

*These notes refer to the Police Reform and Social Responsibility Bill
as brought from the House of Commons on 1st April 2011 [HL Bill 62]*

POLICE REFORM AND SOCIAL RESPONSIBILITY BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Police Reform and Social Responsibility Bill as brought from the House of Commons on 1st April 2011. They have been prepared by the Home Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

OVERVIEW

3. The Police Reform and Social Responsibility Bill comprises of five Parts and seventeen Schedules. The explanatory notes are divided into five Parts reflecting the structure of the Bill. A summary of each Part is provided below. Commentary on each Part is then set out in clause order, with the commentary on each Schedule following the clause that introduces it.
4. **Part 1: Police Reform** contains provisions to abolish police authorities (excluding the City of London) and replace them with directly elected Police and Crime Commissioners for each police force outside London, and the Mayor's Office for Policing and Crime for the Metropolitan Police.
5. Police and Crime Commissioners will be responsible for holding the chief constable of their police force to account for the full range of their responsibilities. The chief constable will retain responsibility for the direction and control of the police force. Part 1 also contains provisions for establishing Police and Crime Panels for each police area. The role of the Police and Crime Panel will be to advise and scrutinise the work of the Police and Crime Commissioner.

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6. Part 1 states the basic duties of a Police and Crime Commissioner. These include publishing a police and crime plan, setting the local police and crime objectives, and setting the local precept and annual force budget (including contingency reserves) in discussion with the chief constable. Provisions are also included in Part 1 for Police and Crime Commissioners to appoint, suspend and dismiss the chief constable of their police force. The appointment of all other officers will remain a matter for the chief constable.

7. Part 1 makes provisions for replacing the Metropolitan Police Authority with the Mayor's Office for Policing and Crime, to be run by the Mayor of London. The Mayor's Office of Policing and Crime will have the same powers as a Police and Crime Commissioner, except appointing the Metropolitan Police Service Commissioner and Deputy Commissioner (the Queen will continue to appoint both the Metropolitan Commissioner and Deputy Metropolitan Commissioner on the advice of the Home Secretary). A committee of the London Assembly will act as the Police and Crime Panel for the metropolitan police district. The composition of the panel is at the discretion of the London Assembly (and it may therefore include independent members).

8. Part 1 also contains provisions for the first and subsequent elections of Police and Crime Commissioners. Police and Crime Commissioners will hold office for four years and can only hold office for a maximum of two terms. The two terms need not be consecutive.

9. **Part 2: Licensing** contains provisions to amend the Licensing Act 2003 to give licensing authorities, the police, local authorities with responsibility for controlling noise nuisance, and communities an increased role in licensing decisions. Provisions also enable Primary Care Trusts (and Local Health Boards in Wales) to have a say in licensing processes.

10. **Part 2** gives greater powers to licensing authorities to remove or refuse licences by enabling them to fulfil the same functions as existing responsible authorities, and to communities to make representations in relation to licensing decisions or call for a review of licensed premises. There is provision for doubling the maximum fine for premises which persistently sell alcohol to those under 18, and increasing the period of suspensions which can be imposed on such premises. Provisions reduce the evidential burden on licensing authorities and the police when making decisions under the Licensing Act 2003. Provisions also give licensing authorities greater flexibility in making early morning restriction orders; they will be able to make such orders for the whole, or part, of their areas for a period of any duration between midnight and 6am, and will be able to impose different restrictions on different days.

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11. Part 2 introduces greater flexibility in relation to the scrutiny and utility of temporary event notices. The police and local authorities exercising environmental health functions will be able to object to a temporary event notice on the basis of all the licensing objectives in the Licensing Act 2003, and licensing authorities will be able to impose conditions on a temporary event notice in limited circumstances. Provisions will also enable premises users, in any calendar year, to hold a single event under a temporary event notice for up to seven days, use a single premises for up to 21 days and to give a limited number of temporary event notices later than the existing process permits.

12. Part 2 will bolster the ability of licensing authorities to enforce payment of unpaid fees by providing for the suspension of a premises licence or club premises certificate for non-payment of an annual fee. Provisions also impose a requirement on the Secretary of State to review the impact of all the amendments introduced by Part 2 into the regulatory regime under the Licensing Act 2003 after a period of five years following their coming into force.

13. Part 2 makes provision to enable licensing authorities to introduce a levy in their areas which will be payable by premises which supply alcohol as a part of the late night economy. Licensing authorities will be able to impose the levy on such premises for a period of any duration between midnight and 6am, although some premises may benefit from an exemption or discount. At least 70% of the funds generated by the levy will be paid to the police and crime commissioner and it is intended also to pay such funds to bodies which operate measures to address the effect of alcohol related crime and disorder.

14. **Part 3: Parliament Square Garden and surrounding area** contains a new legal framework for Parliament Square which aims to prevent encampments and other disruptive activity. The provisions confer power on constables and authorised officers to prohibit persons from engaging in certain activities in a specified area of Parliament Square (being the central garden area and adjoining pavements), including the unauthorised operation of any amplified noise equipment; the erection and keeping of tents or other structures designed to facilitate sleeping or staying in a place for any period; the using of any tent or structure to sleep or stay in the area, and the placing or using of any sleeping equipment for the purpose of sleeping overnight in the area.

15. Part 3 also repeals existing provisions governing protests in the vicinity of Parliament set out in sections 132-138 of the Serious Organised Crime and Police Act 2005. The 2005 Act made it an offence to organise or take part in a demonstration in the designated area around Parliament without the authorisation of the Metropolitan Police or use a loudspeaker in the designated area. One of the effects of repeal is that section 14 of the Public Order Act 1986 (powers to impose conditions on assemblies) will once again apply to static demonstrations held in the

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area around Parliament, thereby bringing the policing of protests back in line with the policing of protests in the rest of the country.

16. **Part 4: Miscellaneous** amends the Greater London Authority Act 1999 and the Local Government Act 1972 to enable local authorities to attach powers of seizure and retention of any property in connection with any breach of a byelaw made under section 385 of the Greater London Authority Act and section 235 of the Local Government Act.

17. **Part 4: Misuse of drugs** amends the Misuse of Drugs Act 1971 by introducing a new power for the Secretary of State temporarily to control a substance for up to one year by statutory instrument.

18. There are also measures in Part 4 to amend the constitution of the Advisory Council on the Misuse of Drugs by removing the statutory requirement on the Secretary of State to appoint members with experience in specified activities. This will allow for greater flexibility in the membership of the Advisory Council on the Misuse of Drugs.

19. **Part 4: Arrest warrants** gives effect to a commitment of the Justice Secretary announced in a Written Ministerial Statement on 22nd July 2010 that the Government intended to bring forward a legislative amendment to require the consent of the Director of Public Prosecutions (DPP) before an arrest warrant can be issued on the application of a private prosecutor in respect of offences over which the United Kingdom has asserted universal jurisdiction. These offences, which include war crimes under the Geneva Conventions Act 1957, may be tried in England and Wales notwithstanding that the crime took place outside the United Kingdom, and regardless of the nationality or residence of the offender. Requiring the DPP's consent is intended to ensure that an arrest warrant is issued only where there is a prospect of successful prosecution.

20. **Part 5: Final Provisions** contains technical clauses on orders and regulations, money, the territorial extent of the Bill, how clauses are to be commenced and the short title for the Bill.

PART 1- POLICE REFORM

Police areas outside London

Clause 1: Police and crime commissioners

21. Clause 1 creates a new directly elected police and crime commissioner for each police force area in England and Wales outside London.

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22. *Subsection (2)* provides that the police and crime commissioner will be a corporation sole. This means that the office will have its own legal personality, distinct from that of the person holding it, and it is in this separate capacity that the police and crime commissioner will own property, employ staff, make contracts and take part in legal proceedings.

23. *Subsections (5) to (7)* set out the core functions of police and crime commissioners, which are to secure the maintenance of an efficient and effective police force, and to hold the chief constable to account for the exercise of his functions. These are the functions currently carried out by police authorities.

24. *Subsection (8)* sets out a number of functions in respect of which, in particular, the police and crime commissioner must hold the chief constable to account.

25. *Subsection (9)* abolishes all police authorities under section 3 of the Police Act 1996.

26. *Subsection (10)* introduces Schedule 1.

Schedule 1: Police and Crime Commissioners

27. Schedule 1 deals with a number of ancillary matters in relation to police and crime commissioners such as remuneration, staff and powers.

28. Paragraphs 2 to 5 provide for a police and crime commissioner to receive a salary, allowances and a pension. The amount of the salary and allowances, and the amount to be paid by the police and crime commissioner in respect of pensions, will be determined by the Secretary of State, and these determinations will be published.

29. Paragraphs 6 and 7 set out the powers and duties of police and crime commissioners in respect of staff. The police and crime commissioner must appoint a person to be head of his staff (referred to in the Bill as his chief executive) and a person to be responsible for the administration of his financial affairs (referred to in the Bill as his chief finance officer), and may appoint other staff. Paragraphs 87 to 91 and 94 to 95 of Part 3 of Schedule 12 amend the relevant provisions in local government legislation with the effect that the chief executive and chief finance officer have the same powers and duties as their equivalents in local authorities. In particular, the chief finance officer will automatically be designated as monitoring officer, with the duty of making a report in relation to any unlawful conduct or maladministration by the police and crime commissioner.

30. Paragraph 8 allows the police and crime commissioner to pay his staff.

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31. Paragraph 9 provides a police and crime commissioner with a general power to do anything intended to allow or assist him in discharging his functions.

32. Paragraph 10 protects a police and crime commissioner and any member of his staff from personal liability in respect of acts done in the course of their duties and in good faith.

Clause 2: Chief constables

33. Clause 2 provides for each police force to have a chief constable.

34. *Subsection (3)* places the members of the police force and the force's civilian staff under the direction and control of the chief constable. This reflects the existing position for chief constables.

35. *Subsection (6)* makes *subsection (3)* subject to any provision in a collaboration agreement which may place members of the police force or civilian staff under the direction and control of the chief constable of another force.

36. *Subsection (7)* introduces Schedule 2.

Schedule 2: Chief Constables

37. Schedule 2 deals with a number of ancillary matters in relation to chief constables such as the appointment of staff.

38. Paragraph 2 provides for the chief constable to be a corporation sole. At present the office of chief constable is unincorporated and does not constitute a separate legal personality to the person holding it. This change is necessitated by the change in the employment arrangements for the civilian staff engaged to support the police force. At present these staff are employed by the police authority, but in future they will be employed by the chief constable. By allowing the chief constable to appoint these staff in his corporate rather than his personal capacity, paragraph 2 ensures that any rights and liabilities under the contracts of employment will pass to the chief constable's successor when he leaves office.

39. Paragraphs 4 and 5 require the chief constable to appoint a person to be responsible for the administration of the police force's financial affairs (referred to in the Bill as the police force's chief finance officer), and allows him to appoint such other civilian staff as the chief constable thinks appropriate.

40. Paragraph 6 allows a chief constable to pay his staff.

41. Paragraph 7 gives chief constables a general power to do anything intended to allow or assist him in discharging his functions, but he may only acquire and

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dispose of property, and borrow money with the consent of the police and crime commissioner. This reflects the fact that the assets of a police force will be owned by the police and crime commissioner, in the same way that they are currently owned by the police authority.

42. Paragraph 8 requires the police and crime commissioner to pay, out of the police fund, damages, costs etc awarded against the chief constable in any legal proceedings against him arising from unlawful acts by his civilian staff. Paragraph 8 also allows, but does not require, the police and crime commissioner to pay damages, costs etc awarded against members civilian staff themselves. This replicates the existing position in respect of legal proceedings arising from unlawful acts by police officers.

Metropolitan Police District

Clause 3: Mayor's Office for Policing and Crime

43. Clause 3 creates a new body, the Mayor's Office for Policing and Crime.

44. *Subsection (2)* provides that the Mayor's Office for Policing and Crime is a corporation sole, with a separate legal status to the person occupying the office.

45. *Subsections (3) and (4)* provide that the Mayor of London for the time being is to be the occupant of the Mayor's Office for Policing and Crime, the two offices being coterminous as regards their duration.

46. *Subsections (5) to (7)* set out the core functions of the Mayor's Office for Policing and Crime, which are to secure the maintenance of an efficient and effective metropolitan police force, and to hold the Commissioner of Police of the Metropolis to account for the exercise of his functions. These are the functions currently carried out by the Metropolitan Police Authority.

47. *Subsection (8)* sets out a number of functions in respect of which, in particular, the Mayor's Office for Policing and Crime must hold the chief constable to account.

48. *Subsection (9)* amends the Greater London Authority Act 1999 with the effect that the Mayor's Office for Policing and Crime becomes a functional body of the Greater London Authority.

49. *Subsections (10) and (11)* ensure that a person acting as Mayor of London in the event of a vacancy in the office or the incapacity of the Mayor will occupy the Mayor's Office for Policing and Crime.

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50. *Subsection (12)* abolishes the Metropolitan Police Authority as it is replaced by the Mayor's Office for Policing and Crime.

51. *Subsection (13)* introduces Schedule 3.

Schedule 3: Mayor's Office for Policing and Crime

52. Schedule 3 deals with a number of ancillary matters in relation to the Mayor's Office for Policing and Crime such as remuneration, staff and powers. To a large degree these are consistent with the provision for police and crime commissioners in Schedule 1.

53. Paragraph 1 provides for the Mayor to receive allowances, to be determined by the Secretary of State, in respect of his occupation of the Mayor's Office for Policing and Crime (there is already provision in the Greater London Authority Act 1999 for the Mayor, in his capacity as such, to receive a salary, allowances and pension from the Greater London Authority).

54. Paragraphs 2 and 3 require the Mayor's Office for Policing and Crime to appoint a person to be its head of staff (referred to in the Bill as the chief executive), and allow it to appoint any other necessary staff. Paragraph 2 makes reference to the fact that the Greater London Authority Act 1999 requires each functional body of the Greater London Authority to appoint an officer responsible for the administration of the body's financial affairs (known in that Act as the chief finance officer). It is accordingly not necessary for the Bill to make provision for the Mayor's Office for Policing and Crime to appoint such an officer. The staff of the Mayor's Office for Policing and Crime will be employees of that body, and not employees of the Mayor or the Greater London Authority.

55. Paragraph 4 applies to any person appointed under clause 19 as the Deputy Mayor for Policing and Crime. The paragraph lists persons disqualified from being appointed as the Deputy Mayor for Policing and Crime.

56. Paragraph 5 requires the Mayor's Office for Policing and Crime to notify the London Assembly of any appointments of staff that it makes (this is similar to the requirement imposed on the Mayor, in his capacity as such, by the Greater London Authority Act 1999).

57. Paragraph 6 allows the Mayor's Office for Policing and Crime to pay its staff.

58. Paragraph 7 provides the Mayor's Office for Policing and Crime with a general power to do anything intended to allow or assist it in discharging its functions.

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59. Paragraph 8 protects the Mayor's Office for Policing and Crime and any member of its staff from personal liability for acts done in the course of their duties and in good faith.

Clause 4: Commissioner of Police of the Metropolis

60. Clause 4 provides for the incorporation of the office of Commissioner of Police of the Metropolis as a corporation sole. The reason why the existing post of Commissioner is to be incorporated in this way is the same as for the post of chief constable of a police force outside London (see clause 2 above).

61. *Subsection (3)* provides for the Commissioner of Police of the Metropolis to have direction and control over the members of the metropolitan police force and the civilian staff of the force. This reflects the existing position.

62. *Subsection (6)* makes *subsection (3)* subject to any provision in a collaboration agreement which may place members of the metropolitan police force or civilian staff under the direction and control of the chief constable of another force.

63. *Subsection (7)* introduces Schedule 4.

Schedule 4: Commissioner of Police of the Metropolis

64. Schedule 4 makes similar provision in relation to the staff etc of the Commissioner as Schedule 2 makes for chief constables of police forces outside London.

Functions of Elected Local Policing Authorities

Clause 5: Police and crime commissioners to issue police and crime plans

65. Clause 5 requires a police and crime commissioner to issue and publish a police and crime plan within the financial year in which he is elected.

66. *Subsection (4)* provides for the police and crime commissioner to vary a police and crime plan.

67. *Subsection (5)* requires the police and crime commissioner to have regard, in issuing or varying a police and crime plan, to the strategic policing requirement issued by the Secretary of State (for which, see clause 79).

68. *Subsections (6) to (7)* provide for the police and crime commissioner to consult with the chief constable in the drafting or variation of a police and crime plan, and for the police and crime panel to scrutinise a police and crime plan before it is issued.

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69. *Subsection (8)* ensures that the police and crime commissioner consults the chief constable before issuing or varying a police and crime plan, on any points that have changed since the initial draft.

Clause 6: Mayor's Office for Policing and Crime to issue police and crime plans

70. Clause 6 replicates the provisions in clause 5 for the Mayor's Office for Policing and Crime.

71. *Subsections (10) to (12)* have the effect of applying various provisions of the Greater London Authority Act 1999 concerned with the Mayor's strategies to the police and crime plan, as if it was a strategy.

72. *Subsection (13)* requires the Mayor and the Mayor's Office for Policing and Crime to co-operate in ensuring that the Mayor's strategies and the police and crime plan are consistent with each other. Although the Mayor will be the occupant of the Mayor's Office for Policing and Crime, this provision ensures that he takes account of the interests of both offices in preparing the strategies and the plan.

Clause 7: Police and crime plans

73. Clause 7 provides for the content and duration of a police and crime plan.

74. *Subsection (1)* provides for the police and crime plan to set out various matters including the police and crime commissioner's police and crime reduction objectives, and the policing which the chief constable is to provide for the police area.

75. *Subsection (3)*, read with *subsection (7)*, provides for a police and crime plan to continue in effect until the end of the financial year in which the next ordinary election to the office of police and crime commissioner is expected to take place, unless a new plan is issued in the interim. The effect is that, in the period between a police and crime commissioner being elected to the office and issuing his police and crime reduction plan, the plan of the previous administration will remain in effect, ensuring that there are always objectives in place for the chief constable to work to.

76. *Subsections (4) to (6)* allow the Secretary of State to give guidance about the matters to be dealt with in police and crime plans, to which the police and crime commissioner must have regard.

Clause 8: Duty to have regard to police and crime plan

77. Clause 8 requires the police and crime commissioner, the chief constable, the Mayor's Office for Policing and Crime and the Commissioner of Police of the

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Metropolis to have regard to the content of the applicable police and crime plan in exercising their functions.

