

POLICING AND CRIME BILL: MEMORANDUM FOR PUBLIC BILL COMMITTEE ON THE APPLICATION OF STANDING ORDER 83L OF THE STANDING ORDERS OF THE HOUSE IN RESPECT OF THE GOVERNMENT AMENDMENTS TABLED FOR COMMONS COMMITTEE

Summary

1. Subject to certain exceptions (as detailed in Annex H to the Explanatory Notes and below), the provisions of the Bill extend and apply to England and Wales only.
2. Taking into account the Government amendments tabled¹ for Commons Committee stage, in the view of the Government of the United Kingdom (“UK”), clauses 1 to 9, new clause 22 and Schedules 1 and 2 relate exclusively to England and would be within the legislative competence of the Scottish Parliament and Northern Ireland Assembly.
3. Taking into account the Government amendments tabled for Commons Committee stage, in the view of the Government of the UK, clauses 10 to 23, 25, 29 to 32, 34 to 37, 39 to 55, 57 to 61, 63, 74 to 76, 82 to 84, 87 and 107, new clauses 1, 3 to 6 and 24 to 28, Schedules 3 to 6, 10 and 11 and new Schedule 2 relate exclusively to England and Wales and would be within the legislative competence of the Scottish Parliament and Northern Ireland Assembly.

Commons Committee stage amendments

4. The following is the Department’s assessment of the amendments to the Bill tabled by the Government for consideration at Commons Committee stage.
5. With the exception of the amendments referred to in paragraph 14 (which relates to clause 22) and 19 (which relates to clause 62) below, none of the amendments to existing clauses of or Schedules to the Bill alter the territorial application of the clause or Schedule in question or the analysis at Annex H to the Explanatory Notes. Clause 22 on introduction applied to England and Wales only; the effect of the amendments referred to in paragraph 14 is to extend, in part, the application of the clause to the whole of the UK. Clause 62 on introduction applied, in part, to the whole of the UK; as a result of the amendments referred to in paragraph 19 further provisions in the clause will extend to the whole of the UK.
6. The following new clause applies to England only and, in the view of the Government of the UK, it would be within the legislative competence of the Scottish Parliament and Northern Ireland Assembly to make corresponding

¹ In this memorandum, the Government amendments are referred to by reference to the amendment, new clause or new Schedule number assigned to them in the Marshalled List.

provision and, as such, the clause is certifiable under Standing Order 83L (see paragraph 10 below in respect of minor and consequential effects):

- New clause 22 (*Combined authority mayors: exercise of fire and rescue functions*).

7. The following new clauses and new Schedule apply to England and Wales only and, in the view of the Government of the UK, it would be within the legislative competence of the Scottish Parliament and Northern Ireland Assembly to make corresponding provision and, as such, the clauses and Schedule are certifiable under Standing Order 83L (see paragraph 11 below in respect of minor and consequential effects):

- New clause 1 (*Initiation of investigations by IPCC*);
- New clause 3 (*Release without bail: fingerprinting and samples*);
- New clause 4 (*Release under section 24A of the Criminal Justice Act 2003*);
- New clause 5 (*Duty to notify person released under section 34, 37 or 37CA of PACE that not to be prosecuted*);
- New clause 6 (*Duty to notify person released under any of sections 41 to 44 of PACE that not to be prosecuted*);
- New clause 24 (*Investigations by IPCC: powers of seizure and retention*);
- New clause 25 (*Transfer of staff to local policing bodies*);
- New clause 26 (*Office for Police Conduct*);
- New clause 27 (*Exercise of functions*);
- New clause 28 (*Protective searches: individuals removed etc under section 135 or 136 of the Mental Health Act 1983*);
- New Schedule 2 (*Office for Police Conduct*).

8. The following new clause applies to England and Wales only but, in the view of the Government of the UK, it would not be within the legislative competence of the Scottish Parliament and Northern Ireland Assembly to make corresponding provision and, as such, the new clause is not certifiable under Standing Order 83L (see paragraph 13 below):

- New clause 2 (*Sensitive information received by IPCC: restriction on disclosure*).

