

# ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 1: Injunctions

114. The injunction under Part 1 (presented as the crime prevention injunction in the White Paper) is a purely civil injunction available in the county court for adults and in the youth court for those under the age of 18. The injunction replaces a range of current tools including the anti-social behaviour order (“ASBO”) on application, the anti-social behaviour injunction (“ASBI”), the drinking banning order on application, intervention orders and individual support orders. The injunction can be used to tackle a range of anti-social behaviour problems. For example, an individual regularly hangs around inside local hospital waiting areas. He is always drunk and aggressive to hospital staff, often allowing his dog to jump at staff and others in an uncontrolled manner. Under the new system, NHS Protect (or its successor), the body responsible for protecting NHS staff, property and resources against crime and disorder in England, and the body in Wales carrying out corresponding functions, could apply for an injunction directly to the court to stop the individual’s anti-social behaviour. Along with prohibitions, the injunction could also include positive requirements to get the individual to deal with the underlying cause of his behaviour, that is, his misuse of alcohol, and require him to attend dog training classes so he can learn how to control his dog and understand its welfare needs.
115. **Section 1** sets out a two-part test for granting an injunction. An injunction may be made against a person aged 10 or over if the court is satisfied, on the balance of probabilities (the civil standard of proof), that the person has engaged in, or is threatening to engage in, anti-social behaviour and that it is just and convenient to grant the injunction. Section 2 defines “anti-social behaviour” for this purpose. Where the applicant is a housing provider, local authority or chief officer of police and the anti-social behaviour is related to a housing context, it is defined as “conduct capable of causing nuisance or annoyance” (*subsections (1)(b) and (c) and (2)*). This is similar to the current ASBI, which is used by registered providers of social housing and local authorities (in relation to their housing management functions) to stop anti-social behaviour. Otherwise, for the purposes of the test for an injunction, “anti-social behaviour” is defined as “conduct that has caused, or is likely to cause, harassment, alarm or distress to any person”. Both definitions are capable of including allowing, inciting or encouraging any other person to engage or threaten to engage in anti-social behaviour.
116. The injunction could include prohibitions or requirements that assist in the prevention of future anti-social behaviour (section 1(3)). Such prohibitions may include, for example, not being in possession of a can of spray paint in a public place, not entering a particular area, or not being drunk in a public place. Requirements would be designed to deal with the underlying causes of an individual’s anti-social behaviour and could include, for example, attendance at an alcohol or drugs misuse course or dog training in the case of irresponsible dog owners.

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117. Where an injunction imposes requirements on the respondent, it must specify the person (an individual or an organisation) who is responsible for supervising compliance (section 3). The court must receive evidence on the suitability and enforceability of a requirement from this person. Such individuals or organisations could include the local authority, youth offending teams, recognised providers of substance misuse recovery or dog training providers for irresponsible dog owners.
118. There is no minimum or maximum term for the injunction for adults, so the court may decide that the injunction should be for a specified period or an indefinite period. However, in the case of injunctions against under-18s, the maximum term is 12 months (section 1(6)). The duration of any prohibitions or requirements may be shorter than the duration of the injunction itself.
119. There will be a wider range of potential applicants for the new injunction than the current ASBI to bring it more in line with the breadth of the ASBO. This is intended to help reduce the burden falling on any particular agency to make applications on behalf of others. The following agencies would be able to apply (section 5): a local authority; a housing provider; a chief officer of police (including of the British Transport Police); Transport for London; the Environment Agency; the National Resources Body for Wales; and NHS Protect in England (or its successor) and the relevant body in Wales exercising corresponding functions or other body in Wales exercising any such functions on the direction of the Secretary of State or Welsh Ministers.
120. The list of bodies that may apply for an injunction may be varied by order, subject to the affirmative resolution procedure (section 5(5) and section 182(2)(a)).
121. The Secretary of State has a power to issue and revise guidance to those entitled to apply for injunctions, in relation to their exercise of functions under Part 1 of the Act (section 19).
122. There is a formal requirement for the applicant to consult with the local youth offending team (“YOT”) before making an application, if an injunction is against someone under the age of 18. The consultation requirement does not give a veto power to the local YOT. The applicant must also inform any other body or individual about the application that they think appropriate (section 14), again before making an application. This could include a social landlord (when an application is made by another body against one of their tenants) or mental health team.
123. Applications for an injunction would normally be made to the county court or High Court where the respondent is an adult, or to the youth court where the respondent is under 18. However, section 18(2) makes provision for cases involving multiple respondents where one (or more) of them is aged 18 or over and one (or more) is under that age. In such a case, an applicant may apply at the time of the application to the youth court for permission for the application in respect of the adult(s) to be heard in that court. The youth court would be able to grant the application if it was in the interest of justice. Sections 8(2)(b), 9(3)(b) and 10(2)(b) ensure that while an application in respect of an under-18 will be heard by the youth court, subsequent proceedings against a defendant who has attained the age of 18 since the injunction was made would take place in the appropriate adult court.
124. Applications for an injunction would normally be made following the giving of notice to the respondent. However, section 6 allows an application for an injunction to be made without notice. Without notice applications would, in practice, only be made in exceptional or urgent circumstances and the applicant would need to produce evidence to the court as to why a without notice hearing was necessary. Where a without notice application is made, the court would be able to grant an interim injunction pending a full hearing following the giving of notice to the respondent (sections 6 and 7). The consultation requirements in section 14 do not apply to without notice applications.

125. A court may vary or discharge an injunction upon application by the original applicant or respondent (section 8). A variation may take a number of forms including the addition of a new prohibition or requirement or the removal of an existing one, the extension or reduction of the duration of an existing prohibition or requirement, or the attachment of a power of arrest.
126. A power of arrest may be attached to any prohibition or requirement contained in an injunction if the court believes that the individual has used violence, or threatened violence against another person when they committed the anti-social behaviour, or if there is risk of significant harm by the respondent to others (section 4). A power of arrest attached to an injunction allows a police officer to arrest the respondent without a warrant if the respondent breached a condition in the injunction, that is, a prohibition or a requirement (section 9). Where no power of arrest is attached to the injunction, the applicant may apply to the court to issue a warrant of arrest of a respondent if the applicant thinks that the respondent has breached the injunction (section 10). Section 11 and Schedule 1 make provision for the remand, whether on bail or in custody, of a person arrested for breach of an injunction.
127. Breach of an injunction by an adult will be contempt of court, punishable in the usual way by the county court by a term of imprisonment of up to two years or an unlimited fine. Breach of an injunction by someone aged under 18 could result in the youth court imposing a supervision order or a detention order. A detention order can be made for breaching the injunction or for breaching a supervision order that was imposed for breaching the injunction. The court may revoke the supervision order and impose a new one or it may revoke the supervision order and make a detention order. The court can only impose a detention order where it considers that the severity or extent of the behaviour warrants it and that no other sanction available to it is appropriate. The court must be satisfied beyond reasonable doubt that the under 18 has, without reasonable excuse, breached the injunction or breached a supervision order that was imposed for breaching the injunction before it can make the detention order. The court must also consider any representations from the YOT specified in the supervision order before imposing a detention order. The maximum duration of a detention order is three months and it cannot be imposed on under 14s (section 12 and Schedule 2). A supervision order may contain one or more of the following requirements: a supervision requirement, an activity requirement or a curfew requirement. An electronic monitoring requirement may be attached to a curfew requirement in order to monitor compliance.
128. In granting an injunction to a housing provider, local authority or the police, the court may attach a power to exclude the respondent from their home or a specified area, provided the respondent is aged 18 or over. The court may exclude the respondent if it thinks that they have been violent or threatened violence to other persons, or if there is a significant risk of harm from the respondent to other persons (section 13). In the case of a housing provider, exclusion can only relate to the property owned or managed by them. There is no such limitation in the case of the police or local authority and exclusion would be tenure neutral.
129. There is a right of appeal against a decision of the youth court under this Part (section 15). A decision of the county court is appealable to the High Court.
130. [Section 16](#) enables the court to give a special measures direction to protect vulnerable or intimidated witnesses in injunction proceedings. Such measures may include giving evidence behind a screen or by video link or in private.
131. The automatic restriction on reporting legal proceeding in relation to someone aged under 18 (section 49 of the Children and Young Persons Act 1933) does not apply to proceedings for an injunction under section 1 (section 17). However, section 39 of that Act does apply to these proceedings and gives the court the discretion to restrict the publication of certain information (for example, the respondent's name and address) in order to protect the identity of the child or young person.

132. **Section 21** makes certain saving and transitional provisions in respect of ASBOs on application, anti-social behaviour injunctions and drinking banning orders made before the commencement of the provisions in the Act repealing the legislation providing for such orders and injunctions. Five years after the commencement of Part 1 of the Act any of these orders or injunctions still in force will automatically be treated as an injunction under Part 1.

## **Part 2: Criminal behaviour orders**

133. The criminal behaviour order (“CBO”) will be an order on conviction, available following a conviction for any criminal offence in the Crown Court, a magistrates’ court or a youth court. This would replace the ASBO on conviction and the drinking banning order on conviction. A court will be able to make a criminal behaviour order against an offender only if the prosecutor applies for it. This would normally be at the instigation of the police or local authority. Unlike the current process, local authorities would be able to apply directly to the prosecution without requesting the permission of the police.
134. **Section 22** sets out the two-part test for granting an order. An order may be made against a person over the age of 10 if the court is satisfied that the offender has engaged in behaviour that caused, or was likely to cause, harassment, alarm or distress to any person and that the court considers that making the order will assist in preventing the offender from engaging in such behaviour. The standard of proof would be the criminal standard, that is, “beyond reasonable doubt” (*subsection (3)*).
135. The order could include prohibitions and/or positive requirements that assist in preventing the offender from engaging in behaviour that could cause harassment, alarm or distress in the future (*section 22(5)*). Such prohibitions could include not being in possession of a can of spray paint in a public place, not entering a particular area, or not being drunk in a public place. The requirements in an order could include attendance at a course to educate offenders on alcohol and its effects.
136. An order may only be made against an offender when he or she has been sentenced for the offence or given a conditional discharge (*section 22(6)*). No order may be made where the offender has been given an absolute discharge or has only been bound over to keep the peace.
137. A court may only make a criminal behaviour order against an offender if the prosecution applies for an order; it may not make an order on its own volition (*section 22(7)*).
138. Where the offender is under the age of 18, the police or local authority must consult the local youth offending team and must inform the prosecutor of the views of the youth offending team. The consultation requirement does not give the youth offending team a veto power over applications for criminal behaviour orders (*section 22(8)*). Accompanying guidance will also recommend that the young person is given the chance to express their views, in line with their rights under the UN Convention on the Rights of the Child.
139. The court can consider evidence which was inadmissible in the criminal proceedings. This could include hearsay or bad character evidence (*section 23(2)*). The automatic reporting restrictions of certain information (such as the name, address or school of a child or young person) that normally apply in respect of legal proceedings in relation to a person under 18 (*section 49 of the Children and Young Persons Act 1933*) do not apply to proceedings in which a CBO is made (*section 23(7) and (8)*). However, *section 39* of that Act does apply which gives the court the discretion to prohibit the publication of certain information that would identify the child or young person.
140. **Section 24** provides that if an order includes a requirement it must specify the person responsible for supervising compliance. The court must receive evidence on the enforceability and suitability of the requirement from the individual specified or, in the case of an organisation, an individual representing that organisation. Such individuals

or organisations could be the local authority, recognised providers of substance misuse recovery or dog training providers for irresponsible dog owners.

141. Where a criminal behaviour order is made against a person under 18 years of age the order must be for a fixed period of between one and three years. In the case of an adult, a criminal behaviour order must be for either a fixed period of two years or more or for an indefinite duration – there is no maximum length (section 25).
142. Where the court adjourns a hearing for an order, it can place an interim order on the offender that lasts until the final hearing of the application if the court thinks it is just to do so (section 26).
143. A court can vary or discharge an order upon the application of the offender or the prosecution (section 27). However, where a previous application has been dismissed, that party cannot make a further application to vary or discharge the order without the consent of the court or agreement of the other party (the offender or prosecution).
144. Reviews must be held every 12 months for offenders under the age of 18 (section 28). The 12 month period starts from the date the order was made, or from the date it was subsequently varied. The review must consider the offender's compliance with the order and the support provided to help him or her comply with it, and give consideration to whether an application should be made to vary or discharge the order. The review should be carried out by the police with the local authority and any other relevant person or body (section 29).
145. The automatic restriction on reporting legal proceeding in relation to someone aged under 18 (section 49 of the Children and Young Persons Act 1933) does not apply to CBO breach proceedings (section 30(5)). However, section 45 of the Youth Justice and Criminal Evidence Act 1999 applies to CBO breach proceedings against someone aged under 18. That section gives the court the discretion to restrict the publication of certain information (for example, the respondent's name or address) in criminal proceedings in order to protect the identity of the child or young person. The court must give reasons if it decides to give a direction and exercise its discretion under section 45. (Section 45 of that Act applies to criminal proceedings and allows the court to restrict reporting of this kind of information if it feels that the reporting would lead to the identification of the child in question.)
146. In any proceedings in relation to a CBO it is open to the court to make a special measures direction in relation to vulnerable and intimidated witnesses. Such measures may include the physical screening of a witness, enabling evidence to be given in private or the use of a video-recorded interview.
147. [Section 32](#) provides that the Secretary of State may issue and revise guidance to chief officers of police and local authorities about the exercise of their functions under Part 2 of the Act.
148. [Section 33](#) makes certain saving and transitional provisions in respect of ASBOs on conviction, individual support orders and drinking banning orders on conviction made before the commencement of the provisions in Part 1 of Schedule 11 to the Act repealing the legislation providing for such orders. Five years after the commencement of Part 2 of the Act any such orders still in force will be automatically treated as criminal behaviour orders.

### **Part 3: Dispersal powers**

149. The dispersal power will enable officers (constables in uniform and police community support officers ("PCSOs")) to direct a person who has committed, or is likely to commit, anti-social behaviour to leave a specified area and not return for a specified period of up to 48 hours. The test would be that the officer is satisfied on reasonable grounds that the person's behaviour is contributing, or is likely to contribute to anti-social behaviour or crime or disorder in the area and that the direction is necessary

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to prevent the same (section 35(2) and (3)). Police officers would have access to all elements of the power, and PCSOs could have access to some or all elements of the power at the discretion of the Chief Constable (section 40).

