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House of Commons
London
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17 March 2016

**POLICING AND CRIME BILL:
GOVERNMENT AMENDMENTS FOR COMMONS COMMITTEE**

I am writing to let members of the Public Bill Committee have details of a second tranche of Government amendments which I tabled on 16 March.

PCC-style Fire and Rescue Authorities – further consequential amendments (amendments to clause 110 and Schedules 1 and 2)

Schedule 1 provides for a Police and Crime Commission to take responsibility for the fire and rescue authority in their area. Part 2 of Schedule 1 amends various enactments as a consequence of the creation of PCC-style fire and rescue authorities. The amendments to Schedule 1 make further such consequential amendments, including to the Local Government and Housing Act 1989 (the 1989 Act). The amendments to paragraphs 85 and 86 of Schedule 2 modify the amendments made there to the 1989 Act (as a consequence of the creation of the London Fire Commissioner) to take account of the amendments made to that Act by the amendments to Schedule 1.

Finally, the amendments to paragraph 73 of Schedule 2 modify the amendments to section 106 of the Housing Association Act 1985 to remove (rather than replace) references to the London Fire and Emergency Planning Authority. This is because section 106 of that Act only applies to Wales.

Restriction on disclosure of sensitive information received by the IPCC (amendments to clauses 12, 21 and 26 and Schedule 5 and new clause “*Sensitive information received by IPCC: restriction on disclosure*”)

These amendments provide that where the Independent Police Complaints Commission (IPCC) receives sensitive information it must not disclose the information without the consent of the relevant authority (i.e. the organisation who owns the information). Sensitive information includes that provided by the security and intelligence services, information derived from interception and information from a government department which may, if disclosed, cause damage to national security, international relations or the economic well being of the country. At present, Part 2 of the Police Reform Act 2002 includes provision for the protection of sensitive information provided to the IPCC under an information notice.

These amendments widen the protection to include all information received by the IPCC (and they mirror similar provisions relating to Her Majesty’s Inspectorate of Constabulary (HMIC) at clause 26 of the Bill). The IPCC will continue to have access to all pertinent information and can continue to base decision-making on it but where the IPCC seek onward disclosure of any sensitive information they must seek consent from the owner of the information. The amendments also provide that intelligence service information means information obtained directly or indirectly from an intelligence service. In addition, they introduce a duty on the person providing the information to inform the IPCC that the information falls within the definition of sensitive information (the amendment to clause 26 provides for a similar duty in relation to information supplied to HMIC).

Delegation of complaints functions by the Common Council of the City of London (amendment to clause 17)

Clause 17 provides a regulation-making power that will be used to allow local policing bodies (chiefly PCCs) to delegate their new functions relating to the complaints system and accordingly prevents delegation of those functions under the general delegation powers of PCCs and the Mayor’s Office of Policing and Crime. This amendment makes equivalent provision for the Common Council, which is the local policing body for the City of London Police.

Police whistle-blowing (amendments to clause 21 and Schedule 5)

Clause 21 and Schedule 5 introduce a power for the IPCC to investigate concerns raised by police whistle-blowers of which it becomes aware. These provisions contain a number of protections for police whistle-blowers in order to protect their identity and information about the investigation, with exceptions to those protections to be set out in regulations. In order to ensure a greater level of reassurance to police whistle-blowers, these amendments limit the scope of the relevant regulation-making powers. The amendments specify that such regulations can only permit disclosure of the whistle-blower's identity or other information relating to their concern or the investigation where necessary for certain limited purposes, such as for the protection of the interests of national security. In addition, the amendments clarify that there will be a duty on the IPCC to keep the whistle-blower informed about the progress of the investigation and its outcome, which will encourage whistle-blowers that they will be properly informed and supported throughout any investigation.

Regulations may make exceptions to that duty but only for certain limited purposes. The amendments also limit the regulation-making powers of the Secretary of State to make exceptions from the rule that the final investigation report must be disclosed to the whistle-blower, listing a number of limited purposes for which regulations can be made. Such purposes include for the prevention or detection of crime. The amendments also allow for regulations to provide for circumstances in which the final investigation report can be provided to the appropriate authority without the whistle-blower's consent but, again, such regulations can only be made for certain limited purposes.