78. *Subsections (5) to (7)* allow the Secretary of State to give guidance about the manner in which this duty is to be complied with.

Clause 9: Crime and disorder reduction grants

79. Clause 9 gives a police and crime commissioner and the Mayor's Office for Policing and Crime the power to award a crime and disorder reduction grant to any person in order to secure or contribute to securing crime and disorder reduction in the police area. The grant may be subject to any conditions that the commissioner may deem appropriate.

Clause 10: Co-operative working

80. Clause 10 places duties in relation to co-operation on a police and crime commissioner or (in the metropolitan police district) the Mayor's Office for Policing and Crime and various other bodies with functions in the areas of criminal justice and the reduction of crime and disorder in relation to co-operation.

81. *Subsection (1)* requires the police and crime commissioner or the Mayor's Office for Policing and Crime (as the case may be) and bodies that are members of community safety partnerships formed under the Crime and Disorder Act 1998 to co-operate with each other in the exercise of their respective functions, except devolved Welsh functions. These bodies are the police, the probation services, local authorities, fire and rescue authorities and NHS Primary Care Trusts.

82. *Subsection (2)* requires the police and crime commissioner or the Mayor's Office for Policing and Crime (as the case may be) and certain criminal justice bodies to make arrangements so that their respective functions are exercised so as to provide an efficient and effective criminal justice system for the police area. It is anticipated that these arrangements will involve the agreement of a protocol or memorandum of understanding between the various bodies setting out the matters in respect of which they will co-operate and the means by which they will do so.

83. *Subsection (4)* lists the various criminal justice bodies to which the duty to make arrangements applies. Some of the references are to Ministers, because legislation confers the relevant functions on Ministers and they are then delegated to officials and public bodies. In practice the criminal justice bodies will be the police, the Crown Prosecution Service, Her Majesty's Court Service, the National Offender Management Service, or other providers in relation to prisons or probation, and Youth Offending Teams.

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Clause 11: Information for public etc.

84. Clause 11 imposes obligations on a police and crime commissioner and the Mayor's Office for Policing and Crime in relation to the publication of information.

85. *Subsection (1)* allows the Secretary of State to specify by order information which a police and crime commissioner and the Mayor's Office for Policing and Crime must publish, and also to specify the time and manner of publication. It is anticipated that this power will be used to ensure the publication of standard information as to numbers of staff and the rates of their pay, items of expenditure above a specified monetary limit, and any gifts or loans received.

86. *Subsection (3)* requires a police and crime commissioner and the Mayor's Office for Policing and Crime to publish such further information as is necessary to allow local people to assess the performance of the body itself and also that of the chief officer of police for the police area (either the chief constable or, in the metropolitan police district, the Commissioner).

Clause 12: Annual reports

87. Clause 12 requires a police and crime commissioner and the Mayor's Office for Policing and Crime to produce an annual report.

88. *Subsection (1)* requires an annual report to show, in respect of the financial year in question, how the police and crime commissioner or the Mayor's Office for Policing and Crime has carried out his functions and the progress made in meeting the objectives in the police and crime plan.

89. *Subsections (2) to (5)* make provision for the police and crime panel to scrutinise the annual report.

90. *Subsections (6) and (7)* require a police and crime commissioner and the Mayor's Office for Policing and Crime to publish each annual report in such manner as he thinks fit.

Clause 13: Information for police and crime panels

91. Clause 13 allows a police and crime panel to require its police and crime commissioner or (in the case of the metropolitan police district, the Mayor's Office for Policing and Crime) to provide it with information.

92. *Subsection (1)* requires a police and crime commissioner or the Mayor's Office for Policing and Crime to provide the police and crime panel with any information they reasonably require in order to carry out their duties.

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93. *Subsection (2)* excludes from the requirement under *subsection (1)* information which, in the view of the chief constable it would be harmful to disclose for various reasons set out in the *subsection*. This does not prevent the disclosure of the information to the police and crime panel; it means that the police and crime commissioner or the Mayor's Office for Policing and Crime is not required to disclose it.

Clause 14: Arrangements for obtaining the views of the community on policing

94. Clause 14 amends the existing provisions requiring the views of the people in the police area to be obtained, in order to ensure that those views are sought in particular circumstances, namely before a police and crime commissioner or the Mayor's Office for Policing and Crime issues a police and crime plan or precept.

95. *Subsection (2)* makes particular reference, in the provision to be inserted in section 96 of the Police Act 1996, to the views of relevant ratepayers. The term is defined in the provision inserted by *subsection (4)*. This replaces provision in the Local Government Finance Act 1992 requiring police authorities to obtain the views of representatives of non-domestic rate-payers, which is amended by clause 26(6) so that it does not apply to police and crime commissioners. The purpose is to create a single provision in the 1996 Act concerning the duty on police and crime commissioners to consult the public in relation to precept.

Clause 15: Supply of goods and services

96. Clause 15 allows a police and crime commissioner and the Mayor's Office for Policing and Crime to make contracts with any public or private sector body in relation to the supply of goods and services.

97. *Subsection (3)* creates an exception to the general rule, in that an elected local policing authority is prohibited from making a contract with another such authority, or the Common Council in its capacity as the police authority for the City of London, in respect of matters that could be the subject of a collaboration agreement. This is to encourage authorities to make the full use of the arrangements for collaboration.

98. The clause replicates the existing provision for police authorities.

Clause 16: Appointment of persons not employed by elected local policing body

99. Clause 16 allows a police and crime commissioner or the Mayor's Office for Policing and Crime to appoint a person to a post, or designate a person as having specified duties or responsibilities, when required or authorised to do so by any Act, regardless of whether or not the person is a member of the staff of that police and crime commissioner or of the Mayor's Office for Policing and Crime. The purpose of this is to allow flexibility in sharing staff between different bodies.

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100. The clause replicates the existing provision for police authorities.

Clause 17: Duties when carrying out functions

101. Clause 17 sets out particular matters to which a police and crime commissioner or the Mayor's Office for Policing and Crime must have regard in carrying out his functions, in addition to the requirement under clause 8 to have regard to the police and crime plan.

102. *Subsection (3)(b)* ensures that, in discharging the duty under *subsection (2)* to have regard to any report or recommendation made by the police and crime panel on his annual report on the previous year, a police and crime commissioner or the Mayor's Office for Policing and Crime has a period of grace in which to consider the report or recommendations.

Clause 18: Delegation of functions by police and crime commissioners

103. Clause 18 allows a police and crime commissioner to delegate the exercise of his functions to any person, with certain exceptions. In accordance with general principles (and therefore not expressly provided for in the clause) the police and crime commissioner retains ultimate responsibility for the discharge of a function delegated to another person.

104. *Subsections (2) and (3)* prevent a police and crime commissioner from delegating any function to the police, to any other police and crime commissioner, to the Mayor's Office for Policing and Crime, or to another body maintaining a police force, such as the Common Council of the City of London in its capacity as a police authority. The intention is that any exercise of a police and crime commissioner's functions by these bodies should be under a collaboration agreement (for which, see clause 57) rather than by delegation.

105. *Subsections (2) and (4)* prevent a police and crime commissioner from delegating to any person certain functions of particular importance which he must discharge personally.

Clause 19: Delegation of functions by Mayor's Office for Policing and Crime

106. Clause 19 makes similar provision in relation to the Mayor's Office for Policing and Crime to that in clause 18 in relation to police and crime commissioners.

107. *Subsections (2), (4) and (5)* make particular provision for the delegation of functions to the Deputy Mayor for Policing and Crime (for which, see Schedule 3), who may in turn delegate functions to any other person, subject to the same restrictions applying to delegation by the Mayor's Office for Policing and Crime.

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Clause 20: Deputy Mayor for Policing and Crime: confirmation hearings

108. Clause 20 amends the Greater London Authority Act 1999 so that the existing procedure for the London Assembly to scrutinise senior appointments made by the Mayor applies to the appointment of the Deputy Mayor for Policing and Crime by the Mayor in his capacity as the Mayor's Office for Policing and Crime.

Clause 21: Police Fund

109. Clause 21 requires a police and crime commissioner and the Mayor's Office for Policing and Crime to maintain a single fund into which all receipts must be paid, and out of which all expenditure must be met. The police and crime commissioner must keep accounts in respect of this fund.

110. The requirement to use the fund for all receipts and expenditure is subject to any contrary provision in regulations made under the Police Pensions Act 1976. The Police Pensions Fund Regulations 2007 require forces to maintain a police pension fund that is separate to the police fund.

111. The clause replicates the current provision in relation to police authorities.

Clause 22: Minimum budget for police and crime commissioner

112. Clause 22 ensures that the existing power of the Secretary of State to set a minimum budget requirement for a police authority continues to apply in relation to a police and crime commissioner.

113. *Subsection (3)* imposes a new limitation on the exercise of the power, in that the Secretary of State may not exercise it unless satisfied that it is necessary to do so because the budget requirement has been set at such a low level that, if implemented, the public safety of people in the police area would be put at risk.

Clause 23: Minimum budget for Mayor's Office for Policing and Crime

114. Clause 23 makes similar provision in relation to the Mayor's Office for Policing and Crime to that made for police and crime commissioners by clause 22.

Clause 24: Police grant

115. Clause 24 ensures that the power of the Secretary of State to make a police grant to police authorities and the Metropolitan Police Authority can be exercised in future in relation to police and crime commissioners and the Mayor's Office for Policing and Crime. The procedure for the making of grants is unchanged.

Clause 25: Other grants etc under Police Act 1996

116. Clause 25 makes similar provision to clause 24, in respect of the other sources of funding for police authorities under the Police Act 1996, namely grants for capital expenditure, grants in relation to national security, grants by local

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authorities, and gifts or loans. The effect is that in future grants etc under these provisions will be capable of being made to police and crime commissioners.

Clause 26: Precepts

117. Clause 26 confers on police and crime commissioners the power, currently exercised by police authorities, to issue a precept, thus allowing council tax to be levied in order to fund the police.

118. *Subsection (3)* disapplies local government legislation which would otherwise impose a duty on police and crime commissioners to consult ratepayers before issuing a precept. The same requirement is instead incorporated in clause 14 (arrangements to obtain the views of the public on policing), so that there is a single, consolidated provision in relation to the duties of police and crime commissioners to consult the public.

119. *Subsection (4)* introduces Schedule 5, which sets out the powers of a police and crime panel to scrutinise a proposed precept, and the procedure to be followed by the police and crime commissioner and the panel in that regard.

Schedule 5: Issuing precepts

120. Schedule 5 makes provision for scrutiny by police and crime panels of a precept that the police and crime commissioner intends to issue in order to raise funds for policing by way of council tax. It requires the police and crime commissioner to notify the police and crime panel of the proposed precept, for the panel to consider the proposal and report on it, and for the commissioner to have regard to the report. The police and crime panel also has the power to veto a proposed precept provided that three quarters of the total membership of the panel agrees. If this power of veto is not exercised, the police and crime commissioner must issue the proposed veto, or issue a different precept in accordance with the recommendation made by the police and crime panel in its report.

121. Paragraphs 7 and 8 give the Secretary of State the power to make regulations governing the procedure for the panel's scrutiny of precepts, and the procedure to be followed if a proposed precept is vetoed, in order to ensure that a precept is eventually issued.

Clause 27: Other grants etc

122. Clause 27, like clauses 24 and 25, makes provision for grants currently payable to police authorities and to the Metropolitan Police Authority to be payable in future to police and crime commissioners and the Mayor's Office for Policing and Crime.

*These notes refer to the Police Reform and Social Responsibility Bill
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Accountability of Elected Local Policing Bodies

Clause 28: Police and crime panels of local authorities

123. Clause 28 provides for each police area except the Metropolitan Police District to have a police and crime panel to scrutinise the police and crime commissioner's exercise of his functions.

124. *Subsection (2)* sets out the police and crime panel's duties in relation to the police and crime plan submitted to them by the police and crime commissioner in accordance with clause 5(6)(c).

125. *Subsection (3)* sets out the police and crime panel's duties in relation to the annual report submitted to them by the police and crime commissioner in accordance with clause 12(2).

126. *Subsection (4)* introduces schedule 5 and 8, which set out the police and crime panel's duties in relation to a police and crime commissioner's proposed precept and proposed appointment of a chief constable, respectively.

127. *Subsection (5)* places a general duty on the police and crime panel to scrutinise the police and crime commissioner's exercise of his functions in respect of any matter not covered by the preceding subsections.

128. *Subsections (6) and (7)* provide for a police and crime panel to publish its reports and recommendations and (in England) to send copies to the local authorities in the police area.

129. *Subsection (8)* introduces Schedule 6.

Schedule 6: Police and crime panels

130. Schedule 6 makes provision for the establishment and procedures of police and crime panels.

131. Part 1 provides for the type of police and crime panel that a police area is to have. Under paragraph 1, a police area in England has a panel established and maintained in accordance with Part 2, unless the Secretary of State has made an order providing that it is to have a panel established and maintained in accordance with Part 3. Such an order can only be made if all of the local authorities in the police area have failed to nominate or appoint members for the panel in accordance with Part 2. Under paragraph 2, a police area in Wales always has a panel established and maintained in accordance with Part 3.

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132. Part 2 requires the local authority or authorities in a police area in England to establish and maintain the police and crime panel, which is to be a committee of the authority or authorities.

133. Paragraphs 4 to 9 provide for the membership of a Part 2 police and crime panel. They achieve the result that a police and crime panel will consist of at least ten members appointed from the local authority or local authorities in the police areas, and two co-opted members appointed by the panel itself. Each local authority in the police area will be represented on the police and crime panel by at least one of its councillors, and the size of the panel will be decided by the number of local authorities in the police area, if greater than ten. "Councillors" for these purposes means a member of the local authority or the elected mayor, if there is one. Paragraph 10 provides for the Secretary of State to nominate and appoint councillors to a police and crime panel where one or more of the local authorities in the police area has failed to do so. In exercising this power, the Secretary of State must secure (so far as is reasonably practicable) that each local authority in the police area is represented on the panel by at least one of its councillors, but no more than one if there are ten or more authorities in the police area.

134. Part 3 of the Schedule requires the Secretary of State to establish and maintain a police and crime panel for the police areas in Wales and for any police area in England in respect of which an order under paragraph 1 is in force. These panels are free-standing bodies and not committees of the local authority or authorities in the police area.

135. Paragraph 13 provides for the membership of a Part 3 police and crime panel. They achieve the same result as paragraphs 4 to 9, in that a panel is to consist of ten councillors from the local authorities in the police area, unless there are more than ten local authorities in the police area, in which case the number of councillor members will be the same as the number of local authorities. The panel will also have two co-opted members.

136. Paragraphs 14 to 16 provides for the selection of the councillor members of a Part 3 police and crime panel in Wales. In the first instance, the Secretary of State will invite the local authority or authorities in a police area to nominate councillors for appointment to the panel, and again in doing so the Secretary of State must secure (so far as is reasonably practicable) that each local authority in the police area is represented on the panel by at least one of its councillors, but no more than one if there are ten or more authorities in the police area. The Secretary of State must appoint any councillor who is nominated by a local authority and who accepts the nomination. But if a local authority fails to nominate the required number of councillors, or a councillor declines the nomination, the Secretary of State must either invite a further nomination or nominate and appoint a councillor. This process will continue until the required number of councillor members have been appointed.

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137. Paragraphs 17 and 18 provide for the selection of councillor members for a Part 3 panel in England. They provide for these members to be nominated and appointed by the Secretary of State – there is no provision for the Secretary of State to invite nominations from the local authorities. This is because a Part 3 panel will only be established in England if the local authorities have failed to co-operate in the establishment of a Part 2 panel, and it is assumed that they would not co-operate in the nomination of councillors for appointment by the Secretary of State.

138. Paragraphs 19 and 20 provide for the Secretary of State to maintain a Part 3 panel by providing financial and other resources, since it will not be a committee of the local authority or authorities in the police area. This includes meeting any liability incurred by a panel member.

139. Paragraph 23, 27 and 28 provide for panel arrangements to be made, governing the establishment and maintenance of police and crime panels, including the payment of allowances and the provision of support. In the case of a Part 2 panel, these are made by the local authority or authorities in the police area, by agreement; in the case of a Part 3 panel, they are made by the Secretary of State.

140. Paragraphs 24 to 26 concern the procedures of police and crime panels. A police and crime panel must make its own rules of procedure, and those rules must make provision for there to be a chair of the panel. Regardless of the procedures determined by the police and crime panel, there are certain functions which may only be exercised by the panel as whole, and not by a sub-committee of the panel. These are the functions of scrutinising the police and crime plan, the annual report, the precept and the appointment of a chief constable. All members of a panel may vote in its proceedings.

141. Paragraph 30 places a duty on local authorities and the Secretary of State, in establishing a police and crime panel, to secure (so far as is reasonably practicable) that the councillor members of the panel represent all parts of the police area, represent the political make-up of the local authority or authorities, and have the skills, knowledge and experience necessary for the panel to discharge its functions effectively. Paragraph 31 places the same duty in respect of skills, knowledge and experience on the panel itself when seeking to co-opt members.

142. Paragraphs 32 to 36 allow the Secretary of State to make procedural regulations about notifications, nominations and appointments, and also regulations modifying, suspending, transferring or removing functions in relation to the establishment of panels.

Clause 29: Power to require attendance and information

143. Clause 29 makes provision for a police and crime panel to require the police and crime commissioner or members of his staff to attend before the panel to answer

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questions, and for a police and crime commissioner to respond in writing to the panel's reports or recommendations. Members of the commissioner's staff will not be obliged to answer questions or provide evidence in respect of any advice provided to the commissioner.

Clause 30: Suspension of police and crime commissioner

144. Clause 30 makes provision allowing a police and crime panel to suspend a police and crime commissioner from office if he is charged with a criminal offence carrying a maximum sentence in excess of two years' imprisonment.

Clause 31: Conduct of commissioners

145. Clause 31 allows the Secretary of State to make regulations about the making, and handling of complaints against police and crime commissioner and specially appointed members of their staff, the recording of matters (not the subject of complaints) from which it appears that police and crime commissioners or specially appointed members of their staff may have committed criminal offences, and the investigation of these complaints and matters.

146. *Subsection (2)* introduces Schedule 7.