150. The dispersal power can only be used where an officer of at least the rank of inspector has authorised its use in a specified locality (section 34(1)). The authorisation can last a maximum of 48 hours. That authorisation can only be given where the police officer of or above the rank of inspector reasonably believes that, in respect of any locality within his police area, the exercise by a constable in uniform or PCSO of the dispersal powers in Part 3 of the Act may be required in order to remove or reduce the likelihood of the events mentioned in subsection (3)(a) or (b) of section 34 occurring. For instance, the inspector may have intelligence to indicate that there is likely to be anti-social behaviour on a particular housing estate during the weekend and authorise the use of the dispersal power for 48 hours. Alternatively, in a situation where an officer needs to use the dispersal power in an area that has not been authorised, the officer can contact an inspector for an authorisation and describe the circumstances to him or her.
151. Before authorising the use of the dispersal power in a specified area, the authorising police officer must have particular regard to the rights of freedom of expression and freedom of assembly and association (section 34(3)). A similar duty is placed on a constable before issuing a dispersal direction (section 36(5)).
152. The direction would in most instances be given in writing to ensure that those individuals being dispersed are clear where they are being dispersed from. Where this is not reasonably practicable, the direction could be given orally (section 35(5)(a)) and the officer would keep a written record of the direction (section 38). Any constable can vary or withdraw a direction and must do this in writing to the person originally issued with the order unless not reasonably practicable (section 35(8) and (9)).
153. The officer must specify the area from which the person is excluded, and may specify when and by which route they must leave the area (section 35(5)(b) and (c)). Where the officer believes an individual is under the age of 16, an officer can remove that individual to a place where he or she lives or to a place of safety (section 35(7)).
154. Failure to comply with the direction would be a criminal offence and would carry a maximum penalty of a level 4 fine (currently £2,500) and/or three months imprisonment (section 39).
155. An officer would also be able to require an individual to hand over items causing, or likely to cause, anti-social behaviour – for instance, alcohol or a can of spray paint (section 37). Failure to comply with the requirement is a criminal offence, the maximum penalty for which is a level 2 fine (currently £500) (section 39(4)). These sanctions are in line with current equivalent powers, and are designed to ensure there is an appropriately serious consequence to failing to comply.
156. However, the officer does not have power under this provision to retain any seized item indefinitely. The officer must give the person information in writing about how and when they can recover the item, which must not be returned before the exclusion period is over. If the person is under 16 the officer can require that person to be accompanied by an adult when collecting the item.
157. [Section 41](#) provides that the Secretary of State may issue and revise guidance to chief officers of police about the exercise of functions under Part 3 of the Act by officers under their direction and control.
158. As a safeguard to ensure that the power is used proportionately, and to protect civil liberties, guidance will suggest that data on its use should be published locally. This would be via a website or other locally agreed media. Police and Crime Commissioners (or in London, the relevant policing body) would have a role in holding forces to account on their exercise of these powers to ensure that they are being used proportionately. Publication of data locally would also help highlight any “hot-spot” areas that may need

a longer-term solution (for example, diversionary activities for young people or the introduction of CCTV cameras to help “design out” crime and anti-social behaviour).

159. [Section 42](#) makes saving provisions for authorisations given under section 30(2) of the Anti-social Behaviour Act 2003, and directions given under section 27 of the Violent Crime Reduction Act 2006 before the commencement day of Part 3 of the Act.

#### **Part 4, Chapter 1: Community protection notices**

160. The community protection notice is intended to deal with unreasonable, ongoing problems or nuisances which negatively affect the community’s quality of life by targeting the person responsible (section 43(1)). The notice can direct any individual over the age of 16, business or organisation responsible to stop causing the problem and it could also require the person responsible to take reasonable steps to ensure that it does not occur again (section 43(3)). For instance, where a dog was repeatedly escaping from its owner’s back garden due to a broken fence, the owner could be issued with a notice requiring that they fix the fence to avoid further escapes and also, if appropriate, ensure that the owner and dog attended training sessions to improve behaviour (if this was also an issue).
161. This notice will replace current measures such as litter clearing notices, defacement removal notices and street litter control notices.
162. It is not meant to replace the statutory nuisance regime, although (as with these existing measures) there is no legal bar to it being used where behaviour is such as to amount to a statutory nuisance under section 79 of the Environmental Protection Act 1990. For example, a local authority could issue a CPN to address anti-social behaviour while investigating whether it constitutes statutory nuisance. Part 3 of the Environmental Protection Act 1990 places a duty on a local authority to investigate complaints of statutory nuisance from people living within its area. Issue of a CPN does not relieve the local authority of its obligation under Part 3 of the Environmental Protection Act 1990 to serve an abatement notice where the relevant test is met.
163. The notice should be issued to someone who can be held responsible for the anti-social behaviour (section 44). For instance, if a small shop were allowing litter to be deposited outside the property and not dealing with the issue, a notice could be issued to the business owner, whereas if a large national supermarket were to cause a similar issue, the company itself or the store manager could be issued with a notice.
164. The power to issue a notice will be available not only to the police and local authority staff but also to PSCOs, if designated by the chief constable (section 53(5); under section 53(6) a PSCO will also be able to issue a fixed penalty notice for the offence of breaching a community protection notice, if designated for that). In addition, the power to issue a community protection notice will be available to persons who are designated by the relevant authority, if they fall within a description specified in an order made by the Secretary of State. For example, if registered providers of social housing were specified in an order, a particular registered provider would be able to issue notices if designated by the local authority in question (section 53(1)(c) and (4)).
165. Before issuing a notice, an authorised person is required to inform whatever agencies or persons he or she considered appropriate (for example the landlord of the person in question, or the local authority), partly in order to avoid duplication (section 43(6)). The person would also have to have issued a written warning in advance and allowed an appropriate amount of time to pass (section 43(5)). This is to ensure that the perpetrator is aware of their behaviour and allows them time to rectify the situation. It will be for the person issuing the written warning to decide how long is appropriate before serving a notice. In the example above where a dog owner’s fence needs to be fixed, this could be days or weeks, in order to allow the individual to address the problem. However, it could be minutes or hours in a case where, for example, someone was persistently playing loud music in a park.

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166. Wherever possible, the notice should be issued in person. However, where this is not possible, it can be posted or left at the proper address (section 55(1)). In the case of the latter when it relates to a business, the address may be different from the location of the anti-social behaviour.
167. Remedial works or works in default can be added to the notice immediately or once the individual, business or organisation has had sufficient time to comply with any requirements (section 47). For instance, if the behaviour related to a front garden full of rubbish, the individual could be given a period of seven days to clear the waste. The issuing officer could also make clear on the face of the notice that if this was not complied with, they would authorise the works in default on a given date and at a given cost. Consent would only be required when that work necessitated entry to the perpetrator's property – those issuing a notice would be able to carry out remedial works in default in areas "open to the air" (section 47(5)), for instance clearing rubbish from a front garden. This is in line with current provision in section 92 of the Environmental Protection Act 1990.
168. In undertaking remedial works or works in default, the local authority is exempted from liability in the event of any damage caused by works carried out in good faith and with due care and attention (section 54).
169. A person issued with a community protection notice may appeal within 21 days to the magistrates' court. Grounds for appeal include that the conduct specified in the notice did not meet one of the limbs of the test for issuing a notice or that the person could not reasonably be expected to control the behaviour. While an appeal is pending, any requirements in the notice for the person to stop doing certain things will have effect, but positive requirements to do certain things will not (section 46). For example, where rubbish has accumulated in someone's front garden and a notice issued to the owner, a requirement to stop adding to the rubbish would continue in effect but a requirement to clear the garden would not.
170. Breach of any requirement in the notice, without reasonable excuse, would be a criminal offence, subject to a fixed penalty notice (which attracts a penalty of £100) (section 52) or prosecution. On summary conviction an individual would be liable to a level 4 fine (currently up to £2,500). An organisation such as a company is liable to a fine not exceeding £20,000. On conviction, the magistrates' court would have the power to order forfeiture and destruction of any item used in the commission of the offence – for instance, noise equipment (section 50). Where necessary, the court can also issue a warrant allowing a constable or local authority to seize such items (section 51).
171. The Secretary of State may issue and revise guidance to chief officers of police and local authorities about the exercise of functions under Chapter 1 of Part 4 of the Act (section 56).
172. Community protection notices will be different from the powers they replace in the following ways:
  - a. They cover a wider range of behaviour (all behaviour that is detrimental to the local community's quality of life) rather than specifically stating the behaviour covered (for example, litter or graffiti);
  - b. Noise disturbance could be tackled, particularly if it is demonstrated to be occurring in conjunction with other anti-social behaviour;
  - c. The notices can be issued by a wider range of agencies: the police, local authorities and private registered providers of social housing (if approved by local authorities), thereby enabling the most appropriate agency to deal with the situation;
  - d. The notices can apply to businesses and individuals (which is the same as for some of the notices they will replace but not all); and



- e. It would be a criminal offence if a person did not comply, with a sanction of a fine (or fixed penalty notice) for non-compliance. This is the case at the moment for litter-related notices but not defacement removal notices.

#### **Part 4, Chapter 2: Public spaces protection orders**

- 173. The public spaces protection order (referred to as the community protection order (public spaces) in the White Paper) is intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area. The order could also be used to deal with likely future problems. It will replace designated public place orders, gating orders and dog control orders. Examples of where a new order could be used include prohibiting the consumption of alcohol in public parks or ensuring dogs are kept on a leash in children's play areas. It could also prohibit spitting in certain areas (if the problem was persistent and unreasonable). This is currently covered in local byelaws.
- 174. An order can be issued either by a local authority (section 59) or by a body designated by the Secretary of State in respect of land that it has the power to regulate by virtue of any enactment – for example, the City of London Corporation could be designated to make orders in respect of lands it manages on behalf of local authorities, such as Epping Forest and Hampstead Heath (section 71).
- 175. Before making an order, the authority must publicise the proposed order and consult the chief officer of police, the Police and Crime Commissioner (or the equivalent in London) and any representatives of the local community they consider appropriate – for example, a local residents group or a community group that regularly uses the public place. The authority must also consult, as far as reasonably practicable, the owner or occupier of the land in question and inform the county council and any parish or community council. In addition, the authority must have particular regard to the rights of freedom of expression and freedom of assembly and association before making a public spaces protection order. These requirements also apply to decisions to extend the period of, vary or discharge an order (section 72).
- 176. Orders will last for up to three years before requiring a review (section 60(1)), however there is no limit on the number of times an order can be reviewed and renewed. The review requirements will be different depending on the prohibitions or requirements being applied – for instance, an order requiring dogs are kept on their leash in a children's play area is unlikely to necessitate the same level of review as an order prohibiting any access to a public place to deal with a short-term issue such as localised crime. An order can be varied or discharged at any time by the authority that made it (section 61).
- 177. The two-part test for issuing the order will be that the authority is satisfied on reasonable grounds that that activities carried on, or likely to be carried on, in a public place are detrimental to the local community's quality of life, and that the impact justifies restrictions being put in place in a particular area. The behaviour must also be ongoing and unreasonable (section 59(2) and (3)).
- 178. The order can prohibit certain things (for example, drinking alcohol), require specific things to be done (for example, keeping dogs on leashes), or both (section 59(4)). Unlike the orders this power will replace, only one order will be required to deal with a specific place, with one consultation. For instance, a single order could be used to prohibit drinking in a specific park as well as ensuring dogs were kept under control, through either being kept on a leash or limiting the number of dogs an individual can walk at one time.
- 179. An order prohibiting the consumption of alcohol cannot be used against licensed premises (section 62). Sections 63(2) and 67(4) provide that breach of an order prohibiting the consumption of alcohol is only an offence when an individual does

not cease drinking or surrender alcoholic drinks when challenged by an enforcement officer. This could be a police officer, PCSO or local authority officer. This ensures that officers are able to exercise discretion in each situation. Where there is no threat of anti-social behaviour, they need not challenge the individuals, for example a family picnic with a bottle of wine.

180. Where an order restricts access to a public right of way, the local authority should also consider the wider impact on those in the locality and the availability of other routes (section 64(1)). For instance, an alleyway between houses and a key local amenity (shops, etc.) should not be closed where there is no other reasonable route for people to use. The local authority must also inform those in the locality of any proposed order (section 64(2)). Where an order would restrict a public right of way that crosses into another local authority area, that local authority must also be consulted where the issuing authority thinks it appropriate to do so (section 64(3)).
181. The appeal route for either an order or a variation of an order is through the High Court and is only open to someone who lives in the area or regularly visits the area (section 66(1)) and must be made within six weeks of the order or variation of the order being applied for (section 66(3)). However, this does not preclude others (such as national bodies) from seeking judicial review.
182. Breach of the order, without reasonable excuse, is a criminal offence, subject to a fixed penalty notice (of up to £100) (section 68) or prosecution. On summary conviction, an individual would be liable to a level 3 fine (currently up to £1,000). It is also an offence to fail to comply with a request to cease drinking or surrender alcohol in a controlled drinking zone punishable on summary conviction by a level 2 fine (currently up to £500). If alcohol is confiscated, it can also be disposed by the person who confiscates it.
183. [Section 75](#) provides for the transitional arrangements associated with the new orders. It provides that current orders will remain in place for three years following the commencement of this legislation. During that period it is expected that local authorities will have had time to review current orders and consider the appropriateness of the new order to replace them.
184. [Section 70](#) provides that a public spaces protection order takes precedence over a byelaw where the byelaw prohibits an activity in the restricted area. However, where a body designated under section 71 (see paragraph 175) has made byelaws in respect of a public space, it may give a notice, the effect of which would be to ensure that its byelaws took precedence over any public spaces protection order issued by the local authority (section 71(6)). In contrast, a public spaces protection order made by a designated body does not take precedence over one made by the local authority (section 71(5)).
185. [Section 73](#) provides the Secretary of State with a power to issue and revise guidance to local authorities and bodies designated under section 71 about the exercise of their functions under Chapter 2 of Part 4 of the Act. It also provides that the Secretary of State may issue guidance to chief officers of police about the exercise of functions under this Chapter by officers under their direction and control.
186. The public spaces protection order will be different from the powers it will replace in the following ways:
  - a. It can prohibit a wider range of behaviour, which makes the new order more like the “good rule and government byelaws” made under the Local Government Act 1972, but with a fixed penalty notice available on breach (although some current byelaws do allow for fixed penalty notices to be issued).;
  - b. There will be less central government oversight than with byelaws, and no central government reporting requirements as with designated public place orders. This will reduce bureaucracy; and

- c. There will be lighter touch consultation requirements to save costs (for example, there is no duty to advertise in local newspapers).

