forces and other criminal justice agencies, the Secretary of State, police and crime commissioners and the Commissioner for Victims and Witnesses. These are uncoded, but imply new, potentially significant, financial burdens on the affected persons.

129 The other Lords amendments are not expected to have a material financial impact on public sector bodies.

## European Convention on Human Rights implications

### Lords amendment 135: coroners investigations into deaths: meaning of 'state detention'

130 Article 2 of the European Convention on Human Rights ("ECHR") imposes a positive "procedural" or "investigative" duty to conduct a proper and open investigation into deaths for which the State "might be responsible". Case law has established that the investigative duty arises automatically in some circumstances (for example a death in prison custody) but this does not include deprivation of liberty under mental capacity legislation.

131 It is the Government's view that the investigative duty under Article 2 ECHR is satisfied by the existing duty of coroners in section 1 of the Coroners and Justice Act 2009 to hold an inquest in all cases where the death was violent, unnatural, or of unknown cause. It is therefore the Government's view that **Lords amendment 135**, which removes the requirement for an automatic inquest in all cases where a person is deprived of their liberty under the Mental Capacity Act 2005, is compatible with Article 2 ECHR.

132 An inquest should be held in respect of the death of a person deprived of liberty under mental capacity legislation in any case where there is evidence to suggest that the state may have some responsibility for the death. A referral to the coroner can be made at any time after death by anyone who has a concern about the circumstances of the death.

# **POLICING AND CRIME BILL**

## **EXPLANATORY NOTES ON LORDS AMENDMENTS**

These Explanatory Notes relate to the Lords Amendments to the Policing and Crime Bill as brought from the House of Lords on 19 December 2016.

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