CRIMINAL JUSTICE BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

The Government has tabled amendments to the Criminal Justice Bill for Commons Report stage. These amendments introduce further new delegated powers. This supplementary memorandum explains why the new powers have been taken and the justification for the procedure selected.

New clause "*Sex offenders: notification of absence from sole or main residence*" – New section 85ZA(8) of the Sexual Offences Act 2003: Power to amend the period specified in section 85ZA(2)

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Negative resolution procedure*

Context and purpose

1. Part 2 of the 2003 Act requires relevant sex offenders to notify the police of specified information (such as their name(s) and home address) within the period of three days beginning with the relevant date (i.e., the date of their conviction or release from custody where they received a custodial sentence) or within the period of three days of their notifiable information changing or annually. Section 80(1) of 2003 Act provides that a person is subject to the notification requirements of Part 2 if they are convicted of an offence in Schedule 3 to the 2003 Act, or they are found not guilty of such an offence by reason of insanity or they are found to be under a disability and to have done the act charged against them in respect of such offence; or they have been cautioned in respect of such an offence. Such a person is referred to as a "relevant offender".

2. New clause "*Sex offenders: notification of absence from sole or main residence*" inserts new section 85ZA into the 2003 Act. New section 85ZA(2) requires a relevant offender to notify the police if they intend to be absent from their sole or main residence (their home address) for a period of more than five days. Such a notification must be made not less than 12 hours before leaving their home address. The notification must contain the information set out in section 85ZA(3), namely:

    a) the date on which the relevant offender will leave their home address;
    b) such details as the relevant offender holds about— (i) their travel arrangements during the relevant period; (ii) their accommodation arrangements during that period; (iii) their date of return to that home address.

3. New section 85ZA(8) enables the Secretary of State, by regulations, to amend subsection (2) so as to change the duration of the relevant period, provided that the relevant period is at least five days.

Justification for the power

4. These new notification requirements are intended to assist the police in the more effective management of the risk of reoffending by registered sex offenders where they reside at a place other than their home address for more than five days. In providing for such notification requirements there is a balance to be struck between ensuring the police have the necessary information to effectively manage the risk of reoffending by registered sex offenders and putting in place requirements that are disproportionate in terms of their impact on the offender or unwieldy in terms of the administrative burdens they place on the police. It is currently assessed that a requirement on relevant offenders to notify the police in advance of absences from their home address of more than five days is proportionate. But in the light of operational experience, it may be necessary to extend the five-day period. It is considered that such fine tuning of the notification regime is an appropriate matter to be left to secondary legislation.

Justification for the procedure

5. By virtue of section 138(3) of the 2003 Act, regulations under new section 85ZA(8) are subject to the negative resolution procedure. While this is a Henry VIII power and therefore would normally be subject to the affirmative procedure, the negative procedure is considered appropriate in this instance given the narrow ambit of the power and the fact that the power cannot be exercised to reduce the relevant period to less than five days. Moreover, any increase in the five-day period would make the notification requirement less onerous for relevant offenders.

New clause "*Child sex offenders: requirement to notify if entering premises where children present*" –

(i) New section 86B(3)(b) of the Sexual Offences Act 2003: Power to specify other information to be included in a section 86B notification.
(ii) New section 86B(5) of the Sexual Offences Act 2003: Power to specify circumstances in which a further section 86B is not required.
(iii) New section 86B(9) of the Sexual Offences Act 2003: Power to specify meaning of "qualifying premises" for the purposes of section 86B.

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*(i) Negative resolution procedure* *(ii) Draft affirmative resolution procedure* *(iii) Draft affirmative resolution procedure*

Context and purpose

6. New clause "*Child sex offenders: requirement to notify if entering premises where children present"* inserts new sections 86A to 86D into the Sexual offences Act 2003 ("the 2003 Act") which place additional requirements on certain registered sex offenders ("RSO") to notify the police before entering into qualifying premises at which children are present. These provisions are intended to strengthen the safeguarding of children by ensuring that the police are notified in advance of contact within qualifying premises between registered sex offenders of particular concern and children.

7. New section 86A enables a chief officer of police to give a notice (a "section 86A notice") to a relevant RSO (a "section 86B relevant offender") if satisfied that it is necessary, for the purpose of protecting children generally, or particular children, from sexual harm, for the RSO to be subject to the requirements in section 86B. New section 86B(1) provides that a section 86B relevant offender must notify the police before entering qualifying premises at which children are present. A notification under new section 86B(1) must specify the date on which the offender is to enter the premises, and must be given at least 12 hours before the offender enters the premises unless it is not reasonably practical to give such advance notice, in which case the notice must be given as far in advance of the offender entering the premises as is reasonably practicable (new section 86B(1)). Where it is not reasonably practicable to give any form of advance notice, a section 86B relevant offender must notify the police within three days of entering the qualifying premises (new section 86B(2)).

8. A notification under new section 86B(1) or (2) must include: (a) the address of the premises to which the notification relates; and (b) such other information as the Secretary of State may specify in regulations (new section 86B(3)).

9. New section 86B(5) confers power on the Secretary of State, by regulations, to specify the circumstances in which a section 86A relevant offender, having given a notification under section 86B(1) or (2), is not required to give another notification in relation to the same children or premises. If, for example, a section 86B relevant offender makes regular visits to the home of a sibling where nephews or nieces are present, the police may conclude on the basis of a risk assessment (taking into account whether another adult is present on the premises) that repeat notifications in advance of every visit is not required.

10. New section 86B(9) provides that for the purpose of section 86B, "qualifying premises" means premises of a kind specified in regulations made by the Secretary of State.