Disciplinary proceedings concerning former officers (amendments to clauses 22 and 110 and new Schedule "*Disciplinary proceedings: former members of MoD Police, British Transport Police and Civil Nuclear Constabulary*")

Clause 22 makes provision allowing for disciplinary proceedings to be brought against former officers, when an officer resigns or retires to avoid disciplinary action or where an allegation is raised against an officer within a specified period following his or her exit from a force. These amendments will ensure that these provisions apply to the range of former officers they are intended to cover. In particular, the amendments:-

- Extend the provisions to the British Transport Police, Civil Nuclear Constabulary and Ministry of Defence Police, ensuring consistency across policing.
- Enable fresh disciplinary proceedings to be brought against former officers in England and Wales, for example following an IPCC re-investigation of a complaint, a conduct matter or a death or serious injury matter (under clause 15 of the Bill). Following a re-investigation, the IPCC or appropriate authority may determine that an individual does in fact have a case to answer for gross misconduct, a matter which could lead to dismissal. These amendments will allow, in those circumstances, for further disciplinary proceedings to be brought, with a potential outcome of a finding that the officer would have been dismissed and being barred from policing.
- Clarify that, in cases where the alleged misconduct occurs prior to the commencement of the provision, provision may only be made allowing for disciplinary proceedings to be brought against former officers where the allegation, if proven, could have led to dismissal.

Police Appeals Tribunals for MoD Police (amendment to clause 24)

Clause 24 allows the Home Secretary to make provision regarding the constitution of Police Appeals Tribunals in rules. An amendment to the Ministry of Defence Police Act 1987 is needed to ensure that the Defence Secretary has the power to make equivalent provisions for Police Appeals Tribunals for members of the Ministry of Defence police.

Pre-charge bail (amendments to clause 50 and new clauses “*Release without bail: fingerprinting and samples*”, “*Release under section 24A of the Criminal Justice Act 2003*”, “*Duty to notify person released under section 34, 37 or 37CA of PACE that not to be prosecuted*” and “*Duty to notify person released under any of sections 41 to 44 of PACE that not to be prosecuted*”)

New clause “*Release without bail: fingerprinting and samples*” amends sections 61 and 63 of the Police and Criminal Evidence Act 1984 (PACE), which deal with taking the fingerprints and DNA respectively of a person arrested on suspicion of the commission of an offence. Sections 61 and 63 currently permit the taking of fingerprints and DNA from a person who has been arrested and subsequently released on bail where they have not been taken while they were in detention.

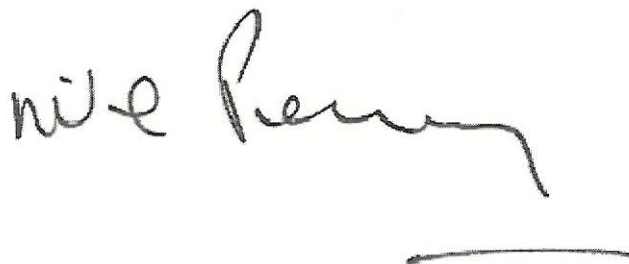
This new clause would extend this power to those arrested and released without bail, where bail is not necessary and proportionate.

New clauses "*Duty to notify person released under section 34, 37 or 37CA of PACE that not to be prosecuted*" and "*Duty to notify person released under any of sections 41 to 44 of PACE that not to be prosecuted*" deliver a commitment made in the Government's response to the consultation, published on 23 March 2015, to make sure that, where a person is released without bail, a custody officer must still notify them if it is decided not to prosecute. In this way, a person released without bail is put in the same position as a person bailed under section 37(7)(a) of PACE (who must be notified under section 37B(5) and their bail terminated).

These new clauses makes clear that the giving of a notice under either these new clauses or the existing 37B(5A) does not prevent the investigation being resumed if further evidence comes to light. This reflects existing practice that a decision not to prosecute will be taken on the basis of the evidence then available – any further evidence must be considered to see if it changes the original decision.

New clause "*Release under section 24A of the Criminal Justice Act 2003*" and the amendment to clause 50 make consequential amendments to the Criminal Justice Act 2003 to require the police, where they have arrested a person for breaching a conditional caution, to consider whether their subsequent release should be on bail or without bail. They must be satisfied that bail is both necessary and proportionate, in the same way as they would when releasing a person after their initial period of pre-charge detention.

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

A handwritten signature in black ink, appearing to read "Mike Penning". The signature is written in a cursive style and is positioned above a horizontal line.

Rt Hon Mike Penning MP