

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL

DELEGATED POWERS MEMORANDUM

MEMORANDUM BY THE HOME OFFICE; DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT; DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS; AND MINISTRY OF JUSTICE

Introduction

This Memorandum identifies the provisions of the Anti-social Behaviour, Crime and Policing Bill which confers powers to make delegated legislation, and explains in each case why the power has been taken and the nature of, and reason for, the procedure selected.

2. The Bill is in 14 Parts:

- Part 1 makes provision for a civil injunction to prevent nuisance and annoyance;
- Part 2 makes provision for an order on conviction to prevent behaviour which causes harassment, alarm or distress;
- Part 3 contains a power for the police to disperse people causing harassment, alarm or distress;
- Part 4 makes provision for a community protection notice and a public spaces protection order, both of which have the aim of preventing behaviour which is detrimental to the local community. It also makes provision for premises closure notices and orders to be issued and made in respect of premises which cause nuisance to the public;
- Part 5 makes provision for the recovery of possession of houses on anti-social behaviour grounds;
- Part 6 contains provisions on establishing a community remedy document and dealing with responses to complaints of anti-social behaviour;
- Part 7 amends the provisions of the Dangerous Dogs Act 1991;
- Part 8 introduces a new offence of possession of illegal firearms for sale or supply and increases the maximum penalties for the importation or exportation of illegal firearms;
- Part 9 strengthens the arrangements for protecting the public from sexual harm and violence provided for in Part 2 of the Sexual Offences Act 2003 and Part 7 of the Criminal Justice and Immigration Act 2008 respectively;
- Part 10 introduces a new offence of forced marriage and criminalises the breach of a forced marriage protection order;
- Part 11 contains various measures in respect of policing, including conferring functions on the College of Policing, establishing a Police Remuneration Review Body, conferring additional powers on the Independent Police Complaints Commission and amending the counter-terrorism border security powers in Schedules 7 and 8 to the Terrorism Act 2000;
- Part 12 makes various amendments to the Extradition Act 2003;
- Part 13 contains a number of criminal justice measures, including revision of the test for determining eligibility for compensation following a miscarriage of justice. This Part also contains a placeholder clause for prospective measures in respect of the setting of court and tribunal fees; and

- Part 14 contains minor and consequential amendments to other enactments and general provisions including provisions in respect of the Parliamentary procedure to be applied to orders and regulations made under the Bill (clause 157).

PART 1: INJUNCTIONS TO PREVENT NUISANCE AND ANNOYANCE

Clause 4(5): Power to amend clause 4 to vary the list of persons who can apply for an injunction

Power conferred on: Secretary of State

Power exercisable by: Order made by Statutory Instrument

Parliamentary procedure: Negative resolution

3. Clause 4(1) sets out the persons who may apply for an injunction to prevent nuisance and annoyance under clause 1. The order-making power enables the Secretary of State to amend the clause so as to allow other persons or categories of person to apply for an injunction under clause 1 and to otherwise amend the list of persons to may apply. The power ensures that there is the flexibility to add, remove and vary the list of persons who may apply for a crime prevention injunction, for example, to take account of the creation of new bodies or the extension of the functions of existing bodies such that they take on new or enhanced responsibilities for tackling anti-social behaviour or to update references to existing bodies if necessary. The power may also be used to make consequential amendments to the interpretation clause in respect of this Part (clause 19). Although this is a power to amend primary legislation it is considered that the negative resolution procedure provides sufficient parliamentary scrutiny considering that the power is very tightly prescribed. Section 1A(2) of the Crime and Disorder Act 1998 (as amended by section 139 of the Serious Organised Crime and Police Act 2005) contains a similar power which enables the Secretary of State to provide, by order, for other persons to apply for an anti-social behaviour order; although this is a power to specify additional persons by an order (rather than through amendments to primary legislation), the effect is the same as the proposed power in clause 4(5) and is also subject to the negative resolution procedure.

Clause 18: Power to make rules of court.

Power conferred on: Civil Procedure Rules Committee (under section 2 of the Civil Procedure Act 1997) and the Lord Chief Justice (under sections 144 and 145 of the Magistrates' Courts Act 1980)

Power exercisable by: Rules of court made by Statutory Instrument

Parliamentary procedure: Negative resolution

4. Clause 18 enables rules of court to be made in relation to the injunction under clause 1. Such injunctions are to be made in the county court (or High Court) when the proposed respondent is aged 18 or over and in the youth court when the proposed respondent is aged under 18. Rules of court may be made to enable appeals against decisions of the county court (or High Court) or youth court to be lodged without giving notice to the other side. Rules of court may also provide for the transfer of cases between the youth court and county court

when the respondent turns 18. It is appropriate that these procedural matters are dealt with in rules of court, the procedure for which is well established.

PART 2: CRIMINAL BEHAVIOUR ORDERS

Clause 27(4): Power to issue guidance in respect of the review of criminal behaviour orders

Power conferred on: Secretary of State

Power exercisable by: Statutory guidance

Parliamentary procedure: None

5. The purpose of the power in clause 27(4) is to enable the Secretary of State to issue guidance to those carrying out or participating in the review of a Criminal Behaviour Order (CBO) in order to outline a sensible framework for carrying out the reviews in light of the statutory requirements. The guidance would provide further detail on how the review should be carried out, what particular matters should be dealt with, and what action is appropriate to take in consequence of the findings.

6. Clause 27 already requires the annual reviews of a CBO made against a person under 18 to include consideration of the extent to which the child or young person has complied with the Order, the adequacy of support available to help him or her to comply with the Order, and any matters relevant to whether an application to vary or discharge the Order should be made. Furthermore, subsection (2) already specifies during which periods the review should occur and clause 28 specifies who must carry out the review, who must co-operate in it, and who may be invited to it by whom.

7. There is no parliamentary procedure for the issue of such guidance since it will be worked up in consultation with practitioners, it will not conflict with the statutory provisions governing CBO reviews, and those carrying out or participating in a review are not required to follow the guidance, albeit that they will have to have regard to it. This power to issue guidance is similar to that in section 1J(7) of the Crime and Disorder Act 1998, as inserted by section 123 of the Criminal Justice and Immigration Act 2008.

PART 4, CHAPTER 1: COMMUNITY PROTECTION NOTICES

Clause 50(4): Power to specify description of person who may be designated by a local authority for the purpose of issuing a community protection notice

Power conferred on: Secretary of State

Power exercisable by: Order made by statutory instrument

Parliamentary procedure: Negative resolution

8. A community protection notice (“CPN”) may be issued by an authorised person. Clause 50(1) sets out who those authorised persons are which are as follows: a constable, the relevant local authority or a person designated by the relevant local authority. The order-

making power in clause 50(4) enables the Secretary of State to restrict that latter category to a type of person set out in the order, to ensure that the CPN cannot be issued by any person authorised by the local authority. It is envisaged that an order under this provision may result in housing providers being designed by the local authority where appropriate. It is considered appropriate to retain flexibility as to the categories of persons who it might be appropriate to designate as an authorised person, hence the order-making power. Since this order-making power restricts the scope of clause 50(1) it is considered that the negative resolution procedure provides adequate parliamentary scrutiny.