Justification for the power

11. The requirement on certain registered sex offenders to notify the police before entering qualifying premises where children are present will be established on the face of the 2003 Act. New sections 86A to 86D of the 2003 Act provide for the fundamentals of the scheme.

12. New section 86A(3) establishes that a notification under section 86A(1) or (2) must include certain information. New section 86B(3)(a) provides that a notification must, in all cases, specify the address of the premises to which the notification relates. Other relevant information will be case specific and, as such, is appropriately left to be specified in secondary legislation. For example, where a section 86B relevant offender is entering another dwelling, for example of a relative, it may be appropriate for the notification to specify the name and age of each child living at the address. It may not be possible for a section 86B relevant offender to provide such information when entering venues to which the public have access, such as a sports centre. Specifying other categories of information in regulations affords the flexibility to tailor the requirements to different settings and ensure that regulations made under new section 86B(3)(b) can dovetail with regulations made under section 86B(9) defining qualifying premises.

13. The circumstances in which it may be unnecessary for a section 86B relevant offender to make a repeat notification in relation to the same children or same premises will also be subject to variation depending on the nature of the premises and contact with the child/children. As indicated in paragraph 38 above, a repeat notification may not be necessary where the section 86B relevant offender regularly visits the home of a sibling or other adult relative where relatives under 18 years old are present, and another adult is also present. Attendance at other premises where children are present may pose greater safeguarding risks and it may be necessary to require a further notification under new section 86B(1) or (2) for each visit or to apply more stringent conditions under which the waiver in new section 86B(5) is to apply. Specifying the circumstances in which the waiver is to apply in regulations affords the necessary flexibility to take account of visits to different categories of premises and nature of contact with children, and again ensures that regulations made under subsection (5) of section 86B can dovetail with those made under subsection (9).

14. Enabling the meaning of qualifying premises to be prescribed in regulations will enable the notification requirements in new sections 86B to be readily expanded in response to the risk presented by registered sex offenders and new categories of premises where registered sex offenders may seek to engage in predatory behaviour. In particular, the leisure industry is dynamic and new types of facility may come on stream where children may be at risk from predatory sex offenders. Were that to be the case, it is important that the meaning of qualifying premises can be quickly updated so that the notification requirements in new section 86B can be applied.

Justification for the procedure

15. By virtue of section 138(3) of the 2003 Act, regulations under new section 86B(3)(b) are subject to the negative procedure. Such regulations relate only to the detail of the information to be included in a section 86B notification. This is essentially an administrative matter and, as such, the negative procedure is considered to provide an appropriate level of parliamentary scrutiny.

16. By virtue of section 138(2) of the 2003 Act, as amended, regulations under new section 86B(5) and (9) are subject to the draft affirmative procedure. The draft affirmative procedure is considered appropriate for the regulation-making power in new section 86B(5) as the effect of such regulations will be to disapply the notification requirement (as set out on the face of the 2003 Act) in specified circumstances. It is considered appropriate that such regulations should be subject to debate and approval by both Houses so that Parliament can be satisfied that the prescribed exceptions to the notification requirements are justified.

17. The affirmative procedure is similarly considered appropriate for regulations made under new section 86B(9) given that the prescribed meaning of qualifying premises is a key aspect of the scope of the notification requirements provided for in section 86B. Given this, it is again appropriate that such regulations are debated and approved by both Houses.

New clause "*Sex offenders: method of notification"* (3) –

(i) New section 87A(1) and (6) of the Sexual Offences Act 2003: Power to specify conditions that must be satisfied in order for a registered sex offender to notify information to the police virtually

(ii) New section 87A(10) of the Sexual Offences Act 2003: Power to direct form of acknowledgement for notification under section 87A

Power conferred on:	*Secretary of State*
Power exercisable by:	*(i) Regulations made by statutory instrument* *(ii) Administrative direction*
Parliamentary procedure:	*(i) Negative resolution procedure* *(ii) None*

Context and purpose

18. Part 2 of the 2003 Act requires relevant sex offenders to notify the police of specified information (such as their name(s) and home address) within the period of three days beginning with the relevant date (i.e., the date of their conviction or release from custody where they received a custodial sentence) or within the period of three days of their notifiable information changing or to update the information annually.

19. Section 87(1) of the 2003 Act requires a relevant offender to give a notification required by section 83(1), 84(1) or 85(1) by attending at a police station in the person's local police area that is for the time being specified in a document published by the chief officer for that local police area and to give an oral notification to a police officer or anyone authorised to receive such notification.

20. New clause "*Sex offenders: method of notification"* inserts new section 87A into the 2003 Act which enables a relevant offender to make a notification to the police virtually if the following conditions are met:

- Condition 1 - that a senior police officer has given a relevant offender a notice authorising them to give notifications virtually, and the notice has not been cancelled (new section 87A(2)).
- Condition 2 – that the notification does not relate to a matter specified by the Secretary of State in regulations (a "specified matter") (new section 87A(6)).
- Condition 3 - that the notification is given to a person authorised to receive virtual notifications by the chief officer of police for P's local police area (new section 87A(7)).

21. New section 87A(1)(b) enables the Secretary of State to specify further conditions in regulations. New section 87A(9) provides that the conditions which may be specified in regulations under subsection (1)(b) include further conditions about the means of giving the notification.

22. New section 87A(8) provides that a notification is given virtually if it is given by a means which enables the relevant offender and the person receiving the notification to see and hear each other without being together in the same place; in effect via a live link using an electronic device such as a personal computer.

