



Lord Rosser
House of Lords
London
SW1A 0PW

7 September 2016

Dear Richard,

POLICING AND CRIME BILL: GOVERNMENT AMENDMENTS FOR LORDS COMMITTEE STAGE

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

Change the title of police and crime commissioners (PCCs) where they take on the governance of a fire and rescue authority (FRA) (amendments to Schedule 1).

Chapter 2 of Part 1 of the Bill enables a PCC to take on the functions of an FRA where a local case is made. Where this happens the person holding the office of PCC will legally be both a PCC and FRA, the PCC and FRA remaining separate legal bodies. At Commons Report stage, Amanda Milling tabled an amendment which sought to change the title of PCCs where they have taken on such functions (Hansard, 26 April 2016, columns 1323-1324). In response to the debate the then Policing Minister indicated that the Government supported such a change (columns 1339-1340). It is important that the public understand that where a PCC is also the FRA for an area that they are electing someone with responsibilities for the oversight of both the police force and fire and rescue service and that they are able to hold them to account for the delivery of both services. These amendments therefore provide that in such cases the PCC is renamed 'Police, Fire and Crime Commissioner'. As a consequence of this change, the name of the corresponding Police and Crime Panel will be changed to 'Police, Fire and Crime Panel'.

Disciplinary action against former police officers (amendments to clause 28 and Schedules 7, 8 and 9)

Clause 28 of the Bill would allow for the extension of the disciplinary regime to former officers where an allegation arose before they resigned or retired, or arose within a period of time following their resignation or retirement. The relevant period would be specified in regulations and we have made it clear that we intend to specify a period of 12 months. At Commons Report stage, the then Policing Minister undertook to bring forward an amendment which would set aside the 12 month time limit in exceptional circumstances (Hansard, 13 June 2016, column 1466).

The "exceptional circumstances" test will be applied by the Independent Police Complaints Commission (IPCC) (and, in due course, the Office for Police Conduct once the reforms to the IPCC's governance and structure (provided for in Chapter 5 of Part 2 of the Bill) have been commenced). Disciplinary proceedings outside the standard 12 month time limit could only be instigated in cases where the alleged misconduct, inefficiency or ineffectiveness is such that, if proved, the former officer could have been dealt with by dismissal if he or she had still been

serving and the IPCC determines that such proceedings would be reasonable and proportionate having regard to:

- a) the seriousness of the alleged misconduct, inefficiency or ineffectiveness;
- b) the impact of the allegation on public confidence in the police; and
- c) the public interest.

Regulations will set out the matters to be taken into account by the IPCC in making this determination. An indicative list of such matters is set out at Annex A. As with the original provisions set out in clause 28 (and the regulations to be made under it), the “exceptional circumstances” test will not operate retrospectively.

Amendments responding to the report by the Delegated Powers and Regulatory Reform Committee (revised clause 30 and amendments to clauses 29, 40 and 149 and Schedule 8)

In response to conclusions and recommendations made by the Delegated Powers and Regulatory Reform Committee, these amendments provide:

- that the power conferred by new section 88C(5)(e) of the Police Act 1996 (inserted by Schedule 8 to the Bill) is subject to the affirmative procedure (paragraph 15 of the DPRRC report).
- that regulations made under clause 29(6) may make provision that corresponds or is similar to that made by *or under* Part 4A of the 1996 Act (again, inserted by Schedule 8 to the Bill) (paragraph 18 of the report).
- for the composition of Police Appeals Tribunals (PATs) to continue to be specified in primary legislation (paragraph 21 of the report). As a result of this change, it is no longer necessary to make separate provision for the composition of PATs hearing appeals from Ministry of Defence police officers - accordingly the whole of the revised clause 30 extends to England and Wales only (a consequential amendment omits clause 149(2)(g)).

I have today written separately to Baroness Fookes with a response to the Committee’s report.