PART 4, CHAPTER 2: PUBLIC SPACES PROTECTION ORDERS

Clause 55(9): Power to specify form of publication of a public spaces protection order

Clause 56(3)(b): Power to specify form of publication of an extension to a public spaces protection order

Clause 57(7): Power to specify form of publication of a variation to a public spaces protection order

Clause 57(8): Power to specify form of publication of the discharge of a public spaces protection order

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

9. All of these provisions enable the Secretary of State to make provision in regulations about the publication of a public spaces protection order, the extension of such an order, the variation of such an order and the discharge of such an order. Although it is important that these orders are published so that local residents and other users of the affected public spaces are familiar with the terms of any order, it is necessary to afford some flexibility about how these orders should be published, for example, to take account of new technology. Furthermore, such detail is an appropriate matter for secondary legislation. The negative resolution procedure is considered to provide an appropriate level of Parliamentary scrutiny. There is a similar power in section 13(4) and (5) of the Criminal Justice and Police Act 2001¹ to make regulations governing the requirements on local authorities to publicise the making and effect of a designated public places order; that regulation-making power is also subject to the negative procedure.

Clause 61(1)(e) and (f): Power to prescribe description of a highway

Power conferred on: Secretary of State and Welsh Ministers

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

10. These provisions enable the Secretary of State and Welsh Ministers to set out what type of highway may not be subject to a public space protection order which restricts the

¹ See Local Authorities (Alcohol Consumption in Designated Public Places) Regulations 2007 (SI 2007/806)

public right of way over such a highway. This provides sufficient flexibility should experience show that in fact another type of highway (in addition to those listed in clause 61(1)) should not be subject to such restrictions. It is considered that the negative resolution procedure provides sufficient Parliamentary scrutiny for this level of detail and is consistent with similar provisions in section 129A(5)(e) of the Highways Act 1980, inserted by section 2 of the Clean Neighbourhoods and Environment Act 2005.

PART 4, CHAPTER 3: CLOSURE OF PREMISES ASSOCIATED WITH NUISANCE OR DISORDER

Clause 69(8): Power to prescribe premises or description of premises in relation to which a premises closure order may not be issued

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

11. This power enables the Secretary of State to make provision for certain types of premises to be exempt from the premises closure notice and premises closure order provisions in Chapter 3 of Part 4. It is considered appropriate to have this delegated power in the event that experience of the provisions shows that some premises should be exempt. It is considered that the negative resolution procedure provides sufficient Parliamentary scrutiny for this level of detail and is consistent with similar provisions in sections 1(9) and 11A(10) of the Anti-social Behaviour Act 2003 (section 11A was inserted by Schedule 20 to the Criminal Justice and Immigration Act 2008).

PART 5: RECOVERY OF POSSESSION OF DWELLING-HOUSES: ANTI-SOCIAL BEHAVIOUR GROUNDS

Clause 86(1) – new section 84A(10) and (11) of the Housing Act 1985: Power to amend new Schedule 2A to the Housing Act 1985 (absolute grounds for possession for anti-social behaviour: serious offences)

Power conferred on: Secretary of State and the Welsh Ministers

Power exercisable by: Order made by statutory instrument

Parliamentary procedure: Negative resolution

12. Clause 86(1) inserts new section 84A into the Housing Act 1985 (“the 1985 Act”). Section 84A introduces the new absolute ground for possession into the 1985 Act. Unlike the existing grounds for possession in Part 1 of Schedule 2 (where the court may order possession only if it considers it reasonable to do so) under section 84A the court will be required to order possession provided one of the five conditions for possession in section 84A is met and the landlord has complied with the procedural requirements in the new sections 83ZA (notice requirements) and 85ZA (review requirements) of the 1985 Act. (*Manchester City Council v Pinnock* ([2010] UKSC 45 established that tenants of public authorities have the right to raise proportionality as a defence to possession proceedings. Section 84A(1)

clarifies that the absolute ground for possession is subject to any available defence based upon the tenant's Convention rights. Condition 1 will be met if the tenant, a person residing in or visiting the dwelling-house has committed one of the serious offences listed in the new Schedule 2A to the 1985 Act (inserted into that Act by clause 86(2) and Schedule 3). The offence must have been committed in the locality of the dwelling-house, against a person who lives in the locality of the dwelling-house or against the landlord or a person employed in connection with the landlord's housing management functions.

13. Clause 89 inserts a new ground for possession (ground 7A) into Part 1 of Schedule 2 to the Housing Act 1988 (grounds on which court must order possession). Subject to any available defence based upon Convention rights, the court will be required to order possession under the new ground 7A if one of the five conditions in that ground, which are identical to those in the new section 84A of the 1985 Act, is met. New Schedule 2A to the 1985 Act is therefore also relevant to condition 1 in ground 7A.

14. New section 84A(10) enables the Secretary of State to amend new Schedule 2A to the 1985 Act, insofar as it applies to England, by order, subject to the negative resolution procedure. New section 84A(11) confers the same power on the Welsh Ministers, insofar as Schedule 2A to the 1985 Act applies to Wales.

15. It is intended that the power will be used to add or remove offences from Schedule 2A to take into account changes in legislation, in particular the repeal of existing offences and the creation of new ones. As the purpose is to ensure that Schedule 2A remains up-to-date and that only relevant offences are included, it is considered that the negative resolution procedure provides the appropriate level of Parliamentary scrutiny.

Clause 88 – new section 85ZA(7) and (8) of the Housing Act 1985: Power to make provision about the procedure to be followed in connection with a review of a decision to seek possession on absolute ground for anti-social behaviour

Power conferred on: Secretary of State and the Welsh Ministers

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

16. Clause 88 inserts new section 85ZA into the 1985 Act. New section 85ZA provides secure tenants of local housing authorities and housing action trusts with a right to request a review of the landlord's decision to seek possession on the absolute ground. The landlord must review the decision, if the tenant requests it.

17. New section 85ZA(7) provides that the Secretary of State may make regulations setting out the procedure to be followed for such a review in relation to dwelling-houses in England, and new section 85ZA(8) provides that the Welsh Ministers may make regulations setting out the procedure to be followed for such a review in relation to dwelling-houses in Wales. Subsection (9)(a) provides that this may include ensuring that the decision maker on the review is senior to and different from those involved in the original decision. Subsection (9)(b) provides that the regulations may make provision for the circumstances in which the tenant would be entitled to an oral hearing and whether and by whom the tenant may be represented at that hearing.

18. Regulations currently prescribe the procedure in the parallel circumstances of a tenant seeking review of a decision to end an introductory tenancy under section 129(3) and (4) of the Housing Act 1996². It is considered that secondary legislation is appropriate because the regulations are likely to need to set out the situation in considerable detail and that, as these matters are unlikely to be contentious, the negative resolution procedure provides an appropriate level of Parliamentary scrutiny.