23. New section 87A(10) provides that a notification under new section 87A must be acknowledged in writing, in such form as the Secretary of State may direct. This mirrors the existing provision in section 87(3) in respect of in-person notifications.

Justification for the power

24. The notification scheme provided for in Part 2 of the 2003 Act currently requires relevant offenders to make notifications to the police in person by attending a police station. This enables the police to confirm the identity of the offender and assess their demeanour in order to help form a judgment about the veracity of the information provided (it is an offence to provide false information). In moving to a system whereby certain notifiable information may be supplied virtually it is important to ensure that the police can visually confirm the offender's identity and assess their demeanour. The Bill will insert onto the face of the 2003 Act the basic framework for virtual notifications, but it is considered appropriate to confer powers on the Secretary of State to add to the conditions that must be satisfied before notifications can be made virtually. This will, in particular, enable the conditions for making virtual notifications to be adjusted to take account of developments in technology. The power to specify the information that may be notified virtually will enable the list of specified matters to be adjusted, including to reflect additions to the list of notifiable information (section 83(5)(h) enables additional information to be prescribed by regulations).

25. As now, it will assist the police to have a standard format for the written acknowledgement of a notification. This is a purely administrative process and, as such, the form of the acknowledgement may be left to be determined by a ministerial direction rather than a prescribed form.

Justification for the procedure

26. By virtue of section 138(3) of the 2003 Act, regulations under new section 87A(1) and (6) are subject to the negative resolution procedure. The Bill itself establishes the overarching framework for the making of virtual notifications, that being the case the negative procedure is considered to afford an appropriate level of parliamentary scrutiny for regulations specifying the matters that may be notified virtually or for adding to the conditions that must be satisfied before notifications may be made virtually (the regulation-making power in new section 87A(1) cannot be exercised so as to remove or override the conditions specified in that section).

27. Any direction under new section 87A(10) is not subject to any parliamentary procedure. Such directions deal with purely administrative matters (the form of an acknowledgement) which can properly be left to the Secretary of State without any form of parliamentary scrutiny.

New clause "*Sex offenders: review of indefinite notification requirements" (3)* – New section 91EB(6) of the Sexual Offences Act 2003: Power to amend the period specified in section 91EB(1)

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Negative resolution procedure*

Context and purpose

28. Part 2 of the 2003 Act requires relevant sex offenders to notify the police of specified information (such as their name(s) and home address) within the period of three days beginning with the relevant date (i.e., the date of their conviction or release from custody where they received a custodial sentence) or within the period of three days of their notifiable information changing or annually. Section 80(1) of 2003 Act provides that a person is subject to the notification requirements of Part 2 if they are convicted of an offence in Schedule 3 to the 2003 Act, or they are found not guilty of such an offence by reason of insanity or they are found to be under a disability and to have done the act charged against them in respect of such offence; or they have been cautioned in respect of such an offence. Such a person is referred to as a "relevant offender".

29. The duration of the notification requirement is related to the relevant offender's sentence and the courts have no discretion over this. The maximum notification period is for an indefinite period. However, those subject to indefinite notification may request the police to review this after 15 years (eight years for juveniles) and remove the requirement if they consider that the offender no longer poses a risk. If the police refuse the request, there is an avenue of appeal to a magistrates' court.

30. Section 91A to 91F of the 2003 Act (as inserted by the Sexual Offences Act 2003 (Remedial) Order 2012) provides a mechanism for a qualifying relevant offender to apply to the relevant chief officer of police for a determination that the qualifying

relevant offender is no longer subject to the indefinite notification requirements. New clause "*Sex offenders: review of indefinite notification requirements"* (3) inserts new sections 91EA to 91ED into the 2003 Act which confer a power on the relevant chief officer of police to be able to determine whether a qualifying relevant offender, who has not made an application for a review of the application of indefinite notification requirements, should remain subject to the indefinite notification requirements. The test for discontinuing indefinite notification requirements following an "own motion review" is that the chief officer is satisfied that it is not necessary for the purpose of protecting the public or any particular members of the public from sexual harm for the qualifying relevant offender to remain subject to indefinite notification requirements.

31. In conducting an own motion review, the relevant chief officer must afford the qualifying relevant offender 35 days to make representations and notify a responsible body (that is, the probation and prison services and bodies listed in section 325(5) of the Criminal Justice Act 2003) within seven days of the start of the review that they are beginning an own motion review. A responsible body then has 28 days of receipt of the notification to submit to the relevant chief officer any information they consider relevant to the review. New section 91EB(1) requires the relevant chief officer of police, within six weeks of the date mentioned in new section 91EB(2), to determine whether the qualifying relevant offender should remain subject to the indefinite notification requirements and give notice of the determination to the qualifying relevant offender. New section 91EB(2) provides that the relevant date is the latest date on which the qualifying relevant offender may make representations to the relevant chief officer. New section 91EB(6) confers a power on the Secretary of State, by regulations, to amend the six week period in section 91EB(1). Section 91C(5) of the 2003 Act contains an equivalent power in relation to applications for the termination of indefinite notification requirements by a qualifying relevant offender.

Justification for the power

32. It is important that an own motion review is conducted expeditiously and brought to an early conclusion. Accordingly, the Bill requires such reviews to be completed within six weeks once the period for submitting representations has elapsed. However, as own motion reviews will be a new process it may be that, in the light of operational experience, police forces need more (or less) time to complete such reviews. Were that to be the case, it is important that the relevant period can be extended quickly by regulations given that chief officers would be in default of a statutory obligation if the six-week period was breached.

