

## Crime and Courts Bill

### Delegated Powers – Supplementary Memorandum by the Home Office

The Government has tabled further amendments to the Crime and Courts Bill for Commons Report stage. These include a number of new delegated powers. This supplementary memorandum explains in each case why the power has been taken and the reason for the procedure selected.

**New Schedule ‘*The NCA: Northern Ireland*’, paragraph 1: power to provide for provisions in Part 1 not to extend to Northern Ireland**

**New Schedule ‘*The NCA: Northern Ireland*’, paragraph 2: power to provide for NCA provisions to extend to Northern Ireland**

**New Schedule ‘*The NCA: Northern Ireland*’, paragraph 3: power to make provision consequential upon an NCA provision extending to Northern Ireland**

**New Schedule ‘*The NCA: Northern Ireland*’, paragraph 4: power to make provision consequential upon a relevant NCA provision not extending to Northern Ireland**

*Power conferred on:*                      *The Secretary of State*

*Power exercisable by:*                *Order made by statutory instrument*

*Parliamentary procedure:*        *Negative resolution*

**New Schedule ‘*The NCA: Northern Ireland*’, paragraph 5: power to modify the exercise of NCA functions in Northern Ireland**

*Power conferred on:*                      *The Secretary of State*

*Power exercisable by:*                *Order made by statutory instrument*

*Parliamentary procedure:*        *Affirmative resolution*

2. Part 1 of the Bill establishes the National Crime Agency (NCA). The Bill, as Introduced, provided for the NCA to have a UK-wide remit in the same way as the Serious Organised Crime Agency which the NCA will replace. The provisions in Part 1 of the Bill relate to a mix of excepted, reserved and transferred matters, as those terms are used in the Northern Ireland Act 1998. Insofar as these provisions relate to transferred matters, the Northern Ireland Minister of Justice had confirmed that he would seek the agreement of the Northern Ireland Executive to take forward a legislative consent motion (LCM). On the 24 January 2013 the Northern Ireland Executive voted not to take forward an LCM in respect of the provisions in Part 1 of the Bill. As a result of the Northern Ireland Executive’s decision it is necessary to amend

the Bill in order to honour the convention that the Westminster Parliament does not legislate on devolved matters without the consent of the Northern Ireland Assembly (the 'Sewel convention'). Discussions are continuing with the Northern Ireland Minister for Justice and between the parties in Northern Ireland. The Government remains hopeful that agreement can be reached in the future and, therefore, in framing the amendments we have sought to provide a mechanism for the NCA provisions to apply fully to Northern Ireland should the Northern Ireland Assembly agree to change the position currently taken.

3. New Schedule '*The NCA: Northern Ireland*' provides that specified "relevant NCA provisions" in Part 1 of the Bill will not extend to Northern Ireland, except by order and with the consent of the Northern Ireland Assembly (in so far as they relate to transferred matters without being ancillary to excepted or reserved matters). The point here is that the need for an LCM arises where a Bill contains provision which is within the legislative competence of the Northern Ireland Assembly and deals substantively with transferred matters. So if a specified "relevant NCA provision" does not extend to Northern Ireland by virtue of paragraph 1(1) of the new Schedule, it cannot give rise to the need for legislative consent. Limiting extent in this way therefore deals with the immediate problem: that the Bill cannot be enacted as it currently stands without breaching the Sewel Convention.

4. However, in order to afford the necessary flexibility to give effect in the future to any agreement in Northern Ireland in respect of these provisions, the new Schedule include five order-making powers as follows:

- a) Paragraph 1(2) enables the Secretary of State to provide that any other provision of Part 1 of the Crime and Courts Act (that is, a provision which is not a specified 'relevant NCA provision') is not to extend to Northern Ireland;
- b) Paragraph 2 enables the Secretary of State to reverse the effect of an order under paragraph 1 or to provide that a relevant NCA provision shall extend to Northern Ireland;
- c) Paragraph 3 enables the Secretary of State to make such provision as she considers appropriate, in consequence of, or in connection with a provision in the Act extending to Northern Ireland by virtue of an order under paragraph 2;
- d) Paragraph 4 enables the Secretary of State to make such provision as she considers appropriate, in consequence of, or in connection with, a provision in the Act not extending to Northern Ireland. It is envisaged this power will be relied upon, for example, to provide for the modification and application of certain Police and Criminal Evidence (PACE) Act provisions in Northern Ireland in relation to the exercise there by NCA officers of immigration and customs powers. The provision made will be similar to that in the PACE application order which applies to HM Revenue and Customs officers in Northern Ireland); and

- e) Paragraph 5 enables the Secretary of State to modify the ways in which (a) the NCA's functions are exercised in Northern Ireland; or (b) the exercise of NCA functions in Northern Ireland is planned or supervised. It is envisaged this power will be used by the Secretary of State if agreement is reached to enable the NCA to operate fully in Northern Ireland as it does in the rest of the United Kingdom, but that such agreement is conditional on certain modifications being made to the statutory framework as it applies in Northern Ireland.