PART 6: LOCAL INVOLVEMENT AND ACCOUNTABILITY

Clause 93(4)(b): Power to issue guidance about discharge of functions under clause 93

Power conferred on: Secretary of State

Power exercisable by: Statutory guidance

Parliamentary procedure: None

19. Clauses 93 to 95 of the Bill give victims a greater say over the form of out-of-court disposals through the introduction of the Community Remedy. Clause 93 requires Police and Crime Commissioners (in London, the Mayor’s Office for Policing and Crime, and the City of London Corporation) to prepare a community remedy document which sets out a menu of the out-of-court disposals (or “actions”) which may be deployed by the police or prosecutor in any given case, following consultation with the victim. The clause requires the actions listed in the community remedy document to promote public confidence in out-of-court disposals and that such actions include a punitive, restorative or rehabilitative element, or any combination of such elements. Police and Crime Commissioners must consult and agree the document with their local chief constable; there is also a requirement to consult with community representatives and such other persons as the Commissioner thinks appropriate. Clause 93(4)(b) requires Police and Crime Commissioners, in carrying out their functions under clause 93, to have regard to any guidance issued by the Secretary of State; such guidance must be published (clause 93(8)). It is envisaged that such guidance would include an illustrative, non-prescriptive list of the types of actions that could be included in the community remedy document.

20. Such guidance is not subject to any parliamentary procedure on the grounds that it will be worked up in consultation with practitioners, it will not conflict with the statutory provisions as set out in clause 93, and Police and Crime Commissioners are not required to follow the guidance, albeit that they will have to have regard to it. A draft of such guidance (embedded in wider non-statutory guidance on the provisions in Parts 1 to 6 of the Bill as a whole) has been published alongside the Bill and is available on the Bill page of the Government website³.

² See Introductory Tenants (Review) Regulations 1997 (SI 1997/72)

³ <https://www.gov.uk/government/organisations/home-office/series/anti-social-behaviour-crime-and-police-bill>

PART 7: DANGEROUS DOGS

Clause 99(2) – new section 1(6A) of the Dangerous Dogs Act 1991: Power to make further provision about an exemption scheme

Power conferred on: Secretary of State

Power exercisable by: Order made by statutory instrument

Parliamentary procedure: Negative resolution

21. Clause 99(2) inserts a new section 1(6A) into the Dangerous Dogs Act 1991 (“the 1991 Act”). Section 1(5) of the 1991 Act contains a power enabling the Secretary of State by order to create a scheme of exemption to the prohibition on keeping a dog to which section 1 of the 1991 Act applies. The purpose of the new power in new section 1(6A) is to enable the Secretary of State by order to require a court to assess the suitability of prospective keepers of section 1 dogs. This is a clarificatory measure given that section 1(6) already gives the Secretary of State the power to provide for specified functions under the scheme to be discharged by such persons or bodies as the Secretary of State thinks appropriate.

PART 9: PROTECTION FROM SEXUAL HARM AND VIOLENCE

Schedule 5, paragraph 2 – new sections 103B(6) and 103E(3)(a) of the Sexual Offences Act 2003: Power to make rules of court

Power conferred on: Civil Procedure Rules Committee (under section 2 of the Civil Procedure Act 1997) and the Lord Chief Justice (under sections 144 and 145 of the Magistrates’ Courts Act 1980)

Power exercisable by: Rules of court made by Statutory Instrument

Parliamentary procedure: Negative resolution

22. Schedule 5 inserts new sections 103A to 103J into Part 2 of the Sexual Offences Act 2003 (“the 2003 Act”). These new sections confer powers on the magistrates’ courts to make, renew, vary or discharge a new civil order (called a “sexual harm prevention order”). In limited cases, the order may also be made by the Crown Court or Court of Appeal. New sections 103B(6) and 103E(3)(a) make specific reference to procedures being subject to the rules of court. The procedures in accordance with which the courts can exercise these new powers are prescribed in rules of court, and these rules must be amended to enable the courts to exercise the new powers.

23. The powers to amend the rules of court are set out in section 2 of the Civil Procedure Act 1997 or sections 144 and 145 of the Magistrates’ Courts Act 1980. The exercise of these powers is subject to existing prescribed processes in those respective provisions; the rules are also subject to the negative resolution procedure. The changes made here to these rule-making powers are not considered to be such as to warrant any change to these procedures.

Schedule 5, paragraphs 2 and 4 – new section 103J(1) and 122J(1) of the Sexual Offences Act 2003: Duty to issue guidance about sexual harm prevention orders and sexual risk orders

Power conferred on: Secretary of State

Power exercisable by: Statutory guidance

Parliamentary procedure: None

24. New sections 103A to 103J and 122A to 122J make provision for the new sexual harm prevention order and sexual risk order respectively. Each order may be made by the courts on the application of either the chief officer of police (usually for the area in which the person to whom the application relates resides) or the Director General of the National Crime Agency. New sections 103J(1) and 122J(1) each impose a duty on the Secretary of State to issue guidance to chief officers and the Director General of the National Crime Agency in relation to the exercise of their powers in respect of the new orders. The chief officer may apply to the court for an order to be made, varied, discharged or renewed; the Director General may apply to the court for an order to be made. The guidance will set out matters which the Secretary of State considers will assist chief officers and the Director General in their exercise of these powers but there is no provision to the effect that they are required to have regard to it.

25. Such guidance is not subject to any parliamentary procedure on the grounds that it will be prepared in consultation with practitioners, it will not conflict with the statutory framework in Part 2 of the Sexual Offences Act 2003, as amended, and chief officers and the Director General will not be under a statutory duty to have regard to it.

Clause 106(1) – new section 98(6) of the Criminal Justice and Immigration Act 2008: Power to amend meaning of “specified offence” for purposes of making a violent offender order

Power conferred on: Secretary of State

Power exercisable by: Order made by statutory instrument

Parliamentary procedure: Affirmative procedure

26. Section 98 of the Criminal Justice and Immigration Act 2008 makes provision for a violent offender order (“the order”). The police may apply to the courts for the order to be made. Subsection (3) contains a list of the offences (each called a “specified offence”) to which the order must relate. Subsection (4) contains a list of corresponding service offences. An application for an order may be made in respect of a person who, amongst other things, has been convicted of a specified offence and the court must be satisfied that the order is necessary to protect the public from harm caused by that person committing one or more specified offences.

27. This clause inserts subsection (6) into section 98. Subsection (6) contains a power to amend subsections (3) and (4). Its purpose is to enable a new offence to be prescribed as a specified offence, although it also enables an existing specified offence to be removed. This

will ensure that the basis on which a violent offender order may be available can be revised to reflect changing public protection needs. However, the Government recognises that this power will enable primary legislation to be amended by a statutory instrument, and considers therefore that this power should be subject to the affirmative resolution procedure (by virtue of section 147(5) of the Criminal Justice and Immigration Act 2008 as amended by clause 106(2)).