Justification for the procedure

33. By virtue of section 138(3) of the 2003 Act, regulations under new section 91EB(6) are subject to the negative resolution procedure. While this is a Henry VIII power and therefore would normally be subject to the affirmative procedure, the negative procedure is considered appropriate in this instance given the narrow ambit of the power. Moreover, any variation of the six-week period would not have a significant adverse impact on qualifying relevant offenders.

Clause "*Sex offenders: restriction on applying for replacement identity documents in new name"* (1) –

(i) New section 93B(7) of the Sexual Offences Act 2003: Power to amend list of identity documents.
(ii) New section 93C(2)(c) of the Sexual Offences Act 2003: Power to specify information to be contained in, and documents to accompany, an application under section 93C.
(iii) New section 93C(5)(a) of the Sexual Offences Act 2003: Power to prescribe conditions that must be satisfied in order for a chief officer of police to authorise registered sex offender to change their name.
(iv) New section 93G of the Sexual Offences Act 2003: Power to issue guidance about the determination of applications under section 93C of the Sexual Offences Act 2003.

Power conferred on:	*Secretary of State*
Power exercisable by:	*(i)-(iii) Regulations made by statutory instrument* *(iv) Statutory guidance*
Parliamentary procedure:	*(i) Draft affirmative resolution procedure* *(ii) Negative resolution procedure* *(iii) Draft affirmative resolution procedure* *(iv) None*

Context and purpose

34. New clause "*Sex offenders: restriction on applying for replacement identity documents in new name"* (1) inserts new sections 93A to 93G into the Sexual offences Act 2003 ("the 2003 Act") which place restrictions on registered sex offenders ("RSO") obtaining an identity document in a new name. These provisions are intended to strengthen the safeguarding of children and members of the public more widely by preventing registered sex offenders from changing their names with the intention of reoffending by concealing their criminal past.

35. New section 93A enables a chief officer of police to give a notice (a "section 93A notice") to a relevant RSO (a "section 93B relevant offender") if satisfied that it is necessary, for the purpose of protecting the public or any particular members of the public from sexual harm, or for protecting children or vulnerable adults generally or any particular children or vulnerable adults from sexual harm from the offender outside the UK, for the RSO to be subject to the restriction under section 93B(1). New section 93B(1) provides that a section 93B relevant offender may not apply for an identity document to be issued to them in a new name unless: (a) authorisation to apply for the document to be issued to them in that name has been granted by the police under section 93C, and (b) that authorisation has not expired

or been cancelled. New section 93B(6) defines an identity document for these purposes, namely an immigration document (as defined in section 7(2) of the Identity Documents Act 2010), a UK passport or a driving licence. It is an offence to fail to comply with the requirement in new section 93B(1) without reasonable excuse (new section 93B(3)). New section 93B(7) confers a power on the Secretary of State, by regulations, to amend new section 93B(6) so as to add to the list of identity documents specified in that subsection.

36. New section 93C makes provision for a section 93B relevant offender to apply to the police for authorisation to apply for an identity document of the same type in a name which is different from the name in which the document is currently held. New section 93C(2) requires such applications to be in writing; specify the identity document which the section 93B relevant offender intends to apply for; and contain such other information, or be accompanied by such documents, as the Secretary of State may specify in regulations. New section 93C(5) provides that the chief officer may grant authorisation only if satisfied that: (a) the offender meets any of the conditions described in regulations made by the Secretary of State, and (b) it is not necessary, for the purpose of protecting the public or any particular members of the public from sexual harm, or for protecting children or vulnerable adults generally or any particular children or vulnerable adults from sexual harm from the offender outside the UK, for the offender to be refused authorisation.

37. New section 93D makes provision for a chief officer of police to give a notice (a "parental notice") to the parent of a section 93B relevant offender who is under the age of 18. It then falls to the parent to comply with section 93B and 93C. New section 93E makes provision for the periodic review of section 93A notices. New section 93F makes provision for appeals to a magistrates' court, including against a decision to give a person a section 93A notice and a refusal to grant authorisation to apply for an identity document in a new name. New section 93G places a duty on the Secretary of State to issue guidance to chief officers in relation to the determination of applications under section 93C. By virtue of section 93C(4) chief officers are required to have regard to such guidance. Such guidance must be published.

Justification for the power

38. The prohibition on certain RSOs applying for a passport, driving licence or other official identity document in a new name without the authorisation of the police will be established on the face of the 2003 Act. New sections 93A to 93G of the 2003 Act provide for the fundamentals of the scheme.

39. New section 93B(6) lists the identity documents for the purposes of the scheme. This list is a sub-set of the list of identity documents in section 7 of the Identity Documents Act 2010; the section 7 list also includes passports issued by jurisdictions outside the UK, documents that can be used (in some circumstances) instead of a passport and driving licences issued by jurisdictions outside of Great Britain which are not relevant for the purposes of the scheme in new sections 93A to 93G of the 2003 Act. It is considered appropriate to include a power in the Bill to add to the list of identity documents in new section 93B(6). In the event a new official document is introduced that could be used for the purpose of confirming a

person's identity, it would be important to promptly add that document to the list in new section 93B(6) so that the protections afforded by the scheme in new sections 93A to 93G (to prevent registered sex offenders evading safeguarding checks) are applied to the new document type. This regulation-making power is analogous to that in section 7(6) of the Identity Documents Act 2010 (which, in turn, replicated that in section 26(4) of the Identity Cards Act 2006). In its third report of session 2010/12, the DPRRC indicated that there was nothing in the Identity Cards Bill which the Committee wished to draw to the attention of the House.

