



Lord Rosser  
House of Lords  
London  
SW1A 0PW

23 November 2016

*Dear Richard,*

## **POLICING AND CRIME BILL: GOVERNMENT AMENDMENTS FOR LORDS 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 which I have tabled today. In general, these amendments respond to points raised by you, Lord Kennedy, Lord Paddick, Baroness Hamwee and other Peers during Committee stage.

### **Part 1: Emergency services collaboration**

- a) **Collaboration agreements – impact on public safety (amendment to clause 3).** The Bill already provides that the duty on the emergency services to consider opportunities for entering into collaboration agreements does not apply if a service is of the view that the proposed collaboration would have an adverse effect on its efficiency or effectiveness. We would expect public safety to be included in consideration as to a service's effectiveness, but in response to the points you raised in Committee (Hansard, 14 September, columns 1471-1472), this amendment makes it clear that there is no question of a service being required to collaborate where that would have a detrimental effect on public safety.
- b) **Collaboration agreements – variation (amendment to clause 4).** The Bill allows a collaboration agreement to be varied by a subsequent new agreement, the implication being that a new agreement is required for any change irrespective of its significance. In response to the points raised by Baroness Hamwee and Lord Hope of Craighead in Committee (Hansard, 14 September, columns 1483-1484), this amendment provides that

changes to a collaboration agreement may be made either by varying the existing agreement or by replacing it with a new agreement. In either case the agreement of all parties will be needed.

- c) **PCC-style fire and rescue authorities (FRAs) – duty on a PCC to consult (amendments to Schedule 1 - paragraphs 3 and 4 of new Schedule A1 to the Fire and Rescue Services Act 2004).** The Bill requires a PCC, before submitting a proposal to the Home Secretary, to “consult” each relevant local authority, and to “make arrangements to seek the views of people” in the police force area. In response to amendments tabled by you and Baroness Hamwee in Committee (Hansard, 14 September, columns 1515-1522), these amendments substitute a strengthened duty to “consult” local people and include an explicit duty to consult with persons representing the views of affected employees. Where there is local disagreement to the proposal a PCC will be required to provide a summary of the views expressed by these representatives to the Home Secretary.
- d) **PCC-style FRAs – impact on public safety (amendments to Schedule 1 and clause 8 - new sections 4A and 4H of the Fire and Rescue Services Act 2004 and new section 107EA of the Local Democracy, Economic Development and Construction Act 2009).** The Bill provides that an order creating a PCC-style FRA or implementing the ‘single employer’ model (where a single chief officer is appointed to manage the police force and fire and rescue service) may only be made where such an order would be in the interests of economy, efficiency and effectiveness, or public safety. In response to the amendments you tabled at Committee stage (Hansard, 12 September, columns 1501-1502), these amendments make it explicit that no order may be made where it would have an adverse effect on public safety.
- e) **PCC-style FRAs – publication of outcome of consultation (amendments to Schedule 1 and clause 8 - paragraph 4 of new Schedule A1 to the Fire and Rescue Services Act 2004 and new section 107EB of the Local Democracy, Economic Development and Construction Act 2009).** The Bill requires a PCC, when submitting a proposal to the Home Secretary, to which one or more relevant local authorities disagree to provide her with the PCC’s response to the representations and views of relevant authorities, people in their area and (as amended by these amendments), representatives of affected employees. In response to the amendments you tabled at Committee stage (Hansard, 12 September, columns 1515-1516), these amendments require a PCC (or combined authority mayor) to publish such information.
- f) **PCC-style FRAs – publication of independent assessment (amendments to paragraph 5 of new Schedule A1 to the Fire and Rescue Services Act 2004 and new section 107EA of the Local Democracy, Economic Development and Construction Act 2009).** Where one or more relevant local authorities oppose a PCC’s proposal, the Bill requires the Home Secretary to commission an independent

assessment of the proposal. In the interests of transparency, these amendments place a duty on the Home Secretary to publish that assessment.

