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POLICING AND CRIME BILL: GOVERNMENT AMENDMENTS FOR REPORT STAGE

I am writing to let you have details of the second tranche of Government amendments (copy attached) for Report stage of the Bill which I have tabled today.

Strengthening of the current inspection powers under the Fire and Rescue Services Act 2004 (new clause “*Inspection of fire and rescue services*” and new Schedule “*Schedule to be inserted as Schedule A3 to the Fire and Rescue Services Act 2004*”)

In response to new clause 13 (*Inspection of Fire and Rescue Authorities*) tabled by Lyn Brown in Committee, I indicated that I did not believe the current peer review arrangements to be acceptable and that we were looking at strengthening the inspection arrangements for the fire and rescue service (Official Report, Public Bill Committee, 22 March 2016 (afternoon), column 143).

You will have subsequently have seen the Home Secretary’s speech on the reform of the fire and rescue service on 24 May¹ where she announced the Government’s intention to bring forward proposals to establish a rigorous and independent inspection regime for fire and rescue in England. As a necessary precursor to that, these amendments strengthen the existing (currently dormant) inspection framework provided for in the Fire and Rescue Services Act 2004 (the 2004 Act).

While the 2004 Act already includes provision for the appointment of fire service inspectors these provisions are deficient in a number of

¹ <http://www.reform.uk/publication/what-next-for-fire-reform/>

respects, particularly when compared with the inspection framework for police forces (as contained in the Police Act 1996, as amended clause 33 of the Bill). These amendments will therefore amend the 2004 Act to enable fire inspectors to enter premises, obtain information, and undertake joint inspections with HM Inspectors of Constabulary. These provisions will put beyond doubt the powers of inspectors to access the information they need to undertake a robust examination of fire and rescue services including, if necessary, without services' consent.

The amendments will also make provision for the Home Secretary to appoint a chief fire and rescue inspector for England, approve a framework of inspection and require inspectors to publish the reports of their inspections as well as an annual report to Parliament.

These provisions will apply to England only.

Extension of police powers to retain DNA and fingerprints of those convicted outside of England and Wales (new clauses “*Retention of fingerprints and DNA profiles: PACE*” and “*Retention of fingerprints and DNA profiles: Terrorism Act 2000*” and amendments to clause 138 and the long title)

Under current law, if any person is arrested for an offence in England and Wales and has his or her DNA and fingerprints taken, but subsequently no action is taken for that offence, the DNA profile and fingerprints can be retained if the person has a previous conviction in England and Wales. However, if the person has a conviction in another jurisdiction, the DNA profile and prints can be retained only if the conviction is equivalent to a ‘qualifying’ offence in England and Wales (that is, a serious offence, usually sexual or violent). If a person has a conviction(s) elsewhere, for an offence such as theft, their DNA profile and prints cannot be retained.

In addition, the law contains a provision in such cases which, in practice, means that even if there is a power to retain the person’s DNA and prints, they have to be re-sampled and re-fingerprinted following a senior officer’s approval, rather than the DNA and prints taken on arrest being retained. It is likely there are significant numbers arrested who have convictions elsewhere, whose DNA and prints either cannot be retained, or can be retained only after an unnecessary re-arrest and re-sampling. This makes it harder to solve crimes in which such persons may be involved.

New clause *Retention of fingerprints and DNA profiles: PACE* will remove these restrictions, so that DNA and fingerprints taken under the

provisions of the Police and Criminal Evidence Act 1984 can be retained on the basis of convictions outside England and Wales in the same way as for convictions in England and Wales (the retention power would not apply in cases where the conviction elsewhere is for an act which is not an offence here).

New clause *Retention of fingerprints and DNA profiles: Terrorism Act 2000* makes similar provision in respect of persons arrested under section 41 of, or detained under Schedule 7 to, the Terrorism Act 2000; this new clause will extend to the whole of the UK.

These amendments give effect to a recommendation made by the Biometrics Commissioner in his 2015 annual report².