40. The question of what information must be contained in a section 93C application and what documentation should accompany such an application is a secondary detail and one that may appropriately be left to be determined by regulations made by the Secretary of State. The information is expected to include, as a minimum, relevant personal details of the RSO (name, address, date of birth etc) and their reasons for making an application for an identity document in a new name. The required information and documentation is likely to vary according to the circumstances leading to the RSO wishing to change their name. For example, if the name change was as a result of marriage or a change of religion, the information and documentation to be supplied would need to be tailored accordingly. This level of detail is not suitable for primary legislation.

41. The Government accepts that the circumstances in which a chief officer may grant an authorisation is a core part of the scheme and should be underpinned by legislation. The Bill itself provides for a public protection test, but this is accompanied by a requirement that an application should only be granted if specified conditions are met. The circumstances in which it may be legitimate for an RSO to change their name are varied and given the evolving threat posed by RSOs it is considered appropriate to specify the conditions in secondary legislation. The conditions to be specified in regulations are likely to include the following:

- Where a notified offender marries;
- Where a name change is a legitimate feature of a notified offender's religious conversion;
- Where a notified offender changes gender;
- Where a notified offender is a victim of certain course-of-conduct interpersonal offences (e.g., stalking or offences in the context of domestic abuse) and a name change is required to protect them from the harm caused by that offending;
- Where an offender is subject to section 82 of the Serious Organised Crime and Policing Act 2005 (protection arrangements where person at risk);
- Where an offender has received an *Osman* warning (warnings of death threats issued by the police);
- Where the police consider that there are some other exceptional circumstances or reasonable grounds for name change.

42. The Bill itself establishes the framework by which certain RSOs must obtain prior authorisation from the police before they can apply for an identity document in a new name. The purpose of any guidance under new section 93G is to support chief officers in discharging their functions under new section 93C. There is a vast range

of statutory guidance, such as this, issued each year and it is important that guidance can be updated quickly to keep pace with good practice and the changing nature of the threat from registered sex offenders. The guidance will be prepared in consultation with policing practitioners.

Justification for the procedure

43. By virtue of section 138(2) of the 2003 Act, as amended, regulations under new section 93B(7) are subject to the draft affirmative procedure. The draft affirmative procedure is considered appropriate as the effect of adding a new class of identity document to new section 93B(6) would be to extend the restrictions imposed by new section 93B on registered sex offenders subject to a section 93A notice. The draft affirmative procedure also reflects the fact that this is a Henry VIII power; it also mirrors the procedure applicable to the analogous power in section 7(6) of the Identity Documents Act 2010.

44. By virtue of section 138(3) of the 2003 Act, regulations under new section 93C(2)(c) are subject to the negative procedure. Such regulations relate only to the detail of the information to be included in a section 93C application, and any documents required to accompany such applications. This is essentially an administrative matter and, as such, the negative procedure is considered to provide an appropriate level of parliamentary scrutiny.

45. By virtue of section 138(2) of the 2003 Act, as amended, regulations under new section 93C(5)(a) are subject to the affirmative procedure. This is considered appropriate given that such regulations will determine the circumstances in which a section 93B relevant offender will be able to apply for an identity document in a new name. Such regulations will need to balance the private life of RSOs with the need to protect the public from harm. Given such impact and balancing requirements, it is appropriate that such regulations are debated and approved by both Houses.

46. Any guidance issued under new section 93G will not be subject to any parliamentary procedure on the grounds that it would provide practical advice on the discharge by chief officers of their functions under new section 93C and would be drafted in consultation with policing stakeholders. The guidance will not conflict with, or alter the scope of, the duties on chief officers in section 93C and the associated regulations. Moreover, whilst chief officers will be required to have regard to the guidance when exercising those functions, the guidance will not be binding.

New clause "*Sex offenders: restriction on applying for replacement identity documents in new name*" (2) – new section 93H of the Sexual Offences Act 2003: Power to make provision placing restrictions on granting replacement driving licences in new name

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary procedure: Draft affirmative resolution procedure

Context and purpose

47. New clause "*Sex offenders: restriction on applying for replacement identity documents in new name"* (2) inserts new section 93H into the 2003 Act which makes provision in relation to the granting, by the Secretary of State (in practice, by the Driver and Vehicle Licencing Agency), of replacement driving licences in a new name. New section 93H is consequential on the provisions in new sections 93A to 93G inserted by new clause "*Sex offenders: restriction on applying for replacement identity documents in new name"* (1) and detailed in paragraphs 59 to 71 above. Where a chief officer of police has given a relevant offender a section 93A notice ("a section 93B relevant offender") they will be prohibited from applying for a replacement identity document, including a driving licence, in a new name unless authorised to do so under new section 93C. New section 93H complements such a prohibition by ensuring that the Secretary of State may prevent a section 93B relevant offender from being granted a replacement driving licence in a new name.

48. New section 93H(1) confers on the Secretary of State a power to make provision, by regulations, to prevent a relevant section 93B offender from being granted a replacement driving licence if: (a) the offender holds, or has held, a driving licence, (b) the name to be specified in the replacement licence is different from that specified in the most recent licence granted to the offender, and (c) the offender is not authorised under new section 93C to apply for a driving licence in the new name. Provision that may be made by virtue of section 93H(1) includes amendments to Part 3 of the Road Traffic Act 1988, the legislative framework governing the licencing of drivers of vehicles (new section 93H(6)).