- g) **Deputy Mayor for Fire (amendments to paragraph 8 of Schedule 2, clause 159 and long title and new clause “Deputy Mayor for Policing and Crime as member of local authority”)**. In Committee, Lord Harris of Haringey argued for a relaxation of the political restrictions on the new Deputy Mayor for Fire and existing Deputy Mayor for Policing and Crime which prevent them holding certain elected offices, other than London Assembly Member (Hansard, 12 September, columns 1550-1553). These amendments remove the bar on the Deputy Mayor for Fire and the Deputy Mayor for Policing and Crime becoming or continuing to be a local councillor; there will continue to be a bar on other dual mandates, for example, a Deputy Mayor also being an MP.
- h) **Functions of Fire and Emergency Committee (amendments to Schedule 2 - new sections 327H and 327I of the Greater London Authority Act 1999)**. In response to amendments tabled by Baroness Hamwee in Committee (Hansard, 12 September, columns 1556-1557), these amendments bring the functions of the new Fire and Emergency Committee of the Greater London Assembly more closely into line of those of the Assembly’s Policing and Crime Panel so that the Committee can investigate and report on the actions and decisions of the Deputy Mayor for Fire or on other matters of importance to fire and rescue services in Greater London. The amendments also replace inadvertent references in new section 327H of the Greater London Authority Act 1999 to the fire and emergency “panel” rather than the fire and emergency “committee” (a drafting point helpfully spotted by Lord Harris (column 1555)).

### **Chapter 3 of Part 2: Whistle-blowing: Power of the Independent Police Complaints Commission (IPCC) to investigate (amendments to clause 27 and Schedules 6 and 9)**

- i) The Bill provides the IPCC with a new power to investigate whistle-blowing concerns, strengthening the protections afforded to police whistle-blowers, including the protection of their identity. In response to amendments tabled by Lord Paddick and Lord Kennedy at Committee stage (Hansard, 26 October, columns 233-237), these amendments modify the definition of a ‘whistle-blower’ to include those raising a concern about matters that occurred in a police force *prior* to them joining the police, ensuring that where appropriate, historic cases of police misconduct and malpractice may be brought to light by those who were not in the service at the time. In addition, the amendments exclude from the definition of ‘whistle-blower’ members of a police force who raise a concern about a matter which is *already* being investigated, for example under the provisions of Part 2 of the Police Reform Act 2002. Finally, these amendments clarify that where a whistle-blower raises a concern about a death or serious injury matter (as defined in the 2002 Act), the concern must be handled under the

existing provisions in Part 2 of the 2002 Act, modified to protect the identity of the whistle-blower.

**Chapter 5 of Part 2: IPCC renaming (amendments to clauses 32 and 34 and Schedule 9)**

- j) The Bill strengthens the governance of the IPCC by establishing the post of Director General as the single operational head of the organisation, supported by a Board the majority of the members of which will be non-executives. As there will no longer be commissioners under the new model, we are also changing the name of the organisation to the "Office for Police Conduct". In Committee, you and others argued for the reformed organisation to be named the "*Independent* Office for Police Conduct" to provide greater confidence to those who may be reluctant to come forward if they have concerns about police conduct (Hansard, 26 October, columns 253-255). While no regulatory body can rely on its title alone to uphold its independence from those it regulates, we recognise that the title can contribute to public perceptions about an organisation; accordingly the Government is content to retain the word "Independent" in the renamed IPCC. Some 40 amendments are required to achieve this outcome.

**Chapter 1 of Part 4: Pre-charge bail (amendment to clause 62 and new clause "*PACE: duty to notify person interviewed that not to be prosecuted*")**

- k) The Bill reforms pre-charge bail to strengthen the protections for persons under investigation by the police but who, at this early stage of the criminal justice process, have not been charged with any offence. While we believe that the maximum time limits provided for in the Bill remain appropriate to ensure effective oversight of pre-charge bail, the amendment to clause 62 will confer flexibility on the police so that they can set a bail period within the statutory maximum. The new clause responds in part to the amendment tabled by Lord Marlesford (Hansard, 2 November, columns 663-669) and will place a duty on the police to notify (in writing) a suspect who has not been arrested when a decision has been taken to conclude the investigation (the Bill already provides for such a duty where a person has been arrested). I will be writing separately to Lord Marlesford about his central concern, namely the language used by the police to notify a person that no further action will be taken in respect of a complaint made against them.

**Part 4: Maritime enforcement powers (amendments to clauses 84, 85, 93, 96, 97, 104, 159 and 160 and new Chapter 6A of Part 4 "*Police powers: Maritime enforcement: Northern Irish Offences*")**

- l) Chapters 5 and 6 of Part 4 of the Bill strengthen the maritime enforcement powers of the police and other law enforcement agencies. These powers currently apply to the police and other specified law enforcement agencies in England and Wales and Scotland. At the request of the Minister for Justice in Northern Ireland, new Chapter 6A of Part 4 "*Police powers:*

*Maritime enforcement: Northern Irish Offences*” makes analogous provision for law enforcement officers in Northern Ireland to exercise the maritime enforcement powers in Northern Ireland waters. The maritime powers currently in the Bill include provision for hot pursuit from the waters of one UK jurisdiction into those of another jurisdiction. However, due to the particular policing sensitivities in Northern Ireland, the Minister of Justice has also asked for the hot pursuit powers, insofar as they apply to hot pursuits from England and Wales waters or Scottish waters into Northern Ireland waters, and vice versa, should be removed from the Bill; the amendments to clauses 84, 85, 93, 96, 97 and 104 modify the provisions in Chapters 5 and 6 of Part 4 accordingly.