Cross-border powers of arrest (new clauses “*Extension of cross-border powers of arrest: urgent cases*”, “*Cross-border enforcement: powers of entry to effect arrest*” and “*Cross-border enforcement: minor and consequential amendments*”, new Schedule “*Cross-border enforcement: minor and consequential amendments*” and amendments to clause 138 and the long title)

Part 10 of the Criminal Justice and Public Order Act 1994 (the 1994 Act) provides for cross-border powers of arrest. The key provisions are as follows;

- a) Section 136 provides that a person in respect of whom a warrant for arrest has been issued in any jurisdiction in the UK may be arrested in any other jurisdiction in the UK, by a constable in any police force (or other specified persons) from the issuing or executing jurisdiction or by any other person authorised in the warrant. For example, on the basis of a warrant issued in Northern Ireland, a person could be arrested in Scotland either by an officer from Police Scotland or by an officer from the Police Service of Northern Ireland.
- b) Section 137 provides that a constable from one jurisdiction can arrest without warrant (or in the case of Scottish constables, detain) a person in a jurisdiction other than his own ‘home’ jurisdiction, as long as that constable has reasonable grounds for

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/507104/54496_Biometrics_Commissioners_Report_Print_Ready_3_.pdf (see paragraphs 68 to 75)

suspecting that an offence has been committed or attempted in the constable's own 'home' jurisdiction.

- c) Section 140 confers reciprocal powers of arrest on constables of the police forces in the three jurisdictions of the UK. For example, a constable from Northern Ireland who is present in Scotland may arrest a person in Scotland using the Scottish powers of arrest (i.e. as if the Northern Ireland officer were a Scottish officer). This would allow, for example, a Scottish constable to arrest a person in England where the officer has reasonable grounds to believe that the person has committed an offence in England (but not in the officer's 'home' jurisdiction of Scotland).

These new clauses update the provisions in Part 10 of the 1994 Act in a number of respects. First, new clause *Extension of cross-border powers of arrest: urgent cases* would amend the 1994 Act to close a gap in the cross-border arrest powers to ensure that a person who commits an offence in one UK jurisdiction and is then found in another UK jurisdiction can be arrested without a warrant by an officer from the jurisdiction in which the person is found.

Second, new clause *Cross-border enforcement: powers of entry to effect arrest* provides for ancillary powers for police officers in England and Wales and Northern Ireland to enter a property in which a person suspected of committing an offence in Northern Ireland or England and Wales is located in order to effect an arrest under sections 136 or 137. The provisions in new section 137A of the 1994 Act contain a number of safeguards, including a requirement that an officer must have reasonable grounds for believing that the suspect is on the relevant premises and that the offence in question is an indictable offence or one of a small number of summary offences. The new clause also provides that a police officer arresting a person under section 136 or 137 in Scotland for an offence committed in England and Wales or Northern Ireland has the same powers of entry and search for the purpose of the arrest as a Scottish constable would have had a warrant been issued in Scotland or had the offence been committed in Scotland. Sections 136 and 137 of the 1994 Act already provide that, in respect of warrants issued or offences committed in Scotland, an arresting officer has the same powers of entry and search in England and Wales and Northern Ireland for the purpose of a section 136 or 137 arrest as a Scottish constable would have had a warrant been executed in Scotland or had the arrest been made in Scotland.

Third, new clause and new Schedule *Cross-border enforcement: minor and consequential amendments* update Part 10 of the 1994 Act to reflect changes to the Police and Criminal Evidence Act 1984 and Police and Criminal Evidence (Northern Ireland) Order 1989.

These new clauses and new Schedule extend to the whole of the UK (see amendment to clause 138). The Scottish Government and Northern Ireland Department of Justice have agreed to bring forward a legislative consent motion insofar as these provisions relate to devolved matters.

Conferring lifelong anonymity on victims of forced marriage (new clause “*Anonymity of victims of forced marriage*” and amendments to clause 139 and the long title)

The Anti-social Behaviour, Crime and Policing Act 2014 (the 2014 Act) introduced a specific criminal offence of forced marriage, with the first conviction for this new offence secured in July 2015.

Given the hidden nature of this crime, and the fact it is predominantly an abuse which takes place within the family/community, we know that victims can be reluctant to report it to the police or to give evidence in court. At present, victims of forced marriage may be granted anonymity in certain circumstances and at the discretion of the court. A guarantee of anonymity would encourage more victims to come forward and would increase referrals to the Crown Prosecution Service, ultimately ensuring that more perpetrators of this abhorrent crime are brought to justice. Accordingly, the Government’s *Ending violence against women and girls strategy 2016 to 2020*, published in March 2016³, included a commitment to legislate on this issue.