9. The following new clauses and new Schedule do not relate exclusively to England or to England and Wales and, as such, in the view of the Government of the United Kingdom the new clauses and new Schedule are not certifiable under Standing Order 83L:

- New clause 23 (*References to England and Wales in connection with IPCC functions*);
- New clause 29 (*Application of maritime enforcement powers in connection with Scottish offences: general*);
- New clause 30 (*Restriction on exercise of maritime enforcement powers in connection with Scottish offences*);
- New clause 31 (*Exercise of maritime enforcement powers in hot pursuit in connection with Scottish offences*);
- New clause 32 (*Restriction on exercise of maritime enforcement powers in hot pursuit in connection with Scottish offences*);
- New clause 33 (*Power to stop, divert and detain in connection with Scottish offences*);
- New clause 34 (*Power to search and obtain information in connection with Scottish offences*);
- New clause 35 (*Power of arrest and seizure in connection with Scottish offences*);
- New clause 36 (*Maritime enforcement powers in connection with Scottish offences: supplementary: protective searches*);
- New clause 37 (*Maritime enforcement powers in connection with Scottish offences: other supplementary provision*);
- New clause 38 (*Maritime enforcement powers in connection with Scottish offences: obstruction etc*);
- New clause 39 (*Maritime enforcement powers in connection with Scottish offences: interpretation*);
- New clause 40 (*Controls on defectively deactivated weapons*);
- New clause 41 (*Offence of breach of pre-charge bail conditions relating to travel*);
- New clause 42 (*Offence of breach of pre-charge bail conditions relating to travel: interpretation*);

- New Schedule 1 (*Disciplinary proceedings: former members of MoD Police, British Transport Police and Civil Nuclear Constabulary*).

Minor and consequential effects

10. New clause 22 makes provision for and in connection with enabling the mayor of a combined authority in England by whom both fire and rescue functions and policing functions are exercisable to delegate fire and rescue functions to the chief constable of the police area which corresponds to the area of the combined authority. In effect, the new clause enables a combined authority mayor to adopt the 'single employer' model provided for in Schedule 1 to the Bill. Subsections (5) to (11) of the new clause makes amendments to various enactments consequential on the substantive amendments made by subsections (2) to (4) to the Local Democracy, Economic Development and Construction Act 2009. These amendments have the same extent as the provisions in the Acts being amended (see clause 110(1) to (3) and Government amendments 216 and 221). A number of these Acts extend to Scotland and/or Northern Ireland as well as to England and Wales, however any such amendments will have no effect in Scotland, Wales or Northern Ireland given that the provisions in new clause 22 (as with those in Part 1 of the Bill as a whole) impact only on the governance of fire and rescue authorities in England.

11. Part 3 of new Schedule 2 (*Office for Police Conduct*) makes amendments to other enactments consequential upon the change of name of the Independent Police Complaints Commission ("IPCC") to the Office for Police Conduct and upon changes to the governance arrangements for the organisation. The IPCC was established by Part 2 of the Police Reform Act 2002 which applies to England and Wales only. The amendments made by Part 3 of new Schedule 2 have the same extent as the provisions in those other Acts being amended (see clause 110(1) to (3) and Government amendments 216 and 221). A number of these Acts extend to Scotland and/or Northern Ireland as well as to England and Wales, for example the amendment to Schedule 1 to the Freedom of Information Act 2000, however any such amendments will have no substantive effect in Scotland or Northern Ireland given that the provisions impact only on the functions of the Office for Police Conduct.

Subject matter and legislative competence of devolved legislature

12. Chapter 2 of Part 1 of the Bill provides for Police and Crime Commissioners in England to take over the functions of fire and rescue authorities. New clause 22 (*Combined authority mayors: exercise of fire and rescue functions*) makes provision for and in connection with enabling the mayor of a combined authority by whom both policing and fire and rescue functions are exercisable to delegate those fire and rescue functions to the chief constable for the police area which corresponds to the area of the combined authority. Fire and rescue services fall within paragraph 7 of Part 1 of Schedule 7 to the Government of Wales Act 2006 and the constitution, structure and areas of local authorities fall within paragraph

12 of Part 1 of Schedule 7 to the Government of Wales Act 2006. Such matters are therefore devolved to Wales; however, given that new clause 22 also makes provision in respect of policing, the National Assembly for Wales would not have the legislative competence to make corresponding provision. Fire and rescue services, and the constitution, structure and areas of local authorities, are not reserved to the UK Government under the Scotland Act 1998, neither are they specified as an excepted or reserved matter under the Northern Ireland Act 1998, accordingly given that policing is not generally reserved (or excepted) in either jurisdiction, it would be open to the Scottish Parliament and Northern Ireland Assembly to make provision corresponding to that in new clause 22.