Extension of provisions to Northern Ireland (new clauses *Retention of fingerprints and DNA profiles: PACE (NI) Order 1989* and *Anonymity of victims of forced marriage: Northern Ireland* and amendments to clauses 149 and 150)

Clause 69 of the Bill enables DNA profiles and fingerprints to be retained on the basis of convictions outside of England and Wales in the same way as for convictions in England and Wales, while clause 143 confers lifelong anonymity on the victims of forced marriage in England and Wales. At the request of the Northern Ireland Minister of Justice, these amendments make equivalent provision for Northern Ireland.

New offence of possession of pyrotechnic articles at musical events (new clause *Possession of pyrotechnic articles at musical events* and amendments to clause 149 and the long title)

The misuse of fireworks and flares at live music events is an increasing issue. In 2014, 255 incidents involving fireworks, flares and other pyrotechnic devices were recorded by the crowd management company Showsec at their events alone. At Commons Report stage, Nigel Adams tabled an amendment to make it an offence for a member of the public to be in possession of pyrotechnic devices at a live music event (Hansard, 26 April 2016, column 1387-1389). In response to the debate, the then Minister for Preventing Abuse, Exploitation and Crime committed to bringing forward a Government amendment on this issue at Lords Committee (column 1394). This new clause makes it an offence to be in possession (without the consent of the organiser of the event) of a firework, flare or other pyrotechnic article at a place where a qualifying musical event is being held in England, any other place that is being used to regulate entry to or departure from the event, or any other place providing facilities to attendees of the event. A qualifying music event will be defined in regulations (subject to the negative procedure). The maximum penalty for

this summary only offence would be three months' imprisonment or a level 3 fine (currently £1,000).

Annex B 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 all Peers who spoke at Second Reading, Baroness Fookes (Chairman, Delegated Powers and Regulatory Reform Committee), Andy Burnham, Nigel Adams and Amanda Milling, and placing a copy in the Library of the House and on the Bill page on gov.uk.

A handwritten signature in black ink, appearing to read 'Susan', is centered on a light yellow rectangular background.

Baroness Williams of Trafford

Indicative list of matters to be considered by the IPCC when determining whether it is reasonable and proportionate for disciplinary proceedings to be brought outside the normal time period.

This Annex sets out an indication of the matters to be taken into account by the IPCC, which would be set out in regulations, supplemented by guidance setting out with greater detail and context how these matters would be considered. This list of matters is indicative at this stage. Any regulations will be subject to statutory consultation with the Police Advisory Board for England and Wales before being laid and coming into force.

Only cases where, following the conclusion of an investigation, there has been a decision that the former officer has a case to answer for gross misconduct (i.e. where the alleged misconduct, inefficiency or ineffectiveness is such that, if proven, the former officer could have been dealt with by dismissal had he or she still been in service) are within scope. Of these cases, the 'reasonable and proportionate' test (including these matters) will be used to identify those which are of an exceptional nature meaning that misconduct proceedings may be brought outside of the normal time limit that would apply in the vast majority of cases.

(a) the seriousness of the alleged misconduct, inefficiency or ineffectiveness;

Indicative matters to be considered:

- The extent to which the alleged misconduct, inefficiency or ineffectiveness represents a breach of the standards of professional behaviour;
- Any indication of criminality;
- Whether there are any victims of the alleged misconduct, inefficiency or ineffectiveness and, if there are, the harm caused to them and whether any of them are vulnerable;
- The extent to which the alleged misconduct, inefficiency or ineffectiveness was premeditated;
- In cases where other officers or former officers were involved, the extent of the relevant former officers' involvement;
- The extent to which the former officer betrayed a position of trust or misused his or her policing powers or misuse of the authority of the officer and/or their role;
- Whether the officer acted for personal gain or benefit;
- The seniority of the former officer;
- Any attempts to involve other officers, particularly those of more junior ranks;
- Whether there were any attempts to disguise or cover-up the alleged misconduct, inefficiency or ineffectiveness, particularly where this may have occurred over a number of years, including any indication that the former officer has actively sought to pervert the course of investigations into the alleged misconduct, inefficiency or ineffectiveness;
- Any indication that the former officer has attempted to blame or implicate others in order to avoid responsibility for the alleged misconduct, inefficiency or ineffectiveness;
- Any mitigating circumstances around the mental health or capacity of the former officer at the time of the alleged misconduct, inefficiency or ineffectiveness.