#### **Part 4, Chapter 3: Closure of premises associated with nuisance or disorder etc**

187. The closure of premises associated with nuisance or disorder (referred to as the community protection order (closure) in the White Paper) has two stages – the closure notice and the closure order. The new power consolidates various existing closure powers relating to licensed and non-licensed premises which are causing, or are likely to cause, anti-social behaviour.
188. The two-part test for issuing a notice will be that the police or local authority reasonably believes that there is, or is likely soon to be, a public nuisance or there is, or is likely soon to be, disorder in the vicinity of, and related to the premises; and that the notice is necessary for preventing the continuation or occurrence or reoccurrence of such disorder or behaviour (section 76(1)). For example, closing a nightclub where police have intelligence to suggest that disorder is likely in the immediate vicinity on a specific night or over a specific period.
189. A notice is issued out of court, can be issued for a maximum of 48 hours, and cannot prohibit access by the owner of the premises or people who habitually live on the premises (section 76(4)). The notice can be designed to prohibit access to particular people at particular times. For example, where a property is closed in anticipation of a party publicised through social media, the family who lived there would not be prohibited, and additional people could also be exempted (such as other family members) where appropriate.
190. A notice that lasts for up to 24 hours may be issued by a police officer of at least the rank of inspector or a local authority (section 76(1)). A notice can be issued for, or extended up to, a maximum of 48 hours if agreed by a police officer of at least the rank of superintendent or someone designated by the chief executive officer of a local authority. In total, the period for which such an out-of-court closure notice is in place cannot exceed 48 hours (section 77(2) and (4)).
191. Before issuing the notice, the police or local authority must consult any person or agency they consider appropriate, and must also make reasonable efforts to inform the owner, landlord, licensee and anyone who appears to be residing in the premise (section 76(6) and (7)). The police or local authority must also take into account any special considerations arising from the presence, or likely presence, of any children or vulnerable adults on the premises. Authorised persons will have a power of entry to the premises, using reasonable force if necessary, to secure the notice to the premises (section 79(4)). The service of the notice on relevant people is required of the constable or local authority (or contractor employed by the local authority) if possible to do so (section 79(2)). Where a notice issued by a local authority requires cancellation or variation, it must be signed off by the person who originally issued the notice or, if they are not available, the chief executive of the local authority or a person delegated by him or her (section 78(4) and (5)). If a closure notice is no longer required the police or local authority that issued the notice must cancel the closure notice with a cancellation notice (section 78(2)).
192. When a closure notice is issued, the police or local authority must apply to the magistrates' court for a closure order (section 80(1)). The magistrates' court must hear the application for the closure order within 48 hours of the closure notice being issued (excluding Christmas Day) unless the closure notice has been cancelled by a cancellation notice (section 80(3)). The court can make a closure order for a maximum period of three months (section 80(6)) if it is satisfied that: a person has engaged in disorder, anti-social or criminal behaviour on the premises (or that such behaviour is likely if the order is not made) or the use of the premises is associated with the occurrence of disorder or serious nuisance to members of the public (or that such

*These notes refer to the Anti-Social Behaviour, Crime and Policing Act 2014 (c.12) which received Royal Assent on 13 March 2014*

disorder or serious nuisance is likely if the order is not made); and that the order is necessary to prevent the continuation or occurrence or reoccurrence of such disorder or behaviour (section 80(5)). Unlike the closure notice, a closure order can prohibit access to anyone, including the landlord, owner or habitual residents (section 80(7)).

193. The court can decide to allow a short-term closure notice to continue during a period of adjournment – but not for more than 14 days (section 81). This could allow the person issued with the closure notice time to show that the order should not have been made, without increasing the risk of anti-social behaviour to those in the immediate vicinity of the premises.
194. Before the closure order expires, the police or local authority could apply to the magistrates' court for an extension of the order if this was deemed necessary. The order can be extended for up to three months and the maximum period a closure order could last for overall would be six months (section 82(7) and (8)). Section 83 allows the person who has been issued with a closure order, anyone else who has an interest in the premises, or the local authority or police officer that applied for the order to request a discharge at any time. This discharge hearing would take place in the magistrates' court.
195. Anyone who has an interest in the premises but upon whom the closure notice was not served is entitled to make an application to discharge a closure order or appeal against a closure order or a decision to extend a closure order. Interest in this context means legal and financial interests (sections 83 and 84).
196. Where a closure order, temporary order or extension of a closure order has restricted access to a part of any premises that is not subject to the order, the owner or occupier of that other part can apply to the appropriate court under section 87. The court can then make whatever order it thinks appropriate in relation to access. Where this was previously considered under section 80(8)(b) the application under section 87 can still be made if the requirements in section 87 are met.
197. If an individual on whom the closure order was served, or anyone else with an interest in the premises, believes that it was issued incorrectly, he or she can appeal to the Crown Court (section 84). This appeal must be made within 21 days of the original court order (section 84(5)).
198. For the duration of the closure order, authorised persons can enter the premises to carry out essential maintenance (section 85). This would allow access, for example, to service a boiler or fix a leak. A power of entry is provided to enable this. The body managing the closure can also make a claim for reimbursement of costs as a result of such work (section 88) and their officers are exempt from liability should there be damage as a result of the activity, unless they acted in bad faith (section 89). Section 90 allows for a compensation claim for financial loss associated with an order. However, compensation would not be available to those associated with the behaviour on the premises that caused the closure (section 90(5)).
199. Breach of the notice or the order, without reasonable excuse, would be a criminal offence (section 86). On summary conviction, a person would be liable to an unlimited fine and/or up to three months imprisonment if in breach of a notice and up to six months imprisonment if in breach of an order (or 51 weeks following the commencement of section 281(5) of the Criminal Justice Act 2003). Organisations and businesses would be subject to an unlimited fine. A person guilty of obstructing an officer in the process of closing a property also commits an offence and is liable to a fine and/or up to three months imprisonment.
200. The Secretary of State may issue or revise guidance to the police and local authorities about the exercise of functions under Chapter 3 of Part 4 (section 91).

## **Part 5: Recovery of possession of dwelling-houses: anti-social behaviour grounds**

### ***Section 94: New ground for serious offences or breach of prohibitions etc***

201. Under the provisions of the Housing Act 1985 (“the 1985 Act”) the county court may only make an order for possession of a secure tenancy if it considers it reasonable to do so and/or suitable alternative accommodation is available and one of the grounds in Schedule 2 to that Act is met. Under ground 2 of Schedule 2 to that Act, the court may grant possession for anti-social behaviour if it considers it reasonable to do so.
202. This section introduces a new absolute ground for possession of a dwelling that is the subject of a secure tenancy (in general, most secure tenants are local authority tenants although other social landlords, such as private registered providers of social housing (“PRPs”) in England and registered social landlords (“RSLs”) in Wales may have secure tenants). This new ground is an addition to the existing discretionary grounds for possession in Schedule 2 to the 1985 Act.
203. *Subsection (1)* inserts a new section 84A into the 1985 Act which provides that the court will be required to grant possession if any one of five conditions is met, the notice requirements have been met, and, where relevant, the review procedures have been followed. (New section 84A(1) clarifies that this is subject to any available defence based upon the tenant’s Convention rights, within the meaning of the Human Rights Act 1998. This is a statement of the law as established by *Manchester City Council v Pinnock* [2010] UKSC 45, which held that tenants of public authorities have the right to raise proportionality as a defence to possession proceedings.)
204. The five conditions in new section 84A relate to anti-social behaviour by the tenant, a member of the tenant’s household or a visitor to the property.
205. Condition 1, 2 or 3 will be met if the tenant, a member of the tenant’s household or a person visiting the property has been:
  - a. convicted of a serious offence (which is one of the offences set out in new Schedule 2A to the 1985 Act as inserted by *subsection (2)* of section 94 and Schedule 3 to the Act);
  - b. found by a court to have breached an injunction obtained under section 1 of the Act; or
  - c. convicted for breach of a criminal behaviour order obtained under section 22 of the Act.
206. The offence or anti-social conduct must have been committed in the dwelling-house or in the locality of the dwelling-house, affected a person with a right to live in the locality of the dwelling-house or affected the landlord or a person connected with the landlord’s housing management functions.
207. Condition 4 will be met if the tenant’s property has been closed under a closure order obtained under section 80 of the Act as a result of anti-social behaviour in or near the property and the total period of closure (under the order or under a preceding closure notice) was more than 48 hours.
208. Condition 5 will be met if the tenant, a member of the tenant’s household or a person visiting the property has been convicted for breach of a notice or order to abate noise in relation to the tenant’s property under the Environmental Protection Act 1990.
209. New section 84A(10) and (11) confers power on the Secretary of State in relation to England and the Welsh Ministers in relation to Wales to amend new Schedule 2A to the 1985 Act by order (subject to the affirmative resolution procedure) by adding an indictable offence or removing an offence.

***Section 95: Notice requirements for new ground***

210. This section inserts a new section 83ZA into the 1985 Act which sets out the notice requirements where a landlord of a secure tenant wishes to seek possession for anti-social behaviour on the absolute ground or the absolute ground alongside one or more of the discretionary grounds. The new section prescribes the minimum notice that the landlord must give to a tenant and the time limits in which possession proceedings must begin. In the notice, landlords must also give the reason for applying for possession and the condition, or conditions, on which they propose to rely and let the tenants know where and how they can seek advice. Landlords whose tenants have a statutory right to request a review of the decision must also inform their tenants about this right.
211. New section 83ZA also sets out the time limits within which a notice must be served following a conviction, finding of the court, closure of premises, or the conclusion of any appeal process.

***Section 96: Review requirements for new ground***

212. This section, which inserts a new section 85ZA into the 1985 Act, provides secure tenants of local housing authorities and housing action trusts with a right to request a review of the landlord's decision to seek possession on the absolute ground. The landlord must review the decision, if the tenant requests it. New section 85ZA specifies how requests should be made, the time limits that apply to the review procedure and how the outcome of the review should be communicated to the tenant.
213. New sections 85ZA(7) and (8) confer a power on the Secretary of State in relation to England and the Welsh Ministers in relation to Wales to make regulations (subject to the negative resolution procedure) setting out the procedure for carrying out such reviews.

***Section 97: Corresponding new ground and notice requirements for assured tenancies***

214. Most tenants in the private sector and most tenants of PRPs and RSLs have assured tenancies. With assured tenancies, the court must grant the landlord possession if a ground in Part 1 of Schedule 2 to the Housing Act 1988 ("the Housing Act") is met and may grant possession if one of the grounds in Part 2 of Schedule 2 to that Act is met and it is reasonable to grant possession. Under ground 14 of Schedule 2, the court may grant possession on the grounds of anti-social behaviour if it considers it reasonable to do so.
215. **Section 97** inserts a new ground for possession of a dwelling that is the subject of an assured tenancy into Part 1 of Schedule 2 to the Housing Act.
216. *Subsection (1)* amends Schedule 2 to the Housing Act so that the court will be required to grant possession under the new ground (ground 7A) if any of one of the five conditions in that ground, which are identical to those in the new section 84A of the 1985 Act (as inserted by section 94), is met.
217. Section 7(3) of the Housing Act, as amended by paragraph 18 of Schedule 11 to the Act, clarifies that the grounds in Part 1 of Schedule 2 to that Act (including new ground 7A) are subject to any available defence based upon the tenant's Convention rights. Since this reflects the position already, following the judgments in *Manchester City Council v Pinnock* [2010] UKSC 45 and *London Borough of Hounslow v Powell* [2011] UKSC 8 (where the court found that landlords who are public authorities must consider the proportionality of their decisions), this amendment is merely clarificatory and has no substantive legal effect.
218. *Subsection (2)* amends section 8 of the Housing Act to modify the notice requirements for possession under assured tenancies to take account of the new ground 7A. It sets the time limits within which notices under ground 7A must be served.

***Section 98: Conduct causing nuisance to landlords etc***

219. This section amends the existing discretionary grounds for possession for anti-social behaviour (ground 2 in Schedule 2 to the 1985 Act and ground 14 in Schedule 2 to the Housing Act) so that they also apply where anti-social behaviour occurs outside the locality of the dwelling-house. The amendments allow a landlord to apply for possession of a secure or assured tenant's property where the tenant or a person living in or visiting the tenant's property has been guilty of conduct that is likely to cause nuisance or annoyance to the landlord, or a person employed in connection with the exercise of the landlord's housing management functions.

***Section 99: Offences connected with riot***

220. This section adds a new discretionary ground for possession into Schedule 2 to the 1985 Act (*subsection (1)*) and Schedule 2 to the Housing Act (*subsection (2)*) so that a landlord can apply for possession of a secure or assured tenant's property where the tenant or an adult living in the tenant's property has been convicted of an indictable offence committed at the scene of a riot which took place anywhere in the UK. This section applies only to dwelling houses in England.

***Section 100: Restrictions where new possession proceedings in progress etc***

221. *Subsection (1)* amends section 138 of the 1985 Act so that, as with the existing ground for possession for anti-social behaviour, if proceedings on the absolute or the new discretionary ground of possession for anti-social behaviour are pending before any court, the landlord has no duty to convey the freehold or grant a lease to a tenant who has applied to exercise the right to buy.
222. The amendments made by section 100 will also mean that a landlord may also refuse to allow a tenant to take part in mutual exchange under the 1985 Act (which applies to secure tenants) (*subsection (2)*) or a transfer of tenancy under the Localism Act 2011 (which applies to certain secure and assured tenants) (*subsection (3)*). Landlords may already withhold consent where possession is being sought on the existing discretionary ground for anti-social behaviour.

**Part 6: Local involvement and accountability**

***Section 101: The community remedy document***

223. **Sections 101 to 103** provide for the victim of low-level crime or anti-social behaviour to have a say in the determination of the punishment imposed on or actions required of the offender where he or she is dealt with by way of an out-of-court disposal. Section 101 requires the local policing body, namely the Police and Crime Commissioner or, in London, the Mayor's Office for Policing and Crime or the Common Council of the City of London, to prepare a "community remedy document" (*subsection (1)*).
224. *Subsection (2)* defines a community remedy document as a list of actions that might be carried out by an offender or a perpetrator of anti-social behaviour as a sanction without going to court. The local policing body must ensure that the actions in the community remedy document are reasonable and proportionate. The community remedy document could include actions such as paying compensation to the victim, making good any damage caused or mediation to resolve a dispute.
225. *Subsection (3)* specifies that actions in the community remedy document must be rehabilitative, restorative and/or punitive.
226. *Subsection (4)* requires the local policing body, when preparing the community remedy document, to consult the chief officer of police and local authorities within the force area, consult whatever community representatives are considered appropriate and carry out whatever public consultation is considered appropriate. This might include

consulting with local faith leaders or leaders of community groups, holding public meetings, or putting up notices in prominent places within the community. *Subsection (4)* also requires the local policing body to have regard to the need to promote public confidence in out-of-court disposals and to any guidance issued by the Secretary of State, which must be published (*subsection (8)*).

227. *Subsection (7)* requires the local policing body to publish the community remedy document in whatever way is considered appropriate which might be, for example, on its and the police force's website.

### ***Section 102: Anti-social behaviour etc: out of court disposals***

228. *Subsection (1)* ensures that the community remedy can only be used where a constable (or other person listed under *subsection (2)*) thinks there is enough evidence to apply for an injunction under section 1 of the Act or to take other court proceedings and when it is not considered that a conditional caution would be appropriate (see section 103 where a conditional caution is considered appropriate).
229. Before determining the appropriate action to require of the perpetrator, the constable or other relevant person must make reasonable efforts to ascertain the views of the victim or victims who will be able to indicate which of the actions listed in the community remedy document they consider appropriate in that case (*subsection (3)*). There is no requirement on the victim to express a view if he or she does not wish to do so. *Subsection (4)* provides that where the victim has expressed a view as to the appropriate action there is a presumption that the constable (or other person) would invite the perpetrator to carry out that action unless the action was considered by the constable (or other person) to be inappropriate. For example, where it would be unreasonable to ask an offender to carry out an action that was incompatible with their disability. However, if the perpetrator did not agree to the sanction, this could lead to more formal sanctions.

### ***Section 103: Criminal behaviour: conditional cautions***

230. *Subsections (1)* and *(2)* insert new section 23ZA into the Criminal Justice Act (which provides for conditional cautions) and new section 66BA into the Crime and Disorder Act 1998 (section 66A of which provides for youth conditional cautions) respectively. A conditional caution is available for any offence although for adults some offences including domestic violence or hate crime are excluded from being offered a conditional caution. New section 23ZA of the Criminal Justice Act and new section 66BA of the Crime and Disorder Act 1998 make equivalent provision in respect of conditional cautions and youth conditional cautions as section 102 does in respect of other out-of-court disposals.