13. New clause 2 (*Sensitive information received by IPCC: restriction on disclosure*) applies to England and Wales only. New clause 2 places restrictions on the disclosure of sensitive information received by the IPCC. Such information includes information that originates or relates to the intelligence agencies and Her Majesty's forces. The Crown (including the intelligence agencies) and the armed forces of the Crown are reserved matters in Scotland (paragraphs 1 and 9 of Schedule 5 to the Scotland Act 1998) and national security (including the intelligence agencies) and the armed forces of the Crown are excepted matters in Northern Ireland (paragraphs 17 and 4 of Schedule 2 to the Northern Ireland Act 1998), as such, the Scottish Parliament and the Northern Ireland Assembly could not make corresponding provision in respect of the disclosure of sensitive information received by the Police Investigations and Review Commissioner or the Police Ombudsman for Northern Ireland respectively.
14. New subsection (8) of clause 22 (inserted by amendment 145) and new Schedule 1 (*Disciplinary proceedings: Former members of MoD police, British Transport Police and Civil Nuclear Constabulary*) make equivalent provision to that provided for in clause 22(1) to (7) (which applies to "Home Office" police forces in England and Wales) to enable regulations to be made in respect of disciplinary proceedings against former members of the Ministry of Defence ("MoD") Police, British Transport Police ("BTP") and Civil Nuclear Constabulary ("CNC"). Paragraphs 1 to 5 (which relate to the MoD police) of new Schedule 1 apply to the UK, while paragraphs 6 to 14 (which relate to BTP and CNC) apply to Great Britain.

Clarification of the Explanatory Notes relating to 'English votes for English laws' (Annex H)

15. As set out in paragraph (p) of Annex H to the Explanatory Notes, in the view of the Government of the UK, Schedules 7 and 8 of the Bill are not exclusively within devolved legislative competence. Clause 28(11) of the Bill introduces Schedules 7 and 8 and, accordingly, was similarly not certifiable under Standing Order 83J (and was not included in the Speaker's provisional certificate of 2 March 2016).
16. As set out in the table at Annex H to the Explanatory Notes, clause 32 (*Restrictions on designated persons acting as covert human intelligence sources*) does not apply to Scotland and Northern Ireland and it is within the legislative competence of the Scottish Parliament (but not the Northern Ireland Assembly) to make corresponding provision. That being the case, in the view of the

Government of the UK the clause was certifiable under Standing Order 83J (and was included in the Speaker's provisional certificate of 2 March 2016); the summary paragraph on page 144 of the Explanatory Notes inadvertently omitted to include clause 32.

17. As set out in paragraph (r) of Annex H to the Explanatory Notes, Schedule 9 to the Bill includes an amendment to section 28 of the Railways and Transport Safety Act 2003 which extends to Scotland. As Schedule 9, and clause 33 which introduces it, in part apply to Scotland, in the view of the Government of the United Kingdom they were not certifiable under Standing Order 83J (and were not included in the Speaker's provisional certificate of 2 March 2016).
18. The table in Annex H to the Explanatory Notes indicated that clauses 71 (*Maritime enforcement powers: offences*) and 72 (*Maritime enforcement powers: code of practice*) of the Bill do not extend and apply to Scotland and Northern Ireland. While these clauses do not form part of the law of Scotland and Northern Ireland, they do apply in relation to the exercise of the maritime enforcement powers in "Scottish waters" and "Northern Ireland waters". Accordingly, in the view of the Government of the United Kingdom, these clauses were not certifiable under Standing Order 83J (and were not included in the Speaker's provisional certificate of 2 March 2016). A similar analysis applies to new clause 38 (*Maritime enforcement powers in connection with Scottish offences: obstruction etc*) which does not form part of the law of England, Wales and Northern Ireland, but applies in relation to the exercise of the maritime enforcement powers in "England and Wales waters" and "Northern Ireland waters".
19. Amendments 218 and 219 alter the territorial extent of subsections (2) to (5) of clause 62 so that they have UK-wide extent (the Bill, on introduction, provided that only subsections (2) and (3) of clause 62 extend to the whole of the UK, but only insofar as they relate to clause 73). This change does not affect the analysis in Annex H to the Explanatory Notes.
20. The above assessment is presented in tabular form in the attached annex.

Home Office
12 April 2016

Provisions in the Bill on Introduction taking into account Government amendments tabled for Commons Committee