**Part 4 – new clause: Police powers to remove face coverings (new clause “*Powers to require removal of disguises: oral authorisation*” and amendment to long title)**

- m) In response to an amendment tabled by Lord Dear at Committee stage (Hansard, 2 November, columns 739-742), this new clause refines the existing police powers in section 60AA of the Criminal Justice and Public Order Act 1994 to require the removal of disguises. The new clause clarifies that the required authorisation by a senior officer to enable an officer on the ground to exercise the powers need not be in writing where it would not be practicable to do so. In such a case, the oral authorisation would need to specify appropriate matters (such as the location where the powers could be exercised) and subsequently recorded in writing.

**Part 6: Firearms**

- n) **Controls on defectively deactivated weapons (amendments to clause 114).** In order to be able to enforce any non-compliance with new European deactivation standards for firearms, 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 on amendments tabled by Lord Attlee (Hansard, 9 November, columns 1155-1159), these amendments remove the link to the EU standards in primary legislation and instead provide for the standards to be specified by the Secretary of State. While the UK remains a member of the EU, we will continue to abide by the EU standards, but these amendments will afford flexibility in the longer term to set our own higher standards. These amendments also exclude from the ambit of the offence any sale or gift of a defectively deactivated firearm (or an offer to sell or gift such a firearm) from one museum to another, provided that both museums hold a museum firearms licence under the Firearms (Amendment) Act 1988. This exemption will enable transfers of deactivated weapons to continue between, for example, regimental museums, while ensuring that defectively deactivated weapons do not find their way onto the market.

**Requirement to state nationality (amendment to clause 145 and new clause "*Pilot schemes*")**

- o) Clauses 144 and 145 amend the UK Borders Act 2007 to confer on the police and immigration officers the power to require a person to provide their nationality following arrest and to require suspected foreign nationals to produce their nationality document(s). In response to the report by the Joint Committee on Human Rights and the concerns expressed by Baroness Hamwee in Committee (Hansard, 9 November, columns 1259-1260) that these powers could have a disproportionate impact on black and ethnic minority nationals, these amendments make two changes to these provisions. First, as recommended by the JCHR, they provide, on the face of the Bill, that a person may produce alternative documentary evidence, to a passport, to establish their entitlement to British citizenship. Second, the new clause will enable these provisions can be piloted in one or more police force areas. We will then undertake a full equality impact evaluation before rolling out these provisions nationally.

Annex A details other, minor and technical, amendments to the Bill.

I also attach a supplementary delegated powers memorandum relating to these amendments.

I am copying this letter to Lord Kennedy of Southwark, Lord Paddick, Baroness Hamwee, Baroness Bakewell of Hardington Mandeville, Lord Hope of Craighead, Baroness Scott of Bybrook, Lord Bach, Baroness Redfern, Lord Marlesford, Lord Harris of Haringey, Lord Attlee, Lord Condon, Lord Hailsham, Lord Dear, Baroness Boothroyd, Lord Campbell of Pittenweem, Lord Wilson of Tillyorn, Lord Elystan-Morgan, Lord Inglewood, Baroness Fookes (Chairman, Delegated Powers and Regulatory Reform Committee), Harriet Harman (Chair, Joint Committee on Human Rights), Diane Abbott, Lyn Brown and Sir Edward Garnier, and placing a copy in the Library of the House and on the Bill page on gov.uk.