49. New section 93H(2) and (3) enables regulations made under new section 93H(1) to establish an information sharing gateway authorising or requiring the appropriate chief officer~~s~~ of police and the Secretary of State to disclose specified information to each other, as the case may be, to enable them to carry out their functions under or by virtue of the regulations or in connection with the detection or investigation of an offence under new section 93B(3) (offence of failure to comply with requirement for authorisation before applying for certain identity documents in new name). New section 93H(4) enables regulations to make provision about how the appropriate chief officer of police and the Secretary of State may or must use any information which is provided to each of them by the other. New section 93H(5) provides that regulations may not contravene the data protection legislation

Justification for the power

50. New sections 93A to 93G will set out on the face of the 2003 Act the core legislative framework for preventing certain registered sex offenders from applying for replacement identity documents in a new name and preventing from being granted a replacement driving licence (it is not necessary to make statutory provision preventing the Home Office granting replacement immigration documents or passports to a section 93B offender as these documents are issued under secondary legislation and the royal prerogative respectively). It is necessary to

leave to regulations the detailed provision preventing a relevant section 93B offender from being granted a replacement driving licence because the operation of the scheme is dependent on the police knowing whether a section 93B offender has, or has had, a driving licence. To ensure that the police have such information, it is intended to exercise the regulation-making power in sections 83(5)(h) and 84(1)(ca) of the 2003 Act (notification regulations) to require registered sex offenders to notify the police of details of any identity documents (including driving licences) issued in their name. Given this approach, it is also considered appropriate to specify in secondary legislation the restriction on driving licences being granted in a new name so that it can operate in tandem with the notification regulations which are needed to make the restriction work.

Justification for the procedure

51. By virtue of section 138(2) of the 2003 Act, as amended, regulations under new section 93H are subject to the draft affirmative procedure. The draft affirmative procedure is considered appropriate as regulations under section 93H would need to amend provisions relating to the circumstances in which the Secretary of State may or must grant a replacement licence (section 99 of the Road Traffic Act 1988). The draft affirmative procedure also reflects the fact that this is a Henry VIII power.

New clause "*Duty to report child sex offences: power to amend*": Power to make certain amendments relating to the duty to report child sex offences

Power conferred on: Secretary of State

Power exercised by: Regulations by statutory instrument

Parliamentary procedure: Draft affirmative resolution procedure

Context and purpose

52. In its final report to the Government (October 2022), the Independent Inquiry into Child Sexual Abuse recommended the introduction of a 'mandatory reporting' regime for child sexual abuse in England.[1] In April 2023 the then Home Secretary announced that the Government had accepted the recommendation.

53. New clause "*Duty to report child sex offences"* (1) places a duty on persons aged 18 or over engaged in "relevant activity" in England to notify suspected child sex offences (as listed in Part 1 of new Schedule "*Duty to report child sex offences: child sex offences and further relevant activity"*) to the police or local authority. The term "relevant activity" is defined in subsection (7) of the clause as covering a regulated activity relating to children within the meaning of Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (for example, healthcare professionals or teachers), or (b) an activity specified in Part 2 of the new Schedule (this includes certain positions of trust not captured in the 2006 Act). Subsection (2)(a) requires notifications to be made to the relevant chief officer of police or local

[1] https://www.iicsa.org.uk/reports-recommendations/publications/inquiry/final-report.html

authority director of children's or social services (or both). Subsection (2)(c) requires notifications to be made as soon as reasonably practicable. The duty to report is subject to certain exceptions. Clause "*Duty to report child sex offences"* (4)(a) disapplies the duty if the person on whom the duty falls has reason to believe that another person has previously, or will imminently, make a notification under clause "*Duty to report child sex offences"* (1) in connection with the same suspected child sex offence. Clause "*Duty to report child sex offences"* (4)(b) temporarily disapplies the duty if the person on whom the duty reasonably believes that it is not currently in the best interests of each child involved in the suspected offence, other than any suspected offender, to make a notification. New clauses "*Exception for certain consensual sexual activity amongst children"* and *"Exception relating to commission of offence under section 14 of the Sexual Offences Act 2003 by a child in certain circumstances"* disapply the duty to report where certain conditions are met relating to consensual sexual activity among children. New clause "*Exception in respect of certain disclosures by children"* provides for an exception to the duty in respect of certain disclosures by children relating to their own behaviour. New clause "*Duty to report child sex offences: modification for constables"* modifies the duty as imposed by clause "*Duty to report child sex offences"* where it applies to a constable.

54. New clause "*Offence of preventing or deterring a person from complying with duty to report child sex offences"* provides for an offence of preventing or deterring a person from complying with duty imposed by clause "*Duty to report child sex offences"* (1). A failure to report child sex offences will not of itself be an offence, instead failing to comply with the duty imposed by clause "*Duty to report child sex offences"* (1) will be treated as conduct potentially giving rise to a person being included on the children's barred list maintained by the Disclosure and Barring Service (or, in the case of a constable, conduct potentially giving rise to misconduct proceedings) or (where applicable) potential disciplinary action instituted by a professional regulator.

55. New clause "*Duty to report child sex offences: power to amend*" confers a power on the Secretary of State to make regulations to make certain amendments to the Criminal Justice Act in relation to the duty imposed by clause "*Duty to report child sex offences"* (1). In particular, such regulations may amend:

    a) Clause "*Duty to report child sex offences"* so as to change the person or persons to whom a notification under that clause is to be made or to provide that a notification under that clause must (in any event) be made within a particular period;
    b) The Criminal Justice Act so as to add or change (but not remove) an exception to the duty under clause "*Duty to report child sex offences"*; and
    c) Schedule "*Duty to report child sex offences: child sex offences and further relevant activity"* so as to: (i) add an offence to, change, or remove an offence from Part 1 of that Schedule; (ii) add an activity to, change, or remove an activity from Part 2 of that Schedule.