### ***Section 104: Review of response to complaints***

231. This section provides for the community trigger. The community trigger is a mechanism for victims of persistent anti-social behaviour to request that relevant bodies undertake a case review. A case review would entail the relevant bodies sharing information in relation to the case, discussing what action has previously been taken, and collectively deciding whether any further action could be taken. Relevant bodies are set out in section 105 and include local authorities, the police, health providers and providers of social housing. Any individual, community or business can make an application for a case review, and the relevant bodies must carry out a case review if the threshold is met. The threshold will be set by the relevant bodies and could, for example, be three reports of separate incidents of anti-social behaviour in a six month period, where there has not been an adequate response to that behaviour. The threshold may also be set with reference to the persistence of the behaviour, the potential for harm to the victim, and the adequacy of response from agencies. *Subsection (4)* provides that the threshold should be set no higher than three complaints, but agencies may choose to set a lower threshold. *Subsection (11)* defines a "qualifying complaint" as one which is made within



one month of the incident occurring and provides that the application for the case review should be made within six months of the original complaint. The community trigger is intended as a backstop safety net for the victims of anti-social behaviour who consider that there has not been an appropriate response to their complaints about such behaviour.

232. The relevant bodies in each local government area must make and publish arrangements for review procedures (*subsection (2)*). *Paragraph 8* of Schedule 4 allows for joint arrangements to be made for a larger area such as the police force area. The procedures must include the point of contact for making applications and ensure that applications are passed to all the relevant bodies in the area. The bodies carrying out the review must inform the applicant of their decision on whether or not the threshold for review is met, the outcome of the review and any recommendations made as a result of the review (*subsections (6) to (8)*). The bodies carrying out the review may make recommendations to a person who carries out public functions, including any of the bodies that have taken part in the community trigger review, and the person must have regard to the recommendations.
233. *Subsection (9)* requires relevant bodies to publish information about the number of community trigger applications they received, the number of times the threshold was not met, the number of case reviews carried out and the number of reviews that resulted in further action.

#### ***Schedule 4: ASB case reviews: supplementary provision***

234. *Schedule 4* makes additional provisions for the community trigger. The review procedures must include:
- a. what happens when the applicant is dissatisfied with the way their application was dealt with or the review carried out (*paragraph 3*);
  - b. an assessment of the effectiveness of the procedures and revising them (*paragraph 4*).
235. In making and revising the procedures, the relevant bodies must consult the PCC (or Mayor's Office for Policing and Crime or Common Council of the City of London), and the appropriate local providers of social housing (*paragraphs 1 and 2*).
236. *Paragraph 7* sets out the information sharing requirements. The relevant bodies may request any person to disclose information in order to carry out the case review. If the information relates to a public function, agencies must comply with the request for information unless it contravenes the Data Protection Act 1998 or Part 1 of the Regulation of Investigatory Powers Act 2000.
237. *Part 2* of Schedule 4 sets out arrangements for co-opting local providers of social housing to be included among the relevant bodies. In practice this may mean that larger housing providers play a regular part in community trigger case reviews in their area, and in setting up the procedure; whereas smaller housing providers would be consulted on the procedures and be involved in community triggers which relate to their tenants. The providers of social housing must co-operate with the relevant bodies for the purpose of the case reviews.

#### ***Section 105: ASB case reviews: interpretation***

238. This section defines terms used in section 104 and Schedule 4.

### **Part 7: Dangerous Dogs**

#### ***Section 106: Keeping dogs under proper control***

239. This section amends the Dangerous Dogs Act 1991 ("the 1991 Act").

*These notes refer to the Anti-Social Behaviour, Crime and Policing Act 2014 (c.12) which received Royal Assent on 13 March 2014*

240. *Subsection (2)(a)(i)* amends section 3 of the 1991 Act so as to extend the current offence of having a dog that is dangerously out of control in a public place, or a private place where the dog is not permitted to be, to all places including private property.
241. *Subsection (2)(b)*, which inserts new subsections (1A) and (1B) into section 3 of the 1991 Act, creates an exemption for “householder cases”. These are cases where a dog becomes dangerously out of control when a trespasser is inside, or is in the process of entering, a building that is a place where a person lives. It does not matter whether the person actually was a trespasser; if the owner is in the building when the dog becomes out of control and believes that the person is a trespasser, that is sufficient. “Trespasser” takes its common law meaning, as someone trespassing against the occupier of the land. Whether a building is a “dwelling” is a question of fact that will be determined by the court in each case.
242. The provisions of section 76(8B) to (8F) of the Criminal Justice and Immigration Act 2008, as inserted by section 43 of the Crime and Courts Act 2013, define the meaning of a “householder case” where a court is considering whether the level of force used by a defendant who claims to have acted in self-defence was reasonable in the circumstances as he or she believed them to be. Section 76(8B) ensures that people who live in buildings which serve a dual purpose as a place of residence and a place of work (for example, a shopkeeper and his or her family who live above the shop) can rely on the defence regardless of which part of the building they were in when they were confronted by an intruder, providing that there is internal means of access between the two parts of the building. Section 76(8C) creates a similar provision for the armed forces whose living or sleeping accommodation may be in the building they work in and where there is internal access between the two parts.
243. *Subsection (2)(c)* repeals section 3(3) of the 1991 Act which differentiates between private places where the dog has a right to be and private places where the dog does not have a right to be. This provision is no longer required as all places, regardless of whether they are public or private, will now be covered by the offence. *Subsections (2)(d)(i) and (ii), (3) and (4)* make other amendments to the 1991 Act consequential upon the repeal of section 3(3).
244. *Subsection (5)* extends the rights of enforcement officers (for example, a local authority dog warden) to seize dogs from both public and private places if it appears to such an officer that the dog is dangerously out of control.
245. *Subsections (6) and (2)(a)(ii)* together make it an offence under section 3 for a dog to be dangerously out of control when there are grounds for reasonable apprehension that it will injure any assistance dog, whether or not it actually does so. Where an out-of-control dog injures an assistance dog, an aggravated offence will be committed under section 3, thereby attaching the high maximum penalty for an aggravated offence provided for in section 3(4) (as to which see the following paragraph). Subsection (6) applies the definition of an assistance dog in section 173(1) of the Equality Act 2010, that is, a dog which has been trained to provide assistance to a deaf or blind person or certain other specified categories of person with a disability.
246. *Subsections (2)(d)(iii) and (2)(e)* increase the maximum penalty for an aggravated offence under section 3 (currently 2 years imprisonment) to 14 years if a person dies as a result of being injured; 5 years in other cases where a person is injured; and 3 years where an assistance dog is killed or injured.

***Section 107: Whether a dog is a danger to public safety***

247. This section amends the 1991 Act in relation to the test which the court must consider when assessing whether a dog is dangerous and therefore liable to be destroyed.
248. The amendments clarify the requirement that a court must consider the character of the owner or keeper, as well as the temperament of the dog and its past behaviour along

with any other relevant circumstances when deciding whether the dog poses a danger to public safety. If the court decides that the dog would pose a danger to public safety, this constitutes a reason for making an order for destruction as opposed to a contingent destruction order.

249. *Subsection (2)* inserts a new subsection (6A) into section 1 of the 1991 Act so as to enable the Secretary of State, when making a scheme under subsections (5) and (6) of that section,<sup>1</sup> to include provision requiring a court to make an assessment of suitability as part of the process of deciding whether a person should be entitled to keep a section 1 dog (namely a dog of the type known as a Pit Bull Terrier, Japanese Tosa, Dogo Argentino or Fila Brasileiro).
250. *Subsection (3)* amends section 4 of the 1991 Act (which enables a court to order the destruction of a dangerous dog where a person has been convicted of an offence under section 1 or 3 or of an offence under an order made under section 2) so as to require the court, in making an assessment of dangerousness under that section, to assess the character of the owner as well as the temperament of the dog, its past behaviour and any other relevant circumstances in order to decide whether to make a contingent destruction order under section 4A of the 1991 Act.
251. *Subsection (4)* requires the same test of danger to public safety to apply when the court considers the need for a destruction order under section 4B of the 1991 Act (destruction orders otherwise than on a conviction). It also amends section 4B to enable civil proceedings to be brought in respect of dogs seized under any enactment.

## **Part 8: Firearms**

### ***Section 108: New offence of possessing firearm for supply etc***

252. *Subsections (2)* and *(3)* amend section 5 of the Firearms Act 1968 (“the 1968 Act”), subsections (1) and (1A) of which makes it an offence to possess, purchase, acquire, manufacture, sell or transfer, without the authority of the Secretary of State, or Scottish Ministers in Scotland, firearms or ammunition of particular types (such as handguns, sub-machine guns and assault rifles). The offence attracts a maximum sentence of 10 years. *Subsections (2)* and *(3)* separate the existing section 5(1) and (1A) offences into two component parts. One component part covers simple possession, purchase or acquisition of an unauthorised firearm or ammunition, which will carry the existing maximum penalty of 10 years. The other component part covers the manufacture, sale or transfer, or purchasing or acquiring for sale or transfer of an unauthorised firearm or ammunition, which will carry a maximum penalty of life imprisonment (see new section 5(2A)(a), (b) and (d) of the 1968 Act inserted by *subsection (3)* of the section). In addition, new section 5(2A)(c) of the 1968 Act creates a new offence of possession for sale or transfer of an unauthorised firearm or ammunition, which will similarly carry a maximum penalty of life imprisonment (as provided for by the amendment to Part 1 of Schedule 6 to the 1968 Act made by *subsection (8)*).
253. *Subsection (4)* amends section 5(3) of the 1968 Act to define “authority” as meaning an authority given in writing by the Secretary of State in or as regards England and Wales or by the Scottish Ministers in or as regards Scotland.
254. *Subsection (5)* makes consequential amendments to section 5A of the 1968 Act, to delete the references to section 5(1A). This is necessary to reflect the changes that subsections (2) and (3) of that section make to section 5 of the 1968 Act. For example, the requirement to have an authority to sell or transfer will be located in section 5(2A), not section 5(1A).

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<sup>1</sup> The current scheme was enacted under the Dangerous Dogs Compensation and Exemption Scheme Order 1991 <http://www.legislation.gov.uk/uk/si/1991/1744/contents/made>

255. *Subsection (6)* amends section 51A of the 1968 Act so that the offences in new section 5(2A) of that Act attract the mandatory minimum sentences provided for in that section, namely five years imprisonment in the case of an offender aged 18 years or over when he or she committed the offence (21 years or over in Scotland) or three years imprisonment in the case of an offender under 18 years (21 years in Scotland).

### ***Section 109: Functions of Scottish Ministers under Firearms Acts***

256. Section 5 of the 1968 Act deals with the prohibition of certain weapons and, on devolution, the Secretary of State's functions under section 5 were transferred to the Scottish Ministers by the [Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 1999 \(SI 1999/1750](#) - made under section 63 of the Scotland Act 1998). The new firearms offence of possession for sale or transfer of any prohibited weapon is to be inserted as section 5(2A) of the 1968 Act by virtue of section 108. The offence is committed where the conduct is undertaken without authority, which is defined as "an authority given in writing by the Secretary of State (in or as regards England and Wales), or the Scottish Ministers (in or as regards Scotland)". This is similar to the formula used for the existing firearms offences in section 5 but the functions which were transferred to the Scottish Ministers under section 5 upon devolution only catch those that could be exercised in relation to the offences that existed at that time. Additional functions under section 5 need to be transferred to Scottish Ministers in relation to the new offences and the effect of *subsections (1) and (4)* is to revoke the entry in the 1999 Order in respect of section 5 of the 1968 Act and transfer afresh all the Secretary of State's functions under this section, as amended, to the Scottish Ministers in or as regards Scotland. The amendments in *subsection (2)* to section 5A of the 1968 Act (exemptions from requirement of authority under section 5) and the amendments in *subsection (3)* to the Firearms (Amendment) Act 1997 (in relation to those sections which provide special exemptions from prohibition of small firearms) are consequential upon the amendments to section 5 of the 1968 Act as, in each case, they refer back to the functions of Ministers under that section.

### ***Section 110: Possession of firearms by persons previously convicted of crime***

257. *Subsection (1)* amends section 21 of the 1968 Act. Section 21 prohibits persons who have previously served custodial sentences of between three months and three years from possessing firearms for a period of five years. Persons who have served custodial sentences of more than three years are permanently prohibited. Section 110 extends the definition of a prohibited person to include persons with suspended sentences of three months or more. The period of five years will begin on the second day after the date on which sentence has been passed. A suspended sentence can only be for a maximum of two years so the permanent prohibition will not apply. *Subsection (3)* makes a transitional provision that enables a person with a suspended sentence to continue to possess firearms for the remainder of the period of a firearms certificate that was valid immediately before *subsection (1)* comes into force.
258. *Subsection (2)* amends section 58(2) of the 1968 Act. Section 58(2) allows antique firearms to be possessed without a certificate as a "curiosity or ornament". It ensures that persons prohibited from possessing firearms under section 21 will also be unable to possess antique firearms under section 58(2).

### ***Section 111: Increased penalty for improper importation of firearms etc***

259. *Subsections (2) and (3)* amend section 50 of the Customs and Excise Management Act 1979 ("the 1979 Act"). Section 50 of that Act makes it an offence to import prohibited goods. The importation of firearms is restricted under the [Import of Goods \(Control\) Order 1954 \(SI 1954/23\)](#), made under section 1 of the Import, Export and Customs Powers (Defence) Act 1939. This prohibits importation other than in accordance with a licence issued by the Department for Business, Innovation and Skills. The maximum penalty for an offence under section 50 is normally seven years, but where it relates to

prohibited firearms and certain other specified goods (including counterfeit currency notes and coins) it is 10 years. The amendments to section 50 increase the maximum penalty for the unlawful importation of firearms prohibited under section 5 of the 1968 Act from 10 years to life imprisonment. *Subsection (3)* makes consequential amendments to section 50 in order to preserve the existing maximum penalty of 10 years for the improper importation of counterfeit currency notes and coins.

260. *Subsections (4) and (5)* make similar amendments to section 170 of the 1979 Act. Section 170 of that Act makes it an offence knowingly to acquire possession of goods or knowingly to be concerned in carrying, removing, depositing, harbouring, keeping or concealing goods where the importation of the goods is restricted or prohibited under any enactment, and there is an intention to evade the restriction or prohibition. It is also an offence to be knowingly concerned in the fraudulent evasion of the restriction or prohibition on the importation of such goods. It is usual practice to deal with smuggling of prohibited goods by charging an offence under section 170, even when the conduct falls within the specific importation offence in section 50. The effect of the amendments to section 170 is that the maximum penalty for the importation of firearms prohibited under section 5 of the 1968 Act will be increased from 10 years to life imprisonment.
261. *Subsections (6) and (7)* make similar amendments to section 68 of the 1979 Act. Section 68 of that Act makes it an offence for a person to be knowingly concerned in the exportation of any goods with the intent to evade the prohibition or restriction on their exportation. The effect of the amendments to section 68 is that the maximum penalty for exportation of firearms prohibited under section 5 of the 1968 Act will be increased from 10 years to life imprisonment.

### ***Section 112: British Transport Police: Crown status under Firearms Act 1968***

262. *Subsection (1)* amends section 54(3) of the 1968 Act, which identifies those persons deemed to be in the service of the Crown and for whom the provisions of the Act relating to the possession, purchase or acquisition of firearms are modified, to include a member of the British Transport Police Force or a person employed by the British Transport Police Authority who is under the direction and control of the Chief Constable of the British Transport Police Force. The effect of bringing British Transport Police officers and employees of the British Transport Police Authority under the control of the Chief Constable of British Transport Police within the definition of a Crown servant is that such officers and employees are no longer required to obtain certificates for firearms under the 1968 Act in connection with the exercise of their duties. Consequent on that amendment, *subsection (2)* repeals subsections (3A) and (3B) of section 54 which currently provide a limited modification to those provisions relating to weapons of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing.