Schedule 7: Regulations about complaints and conduct matters

147. Schedule 7 makes provision for matters that must, may and may not be contained in regulations made by the Secretary of State under clause 31.

148. Paragraph 2 requires the regulations to provide for complaints of criminal or otherwise corrupt behaviour to be investigated by the Independent Police Complaints Commission.

149. Paragraph 3 requires the regulations to provide for complaints not investigated by the Independent Police Complaints Commission to be the subject of informal resolution by the police and crime panel.

150. Paragraph 5 prevents the regulations from making provision for a police and crime commissioner to be removed from office or a specially appointed member of staff to be dismissed.

151. Paragraph 6 allows regulations to apply provisions of Part 2 of the Police Reform Act 2002 (which deals with the handling of complaints and conduct matters concerning persons serving with the police), and any other enactment, with or without modification.

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Clause 32: London Assembly police and crime panel

152. Clause 32 requires the London Assembly to convene a police and crime panel to exercise the Assembly's functions in relation to scrutiny of the Mayor's Office for Policing and Crime.

Clause 33: Functions to be discharged by police and crime panel

153. Clause 33 requires the London Assembly to carry out the scrutiny functions conferred on a police and crime panel in a police area outside London. These are the functions which are to be carried out by the Assembly's police and crime panel on its behalf.

Police Forces in Areas with Elected Local Policing Bodies

Clause 34: Engagement with local people

154. Clause 34 requires a chief officer to make arrangements for engaging with people in each neighbourhood in the police area, in order to obtain their views about crime and disorder and provide information about policing. These arrangements should include regular community beat meetings and other forms of engagement which allow all groups in an area to give their views on policing and hold their local police to account. Information could include statistical or other information relating to policing, crime and disorder.

155. *Subsection (3)* requires the arrangements to include provision for neighbourhood beat meetings.

Clause 35: Value for money

156. Clause 35 requires the chief constable to secure good value for money in exercising his functions, and ensure that his police officers and staff do the same.

Clause 36: Reports for elected local policing bodies

157. Clause 36 requires a chief constable or the Commissioner of Police of the Metropolis to provide a report on policing matters to the police and crime commissioner or the Mayor's Office for Policing and Crime (as the case may be) when required to do so.

Clause 37: Appointment of persons not employed by chief officers of police

158. Clause 37 makes similar provision in relation to chief constables and the Commissioner of Police of the Metropolis to that made in clause 16 in relation to police and crime commissioners and the Mayor's Office for Policing and Crime, in other words provision allowing the appoint of a person to a post within the police force whether or not the person is employed by the chief constable or the Commissioner of Police of the Metropolis (as the case may be).

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Clause 38: Appointment, suspension and removal of chief constables

159. Clause 38 provides for the police and crime commissioner to appoint or suspend the chief constable of a police force. The police and crime commissioner may also call upon the chief constable to resign or retire and, if so, the chief constable must resign or retire.

160. *Subsection (5)* introduces Schedule 8.

Schedule 8: Appointment, suspension and removal of senior police officers

161. The Schedule makes provision for the scrutiny by police and crime panels of appointments, suspensions and removals of chief constables by police and crime commissioners, and for certain procedural requirements to be complied with by chief constables in suspending or removing deputy chief constables or assistant chief constables.

162. Part 1 deals with the appointment of chief constables, and sets out a process by which the police and crime panel must consider a proposed appointment at a confirmation hearing and make a recommendation as to whether the candidate is to be appointed. It gives the panel a power of veto over a proposed appointment, provided that three quarters of the total membership of the panel agrees. It also gives the Secretary of State powers to make regulations governing the procedure for the panel's scrutiny of appointments, and the procedure to be followed if a proposed appointment is vetoed, to deal with any deadlock and ensure an appointment is eventually made.

163. Part 2 deals with the suspension and removal of chief constables. It requires a police and crime commissioner to notify the police and crime panel if he suspends the chief constable. In relation to removals, it requires the police and crime commissioner to give the chief constable a written explanation of the grounds for wishing to remove him, and allows the chief constable to make written representations which the police and crime commissioner must consider. The police and crime commissioner must also inform the police and crime panel of the fact and they must consider the matter at a hearing and make a recommendation. This is to be done within a specified time limit and would take place in advance of a final decision being reached by the police and crime commissioner.

164. Part 3 deals with the suspension and removal of deputy chief constables and assistant chief constables. It requires a chief constable to notify the police and crime commissioner if they suspend one of these officers. If the chief constable wishes to remove one of these officers they are required to consult with the police and crime commissioner and provide the officer concerned with a written explanation of the reasons for removal. The officer must be given the opportunity to make representations, which the chief constable must consider before making a final decision.

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Clause 39: Deputy chief constables

165. Clause 39 provides for a police force to have one or more deputy chief constables appointed by the chief constable after consultation with the police and crime commissioner. The chief constable may suspend or remove a deputy chief constable, subject to the procedural requirements in Schedule 8.

Clause 40: Assistant chief constables

166. Clause 40 makes similar provision in respect of assistant chief constables to that made in respect of deputy chief constables in clause 39. The only difference is that a chief constable intending to increase the number of deputy chief constable posts must consult with the police and crime commissioner, but there is no such requirement in relation to assistant chief constable posts.

Clause 41: Power of deputy to exercise functions of chief constable

167. Clause 41 makes provision for deputy chief constables and assistant chief constables to carry out the duties of the chief constable when certain conditions are met.

Clause 42: Appointment of Commissioner of Police of the Metropolis

168. Clause 42 provides for the appointment of the Commissioner of Police of the Metropolis. The Commissioner of Police of the Metropolis is appointed by Her Majesty upon recommendation by the Secretary of State. In making this recommendation, the Secretary of State must have regard to any recommendations made by the Mayor's Office for Policing and Crime.

Clause 43: Deputy Commissioner of Police of the Metropolis

169. Clause 43 relates to the appointment of the Deputy Commissioner of Police of the Metropolis. The Deputy Commissioner of Police of the Metropolis is appointed by Her Majesty upon recommendation by the Secretary of State. In making this recommendation, the Secretary of State must have regard to any recommendations made by the Commissioner of Police of the Metropolis and any representations from the Mayor's Office for Policing and Crime.

Clause 44: Functions of Deputy Commissioner of Police of the Metropolis

170. Clause 44 provides for the Deputy Commissioner to stand in for Commissioner of Police of the Metropolis. The consent of the Secretary of State is required if the Deputy Commissioner is to do so for a period exceeding three months.

Clause 45: Assistant Commissioners of Police of the Metropolis

171. Clause 45 provides for the metropolitan police force to have Assistant Commissioners, appointed by the Commissioner of Police of the Metropolis after consulting with the Mayor's Office for Policing and Crime. An Assistant Commissioner may exercise the functions of the Commissioner, with the Commissioner's consent.

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Clause 46: Deputy Assistant Commissioners of Police of the Metropolis

172. Clause 46 makes provision for the appointment by the Commissioner of Police of the Metropolis of Deputy Assistant Commissioners, after consultation with the Mayor's Office for Policing and Crime.

Clause 47: Commanders

173. Clause 47 makes provision for the appointment by the Commissioner of Police of the Metropolis of Commanders, after consultation with the Mayor's Office for Policing and Crime.

Clause 48: Suspension and removal of Commissioner and Deputy Commissioner

174. Clause 48 allows the Mayor's Office for Policing and Crime to suspend from duty the Commissioner or Deputy Commissioner. This clause also allows them to call upon the Commissioner or Deputy Commissioner to resign or retire. The Mayor's Office for Policing and Crime may only do so with the approval of the Secretary of State, and after giving the officer a written explanation and an opportunity to make written representations, which it must consider.

Clause 49: Suspension and removal of other senior metropolitan police officers

175. Clause 49 allows the Commissioner of Police of the Metropolis to suspend from duty other senior metropolitan police officers, below the rank of Deputy Commissioner, in consultation with the Mayor's Office for Police and Crime. This clause also allows the Commissioner to call upon them to resign or retire, in consultation with the Mayor's Office and they are required to provide the officer concerned with a written explanation of the reasons for the proposed removal. The officer must be given the opportunity to make representations, which the Commissioner must consider before making their final decision.

Police and Crime Commissioners: Elections and Vacancies

Clause 50: Ordinary elections

176. Under clause 50 an election for police and crime commissioners for all police areas will be held in 2012. Elections will then be held in each subsequent fourth year. *Subsection (2)* provides for the date of the poll. *Subsection (3)* provides that the term of office is four years, starts on the seventh day after the election, and ends on the sixth day after the next election, although under *subsection (4)* is subject to any provision made under this Act, or other Act relating to the appointment of election of police and crime commissioners or their ceasing to hold office.

Clause 51: Election to fill vacancy in office of commissioner

177. Clause 51 applies where a vacancy arises in the office of police and crime commissioner. In such cases, an election must be held to fill the vacancy.

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178. *Subsection (4)* provides that the date of the election must not be more than 35 days after the “relevant event” (which is defined in *subsection (5)* as being where the High Court or the appropriate officer has declared the office to be vacant and, in any other case the giving of the notice of vacancy to the appropriate officer). Appropriate officer in this context is defined in clause 78 and means the head of paid service of the local authority designated by the Secretary of State. *Subsection (7)* provides that no election is to be held if the vacancy arises within the period of six months before an ordinary election. An order under clause 58 can make special provision where an election fails or there is some irregularity, which could override *subsections (3) and (4)*.

Clause 52: Persons entitled to vote

179. Under clause 52 a person is entitled to vote for a police and crime commissioner if they are entitled to vote in a local government election in an electoral area wholly or partly comprised in the police area, and the address in respect of which the person is registered is within the police area. A person is not entitled to vote more than once in the same police area.

Clause 53: Public awareness about elections: role of Electoral Commission

180. Clause 53 provides that the Electoral Commission must take such steps as it considers appropriate to raise public awareness about each election of a police and crime commissioner.

Clause 54: Returning officers etc.

181. Clause 54 provides that the police area returning officer is a person who is an acting returning officer for Parliamentary elections for a constituency falling partly or wholly within the police area and who is designated as such by order made by the Secretary of State. Under *subsection (2)* the Secretary of State may by regulations confer functions on both the returning officer and local returning officers (a local returning officer for this purpose is defined in *subsection (5)* as a person who acts as returning officer for certain local elections under section 35 of the Representation of the People Act 1983). Such regulations may apply or incorporate, with or without modifications or exceptions, provisions of other legislation about elections, and are subject to the affirmative resolution procedure.

182. *Subsection (4)* requires certain local authorities make other staff available to assist the returning officer for the police area and local returning officers in carrying out their functions.

Clause 55: Returning officers: expenditure

183. Clause 55 allows a returning officer to recover charges in respect of services rendered or expenses incurred in connection with the election provided that they are necessarily rendered or incurred in the effective and efficient conduct of that election, and subject to an overall maximum recoverable amount to be set by the

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Secretary of State, with the consent of the Treasury, by order. In order to recover charges, a returning officer must submit an account to the Secretary of State who, under *subsection (7)* may apply for the account to be assessed, or “taxed”, in accordance with clause 56. *Subsection (10)* provides that the Secretary of State may by regulations make provision accounts of returning officers’ charges.

Clause 56: Taxation of returning officer’s account

184. Clause 56 provides that an application for a returning officer’s account is to be taxed is to be made to the county court, and for that court’s jurisdiction in determining the application. ‘Returning officer’ has the same meaning as in clause 55.

Clause 57: Voting at elections of police and crime commissioners

185. Clause 57 provides that the commissioner is to be returned under the simple majority system unless there are three or more candidates, in which case the provisions of Schedule 9 provide for the supplementary voting system. A supplementary vote in this context means a vote capable of being given to indicate first and second preferences from among the candidates. Schedule 9 provides in paragraph 3 for the counting process where a candidate has an overall majority of first preference votes, and paragraph 4 where no candidate has such overall majority.

Clause 58: Power to make provision about elections etc

186. Clause 58 provides that the Secretary of State may by order, subject to the affirmative resolution procedure and after consulting the Electoral Commission (under section 7 of the Political Parties, Elections and Referendums Act 2000 as amended by Schedule 10), make provision as to the conduct of elections of police and crime commissioner and the questioning of such an election and consequences of irregularities. Such an order may apply or incorporate, with or without modifications or exceptions, any relevant provision (defined in *subsection (6)*), modify forms used in other elections in order to enable them to be used in elections for police and crime commissioners also, and include provision relating to criminal offences. *Subsection (4)* provides that such an order may make amendments to any relevant provision of which are consequential on any provision of Chapter 6 or regulations under clause 54 or an order under *subsection (1)* of clause 58.

Clause 59: Date of vacancy in office of commissioner

187. Clause 59 sets out the circumstances in which a vacancy is to be treated for the purposes of the Chapter as occurring in the office of police and crime commissioner and the corresponding dates on which the vacancy is deemed to have occurred. Under *subsection (4)* public notice of a vacancy must be given by the appropriate officer (as defined in clause 78) and that appropriate officer must give notice of the vacancy to the returning officer for the police area.

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Clause 60: Declaration of vacancy in certain cases

188. Clause 60 provides that when a vacancy occurs a declaration of vacancy is to be made forthwith, unless a declaration to that effect has already been made by the High Court, or an application has already been made to the High Court, in the circumstances set out in paragraphs (a), (b) and (c) of *subsection (1)*, including where a police and crime commissioner becomes disqualified.

Clause 61: Resignation of commissioner

189. Clause 61 provides that the commissioner may resign at any time on giving notice to the appropriate officer (as defined in clause 78).

Clause 62: Appointment of acting commissioner

190. Clause 62 provides for the appointment of an acting police and crime commissioner while the office is vacant or the holder is incapacitated or suspended.

191. *Subsections (1), (2) and (3)* provide for the appointment to be made by the police and crime panel from among the staff of the police and crime commissioner, and in a case where the police and crime commissioner is incapacitated but makes representations as to who should be appointed as acting police and crime commissioner, the panel must have regard to them.

192. *Subsection (4)* allows an acting police and crime commissioner to exercise any of the functions of the police and crime commissioner except the issuing or variation of a Police and Crime Plan.

Clause 63: Vacancy where acting commissioner acts for 6 months

193. Clause 63 provides that where an acting commissioner has been appointed because a police and crime commissioner is incapacitated, at the end of a 6 month period the office of police and crime commissioner becomes vacant if the police and crime commissioner is still incapacitated.

Clause 64: Disqualification from election as police and crime commissioner

194. Clause 64 provides that a person is ineligible to stand as a police and crime commissioner unless they are 18 years old when nominated as a candidate, and are in the register of local government electors for the police force area on the day of the election and the day on which the person is nominated as a candidate at the election. A person is disqualified from being elected if the person has been nominated as a candidate for any other police area.

Clause 65: Police and crime commissioner not to serve for more than two terms

195. Clause 65 provides that a person is disqualified from being elected, if that person has been elected as police and crime commissioner for that police area at two

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previous elections. *Subsection (7)* provides that where police areas are altered, the old and new police areas are to be treated as different areas from any resulting area for the purposes of this clause, unless the order making the alteration provides otherwise.

Clause 66: Disqualification from election or holding office as police and crime commissioner: police grounds

196. Clause 66, *subsection (1)* sets out the circumstances connected with the police in which a person is disqualified from being elected or from holding office as a police and crime commissioner

197. Paragraphs (a) to (c) disqualify members of certain police forces, namely police forces for any police areas in the United Kingdom, the British Transport Police Force and the Civil Nuclear Constabulary; paragraph (c) disqualifies special constables of police forces in England and Wales or the British Transport Police Force.

198. Paragraphs (d) to (i) disqualify the Mayor of London, and members of the Common Council of the City of London or other police authorities, and members of staff of local policing bodies, chief officers of police and other police authorities, and paragraph (i) disqualifies persons holding employment in an entity under the control of a local policing body or other police authority or of a chief officer of police (to be construed in accordance with regulations) or any body in paragraph (g). *Subsection (2)* defines a member of staff for these purposes. *Subsection (4)* makes special provision for the first elections, when the existing police authorities will still be in place.

Clause 67: Disqualification from election or holding office as police and crime commissioner: other grounds

199. Clause 67(1) provides that a person is to be disqualified from being elected or being a police and crime commissioner unless the person satisfies the citizenship condition in clause 69. *Subsection (2)* disqualifies a person who is disqualified from membership of the House of Commons under section 1(1)(a) to (c) of the House of Commons Disqualification Act 1975 (judges, civil servants and members of the armed forces), or is a member of an overseas legislature. *Subsection (3)* relates to bankruptcy restrictions, and convictions for imprisonable offences. A person is also to be disqualified if a member of staff of, or employed by an entity under the control of, a relevant council (as defined).

Clause 68: Disqualification of person holding office as police and crime commissioner

200. Clause 68 provides for disqualification from holding office as police and crime commissioner upon becoming a member of the elected bodies set out in

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subsections (1) and (2). Further, clause 73 makes separate provision for members of the House of Lords.

Clause 69: Citizenship condition

201. Clause 69 provides for the citizenship condition. It is satisfied by a person who is a qualifying Commonwealth citizen (as defined in *subsection (3)*), a citizen of the Republic of Ireland, or a citizen of the European Union.

Clause 70: Validity of acts

202. Clause 70 provides that the acts of any person who has been elected as police and crime commissioner are to be valid and effectual, despite any disqualification from being or being elected as a commissioner.

Clause 71: Declaration of acceptance of office of police and crime commissioner

203. Clause 71 provides that a person cannot become police and crime commissioner until he or she makes a declaration of acceptance of the office within the two months after the election, and that such declaration must be made to the appropriate officer and in the form specified by order made by the Secretary of State. Failure to make this declaration as required will render the office of the police and crime commissioner vacant under *subsection (2)*.

204. A person may be elected as a police and crime commissioner while a member of any of the bodies listed in *subsection (5)* but must have resign any such membership before giving a declaration of acceptance of office.

Clause 72: Judicial proceedings as to disqualification or vacancy

205. Clause 72 provides that a person who claims that another is purporting to act as police and crime commissioner has been disqualified may apply to the High Court for a declaration to that effect and that accordingly the office is vacant. An application can also be made where a vacancy arises because the commissioner is incapacitated and an acting commissioner has been acting for more than 6 months and where a person fails properly to give a declaration of acceptance of office within 2 months after being elected. *Subsection (3)* provides that no declaration may be made if an election petition is pending or has been tried in which the person's disqualification on those grounds was an issue. On an application the applicant must give such security for costs as the court may direct, subject to the maximum amount specified in *subsection (6)*. The decision of the court is final.

