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POLICING AND CRIME BILL: GOVERNMENT AMENDMENTS FOR REPORT STAGE

I am writing to let you have details of a first tranche of Government amendments (copy attached) for Report stage of the Bill. The amendments relate to Parts 2 and 3 of the Bill.

Duty to consult the Police Advisory Board for England and Wales on Part 2B regulations (amendment to clause 26)

The Bill inserts a new Part 2B into the Police Reform Act 2002 (the 2002 Act) to enable the IPCC to undertake an investigation into a concern raised by a whistle-blower. At Committee stage, I undertook to consider your amendment 162 which sought to add relevant police workforce representative bodies to the list of persons who must be consulted before the Home Secretary makes regulations under the new Part 2B (Official Report, 24 March 2016, columns 199-200). This amendment will require the Home Secretary to consult the Police Advisory Board for England and Wales before making such regulations (in line with the existing requirement to consult the Board on regulations made under Part 2 of the 2002 Act). The Board includes representatives from the Chief Police Officers' Staff Association, the Police Superintendents' Association and the Police Federation.

Other technical and consequential amendments relating to complaints and discipline (new clause *Public records* and amendments to clauses 17, 32, 33 and 136 and Schedules 4, 7, 8 and 9)

- The amendments to paragraphs 27 and 37 of Schedule 4 to the Bill are technical amendments needed to clarify the powers of the appropriate authority (the chief officer or local policing body, as the

case may be) and IPCC following an investigation into a complaint. The amendment to paragraph 27 makes clear that the appropriate authority can make determinations regarding non-criminal and non-disciplinary matters following an investigation on its own behalf. We have already given the IPCC the same explicit power under paragraph 26 of Schedule 4. The amendment to paragraph 37 enables the IPCC, in a case where it decides upon review that a matter ought to be re-investigated by the appropriate authority, to give that authority such directions as to the handling of the matter in future as it thinks fit.

- Schedule 7 to the Bill provides for the creation of new statutory police barred and police advisory lists. New section 88I(1)(a) of the Police Act 1996 (the 1996 Act), which relates to the police advisory list, requires the relevant authority (the chief officer or local policing body as the case may be) to report a person to the College of Policing where the person resigns or retires after an allegation about his or her conduct comes to the attention of the relevant authority. The amendment to this provision disapplies this reporting duty in a case where an allegation surfaces, disciplinary proceedings are concluded and the person then resigns or retires. The effect of this amendment is to ensure that only those who resign or retire whilst subject to a *live* investigation or disciplinary proceedings will be added to the advisory list.
- Following amendments made in Committee, Chapter 5 of Part 2 reforms the governance of the IPCC and changes its name to the Office for Police Conduct. The amendments to clause 23 and Schedule 8 make further technical and consequential amendments as a result of these changes. In addition, the IPCC and Office for Police Conduct is made subject to the provisions of the Public Records Act 1958 (see new clause *Public records*). The IPCC currently retains documentation for a minimum of six years and while this information is potentially accessible, including via freedom of information requests, being subject to the Public Records Act would strengthen the obligations on the IPCC and the National Archive formally to consider which records should be selected for permanent preservation as archives. While new clause *Public records* extends to the whole of the United Kingdom (see the consequential amendment to clause 136(2)), for the purposes of Standing Order 83L of the Standing Orders of the House its effect in Scotland and Northern Ireland is considered to be minor and consequential.

- In three places the Bill refers to the interception provisions in the Regulation of Investigatory Powers Act 2000 which are being repealed and replaced by provisions in the Investigatory Powers Bill. The amendments to clauses 17 and 33 and Schedule 9 make the necessary amendments to this Bill to take account of the provisions in the Investigatory Powers Bill.

Inspection (new clause *Police volunteers: inspection* and amendments to clause 33)

Chapter 5 of Part 2 of the Bill strengthens the powers of HM Inspectors of Constabulary (HMIs) to obtain information and access to premises for the purposes of an inspection. These amendments make two changes to the provisions in clause 33.