## **Part 9: Protection from sexual harm and violence**

### ***Section 113: Sexual harm protection orders and risk of sexual harm orders, etc***

263. *Subsection (1)* introduces Schedule 5. This makes amendments to Part 2 of the Sexual Offences Act 2003, which provides for the use of civil orders to prevent sexual harm.
264. *Subsection (2)* amends section 142 of the Sexual Offences Act, which sets out the extent of the provisions of that Act. The effect is that:
- sexual offences prevention orders and foreign travel orders, which cease to be part of the law of England and Wales, continue to be part of the law of Scotland and Northern Ireland;
  - risk of sexual harm orders, which likewise cease to be part of the law of England and Wales, continue to be part of the law of Northern Ireland (there is corresponding

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legislation for Scotland in the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005);

- the new orders are part of the law of England and Wales;
- the courts in Northern Ireland may vary a sexual harm prevention order or sexual risk order made in England and Wales, where the individual subject to the order now resides in or is intending to come to Northern Ireland (see also [paragraph 6](#) of Schedule 5).

### ***Schedule 5: Amendments to Parts 2 and 3 of the Sexual Offences Act 2003***

265. [Paragraph 2](#) inserts new sections 103A to 103K into Part 2 of the Sexual Offences Act to make provision for the sexual harm prevention order (“SHPO”). This will be a civil preventative order designed to protect the public from sexual harm. The order will be available in England and Wales and replaces the SHPO and the FTO (in England and Wales).
266. New section 103A sets out who may apply and the grounds for an order. A court may make a SHPO when it deals with a person in respect of an offence listed in Schedule 3 or Schedule 5 to the Sexual Offences Act, or, in the case of an offender lacking capacity, deals with that offender in respect of a finding relating to such an offence. A magistrates’ court (or youth court, where the defendant is under 18) may make a SHPO when an application for such an order is made to it by a chief officer of police or the Director General of the NCA in respect of a person. To make an order, the court must be satisfied that:
- the person has been dealt with by a court in respect of an offence listed in Schedule 3<sup>2</sup> (other than at paragraph 60) or at Schedule 5 to the Sexual Offences Act; or has been dealt with by a court abroad in respect of an act which was an offence under the law of that territory and which would, if committed in any part of the United Kingdom, have constituted an offence listed in Schedule 3 (other than at paragraph 60) or at Schedule 5; and
  - the person’s behaviour, since the date on which they were first dealt with in this way, means it is necessary to make the order for the purpose of:
    - protecting the public or any particular members of the public from sexual harm from the defendant (the test for the grant of a SOPO is “serious sexual harm”); or
    - protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the United Kingdom.
267. The order can include any prohibition the court considers necessary for this purpose, including the prevention of foreign travel to the country or countries specified in the order (or to all foreign countries, if that is what the order provides), as set out in new section 103C. Where the order prevents the person from any travel outside the UK, they must surrender their passport to the police for the duration of this prohibition (new section 103D(4)). Where the person is not a registered sex offender, the order makes them subject to the notification requirements for registered sex offenders (as set out in Part 2 of the Sexual Offences Act) for the duration of the order. If the person is a registered sex offender who would, if not for the order, cease to be subject to the notification requirements, they will remain subject to the requirements for the duration of the order (new section 103G).

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<sup>2</sup> If a person is convicted, cautioned or subject to certain other findings in respect of an offence listed in Schedule 3, the person becomes subject to the notification requirements of Part 2 of the Sexual Offences Act.

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268. Where the application is made by the police, the court is required to make an order subjecting the defendant to the notification requirements of Part 2 of the Sexual Offences Act, even if there is no separate application for such an order, if the applicant invites the court to do so and the relevant conditions are met (new section 103G(6)). There is a corresponding provision in the case of an application for an interim sexual harm prevention order, although here the court has a power and not a duty to make a notification order (new section 103G(7)).
269. New section 103C(2) provides that an order will last a minimum of five years and has no maximum period (with the exception of any foreign travel restriction which, if applicable, has a maximum duration of five years but may be renewed, see new section 103D(1) and (3)).
270. New section 103I provides that breach of an order will be a criminal offence with a maximum penalty of five years' imprisonment or an unlimited fine, or both.
271. New section 103F allows the police to apply for an interim sexual harm prevention order where an application has been made for a full order. In appropriate cases, this enables the court to place prohibitions on the person (and results in their becoming subject to the notification requirements) pending the full application for the order being determined.
272. New section 103E provides that a court can vary, renew, or discharge an order upon application from the person in respect of whom the order was made ("the defendant") or the police. An order cannot be discharged before the end of five years from the date the order was made without the consent of the defendant and the police, with the exception of an order only containing foreign travel prohibitions (new section 103E(7) and (8)).
273. The defendant may appeal against the making of an order (new section 103H).
274. New section 103J requires the Secretary of State (in practice, the Home Secretary) to issue guidance to chief officers of police and the Director General of the NCA in relation to their exercise of powers with regard to sexual harm prevention orders.
275. New section 103K provides for rules of court to be made to enable linked applications for orders involving individuals aged under 18 and other individuals aged 18 or over to be heard together in the youth court, where the youth court considers this to be in the interests of justice. It also provides for rules of court to be made in relation to individuals who reach the age of 18 after proceedings have begun, including rules prescribing circumstances in which proceedings may or must remain in the youth court and rules about the transfer of proceedings to the magistrates' court.
276. *Paragraph 4* inserts new sections 122A to 122K into Part 2 of the Sexual Offences Act to make provision for the sexual risk order ("SRO"). This will be a civil preventative order designed to protect the public from sexual harm. The order will be available in England and Wales and replaces the risk of sexual harm order (in England and Wales). The person concerned ("the defendant") may or may not have a conviction for a sexual (or any other) offence.
277. New section 122A sets out who may apply for such an order, the grounds on which it can be made and its effect. The order will be available to the police and NCA on application to a magistrates' court in relation to a defendant who has done an act of a sexual nature and, as a result, the police or NCA have reasonable cause to believe that an order is necessary to:
- protect the public or any particular members of the public from harm from the defendant; or
  - protect children or vulnerable adults generally, or any particular children or vulnerable adults, from harm from the defendant outside the United Kingdom.

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278. The court may make an order if it is satisfied that the defendant has done an act of a sexual nature as a result of which it is necessary to make the order for one or both of these purposes. The SRO differs from the existing RoSHO in that it can be made after the defendant has committed one such act, whereas a RoSHO may only be made following two acts.
279. The order can include any prohibition the court considers necessary for this purpose, including the prevention of foreign travel to the country or countries specified in the order, as set out in new section 122C. Where the order prevents the defendant from any travel outside the UK, they must surrender their passport to the police for the duration of this prohibition (new section 122C(4)).
280. New section 122F provides that a defendant subject to an order or an interim order is required to notify to the police, within three days, their name and address (including any subsequent changes to this information).
281. New section 122A(7)(b) provides that an order will last a minimum of two years and has no maximum period (with the exception of any foreign travel restriction which expires after a maximum of five years, unless renewed). Breach of an order will be a criminal offence with a maximum penalty of five years' imprisonment or an unlimited fine, or both (new section 122H). Breach of an order also results in the defendant becoming subject to the notification requirements for registered sex offenders (as set out in the Sexual Offences Act) for the remaining duration of the order (new section 122I).
282. New section 122E allows the police or NCA to apply for an interim sexual harm prevention order where an application has been made for a full order. This enables prohibitions to be placed on the defendant's behaviour and to ensure that they will be subject to the notification requirements pending the full order being determined.
283. New section 122D provides that a court can vary, renew or discharge an order upon the application of the defendant or the police. An order cannot be discharged before the end of two years from the date the order was made without the consent of the defendant and the police, with the exception of an order containing only foreign travel prohibitions.
284. The defendant may appeal against the making of an order (section 122G).
285. New section 122J requires the Secretary of State to issue guidance to chief officers of police and the Director General of the NCA in relation to their exercise of powers with regard to sexual risk orders.
286. New section 122K provides for rules of court to be made to enable linked applications for orders involving individuals aged under 18 and other individuals aged 18 or over to be heard together in the youth court, where the youth court considers this to be in the interests of justice. It also provides for rules of court to be made in relation to individuals who attain the age of 18 after proceedings have begun, including rules prescribing circumstances in which proceedings may or must remain in the youth court and rules about the transfer of proceedings to the magistrates' court.
287. The two new orders will extend to England and Wales, where the existing SOPO, RoSHO and FTO will be repealed (*paragraphs 3 and 5*). *Paragraph 6* inserts new sections 136ZA to 136ZD into Part 2 of the 2003 Act. Any prohibitions imposed by one of the new orders will by virtue of new section 136ZA be enforceable by prosecution throughout the United Kingdom, unless it is expressly confined to a specific locality. The effect of new section 136ZB is that an order made in one part of the United Kingdom will revoke a corresponding order made in a different part of the United Kingdom, except where the court orders otherwise. New sections 136ZC and ZD enable a court in Northern Ireland to vary a SHPO or SRO made in England and Wales, where the individual subject to the order now resides in or is intending to come to Northern Ireland.



288. *Paragraph 7* amends section 137 of the Sexual Offences Act. At present, service courts have powers in respect of the sexual offences prevention order, which is replaced by the SHPO. Section 137 is amended so as to make provision for a service court to make a sexual harm prevention order in respect of an individual who has been dealt with by that court. A service court may not make an order if it did not deal with the related conviction nor may it make an order on the application of the police or NCA. A service court may, on the application of a provost martial or the person in respect of whom the order was made, vary, renew, or discharge a SHPO if the defendant is subject to service law or service discipline at the time of the application (*paragraph 7(3)*).

#### ***Section 114: Saving and transitional provisions***

289. *Subsection (1)* defines a SOPO, FTO, or RoSHO as an “existing order”, sexual harm prevention order or sexual risk order as a “new order” and a restraining order or a sex offender order as an “old order”. The “old orders” are ones made under legislation repealed by the Sexual Offences Act.
290. *Subsection (2)* provides that the repeal or amendments by this Act do not apply to an existing order made, an application for an existing order or anything done in connection with such an order before the commencement of the provisions in this Act for the new orders.
291. The effect of *subsection (3)* is to allow any “old orders” that are still in effect to be varied, renewed or discharged, and to allow a breach of any such order to be prosecuted. This is necessary because of the repeal by the Act of provisions of the Sexual Offences Act that have that effect.
292. *Subsection (4)* prevents the variation of SOPOs, FTOs, RoSHOs and old orders to extend their duration on or after the date the new orders come into force.
293. *Subsection (5)* provides that five years after the new orders come into force, the provisions in any SOPO or RoSHO which continues to have effect will be treated as if they were provisions in a new order.

#### ***Section 115: Closure powers in respect of premises used for child sexual exploitation***

294. *Subsection (1)* introduces Schedule 6, which makes amendments to Part 2A of the Sexual Offences Act to extend the closure powers it contains so that these are available in respect of a wider range of child sex offences.
295. *Subsection (2)* ensures that that the closure powers, as amended, can be used in respect of offences committed before, on or after the section coming into force.

#### ***Schedule 6: Amendments to Part 2A of the Sexual Offences Act 2003***

296. *Schedule 6* makes amendments that extend existing powers in Part 2A of the Sexual Offences Act to provide for the temporary closure of premises used for child sexual exploitation. The existing closure power in Part 2A relates to prostitution and child pornography offences only. Schedule 6 makes them available in relation to premises which are used for activities related to other specified child sex offences.
297. *Paragraph 2* amends section 136A of the Sexual Offences Act to specify child sex offences for the purpose of the closure powers. A specified child sex offence is defined by reference to the offences in the Sexual Offences Act. These include specific child sex offences in sections 5 to 13 of that Act, offences relating to indecent images of children under the Protection of Children Act 1978 and other sexual offences in which the victim is aged under 18 (including rape, sexual assault, abuse of position of trust and pornography).

298. *Paragraph 2(6)* inserts a new subsection (5A) into section 136A of the 2003 Act, which provides that the closure powers can be used at any time that the premises are being used to commit a specified offence or for activities intended to arrange or facilitate the commission of a specified offence.
299. *Paragraph 4* inserts new section 136BA into the Sexual Offences Act, which sets out the conditions that need to be met for the use of closure powers in respect of premises used for child sexual exploitation.
300. New section 136BA enables a police officer of at least the rank of superintendent to authorise the issue of a closure notice where three conditions are met:
- i. the officer has reasonable grounds for believing that in the past three months the premises were used for activities related to a specified child sex offence, or the premises are likely to be used for such activities;
  - ii. the officer has reasonable grounds for believing that the making of a closure order is necessary to prevent the premises being used for such activities; and
  - iii. the officer is satisfied that reasonable efforts have been made to consult the local authority for the area in which the premises are situated, and to establish the identity of any residents or persons who have control of or responsibility for or an interest in the premises. In cases of urgency, where it is not possible to consult the local authority before a closure notice is issued, the authority must be consulted as soon as possible after the closure notice has been issued.
301. Subsections (8) to (10) of new section 136BA set out further matters relating to the issue of a notice; these include that it can be given orally or in writing and that the Secretary of State may by regulations specify premises or descriptions of premises to which this section does not apply.
302. *Paragraph 6* makes consequential amendments to sections 136D of Part 2A of the Sexual Offences Act. *Paragraph 6(3)* inserts new subsection (7A) into Section 136D of the Sexual Offences Act, which provides that the magistrates' court will be able to make a closure order in respect of premises in relation to which a closure notice has been issued if, amongst other things, it is satisfied that during the preceding three months the premises were used for activities related to a specified child sex offence, or that the premises are likely to be used for such activities.
303. *Paragraphs 7 to 10* make consequential amendments to sections 136H to 136J and section 136O of the Sexual Offences Act.
304. Whilst section 184(3)(b) of the Act provides for section 115 and Schedule 6 to extend to England, Wales and Northern Ireland, the effect of *paragraph 11*, which amends section 136R of the Sexual Offences Act, is to narrow the application of the revised closures powers to premises in England and Wales.

***Section 116: Information about guests at hotels believed to be used for child sexual exploitation***

305. *Subsection (1)* confers a power on a police officer, of at least the rank of inspector, to serve a notice on the owner, operator or manager of a hotel that the officer reasonably believes has been or will be used for the purposes of child sexual exploitation or conduct preparatory to or connected with it. For the purposes of section 116, "child sexual exploitation" is defined with reference to a range of offences set out in *subsection (8)*, for example, rape, abuse of children through prostitution and pornography and abuse of a position of trust.
306. *Subsection (2)* specifies the matters which must be contained in the notice. These include an explanation of the information that a constable may require the person issued with a notice to provide, avenues of appeal against a notice, and the consequences of

failure to comply. The notice must also specify the period for which it has effect, which, under *subsection (3)*, must be no more than six months.