Clause 73: Police and crime commissioners not to sit or vote in House of Lords

206. Clause 73 provides that a member of the House of Lords is disqualified while holding office as police and crime commissioner from sitting or voting in the House of Lords and from sitting or voting in a committee of the House of Lords or a joint

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committee of both Houses of Parliament. *Subsection (3)* provides that where a member of the House of Lords is elected as police and crime commissioner the return officer for the police area must notify the Speaker of the House of Lords.

Clause 74: Amendment of police areas: term of office of commissioner

207. Police areas can be altered by order made under section 10 of the Local Government and Public Involvement in Health Act 2007, section 58 of the Local Government Act 1972, or under section 32 of the Police Act 1996. Those Acts are amended by clause 76 to allow an order altering police areas to require an election to take place for a police and crime commissioner for any area resulting from the order, or for an existing police and crime commissioner to become the police and crime commissioner for any of the resulting areas. Under *subsection (2)* of clause 74, a person's term of office will end at the time it would end had the person been elected at the previous ordinary election of commissioners in England or Wales.

Clause 75: Computation of time and timing of elections etc

208. Clause 75 provides for the computation of time where an election is due to be held or a declaration of acceptance of office is due to be given on a day which is not a business day. 'Business day' for these purposes is defined in *subsection (5)*. It also provides for non-business days not to count for calculating the period within which a by-election must be held.

Clause 76: Elections: consequential amendments

209. Clause 76 provides that Schedule 10 has effect; that Schedule includes amendments to the Local Government Act 1972, the Representation of the People Act 1983, the Police Act 1996, the Political Parties, Elections and Referendums Act 2000, and the Local Government and Public Involvement in Health Act 2007.

210. The amendments to the Political Parties, Elections and Referendums Act 2000 extend certain functions of the Electoral Commission to cover elections of police and crime commissioners.

Clause 77: The appropriate officer

211. Clause 77 provides that the Secretary of State must, for police areas for which police and crime commissioners are elected, by order designate a local authority and that the head of paid service of that designated authority (as defined in *subsection (3)*) is to be the 'appropriate officer'.

Clause 78: Interpretation of Chapter 6

212. Clause 78(1) provides for the definition of various terms used in this Chapter, including the definition of 'appropriate officer', and 'local government elector'. *Subsection (2)* provides that the terms 'elector' in relation to a local government election, 'electoral area' and 'local government election' have the same meaning as in the Representation of the People Act 1983 (unless the context otherwise requires).

*These notes refer to the Police Reform and Social Responsibility Bill
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Other Provisions Relating to Policing and Crime and Disorder

Clause 79: The strategic policing requirement

213. Clause 79 replaces the existing provision for the Secretary of State to issue strategic priorities with a requirement that he issues a requirement for national policing capabilities. That is, a document setting out national threats and the national policing capabilities to counter them. Local policing bodies will have to have regard to the document when setting their Police and Crime Plans (clauses 5 and 6). Chief constables and the Commissioner of Police of the Metropolis are required to have regard to the document in discharging their functions, and they will be held to account by their local policing body for doing so (clauses 2 and 3).

Clause 80: General duty of Secretary of State

214. Clause 80 requires the Secretary of State to use the powers conferred by this Part of the Bill in a way that promotes the efficiency and effectiveness of the police.

Clause 81: Obtaining advice from representative bodies

215. Clause 81 makes provisions for the Secretary of State to seek advice on police and policing matters from a representative body (a body which the Secretary of State considers to represent the professional views of members of the police force) and within a specified period of time. If the advice is given, the Secretary of State must have regard to such advice.

Clause 82: Abolition of certain powers of Secretary of State

216. Clause 82 abolishes the Secretary of State's power to set performance targets for police strategic priorities, require police authorities to issue reports and determine codes of practice for police authorities.

Clause 83: Suspension and removal of senior police officers

217. Clause 83 amends the Police Act 1996 with the effect that the Secretary of State's existing power to require a police authority to use its power to suspending a chief officer or calling upon a chief officer to resign or retire will only in future be exercisable in respect of the Mayor's Office for Policing and Crime. The Secretary of State will not have power to direct a police and crime commissioner to suspend or remove a chief constable. The clause also amends section 50 of the Police Act 1996, which confers a general power on the Secretary of State to make regulations in relation to the administration of police forces, in order to allow regulations to be made under that section in relation to the suspension and removal of senior police officers. There is currently a separate power to make such regulations under section 42A of the Police Act 1996 which is being repealed – the amendment does not extend the powers of the Secretary of State but merely places them in a single section for ease of reference.

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Clause 84: Functions of HMIC

218. Clause 84 amends section 54 of the Police Act 1996 (appointment and functions of inspectors of constabulary).

219. *Subsection (2)* removes reference to the inspectors of constabulary reporting specifically to the Secretary of State.

220. *Subsection (3)* repeals the provision for the inspection of police authorities, without replacing it with similar provision in relation to local policing authorities.

221. *Subsection (4)* supplements the power of the Secretary of State to require the inspectors to inspect a particular police force by giving a local policing authority the power to request an inspection of their police force. The inspectors may levy charges in respect of such an inspection.

222. *Subsection (7)* provides for the annual report prepared by the inspectors to include an assessment of the efficiency and effectiveness of policing in England and Wales for the year in which the report is prepared.

Clause 85: HMIC reports: publication

223. Clause 85 amends section 55 of the Police Act 1996 (publication of reports).

224. *Subsection (2)* removes the requirement on the Secretary of State to publish any report received under section 54 of the Police Act 1996 and instead requires the inspectors of constabulary to arrange publication of any report that they prepare under section 54 of the Police Act 1996.

225. *Subsection (3)* requires the inspectors to exclude from publication information that may be against the interest of national security or jeopardise the safety of any person, but such information must be disclosed to the Secretary of State.

226. *Subsection (4)* requires the inspectors of constabulary (and not the Secretary of State) to send a copy of the report to the police and crime commissioner, the chief officer and the police and crime panel established by this Bill.

Clause 86: Inspection programmes and frameworks

227. Clause 86 amends paragraph 2 of Schedule 4A to the Police Act 1996 (inspection programmes and inspection frameworks).

228. *Subsection (2)* removes the power of the Secretary of State to direct by order the time when the inspectors of constabulary should prepare an inspection programme.

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229. *Subsection (4)* provides for the chief inspector of constabulary (rather than the Secretary of State) to lay before Parliament, publish and distribute the inspection framework and programme. It also provides for the chief inspector to obtain the Secretary of State's approval of the inspection framework and programme.

230. *Subsection (7)* gives the Secretary of State the power to specify by order matters to which the chief inspector must have regard in preparing the inspection framework and programme, including the need to ensure that inspections do not impose an undue burden on police forces, and that inspections address policing issues of national importance.

Clause 87: Powers in connection with HMIC inspections

231. Clause 87 further amends Schedule 4A to the Police Act 1996 by creating new rights of access to police information and premises for the inspectors of constabulary and their staff. The rights of access are based on those of the Independent Police Complaints Commission.

Clause 88: HMIC and freedom of information

232. Clause 88 makes the chief inspector of constabulary (and thus the inspectors) subject to the duties under the Freedom of Information Act 2000 to confirm that requested information is held, and to provide it.

Clause 89: Crime and disorder strategies

233. Clause 89 introduces Schedule 11.

Schedule 11: Crime and disorder strategies

234. Schedule 11 amends the Crime and Disorder Act 1998.

235. Paragraph 2 amends section 5(1) of the Crime and Disorder Act 1998 (responsible authorities for strategies) which lists the authorities responsible, together, for formulating and implementing strategies in relation to reducing crime and disorder etc. When exercising these functions together, the responsible authorities are known collectively as a Community Safety Partnership. The paragraph removes the references to police authorities from section 5, without replacing them with references to police and crime commissioners. Police and Crime commissioners will not be members of Community Safety Partnerships.

236. Paragraphs 2 and 3 amend those provisions in section 5 of the Crime and Disorder Act 1998 dealing with mergers of Community Safety Partnerships in England. These provisions apply only in relation to local government areas in England and currently the power to merge rests with the Secretary of State. These paragraphs provide instead for the mergers to take place by agreement between the responsible authorities and police and crime commissioner. The Secretary of State

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237. Paragraph 4 amends section 6 of the Crime and Disorder Act 1998 (formulation and implementation of strategies). The amendments allow regulations to confer functions on a police and crime commissioner in England in relation to strategies for any local government area that lies in their force area. This includes provision for the commissioner to arrange meetings to assist development and implementation of strategies; being chair of any such meetings; and being able to specify attendees which may include representatives of the responsible authorities comprising a Community Safety Partnership in their force area.

238. Paragraph 5 amends section 7 of the Crime and Disorder Act 1998 (supplemental). Section 7 makes provisions for the Secretary of State to require the responsible authorities comprising a Community and Safety Partnership to submit a report on any matter relating to the exercise of their functions, apart from devolved Welsh functions. This power is transferred to the relevant policing body (which will be the police and crime commissioner for police areas outside of London). The power must be exercised in a reasonable and proportionate manner, and only where the relevant policing body is not satisfied the responsible authorities within a Community Safety Partnership are performing their functions adequately.

Clause 90: Collaboration agreements

239. Clause 90 amends the provisions in the Police Act 1996 concerning collaboration agreements. These provisions (and those in Schedule 12) use the term “policing bodies” to refer to police and crime commissioners, the Mayor’s Office for Policing and Crime and the police authorities for the British Transport Police and the Civil Nuclear Constabulary.

240. *Subsection (2)* inserts new sections creating duties on chief officers (and those in Schedule 12) use the term “policing bodies” to enter into collaboration agreements in certain circumstances. They require them to keep under consideration arrangements for potential collaboration agreements, to notify the prospective partners about arrangements being considered and for these parties to consider whether these would be in the interest of the efficiency or effectiveness of one or more police forces.

241. *Subsection (3)* inserts a further section in the Police Act 1996 creating a power for the Secretary of State to specify, by order, policing functions which must be exercised by means of one or more collaboration agreements. The intention is to require police forces to collaborate in relation to matters of regional or national importance such as counter-terrorism and combating serious organised crime.

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Schedule 12: Collaboration agreements

242. Schedule 12 makes additional provision in relation to collaboration agreements, by amending the existing provisions in the Police Act 1996.

243. The Schedule amends sections 23 to 23I of the Police Act 1996 in order to replace the separate arrangements for “police force collaboration agreements” and “police authority collaboration agreements” with general provisions for collaboration agreements which may be made by chief officers and policing bodies either separately or together, and may include other bodies. It also inserts provision requiring chief officers and policing bodies considering making collaboration agreements to consider their existing collaboration agreements, the need to take a consistent approach in making those arrangements, and the other opportunities to collaborate that may be available.

Clause 91: Police powers for civilian employees under collaboration agreements

244. Clause 91 introduces Schedule 13.

Schedule 13: Police powers for civilian employees under collaboration agreements

245. Schedule 13 amends various enactments in order to allow civilian staff designated by one police force as having police powers to exercise those powers in the area of another police force, where this is in furtherance of a collaboration agreement.

246. Paragraph 1 inserts a new section in the Police Act 1996 requiring a collaboration agreement which contains provision about the discharge of functions by designated civilian employees of one police force in the area of another police force to specify the functions that they are permitted to discharge and any restrictions or conditions that may apply.

247. Paragraphs 2 to 5 amend the Police Reform Act 2002 to provide for a procedure by which a chief officer may make a collaboration designation, by which a civilian employee designated by the chief officer of another force as having police powers may exercise those powers in the police area of the chief officer making the collaboration designation. The collaboration designation must be consistent with the provision in the collaboration agreement specifying the functions that may be discharged and imposing any limitations or conditions.

Clause 92: Power to give directions

248. Clause 92 ensures that the existing powers of the Secretary of State to give directions to failing police forces or police authorities continue to apply in relation to police forces and police and crime commissioners.

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Clause 93: Provision of information by chief officers of police

249. Clause 93 ensures that the Secretary of State can continue to collect and publish, or have published, information relating to the policing of an area directly from a chief officer of police. This may include statistical or other information relating to policing, crime and disorder.

Clause 94: Regulations about provision of equipment

250. Clause 94 amends Section 53 of the Police Act 1996 by extending the power of the Secretary of State to make regulations as to police equipment so that regulations can make provision for arrangements by which equipment must or may be procured.

Clause 95: National and international functions

251. Clause 95 amends section 96A of the Police Act 1996 so as to extend the provisions regarding the Home Secretary's powers with respect to national and international functions of police forces. These powers currently only apply to the Metropolitan Police Service, but will be amended to apply to all local policing bodies. Paragraph 7 repeals section 96B of the Police Act 1996.

Clause 96: Police: Complaints

252. Clause 96 introduces Schedule 14.

Schedule 14: Police: Complaints

253. Schedule 14 amends Part 2 and Schedule 3 to the Police Reform Act 2002. Part 2 sets out the role and functions of the Independent Police Complaints Commission (IPCC) and the handling of complaints and other matters which are dealt with in accordance with the Act. Schedule 3 makes provision about the handling and investigation of: (a) complaints about the conduct of a person serving with the police ("a complaint"), (b) matters which are not 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 ("a conduct matter"), and (c) cases which are not the subject of a complaint and which are not a conduct matter but where a person who was, broadly, in the care of the police has died or sustained serious injury ("a DSI matter"). The full definitions of these terms appear in section 12 of the Police Reform Act 2002.

254. Paragraph 2 of Schedule 14 amends section 9(2) (b) of Part 2 of the Police Reform Act to amend the minimum number of Commissioners required in the IPCC from 10 Commissioners to 5.

255. Paragraph 3 amends paragraph 10 of Schedule 2 of the Police Reform Act 2002 to remove the requirement for the IPCC to gain the consent of the Secretary of State for the delegation of Commission functions.

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256. Paragraph 4 amends section 14 of Part 2 to remove the exclusion of complaints relating to the direction and control of a police force being handled in accordance with the provisions in Schedule 3 of the Police Reform Act.

257. Paragraph 5 amends section 29(1) of Part 2 to provide that the definition of “conduct” in relation to the making of complaints includes “decisions” made by a person serving with the police. This paragraph provides that the appropriate authority in relation to the handling of a complaint is under no obligation to refer a complaint to the IPCC though may refer such a complaint with the permission of the IPCC.

258. Paragraph 6 amends Section 10 of Part 2 to remove the exclusion of the IPCC having any function in relation to complaints relating to the direction and control of a police force.

259. Paragraph 7 amends section 15 of Part 2 providing a new power for the local policing body to direct a chief officer to take such steps as the local poling body thinks appropriate if the chief officer of police has not complied with an obligation in the handling of a complaint.

260. Paragraph 8 amends paragraph 2 of Schedule 3 to the Police Reform Act 2002 to provide for complaints made directly to the IPCC to be notified to the appropriate authority unless the IPCC considers it inappropriate to do so. The new sub paragraph (8) permits complaints not to be recorded if the complaint falls within a description of complaints (such as vexatious complaints) specified in Regulations.

261. Paragraph 9 replaces paragraph 6 of Schedule 3. This paragraph deals with the local handling of complaints which have been recorded by the appropriate authority and are not required to be referred to the IPCC or which have been referred to the IPCC and have been referred back to the appropriate authority to deal with. The appropriate authority is required to determine if the complaint is suitable to be dealt with locally and if not is required to make arrangements for the complaint to be formally investigated. A complaint may not be locally resolved if the conduct complained of (if proven) would justify the bringing of criminal or disciplinary proceedings or would involve the infringement of a person’s rights under Article 2 or 3 of the Convention within the meaning of the Human Rights Act 1998.

262. Paragraph 10 amends paragraph 7 of Schedule 3 to allow the appropriate authority to dispense with a complaint without the requirement to apply to the IPCC unless the complaint is one which has previously been referred to the IPCC irrespective of whether the complaint was referred back. In such cases the permission of the IPCC is required to dispense with the complaint.

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263. Paragraph 11 amends paragraph 10 of Schedule 3 to require the appropriate authority to determine whether a matter arising in civil proceedings is required to be referred to the IPCC and if not to provide a provision for the appropriate authority to decide whether to record the matter or not. Such matters are not required to be recorded if they fall within a description of matters identified in regulations.

264. Paragraph 12 amends paragraph 11 of Schedule 3 to require the appropriate authority to determine whether a “conduct matter” is required to be referred to the IPCC and if not to provide a provision for the appropriate authority to decide whether to record the matter or not. Such matters are not required to be recorded if they fall within a description of matters identified in regulations.

265. Paragraph 13 amends paragraph 21 of Schedule 3 to provide for the IPCC to require the discontinuance of an investigation if it appears that the complaint or matter is of a description specified in regulations. An appropriate authority may discontinue an investigation providing the complaint or matter was not one which was required to be referred to the IPCC. Where a complaint or matter is discontinued the appropriate authority is required to notify the complainant and any person entitled to be kept properly informed.

266. Paragraph 14 amends paragraphs 23, 24, 25 and 27 of Schedule 3 to include consideration of whether the performance of a person whose conduct was subject of a complaint was satisfactory or not. The amendment to paragraph 27 provides for the IPCC to be able to recommend and therefore ultimately direct that proceedings for unsatisfactory performance are brought against a person serving with the police.

267. Paragraph 15 and 16 add new paragraphs 3A, 3B and 3C to Schedule 3 to provide that there is no right of appeal against the non recording of a complaint if the appropriate authority is not required to record it or the matter relates to the direction and control of a force.

268. Paragraph 17 amends paragraph 7 of Schedule 3 by adding a new sub paragraph (8) to provide that an appeal against the decision to dispense with a complaint will be made to ‘the relevant appeal body’ which will be either the Chief Officer or the IPCC and for circumstances in which there is no right of appeal.

269. Paragraph 18 amends paragraph 9 of Schedule 3 to provide that an appeal against the outcome of a complaint that is subject of local resolution or handled otherwise than in accordance with the procedures in Schedule 3 will be made to ‘the relevant appeal body’. There is no right of appeal if the complaint relates to the direction and control of a force or the decision of a local policing body.

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270. Paragraph 19 amends paragraph 21 to provide that an appeal against the decision to discontinue an investigation of the complaint will be made to ‘the relevant appeal body’. There is no right of appeal if the complaint relates to the direction and control of a force or the decision of a local policing body.