PART 11: POLICING ETC

Clause 110: New procedure for preparing police regulations.

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

28. Clause 110 changes existing delegated powers (in sections 50, 51 and 53A of the Police Act 1996 and section 97 of the Criminal Justice and Police Act 2001), rather than creating any new powers, but it is included here in case it is of interest to the Committee. The relevant powers are those of the Secretary of State to make regulations as to the ranks, qualifications, probation and personal records of police officers in England and Wales, the procedures and practices to be followed by their police forces, and police training. At present these regulations are made by the Secretary of State after consultation either with the Police Advisory Board for England and Wales or specified persons with an interest in the subject matter.

29. Clause 110 has the effect that the only regulations that the Secretary of State may make in exercise of these powers are those prepared or approved by the College of Policing, and she must make any such regulations submitted to her by the College unless doing so would impair the efficiency or effectiveness of the police, or it would be unlawful or otherwise wrong for her to do so.

30. The intention is that police standards, practices and procedures should be determined by the police themselves, in the form of the new police professional body, the College of Policing. The College has been established as a company limited by guarantee rather than by the Bill, but the Bill includes provision for matters that cannot be dealt with in the articles of association, including this function in relation to regulations. While the clause establishes the expectation that the Secretary of State will implement regulations proposed by the College, she retains the power to decline to do so where there is good reason. The various requirements to consult before making regulations are removed, as the parties with an interest in the regulations will be represented in the College of Policing and will therefore be involved in the preparation of the regulations from the outset.

31. The relevant regulations are made by negative resolution and it is not thought necessary for there to be any change in that regard.

Clause 111(2) – new section 39A(1) of the Police Act 1996: Power to issue codes of practice to chief officers of police.

Power conferred on: College of Policing

Power exercisable by: Code of practice

Parliamentary procedure: Laid only

32. Clause 111(2) amends section 39A of the Police Act 1996, with the effect that it is the College of Policing, rather than the Secretary of State, that has the power to issue codes of practice to which the chief officers of police forces in England and Wales must have regard in exercising their functions.

33. This is a change to an existing delegated power, rather than the creation of an entirely new one. At present the Secretary of State may issue a code if she considers it necessary for the purpose of promoting general police efficiency and effectiveness, and she must consult with representatives of the bodies responsible for maintaining the police forces, and the Association of Chief Police Officers (“ACPO”), before doing so.

34. The College of Policing will be able to issue a code if the College considers that it is necessary for the purpose of promoting general police efficiency and effectiveness or facilitating joint working between police forces, or that it is otherwise in the national interest. This brings the conditions for issuing codes of practice into line with those for making regulations as to procedures and practices under section 53A of the Police Act 1996. The College will have to consult with the National Crime Agency before issuing a code, to reflect the desirability that police practices and procedures are compatible with those of the Agency. However, the College will not have to consult representatives of the local policing bodies or ACPO – these bodies are represented within the College itself, and will therefore be involved in the development of the codes from the outset.

35. The College will have to obtain the approval of the Secretary of State before issuing a code. Codes will continue to be laid before Parliament.

Clause 112 – new section 53E(2) of the Police Act 1996: Power to issue guidance regarding experience, qualifications and training of police civilian staff.

Power conferred on: College of Policing

Power exercisable by: Guidance

Parliamentary procedure: None

36. Clause 112 amends the Police Act 1996 by inserting a new section 53E which allows the College of Policing to issue guidance about the experience, training and qualifications of police civilian staff. This includes staff employed by local policing bodies or chief officers of police, and also staff providing services under contract and working in public-facing roles. Local policing bodies and chief officers of police will have to have regard to the guidance in carrying out their functions. The College is required to publish its guidance.

Clause 118(1) – new section 64A(4) of the Police Act 1996: Power to change the name of the Police Remuneration Review Body.

Power conferred on: Secretary of State

Power exercisable by: Order made by statutory instrument

Parliamentary procedure: Negative resolution

37. Clause 118(1) amends the Police Act 1996 by inserting new sections creating a Police Remuneration Review Body with the function of advising the Secretary of State and the Department of Justice in Northern Ireland on various matters concerning the terms and conditions of service of police officers in England & Wales and Northern Ireland.

38. New section 64A(4) allows the Secretary of State to change the name of the body and to make consequential amendments to legislation. This power would be used if there was any change to the remit of the body – for example, if regulations were made under section 14 of the Crime and Courts Act 2013 giving the body functions in relation to the pay and allowances of officers of the National Crime Agency.

39. Although this is a power to amend primary legislation, the negative resolution procedure is regarded as sufficient bearing in mind the very limited scope of the amendments that could be made, and the limited circumstances in which the power is likely to be exercised.

Clause 119(1) and 120(2) – new section 52A(7) of the Police Act 1996 and new section 25A(7) of the Police (Northern Ireland) Act 1998: Powers to amend sections to reflect any change to the name or functions of the Senior Salaries Review Body.

Power conferred on: Secretary of State and Northern Ireland Department of Justice

Power exercisable by: Order made by statutory instrument

Parliamentary procedure: Negative resolution

40. Clauses 119(1) and 120(2) amend the Police Act 1996 and Police (Northern Ireland) Act 1998 respectively, by inserting new sections about the process to be undertaken before regulations are made as to the terms and conditions of service of police officers. The sections make provision for the Secretary of State or the Northern Ireland Department of Justice (as the case may be) to take advice from the Senior Salaries Review Body (SSRB) in relation to those regulations concerning police officers above the rank of Chief Superintendent.

41. The new sections 52A(7) of the Police Act 1996 and 25A(7) of the Police (Northern Ireland) Act 1998 allow the Secretary of State and the Department of Justice to amend those sections in consequence of a change to the name or functions of the SSRB. Since the SSRB is not a statutory body, changes to its name or functions might be made by non-statutory means, and it would not be possible to make consequential amendments to the new sections in the absence of this power to do so.

42. Although this is a power to amend primary legislation, the negative resolution procedure is regarded as sufficient bearing in mind the very limited scope of the amendments that could be made, and the limited circumstances in which the power is likely to be exercised.

Schedule 6 - paragraph 2 of new Schedule 4B to the Police Act 1996: Power to determine number and experience of members of Police Remuneration Review Body.

Power conferred on: Secretary of State,

Power exercisable by: Determination

Parliamentary procedure: None.

43. The new section 64A(2)(b) to be inserted in the Police Act 1996 by clause 118(1) provides for the Police Remuneration Review Body to consist of five or more members appointed by the Secretary of State, in addition to the chair appointed by the Prime Minister.

44. Paragraph 2 of the new Schedule 4B to be inserted in the Police Act 1996 by Schedule 5 allows the Secretary of State to determine how many members the body should have, and the kinds of experience that they should possess. The purpose is to provide flexibility in relation to the composition of the body to reflect changing circumstances.