307. *Subsection (4)* provides that a constable may require a recipient of the notice to provide the information described in *subsection (5)*. This is restricted to the names and addresses of guests and other prescribed information that can be obtained readily from guests themselves. The other prescribed information may be specified in regulations made by the Secretary of State (subject to the affirmative resolution procedure). *Subsection (6)* provides that any such requirement must be in writing and specify both the time period to which it relates and when the information is to be provided.

### ***Section 117: Appeals***

308. *Subsection (1)* confers a right of appeal to the magistrates' court on a person issued with a notice. Any appeal must be brought within 21 days of the date of issue of a notice (*subsection (2)*).
309. *Subsection (3)* has the effect that any requirement imposed by the notice does not have effect while the appeal is outstanding.
310. *Subsection (4)* prescribes that the court may quash the notice, modify the notice or dismiss the appeal on hearing an appeal.

### ***Section 118: Offences***

311. *Subsections (1) and (2)* make it an offence to fail without reasonable excuse to comply with a requirement in notice, which includes providing in response to a notice incorrect information which the defendant either (i) fails to take reasonable steps to verify or (ii) knows to be incorrect. However, *subsection (3)* provides that an offence is not committed if there were no steps that the person could reasonably have taken to verify the information or to have it verified.
312. *Subsection (4)* provides that a person guilty of an offence under this section is liable on summary conviction to a maximum penalty of a level 4 fine (currently up to £2,500).

### ***Section 119: Violent offender orders***

313. *Subsection (3)* inserts into section 99 of the Criminal Justice and Immigration Act 2008 the offence of murder overseas as an offence which may form the basis on which a VOO may be sought.
314. *Subsection (1)* inserts into section 98 of the Criminal Justice and Immigration Act 2008 the power for the Secretary of State to prescribe specified offences by order (subject to the affirmative resolution procedure (*subsection (2)*)).

## **Part 10: Forced marriage**

### ***Section 120: Offence of breaching of a forced marriage protection order***

315. Part 4A of the Family Law Act 1996 empowers a court to make an order for the purpose of protecting: a person from being forced into a marriage or from any attempt to be forced into a marriage; or a person who has been forced into a marriage. A forced marriage protection order may contain such prohibitions, restrictions or requirements and any other such terms as the court considers appropriate for the purposes of the order. A breach of such an order would otherwise be punishable only as a contempt of court. Speedy enforcement depends on whether the court attaches a power of arrest to the order. If no power of arrest is attached, the victim has to go to the civil court to get an arrest warrant.
316. *Subsection (2)* inserts into Part 4A of the Family Law Act 1996 a new section 63CA, which makes breach of a forced marriage protection order a criminal offence with a

maximum penalty of five years' imprisonment. This means that the police will always be able to arrest for breach of a forced marriage protection order, without the need for the courts to attach a power of arrest, or for the victim to apply to the civil court for an arrest warrant. Under new section 63CA(2), an individual would only be guilty of a criminal offence if aware of the existence of the order at the time of the breach. For a victim who does not want to pursue criminal proceedings, the option will still remain of applying for an arrest warrant for breach of a forced marriage protection order in the civil court.

317. Subsections (3) and (4) of the new section 63CA make provision to preclude double jeopardy so that where a person has been convicted of a breach of a forced marriage protection order, that person cannot be punished subsequently for contempt in relation to the same conduct, and vice versa.
318. *Subsections (3) to (7)* make provision which is consequential on the insertion into the Family Law Act 1996 of new section 63CA. *Subsection (3)* amends section 63E of that Act to enable the court, as an alternative to making a forced marriage protection order, to accept an undertaking (a promise given to the court to do or not to do certain things) from the respondent. But a court may not accept an undertaking where it appears to the court that the respondent has used or threatened violence against the person to be protected and it is necessary for that person's protection to make the order so that breach may be punishable as an offence.
319. *Subsection (4)* amends section 63J(2), which refers to "the order", to make it clear that it is a forced marriage protection order that is being referred to.
320. *Subsection (5)* repeals various provisions which relate to the attachment of a power of arrest to a forced marriage protection order and to arrest pursuant to such a power. Those provisions are no longer required because, as with non-molestation orders when the offence of breach of the order was introduced, the respondent may be arrested for breach without the need for a power of arrest to be attached to the order.
321. *Subsection (6)* makes transitional provision, so that the changes only apply in relation to conduct occurring on or after the day on which the section comes into force. Pre-commencement breach of a forced marriage protection will accordingly not retrospectively be made an offence; but post-commencement breach of a forced marriage protection order will be an offence (even if the order was made before commencement).

### ***Section 121: Offence of forced marriage: England and Wales***

322. The new offence of forced marriage catches a person who intentionally forces a person to enter into marriage, believing the person does not consent, or a person who deceives someone into going abroad for the specific purpose of forcing them to marry. An offence is committed whether or not the forced marriage goes ahead.
323. *Subsection (1)* makes it a criminal offence, under the law in England and Wales, for a person to use violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage without their free and full consent. Where the victim lacks the capacity to consent (within the meaning of the Mental Capacity Act 2005) the offence is capable of being committed by any conduct carried out for the purpose of causing the victim to marry, whether or not it amounts to violence, threats or any other form of coercion (*subsection (2)*).
324. *Subsection (3)* additionally captures as a criminal offence any form of deception practised with the intention both of causing another person to leave the United Kingdom ("UK") to travel to another country and that the other person be subjected to conduct that is an offence under subsection (1) or would be an offence if the victim were in England and Wales.

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325. *Subsection (4)* provides that “marriage” means any religious or civil ceremony of marriage recognised by the customs of the parties to it, or the laws of any country in which it is carried out, as constituting a binding agreement, whether or not it would be legally binding according to the law of England and Wales.
326. *Subsection (6)* provides that an offence is committed whether the violence, threats or other forms of coercion are directed at the victim of a forced marriage or another person.
327. *Subsection (7)* and *(8)* make provision to take extra-territorial jurisdiction over both the coercion and deception elements of the new offence. Any of the prohibited acts in subsections (1) and (2) carried out outside the UK by a UK national or person habitually resident in England or Wales, or to a UK national or person habitually resident in England or Wales, will be an offence under domestic law and triable in the courts of England and Wales. The effect of *subsection (5)(b)* is that it will also be an offence under domestic law if the prohibited acts in subsection (1) or (2) are conducted by or against a person habitually resident in England and Wales, but take place in Scotland or Northern Ireland.
328. *Subsections (9)* and *(10)* set out that the maximum penalties for the new offences in subsections (1) and (2). On summary conviction the maximum penalty is a fine or six months’ imprisonment (rising to 12 months once the increase in magistrates’ courts sentencing powers in section 154(1) of the Criminal Justice Act 2003 is commenced), or both, and on conviction on indictment the maximum penalty is seven years’ imprisonment.

***Section 122: Offence of forced marriage: Scotland***

329. **Section 122** creates an equivalent new offence of forced marriage under the law in Scotland. The provisions of this section broadly mirror those in section 121 above.
330. *Subsection (1)* makes it a criminal offence for a person, under the law in Scotland, to use violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage without their free and full consent. Where the victim lacks the capacity to consent (by reason of a mental disorder within the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003) the offence is capable of being committed by any conduct carried out for the purpose of causing the victim to marry, whether or not it amounts to violence, threats or any other form of coercion (*subsection (2)*).
331. *Subsection (3)* additionally captures as a criminal offence any form of deception practised with the intention of causing another person to leave the UK to travel to another country and with the intention that the other person is subjected to conduct that is an offence under subsection (1) or would be an offence if the victim were in Scotland.
332. *Subsection (4)* provides that “marriage” means any religious or civil ceremony of marriage, whether or not it would be legally binding according to the law of Scotland.
333. *Subsection (6)* provides that an offence is committed whether the violence, threats or other forms of coercion are directed at the victim of a forced marriage or another person.
334. *Subsection (7)* and *(8)* make provision to take extra-territorial jurisdiction over both the coercion and deception elements of the new offence. Any of the prohibited acts in subsections (1) and (2) carried out outside the UK by a UK national or to a UK national, or person habitually resident in Scotland, will be an offence under domestic law and triable in the courts of Scotland. The effect of *subsection (7)(b)* is that it will also be an offence under domestic law if the prohibited acts in subsection (1) or (2) are conducted by or against a person habitually resident in Scotland, but takes place in Northern Ireland. The same principle applies if the prohibited act takes place in England or Wales.

335. *Subsection (9)* sets out that the maximum penalties for the new offences in subsections (1) and (2). On summary conviction the maximum penalty is imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (currently £10,000) or both. On conviction on indictment, the maximum penalty is imprisonment for a term not exceeding seven years or to an unlimited fine, or both.

## **Part 11: Policing etc**

### **College of Policing**

#### ***Section 123: Regulations to be prepared or approved by the College***

336. *Subsection (1)* inserts new subsections (2ZA) and (2ZB) into section 50 of the Police Act 1996 (“the 1996 Act”). Section 50 of the 1996 Act confers on the Home Secretary the power to make regulations (subject to the negative resolution procedure) regarding the government, administration and conditions of service of members of police forces. Subsection (2)(a), (b), (c) and (g) of that section, read with subsection (1), gives the Home Secretary the power to make regulations regarding the ranks held by members of police forces (that is police officers), the qualifications for appointment and promotion of members of police forces, the periods spent on probation and the maintenance of personal records of members of police forces. New section 50(2ZA) and (2ZB) give responsibility for determining such matters to the College of Policing. The power to make regulations on such matters would continue to reside with the Home Secretary, but in future decisions as to the content will rest with the College. New section 50(2ZA) sets out the circumstances in which the Home Secretary is able to decline to make police regulations proposed by the College. The power to decline to make regulations on the grounds that “it would for some other reason be wrong to do so” (in new section 50(2ZA)(c)) should be read as covering similar kinds of things to those covered by new section 50(2ZA)(a) and (b). This limb could be used to cover a case where it would not be unlawful to make the regulations in the terms proposed by the College but it would be undesirable to do so because, for example, the regulation as drafted was not sufficiently clear, was flawed, or would not achieve the policy intention the College intended to achieve. In such circumstances the Home Secretary could ask that the College prepare a fresh draft so as not to lay flawed regulations before Parliament.
337. *Subsection (2)* inserts new subsections (2ZA), (2ZB) and (2ZC) into section 51 of the 1996 Act. Section 51 of that Act gives the Home Secretary the power to make regulations (subject to the negative resolution procedure) regarding the government, administration and conditions of service of special constables. The new subsections give the College of Policing responsibility for determining the same list of matters in respect of special constables as it will have under section 50 of the 1996 Act in respect of members of police forces. Again, responsibility for making regulations under section 51 will continue to reside with the Home Secretary but responsibility for the content of those regulations insofar as it relates to matters specified in new section 51(2ZA) will rest with the College. New section 51(2ZB) sets out the circumstances in which the Home Secretary is able to decline to make police regulations proposed by the College.
338. *Subsection (3)(a)* inserts new subsections (1A) and (1B) into section 53A of the 1996 Act. Section 53A of that Act gives the Home Secretary the power to make regulations (the first exercise of the power is subject to the affirmative resolution procedure, with any subsequent regulations being subject to the negative resolution procedure) requiring all police forces in England and Wales to adopt particular practices or procedures. New subsections (1A) and (1B) give the responsibility for determining the content of those regulations to the College of Policing. Responsibility for making regulations under section 53A will continue to reside with the Home Secretary (subject to the affirmative resolution procedure in all cases (*subsection (3)(c)*)). New section 53A(1A) sets out the circumstances in which the Home Secretary is able to decline to make police regulations proposed by the College.

*These notes refer to the Anti-Social Behaviour, Crime and Policing Act 2014 (c.12) which received Royal Assent on 13 March 2014*

339. *Subsection (3)(b)* repeals provisions in section 53A of the 1996 Act concerning the preparation of, and consultation on, regulations about police practices and procedures. These provisions are no longer necessary in light of the role of the College of Policing, as set out in new section 53A(1A) and (1B).
340. *Subsection (4)* amends section 63 of the 1996 Act. Section 63 requires the Home Secretary, prior to making regulations under section 50 or 51, to consult the Police Advisory Board for England and Wales (“the PABEW”) on changes she intends to make to certain police regulations. In consulting the PABEW, the Home Secretary must provide a draft copy of those regulations. *Subsection (4)* removes that requirement in respect of those regulations made under the new section 50(2ZB).
341. *Subsection (5)* amends section 97 of the Criminal Justice and Police Act 2001. Section 97(1) of that Act gives the Home Secretary the power to make regulations (subject to the negative resolution procedure) regarding police training, and the qualifications for deployment to perform particular tasks of individuals serving or employed for policing purposes in England and Wales. *Subsection (5)(a)* inserts new subsections (1A) and (1B) into section 97, which confer responsibility for determining the content of such regulations on the College of Policing. Responsibility for making regulations under section 97 will continue to reside with the Home Secretary. New section 97(1A) sets out the circumstances in which the Home Secretary is able to decline to make police regulations proposed by the College.

***Section 124: Codes of Practice issued by the College***

342. This section amends section 39A of the 1996 Act. Section 39A of the 1996 Act gives the Home Secretary the power to issue Codes of Practice relating to the way in which chief constables discharge their functions. Using the powers given to her under section 39A, the Home Secretary has issued Codes of Practice on the following issues: police use of firearms and less lethal weapons; national intelligence model; management of police information; serious crime analysis section; collecting and sharing data on missing persons with public authorities; and management of police pursuits.
343. *Subsection (2)* substitutes a new subsection (1) of section 39A so as to provide that the College of Policing, rather than the Home Secretary, may issue such Codes of Practice but subject to the Home Secretary’s approval. New section 39A(1) also broadens the circumstances in which a Code of Practice under this section may be issued. At present, the Home Secretary may only issue a Code of Practice if she considers it necessary to do so for the purpose of promoting the efficiency and effectiveness of police forces. Under the new section 39A(1), the College may issue a Code of Practice if one of three tests is satisfied, namely that it considers it necessary to do so in order to improve the efficiency and effectiveness of the police, to facilitate joint or co-ordinated activity by two or more police forces, or if the College otherwise considers that it would be in the national interest for it to issue a Code of Practice.
344. *Subsections (3) to (5)* make consequential and supplementary amendments to: section 39A(2), to confer power on the College to revise in whole or in part a Code of Practice; section 39A(4), to require the College to consult with the National Crime Agency prior to issuing a Code of Practice; and section 39A(5) to maintain the requirement for the Home Secretary to lay Codes of Practice before Parliament, even though they will be issued by the College.

***Section 125: Guidance by the College about employment etc of civilian staff***

345. This section inserts a new section 53E into the 1996 Act, which provides for the College of Policing to issue, revise and publish guidance with regard to the experience or qualifications of police civilian staff and the training they should undertake. The new section applies to private sector staff providing services under contract, as well as employed staff.

346. New section 53E(5) imposes a duty on chief constables, Police and Crime Commissioners, the Mayor's Office of Policing and Crime in London and the Common Council for the City of London Police to have regard to any such guidance issued by the College under new section 53E.

***Section 126: Power to give directions to the College***

347. Subsections (1) and (2) give the Home Secretary the power to direct the College to carry out activities if the Home Secretary believes those activities will improve the efficiency, effectiveness and integrity of the police in England and Wales.