271. Paragraph 20 amends paragraph 25 to provide that an appeal with respect to an investigation will be made to ‘the relevant appeal body’. There is no right of appeal if the complaint relates to the direction and control of a force or the decision of a local policing body.

272. Paragraph 21 adds a definition of ‘direction and control’ to paragraph 29 of Part 2 of the Police Reform Act.

273. Paragraph 22 inserts new paragraphs 30 – 34 into Schedule 3 to define who the ‘relevant appeal body’ is in respect of appeals dealt with under Schedule 3 of the Police Reform Act. The IPCC is the ‘relevant appeal body’ for complaints that must be referred to the IPCC or which have been so referred and then referred back to the appropriate authority for a local investigation or an investigation supervised by the IPCC. The IPCC is also the ‘relevant appeal body’ if the complaint may involve infringement of a person’s right under Article 2 or 3 of the Convention within the meaning of the Human Rights Act or involve a complaint against any senior officer. Paragraph 33 and 34 provide that where an appeal is submitted to the wrong ‘relevant appeal body’ then the appeal will be forwarded to the ‘relevant appeal body’ and the person making the appeal will be notified that the appeal has been forwarded to the ‘relevant appeal body’.

Miscellaneous Provisions

Clause 97: Interpretation of Police Act 1996

274. Clause 97 amends the interpretation section of the Police Act 1996 in consequence of the replacement of police authorities with police and crime commissioners.

Clause 98: Amendments of the Interpretation Act 1978

275. Clause 98 amends Schedule 1 to the Interpretation Act 1978 by inserting the definition of local policing authority and police and crime commissioner, and removing references to police authority.

Clause 99: Police reform: transitional provision

276. Clause 99 introduces Schedule 15.

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Schedule 15: Police reform: transitional provision

277. Schedule 15 provides for the Secretary of State to make one or more transfer schemes for transferring staff, property, rights or liabilities of a police authority or the Metropolitan Police Authority.

278. Paragraphs 2 to 8 concern transfers of staff and allow schemes to make provision for the transfer of police authority employees to transfer to the employment of police and crime commissioners, the Mayor's Office for Policing and Crime, chief constables and the Commissioner of Police of the Metropolis on their existing terms and conditions.

Clause 100: Police reform: minor and consequential amendments

279. Clause 100 introduces Schedule 16.

Schedule 16: Police reform: minor and consequential amendments

280. Schedule 16 makes consequential amendments.

281. Part 1 makes those amendments to the Police Act 1996 not set out in elsewhere in the Bill.

282. Part 2 makes amendments to the Greater London Authority Act 1999 not set out elsewhere in the Bill.

283. Part 3 makes amendments to other enactments. Many of these are amendments to local government legislation which was applicable to police authorities.

Clause 101: Guidance

284. Clause 101 makes procedural provision as to the form and content of guidance and directions given under Part 1.

Clause 102: Crime and disorder reduction

285. Clause 102 provides a definition of crime and disorder reduction for the purposes of Part 1.

Clause 103: Interpretation of Part 1

286. Clause 103 provides definitions of terms used in Part 1.

PART 2 – LICENSING

Amendments of the Licensing Act 2003

Clause 104: Licensing authorities as responsible authorities

287. The Licensing Act 2003 defines responsible authorities as including the police, fire authorities, local authorities exercising health and safety, local planning, environmental health and child protection functions, and any licensing authorities (other than the relevant licensing authority) in whose area a part of the premises is situated. The relevant licensing authority is the authority with responsibility for licensing functions relating to the premises in question and currently is not a “responsible authority”. Responsible authorities can make representations based on the licensing objectives in relation to applications for the grant or variation of a premises licence or club premises certificate, to request the review of such authorisations or to make representations in relation to other discrete processes. Because relevant licensing authorities are not “responsible authorities” (within the current definition), they are unable to engage in those activities. Clause 104 introduces amendments to bring relevant licensing authorities within the definition of “responsible authority”, which will enable relevant licensing authorities to engage in those activities. *Subsections (2) and (3)*, amends the provisions in Part 3 and 4 of the Licensing Act 2003 to make relevant licensing authorities “responsible authorities” in relation to premises licences and club premises certificates. *Subsection 4* makes provision for the application of these amendments.

Clause 105: Primary Care Trusts and Local Health Boards as responsible authorities

288. Clause 105 amends sections - 13(4) and 69(4) - of the Licensing Act 2003 by adding a Primary Care Trust (or its equivalent body in Wales, a Local Health Board) for any area in which a premises is situated (or for any area any part of which is the area specified by an early morning restriction order) as a responsible authority. These new bodies will be able to fulfil the same functions as existing responsible authorities.

289. This clause also amends section 5(3) of the Licensing Act 2003 by adding these bodies as bodies which a licensing authority must consult before determining or revising its statement of licensing policy.

290. *Subsection (5)* makes provision for the application of these amendments.

Clause 106: Premises licences: who may make relevant representations

291. Under the Licensing Act 2003 ‘interested parties’ (persons who can make an application for review or a representation with regard to one of the licensing processes) in most cases must have a particular relationship to the vicinity of the

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premises in relation to which the application or other process relates (for example, by living in the vicinity or being involved in a business in the vicinity).

292. Clauses 106 to 109 remove this test of ‘vicinity’ from the Licensing Act 2003, and consequently remove the category of interested party. This will enable any person to make representations in relation to applications for the grant or variation (including a minor variation) of a premises licence or club premises certificate, the grant of a provisional statement and to make applications for the review of such authorisations, and to make representations in relation to other discrete processes. However, all representations will need to relate to the licensing objectives and must not be frivolous or vexatious.

293. Clause 106, at *subsections (2) to (10)*, amends a number of provisions in Part 3 of the Licensing Act 2003 to reflect the introduction of this measure in relation to premises licences. Section 13 of the Act is amended to remove the definition of an ‘interested party’, and a range of processes are modified. These are the processes governing applications for:

- a) the grant or variation of a licence
- b) the grant of a provisional statement,
- c) a minor variation of a licence, and
- d) an application for a licence by a community premises to remove the requirement to have a designated premises supervisor.

294. The requirement on an applicant to advertise an application, and on a licensing authority to send notices of applications, are modified as a consequence of the removal of the category of interested party from these processes. This amendment also provides that any representations from persons (other than responsible authorities) must not, in the opinion of the relevant licensing authority, be frivolous or vexatious.

295. *Subsection (3)* amends the requirements on the Secretary of State to make regulations governing who should advertise an application. Regulations will require an applicant and licensing authority to advertise the application: the former must advertise the application in a way which ensures that it comes to the attention of persons in the licensing authority’s area who it may affect; the latter must advertise it in a way that ensures that it comes to the attention of all persons who it may affect.

296. *Subsection (11)* makes provision for the application of these amendments.

Clause 107: Premises licences: who may apply for a review

297. *Subsections (2) to (6)* amend a number of provisions in the Licensing Act 2003 governing applications for review or summary review of a premises licence,

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and a review of a licence following the making of a closure order, to reflect the introduction of this measure. *Subsections (2) and (6)* amend the requirements on a licensing authority to advertise an application for review or summary review, and a review following a closure order, so as to ensure that this is brought to the attention of any persons it may affect, and to advertise the period during which any such person may make representations about the application. These amendments also provide that representations from any persons (other than responsible authorities) must not, in the opinion of the licensing authority, be frivolous or vexatious.

298. *Subsection (7)* makes provision for the application of these amendments.

Clause 108: Club premises certificates: who may make relevant representations

299. *Subsections (2) to (8)* amend a number of provisions in the Licensing Act 2003 relating to applications for the grant, variation and minor variation of a club premises certificate in Part 4 of the Act. Section 69 of the Act is amended to remove the definition of “interested party”. These amendments require a licensing authority to advertise applications for the grant or variation of a certificate so as to ensure that this is brought to the attention of any persons it may affect, and to advertise the period during which any such person may make representations about the application. These amendments also provide that representations from any persons (other than responsible authorities) must not, in the opinion of the licensing authority, be frivolous or vexatious.

300. *Subsection (3)* amends the requirements on the Secretary of State to make regulations governing who should advertise an application. Regulations will require the application and licensing authority to advertise the application: the former must advertise the application in a way which ensures that it comes to the attention of persons in the licensing authority’s area who it may affect; the latter must advertise it in a way that ensures that it comes to the attention of all persons who it may affect.

301. *Subsection (9)* makes provision for the application of these amendments.

Clause 109: Club premises certificates: who may apply for a review

302. *Subsections (2) to (4)* amend a number of provisions in the Licensing Act 2003 governing applications for review of a club premises certificate to reflect the introduction of this measure. *Subsection (3)* amends the requirements on a licensing authority to advertise an application for review so as to ensure that this is brought to the attention of any persons it may affect, and to advertise the period during which any such person may make representations about the application. *Subsection (4)* provides that representations from any persons (other than responsible authorities) must not, in the opinion of the licensing authority, be frivolous or vexatious.

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303. *Subsection (5)* makes provision for the application of these amendments on the amendments coming into force.

Clause 110: Reducing the burden: premises licences

304. The Licensing Act 2003 imposes a general duty on licensing authorities to exercise their licensing functions with a view to promoting the licensing objectives; the objectives are the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. A number of specific processes require licensing authorities to take steps which are “necessary” for the promotion of the objectives. This requirement is imposed on licensing authorities by a range of provisions in the Act; this primarily arises when licensing authorities are considering whether to grant or refuse an authorisation in relation to which relevant representations or objections have been made.

305. Clauses 110 to 112 amend those provisions by instead requiring licensing authorities to take steps which are “appropriate” for the promotion of the objectives. This has the effect of reducing the threshold which licensing authorities must meet to achieve the promotion of the objectives, but ensures that their decisions continue to be solely for the purpose of promoting the objectives. These clauses introduce this amendment into provisions according to whether these relate to premises licences (Part 3 of the Act), club premises certificates (Part 4) or various discrete processes, for example in relation to temporary event notices or applications for personal licences.

306. *Subsections (2) to (14)* amend a number of provisions in the Licensing Act 2003 that relate to premises licences to reflect the introduction of this measure. The basis on which a licensing authority makes decisions in a range of processes relating to premises licences is correspondingly modified. These are the processes governing applications for:

- a) the grant or variation of a licence following relevant representations,
- b) the imposition of conditions on licences which authorise the performance of plays at a premises to promote public safety,
- c) the removal of the requirement to have a designated premises supervisor in relation to a community premises following a police objection,
- d) the grant of a provisional statement following relevant representations,
- e) the variation of a licence to specify an individual as a designated premises supervisor following a police objection,
- f) the minor variation of a licence following representations,
- g) the transfer of a licence following a police objection,
- h) review of a licence and
- i) summary review of a licence (in relation to whether interim steps should be taken and what steps to take following the review determination). This

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307. *Subsections (15) and (16)* make provision for the application of these amendments.

Clause 111: Reducing the burden: club premises certificates

308. *Subsections (2) to (5)* amend a number of provisions in Part 4 of the Licensing Act 2003 relating to club premises certificates to reflect the introduction of this measure. The basis on which a licensing authority makes decisions in a range of processes relating to club premises certificates is correspondingly modified. These are the processes governing applications for:

- a) the grant or variation of a certificate following relevant representations,
- b) the imposition of conditions on certificates which authorise the performance of plays at a club premises to promote public safety, and
- c) review of a certificate.

309. *Subsection (6)* makes provision for the application of these amendments.

Clause 112: Reducing the burden: other situations

310. *Subsections (2) to (7)* amend provisions in relation to a range of discrete processes in the Licensing Act 2003 to reflect the introduction of this measure. The basis on which a licensing authority makes decisions in those processes is correspondingly modified. These are the processes governing a licensing authority's decision to:

- a) send a premises user a counter notice following police objections on a temporary event notice,
- b) reject an application for a personal licence following police objections,
- c) reject an application for renewal of a personal licence following police objections, and
- d) revoke a personal licence following police objections in relation to new convictions coming to light.

311. These also amend the basis on which a licensing authority makes decisions in relation to the steps it must take at a review following a closure order and the making of an early morning restriction.

312. *Subsections (8) to (11)* make provision for the application of these amendments.

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Clause 113: Temporary event notices: who may make an objection

313. The Licensing Act 2003 currently includes a scheme which enables an individual to carry on a licensable activity, on a temporary basis, by virtue of a temporary event notice. To hold a temporary event the event holder ('premises user') must send a temporary event notice to the licensing authority and the Chief Officer of Police at least 10 working days before the event. The Chief Officer, if satisfied that the temporary event would undermine the crime prevention objective, must send an objection notice to the licensing authority and premises user no later than 48 hours after receipt of the temporary event notice.

314. Police objections trigger a requirement on the licensing authority to hold a hearing and may result in a counter notice being sent to the premises user if the licensing authority thinks that the temporary event would undermine the crime prevention objective. The licensing authority must also give the premises user a counter notice if one of the prescribed limits is exceeded. If a counter notice is issued, the temporary event notice will no longer authorise any licensable activities taking place under it.

315. Clause 113 extends the right to object to a temporary event notice to the environmental health authority, and allows the police and the environmental health authority for the area in which the premises are situated (defined as 'relevant persons'), to object to a temporary event on the grounds of all four licensing objectives. It also allows licensing authorities to issue a counter notice under section 105 of the Act on the basis of all four of the licensing objectives.

316. *Subsections (2) to (13)* amend sections 104 to 107 of the Licensing Act 2003. These amendments introduce the new category of 'relevant person', and revise and adapt the processes governing objections from relevant persons; these relate to the holding of a hearing or modification of a temporary event notice following receipt of objections from one or both relevant persons, the notices which the relevant licensing authority must send to the premises user and relevant persons, the timetable governing when these steps must be taken, and extend existing rights of appeal to the magistrates' court to those involved in the process. These amendments do not represent a departure from the existing processes in Part 5 of the Act, but adapt these to facilitate the involvement of the environmental health officer and the ability of relevant persons to object on the basis of all the licensing objectives.

317. *Subsection (14)* makes provision for the application of these amendments.

Clause 114: Temporary event notices: conditions

318. This clause enables a licensing authority to impose conditions on a temporary event notice if it considers that this promotes the licensing objectives. A licensing authority can only impose such conditions if an objection has been made by at least one relevant person (and the licensing authority considers that permitting the event to

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proceed would promote the licensing objectives), and at least a part of the premises in relation to which the temporary event notice is given is already subject to a premises licence or club premises certificate. Any such conditions must be consistent with the activity authorised by the temporary event notice and existing conditions attaching to the subsisting licence or certificate.

319. *Subsections (2) to (5)* amend sections 98, 109 and 110 of the Licensing Act 2003 and insert section 106A into the Act. This has the effect that a permitted temporary activity must be carried on in accordance with both the existing conditions imposed under section 100 of the Act and any conditions imposed on a temporary event notice by a licensing authority under the new section 106A. A licensing authority, if it decides to impose one or more conditions on the temporary event notice under the new section 106A, must give the premises user a notice of the decision and a separate statement (the ‘statement of conditions’) that sets out the conditions imposed on the temporary event notice and give a copy of the notice and statement to each relevant person. This clause makes a number of amendments to the existing process to facilitate the introduction of a licensing authority’s power to impose conditions.

320. *Subsection (6)* makes provision for the application of these amendments.

Clause 115: Temporary event notices: late notices

321. Clause 115 enables a premises user to give a limited number of temporary event notices in a shorter timeframe than that which applies to the existing temporary event notice process. This is defined as a “late temporary event notice”. A temporary event notice which is given in accordance with the existing timeframe is defined as a “standard temporary event notice”. An objection from at least one relevant person to a “late temporary event notice” will result in a counter notice being issued. This will make the late temporary event notice ineffective (without a right to a hearing and onward appeal, as applies to the existing process) and the event to which it relates cannot lawfully take place.

322. *Subsections (2) to (12)* insert new sections 100A and 104A which amend a number of provisions in Part 5 of the Licensing Act 2003 to introduce a separate process stream for standard and late temporary event notices.

323. The existing processes are adapted to facilitate the introduction of the availability of a late temporary event notice. A standard temporary event notice is a temporary event notice which is given to the relevant licensing authority and (if it is made in writing) to each relevant person, no later than 10 days before the temporary event to which it relates. A late temporary event notice is a temporary event notice which is given to the relevant licensing authority electronically no later than five working days, but no earlier than nine working days before the temporary event begins; or, if it is made in writing, is given to the licensing authority and each

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relevant person no later than five working days before the temporary event begins and to at least one of those persons no earlier than nine working days before the event begins. There is a limit on how many late temporary event notices can be given in any calendar year: this is 10 for personal licence holders and two for non-personal licence holders.

324. *Subsection (13)* makes provision for the application of these amendments.

Clause 116: Relaxation of time limits applying to temporary event notices

325. Clause 116 amends sections 100 and 107 of the Licensing Act 2003 to increase the period for which licensable activities at any single event can be carried on in accordance with a temporary event notice from 96 to 168 hours, and the number of days in any calendar year on which a single premises can be used to carry on licensable activities from 15 to 21 days.

326. *Subsection (4)* makes provision for the application of these amendments on the amendments coming into force.

Clause 117: Temporary event notices: acknowledgement of notice

327. Clause 117 amends section 102 of the Licensing Act 2003 to remove the requirement on a licensing authority to acknowledge receipt of a temporary event notice by sending one notice to the premises user, and replaces this with a requirement to give written acknowledgement.

328. *Subsection (2)* makes provision for the application of these amendments.

Clause 118: Temporary event notice: time for objection by police

329. Clause 118 amends section 104(3) of the Licensing Act 2003 to extend the period in which a relevant person can object to a temporary event notice from two to three working days. *Subsection (2)* makes provision for the application of this amendment to temporary event notices given on or after the commencement of this clause.

Clause 119: Persistently selling alcohol to children

330. Section 147A of the Licensing Act 2003 makes it an offence for a premises licence holder, or person who has given a temporary event notice, to sell alcohol on two or more occasions in a three month period to a child. On conviction, a person is liable to a fine not exceeding £10,000. This amendment increases the maximum fine to £20,000.

