

POLICING AND CRIME BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

The Government has tabled amendments to the Policing and Crime Bill for Lords Report stage. These include a number of new or modified delegated powers. This supplementary memorandum explains why the new powers have been taken and the reason for the procedure selected.

Amendment to clause 27(1) – new section 29FA(4) of the Police Reform Act 2002 (“the 2002 Act”): Power to modify Schedule 3 to the 2002 Act in relation to a death or serious injury (“DSI”) matter for the purpose of making provision for the protection of anonymity of whistle-blowers

Amendment to Schedule 6 – new paragraph 4A(5) of new Schedule 3A to the 2002 Act: Power to modify Schedule 3 to the 2002 Act for the purpose of making provision for the protection of the anonymity of whistle-blowers

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

1. New section 29FA of the 2002 Act requires the Independent Police Complaints Commission (“IPCC”), upon receipt of information from a whistle-blower, to consider whether the concern is about a DSI matter. Where the IPCC determines that it is, the IPCC must not investigate under new Part 2B of the 2002 Act, but must instead notify the appropriate authority in relation to the DSI matter. That authority must then record the matter as a DSI matter under Part 2 of the 2002 Act.
2. In cases where there is an ongoing investigation under new Part 2B, information may come to light which indicates that the matter is a DSI matter. In such circumstances, new paragraph 4A of Schedule 3A to the 2002 Act provides that the investigation would cease to be a Part 2B investigation and become a Part 2 investigation
3. New section 29FA(4) and paragraph 4A(5) of new Schedule 3A confer powers on the Secretary of State (in practice, the Home Secretary), by regulations, to modify Schedule 3 to the 2002 Act in relation to DSI matters and investigations which are being dealt with or taking place under Part 2 as a result of the above provisions. But modifications may only be made for the purpose of making provision for the protection of the anonymity of whistle-blowers.
4. The principle that the identity of a whistle-blower should be protected regardless of whether an investigation is conducted under new Part 2B or existing Part 2 of the 2002 Act is established on the face of the Bill. Making any necessary modifications to Schedule 3 to the 2002 Act to deliver this objective is an appropriate matter to be left to secondary legislation. Any modifications will be set out in the regulations rather than by textual amendments to the 2002 Act. These

regulation-making powers are narrowly focused – as stated, modifications may only be made for the purpose of making provision for the protection of the anonymity of whistle-blowers – and any regulations are subject to consultation (by virtue of new section 29L of the 2002 Act and section 63 of the Police Act 1996 (as amended by new section 29M(5) of the 2002 Act)). Given this, the Government is satisfied that the negative procedure (which applies by virtue of section 105(2) of the 2002 Act) provides a sufficient level of parliamentary scrutiny.

Amendment to clause 105 - new section 137D(5) of the Criminal Justice and Public Order Act 1994: Power to amend list of rights of persons arrested under section 137A of the 1994 Act and to further modify application of such rights

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative procedure

5. Chapter 7 of Part 4 of the Bill includes measures to strengthen the existing cross-border powers of arrest contained in Part 10 of the Criminal Justice and Public Order Act 1994 (“the 1994 Act”). In particular, these provisions close a gap in the cross-border arrest powers by creating a new power of arrest so that a person who commits an offence in one UK jurisdiction can be arrested without a warrant by an officer from the jurisdiction in which the person is found. The new power of arrest will also be exercisable by immigration officers and Revenue and Customs officers. In relation to the latter, the new power of arrest and the existing cross-border powers of arrest will be exercisable in relation to all of the reserved functions of HMRC and Revenue and Customs officers (that is, both customs and tax).
6. New section 137D of, and Schedule 7B to, the 1994 Act (inserted by clause 105) apply, with modifications, certain existing statutory rights to persons arrested under the new power of arrest. Section 137D(5) includes a power to add new rights (or to remove such added rights), alter the modifications of those rights or to disapply any of the rights in specified cases or circumstances.
7. If section 137D(5) is used to add new rights for arrested persons or to further modify their application, this could give rise to a need for consequential amendments to other legislation, particularly in relation to the exercise of powers by Revenue and Customs officers and immigration officers. A change to, for example, Schedule 7B to the 1994 Act might trigger a need to amend section 87 of the Finance Act 2007 or Schedule 21 to the Crime and Courts Act 2013, as amended by this Bill. Other provisions relating to the duties of immigration officers, Revenue and Customs officers, National Crime Agency officers and designated customs officials are widely spread throughout the statute book and piecemeal, which makes consequential amendments in relation to those officers both more likely and more difficult to predict. For this reason, the regulation-making power in section 137D(5) is amended to ensure that such regulations may include consequential provision, including provision amending any statutory provision.

8. For the reasons given in paragraph 239 of the Department's original memorandum, the regulation-making power continues to be subject to the affirmative procedure.