(b) the impact of the allegation on public confidence in the police;

Indicative matters to be considered:

- The effect the alleged misconduct, inefficiency or ineffectiveness has had on the community where it took place (including its effect on police-public and intra-community relations, and whether it has led to any disturbances or incidents of public order);
- The effect the alleged misconduct, inefficiency or ineffectiveness has had on the reputation of the relevant police force at a local level, and the reputation of the police at a national level (including whether it has caused serious and lasting harm to public confidence in the force/service);

- The extent and nature of any public representations made by elected holders of office, including (but not exclusively) local policing bodies, Members of Parliament, local councillors and mayors;
- The extent and nature of any representations, organised activity or campaigns (including online – e.g. petitions) from the public not directly affected by the incident on a regional or national level;
- The extent and nature of any publicity and media coverage at regional, national and international levels.

(c): The public interest.

Indicative matters to be considered:

- Any indication there are public protection grounds for the former officer to be prevented from future service with the police (and like bodies);
- The length of time that has passed since the alleged misconduct, inefficiency or ineffectiveness took place;
- Whether other proceedings (e.g. criminal proceedings) have been, are being or will be taken which have seen or will see the former officer being held to account;
- Whether other proceedings (e.g. criminal proceedings) have been, are being or will be taken which have already led or will most likely lead to the former officer being prevented from serving with the police (and like bodies) in future (e.g. a significant custodial sentence);
- If there are victims of the alleged misconduct, ineffectiveness or inefficiency, any indication of the impact a decision not to bring disciplinary proceedings would have on them;
- The likelihood of the former officer seeking future service with the police (or like bodies) – based on, for example, age and health;
- Whether there are exceptional circumstances, for example relating to the current physical or mental health of the former officer.

Other minor and technical amendments

Part 1: Emergency service collaboration (amendments to clauses 2, 7 and 8 and Schedules 1 and 2)

- Part 1 of the Bill places a duty on the three emergency services to enter into collaboration agreements where it would be in the interests of efficiency **or** effectiveness to do so. In one place the Bill inadvertently specifies a test of “efficiency **and** effectiveness”; the amendment to clause 2(4) rectifies this.
- New section 4D of the Fire and Rescue Services Act 2004 (the 2004 Act) (inserted by paragraph 5 of Schedule 1) sets out further powers of a PCC-style FRA created by an order made under new section 4A of that Act. The drafting amendment to new section 4D(9), which relates to the payment of pensions, makes it clear that this provision relates to an FRA *created by an order under section 4A*.
- The amendment to clause 7(11) limits the territorial application of the amendment made to section 3 of the 2004 Act (which relates to the appointment of a PCC to a combined fire and rescue authority) to England in line with the other amendments made to that Act.
- Under the single employer model, a PCC as FRA may delegate functions of an FRA to the chief constable. An order made under new section 4H of the 2004 Act (inserted by paragraph 5 of Schedule 1 to the Bill) would make provision for such delegation and enable the chief constable to sub-delegate such functions. The amendments to new sections 4H and 4I of, and paragraph 4 of new Schedule A2 to, the 2004 Act ensure that a chief constable would also have the flexibility to delegate any functions that were directly conferred on them by any other enactment (not just those delegated to them by a section 4H order). Amendments to clause 8 achieve the same end where the single employer model is operated by a combined authority mayor. These amendments also ensure that under the single employer model (where operated by a PCC or a combined authority mayor), the chief constable can appoint staff for the purposes of the exercise of fire and rescue functions that are conferred directly on the chief constable and that the chief finance officer for the police force is responsible for the proper administration of the financial affairs relating to the exercise of fire and rescue functions conferred directly on the chief constable.
- The amendments to new section 107EF of the Local Democracy, Economic Development and Construction Act 2009 (the 2009 Act) (inserted by clause 8(2)) and to new section 4L of the 2004 Act (inserted by paragraph 5 of Schedule 1) clarify the meaning of an enactment for the purposes of these provisions.
- The amendments to new section 4D(10) and (11) of the 2004 Act (and the new subsection to be inserted after section 4D(11)) also relate to sub-delegation. In this instance the amendments provide that an order made under new section 4A establishing a PCC-style FRA may provide for the fire and rescue functions of a PCC to be sub-delegated to a member of staff of the FRA (as currently provided in the Bill) or to a member of staff of a PCC. In the interests of efficiency and effectiveness, we would expect that where a PCC is both PCC and an FRA, his or her staff would support the PCC in discharging both his or her policing, and fire and rescue functions, for example, there would be a single chief executive and single chief finance officer covering both PCC and FRA functions.
- New section 4L of the 2004 Act confers a power to apply (with any necessary modifications) relevant legislation relating to police and crime commissioners to a PCC-style FRA (new section 107EF of the 2009 Act makes equivalent provision in respect of the single employer model operated by a combined authority mayor). Similar powers are needed to apply, with any necessary modifications, relevant provisions of fire and rescue related-legislation where the single employer model is in operation. These new order-making powers (as provided for in new section “*Application of fire and rescue provisions*” of the 2004 Act and new section “*Section 107EA orders: application of fire and rescue provisions*” of the 2009 Act) would be used, in