331. Section 169A of the Act enables the police and trading standards officers to issue a closure notice to a person in relation to whom there is evidence that he has committed an offence under section 147A of the Act and for which there is a

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reasonable prospect of conviction. The closure notice discharges the person from any further criminal liability but prevents him from selling alcohol for the period specified in the notice. This amendment increases that period from a maximum of 48 hours to a period of between 48 hours and 336 hours.

332. *Subsections (4) and (5)* make provision for the application of these amendments.

Clause 120: Early morning alcohol restriction orders

333. Section 172A of the Licensing Act 2003 enables a licensing authority to make an early morning restriction order to prohibit the supply of alcohol from premises (including supplies authorised by a temporary event notice) between 3am and 6am in the whole or part of its area. The order can apply every day or on specified days, and for a limited or unlimited period. A decision to make an order must be made by the full council of a licensing authority. A licensing authority can only make an order if it considers that this will promote one or more of the licensing objectives, and the making of the order is subject to a licensing authority observing prescribed procedures. The procedures include a requirement that a licensing authority must advertise its decision to make an order, a right of affected persons to make representations and a requirement on a licensing authority to hold a hearing to consider such representations.

334. *Subsection (2)* excepts the decision of a licensing authority to make an early morning restriction order from those licensing functions which can be exercised by licensing committees. This has the consequence that a licensing authority's decision to make such an order must be made by its full council. *Subsections (3) and (4)* repeal section 55 of the Crime and Security Act 2010 (which inserted sections 172A to 172E into the Licensing Act 2003) and introduce these provisions in an amended form. This has the effect of enabling a licensing authority to make an order of any duration between 12 midnight and 6am. An order can be made, amongst other things, at different times on different days. A licensing authority's ability to exercise this power remains subject to the existing processes prescribed in sections 172A to 172E of the Licensing Act 2003.

Clause 121: Suspension of licence or certificate for failing to pay annual fee

335. Sections 55 and 92 of the Licensing Act 2003 contain powers to make regulations to prescribe the annual fees payable by the holders of premises licences and club premises certificates. The annual fee is payable on the anniversary of the grant of the licence or certificate. A fee which is not paid on the due date can be recovered as a debt due to a licensing authority. No other sanction for non payment of an annual fee is available to a licensing authority. This clause introduces amendments to the Licensing Act 2003, by inserting sections 55A and 92A, to require a licensing authority to suspend a licence or certificate for non payment of an annual fee if certain conditions are met.

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336. A licensing authority will be required to suspend a licence or certificate if the annual fee is not paid when it is due. A licence or certificate holder will avoid this consequence if, at the time that the annual fee became due, the non payment was a result of an administrative error (by any person) or the holder disputed liability to pay the fee (whether as to liability to pay a fee at all, or its amount) and the grace period of 21 days had not expired. In the event of a dispute about liability to pay a fee, the holder of a licence or certificate must notify the licensing authority in writing of this dispute on or before the due date for the fee. If a licensing authority suspends a licence or certificate, it must notify the holder in writing and specify the date on which the suspension takes effect; this date must be at least two working days after the day the authority gives the notice. A suspension ceases to have effect on the day on which the authority receives payment of the fee from the licence or certificate holder. The authority is required to give the holder written acknowledgment of receipt as soon as practicable following receipt, and in any event no later than the period prescribed in paragraph (6).

337. *Subsection (6)* makes provision for the application of these amendments on the amendments coming into force.

Clause 122: Power for Licensing authorities to set fees

338. The Licensing Act 2003 contains various powers to make regulations to prescribe fees. These fees include –

- a) fees payable on applying for the grant, variation or transfer of a premises licence under Part 3 or for the grant or variation of a club premises certificate under Part 4;
- b) annual fees for a premises licence or club premises certificate;
- c) fees payable on applying for a personal licence, (or to replace a lost or stolen personal licence);
- d) fees payable on giving a temporary event notice.
- e) fees payable by those with property interests to be notified by licensing authorities of licensing matters.

339. The powers to prescribe fees in relation to premises licences and club premises certificates are contained in sections 55 and 92,

340. In all cases, the current powers enable regulations to prescribe a fixed fee for each fee category, although there is power to prescribe different levels of fee within a category; for example, the fee to accompany an application for the grant of a premises licence or club premises certificate is determined by reference to the rateable value of the premises to which it relates, or whether the activities carried on at the premises primarily comprise the supply of alcohol for consumption on the premises. Regulations have been made to prescribe those fees: the Licensing Act 2003 (Fees) Regulations 2005.

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341. Clause 122 amends the Licensing Act 2003 by introducing new sections 197A and 197B to enable regulations, instead of prescribing the amount of a fee, to provide that the amount of a fee is to be determined by the licensing authority to whom it is payable.

342. New section 197A preserves the power of the Secretary of State to prescribe the amount of a fee (*subsections (1) and (2)*) but also enables the Secretary of State to provide that licensing authorities may instead determine the amount of a fee payable to them (*subsection (3)*). Under *subsection (7)*, where the amount of a fee is set by a licensing authority, it must relate to both the licensing authority's costs in so far as these are referable to the discharge of the function to which the fee relates (for example, the costs referable to an application for a licence: see new section 197B(2)) and the licensing authority's general costs under the Licensing Act 2003 (for example, the costs of exercising one of a number of licensing functions under that Act in relation to which a fee is not specifically payable – see new section 197B(3)). Under *subsection (2)*, these are also matters the Secretary of State may take into account where setting the fee.

343. *Subsections (4) and (5)* enable regulations to specify constraints on a licensing authority's power to determine the amount of a fee (for example, a maximum fee for a specific fee category). *Subsection (6)* enables a licensing authority to determine a different fee for each fee category that may be specified in regulations and requires a licensing authority to publish the amount of a fee as determined from time to time.

344. New section 197B(4) enables regulations, in a case where the amount of a fee is prescribed by the Secretary of State or provision is made for a licensing authority to determine a fee, to make different provision for different licensing authorities or descriptions of licensing authority. This allows the Secretary of State to prescribe fees in regulations for some licensing authorities' areas but provide for other licensing authorities to determine those kinds of fees for their areas

345. Clause 122 also provides that, in a case where a licensing authority may determine the amount of a fee under new section 197A, it cannot delegate the exercise of this function to a licensing officer by virtue of sections 10(1) and (2) of the Act.

Clause 123: Licensing policy statements

346. Section 5 of the Licensing Act 2003 requires a licensing authority to determine its licensing policy in respect of each three year period and publish a statement of that policy in the form of a 'licensing statement' before the beginning of each such period. The licensing authority must also keep its policy under review during each three year period and revise it as appropriate.

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347. This clause enables a licensing authority to determine its licensing policy and publish a licensing statement in respect of every five year period (this cycle commences on 7th January 2011), unless it replaces its entire policy at any time during each five year period, in which case the new five year period begins from the date on which the policy is replaced. A licensing authority continues to be required to keep its policy under review during each five year period.

Clause 124: Personal licences: relevant offences

348. This clause amends Schedule 4 of the Licensing Act 2003. This contains the offences (“relevant offences”). An applicant for the grant or renewal of a personal licence must disclose an unspent conviction for a relevant offence or a foreign offence. A licensing authority notifies the police of the existence of such a conviction, and the police can object to the grant or renewal of the application if they are satisfied that the grant or renewal of the application would undermine the crime prevention objective. This objection requires the licensing authority to hold a hearing to determine the matter. There is also provision for revocation of a personal licence if a personal licence holder is convicted of a relevant offence.

349. The relevant offences include sex offences, offences involving violence and dishonesty, road traffic offences and drugs offences. This clause amends the list of relevant offences to include an offence of attempt to commit a relevant offence or conspiracy to commit a relevant offence, an offence of failing to co-operate with a preliminary test under section 6(6) of the Road Traffic Act 1988 and conspiracy to defraud.

350. *Subsection (5)* makes provision for the application of these amendments.

Clause 125: Review of effect of amendments on licensing scheme

351. This clause requires the Secretary of State to review the regulatory impact on the licensing regime under the 2003 Act of the amendments being introduced in this Bill. The review must be carried out as soon as practicable after the expiry of a five year period from the last date on which these amendments come into force. The duty to review only applies in relation to amendments which are or may introduce a regulatory burden; these provisions are listed in *subsection 1(a)*.

Late night levy

Clauses 126 to 140: Late night levy

352. These clauses enable a licensing authority to introduce a levy payable by the holders of a premises licence or club premises certificate in relation to each premises in its area which is authorised to supply alcohol during a set period (the “late night supply period”) between midnight and 6am. Clause 126 contains provision enabling licensing authorities to decide to introduce a levy. Definitions of premises to which, or the times at which, it would apply are contained in clause 127. The funds generated by the levy will, subject to a deduction for the expenses of introducing,

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collecting, administering and enforcing the scheme, be payable to the police and crime commissioner or be used in accordance with regulations under clause 132. Clause 132 also provides that at least 70% of these funds must be paid to the police and crime commissioner. The Government intends that the regulations will permit licensing authorities to pay the remaining funds to be paid to other organs of local government which operate or administer measures to address the effect of alcohol-related crime and disorder in the night-time economy.

353. The holders of licences and certificates which permit the late night supply of alcohol benefit from the existence of a late night economy. But alcohol-related crime and disorder in that night time economy give rise to costs for the police, local authorities and other bodies. The Government's intention in introducing the provisions is to enable licensing authorities to require those who benefit from the late night economy by being permitted to supply alcohol between midnight and 6 am to contribute to police costs and the costs of other measures that the Government intends to permit in regulations under clause 132 to address the effect of alcohol-related crime and disorder in the night-time economy. Licensing authorities are required under clause 126 to consider, before deciding to introduce a levy in their area, whether this measure is an appropriate means of raising revenue in relation to these costs.

354. The liability of holders of licences or certificates to pay a levy (unless they are exempt and subject to whether they fall within a reduction category: see clause 136) will be determined in accordance with their payment year. Clause 127 enables regulations to prescribe how a licensing authority will determine the payment year for a licence or certificate holder by reference to, for example, the period in respect of which the holder pays an annual fee under the Licensing Act 2003. The holder's liability will be determined by reference to when that year begins and regulations under clause 130 may provide for a holder's liability to pay the levy to be adjusted should its authorisation to supply alcohol cease or commence during that payment year. A licensing authority will be required to determine the basis on which a payment year will be set at the time that it decides to introduce a levy.

355. Clause 129 contains power to make regulations which will prescribe the amount of the levy, or the basis on which it will be determined, which must be uniform across England and Wales.

356. These provisions will enable licensing authorities to:

- introduce the levy requirement in their area, where it will apply indefinitely until they decide to revoke it under clause 134
- set the late night supply period within the midnight to 6am window (although this must be the same on each day) (see clause 127),

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- afford exemptions or discounts in relation to certain categories of premises in cases prescribed by regulations under clause 136;
- determine the proportion of the funds generated by the levy that will be paid to the police under clause 132 (which must be at least 70%),
- revoke the levy in their areas, or vary any of these matters. All these decisions must be made for whole years.

357. These provisions also contain powers to make regulations about the description of expenses (relating to the introduction, collection, administration and enforcement of the levy) which may be deducted from levy receipts (see clause 130), to determine how the net sum available to be paid to the police and others is calculated (see clause 131), and to vary the minimum proportion of the funds generated by the levy that is paid to the police (see clause 132).

358. Under clause 135 regulations must require that prior to introducing the levy in its area, a licensing authority must allow any person with a potential liability to pay a levy to apply to vary the relevant licence or certificate with the effect that the person ceases to be liable, without incurring the fee which ordinarily must accompany such applications.

359. Under clause 130(6) a licensing authority is required to suspend a premises licence or club premises certificate for non-payment of the levy if certain conditions are met, on the same basis that a licence or certificate can be suspended for non-payment of an annual fee by virtue of the provision in clause 122.

360. Under clause 135 regulations must require a licensing authority to consult the police, holders of relevant authorisations and other persons who may be prescribed by regulations before making a decision to introduce the levy in its area or to revoke it or vary certain matters. The levy would not be introduced so as to apply retrospectively to any premises affected by it.

Clause 141: Alcohol disorder zones: repeal

361. This clause repeals Chapter 2 of Part 1 of the Violent Crime Reduction Act 2006 which makes provision for local authorities to designate an area in which there is alcohol related nuisance or disorder as an Alcohol Disorder Zone. Alcohol Disorder Zones enable local authorities to put in place a number of steps to reduce the nuisance and disorder, and also to impose charges on premises and clubs which supply alcohol within an Alcohol Disorder Zone. No Alcohol Disorder Zones have been designated under this provision. Chapter 2 makes alternative provisions for a late night levy on licensed premises.

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PART 3 – PARLIAMENT SQUARE GARDEN AND SURROUNDING AREA

Clause 142: Demonstrations in vicinity of Parliament: repeal of SOCPA 2005 provisions

362. *Subsection (1)* repeals sections 132 to 138 of the Serious Organised Crime and Police Act 2005 which govern protests in a designated area around Parliament. This repeal means that, under those provisions, it will no longer be a requirement to give notice of demonstrations in the designated area; it will no longer be an offence for such demonstrations to be held without the authorisation of the Metropolitan Police Commissioner; and it will no longer be an offence for a person to use a loudspeaker in the designated area. Repeal of section 132(6) of the 2005 Act means that section 14 of the Public Order Act 1986 will once more apply to public assemblies in the vicinity of Parliament. Repeal of section 138 of the 2005 Act also means that the designated area around Parliament as set out in the Serious Organised Crime and Police Act 2005 (Designated Area) Order 2005 (S.I. 2005/1537) will cease to have effect.

Clause 143: Controlled area of Parliament Square

363. Clause 143 defines the controlled area of Parliament Square in which the activities set out in clause 142, *subsection 2*, are prohibited if in breach of a direction. This controlled area comprises the central part of Parliament Square which includes the central garden with its areas of grass and walkways as well as the pavements immediately surrounding the central garden. See also the map attached at Annex A to the Explanatory Notes for the delineation of the controlled area (which is the entire hatched area on the map comprising both the Greater London Authority and the Westminster City Council areas of responsibility).

Clause 144: Prohibited activities in controlled area of Parliament Square

364. *Subsection (1)* gives a constable or authorised officer the power to direct a person to stop doing, or not to start doing, a prohibited activity which he reasonably believes a person is doing, or is about to do, in the controlled area.

365. *Subsection (2) (a) to (e)* sets out the prohibited activities in relation to the controlled area as follows:

- a) operating any amplified noise equipment;
- b) erecting or keeping erected any tent, or any other structure designed or adapted for the purpose of facilitating sleeping or staying in a place for any period;
- c) using any tent or other such structure for the purpose of sleeping or staying in the area;
- d) placing or keeping in place any sleeping equipment with a view to its use for the purpose of sleeping overnight in the area;

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e) using any sleeping equipment for the purpose of sleeping overnight in the area.

366. *Subsection (3)* sets out express exceptions so that an activity is not a prohibited activity if it is done for emergency services purposes or done by or on behalf of a relevant authority (meaning a Minister of the Crown or a government department, the Greater London Authority or Westminster City Council); or where the Greater London Authority or Westminster City Council authorise a person to operate amplified noise equipment.

367. This definition of a prohibited activity applies to the entire Part. Therefore any time that the use of amplified noise equipment has been authorised, it is not a prohibited activity.

368. *Subsections (4), (5) and (7)* define “amplified noise equipment”, “relevant authority” and “sleeping equipment”.

369. *Subsection (6)* makes it clear that tents or other structures erected in the controlled area before these provisions come into force, or sleeping equipment placed in the controlled area before these provisions come into force, are covered by these provisions.

370. *Subsection (8)* sets out the offence and penalty for a person who fails, without reasonable excuse, to comply with a direction.

Clause 145: Directions under section 144: further provision

371. *Subsection (1)* provides that where a direction is given requiring a person to cease doing a prohibited activity, it may also include a direction requiring the person not to start doing that activity again after having ceased it.

372. *Subsections (2) and (3)* provide that a direction requiring a person not to start doing a prohibited activity has effect for a period specified by the constable or authorised officer which may be no longer than 90 days. If no time limit is specified, the direction remains in force for 90 days beginning with the day on which it is given.

373. *Subsections (4) and (5)* set out the condition in which a direction can be given to a person to cease operating, or not to start operating, any amplified noise equipment. The direction may be given only where it appears to a constable or authorised officer that the person operating or about to operate the equipment is producing an audible sound that other persons in or in the vicinity of the controlled area can hear or are likely to hear.

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Clause 146: Power to seize property

374. *Subsection (1)* enables a constable or authorised officer to seize and retain prohibited items in the controlled area, where it appears that an item is being, or has been, used in connection with the commission of an offence of breaching a direction under clause 146.

375. *Subsection (2)* enables a constable to seize and retain prohibited items beyond the controlled area where it appears that an item has been used in connection with the commission of such an offence.

376. *Subsection (4)* provides a constable with the power to use reasonable force if necessary in exercising a power of seizure.

377. *Subsection (5)* ensures that the property is properly returned to the person from whom it was seized (unless the court orders its forfeiture: see clause 150). *Subsection (6)* provides for situations where the person from whom property is seized is not known; it may be returned to any other person appearing to have rights in the property, or otherwise the property can be disposed of after 90 days from the time it was seized.

Clause 147: Power of court on conviction

378. Clause 147 empowers the court, upon the conviction of a person for the offence set out in clause 144(8), to order forfeiture of the item which was used in the commission of the offence and make any appropriate order which has the purpose of preventing the defendant from engaging in prohibited activities in the controlled area. This order could include prohibiting the defendant from returning to the controlled area for a particular period.

Clause 148: Authorisation for operation of amplified noise equipment

379. *Subsection (1)* gives the Greater London Authority and Westminster City Council the ability to authorise a person to operate amplified noise equipment in the controlled area.

380. *Subsection (2)* requires a person to apply for authorisation to the responsible authority. The application must be made to the authority which has control of the area in which the individual wishes to use the equipment.

381. *Subsections (3) to (8)* set out what the Greater London Authority and Westminster City Council may and must do in relation to processing and considering applications, including setting the period to which an authorisation applies, the imposition of any conditions, the varying of conditions and the withdrawal of an authorisation.

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Clause 149: Meaning of “authorised officer” and “responsible authority”

382. Clause 149 defines an authorised officer and responsible authority for the purposes of Part 3. The responsible authority for the central garden of Parliament Square (as defined in clause 143) is the Greater London Authority. The responsible authority for other land, that is, the adjoining footways, is Westminster City Council. On the map in Annex A, the Greater London Authority area is lightly hatched and the Westminster City Council area is more densely hatched.