To this end, new clause *Anonymity of victims of forced marriage* will introduce lifelong anonymity for victims of forced marriage, similar to provisions introduced for victims of Female Genital Mutilation in the Serious Crime Act 2015. These provisions will extend to England and Wales only.

Extension of powers to seize cancelled British passports in-country to cover foreign passports and travel documents and to provide for a power of entry (new clause “*Powers to seize invalid travel documents*” and amendments to clause 138 and the long title)

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522166/VAWG_Strategy_FINAL_PUBLICATION_MASTER_vRB.PDF

There are existing powers in Schedule 8 to the 2014 Act to seize invalid passports and other travel documents (of any nationality) at the border and to seize invalid British passports in country. However, there are no such powers to seize invalid foreign passports and travel documents in-country and no power of entry to search premises for a British passport cancelled under the Royal Prerogative for national security reasons.

This new clause amends Schedule 8 to the 2014 Act to allow the police, or an immigration officer, to seize a foreign passport that has been invalidated by the Government that issued it. It will also allow the police the power of entry to search premises for both British passports (cancelled under the Royal Prerogative in relation to national security) and invalid foreign travel documents.

This power is needed to disrupt the travel plans of would-be foreign fighters travelling to Syria or other conflict zones. Since December 2014, European Economic Area Member States, plus Switzerland, have been distributing details of such travel documents to law enforcement officers across Europe, asking that the documents be seized. The police and Immigration Enforcement, however, currently have no power to comply with such a request unless the passport is encountered at a port.

The existing requirement in the 2014 Act for Secretary of State authorisation to use the Schedule 8 powers in relation to British passports cancelled under the Royal Prerogative in relation to national security will also be removed. This change will enable the police to act quickly to seize a cancelled British passport where it is necessary to do so; any decision to cancel a British passport on public interest grounds would, as now, continue to need the Home Secretary's agreement. In addition, as an authorisation is not appropriate in relation to foreign travel documents, leaving it in place would result in a mis-match between the powers in relation to British passports as compared to those in relation to foreign travel documents.

These provisions will apply to the UK.

Statutory guidance in respect of taxi and private hire vehicle (“PHV”) licensing (new clause “*Licensing functions under taxi and PHV legislation: protection of children and vulnerable adults*” and amendment to the long title)

In Committee, Carolyn Harris tabled new clause 45 which sought to place local authorities under a duty to consider how they can prevent child sexual exploitation when they issue licences for taxis and PHVs (I

note Sarah Champion has re-tabled this new clause (NC10) for day two of Report stage). Both the Jay⁴ and Casey Reports⁵ into child sexual exploitation noted the prominent role played by taxi drivers in a large number of cases of abuse. The Casey Report in particular uncovered what was described as “weak and ineffective arrangements for taxi licensing which leave the public at risk”. The Government strongly agrees that continued work with the taxi and PHV sector is needed to reduce the risk of child sexual exploitation and other abuse of vulnerable individuals. Accordingly, in Committee, the Minister for Preventing Abuse, Exploitation and Crime agreed the need to strengthen the existing licensing arrangements.

To this end, new clause “*Licensing functions under taxi and PHV legislation: protection of children and vulnerable adults* empowers the Secretary of State (in practice the Secretary of State for Transport) to issue statutory guidance to local taxi and PHV licensing authorities in relation to the safeguarding of children and vulnerable adults and requires such authorities to have regard to the guidance when exercising their taxi and PHV licensing functions.

The new clause applies to England and Wales only.

Restoring littering powers of Scottish local authorities under sections 92, 93 and 94 of the Environmental Protection Act 1990 (new clause “*Powers of litter authorities in Scotland*” and amendments to clauses 138 and 139 and the long title)

New clause “*Powers of litter authorities in Scotland*” will reinstate powers for local authorities in Scotland to issue or serve litter abatement notices, under section 92 of the Environmental Protection Act 1990, and street litter control notices under section 93 of that Act (supplemented by provisions in section 94).

