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

I am writing to let members of the Public Bill Committee have details of a further tranche of Government amendments which I have tabled today.

**Emergency services collaboration: the application of the “single employer” model to metro mayors (new clause “*Combined authority mayors: exercise of fire and rescue functions*” and amendment to clause 110)**

The Bill currently provides for Police and Crime Commissioners (“PCCs”) to take responsibility for the fire and rescue service(s) in their area, where a local case is made. It further provides for PCCs to take an additional step to put in place the single employer model – that is, to delegate fire functions to a single chief officer who would employ both police and fire personnel. The Government’s intention is that these provisions should apply to metro mayors in the same way as they do to PCCs.

There are already existing powers in the Local Democracy, Economic Development and Construction Act 2009 (as amended by the Cities and Local Government Devolution Act 2016), to enable a metro mayor to take on responsibility for the governance of policing and fire (analogous to the 'governance model' in the Bill). However, there is no existing provision in legislation that would enable a mayor who had taken on the governance of fire to implement the 'single employer model'. New Clause *Combined authority mayors: exercise of fire and rescue functions* provides for mayors to implement this model. It will allow mayors to realise the full benefits of collaboration between the two services – for example bringing together the senior management team of the police force and fire and rescue service and allowing the rapid consolidation of back office functions.

The new clause applies the principles of the single employer model as they apply to PCCs to metro mayors, taking into account the context of the mayoral model. They enable a mayor to make a request to the Home Secretary where they consider that there is a local case for the single employer model. The mayor's proposal would need to set out why it would be in the interests of economy, efficiency and effectiveness or public safety for the order to be made and would need to include the outcomes of local consultation. Where there is not local agreement (if 2/3 or more of the constituent members of the combined authority disagree with the mayor's proposal), the provisions will also require the Home Secretary to secure an independent assessment of the mayor's proposal and have regard to the local consultation undertaken by the mayor before making an order. This ensures that local communities will continue to have a say over how emergency services are delivered in their area and is in keeping with the Government's broader approach to devolving powers.

The new clause also makes a number of technical and consequential provisions to allow mayors and chief constables in mayoral areas to give effect to the single employer model. This includes provision for transfer schemes transferring property, rights and liabilities from either the combined authority or a fire and rescue authority to the chief constable, where an order implementing the single employer model is made. This permits a mayor to implement the single employer at the same time as fire and policing functions are transferred. The provisions also enable chief constables to appoint, remunerate and pay pensions to fire staff and for the mayor to hold the chief constable to account for the exercise of their fire functions.

**Reforming the Independent Police Complaints Commission's ("IPCC") governance arrangements (new clauses "*Office for Police Conduct*" and "*Exercise of functions*" and new Schedule "*Office for Police Conduct*" and amendments to clause 110)**

Following a public consultation, the Home Secretary announced at Second Reading that we would table amendments at Committee stage (Official Report, 7 March 2016, column 43) to reform the governance structure of the IPCC and to rename it as "the Office for Police Conduct" ("OPC"). The purpose of these reforms is to remedy weaknesses in the current governance structure, as identified by a recent independent review, and to deliver a more capable, resilient IPCC with clear lines of accountability and decision-making and one more suited to its expanding role in investigating serious and sensitive matters involving the police.

New clause *Office for Police Conduct* amends section 9 of the Police Reform Act 2002 ("the 2002 Act") to rename the IPCC and to replace the existing "Commission structure" with a new arrangement. The OPC will be headed by a Director General (which will be a Crown appointment), who will be responsible for the OPC's investigations and decisions. Corporate governance is to be provided by a unitary board, consisting of at least six other members and including a majority of non-executive directors (NEDs).

New clause *Exercise of functions* provides for the Director General to carry out the investigatory and other functions previously discharged by the IPCC and for the governance functions of the Board. A Code of Practice will govern the relationship between the Director General and the Board.

Part 1 of new Schedule *Office for Police Conduct* makes various detailed amendments to Schedule 2 to the 2002 Act to give full effect to the new governance structure of the OPC. As amended, Schedule 2 to the 2002 Act will include arrangements for the appointment of NEDs by the Secretary of State, the terms of office for the Director General and NEDs; arrangements for the appointment of staff by the Director General; delegation of functions by the Director General to staff; and powers to set up regional offices in England and in Wales. Part 2 of the new Schedule makes a number of minor and consequential amendments to other provisions in Part 2 of the 2002 Act, including to vest investigative and certain decision-making functions in the Director General rather than, as now, in the 'Commission'.

Part 3 of the new Schedule makes consequential amendments to other Acts that refer to the Commission. Given the number of individual references to the IPCC in the 2002 Act and other enactments this Schedule is necessarily lengthy.

**Clarification of the IPCC's jurisdiction in UK territorial waters adjacent to England and Wales (new clause "*References to England and Wales in connection with IPCC functions*" and amendment to clause 110)**

The law as it stands is clear that the activities of the 43 territorial police forces of England and Wales, when they are operating in adjacent UK territorial waters, fall within the jurisdiction of the IPCC. However, there is a need for greater clarity in relation to the other law enforcement bodies that also fall under the jurisdiction of the IPCC. Under the 2002 Act, such other bodies include the National Crime Agency, the Ministry of Defence Police and the British Transport Police. New clause *References to England and Wales in connection with IPCC functions* clarifies that the exercise of police powers and functions by such law enforcement bodies in the UK's territorial waters adjacent to England and Wales falls within the jurisdiction of the IPCC. The new clause also amends the law covering the activities of HM Revenue and Customs and immigration officers, who also fall within the IPCC's jurisdiction, to provide the same clarity.