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within competence of Welsh Assembly?	Would corresponding provision be within competence of Scottish Parliament?	Would corresponding provision be within competence of NI Assembly?	Legislative Consent Motion needed?
Part 1: Emergency services collaboration – Chapter 1: Collaboration agreements								
Clauses 1 to 5	Yes	No	No	No	No	Yes	Yes	No
Part 1: Emergency services collaboration – Chapter 2: Police and Crime Commissioners: Fire and rescue functions								
Clauses 6 and 7	Yes	No	No	No	No	Yes	Yes	No
Schedule 1	Yes	No	No	No	No	Yes	Yes	No
Part 1: Emergency services collaboration – Chapter 3: London Fire Commissioner								
Clauses 8 and 9	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 2	Yes	No	No	No	Yes	Yes	Yes	No
Part 2: Police complaints, discipline and inspection – Chapter 1: Police complaints								
Clauses 10 to 17	Yes	Yes	No	No	No	Yes	Yes	No
Schedules 3 and 4	Yes	Yes	No	No	No	Yes	Yes	No
Part 2: Police complaints, discipline and inspection – Chapter 2: Police super-complaints								
Clauses 18 to 20	Yes	Yes	No	No	No	Yes	Yes	No
Part 2: Police complaints, discipline and inspection – Chapter 3: Whistle-blowing: Power of IPCC to investigate								
Clause 21	Yes	Yes	No	No	No	Yes	Yes	No
Schedule 5	Yes	Yes	No	No	No	Yes	Yes	No
Part 2: Police complaints, discipline and inspection – Chapter 4: Police discipline								
Clauses 22, as amended	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Clause 23	Yes	Yes	No	No	No	Yes	Yes	No
Schedule 6	Yes	Yes	No	No	No	Yes	Yes	No
Clause 24	Yes	Yes	In part	In part	No	No	No	No
Clause 25	Yes	Yes	No	No	No	Yes	Yes	No
Part 2: Police complaints, discipline and inspection – Chapter 5: Inspection								
Clause 26	Yes	Yes	No	No	No	No	No	No

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within competence of Welsh Assembly?	Would corresponding provision be within competence of Scottish Parliament?	Would corresponding provision be within competence of NI Assembly?	Legislative Consent Motion needed?
Clause 27	Yes	Yes	In part	In part	No	No	No	No
Part 3: Police workforce and representative institutions – Chapter 1: Police workforce								
Clause 28	Yes	Yes	No	No	No	No	No	No
Schedules 7 and 8	Yes	Yes	No	No	No	No	No	No
Clauses 29 to 31	Yes	Yes	No	No	No	Yes	Yes	No
Clause 32	Yes	Yes	No	No	No	Yes	No	No
Clause 33	Yes	Yes	In part	No	No	No	Yes	No
Schedule 9	Yes	Yes	In part	No	N/A	N/A	N/A	No
Clause 34	In part	In part	In part	No	No	Yes	Yes	No
Schedule 10	Yes	Yes	No	No	No	Yes	Yes	No
Clauses 35 and 36	Yes	Yes	No	No	No	Yes	Yes	No
Part 3: Police workforce and representative institutions – Chapter 2: Representative institutions								
Clause 37	Yes	Yes	No	No	No	Yes	Yes	No
Clause 38	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 39	Yes	Yes	No	No	No	No	Yes	No
Schedule 11	Yes	Yes	No	No	No	No	Yes	No
Part 4: Police powers – Chapter 1: Pre-charge bail								
Clauses 40 to 51	Yes	Yes	No	No	No	Yes	Yes	No
Part 4: Police powers – Chapter 2: Powers under PACE: Miscellaneous								
Clauses 52 to 55	Yes	Yes	No	No	No	Yes	Yes	No
Clause 56	Yes	Yes	In part	In part	No	No	No	No
Clause 57 and 58	Yes	Yes	No	No	No	Yes	Yes	No
Part 4: Police powers – Chapter 3: Powers under the Mental Health Act 1983								
Clauses 59 to 61	Yes	Yes	No	No	No	Yes	Yes	Yes (W)
Part 4: Police powers – Chapter 4: Police powers: Maritime enforcement								
Clause 62	Yes	Yes	In part	In part	N/A	N/A	N/A	Yes (S, NI)

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within competence of Welsh Assembly?	Would corresponding provision be within competence of Scottish Parliament?	Would corresponding provision be within competence of NI Assembly?	Legislative Consent Motion needed?
Clause 63	Yes	Yes	No	No	No	Yes	Yes	No
Clauses 64 to 70	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, NI)
Clauses 71 and 72	Yes	Yes	In part	In part	N/A	N/A	N/A	No
Clause 73	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, NI)
Part 5: Police and Crime Commissioners and police areas								
Clauses 74 to 76	Yes	Yes	No	No	No	Yes	Yes	No
Part 6: Firearms								
Clauses 77 to 79	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Clause 80	Yes	Yes	Yes	No	N/A	N/A	N/A	Yes (S)
Clause 81	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Part 7: Alcohol: Licensing								
Clauses 82 to 84	Yes	Yes	No	No	No	Yes	Yes	No
Clauses 85 and 86	Yes	Yes	No	No	No	No	No	No
Clause 87	Yes	Yes	No	No	No	Yes	Yes	No
Part 8: Financial sanctions								
Clauses 88 to 94	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 95	Yes	Yes	No	No	No	No	No	No
Clauses 96 to 100	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 9: Miscellaneous and general								
Clause 102	Yes	Yes	No	No	No	No	No	No
Schedule 12	Yes	Yes	No	No	No	No	No	No
Clause 103	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clauses 104 and 105	Yes	Yes	Yes	Yes	No	No	No	No
Clause 106	Yes	Yes	No	No	No	No	No	No
Clause 107	Yes	Yes	No	No	No	Yes	Yes	No