Clause 150: Effect of Part on byelaws

383. This clause ensures that the provisions do not result in the same behaviour being criminalised twice. It does this by providing that any byelaws which have the effect of prohibiting or restricting the already prohibited activity in the controlled area cease to have effect (to the extent of the overlap) when the provisions come into force. The clause also provides that the powers of the Greater London Authority and Westminster City Council to enact byelaws are limited so as to prevent any dual criminality in relation to any particular activity that is a prohibited activity for the purposes of Part 3. The Greater London Authority has the power to make byelaws under section 385 of the Greater London Authority Act 1999 in order to secure the proper management of Parliament Square Garden. Westminster City Council has the power to make byelaws under section 235 of the Local Government Act 1972 for good rule and government and the suppression of nuisances.

PART 4 – MISCELLANEOUS

Seizure powers under byelaws

Clause 151: Enforcement of byelaws: powers of seizure etc

384. Section 235 of the Local Government Act 1972 enables the local district council or London borough council to make byelaws for the good rule and government of the whole or any part of the district or borough and for the prevention and suppression of nuisances.

385. *Subsection (1)* of clause 151 enables local authorities to attach powers of seizure and retention of any property in connection with any breach of a byelaw made under that section and enables the courts, upon conviction for non-compliance or contravention of any byelaw, to order forfeiture of any such property.

386. Section 385(4)(b) of the Greater London Authority Act 1999 enables the Greater London Authority to make and enforce such byelaws as they consider necessary for securing the proper management of Parliament Square Garden and Trafalgar Square and the preservation of order and the prevention of abuses therein. There is already a power of seizure in relation to any breach of a trading byelaw under section 385(4)(b) of the 1999 Act, so *subsection (2)* of clause 151 amends this

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section to ensure that the power of seizure can be used in relation to breach of any byelaw.

Misuse of drugs

Clause 152: Temporary control of drugs

387. Clause 152 introduces Schedule 17.

Schedule 17: Temporary class drug orders

388. Paragraph 2 amends section 2 of 1971 Act to extend the definition of “controlled drugs” to include a drug subject to a temporary class drug order. Unless otherwise specified (see paragraphs 7 and 10 of the Schedule), all references to controlled drugs in the 1971 Act, and in other legislation that applies the 1971 Act meaning of “controlled drugs”, will include a temporary class drug.

389. Paragraph 3 inserts new sections 2A and 2B into the 1971 Act and provides that the Secretary of State may make an order (a ‘temporary class drug order’) if two conditions are met.

390. The first condition is that the substance is not a Class A, B or C drug. The second condition is that the Secretary of State has either consulted in accordance with section 2B and has determined that the order should be made, or otherwise has received a recommendation to that effect from the Advisory Council. Consultation under section 2B requires the Secretary of State to consult the Advisory Council or (in certain urgent cases) its Chair or another designated member of the Advisory Council. After carrying out such consultation the Secretary of State can only proceed to make the order if it appears that the drug is one that is being, or is likely to be, misused, and that misuse is having, or is capable of having, harmful effects. A corresponding requirement applies before the Advisory Council may make a recommendation under section 2B for the making of such an order (see section 2B(6)).

391. A temporary class drug order expires at the end of twelve months unless, if earlier, the temporary class drug is brought under the permanent control of the 1971 Act by virtue of an Order in Council under section 2(2) of the 1971 Act or if the temporary class drug order is revoked. A temporary class drug order is made subject to the negative resolution procedure.

392. Paragraphs 4 and 5 amend sections 3 and 4(1) of the 1971 Act to apply the restrictions of importation and exportation, and production and supply, to a temporary class drug.

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393. Paragraph 6 disapplies section 5(1) and section 5(2) of the 1971 Act such that it is neither unlawful nor an offence under the 1971 Act to have a temporary class drug in a person's possession, unless that possession is in connection with an offence or prohibition under other provisions of the Act (see sections 3, 4, and 5(3)). So the offence of possession with intent to supply (section 5(3)) will apply to a temporary class drug.

394. Paragraphs 7 and 8 (complemented by amendments to the 1971 Act by virtue of paragraphs 10, 11, 12 and 14) provide that sections 7, 10 and 22 of the 1971 Act will not apply to temporary class drugs. Instead, the new section 7A confers power to make in the temporary class drug order any provision in relation to a temporary class drug that could be made in relation to other controlled drugs under section 7(1), 10 or 22.

395. Similar to the power that the Secretary of State has under section 7 of the 1971 Act, under section 7A(2) a temporary class drug order may make provision to except a temporary class drug from the restriction on importation, exportation, production and supply. However, the Secretary of State is not obliged to make any provision of a kind mentioned in section 7(3)(a) in relation to a temporary class drug (although the Secretary of State would have the discretion to make any such provision should she feel it appropriate to do so). The Secretary of State may also make provision (which may take the form of applying any provision made under sections 7(1), 10 or 22 of the 1971 Act) so as to allow for the lawful production and supply of a temporary class drug and provision for preventing misuse of controlled drugs including safe custody.

396. Paragraph 9 amends section 9A of the 1971 Act to apply its provisions, which prohibit the supply etc of articles for administering or preparing controlled drugs, to a temporary class drug. For the purposes of section 9A(1), administration will be "unlawful" in relation to a temporary class drug unless, in the case of a person who is administering the drug to himself or herself, that person's possession of the drug is to be treated as excepted possession for the purposes of the Act (see new section 7A(2)(c) inserted by paragraph 8 of the Schedule).

397. Paragraphs 13 and 18 make consequential amendments to sections 18 and 30 of the 1971 Act.

398. Paragraph 15 amends section 23 to apply its provisions relating to search and obtaining evidence in respect of a temporary class drug as it applies in relation to any other controlled drug.

399. Paragraph 16 insert a new section 23A which makes provision for the power to search and detain a person (or vehicle or vessel) where a constable has reasonable grounds to suspect that the person is in possession of a temporary class drug; seize,

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400. The new power under section 23A is in addition to the power under section 23. However, the power under section 23(2) will apply to a temporary class drug only if a constable has reasonable grounds to suspect that the person's possession of the drug is "in contravention of this Act". Since section 5(1) and (2) will not apply to temporary class drugs, the section 23(2) power would apply to a temporary class drug only if the constable has reason to suspect that the person's possession is in contravention of other provisions of the Act (e.g. sections 3, 4, or 5(3)). Therefore, the new power under section 23A ensures that a constable can search for, and seize, a temporary class drug in cases where there is no reason to suspect a contravention of any other provision of the Act in relation to the drug.

401. Paragraph 17 provides for the penalties prescribed under Schedule 4 to the 1971 Act in respect of Class B controlled drugs to apply, where appropriate, to offences committed under the 1971 Act in relation to a temporary class drug.

402. Paragraph 19 inserts a definition of "temporary class drug order" in section 37(1) of the 1971 Act.

403. Paragraph 20 enables the Secretary of State to make a temporary class drug order for the whole of the UK including Northern Ireland.

404. Paragraphs 21 and 22 make consequential amendments to Schedule 1 to the Customs and Management Act 1979 and section 19 of the Criminal Justice (international Co-operation) Act 1990 to ensure that temporary class drugs are subject to these provisions in the same way that they apply to Class B drugs.

Clause 153: Advisory Council on the Misuse of Drugs

405. *Subsections (1) and (2)* amends Schedule 1 to the Misuse of Drugs Act 1971 (constitution etc. of the Advisory Council on the Misuse of Drugs) to remove the requirement on the Secretary of State to appoint to the Advisory Council on the Misuse of Drugs at least one person with wide and recent experience in each of six specified activities - medicine, dentistry, veterinary medicine, pharmacy, the pharmaceutical industry and chemistry - and persons with wide and recent experience of social problems connected with the misuse of drugs.

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Arrest warrants

Clause 154: Restriction on issue of arrest warrants in private prosecutions

406. Clause 154 provides that the consent of the Director of Public Prosecutions is required before a magistrate can issue an arrest warrant to a private prosecutor in respect of certain offences alleged to have been committed outside the United Kingdom.

407. Section 1 of the Magistrates' Courts Act 1980 ('the 1980 Act') concerns the jurisdiction of magistrates' courts to issue criminal process. It gives a magistrates' court the power, on the laying of an information, to issue a summons or to issue a warrant for the arrest of the person named in the information (the suspect), in order to bring the person before the court to answer to the allegation. The clause inserts five new *subsections (4A) - (4E)* into section 1 of the 1980 Act and amends section 25 of the Prosecution of Offences Act 1985 ('the 1985 Act').

408. *Subsection (4A)*, where it applies, limits the power of a magistrates' court to issue a warrant. No warrant can be issued without first receiving the consent of the Director of Public Prosecutions. The consent thus becomes a condition precedent to the issue of a warrant. The provision applies where the information is laid by someone who is not a public prosecutor (this expression is defined by new *subsection (4B)* as having the same meaning as in section 29 of the Criminal Justice Act 2003), and only in respect of certain offences, as defined in *subsections (4C) and (4D)*.

409. Under *subsection (4C)*, *subsection (4A)* applies to qualifying offences listed in *subsection (4D)*, alleged to have been committed outside the United Kingdom, and to ancillary offences (such as conspiracy or attempt) in relation to qualifying offences that were committed outside the United Kingdom (or would have been had the offence proceeded that far). Aiding and abetting a qualifying offence is not listed separately as an ancillary offence, because under the criminal law relating to principals and accessories a person who aids and abets the commission of the qualifying offence would commit the qualifying offence.

410. *Subsection (4D)* is a list of those offences in respect of which the United Kingdom asserts universal jurisdiction, namely, those offences that may be tried in England and Wales even though the crime took place outside the United Kingdom, and regardless of the nationality or residence of the offender.

411. *Subsection (2)* of clause 154 inserts a new *subsection (2A)* into section 25 of the 1985 Act, which provides that section 25(2) of that Act is subject to new *subsection (4A)* of the 1980 Act.

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PART 5 – FINAL PROVISIONS

Clause 157: Extent

412. Clause 157 states the territorial extent of the Bill. This Bill applies to England and Wales. The following break-down shows which provisions apply to the UK.

Territorial Application: Wales

413. The Bill applies to England and Wales.

Territorial Application: Scotland

414. Clause 58 (power to make provision about elections) extends to Scotland. This will allow modifications made under the power to have the same extent as the forms or other provisions they modify (in the same way as amendments made by the Bill itself). The clauses on the misuse of drugs (152- 153) apply to Scotland so as to allow the Home Secretary to make a temporary class drug order that covers the whole of the UK. Clauses 157, 158 and 159 (extent, commencement and short title) also apply to Scotland.

Territorial Application: Northern Ireland

415. Clause 58 (power to make provision about elections) applies to Northern Ireland. This will allow modifications made under the power to have the same extent as the forms or other provisions they modify (in the same way as amendments made by the Bill itself). The clauses on the misuse of drugs (152-153) apply to Northern Ireland. The Bill will enable the Home Secretary to make a temporary class drug order that covers the whole of the UK. Clauses 157, 158 and 159 (extent, commencement and short title) also apply to Northern Ireland.

Clause 158: Commencement

416. Under clause 158(3) clauses 58, 154 and 155 – 59 will come into effect on the day the Bill is passed. Clause 151(1), so far as it relates to local authorities in Wales, is subject to commencement by an order made by the Welsh Ministers. Otherwise, all the Bill's provisions are subject to commencement by an order made by the Secretary of State.

FINANCIAL EFFECTS OF THE BILL

417. The average annual costs of the Bill are estimated by the Home Office to be £58m (excluding one-off costs).

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Part 1 – Police Reform

418. It is expected that Police and Crime Commissioners elections will cost £50m in 2012/13, and every four years after. The average annual costs are therefore £12m (based on 2010 prices). There will also be a one-off transitional cost of approximately £5m to cover the potential cost of redundancies from police authorities.

419. Other funding costs for Police and Crime Commissioners, such as salary, will be met from funding available as part of the Spending Review settlement for the police and will not exceed those associated with current police authority arrangements. Any transitional costs will come out of the Spending Review settlement for the police.

Part 2 – Licensing:

420. The annual cost of the licensing provisions on licence and club premises certificate holders and users of Temporary Event Notices (TENs) is estimated to be £45.9m.

Part 3 – Parliament Square Garden and surrounding area:

421. The new legal framework which aims to prevent encampments and other disruptive activity applies only to a defined area within Parliament Square. Therefore it is expected that any associated costs will be minimal, and will fall to a limited group of public sector organisations - the Metropolitan Police Service, Greater London Authority and Westminster City Council - who are aware of the cost implications. The byelaw provisions which extend to England and Wales are an enabling power only and do not in themselves have any direct impact.

Part 4 – Misuse of drugs:

422. The new power for the Secretary of State to temporarily control a substance for up to one year is an enabling power and as such has no direct costs. A Regulatory Impact Assessment will be completed on each occasion that the power is used.

Part 4 – Arrest warrants:

423. The costs of the provisions on arrest warrants will be broadly neutral.

EFFECTS OF THE BILL ON PUBLIC SECTOR MANPOWER

424. The effects of the Bill on public sector manpower are set out below:

Part 1 – Police Reform

425. Public service manpower will be affected by replacing police authorities with Police and Crime Commissioners. The Bill will create 41 full-time Police and Crime

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Commissioners posts paid for by public funds. Each Police and Crime Commissioner will be assisted by a support team comprising of at least two staff paid for by public funds thereby creating a minimum total of a further 82 new posts. The number of staff in the Police and Crime Commissioner support team may vary according to the requirements of individual Police and Crime Commissioners and so this number is likely to increase.

426. Part 1 will also establish Police and Crime Panels – one panel for each Police and Crime Commissioner - comprised of councillors from local authorities and independent members. We expect that some local authority councillors currently serving on the police authority may become members of the new Police and Crime Panel.

Part 2 – Licensing:

427. The licensing provisions in the Bill are likely to lead to a marginal increase in manpower resources in licensing authorities, at least initially. This will be as a result of more representations, hearings (on applications) and reviews (on existing licensed premises). There will be a marginally increased role for licensing officers, for example, in deciding whether to impose existing conditions on licensed premises that issue Temporary Event Notices (TENs). There will be an additional role for Environmental Health departments too in considering TENs (and objecting if necessary).

428. The provision to enable licensing authorities to act as responsible authorities will be a marginal expansion of their current role. This will enable them to intervene in licensing processes, without waiting for another person to take any action. Therefore, this is expected to result in a reduction in key cost factors in the medium to long term; for example, earlier intervention will reduce the costs associated with regulating problem premises. The relaxation of the requirements on licensing authorities to prepare licensing statements will also give rise to a small cost saving.

429. There is also a potential manpower implication for health bodies due to their new role as ‘Responsible Authorities’. In the medium and long term, this will result in savings to the Health Service due to the reduced demands placed on it by alcohol related harms. However, the net effect on manpower should be neutral as the overall effect will be to allow current resources to be better directed against priorities.

Part 3 – Parliament Square Garden and surrounding area:

430. The Parliament Square provisions are likely to have manpower implications for the Metropolitan Police Service, the Greater London Authority and Westminster City Council, depending on the level of activity in Parliament Square. Once the new offences are implemented the manpower requirements will be met from existing resources. The repeal of sections 132-138 of the Serious Organised Crime and Police Act 2005 will also provide manpower savings for the Metropolitan Police

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Service by removing the requirement for prior notification and authorisation of demonstrations. The new framework will support effective and swift enforcement action and aims to mitigate against the protracted and costly action previously taken by the Metropolitan Police Service, the Greater London Authority and Westminster City Council to safeguard the Square for the enjoyment of all.

431. The effects of the other provisions of the Bill on public sector manpower will be minimal.

SUMMARY OF THE IMPACT ASSESSMENT

432. The average annual cost of the Bill will be £58m (excluding one-off costs) and the average annual monetised benefits of the Bill will be £38m (excluding one-off benefits). The one-off costs of the Bill will be £5m.

433. The Bill will be accompanied by an overarching Impact Assessment. Individual Impact Assessments, signed by Ministers, have been produced and will be published for the Police and Crime Commissioners and alcohol provisions in the Bill. The alcohol provisions will affect businesses; the Police and Crime Commissioners provisions have been subject to an Impact Assessment on the basis that they meet the threshold for public sector impact. Updated versions of these documents will be published alongside the Bill and will be available via the Home Office's website.

434. The Better Regulation Executive is content that Impact Assessments are not required for the provisions on drugs, protests and encampments around Parliament and arrest warrants. However, an explanation of the non-quantified benefit of each policy is contained in the overarching Impact Assessment.

435. In addition, individual Equality Impact Assessments will be published on the Home Office website for those provisions which could be perceived to have a disproportionate effect. The following provisions have been subject to an EIA:

- Police and Crime Commissioners;
- Alcohol;
- Protests and encampments around Parliament.

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COMPATIBILITY WITH THE EUROPEAN CONVENTION OF HUMAN RIGHTS

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

“In my view, the provisions of the Police Reform and Social Responsibility Bill are compatible with the Convention rights.”

Part 1 – Police Reform

437. The provisions of Chapter 1 of Part 1 of the Bill relate to the election of a Police and Crime Commissioner (the “Commissioner”). These include provisions on disqualification from election and from holding office as Commissioner (clauses 64, 66 and 69), and the amendment of police areas (clause 74), and the Government considers that ECHR issues potentially arise in this context.

438. The Bill contains provision in clause 67(3)(c) for a person to be disqualified from being elected as a Commissioner if he has been convicted in the UK, the Channel Islands or Isle of Man of any imprisonable offence (whether or not sentenced to a term of imprisonment in respect of the offence). The Government has considered whether this is a retrospective provision giving rise to human rights difficulties, in the sense that a sentence of imprisonment imposed before commencement of the Act will disqualify a person from holding office after commencement. However, it has concluded that no ECHR difficulties arise: convictions before the commencement of the Act may be viewed as relevant to the personal conduct of the person seeking election by the electorate at large.