45. Before making or revising a determination, the Secretary of State has to consult representatives of the bodies maintaining the police forces in England and Wales and Northern Ireland and the chief officers and members of those forces, and the Northern Ireland Department of Justice (see paragraph 13 of new Schedule 4B). The Secretary of State must arrange for any determination or revision to be published (see paragraph 14 of new Schedule 4B).

46. Bearing in mind the nature of the determination being made, it is not thought necessary for the power to be subject to Parliamentary scrutiny.

Schedule 6 - paragraph 4 of new Schedule 4B to the Police Act 1996: Power to issue statement of principles as to the conduct of members of the Police Remuneration Review Body.

Power conferred on: Secretary of State

Power exercisable by: Statement of principles

Parliamentary procedure: None

47. Paragraph 4 of the new Schedule 4B to be inserted in the Police Act 1996 by Schedule 5 enables the Secretary of State to issue a statement of principles as to the conduct of members of the Police Remuneration Review Body. The purpose is to ensure that suitable standards of conduct are laid down for members of the body, but to avoid the need for the Bill to descend to this level of detail.

48. Before issuing or revising a statement of principles, the Secretary of State has to consult representatives of the bodies maintaining the police forces in England and Wales and Northern Ireland and the chief officers and members of those forces, and the Northern Ireland Department of Justice (see paragraph 13 of new Schedule 4B). The Secretary of State must arrange for any statement or revision to be published (see paragraph 14 of new Schedule 4B).

49. Bearing in mind the nature of the statement, it is not thought necessary for the power to be subject to Parliamentary scrutiny.

Schedule 6 - paragraphs 11(2) and 12 of new Schedule 4B to the Police Act 1996: Power to give directions to the Police Remuneration Review Body as to procedure and matters to be taken into consideration.

Power conferred on: Secretary of State

Power exercisable by: Direction

Parliamentary procedure: None

50. Paragraphs 11(2) and 12 of the new Schedule 4B to be inserted in the Police Act 1996 by Schedule 6 allow the Secretary of State to give directions to the Police Remuneration Review Body as to its procedure and the matters that it is to consider when making decisions. The directions will specify persons from whom the body will obtain evidence and the procedure for obtaining it. The purpose is to avoid the need for the Bill to set out the detail of these matters, and to provide flexibility if, for example, fresh considerations become relevant to the work of the body.

51. Before making or revising a direction, the Secretary of State has to consult representatives of the bodies maintaining the police forces in England and Wales and Northern Ireland and the chief officers and members of those forces, and the Northern Ireland Department of Justice (see paragraph 13 of new Schedule 4B). The Secretary of State must arrange for any direction or revision to be published (see paragraph 14 of new Schedule 4B).

52. Bearing in mind the nature of the direction, it is not thought necessary for the power to be subject to Parliamentary scrutiny.

Clause 121 – New subsections (8) to (10) of section 12 of the Police Reform Act 2002: Power to apply Part 2 of the Police Reform Act 2002 to contractors

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

53. This clause inserts new subsections (8) to (10) into section 12 of the Police Reform Act 2002 (“the 2002 Act”) to enable the Secretary of State to make regulations which provide that a contractor, a sub-contractor of a contractor or an employee of such a contractor or sub-contractor will for the purposes of the 2002 Act be treated as a person serving with the police. The purpose of this power is to enable the Independent Police Complaints Commission (the

Commission) to have oversight of complaints or other matters relating to the conduct of contractors, sub-contractors or their employees who are contracted to provide services to the police. Such contracted activities may include detention and escort functions or the provision of staff to operate an emergency call centre.

54. Paragraph 91 of Schedule 9 to the Bill will repeal section 39(9) to (11) of the 2002 Act which confers power on the Secretary of State to make regulations which provide for the handling of complaints or other matters relating to the conduct of any person designated under that section. Regulations made under this section apply Part 2 of the Act to such designated persons.

55. New section 12(8) will enable the regulations to be made in relation to a contractor, sub-contractor or an employee of either of them. A contractor is defined in new section 12(10) as a person who enters into a contract with a local policing body or a chief officer to provide services to a chief officer.

56. New section 12(9) enables the application of Part 2 of the 2002 Act to be modified as it applies to contractors. New section 12(8), when read with section 105(4) of the 2002 Act, will also enable the regulations to prescribe any categories of employee of a contractor which are excluded from the application of Part 2.

57. The power to make these regulations is exercisable subject to the negative resolution procedure. The power to make regulations in section 39(9) to (11) which the new power replaces and extends is subject to the same procedure. The Government, therefore, considers that the negative resolution procedure provides an appropriate level of Parliamentary scrutiny in relation to the powers to make regulations in this clause.

Clause 122(2) – Revised paragraph 19(6) of Schedule 3 to the Police Reform Act 2002: Power to make provisions to enable the Commission's staff to authorise certain matters under the Police and Criminal Evidence Act 1984 in respect of which the Commission would otherwise be required to seek authorisation from a senior police officer

Power conferred on: Secretary of State

Power exercisable by: Order made by statutory instrument

Parliamentary procedure: Negative resolution

58. This clause amends paragraph 19 of Schedule 3 to the 2002 Act and inserts new paragraph 19(6A) into Schedule 3 to that Act to enable the Secretary of State to prescribe certain matters by order.

59. Paragraph 19(6) already confers a power on the Secretary of State to make an order specifying the provisions in the Police and Criminal Evidence Act 1984 (“the 1984 Act”) relating to the investigation of criminal offences by police officers which will apply, subject to any specified modifications, to the investigation of offences by members of staff of the Commission.

60. This clause amends paragraph 19(6) to also confer a power on the Secretary of State to make an order specifying the provisions of a code of practice issued under sections 60

(tape-recording of interviews), 60A (visual recording of interviews) and 66 (Codes of practice) of the 1984 Act relating to the investigation of criminal offences by police officers which will apply, subject to any specified modifications, to the investigation of offences by members of the Commission's staff.

61. This clause also amends paragraph 19 by inserting new sub-paragraph (6A). This enables the power conferred by sub-paragraph (6) to, in particular, provide that a member of the Commission's staff may exercise a power under the 1984 Act in respect of which authorisation would otherwise be required by a police officer of or above a particular rank if authorisation is given by a member of the Commission's staff of or above a specified grade.

62. An order is expected to be made in respect of a number of powers relating to entry and search of premises and the questioning of persons in the 1984 Act and the codes of practice issued under one or more of sections 60, 60A and 66 of the 1984 Act. The purpose of this power is to maintain the Commission's ability to investigate matters independently and expeditiously, in particular in investigations which involve alleged criminality on the part of those serving with the police.

63. The power to make these regulations is exercisable subject to the negative resolution procedure. The existing power in paragraph 19(6) of Schedule 3 to the 2002 Act to make an order is subject to the same procedure and the new powers are merely an extension to this existing power. The Government, therefore, considers that the negative resolution procedure provides an appropriate level of Parliamentary scrutiny in relation to the powers to make regulations in this clause.