Government new clauses and new Schedules tabled for Commons Committee

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within competence of Welsh Assembly?	Would corresponding provision be within competence of Scottish Parliament?	Would corresponding provision be within competence of NI Assembly?	Legislative Consent Motion needed?
NC1 (Initiation of investigations by IPCC)	Yes	Yes	No	No	No	Yes	Yes	No
NC2 (Sensitive information received by IPCC: restrictions on disclosure)	Yes	Yes	No	No	No	No	No	No
NC3 (Release without bail: fingerprinting and samples)	Yes	Yes	No	No	No	Yes	Yes	No
NC4 (Release under section 24A of the Criminal Justice Act 2003)	Yes	Yes	No	No	No	Yes	Yes	No
NC5 (Duty to notify person released under section 34, 37 or 37CA of PACE that not to be prosecuted)	Yes	Yes	No	No	No	Yes	Yes	No

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within competence of Welsh Assembly?	Would corresponding provision be within competence of Scottish Parliament?	Would corresponding provision be within competence of NI Assembly?	Legislative Consent Motion needed?
NC6 (Duty to notify person released under any of sections 41 to 44 of PACE that not to be prosecuted)	Yes	Yes	No	No	No	Yes	Yes	No
NC22 (Combined authority mayors: exercise of fire and rescue functions)	Yes	No	No	No	No	Yes	Yes	No
NC23 (References to England and Wales in connection with IPCC functions)	Yes	Yes	In part	In part	N/A	N/A	N/A	No
NC24 (Investigations by IPCC: powers of seizure and retention)	Yes	Yes	No	No	No	Yes	Yes	No
NC25 (Transfer of staff to local policing bodies)	Yes	Yes	No	No	No	Yes	Yes	No
NC26 (Office for Police Conduct)	Yes	Yes	No	No	No	Yes	Yes	No

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within competence of Welsh Assembly?	Would corresponding provision be within competence of Scottish Parliament?	Would corresponding provision be within competence of NI Assembly?	Legislative Consent Motion needed?
NC27 (Exercise of functions)	Yes	Yes	No	No	No	Yes	Yes	No
NC28 (Protective searches: individuals removed etc under section 135 or 136 of the Mental Health Act 1983)	Yes	Yes	No	No	No	Yes	Yes	No
NC29 (Application of maritime enforcement powers in connection with Scottish offences; general)	In part	In part	Yes	In part	N/A	N/A	N/A	Yes (S, NI)
NC30 (Restriction on exercise of maritime enforcement powers in connection with Scotland offences)	No	No	Yes	No	N/A	N/A	N/A	Yes (S)
NC31- NC37 (Police powers: maritime enforcement : Scotland)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, NI)

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within competence of Welsh Assembly?	Would corresponding provision be within competence of Scottish Parliament?	Would corresponding provision be within competence of NI Assembly?	Legislative Consent Motion needed?
NC38 (Maritime enforcement powers in connection with Scottish offences: obstruction etc)	No	No	Yes	No	N/A	N/A	N/A	Yes (S)
NC39 (Maritime enforcement powers in connection with Scottish offences: interpretation)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, NI)
NC40 (Controls on defectively de-activated weapons)	Yes	Yes	Yes	No	N/A	N/A	N/A	No
NC41 (Offence of breach of pre-charge bail conditions relating to travel)	Yes	Yes	No	Yes	No	No	No	No
NC42 (Offence of breach of pre-charge bail conditions relating to travel: interpretation)	Yes	Yes	No	Yes	No	No	No	No

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within competence of Welsh Assembly?	Would corresponding provision be within competence of Scottish Parliament?	Would corresponding provision be within competence of NI Assembly?	Legislative Consent Motion needed?
NS1 (Disciplinary proceedings: Former members of MoD Police, BTP and CNC)	Yes	Yes	Yes	In Part	N/A	N/A	N/A	No
NS2 (Office for Police Conduct)	Yes	Yes	No	No	No	Yes	Yes	No