56. Section 5B(8) of the Female Genital Mutilation Act 2003 (as inserted by the Serious Crime Act 2015) contains an analogous power to that referred to in paragraph 15(a) above in respect of the duty to report FGM.

Justification for the power

57. The Bill itself provides for the core elements of the duty to report suspected child sex offences. It sets out the duty and the exceptions to it, identifies the categories of person to whom the duty applies, the requirement to make notifications to the police or director of children's or social services and to do so as soon as practicable, and the consequences for preventing or deterring a person from discharging the duty (other consequences for non-compliance are provided for in separate legislation). The Government considers it necessary to be able to modify aspects of the scheme by regulations in the light of experience and in recognition of the unique nature of child sexual abuse as a constantly evolving threat, including through the utilisation of technology and the internet. It may, for example, be necessary to extend the categories of professionals to whom the duty applies if, in the light of experience, it is evident that other professionals would have the requisite knowledge as a result of victims making disclosures to them. Similarly, it may be necessary to modify the list of child sex offences in Part 1 of Schedule "*Duty to report child sex offences: child sex offences and further relevant activity"* to reflect changes to the offences so listed or to add relevant new offences. Such a power is considered appropriate as Parliament would have approved the principle of the reporting duty, including its application to persons working in specified categories of "relevant activity".

Justification for the procedure

58. By virtue of clause 86(3)(a), as amended, the regulation-making power is subject to the affirmative procedure. This is considered appropriate given the 'Henry VIII' nature of the power. It also recognises that in approving the reporting scheme as provided for in the Bill, Parliament will have agreed a particular set of regulated professions to whom the duty should apply and the parameters of the duty and, as such, the affirmative procedure will ensure that both Houses have the opportunity to consider and approve any changes to the scheme before such changes can take effect. This approach is consistent with that taken in section 5B of the Female Genital Mutilation Act 2003.

New clause *"Guidance about disclosure of information by police for purpose of preventing sex offending":* Power to issue guidance about disclosure of information by the police for purpose of preventing sex offending

Power conferred on: Secretary of State

Power exercised by: Statutory guidance

Parliamentary procedure: None

Context and purpose

59. The Child Sex Offender Disclosure Scheme ("the scheme"), often referred to as "Sarah's law" (after Sarah Payne), was implemented across all police forces in England and Wales in 2011.

60. The scheme has two elements: the “right to ask” and the “right to know”. Under the scheme a member of the public may ask the police to check whether a person who has some form of contact with a named child or children has convictions for child sexual offences. This is the “right to ask”. If records show that a child may be at risk of sexual abuse from the person concerned, the police will consider disclosing the information to the person best placed to protect that child/children.

61. The “right to know” enables the police to make a disclosure if they receive indirect information regarding a person that may impact the safety of children. This could include (but is not limited to): (a) information becoming known to the police about a relationship involving a child sex offender and a person who has responsibility for a child or children; (b) information obtained during an investigation into other matters that identifies a need for a person to receive information about someone who may pose a risk to a child; and (c) information received that suggests impending contact between a named child and a person who poses a risk to them.

62. In each case, a disclosure can be made lawfully by the police under the scheme if the disclosure is made in accordance with the police’s common law powers to disclose information where it is necessary to prevent crime and if the disclosure also complies with data protection legislation (Part 3 of the Data Protection Act 2018), the Rehabilitation of Offenders Act 1974 and the Human Rights Act 1998. It must be reasonable and proportionate for the police to make the disclosure based on a credible risk of violence or other harm. Where the case overlaps with other disclosure processes, such as those under the Multi-Agency Public Protection Arrangements or the Domestic Violence Disclosure Scheme, the police will need to decide which process is most appropriate and act accordingly.

63. Non-statutory guidance for the police on the operation of the scheme was first published by the Home Office in 2010 and was updated in April 2023.

64. The Government aims to drive greater use and consistent application of the scheme by putting the guidance underpinning the scheme on a statutory footing and placing a duty on the police to have regard to the guidance, as provided for in subsection (2) of new clause “*Guidance about disclosure of information by police for purpose of preventing sex offending”* . The Home Secretary is under a duty to consult the National Police Chiefs’ Council and such other persons as he or she considers appropriate before issuing or revising the guidance.

65. The provisions in new clause “*Guidance about disclosure of information by police for purpose of preventing sex offending”* are modelled on those in section 77 of the Domestic Abuse Act 2021 which provides for statutory guidance in respect of the Domestic Violence Disclosure Scheme.

Justification for the power

66. The purpose of the guidance is to support the delivery of the scheme and assist front line officers and those who work in the area of public protection with the practical application of the scheme.

67. The scheme did not introduce any new powers for the police to disclose personal data; the same is true of new clause "*Guidance about disclosure of information by police for purpose of preventing sex offending"*. The scheme is based on the police's common law powers to disclose information where it is necessary to prevent crime, and in accordance with data protection and human rights legislation, as explained above at paragraph 22. The scheme and the accompanying guidance provide structure and processes for the exercise of the powers. It does not, of itself, provide the power to disclose or to prevent disclosures being made in situations which fall outside the scheme because they are outside of the police's common law powers to disclose information. Given this, it is appropriate for such practical advice to be included in guidance which can readily be revised from time to time, as necessary, to reflect evolving good practice and relevant case law.