These powers were repealed by the 2014 Act and replaced in England and Wales by the Community Protection Notice. However, the repeal of these provisions inadvertently extended to Scotland (although, by virtue of section 16 of the Interpretation Act 1978, the repeal did not affect any litter abatement notices or litter control notices then in force). The Community Protection Notice is not available in Scotland and this has left a gap in the powers available to local authorities in Scotland to tackle littering.

⁴ Independent Inquiry into Child Sexual Exploitation in Rotherham 1997 -2013 by Alexis Jay OBE

⁵ Report of Inspection of Rotherham Metropolitan Borough Council by Louise Casey CB

The new clause will apply to Scotland only and will come into force on Royal Assent (see amendments to clauses 138 and 139); the Scottish Government has agreed to bring forward the necessary legislative consent motion.

Pre-charge bail: extending the exception for “exceptionally complex” cases to the Financial Conduct Authority (amendments to clause 60)

Chapter 1 of Part 4 of the Bill reforms pre-charge bail, including by providing for any extension of pre-charge bail beyond the three month point following arrest must be authorised by a magistrates’ court. There is an exception to the general position in cases where the Director of the Serious Fraud Office or the Director of Public Prosecutions certifies a case as “exceptionally complex”; in such cases a senior police officer or qualifying senior prosecutor may authorise pre-charge bail up to six months following arrest.

The Financial Conduct Authority (FCA) is similarly responsible for complex cases which can take longer to investigate, accordingly these amendments will provide that the Chief Executive of the FCA will also be able to authorise senior investigators at the FCA to certify a case as “exceptionally complex”. The amendments will also allow the FCA to make applications to a magistrates’ court to extend bail in their cases.

Powers under sections 135 and 136 of the Mental Health Act 1983 (amendments to clauses 74 and 77)

These amendments further clarify the police powers under section 136 (to detain a person experiencing mental ill health) of the Mental Health Act 1983. First, the amendments to clause 74 clarify that the police must obtain a warrant in all circumstances before exercising section 136 powers in domestic premises (as currently drafted the Bill may be interpreted as permitting such powers to be exercised without a warrant where the police are already lawfully in someone’s home). Second, the amendment to clause 77 amends the power to require a person to remove his or her outer clothing (and no more) for the purpose of a protective search so that it is clear that this limitation on the power applies whether the search takes place in public or private.

Maritime enforcement powers - extension to cover foreign flagged ships in international waters (amendments to clauses 78 to 80 and 90 to 92)

Chapter 4 of Part 4 of the Bill strengthens the maritime enforcement powers of the police and other law enforcement agencies in England

and Wales. The powers apply to: UK ships in England and Wales, international and foreign waters; stateless ships within England and Wales waters and international waters; foreign ships in England and Wales waters; and ships registered in a Crown Dependency or British overseas territory within England and Wales waters.

The amendments to clauses 78 to 80 extend these powers to cover foreign flagged ships in international waters where the courts in England and Wales have jurisdiction. The exercise of the powers in relation to such ships will be subject to the approval of the Secretary of State and the consent of the flag State.

The amendments to clauses 90 to 92 make parallel amendments to the Scottish maritime enforcement powers in Chapter 5 of Part 4.

Requirement to state nationality (amendments to clauses 132 and 138)

Clause 132 requires an individual who is arrested to state his or her nationality if required to do so by a police or immigration officer. This immigration-related provision applies to the whole of the UK, however, following further discussions with the Scottish Government, we have concluded that the existing powers of the police in Scotland to ask any person who is detained to provide details of their nationality (as provided for in the Criminal Justice (Scotland) Act 2016) are sufficient. These amendments will therefore limit the application of clause 132 to England and Wales and Northern Ireland.

Other minor amendments

The amendments to clauses 12, 17 and 131 and Schedule 3 as detailed in the accompanying explanatory statements are minor and consequential.

I am copying this letter to members of the former Public Bill Committee, Andy Burnham, Sarah Champion, Joanna Cherry and Harriet Harman (Chair, Joint Committee on Human Rights) and placing a copy in the Library of the House and on the Bill page on gov.uk.

Rt Hon Mike Penning MP
Minister of State for Policing, Fire, Criminal Justice and Victims