5. The Government considers the inclusion of these order-making powers affords the necessary flexibility: to apply the provisions of Part 1 to Northern Ireland in a modified form (that is, excluding 'relevant NCA provisions' and any other consequential modifications) should there be no agreement from the Northern Ireland Assembly to extend the relevant NCA provisions there; to apply the provisions of Part 1 to Northern Ireland in their current form (without the modifications made by new Schedule '*The NCA: Northern Ireland*') should agreement be reached from the Northern Ireland Assembly on that basis; or to apply the provisions of Part 1 to Northern Ireland in modified form should agreement be reached from the Northern Ireland Assembly on that basis.

6. As the order-making powers need to be capable of changing the law in Northern Ireland (and perhaps doing so in a transferred area), paragraph 6 provides any exercise of the new powers which makes transferred provision would require the consent of the Northern Ireland Assembly.

7. Paragraph 7 of the new Schedule enables an order under paragraph 2, 3, 4 or 5 to include provision: (a) conferring, removing or otherwise modifying an NCA function or a function of the Secretary of State, or (b) amending, repealing, revoking or otherwise modifying any enactment. This power recognises that any order made under paragraphs 2 to 5 of the new Schedule may, in particular, need to make textual amendments to Part 1 of the Crime and Courts Act to modify its application to Northern Ireland, or to modify one or more of the enactments amended in Parts 2 and 3 of Schedule 8 to the Bill. Such amendments may be needed to ensure that the right result is achieved when clause 14(1) (abolition of SOCA) comes into force. However, these enactments will only be amended by the Secretary of State to the extent it is necessary to ensure that the role that has been carried out by SOCA in Northern Ireland in so far as it relates to transferred matters can in future be carried out by another body in Northern Ireland. The order may also make provision to ensure that where activity relates to a mix of reserved/transferred matters, that the NCA can continue to carry out that activity in respect of the reserved matters. These types of amendments to UK-wide legislation, such as Part 5 of the Proceeds of Crime Act 2002 (POCA), in so far as they relate to transferred matters will be subject to the consent of the Northern Ireland Assembly by virtue of paragraph 6 of the new Schedule. As part of the 'ripple effect', there may also be a need to make further amendments to other provisions in POCA in consequence of the amendment to the 'relevant NCA provision' in Schedule 8. Notwithstanding this, the Government expects the majority of minor and consequential amendments and repeals listed in Parts 2 and 3 of Schedule 8 will remain as set out in that Schedule.

8. By virtue of an amendment to clause 43(5) an order made under paragraphs 1(2), 2, 3 and 4 of the new Schedule will be subject to the negative procedure. Whilst it is recognised that to the extent that these order-making powers are Henry VIII powers they would ordinarily be subject to the affirmative procedure, the Government considers the negative procedure is appropriate in this instance for the following reasons. First, since the Bill was originally introduced in the House of Lords in May 2012, Parliament has been considering the provisions in Part 1 on the basis that they would operate UK-wide. As such, the scheme provided for in that Part has already been subject to close scrutiny. Second, the powers are focused on achieving a narrow and specific outcome, namely modification of the extent of the provisions in Part 1 of the Act (and associated provisions in other enactments) in their application to Northern Ireland. Third, to the extent that any order makes transferred provision, the order will be subject to the consent of the Northern Ireland Assembly.

9. The Government does, however, consider that the order-making power in paragraph 5 of the new Schedule should be subject to the affirmative procedure (see associated amendment to clause 43(4)). This is because this provision will enable the Secretary of State to modify the application of provisions in Part 1 of the Bill to Northern Ireland (as well as making any necessary consequential or associated amendments to other enactments) outwith the framework currently provided for in Part 1 and therefore in a way that has not yet been subject to any parliamentary scrutiny. In contrast, the other order-making powers are aimed at amending, modifying or limiting the territorial extent of the existing provisions in Part 1 of the Bill.

**New Schedule ‘*Proceeds of crime provisions: Northern Ireland*’, paragraph 3: power to provide for relevant civil recovery provisions to extend to Northern Ireland**

**New Schedule ‘*Proceeds of crime provisions: Northern Ireland*’, paragraph 4: power to make provision consequential upon a relevant civil recovery provision extending to Northern Ireland**

**New Schedule ‘*Proceeds of crime provisions: Northern Ireland*’, paragraph 5: power to make provision consequential upon a relevant a civil recovery NCA provision not extending to Northern Ireland**

*Power conferred on:*                      *The Secretary of State*

*Power exercisable by:*                *Order made by statutory instrument*

*Parliamentary procedure:*        *Negative resolution*

10. The order-making powers in new Schedule ‘*Proceeds of crime provisions: Northern Ireland*’ (focussing on “relevant civil recovery provisions” and “relevant investigation provisions”) mirror those in paragraphs 2, 3 and 4 of new Schedule ‘*The NCA: Northern Ireland*’, as such the rationale for taking

these powers and the justification for the application for the negative procedure is the same as that set out above in respect of the powers in new Schedule '*The NCA: Northern Ireland*'.

**Home Office**  
**1 March 2013**