First, they clarify that the powers of HMIs to gain access to premises, or issue notices under paragraph 6A or 6B, apply to any person authorised by an inspector to act on behalf of an inspector in fulfilling their statutory functions.

Second, they modify the provisions in respect of information notices so that they do not inhibit HMIs' existing ability to conduct unannounced inspections. HMIs already have powers (under paragraph 6A of Schedule 4A to the 1996 Act) to require chief officers to provide such information as specified in a notification for the purpose of an inspection; chief officers must comply with such a notification and have no right of appeal. New paragraphs 6A and 6B of Schedule 4A to the 1996 Act extend these powers to require the production of information and obtain access to premises where such information or access is reasonably required for the purpose of an inspection under section 54 of the 1996 Act. New paragraph 6D of Schedule 4A to the 1996 Act confers a right of appeal on anyone serviced with a notice under paragraph 6A or 6B. On further consideration, this right of appeal is extended too widely and could effectively prevent unannounced inspections. Accordingly, the amendments to new paragraph 6D remove the right of appeal against a notice serviced under new paragraph 6B (because such notices only apply to the premises of police forces, PCCs and companies providing police services under contract) and provide that the right of appeal against an information notice served under new paragraph 6A does not apply to police forces (police officers (including special constables), police staff and volunteers), a local policing body or the staff of such a body, or third party contractors providing policing services to a police force. The right of appeal will remain for all other recipients of a notice

under paragraph 6A. The defence of reasonable excuse to allegations of failure to comply with a paragraph 6A or 6B notice will remain open to all recipients, including those who cannot appeal against such notices.

Subsection (1) of new clause *Police volunteers: inspection* clarifies that inspections of a police force may include inspection of designated volunteers. The new clause extends and applies to England and Wales only and, in the view of the Government, it would be within the legislative competence of the Scottish Parliament and Northern Ireland Assembly to make corresponding provision.

Powers of police staff and volunteers (new clause *Application of Firearms Act 1968 to the police: special constables and volunteers and amendment to clause 136*)

Chapter 1 of Part 3 of the Bill enables chief officers to designate a wider range of powers on police staff and volunteers. Amongst other things, these provisions codify the existing powers on chief officers to equip police community support officers (PCSOs) with CS or PAVA spray (albeit that no force has yet taken up this option) and enable them similarly to equip community support volunteers or policing support volunteers. CS and PAVA spray constitute a prohibited weapon for the purposes of section 5 of the Firearms Act 1968 (the 1968 Act). Police officers equipped with firearms or defensive sprays are exempt from the requirement to possess a certificate under section 1 or an authorisation under section 5 of the 1968 Act by virtue of the exemption for Crown servants provided for in section 54 of that Act. That exemption would also apply to any employed PCSOs equipped with a defensive spray, in their capacity as PCSOs. Designated community support volunteers or policing support volunteers would not benefit from the exemption for Crown servant, accordingly subsection (2) of new clause *Application of Firearms Act 1968 to the police: special constables and volunteers* extends the definition of a Crown servant in section 54 of the 1968 Act to cover these categories of policing volunteers; as a consequence, were such volunteers to be issued with defensive sprays they too would not require a section 1 certificate or section 5 authorisation under the 1968 Act (to possess the sprays in their capacity as volunteer PCSOs). Subsection (2) of the new clause makes it explicit on the face of the 1968 Act that special constables fall within the term “member of a police force” and accordingly similarly do not require a section 1 certificate or section 5 authorisation when equipped with defensive sprays. This serves merely to clarify the law, rather than bring about any substantive change.

Subsection (2) of the new clause extends and applies to England and Wales. Subsection (3) of the new clause extends and applies to England and Wales and Scotland.

I am copying this letter to members of the Public Bill Committee and placing a copy in the library and on the Bill page on gov.uk.

Rt Hon Mike Penning MP