***Section 127: Charging of fees by the College***

348. This section inserts new section 95A into the 1996 Act, which makes provision permitting the College of Policing to charge for providing services of a public nature only if the services are provided with a view to promoting the efficiency, effectiveness or professionalism of the police and are of a description specified by the Secretary of State by order (subject to the negative resolution procedure). The order must also specify the level of fees that the College may charge for providing a specified service, or specify how such fees are to be determined. The College already has the powers it needs to charge for providing commercial services through its status as a company limited by guarantee.

***Section 128: Appointment of senior officers as members of staff of the College***

349. This section inserts new section 100A into the 1996 Act, which allows those individuals who hold the office of constable to continue to do so after appointment as a member of staff of the College of Policing if they hold, or are eligible to hold, a rank higher than that of chief superintendent. New section 100A(3) allows the College of Policing to appoint such an individual to a higher rank than they may have held in their police force prior to appointment.

***Section 129: Disclosure of information to the College***

350. This section inserts a new section 100B in the 1996 Act which contains a broad information gateway to authorise any person to disclose information to the College if the disclosure is made for the purposes of the exercise of the College's functions. This would allow other organisations to share information with the College, such as data that would inform any research the College wished to carry out, or case studies that may assist with police training.

***Section 130: The College and the IPCC***

351. This section inserts a new section 26BA into Part 2 of the Police Reform Act 2002 ("the 2002 Act") which requires the Independent Police Complaints Commission ("the IPCC") and the College to enter into an agreement for the establishment of procedures for the handling of complaints against College staff that is akin to the procedures in Part 2 of that Act. Part 2 confers functions on the IPCC in respect of complaints about, or matters indicating, misconduct or death or serious injury involving persons serving with police forces in England and Wales. Such functions include the examination of police forces' complaint handling procedures and undertaking, managing or supervising investigations into complaints or other matters. The purpose of these provisions is not simply to replicate Part 2 of the 2002 Act, because the arrangements will need to be tailored to the circumstances of the College, but they will ensure that the IPCC has oversight of the College in broadly the same way as it has in relation to the police. The intention is that such an agreement would only relate to those staff of the College who hold the office of constable.



## **Review bodies for police remuneration etc**

### ***Section 131: Abolition of Police Negotiating Board for the United Kingdom***

352. *Subsection (1)* abolishes the Police Negotiating Board (“PNB”) for the United Kingdom and *subsection (2)* repeals sections 61 and 62 of the Police Act 1996, which provided for the existence and constitution of the PNB and its functions in respect of police workforce regulations. *Subsection (3)* provides for the Secretary of State to secure the reimbursement of payments made by Scottish Ministers or the Department of Justice in Northern Ireland towards expenses incurred by the Police Negotiating Board for the United Kingdom. It allows for the refunding of any unused part of the annual contributions provided by both Northern Ireland and Scotland for the Police Negotiating Board for the United Kingdom.

### ***Section 132: Establishment of Police Remuneration Review Body***

353. *Subsection (1)* inserts a new Part 3A (comprising new sections 64A and 64B and new Schedule 4B) into the Police Act 1996, which provides for the “Police Remuneration Review Body” (“PRRB”). New section 64A(1) establishes the PRRB. New section 64A(2) sets out the composition of the PRRB; it is to comprise a chair appointed by the Prime Minister and five or more other members appointed by the Secretary of State, one of whom may be appointed by the Secretary of State as a deputy chair. New section 64A(3) requires the Prime Minister or Secretary of State to consult the Department of Justice in Northern Ireland before making an appointment to the PRRB. New section 64A(4) and (5) enables the Secretary of State to change the name of the PRRB by order subject to the negative resolution procedure.
354. New section 64B(1) requires the PRRB to consider and report on any matter which is referred to it by the Secretary of State and that relates to one of the following issues for police officers of or below the rank of chief superintendent in England and Wales, or for police cadets appointed under section 28 of the Police Act 1996: hours of duty; leave; pay and allowances; and the issue, use and return of clothing, personal equipment and accoutrements. New section 64B(2) requires the PRRB to submit such reports to the Prime Minister and Secretary of State, which the latter must then arrange to be published.
355. New section 64B(3) and (4) make similar provision for Northern Ireland to new section 64B(1) and (2).
356. New section 64B(5) sets out the directions that the Secretary of State and/or the Northern Ireland Department of Justice may give to the PRRB. The PRRB can be directed to: report within a specified time period; have regard to particular considerations; obtain specific evidence such as data from police forces; and make recommendations on specific matters referred to it such as named allowances, for example the Northern Ireland Transitional Allowance. New section 64B(6) enables the PRRB to include in its report any recommendations it considers to be appropriate, which it considers to arise out of the matters referred to it under section 64B(5) regardless of whether or not it is directly given a direction to do so under new section 64B(5). New section 64B(7) enables the Secretary of State or Department of Justice to vary or revoke any references or directions to the PRRB.
357. *Subsection (2)* gives effect to Schedule 7 which inserts new Schedule 4B into the Police Act 1996.

### ***Schedule 7: Schedule to be inserted as Schedule 4B to the Police Act 1996***

358. Paragraphs 1 to 11 of new Schedule 4B make further provision for: the membership of the PRRB; the appointment, resignation and dismissal of its members; and its procedures. Paragraph 12 enables the Secretary of State to give directions to the PRRB about the matters that it is to consider when making decisions. Such directions may, for

example, require the PRRB to consider the Government's public sector pay policy or the impact of its recommendations on recruitment and retention.

359. Paragraph 13 of new Schedule 4B sets out the persons and bodies the Secretary of State must consult before: making or revising a determination about the number of members or the kinds of experience the members of the PRRB should possess (under paragraph 2); issuing or revising a statement of principles relating to the conduct of members (issued under paragraph 4); giving or revising a direction as to the persons or bodies from whom it should gather evidence, the procedure for obtaining evidence, or the matters it should consider when making recommendations (under paragraph 11(2) or 12).
360. Paragraph 14 of new Schedule 4B requires the Secretary of State to publish statements of determinations (and revised determinations); statements of principles (and revised statements); and directions (and revised directions).
361. Paragraph 15 of new Schedule 4B enables the Secretary of State and Department of Justice in Northern Ireland to defray the costs of the PRRB.

### ***Section 133: Consultation about regulations: England and Wales***

362. *Subsection (1)* inserts new section 52A into the Police Act 1996. New section 52A(1) and (2) requires the Secretary of State to refer matters in respect of police officers of or below the rank of chief superintendent and police cadets in England and Wales, that relate to their hours of duty, leave, pay, allowances, and the issue, use and return of clothing, personal equipment and accoutrements, to the PRRB for consideration under new section 64B(1) before making regulations under section 50 or 52 of the Police Act 1996, unless new section 52A(5) applies. New section 52A(2)(b) requires the Secretary of State to consider the PRRB's report on the matters referred.
363. New section 52A(3)(a) requires the Secretary of State to refer matters in respect of police officers above the rank of chief superintendent in England and Wales, that relate to their hours of duty, leave, pay, allowances, and the issue, use and return of clothing, personal equipment and accoutrements, to the Senior Salaries Review Body ("SSRB") before making regulations under section 50 or 52 of the Police Act 1996, unless new section 52A(4) or (5) applies. New section 52A(4) applies where the subject matter of the regulations being considered would affect police officers of or below the rank of chief superintendent as well as those above and the Secretary of State considers it preferable for the matter to be considered by one review body; in such cases the matter must be referred to the PRRB to consider. For example, this provision might apply in a case where consideration is being given to introducing a new allowance payable to all ranks and it is sensible for the Secretary of State to obtain a single "strategic" view on the impact across the police.
364. New section 52A(5) sets out the circumstances in which the Secretary of State's duty to refer matters to the PRRB and/or to consider advice from the SSRB does not apply. If the Secretary of State considers that either there is not enough time refer the matter to the PRRB or SSRB before making regulations because the need is so urgent, or it is unnecessary to refer the matter because of the nature of the proposed regulations, the duty does not apply. However, the default position is that the Secretary of State will not make regulations without first referring the matter to the PRRB or SSRB. The Secretary of State might, for example, consider that it is unnecessary to consult the PRRB or SSRB because the proposed changes to the regulations were of a minor or technical nature, or corrected some previous drafting error in the regulations, or it is proposed to use regulations to implement some uncontroversial benefit conferred on other workers by means of legislation that does not apply to police officers because they are not employees.
365. New section 52A(6) requires the Secretary of State to supply a draft of any proposed regulations to persons whom the Secretary of State considers to represent the interests

of: the persons or bodies who between them maintain police forces; chief officers of police; members of police forces; and police cadets appointed under section 28 of the Police Act 1996, and consider any representations made by them before making regulations. This provision applies in all cases, even where the Secretary of State has not referred a matter to the PRRB or SSRB, as set out under new section 52A(5). The purpose is to ensure that in every case the Secretary of State has the benefit of the technical knowledge of these interested parties in arriving at a final version of the regulations.

366. New section 52A(7) and (8) provides the Secretary of State with the power to amend by order (subject to the negative resolution procedure) the reference to the SSRB in new section (3)(a) and replace it, if the name or the functions of the SSRB changes.
367. *Subsection (2)* makes a consequential amendment to section 63 of the Police Act 1996 to ensure that, as now, there is no requirement on the Secretary of State to refer draft regulations relating to matters within the remit of the PRRB to the Police Advisory Board for England and Wales.
368. *Subsection (3)* amends section 1 of the Police Pensions Act 1976 by replacing the requirement for the Secretary of State to consult the Police Negotiating Board before making changes to police pensions regulations with a requirement to consult the “appropriate advisory or negotiating body”. This is defined in new subsection 1(1A) as the Police Advisory Board for England and Wales for regulations with regard to England and Wales and the Police Negotiating Board for Scotland for regulations with regard to Scotland. New subsection 1(1B) also makes provision for the Secretary of State to invite the views of the Northern Ireland Policing Board and the Police Association of Northern Ireland when consulting the PABEW on regulations regarding England. It is intended that in practical terms representatives of those bodies will join the PABEW for the purposes of the PABEW’s consideration of police pension regulations, in order to promote consistency of approach as between England and Wales on the one hand and Northern Ireland on the other.
369. *Subsection (4)* inserts a new subsection (3) into section 52 of the Police Act 1996 the effect of which is to require the Secretary of State to consult the PABEW, and invite the views of the Northern Ireland Policing Board and Police Association of Northern Ireland, before making regulations about the pension arrangements for police cadets.
370. *Subsection (5)* amends Schedule 3 to the Police and Justice Act 2006 the effect of which is to require the Secretary of State to consult, before exercising the power to merge police pension schemes, PABEW as regards England and Wales; the PNB for Scotland as regards Scotland; and the Northern Ireland Policing Board and the Police Association for Northern Ireland as regards Northern Ireland.

### ***Section 134: Consultation about regulations: Northern Ireland***

371. *Subsection (1)* amends section 25 of the Police (Northern Ireland) Act 1998. That section confers power on the Northern Ireland Department of Justice to make regulations about the conditions of service of members of the Police Service of Northern Ireland. There is a requirement to consult the Northern Ireland Policing Board before making such regulations save where they relate to the duty, leave, pay, allowances, or pensions of police officers and the issue, use and return of equipment. The amendments maintain this saving, but require the Department of Justice to invite the views of the PABEW in relation to draft regulations in respect of police pension arrangements.
372. *Subsection (2)* inserts new section 25A into the Police (Northern Ireland) Act 1998 which makes similar provision about regulations governing the duty, leave, pay or equipment of members of the Police Service of Northern Ireland as new section 52A of the Police Act 1996 (as inserted by section 133) does in relation to police officers in England and Wales. *Subsection (3)* amends section 41 of into the Police (Northern Ireland) Act 2000 to make like provision about regulations governing the hours, leave,

pay or equipment of police trainees (the changes do not affect regulations made under section 41 in relation to police reserve trainees).

## **Independent Police Complaints Commission**

### ***Section 135: Application of IPCC provisions to contractors***

373. Part 2 of the 2002 Act establishes the framework under which the IPCC operates to handle police complaints and misconduct. Section 12 of the Act sets out the complaints, matters and persons to which Part 2 of the 2002 Act applies. For the purposes of this section, persons “serving with the police” fall within IPCC oversight.
374. Currently, only certain private sector contractors who are “designated” by a chief officer in accordance with section 39 of the 2002 Act (to carry out escort and detention functions) fall within Part 2 and therefore are subject to IPCC oversight. However, the police (whether chief officers or local policing bodies) increasingly enter into agreements with private sector contractors to carry out other types of functions, including the provision of staff to operate emergency call centres, provide front counter services (dealing with members of the public who call at police stations or offices) and provide business support services as required (for example, finance and procurement, human resources, facilities management). The anomaly is, however, that although they are providing services traditionally carried out by police officers and staff, such individuals and their employees fall outside IPCC oversight as they are not, for the purposes of the 2002 Act, defined as “serving with the police”.
375. To achieve more parity between private sector contractors in these roles and police officers and staff, and to reflect this increased contracting out of functions, this section inserts a power to make regulations (subject to the negative resolution procedure) into section 12 of the 2002 Act, enabling the Secretary of State to make provision that a contractor, sub-contractor or an employee of a contractor or sub-contractor is to be treated as a person serving with the police. New section 12(10) defines a contractor as a person who contracts with a local policing body or a chief officer of police for the provision of services to the chief officer. The effect of this section is that all contractors, sub-contractors or their employees, of a class specified in regulations as providing services to a chief officer of police, will be required to cooperate with investigations by, or under the oversight of, the IPCC. In other words, the IPCC will be able to investigate specified categories of private sector contractors under the complaints and conduct framework set out in Part 2 of the 2002 Act and any regulations made thereunder.
376. Where services provided by private sector contractors have no connection to what are essentially policing functions, and where it would serve no useful purpose for Part 2, or any regulations made under it, to apply, the category of employee will be limited by regulations (section 105(4) of the 2002 Act enables regulations to make different provisions for different cases). The IPCC’s oversight will continue in relation to employees who are designated under section 39 of the 2002 Act and the provisions in that section about the process of designation will continue to apply. However, paragraph 94 of Schedule 11 provides for the repeal of section 39(9) to (11) of the 2002 Act which will have the effect of avoiding the future possibility of creating a different complaints system for contracted-out staff.
377. New section 12(9) of the 2002 Act enables the Secretary of State in making regulations under new section 12(8), to make modifications to Part 2 of the 2002 Act in its application to contractors. The purpose of this subsection is, amongst other things, to enable the Secretary of State to prescribe the identity of the “appropriate authority” in regulations. In relation to employees who are under the direction and control of the chief officer, the chief officer or the local policing body is likely to be prescribed as the appropriate authority. In other cases, the appropriate authority may be the contractor or the local policing body.