particular, to ensure that references to employees of an FRA can continue to operate as intended under the single employer model (where they will become employees of the chief constable).

- Section 21 of the 2004 Act requires the Secretary of State to prepare a Fire and Rescue National framework which, amongst other things “must set out priorities and objectives for fire and rescue authorities in connection with the discharge of their functions”. An amendment to section 21 will enable the Framework to make different provision for PCC-style FRAs than for other FRAs. This provision recognises that under the single employer model there will be a split between strategic functions discharged by the PCC and operational functions discharged by the chief constable.
- Where a PCC takes on the responsibilities of a FRA, the Bill extends the functions of the corresponding Police and Crime Panel so that it can also scrutinise the PCC in his or her capacity as a FRA. The powers of Police and Crime Panels as set out in the Police Reform and Social Responsibility Act 2011 are appropriately modified to this end. The amendments to paragraph 8 of new Schedule A2 to the 2004 Act make some technical refinements to these modifications to clarify which subsections of section 28 of the 2011 Act and which Schedules to that Act have been applied.
- Where a PCC takes on the responsibilities of an FRA, it is necessary to provide for any complaints against the PCC acting in his or her capacity as an FRA to be dealt with in the same way as complaints against the PCC in relation to the discharge of his or her policing functions. Currently, complaints made about a PCC are dealt with by the relevant Police and Crime Panel or by the Independent Police Complaints Commission, depending on the nature of the complaint. In order that complaints can be dealt with effectively where they are made against a PCC in respect of their fire and rescue responsibilities, the existing complaints system must be mirrored in regulations so that it can apply in the same way (the amendments applying section 31 of, and Schedule 7 to, the Police Reform and Social Responsibility Act 2011 provide for this). This will mean there is a single, comprehensive process for dealing with complaints made against a PCC that will ensure clarity and accountability to the public.
- The amendment to paragraph 55 of Schedule 1 makes a further consequential amendment to the Local Government and Housing Act 1989 to reflect the definition of the PCC-style FRA’s chief finance officer.
- The amendments to paragraph 82 of Schedule 1 make further consequential amendments to the Localism Act 2011 to reflect that a PCC-style FRA is required, in a similar manner to other FRAs, to prepare a pay policy statement as required by section 38 of that Act and to have regard to it when appointing staff. There are also a number of further consequential amendments to other enactments to take account of PCC-style FRAs.
- The amendments to paragraphs 4 and 6 of Schedule 2 further amend sections 45 (Mayor’s periodic report to the Assembly) and 61 (Power to require attendance at Assembly meetings) of the Greater London Authority Act 1999 in their application to the London Fire Commissioner and, in the case of section 45, to the Mayor’s Office for Policing and Crime.
- Schedule 2 makes provision for the new London Fire Commissioner. The amendment to paragraph 71 of that Schedule ensures that the consequential amendment to subsection (5) of section 72 of the Local Government Act 1985 (which relates to the accounts of the London Fire and Emergency Planning Authority) operates on that subsection as amended by the Cities and Local Government Devolution Act 2016.