**Strengthening the role of PCCs in the reformed police complaints system (new clause "*Transfer of staff to local policing bodies*")**

Under the reformed police complaints system, local policing bodies (PCCs and the London equivalent) will be the relevant 'review body' for those appeals currently heard by chief constables. They will also have the ability to take on certain other responsibilities in the complaints system.

New clause *Transfer of staff to local policing bodies* will allow, if desirable, for the transfer of staff from the police force to the local policing body's office for the purpose of discharging these additional complaints responsibilities. We would expect a PCC to agree any transfer scheme with the chief constable. Exceptionally, where agreement is not possible, the Home Secretary would need to consent to the making of a transfer scheme.

Currently, most PCCs have kept their offices deliberately small. This new clause will give them increased flexibility in determining how best to manage taking on these additional complaints functions. The ability to make a transfer scheme will be particularly relevant for the larger forces that currently deal with a significant number of appeals.

**Powers of the IPCC (new clause "*Investigations by the IPCC: powers of seizure and retention*")**

The 2002 Act already provides IPCC investigators with the powers of police constables, which include powers to seize and retain evidence under the Police and Criminal Evidence Act 1984 ("PACE"). However, these powers apply only in relation to the investigations of criminal allegations. Where the IPCC is investigating a serious conduct matter or Death and Serious Injury (DSI) matter involving the police, it is unable to obtain and retain evidence under the PACE powers.

New clause *Investigations by the IPCC: powers of seizure and retention* provides IPCC investigators with powers to seize and retain evidence on a par with PACE but in relation to its investigations about non-criminal matters. This will ensure that crucial evidence can be seized and retained if necessary to support the investigative decisions.

**Protective searches under the Mental Health Act 1983 (new clause "*Protective searches: individuals removed etc under section 135 and 136 of the Mental Health Act 1983*")**

New clause *Protective searches: individuals removed etc under section 135 or 136 of the Mental Health Act 1983* enables a police officer to search a person detained under sections 135 and 136(2) of the 1983 Act for any items that could be used to cause injury to themselves or others.

This new clause complements the provisions in Chapter 3 of Part 4 of the Bill, which amends police powers under sections 135 and 136. Clause 60 enables the use of new places of safety – namely any suitable place if those responsible give consent, and a private dwelling in the case of section 135 – in which there is currently no explicit provision for the police to search the person.

The new search power will be limited and proportionate, with the aim of maintaining the safety of all concerned (that is, the person detained, health and policing professionals and anyone else present) for the period while the person is detained and their mental health is assessed.

It will require the officer to have reasonable grounds for believing that the person has a dangerous item concealed and that they pose a threat to themselves or others. The search will be limited to a search of clothing and the mouth, and will not allow an intimate search.

**Maritime enforcement powers (new clauses “*Application of maritime enforcement powers in connection with Scottish offences: general*”, “*Restriction on exercise of maritime enforcement powers in connection with Scottish offences*”, “*Exercise of maritime enforcement powers in hot pursuit in connection with Scottish offences*”, “*Restriction on exercise of maritime enforcement powers in hot pursuit in connection with Scottish offences*”, “*Power to stop, board, divert and detain in connection with Scottish offences*”, “*Power to search and obtain information in connection with Scottish offences*”, “*Power of arrest and seizure in connection with Scottish offences*”, “*Maritime enforcement powers in connection with Scottish offences: supplementary: protective searches*”, “*Maritime enforcement powers in connection with Scottish offences: other supplementary provision*”, “*Maritime enforcement powers in connection with Scottish offences: obstruction etc*”, “*Maritime enforcement powers in connection with Scottish offences: interpretation*” and amendments to clauses 62, 110 and 111)**

Chapter 4 of Part 4 builds on the maritime enforcement powers available to the police and others in respect of drug trafficking and modern slavery offences committed at sea, by providing the police, National Crime Agency and Border Force with the necessary powers to investigate all crimes that take place on vessels where the courts in England and Wales have jurisdiction. This will include powers to stop, board, divert, detain and search vessels, and powers of arrest and seizure.

These provisions currently apply to law enforcement officers in England and Wales. At the request of the Scottish Government to make these powers available to Police Scotland, these new clauses now make similar provision for law enforcement officers in Scotland. The provisions in Chapter 4 of Part 4 are modified as necessary to reflect Scots law and policing and judicial practice. The amendment to clause 62 makes it clear on the face of the legislation that NCA officers designated with the powers and privileges of a constable in England and Wales may exercise the maritime enforcement powers; while the existing drafting has this effect (see paragraph 726 of the Explanatory Notes) making express provision provides added clarity.

**Firearms (new clause "*Control of defectively de-activated weapons*" and amendment to clause 81)**

Part 6 of the Bill amends the Firearms Acts, including closing loopholes which can be exploited by criminals. One such loophole is the absence of a requirement that, in order for a weapon to be considered deactivated as a matter of law, it must be certified as being deactivated to an approved standard. In November 2015, the European Commission agreed an Implementing Regulation on Deactivation Standards. To give effect to the EU mandatory deactivation standards new clause *Control of defectively de-activated weapons* makes it an offence to make a defectively de-activated firearm available for sale or as a gift to another person or to sell it or give it to another person. The new offence has a maximum penalty of five years' imprisonment.

Clause 81 confers power on the Home Secretary to issue statutory guidance to chief officers of police on the exercise of their licensing functions under the Firearms Acts. Chief officers are under a duty to have regard to the guidance, and, when hearing an appeal against the decision of a chief officer, the Crown Court or the sheriff must consider whether the chief officer had regard to the guidance. The amendment to clause 81 strengthens the duty on the courts so they must have regard to any relevant parts of the guidance in reaching their determination. This will help ensure any criteria set in the guidance, for example those around domestic violence and firearms ownership, are applied consistently by both police and courts.

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**