68. Topics which may be covered in the statutory guidance include (but are not limited to):

- Recommended minimum levels of knowledge and experience required by practitioners to discharge their functions under the scheme effectively;
- Suggested step-by-step processes and timescales for the two disclosure routes under the scheme (the "right to ask" and the "right to know"), including example scenarios for each route;
- Minimum standards of information to be obtained from the applicant;
- Minimum standards of intelligence checks to be completed;
- Guidance on effective engagement with a multi-agency forum such as a Multi-Agency Risk Assessment Conference to inform decision-making;
- Guidance on robust risk assessment and safety planning in order to safeguard the individual or individuals potentially at risk of sexual harm caused by the offender;
- Suggested types of information which may be disclosed under the scheme, such as details of allegations, charges, prosecutions and convictions for relevant offences;
- Guidance on what constitutes a "reasonable and proportionate" disclosure in line with case law, relevant human rights and data protection legislation; and
- Suggested forms of wording for communicating outcomes at each stage of the scheme process.

<u>Justification for the procedure</u>

69. Any guidance issued under clause "*Guidance about disclosure of information by police for purpose of preventing sex offending"* would not be subject to any parliamentary procedure on the grounds that it would provide practical advice on the effective operation of the scheme and would be worked up in consultation with the police and any other persons the Home Secretary considered appropriate. As indicated above, the guidance will not of itself create any new powers to disclose personal information. Moreover, whilst chief officers of police must have regard to any guidance issued under this power, the guidance will not be binding. The

analogous power in section 77 of the Domestic Abuse Act 2021 similarly provides for no parliamentary procedure (the DPRRC made no comment on that delegated power in their report on the Domestic Abuse Bill (21st Report of session 2019-21)).

New clause *"Complaints about police and crime commissioners etc"* - new paragraphs 3(2A) and 4A of Schedule 7 to the Police Reform and Social Responsibility Act 2011: Power to make provision about the meaning of "independent person" and duty to make provision about discontinuance of complaints against Police and Crime Commissioners etc when they no longer hold office

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Draft affirmative resolution procedure*

Purpose of the power:

70. New clause *"Complaints about police and crime commissioners etc*" (2) amends paragraph 3 of Schedule 7 to the Police Reform and Social Responsibility Act 2011 ("the 2011 Act"), to change the responsibility for handling non-serious complaints about Police and Crime Commissioners ("PCCs") from Police and Crime Panels to an "independent person". New paragraph 3(2A) of Schedule 7 provides that the Secretary of State may by regulations make provision about the meaning of "independent person". In effect, such regulations would determine who would handle such complaints in place of Police and Crime Panels. It is intended that such regulations would be made following consultation and engagement with the Department for Levelling Up, Housing and Communities, the Welsh Government, and the relevant principal local authorities.

71. The purpose of the amendments to paragraph 3 of Schedule 7 to the 2011 Act is to change the responsibility for who handles non-serious complaints about PCCs and bring the system of complaints about PCCs more in line with those for other elected representatives (for example, directly elected mayors). It will also address concerns that non-serious complaints about PCCs can be handled in a politically driven way.

72. This follows the Government's two-part Review into the role of PCCs, which heard evidence that the current complaints system against PCCs was not working as effectively as it could, and that some PCCs felt that they had been subject to a politically driven complaints process under Police and Crime Panels. This change is supported by the Association of Police and Crime Commissioners and will allow Panels to bring greater focus to their core role of scrutinising the actions and decisions of PCCs.

73. Clause *"Complaints about police and crime commissioners etc*" (4) inserts new paragraph 4A into Schedule 7 to the 2011 Act which requires regulations made under Schedule 7 must provide that non-criminal complaints against PCCs and mayors exercising PCC functions are not to be dealt with where the office-holder has left office.

Justification for taking the power

74. The provisions in new paragraphs 3(2A) and 4A of Schedule 7 to the 2011 Act augment existing provision in section 31 of and Schedule 7 to the 2011 Act. Section 31 confers power on the Secretary of State to make regulations about the making and handling of complaints against a PCC, a deputy PCC, the holder of the Mayor's Office for Policing and Crime, the Deputy Mayor for Policing and Crime. Schedule 7 makes provision for matters that must, may and may not be contained in regulations made by the Secretary of State under section 31. Paragraph 3 of Schedule 7 requires the regulations to provide for complaints not investigated by the Independent Police Complaints Commission (now the Independent Office for Police Conduct), and not covered by paragraph 4 of Schedule 7, to be the subject of informal resolution by the Police and Crime Panel. The current regulations made under section 31 and Schedule 7 are the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012.

75. Conferring a new power to make provision as to the meaning of an "independent person" for the purpose of handling non-serious complaints against PCCs and a new duty to make provision for such complaints not to be dealt with where the office-holder has left office is consistent with the general approach taken in the 2011 Act. In its report on the Police Reform and Social Responsibility Bill (13th Report of session 2010-12, paragraph 13), the Committee concluded that it did "not regard any aspect of this delegation as inappropriate in view of the affirmative procedure".

Justification for the procedure:

76. By virtue of section 154(2)(a) of the 2011 Act, regulations made under section 31 of the 2011 Act (including the matters to be dealt with by virtue of new paragraphs 3(2A) and 4A of Schedule 7), will be subject to the draft affirmative procedure. The affirmative procedure is considered appropriate as regulations will have the effect of conferring new powers on an independent person and of removing a class of complaints that is not subject to any action. Parliament should have the opportunity to debate and approve any such new arrangements before they take effect.

Home Office
8 May 2024