New Chapter 6A of Part 4 “Police powers: Maritime enforcement: Northern Irish offences” – new clause 104A(3)(e): Power to add to list of law enforcement officers eligible to exercise maritime enforcement powers

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

9. Chapter 5 of Part 4 extend the maritime enforcement powers of the police and other law enforcement officers in England and Wales. Chapter 6 of Part 4 makes equivalent provision in respect of the police and other law enforcement officers in Scotland. The maritime enforcement powers include the power to stop, board, divert and detain (clause 86 and clause 98), search and obtain information (clause 87 and clause 99) and the powers of arrest and seizure (clause 88 and clause 100).
10. New Chapter 6A of Part 4 makes analogous provision for law enforcement officers in Northern Ireland to exercise the maritime enforcement powers in Northern Ireland waters.
11. Clause 82(3) defines a “law enforcement officer” for the purpose of the England and Wales provisions. Paragraphs (a) to (f) lists those persons defined as law enforcement officers, including police officers in England and Wales, special constables, British Transport Police officers, port constables, and designated customs officials. Clause 82(3)(g) makes provision for the Secretary of State to specify further categories of law enforcement officer by regulations. Any additions to the list will not be made by textual amendments to clause 82. Clause 94(3) adopts a similar approach in relation to the Scottish provisions and includes an identical regulation-making power at paragraph (e). These powers are necessary to enable the categories of law enforcement officer who may exercise these maritime enforcement powers to be extended in the light of changing operational requirements. For example, both the Criminal Justice (International Cooperation) Act 1990 and the Modern Slavery Act 2015 confer powers on armed forces personnel and there may be an operational case for extending the powers in this Bill to such personnel in future. These regulation-making powers does not enable the Secretary of State to remove or amend any of the categories of law enforcement officer listed in clause 82(3)(a) to (f) or clause 94(3)(a) to (d). New clause 104A(3)(e) confers a corresponding regulation-making power on the Secretary of State in relation to the new Northern Ireland provisions. Such regulations may only include provision which relates to transferred matters with the consent of the Northern Ireland Department of Justice (new clause 104A(6) and (7)).

12. Regulations made under new clause 104A(3)(e) are subject to the negative resolution procedure, in the same way as regulations made under clauses 82(3)(g) and 94(3)(e). Whilst these provisions confer significant enforcement powers on specified persons, the regulation-making powers will only be exercised to add categories of personnel who have a law enforcement role and, in practice, there will be some nexus between any newly specified category of law enforcement officer and law enforcement in the maritime environment. The Government therefore considers that the negative procedure provides an appropriate level of parliamentary scrutiny. Moreover, the negative procedure matches that for the equivalent power in paragraph 1(1)(c) of Schedule 3 to the 1990 Act. That power has been exercised to add commissioned officers of Her Majesty's ships, officers of the sea-fishery inspectorate and officers of the fishery protection service to the list of enforcement officers for the purposes of Schedule 3 to the 1990 Act.

Amendment to clause 114 – new section 8A(4A), (4B) and (4C) of the Firearms (Amendment) Act 1988: Power to publish a document setting out technical specifications for the deactivation of firearms

Power conferred on: Secretary of State

Power exercisable by: Publication of technical specification document

Parliamentary procedure: None

13. In order to be able to enforce any non-compliance with new European deactivation standards for firearms, clause 114 of the Bill creates a new offence of selling or gifting, or making available for sale or gift, a deactivated firearm within the EU which does not meet the EU standards. In response to the debate in Committee (Hansard, 9 November, columns 1155-1159), the amendments to clause 114 remove the link to the EU standards in primary legislation and instead provide for the standards to be specified by the Secretary of State.

14. New section 8A(4A) of the Firearms (Amendment) Act 1988 requires the Secretary of State (in practice, the Home Secretary) to publish a document setting out the technical specifications that apply for the deactivation of firearms. New section 8A(4B) sets out that the document may contain different technical specifications for different kinds of weapon.

15. New section 8A(4C) permits the Secretary of State to revise the technical specifications document, and where it is revised, requires that the document is published and specifies the date from which any changes to the technical specifications take effect.

16. Technical specifications have been in place since 1989 with revisions in 1995, 2010 and 2016¹. The specifications have been drafted by experts and are

¹ The current deactivation standards are available at:
<https://www.gov.uk/government/publications/the-adaptation-of-shotgun-magazines-and-the-deactivation-of-firearms-revised-2010>

accepted by the trade and the police. Given the detailed nature of the technical specifications it is not considered appropriate to set them out in legislation. All standards have been previously published by the Home Office by administrative means. The amendments therefore place the current long-established process on a statutory footing. The requirement to publish the technical specifications, and specify a date on which any revisions are to take effect, will provide legal certainty for the purpose of the operation of the offence in new section 8A of the 1988 Act. This method of promulgating the standards also enables future revisions to be made at short notice to address a new risk or threat to public safety. While the UK remains a member of the EU, the technical specifications will reflect those mandated by the EU, but these amendments will afford flexibility in the longer term to set our own higher standards. In view of the technical nature of the deactivation standards and the long-established practice of promulgating the standards through administrative means, the Government is satisfied that no parliamentary scrutiny is appropriate in respect of the technical specifications document.

Amendments to clause 160 - New subsections (1A) and (7A): Commencement power

Power conferred on: Department of Justice in Northern Ireland

Power exercisable by: Order made by statutory rule

Parliamentary Procedure: None

17. The amendments inserting new subsection (1A) of clause 160 confers a standard power on the Northern Ireland Department of Justice to bring the provisions in new Chapter 6A of Part 4 (Police powers: Maritime enforcement: Northern Irish offences) of the Bill into force by commencement order. As usual with commencement powers, an order made under new clause 160(1A) is not subject to any procedure in the Northern Ireland Assembly. The UK 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.

18. New clause 160(7A) confers power on the Northern Ireland Department of Justice to make such saving, transitional or transitory provisions as it considers appropriate in connection with the coming into force of the provisions in new Chapter 6A of Part 4. 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 here, as part of the power to make commencement orders or regulations 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.