Clause 125 – New paragraph 28A(4) of Schedule 3 to the Police Reform Act 2002: Power to prescribe circumstances in which the Commission may make recommendations to a person to which that person is required to respond

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

64. This clause inserts new paragraphs 28A and 28B into Schedule 3 to the 2002 Act. New paragraph 28A prescribes a framework in accordance with which the Commission may make a recommendation to a person to which that person is required to respond. The power to make a recommendation may relate to any matter which is identified in a report of an investigation carried out under Part 2 of the 2002 Act. However, the category of person to which a recommendation may be made will be determined by the nature of the matter which was investigated. The power would be available in relation to all persons in either a death or serious injury matter, or a complaint or conduct matter which is specified in regulations (see new paragraph 28A(4)(a)(ii) and (iii) and (4)(b)). In any other case, the category of person to which a recommendation may be made is a person or body in relation to whom the Commission has oversight.

65. The regulations would be made by the Secretary of State and subject to the negative resolution procedure. The powers in the 2002 Act to make existing, similar regulations are subject to the same procedure (for example, the power in paragraph 19D of Schedule 3 in

accordance with which the Police (Complaints and Misconduct) Regulations 2004 (SI 2004/643) were made). The Government, therefore, considers that the negative resolution procedure provides an appropriate level of Parliamentary scrutiny in relation to the powers to make regulations in this clause.

Clause 126(3) and (6) – New paragraph 2(1A) to (1D) of Schedule 8 to and new section 42(3A) to (3D) of the Police Reform and Social Responsibility Act 2011: Duty to designate approved ranks and approved overseas police forces for purposes of appointment of chief officers of police

Power conferred on: College of Policing

Power exercisable by: Designation

Parliamentary procedure: None

66. This clause amends the Police Reform and Social Responsibility Act 2011 so as to extend the range of persons eligible for appointment as a chief constable of a police force in England and Wales or as the Metropolitan Police Commissioner. At present, eligibility is restricted to any person who is or has been a constable anywhere in the United Kingdom. The clause permits the appointment of a person who is or has been a police officer outside the United Kingdom, provided the person has served in a country, police force and rank designated for these purposes by the College of Policing.

67. The clause implements recommendation 24 in the final report of the Independent Review of Police Officer and Staff Remuneration and Conditions (the Winsor Review), which was to the effect that service overseas, in a role equivalent to a chief officer of police in a common law jurisdiction which practises policing by consent, should be accepted as a qualification for appointment to these posts. Because of the difficulties in defining an equivalent role, a common law jurisdiction and policing by consent in primary legislation, it is thought preferable to give the College of Policing the power to designate appropriate ranks, countries and forces. This is consistent with giving the College powers to prepare regulations in relation to qualifications for appointment to police forces (see clause 110).

68. In light of the nature of the designations being made, it is not thought necessary for the exercise of the power to be subject to any Parliamentary procedure, but it is subject to the approval of the Secretary of State. It is intended that she will exercise the power of approval in accordance with the Winsor Review recommendation.

Clause 127(1) and (2): Power to make regulations, give directions and issue guidance in relation to capital finance and accounts of chief officers of police.

Power conferred on: Secretary of State and Welsh Ministers

Power exercisable by: Regulations made by statutory instrument; directions; guidance

Parliamentary procedure: Negative resolution (regulations); none (directions and guidance)

69. The Police Reform and Social Responsibility Act 2011 established chief constables of police forces in England and Wales and the Metropolitan Police Commissioner as corporations sole, with the power to receive and hold funds in their own right. The Act prohibits chief constables or the Commissioner from borrowing money. Clause 127(1) and (2) amend the 2011 Act, relaxing the prohibition by permitting short-term borrowing with the permission of the relevant local policing body. The clause further prohibits chief constables and the Metropolitan Police Commissioner from entering into credit arrangements, which are transactions giving rise to a liability other than a liability to repay money.

70. The new paragraph 7A(4) to be inserted in Schedule 2 to the Police Reform and Social Responsibility Act 2011 by clause 127(1), and the new paragraph 4A(4) to be inserted in Schedule 4 to that Act by clause 127(2), provide for specified provisions in Part 1 of the Local Government Act 2003, and any regulations made under them, to apply to chief constables and the Metropolitan Police Commissioners. The relevant provisions of the Local Government Act 2003 include powers for the Secretary of State to:

- make regulations settling elements of the definition of what amounts to a credit arrangement – see section 7(2) and (3);
- make regulations providing for specified sums or items to be treated, or not treated, as capital receipts – see section 9(3) and 10;
- make regulations on the uses that can be made of capital receipts – see section 11;
- issue guidance in relation to functions under the Act to which chief constables and the Commissioner must have regard, and make regulations specifying third party guidance to which regard must also be had – see section 15;
- make regulations providing for specified expenditure not to be treated as capital expenditure, and to direct that the expenditure of a particular chief constable or the Commissioner shall not be treated as capital expenditure – see section 16;
- make regulations applying the capital finance provisions of the Act to an entity or trust under the control of a chief constable or the Commissioner – see section 18;
- make regulations, and issue guidance to which chief constables and the Commissioner must have regard, about accounting practices – see section 21(1) and (1A);
- make regulations identifying any code of practice or other document as setting out proper accounting practices for the purposes of the Act and other legislation passed subsequently – see section 21(2)(b).

71. The effect is therefore to extend the existing delegated powers of the Secretary of State under Part 1 of the Local Government Act 2003, which are applicable to local authorities, to chief constables and the Metropolitan Police Commissioner. The purpose is to ensure that there is a suitable framework of controls in place in relation to these chief officers' capital finance and accounting arrangements.

72. In the case of chief constables of police forces in Wales, the Bill gives these powers to Welsh Ministers. Although policing is a non-devolved matter in Wales, Welsh Ministers already have the related function of making regulations as to the accounts and audit of chief constables under the Public Audit (Wales) Act 2004. They also make regulations and give directions and guidance under the relevant provisions of the Local Government Act 2003 in relation to Welsh local authorities, including Police and Crime Commissioners. It is therefore desirable that the Welsh Ministers, rather than the Secretary of State, exercise those powers in relation to chief constables in Wales.

73. The various powers to make regulations under Part 1 of the Local Government Act 2003 are subject to the negative resolution procedure. The same procedure is thought to be appropriate for those powers as applied to chief constables and the Metropolitan Police Commissioner. The powers to give directions and issue guidance to local authorities are not subject to any Parliamentary procedure, and none is thought necessary in relation to chief constables and the Metropolitan Police Commissioner.

Clause 129(1)(c): Power to specify services that may be commissioned by local policing bodies.

Power conferred on: Secretary of State

Power exercisable by: Order made by statutory instrument

Parliamentary procedure: Negative resolution

74. Clause 129(1) gives local policing bodies (Police and Crime Commissioners, the Mayor's Office for Policing and Crime and the Common Council of the City of London) powers to commission crime reduction services and services for the support of victims and witnesses. The subsection also allows the Secretary of State to confer further commissioning functions by specifying, by order, descriptions of services that a local policing body may provide, or arrange for their provision.