**Baroness Williams of Trafford**

**Other minor and technical amendments**

- a) **Providing flexibility to make two-way transfers of staff, assets and liabilities under the single employer model (amendments to Schedule 1 and clause 8 - new section 4I of the Fire and Rescue Services Act 2004 and new section 107EC of the Local Democracy, Economic Development and Construction Act 2009).** Where a PCC (or combined authority mayor) decides to move to the single employer model, assets, liabilities and staff can be transferred from the former FRA or the PCC-style FRA to the chief officer under a transfer scheme to be made by the Home Secretary. As the provisions are currently drafted, the transfer will be one way only. To enable some flexibility to respond to future potential reorganisations or decisions by PCCs to pursue different delivery models for back office functions at a later date, these amendments enable the transfer of assets, staff and liabilities back from the chief officer to the PCC-style FRA (or the chief officer to the combined authority).
- b) **Publication of joint police and crime plan and fire and rescue plan (amendments to paragraph 88 of Schedule 1).** These amendments clarify on the face of the Police Reform and Social Responsibility Act 2011 that a PCC who is both PCC and FRA may issue (in a single document) a joint police and crime plan and fire and rescue plan (confirming the position set out at paragraph 333 of the Explanatory Notes).
- c) **Inspection of fire and rescue services (amendments to clause 35 and Schedule 3).** Schedule 3 to the Bill strengthens the existing statutory framework for the inspection of fire and rescue services, including by placing a duty on “relevant persons” to provide an inspector with information and documents reasonably required for the purpose of an inspection. The amendments to Schedule 3 extend the definition of a relevant person to ensure it covers all persons undertaking fire and rescue functions. A corresponding amendment is made to clause 35 in respect of the inspection of police forces.
- d) **Regulatory Reform (Fire Safety) Order 2005 (new clause “*Fire Safety inspections*”).** The Fire Safety Order, which relates to non-domestic premises, places a general duty on employers and others to ensure the safety of employees and others on the premises. This new clause amends the inspection arrangements in respect of Crown and UK Atomic Energy Authority premises as provided for in this Order. It is intended that such inspections can, in future, be carried out by persons authorised by the Secretary of State to act for the purposes of this Order. This will ensure that those authorised to act in this capacity will have the powers of inspection necessary to carry out their function effectively.
- e) **Cross-border enforcement powers (amendments to clauses 105 and Schedules 16 and 17 and new clause “*Cross-border enforcement: officers of Revenue and Customs*”).** The Bill strengthens the existing

cross-border powers of arrest available to police officers. Following further analysis of the gaps in the current law, these amendments extend these enhanced powers so that they are exercisable by immigration officers and officers of revenue and customs and to provide that the powers are exercisable by British Transport Police officers in respect of offences wherever committed in the UK. The amendments further provide that all of the cross-border powers of arrest will be exercisable by revenue and customs officers in relation to both tax and customs matters, consistent with their functions. Designated customs officials and National Crime Agency officers will also be able to exercise cross border powers of arrest.

- f) **Meaning of a firearm (amendments to clause 111).** The firearms provisions in the Bill are, in part, designed to close loopholes in the Firearms Act 1968 which can be exploited by criminals. One of the ways it does this is to define the term lethal barrelled weapon. In defining lethality the Bill includes, on the recommendation of the Law Commission, an exemption for airsoft. To benefit from this exemption an airsoft gun must discharge a plastic missile no larger than 6mm in diameter. Following further representations from the airsoft industry, these amendments increase the maximum diameter to 8mm and clarify that an airsoft weapon must have been designed to discharge only spherical plastic missiles. Having taken expert advice from the National Ballistics Intelligence Service (NBIS) and others, the Government is satisfied that these changes reduce, rather than increase, any risk to the public from the airsoft exemption.
- g) **Antique firearms (amendments to clause 112).** Clause 112 defines an antique firearm for the purposes of the Firearms Act 1968 in order to provide greater clarity for the police and legitimate collectors alike. These amendments further refine the definition so that it captures antique air weapons (as the regulation of air weapons is a devolved matter in Scotland, this change will apply only in England and Wales).
- h) **Offence of possession of pyrotechnic articles at musical events (amendments to clause 119).** This new offence currently applies to a qualifying musical event that takes place in England. Following further consultation with the Welsh Government, we are now satisfied that this provision is not within the legislative competence of the National Assembly, accordingly these amendments extend the application of the offence to Wales.
- i) **Financial sanctions – civil penalties (amendment to clause 132).** Part 8 of the Bill strengthens the arrangements for implementing and enforcing financial sanctions, including new powers to impose monetary penalties on those that breach sanctions in the UK. The clauses provide no right of appeal, although decisions to impose penalties are subject to Judicial Review. Following further consideration, these amendments now propose to provide a right of appeal to the Upper Tribunal (this will enable a full merits hearing on points of law and fact).



- j) **Financial sanctions – application to Crown Dependencies (amendment to clause 141)**. Clauses 137 to 140 enable the UK to take measures to bridge the time gap between the adoption of relevant UN Security Council resolutions and EU transposition. Clause 141 enables the extension of the “without delay” measures to the Crown Dependencies and the Overseas Territories by Order in Council, where they do not have “without delay” measures of their own in place. In recent weeks, the Government of Jersey has taken its own legislative steps to implement sanctions “without delay”; accordingly these amendments omit the reference to Jersey from clause 141.