439. The Government also considers that the power in clause 74(3)(a) – (c) to provide for a Commissioner for a police area to become the Commissioner for a new, altered, police area without an election taking place is justifiable and that there is no breach of Article 3 of Protocol 1 (right to vote). In particular, this is because the Secretary of State retains the power to require an election be held for the altered police area. It may be, in a given case, that only a small part of one ward, contained in one of several local authorities covered by a police area, is switching from one police area to another – for example, 50 electors only – and the Government does not consider it proportionate to require another election in this context, especially given the extra financial resources which such an election would require. Furthermore, it will always be open to the Secretary of State to exercise her discretion to require a fresh election in the event that a significant number of electors are affected by the

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change, and this discretion is inherent in the powers altered by paragraphs 2, 7 and 15 of Schedule 10.

Part 2 – Licensing

440. The Licensing Act 2003 introduced a regime for regulating the supply of alcohol, the provision of certain forms of entertainment and the provision of late night refreshment. Premises must obtain an authorisation to carry on these activities; the authorisations comprise a premises licence, club premises certificate or temporary event notice. The licensing regime, therefore, interferes with the rights of premises owners and users to supply alcohol or late night refreshment from those premises, and with the owners of those goods to sell them. By the same token, the regulation of the provision of entertainment curtails the freedom of premises owners and users as to what activities they can carry on at those premises, and correspondingly their freedom of expression. The licensing regime, therefore, engages Article 1 of Protocol 1 and Article 10.

441. It was held in *Tre Traktorer Aktiebolag –v- Sweden* (1989) 13 EHRR that an alcohol licence is a possession. However, it was held in *Gudmunsson –v- Iceland* (1996) 21 EHRR that a licence is not protected by Article 1 of Protocol 1 if the licence holder does not have a reasonable and legitimate expectation to continue the activities authorised by the licence if the conditions attached to the licence are no longer fulfilled or if the licence is revocable in accordance with provisions which were in force when the licence was granted.

442. The Licensing Act 2003 confers on licensing authorities the power to regulate licensable activities, and they are responsible for administering the various processes by which authorisations are granted, varied, rejected or reviewed. Licensing authorities are under a duty to exercise these functions with a view to promoting 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. Premises licences and club premises certificates are, therefore, subject to review and there is no expectation of their continued duration. Licences and certificates are granted subject to any conditions which are considered to be necessary to promote one or more of the objectives.

443. In view of the potential effects of alcohol on individual health and safety and on public order, there is a cogent public interest in regulating the supply of alcohol. Forms of entertainment regulated under the Licensing Act 2003 include performances of plays, live music and dance, and the playing of recorded music. These activities are an exercise of the right to freedom of expression under Article 10, but the exercise of this right is subject to such conditions or restrictions as are necessary in the interests of public safety, disorder or the rights of others. In view of the potential effects of noise nuisance caused by these activities (in particular, the impact this has on the Article 8 rights of other persons), or disorder associated with

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the provision of certain forms of entertainment, there is a public interest in regulating those activities on the basis of the objectives in the Act. The Government considers, therefore, that the licensing regime is proportionate and does not breach Article 1 of Protocol 1 or Article 10.

444. The regulation by licensing authorities of the exercise of rights of premises owners and users must be compatible with Article 6. The processes under the Licensing Act 2003 contain a number of safeguards, in relation to both the rights of holders of authorisations (for example, under Article 1 Protocol 1 or Article 10) and the rights of other persons (for example, under Article 8) who might be adversely affected by the carrying on of licensable activities at an adjoining premises.

Amendments to Licensing Act 2003

445. Chapter 1 of Part 2 of the Bill makes various amendments to the Licensing Act 2003. The Government considers that none of these materially impacts on the regime established by that Act to the extent that its compliance with the Convention rights is altered. However, three of the amendments do increase the scope for interference by licensing authorities in the activities of the holders of authorisations, and these are described below.

446. Clause 104 amends Parts 3 and 4 of the Licensing Act 2003 to bring relevant licensing authorities within the definition of “responsible authority”. Responsible authorities (which include the police, fire authorities, local authorities exercising health and safety, local planning, environmental health and child protection functions) can make representations based on the licensing objectives in relation to applications for the grant or variation of a premises licence or club premises certificate, to request the review of such authorisations or to make representations in relation to other discrete processes. Because relevant licensing authorities are not “responsible authorities” (within the current definition), they are unable to engage in those activities. This amendment will enable licensing authorities to engage in those activities.

447. As such, a licensing authority will be able to make representations in relation to an application for a licence or certificate, or apply for a review of such an authorisation, and also administer the application process to include holding the hearing at which the application in question is determined. Licensing processes in which a licensing authority acts in more than one capacity, and correspondingly performs more than one function, may raise an issue under Article 6 of the ECHR. However, the Government is aware that similar processes are undertaken under the Gambling Act 2005, in which licensing authorities put in place arrangements which ensure that there is a division of responsibility within the authority for the different functions required of it. Moreover, the processes in relation to which a licensing authority can perform more than one function, and which culminate in a determination being made by the authority at a hearing, are subject to a right of

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appeal to the magistrates' court. The Government, therefore, believes that the ability of licensing authorities to act as responsible authorities is compatible with Article 6 of the ECHR.

448. Clause 120 amends the powers conferred on licensing authorities in relation to making early morning alcohol restriction orders (which have the effect of prohibiting premises within the area to which the order relates from supplying alcohol). The power allows licensing authorities to make an order which applies between 3am and 6am on any day or all days. The amendment will enable licensing authorities to make an order for any duration within a 12 midnight to 6am window, and this will increase the scope for such an order to interfere with the Article 1 Protocol 1 rights of the holders of authorisations affected by it. However, the exercise of this power remains subject to the constraint that the introduction of such an order promotes the licensing objectives (for example, protecting health and safety or preventing crime and disorder), thereby ensuring that any order should be a justified interference in the rights of those it affects. Moreover, the exercise of this power is subject to extensive safeguards (including a right on all those affected by such an order to make representations about, and attend a hearing to consider, the proposal to make it) thereby protecting their article 6 rights. The Government believes, therefore, that early morning restriction orders are compatible with the ECHR.

449. Clause 121 amends the Licensing Act 2003 to require licensing authorities to suspend a premises licence or club premises certificate for non-payment of an annual fee. This is a maintenance fee in respect of a licensing authority's regulatory and compliance costs of exercising its licensing functions, and is paid on the anniversary of the grant of the authorisation and each year thereafter. The Licensing Act 2003 currently makes no provision for the consequences of non-payment, other than enabling licensing authorities to take action to recover the unpaid fee as a debt. The proposed sanction will facilitate recovery of unpaid fees. It is recognised that suspending an authorisation will interfere with the Article 1 Protocol 1 rights of the holders of such authorisations affected by it but this would be as a consequence of the holder's failure to fulfil requirements imposed by the licence (see *Gudmunsson – v- Iceland* (1996) 21 EHRR). Moreover, the power to suspend is subject to safeguards; it will not apply if the non-payment is as a result of administrative error (by any person) or liability to pay the fee is in dispute. The Government believes, therefore, that this does not affect the ECHR compatibility of the 2003 Act.

Late night levy

450. Clauses 126 to 140 enable licensing authorities to introduce a levy payable by premises which are authorised to supply alcohol between midnight and 6am. The funds generated by the levy will, subject to a deduction for the expenses of administering the scheme, be paid to the police and to organs of local government which oversee measures to reduce alcohol related crime. The Government considers

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- to introduce a levy indefinitely subject to a decision to revoke it;
- to introduce a levy for a period of any duration within the midnight to 6am window but this must be the same on each day;
- to afford exemptions or discounts to premises meeting prescribed criteria (based on the extent to which licensing authorities assess the activities carried on at those premises benefit from the late night economy and contribute to alcohol-related crime and disorder);
- to vary the proportion of the funds generated by the levy paid to the police and other bodies;
- to revoke the levy in their areas, vary the hours during which the levy applies, the categories of premises which are exempt or receive a discount and/or the proportion of the funds paid to the police and other bodies; all these decisions must be made on a year on year basis.
- to suspend a premises licence or club premises certificate for non-payment of the levy.

451. Licensing authorities must consider the policing and other costs of the reduction or prevention of crime and disorder connected with the late night supply of alcohol and the desirability of raising revenue to be applied towards those costs. Any liability for the levy will fall on those businesses (or other bodies) which benefit from the late night economy. Licensing authorities are only expected to introduce a levy in their areas if they consider that this can assist in measures which prevent or reduce alcohol related crime and disorder associated with the late night supply of alcohol, and premises which fall into categories which are not considered to contribute substantially or at all to this issue will enjoy exemptions or discounts.

452. The decision of a licensing authority to introduce the levy in its area will constitute an interference with the Article 1 Protocol 1 rights of the holders of authorisations affected by it. However, the exercise of this power is subject to the licensing authority considering the policing and other costs for the reduction or prevention of crime and disorder associated with the late night supply of alcohol, and the desirability of raising revenue to be paid to the police and others in accordance with powers in these provisions. As such, it is expected that revenue generated by

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the levy will be applied to measures which protect health and safety or prevent crime and disorder, which are recognised as a justified basis for interfering in the rights of those affected by the levy. There is a corresponding public interest in requiring those whose activities increase the risk of these damaging effects to contribute to preventative measures. Moreover, the exercise of this power is subject to safeguards including a requirement to consult all the holders of authorisations who may be affected by it, thereby protecting their article 6 rights. This requirement also ensures that those who may be affected are given notice of the proposal to introduce the levy, and these clauses contain provision which enables them to vary their authorisation (without payment of a fee) to the effect that they would no longer be subject to the proposed levy. The Government believes, therefore, that the late night levy scheme is compatible with the ECHR.

Part 3 – Parliament Square Garden and surrounding area

Part 4 – Miscellaneous: Seizure powers under byelaws

453. Clauses 142 to 150 (“the Parliament Square clauses”) and clause 151 engage Article 10 (freedom of expression), Article 11 (freedom of assembly and association) and Article 1 of Protocol 1 (protection of property).

454. The Government recognises that these provisions form part of a careful balancing exercise – balancing the rights of people who wish to demonstrate against the rights of the wider community (as noted in paragraph 48 of the Court of Appeal’s judgment in *Mayor of London –v- Rebecca Hall and Others* [2010] EWCA Civ 817). The Government considers that it is right for Parliament to take the final decisions as to where the balance ought to be struck.

Articles 10 and 11

455. The Government considers that Articles 10 and 11 are engaged by the Parliament Square clauses in that people wishing to exercise their rights to freedom of expression and of assembly and association – commonly referred to as the right to protest – may wish to engage in prohibited activity in order to assist the exercise of their rights.

456. The Government considers that these provisions may interfere with these rights to a limited extent because they may make it more difficult, for example, for an individual to protest by way of a prolonged vigil which might otherwise involve the use of tents and/or sleeping bags. The provisions themselves do not prevent such a vigil or prevent someone from demonstrating; rather they prevent some of the paraphernalia that might be associated with such a vigil. Likewise, although there is no restriction on what an individual can say, or for how long they can say it, the individual will not, without permission, be able to be assisted by a loudhailer in expressing his views.

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457. The Government has limited any interference, both in terms of geographical location and in terms of the activity which is prohibited in the new framework for the controlled area of Parliament Square.

458. The Government further considers that any interference which is provided for in the clauses is in accordance with the law and is sufficiently accessible, foreseeable and precise. The Government considers that such interference is necessary in pursuance of several legitimate aims – namely the prevention of disorder and crime, the protection of the rights of others and protection of health.

459. In terms of the prohibition on tents and sleeping bags, the Government does not consider that this is a disproportionate interference with Article 10 and 11 rights. In coming to this decisions, the Government took note of the findings of Mr Justice Williams in *Mayor of London –v- Rebecca Hall and Others* [2010] EWHC 1613 in which he held, at paragraph 48, that “I am satisfied that PSG [Parliament Square Garden] is wholly unsuited for camping; there is no sanitation...no running water...no public toilets open 24 hours daily in the immediate area...no safe means or cooking; a camp site is wholly incompatible with the location; it would deprive the public of the use of the total area of well-maintained lawn and gardens at the head of British democracy and government and a world renowned WHS [World Heritage Site]”. Mr Justice Williams further noted, in paragraph 133, that he was “satisfied that the GLA and the Mayor are being prevented from exercising their necessary powers of control management and care of PSG and the use of PSG by tourists and visitors, by local workers, by those who want to take advantage of its world renowned setting and by others who want to protest lawfully, is being prevented.”

460. The Government is aware that Mr Justice Williams remarked on the importance of the “protection of the rights and freedoms of others to access PSG [Parliament Square Garden]....but also importantly for the protection of health....and the prevention of crime” in paragraph 133 of the judgment and the Government considers that preventing individuals from erecting or maintaining tents, or using sleeping bags is a proportionate manner in which to pursue these legitimate aims.

461. Insofar as the provisions prevent the use of loudhailers without permission, the Government considers that these provisions will, by virtue of the Bill, be in accordance with the law. The Government considers that the legitimate aim pursued by these provisions is the protection of the rights and freedoms of others – partly those members of the public who should be able to enjoy Parliament Square peacefully, partly those members of the public who wish to demonstrate or protest either with or without using a loudhailer and partly those members of the public who wish to go about their lawful business without disturbance. In order to ensure that this protection is meaningful, the Government considers it necessary to have an authorisation scheme in order to ensure that one or two individuals cannot usurp the

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rights of many others and it does not seem disproportionate for authorities to place limits on duration of use of a loudhailer. To this end, the authorisation scheme will be administered by the Greater London Authority (“GLA”) and Westminster City Council (“WCC”), both of which are public authorities which are bound to act compatibly with the ECHR. The details of this authorisation scheme are set out on the face of the Bill in order to ensure that this is clear and accessible to all.

462. Finally, in ensuring that these provisions are proportionate, the Government has expressly included a middle stage, between the undertaking of the prohibited activity and the commission of the offence, which is that a constable or authorised officer of the GLA or WCC must first issue a direction to cease engaging in the prohibited activity. Only if the individual fails, without reasonable excuse, to comply with this direction, does the individual commit the offence.

Article 1 of Protocol 1

463. Both clause 151 and the Parliament Square clauses include a power of seizure and both of these sets of provisions engage Article 1 of Protocol 1.

464. The Government considers that the proposed seizure powers are likely to constitute a control of use of property under Article 1 of Protocol 1 in accordance with the case law of the ECtHR which has generally treated the seizure of property ancillary to enforcement of domestic legislation as a control of use of property rather than a deprivation of property: e.g. *Handyside –v- UK* (1976) 1 EHRR 737 (obscene publication seized for prosecution); *Allgemeine Gold-und Silberscheideanstalt –v- UK* (1986) 9 EHRR 1 (seizure of smuggled gold coins); *Raimondo –v- Italy* (1994) 18 EHRR 237 (confiscation of the suspected gains from a criminal activity). Therefore, in order for the provisions to be lawful they must be in accordance with law, for the general interest and proportionate.

465. The Government’s view is that the provisions are aimed at preventing the immediate re-occurrence of criminal offences since the seizure powers are only available in relation to items used in contravention of byelaws (contravention of byelaws is a criminal offence), or items used in the commission of a criminal offence under the Parliament Square clauses.

466. It is noted that byelaws are enacted for the benefit of the local community by democratically elected bodies and the Parliament Square clauses aim to protect the rights of others in that particular area and the Government believes that there is a real general interest in preventing the re-occurrence of criminal offences in the community.

467. These provisions will ensure that these powers are clearly set out in law and the local authority using these powers will have made express provision to that effect in their byelaws procedures. The Government further considers that these provisions

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468. Finally, as local authorities are public bodies under the HRA 1998, as are the GLA and WCC and the police (in respect of the Parliament Square provisions) all those bodies able to exercise the power of seizure are obliged to exercise their functions in a manner which is compatible with the rights guaranteed in the HRA.

Misuse of Drugs

469. The provisions of clause 152 and Schedule 17 include a new power to be inserted into section 2A of the Misuse of Drugs Act 1971 (“the 1971 Act”) temporarily to control drugs, and the Government considers that ECHR issues potentially arise in this context.

470. Possession of a drug which is subject to the new form of temporary control would be neither unlawful nor an offence under section 5(1) and (2) of the 1971 Act (which provides for possession of drugs which are otherwise controlled under that Act to be both unlawful and an offence). The Bill introduces a new power to seize and dispose of a substance where a constable has reasonable grounds to suspect that it is a temporary class drug. Although there is to be no power corresponding to section 23(3) of the 1971 Act permitting entry into premises on warrant, the constable is to be empowered to search any person or vehicle, and to detain that person or vehicle for the purposes of such a search.

471. Although the control of drugs under the 1971 Act could engage Article 9 ECHR (freedom of thought, conscience and religion), and Article 1 of Protocol 1 (protection of property), it is considered that the interference with these qualified ECHR rights is proportionate in the circumstances where an order temporarily controlling a particular substance is made because of the harm, or the potential to cause harm, represented by the drug in question, both to the physical and mental health of the individual user and to society. It is not considered that any incompatibility with the ECHR arises from the controlling of drugs generally; for example, in R v Taylor (Paul) [2001] All ER D 199 it was held that, even assuming a prosecution under section 5(3) of the Misuse of Drugs Act 1971 of a person found in possession of a controlled drug with intent to supply it for religious purposes could be said to interfere with that person’s right to freedom of religion, any such interference would be justified by Article 9(2) of the Convention. Article 9 is a qualified right; Article 9(2) refers, for example, to limitations on this right being prescribed by law and being necessary in the interests of public safety or for the protection of public health.

472. It is considered that any interference with the right is justified and proportionate on these grounds. Similarly, Article 1 of Protocol 1 is a qualified right, and interference with this right may be justified where deprivation of a person’s

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property is justified in the public interest and subject to conditions provided for by law. Again, in view of the potential individual health risks and harm potentially caused to society more widely, it is considered that seizure and disposal of a drug subject to temporary control in order to prevent harm is proportionate and permissible under the terms of Article 1. Furthermore, the Government notes that section 12(1)(b) of the Criminal Justice and Police Act 2001 – as well as section 1(1) of the Confiscation of Alcohol (Young Persons) Act 1997 - – provide that alcohol lawfully in possession of a minor lawfully may be disposed of by a constable under those enactments on similar public protection grounds, and observes that the powers being taken in the Bill are similar in nature.

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ANNEX A

473. Map of the controlled area of Parliament Square (reproduced with the permission of the Greater London Authority). The controlled area is the entire hatched area on the map comprising both the Greater London Authority and the Westminster City Council areas of responsibility.

**POLICE REFORM
AND SOCIAL RESPONSIBILITY BILL**

EXPLANATORY NOTES

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