75. The purpose is to create flexibility for the future by allowing the Secretary of State to give local policing bodies the power to commission services which fall outside their crime and policing remit but may be connected to it, such as probation services.

76. The negative resolution procedure is thought appropriate bearing in mind that this is a power to confer further powers on local policing bodies but not to impose duties upon them. If further commissioning powers are conferred by order, it will be up to the individual local policing body to decide whether or how to exercise them.

Schedule 8, Paragraph 1(3) – new paragraph 1A(1) of Schedule 7 to the Terrorism Act 2000: Duty to issue code of practice about training of examining officers etc.

Schedule 8, Paragraph 7(3) – new paragraph 20K(1) of Schedule 8 to the Terrorism Act 2000: Duty to issue code of practice about periodic review of persons detained under Schedule 7

Power conferred on: Secretary of State

Power exercisable by: Code of practice

Parliamentary procedure: Affirmative resolution

77. Paragraph 1(3) of Schedule 8 inserts new paragraph 1A into Schedule 7 to the Terrorism Act 2000 ("the 2000 Act"). This paragraph requires the Secretary of State to issue a code of practice under paragraph 6 of Schedule 14 to the 2000 Act about the training to be undertaken by constables, immigration officers and customs officers who act as examining officers or carry out other functions under Schedule 7 and the procedure for designating

examining officers in paragraph 1(1)(b) and (c) of Schedule 7 to that Act. New paragraph 1A(2) provides that the code must make provision for consultation with relevant chief officers of police before making such a designation.

78. Paragraph 6(3) of Schedule 7 to the Bill inserts new paragraph 20K into Schedule 8 to the 2000 Act. This paragraph requires the Secretary of State to issue a code of practice under paragraph 6 of Schedule 14 to the 2000 Act about the periodic review by a review officer of a person's detention under Schedule 7. At paragraph 20K(2) the person's detention must be periodically reviewed at such intervals as may be specified in the code of practice. At paragraph 20K(7), the code must include provision about training to be undertaken by persons acting as review officers.

79. Paragraph 6 to Schedule 14 to the 2000 Act already places the Secretary of State under a duty to issue codes of practice about the exercise by officers of functions conferred on them by that Act. Paragraph 7(3) of Schedule 14 to the 2000 Act provides that when the Secretary of State has laid a draft of the code of practice before Parliament it may be brought into force by way of an order. Under section 123(4)(m) of the 2000 Act such an order is subject to the affirmative procedure.

80. It is considered appropriate to include the practical details of the training requirements and designation process relating to officers exercising functions under Schedule 7 and of the review process, including the length of intervals, in a code of practice so that such matters can be revised from time to time to take account of best practice developments and experience. By reason of paragraph 6(4) of Schedule 14 to the 2000 Act, any revised code is also subject to the affirmative procedure and it is considered that this provides an appropriately high level of Parliamentary scrutiny of the proposed requirements and procedures.

81. In both cases the relevant Secretary of State is the Home Secretary. It should be noted that there is currently a code of practice⁴ issued under paragraph 6 of Schedule 14 to the 2000 Act. It is proposed to revise this code using the affirmative procedure described above so that it is compliant with the new duties and generally to refresh it in the light of the other amendments made by the Bill to the 2000 Act. To assist the further scrutiny of the Bill, the Government has published a draft of the revised code of practice⁵.

⁴ Examining Officers under the Terrorism Act 2000, Code of Practice. Brought into force by the Terrorism Act 2000 (Code of Practice for Examining Officers) (Revision) Order 2009 SI 2009/1593

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/248770/2013-10-07_Draft_Revised_Code_of_Practice_for_Examining_Officers_under_T....pdf

PART 12: EXTRADITION

Clause 147 – New section 189D(1) and (4) of the Extradition Act 2003: Duty to issue code of practice about exercise of extradition transit powers etc

Power conferred on: Secretary of State

Power exercisable by: Code of practice and order made by statutory instrument

Parliamentary procedure: Affirmative resolution (in respect of an order bringing a code into force)

82. Clause 147 amends the Extradition Act 2003 (“the 2003 Act”) by inserting new sections 189A to 189E into that Act. These sections deal with the transit through the United Kingdom of people being extradited from one territory to another territory (where neither of those territories is the United Kingdom).

83. New section 189A allows the relevant authority in the United Kingdom to issue a certificate to facilitate such transit. If a certificate is issued, an “authorised officer” may escort the person from the incoming means of transport to the outgoing means of transport and take the person into custody to facilitate the transit. There are also powers of search and seizure.

84. New section 189B deals with unscheduled arrivals in the United Kingdom of people who are being extradited from one territory to another territory (where neither of those territories is the United Kingdom). It provides powers of detention, search and seizure which are similar to those set out in new section 189A.

85. New sections 189C to 189E makes further provision regarding these various powers. In particular, new section 189D(1) obliges the Secretary of State to issue a code of practice in connection with the exercise of the powers in new sections 189A and 189B and the retention, use and return of anything seized under the search powers set out in those sections. Subsections (2) to (8) of new section 189D make further provision in respect of such a code of practice. Those subsections oblige the Secretary of State to publish a draft of the code, consider any representations made to her about the draft and, if she thinks it appropriate, modify the code in light of any such representations. By virtue of new section 189D(4), read with section 223(6)(a) as amended by paragraph 117 of Schedule 9 to the Bill, the code will be brought into force by order subject to the affirmative procedure. Such a level of parliamentary scrutiny is considered appropriate given the powers of search and detention vested in an authorised officer.

Clause 147 - New section 189E(1)(b) of the Extradition Act 2003: Power to specify description of persons to be an “authorised officer”

Power conferred on: Secretary of State

Power exercisable by: Order made by statutory instrument

Parliamentary procedure: Negative resolution

86. As set out above, clause 140 will amend the 2003 Act by inserting new sections 189A to 189E into that Act, to deal with the transit through the United Kingdom of people being extradited from one territory to another territory.

87. New section 189E applies for the purposes of new sections 189A to 189D and defines certain terms used in those sections. “Authorised officer” is defined as a constable or any other person who is of a description specified by the Secretary of State by order. This power is intended to afford flexibility to specify other law enforcement officers, such as immigration officers, who may in particular circumstances be better placed to exercise the powers in new sections 189A and 189B.

88. An order made under this section will be subject to the negative procedure (by virtue of section 223(7) of the 2003 Act), which is considered appropriate given that in practice only suitably qualified persons would be designated as an authorised officer who would then be subject to the code of practice issued under new section 189D(1) in the same way as a constable.