Part 2: Police complaints and discipline (amendments to Schedule 9 and clause 149)

- A number of amendments are required to the Investigatory Powers Act 2016 (as it will become (subject to parliamentary approval)) to take account of the reforms to the governance and structure of the IPCC.

- Schedule 9 to the Bill makes amendments to Part 2 of the Police Reform Act 2002 (which provides for the system for handling police complaints) consequential upon the changes to the governance and structure of the IPCC. Paragraph 56 of Schedule 9 makes certain amendments to Schedule 3 to the 2002 Act which are only to apply if those changes are brought into force before certain other reforms to the police complaints system (as provided for in Schedule 5 to the Bill); a technical amendment to paragraph 56 adjusts these transitional provisions.

Part 2: Police inspection (amendments to clause 35 and 36 and Schedule 3)

- Chapter 6 of Part 2 confer new powers on HM Inspectors of Constabulary to access premises and require information for the purpose of an inspection. These amendments ensure that the new powers apply where policing services are being provided by joint working arrangements, for example with another emergency service. A parallel amendment to the inspection provisions in respect of fire and rescue authorities ensures that fire inspectors may access premises occupied wholly *or partly* by a fire and rescue authority.

Part 3, Chapter 1: Powers of civilian staff and volunteers (amendments to Schedules 10, 11 and 12)

- Paragraph 7 of the new Schedule 3B to the Police Reform Act 2002, inserted by Schedule 10 to the Bill, provides that civilian staff and volunteers designated under section 38 of the Police Reform Act 2002 by the Metropolitan Police Commissioner may not be authorised to make an application on behalf of the Commissioner for an interception warrant under the Regulation of Investigatory Powers Act 2000. The amendment to paragraph 7 removes the reference to that Act and replaces it with a reference to the Investigatory Powers Act 2016 (as it will become) which makes new provision for applications for warrants relating to the interception of communications (and, in consequence, repeals Chapter 1 of Part 1 of the Regulation of Investigatory Powers Act 2000).
- Schedule 11 to the Bill lists bespoke powers that may be conferred on police staff and volunteers in addition to any of the powers of a constable which are not contained in the list of excluded powers. These bespoke powers include a power to search for and seize alcohol which build on the existing power of a constable to require a person to surrender alcohol where it is being consumed in a designated public place. In cross-referencing this existing power, the Bill refers to provisions in section 12 of the Criminal Justice and Police Act 2001 which have been repealed. The amendment to paragraph 4 of Schedule 11 refers instead to the relevant power of constable in the Anti-social Behaviour, Crime and Policing Act 2014.
- The list of bespoke powers also includes a power to require a person to give his or her name and address, including where that person has committed an offence under a relevant byelaw. The amendments to paragraph 3 of Schedule 11 incorporate such a definition (by reference to the definition of a “listed byelaw” in paragraph 3(6)).
- Schedule 12 to the Bill makes amendments to various enactments as a consequence of the provisions enabling chief constables to confer police powers on volunteers as well as civilian employees. We have identified one further necessary consequential amendment to the Police Act 1996.

Part 4, Chapters 5 and 6: Maritime enforcement powers (amendments to clauses 82, 93, 94 and 104)

- Clause 138 of the Bill enables the Director General of the National Crime Agency (NCA) to designate NCA officers with the powers of a general customs official. Consequential amendments are now needed to the maritime enforcement powers in Part 4 of the Bill to enable an NCA officer so designated to exercise those powers.

Part 9: Miscellaneous (amendment to clause 149)

- Clauses 139 and 140 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). The 2007 Act includes a power to extend the provisions of that Act to the Crown Dependencies by Order in Council; an amendment is required to ensure that that power applies to the 2007 Act as amended by the Bill.