PART 13: CRIMINAL JUSTICE

Clause 152(4) – new section 143(2)(aza) of the Magistrates’ Courts Act 1980: Power to increase the monetary threshold below which shoplifting is to be treated as summary-only

Power conferred on: Secretary of State

Power exercisable by: Order made by statutory instrument

Parliamentary procedure: Negative procedure

89. This power would enable the Secretary of State by order to increase the monetary threshold for the value of property stolen, below which theft from a shop is to be treated as triable only in a magistrates’ court. Theft is presently triable either summarily in a magistrates’ court or on indictment in the Crown Court. These provisions would provide that shop theft under £200 is treated as triable summarily in a magistrates’ court only. They would however preserve the ability of the defendant to choose Crown Court trial for such offences, thus preserving the ability of the defendant to elect trial by jury. The simpler procedure for summary cases would facilitate such thefts being prosecuted by the police as specified proceedings, for example, where the defendant elects to plead guilty by post. The procedure would also mean a magistrates’ court could not allocate such thefts to the Crown Court, thus ensuring a proportionate approach is taken to them.

90. The reason for including a power to increase the £200 threshold is to ensure that it can be up rated in line with inflation in common with other monetary thresholds listed in section 143(2) of the Magistrates’ Courts Act 1980. By virtue of section 143(6) of that Act, the power would be exercisable by statutory instrument subject to the negative procedure. Given that the value of the limit in real terms cannot be varied under this power, the negative resolution procedure is considered appropriate.

Clause 155: Power to make provision about court and tribunal fees

Power conferred on: Lord Chancellor

Power exercisable by: Order or Regulations made by statutory instrument

Parliamentary procedure: Affirmative procedure on first exercise of the power, negative procedure thereafter

91. Section 92 of the Courts Act 2003, sections 54 and 58(4)(b) of the Mental Capacity Act 2005 and section 42 of the Tribunals, Courts and Enforcement Act 2007 confer on the Lord Chancellor powers to make provision by order in respect of court and tribunal fees and fees charged for services provided by the Office of the Public Guardian. Clause 155 would enable the Lord Chancellor, in exercise of those powers, to set fees in amounts that are greater than the cost of the activities in respect of which those fees are charged. In doing so, the Lord Chancellor must have regard to the overall financial position of the courts and tribunals and the competitiveness of the legal services market.

92. *Managing Public Money* governs, amongst other things, the setting of fees for the provision of public services. The normal rule is that fees should be set at a level to recover the full costs of providing the service. This power would enable the Lord Chancellor to prescribe the charging of enhanced fees, set at a level above cost, which must be used to finance an efficient and effective system of courts and tribunals. This better reflects the principle that users of a service should contribute more to the cost of that service where they can afford to do so, in order that the courts are properly resourced. The Government considers it appropriate that any order, that for the first time sets a fee in an amount that exceeds cost, should be subject to the affirmative resolution procedure. This will enable the principle of charging in excess of cost in respect of specific fees to be subject to a high degree of parliamentary scrutiny. Once that principle has been established, the negative resolution procedure is considered appropriate for any subsequent increases.

PART 14: MISCELLANEOUS AND GENERAL

Clause 156(2) and (3): Power to make consequential amendments to enactments

Power conferred on: Secretary of State and the Welsh Ministers

Power exercisable by: Order made by statutory instrument

Parliamentary procedure: Negative resolution (if it does not amend primary legislation), otherwise affirmative resolution

93. Clause 156(2) confers power on the Secretary of State to make such consequential provision as he or she considers appropriate for the purposes of the Bill. Clause 156(3) confers a similar power on the Welsh Ministers to make such consequential provision as they consider appropriate for the purposes of Part 5 of the Bill (and the associated consequential amendments in Schedule 9) as they apply to Wales. The powers conferred by this clause are wide but they are limited by the fact that any amendments made under the order-making power must be genuinely consequential on provisions in the Bill. But there are various precedents for such provisions including section 51 of the Police and Justice Act 2006,

section 148 of the Criminal Justice and Immigration Act 2008, section 113 of the Protection of Freedoms Act 2012 and section 59 of the Crime and Courts Act 2013. There are far-reaching changes to existing tools for tackling anti-social behaviour made by the Bill and it is possible that not all of the consequences of them have been identified in the Bill's preparation. The Government considers that it would therefore be prudent for the Bill to contain a power to deal with these in secondary legislation. If an order under this clause does not amend primary legislation it will be subject to the negative resolution procedure (by virtue of clause 157(4)(a) and (5)(a)). If an order under this clause does amend primary legislation it will be subject to the affirmative resolution procedure (by virtue of clause 158(2) and (3)). It is considered that this provides the appropriate level of parliamentary scrutiny for the powers conferred by this clause.

Clause 160: Commencement power.

Power conferred on: Secretary of State, the Scottish Ministers, the Welsh Ministers and the Attorney General

Power exercisable by: Order made by statutory instrument

Parliamentary Procedure: None

94. Subsections (1), (4), (5) and (6) of clause 160 contains a standard power for the Secretary of State, the Welsh Ministers, the Attorney General and the Scottish Ministers respectively to bring provisions of the Bill into force by commencement order. As usual with commencement powers, orders made under this clause are not subject to any parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by order enables the provisions to be brought into force at a convenient time.

95. Subsections (7), (8) and (9) confer power on the Secretary of State, the Welsh Ministers and the Scottish Ministers respectively to make such transitional, transitory or saving provisions as he, she or they considers appropriate in connection with the coming into force of the provisions in the Bill. This is a standard power to enable the changes made by the Bill to be implemented in an orderly manner. Such powers are often included as part of the power to make commencement orders (for example, section 116 of the Protection of Freedoms Act 2012) and, as such, are not subject to any parliamentary procedure on the grounds that Parliament has already approved the principle of the provisions in the Bill by enacting them. Although drafted as a free standing power on this occasion, the same principle applies and accordingly the power is not subject to any parliamentary procedure.

96. Subsection (10) enables a commencement order bringing into force the provisions in the Bill relating to the abolition of the Police Negotiating Board for the United Kingdom and the Police Remuneration Review Body to make appropriate consequential and transitional provision if, at that time, the Police Negotiating Board for Scotland has not been established. Chapter 2 of Part 6 of the Criminal Justice (Scotland) Bill, currently before the Scottish Parliament, provides for the establishment of that Board.

97. The Government considers it appropriate to include this power to deal with the possibility that the legislation currently before the Scottish Parliament creating the Police Negotiating Board for Scotland is not in force when this Bill comes into force. The timings

are not yet clear and are out with the control of the UK Government. But the Bill has been drafted as if the Scottish legislation is in force.

98. An order under subsection (10) is not subject to any parliamentary procedure as is normal for a commencement power. Moreover, this provision simply enables the changes made by the Bill to be implemented in an orderly manner. In the case of provisions made under subsection (10) these will merely make technical modifications to the Bill to ensure that references to Scottish police matters are accurate. A similar power is contained in paragraph 11 of Schedule 8 to the Crime and Courts Act 2013.

Home Office/Department for Communities and Local Government/Department for Environment, Food and Rural Affairs/Ministry of Justice

17 October 2013