***Section 136: Application to IPCC of provisions about investigation of offences***

378. This section amends paragraph 19 of Schedule 3 to the 2002 Act which relates to those investigations carried out by the IPCC itself. Paragraph 19(6) already confers a power on the Secretary of State to make an order specifying the provisions in the Police and Criminal Evidence Act 1984 (“PACE”) relating to the investigation of criminal offences by police officers which will apply, subject to any specified modifications, to the investigation of offences by members of staff of the IPCC.
379. *Subsection (2)* amends paragraph 19(6) to extend the scope of this order-making power so that an order may also specify the provisions of PACE relating to the investigation of criminal offences by police officers and the provisions of a code of practice issued under sections 60 (tape-recording of interviews), 60A (visual recording of interviews) or 66 (codes of practice) of that Act which will apply, subject to any specified modifications, to the investigation of offences by members of the IPCC’s staff.
380. *Subsection (3)* inserts new sub-paragraph (6A) into paragraph 19 of Schedule 3 to the 2002 Act. This enables the power conferred by sub-paragraph (6) to provide, in particular, that a member of the IPCC’s staff may exercise a power under PACE in respect of which authorisation would otherwise be required by a police officer of or above a particular rank if authorisation is given by a member of the IPCC’s staff of or above a specified grade.
381. An order is expected to be made in respect of a number of powers relating to entry and search of premises and the questioning of persons in PACE and the codes of practice issued under sections 60, 60A and 66 of that Act. For example, if the IPCC seeks authority to interview a suspect who wishes to have legal advice but has not yet received it pursuant to paragraph 6.6(b)(i)/(ii)/*Note 6A* of PACE Code C (Code of Practice for the detention, treatment and questioning of persons by police officers<sup>3</sup>), it must seek authorisation from a police officer ranked superintendent or above. It is proposed that under the new power, a senior member of the IPCC will be able to authorise the use of this power in an investigation.
382. The purpose of this power is to maintain the IPCC’s ability to investigate matters independently and expeditiously, in particular in investigations which involve alleged criminality on the part of those serving with the police.

***Section 137: Provision of information to IPCC***

383. This section inserts new paragraphs 19ZA to 19ZD in Schedule 3 to the 2002 Act, dealing with the handling of police complaints and conduct matters. The effect of this section is to provide the IPCC with a broad power to serve an information notice on any person, where the information is reasonably required for the discharge of the IPCC’s statutory functions, that is, where it is necessary and relevant to a matter under investigation by the IPCC. For example, the IPCC may use this power to request passenger travel information (such as Oyster card data) which would reveal the identity of witnesses to an event or provide evidence of passenger movements, central to an investigation about a complaint, conduct or death or serious injury matter.
384. New paragraph 19ZA(1) sets out that the IPCC may serve a notice in accordance with any investigation carried out by it under paragraph 19 of Schedule 3. The effect of this is that the power will only be exercisable by the IPCC when conducting an independent investigation. The requirements as to the content of the notice are set out at new paragraph 19ZA(4).
385. It is expected that the IPCC will seek the information it requires by first making an informal request to a relevant person. However there may be occasions when it would be more appropriate or convenient for the IPCC to be able to serve a notice immediately,

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3 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/117589/pace-code-c-2012.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117589/pace-code-c-2012.pdf)

without having to be required to first make an informal request. New paragraph 19ZA(1) therefore provides for this. Where information requested is no longer required, the IPCC may cancel a notice pursuant to new paragraph 19ZA(6).

386. Certain information is excluded from the requirement which is intended to act as an important safeguard to persons on whom an information notice may be served. An information notice must not – as set out at new paragraph 19ZA(2) – require a person to disclose information which may reveal evidence of the commission of an offence by the person concerned, reflecting the approach taken in provisions contained within section 43(8) to (8C) of the Data Protection Act 1998. This amounts to a protection from self-incrimination. The notice must also not require disclosure of information which is legally privileged within the meaning of section 10 of PACE. Further, under new paragraph 19ZA(2)(c), the IPCC cannot require disclosure of communications data that is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (“RIPA”). New paragraph 19ZA(2)(d) prevents a notice from requiring disclosure of information falling within the “control principle”, that is information provided to the person by, or by an agency of, the Government of a country or territory outside the United Kingdom where that Government does not consent to the disclosure of that information. Nor can the IPCC require a postal or telecommunications operator (within the meaning of Chapter 2 of Part 1 of RIPA) to provide communications data (within the meaning of that Chapter). For example, the IPCC could not use an information notice to require the disclosure of subscriber or billing information from a telephone or internet service provider. Nor could it require address details from the Post Office or utility suppliers to locate potential witnesses. This is to ensure that the IPCC’s existing duties in respect of RIPA material are not altered and that the IPCC continues to obtain data from communications service providers in accordance with the framework in RIPA, rather than by virtue of the new broad information notice power.
387. New paragraph 19ZB(1) provides that a failure to comply with the notice, or knowingly or recklessly making a false statement in connection with it, will enable the IPCC to certify the failure to the High Court which may then deal with the matter as a contempt of court; this reflects the approach set out in section 54 of the Freedom of Information Act 2000.
388. A person has a right of appeal against the notice by virtue of new paragraph 19ZC to the First-tier Tribunal on the ground that the notice is not in accordance with the law. This reflects existing provision for appeals in the Data Protection Act 1998 and Freedom of Information Act 2000, which each relate to appeals against notices which may be given to a person in respect of the disclosure (or non-disclosure) of information. In new paragraph 19ZC, the term “not in accordance with the law” refers to an error of law which includes but is not limited to a breach of any specific right under the European Convention of Human Rights or otherwise. If the Tribunal considers that the notice is not in accordance with the law, it is required to quash the notice and may give direction to the IPCC so that it may serve a further notice. Given that the IPCC may only request information or serve a notice in accordance with the new paragraph 19ZA where it is reasonably required, this acts as a further safeguard to ensure all data requests are necessary, proportionate and justified.
389. New paragraph 19ZD provides for the handling of intelligence service and intercept information, and information from a government department which, if disclosed, would in the opinion of the Secretary of State (or Minister of the Crown in charge of the relevant department if that Minister is not a Secretary of State) damage national security, international relations, or the economic interests of the United Kingdom (or any part of the United Kingdom). Where the IPCC receives such information, directly or indirectly, it is prohibited from making onward disclosure of that material unless it has consent from the “relevant authority” (defined in 19ZD(4)). The IPCC is also prohibited from disclosing – - without consent – the fact that it has received such material. This is the effect of new paragraph 19ZD(1). The prohibition on the IPCC disclosing without consent such information, or the fact that it has received such information, will mean

that it must take all reasonable steps to avoid such disclosure, including inadvertent disclosure.

390. Where the relevant authority (defined in new paragraph 19ZD(4)) provides consent and the IPCC discloses information to other persons, a similar bar on onward disclosure is placed on the recipient of that information from the IPCC (new paragraph 19ZD(3)), unless consent has been granted by the relevant authority.

***Section 138: Unsatisfactory performance procedures following investigation of death or serious injury matter***

391. *Subsection (1)* amends paragraph 24C of Schedule 3 to the 2002 Act which relates to a death or serious injury matter where there is no indication that a person serving with the police may have behaved in a manner which would justify the bringing of disciplinary proceedings. New paragraph 24C(3) to (5) provides the IPCC with a power to recommend that a person's performance is unsatisfactory (as opposed to treated as misconduct) and that the appropriate authority should take recommended action in relation to it where the investigation is in respect of a death or serious injury matter.
392. *Subsections (2) to (4)* link this power with paragraph 27 of Schedule 3 to the 2002 Act. Paragraph 27 makes provision for the process in accordance with which the IPCC may make a recommendation or a direction to the appropriate authority in relation to disciplinary proceedings in respect of a conduct matter. The effect is that the IPCC may also recommend and direct the appropriate authority to take steps in relation to a person's unsatisfactory performance in respect of a death or serious injury matter.
393. This section will result in parity in respect of the IPCC's existing powers to recommend and direct unsatisfactory performance procedures in complaint and conduct matters investigated by the IPCC.

***Section 139: Recommendations by IPCC and requirement to respond***

394. This section inserts new paragraphs 28A and 28B into Schedule 3 to the 2002 Act which makes provision in respect of the handling of police complaints and conduct matters. Currently, recipients of recommendations issued by the IPCC pursuant to paragraphs 22(3), 22(5) and 24A(2) and matters that come before the IPCC to consider under paragraphs 8A and 25(2) of Schedule 3, that is those issued about institutional or systemic failings at the end of an independent, managed or supervised investigation or on appeal from a local investigation, are not statutorily required to respond. This results in a situation which adversely affects public confidence in the police complaints system. The effect of this section is to establish a statutory framework obliging recipients of such recommendations to respond within a specified time period (56 days, beginning on the day on which the recommendation was made).
395. For example, a response will be required under this power where the IPCC issues, as it has done, local recommendations to the effect that a force should review its system for storing files for investigations that are both active and closed and that it should ensure that all files are readily accessible.<sup>4</sup> In the case of national recommendations applicable to all forces, the requirement to respond will depend on the basis on which the IPCC has issued the recommendation. For example, a national recommendation issued by the IPCC under this power following an independent investigation into a fatal shooting, recommending that all radio channels used by firearms officers should be audio recorded,<sup>5</sup> will attract the requirement to respond. However, if the IPCC decides to make a recommendation under its general recommendation-making power under

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<sup>4</sup> Southwark Sapphire Unit's local practices for the reporting and investigation of sexual offences, July 2008 – September 2009, Independent Investigation Learning Report, available at: [www.ipcc.gov.uk](http://www.ipcc.gov.uk)

<sup>5</sup> IPCC independent investigation into the fatal shooting of Mark Saunders on 6 May 2008. Investigation report available at: [www.ipcc.gov.uk](http://www.ipcc.gov.uk).

section 10(1)(e) of the 2002 Act, there will be no requirement to respond as this is outside the scope of this provision.

396. New paragraph 28A(4) and (5) sets out the categories of recipient from whom the IPCC may require a response to its recommendations. Given the gravity and seriousness of DSI matters and other matters of sufficient seriousness which will be prescribed within regulations (such as those listed in regulation 4(2)(b) of the Police (Complaints and Misconduct) Regulations 2012), new paragraph 28A(4)(a) enables the IPCC to make a recommendation and to require a response from “any person”. In the interests of proportionality as regards other types of matter, new paragraph 28A(5) limits the category of recipients to persons serving with the police and local policing bodies; however, as this provision will be amending Part 2 of the 2002 Act, it will by implication, also include additional policing bodies, that is, bodies of constables which are not maintained by a local policing body, police forces and other categories of persons over which the IPCC exercises oversight. It will also extend to private sector contractors who will be brought within the IPCC’s oversight by virtue of section 135.
397. New paragraph 28A(6) places a requirement on the IPCC to publish its recommendations. Where the recipient of a recommendation is a local policing body, the IPCC is also required to provide a copy to the chief officer and similarly, where a recommendation is directed at a chief officer, the IPCC must send a copy to the local policing body. This is to reflect the reality of local policing arrangements and the interest of both parties in policing matters within their force area. Where the recipient of a recommendation is a contractor, sub-contractor or an employee of such a person, both the local policing body and the chief officer must also be provided with a copy. The IPCC may also copy in other bodies as it deems appropriate.
398. Recipients of IPCC recommendations are required to respond in writing by virtue of new paragraph 28B(1). This response must include the action the recipient has taken or proposes to take in response or why they have not taken or do not propose to take any action in response. A recipient is required to provide the response within 56 days but may be granted an extension at the discretion of the IPCC pursuant to new paragraph 28B(3). It is also extended where proceedings are commenced for judicial review of the IPCC’s decision to make a recommendation as set out at new paragraph 28B(4).
399. The IPCC has a duty, under new paragraph 28B(5), to publish responses received within 21 days of receipt and provide a copy of the response to those copied into its initial recommendations. New paragraph 28B(6) provides however, for recipients of IPCC recommendations to make representations so that the requirements of publication and disclosure do not apply to their response. This could – at the discretion of the IPCC – result in either non-publication or part-publication but if the IPCC decides to publish or disclose a response (in whole or in part) where the recipient has made representations, this decision must be communicated to the recipient prior to publication (see new paragraph 28B(8)).
400. New paragraph 28B(8) sets out the IPCC’s obligations to publish responses following representations being made by recipients under 28B(6), and new paragraph 28B(9) makes provision about the effect of judicial review proceedings on the IPCC’s duty to publish.
401. New paragraph 28B(10) places a requirement on local policing bodies and chief officers, as recipients, to publish their responses to IPCC recommendations. The requirement to publish applies as it does to the IPCC under new paragraph 28A.

#### ***Section 140: Appointment of chief officers of police***

402. *Subsections (1) to (3)* amend the requirement in the 2011 Act that to be eligible to be appointed as a chief constable a person must have served as a police constable in the UK. The section provides that, as an alternative, a person can have served as a police officer in an approved overseas police force, at an approved rank. *Subsections (4) to*



(6) make an equivalent change to the 2011 Act in respect of the appointment of the Metropolitan Police Commissioner.

403. The section also places a duty on the College of Policing to make recommendations to the Secretary of State on the designation of approved countries, police forces and ranks, service in which would be deemed suitable experience for someone taking on the role of chief constable in England or Wales. Any such designation would be made by the Secretary of State by way of regulations (subject to the negative resolution procedure). It is expected that the College will take into account the direction set out in the *Independent Review of Police Officer and Staff Remuneration and Conditions* that only countries that have a common law jurisdiction and practice “policing by consent” will be suitable for designation.

#### ***Section 141: Financial arrangements for chief officers of police***

404. This section amends the 2011 Act insofar as it relates to the financial controls on chief officers of police. It should be read with paragraphs 99 and 100 of Schedule 11 to the Act. Those paragraphs repeal paragraph 7(3) of Schedule 2 and paragraph 4(3) of Schedule 4 to the 2011 Act, which prohibit chief constables and the Metropolitan Police Commissioner respectively from borrowing.

405. *Subsection (1)* inserts a new paragraph 7A into Schedule 2 to the 2011 Act. New paragraph 7A sets out the circumstances under which a chief constable will be able to borrow. A chief constable will only be able to borrow to cover immediate short term expenditure (it will therefore enable chief constables to have an overdraft facility on their bank account). This borrowing must be in sterling and can only take place with the consent of the relevant Police and Crime Commissioner. New paragraph 7A(2)(b) prohibits chief constables from entering into credit arrangements. New paragraph 7A(3) sets out the circumstances under which a chief constables will be able to invest. A chief constable will only be able to invest for a purpose relevant to his or her functions or for the purpose of prudent financial management, and with the consent of the relevant PCC. New paragraph 7A(4) also applies a number of provisions of Part 1 of the Local Government Act 2003, and any regulations made under them, to chief constables as they apply currently to local authorities. Part 1 of the Local Government Act 2003 sets out the legal framework within which local authorities may undertake capital expenditure and central Government may regulate that activity. The effect of each of the applied provisions is as follows:

- section 6 (protection of lenders): provides that lenders do not need to check whether chief constables have the power to borrow;
- section 7 (meaning of “credit arrangements”): sets out what constitutes a credit arrangement (for the purposes of the prohibition in the new paragraph 7A(2)(b) of Schedule 2 to the 2011 Act);
- sections 9 to 11 (capital receipts): set out what constitutes a capital receipt, how it can be used and areas where the Secretary of State can make regulations. Provisions relating to housing land are not included as they are not relevant to chief constables;
- section 13 (security for money borrowed etc): sets out further conditions around borrowing arrangements for chief constables, including not using property as security against the sum being borrowed;
- section 14 (information): stipulates that chief constables must provide the Secretary of State with any information he or she requires on capital finance etc and accounts;
- section 15 (guidance): stipulates that chief constables shall have regard to guidance and regulations issued by the Secretary of State relating to capital finance etc and accounts;

*These notes refer to the Anti-Social Behaviour, Crime and Policing Act 2014 (c.12) which received Royal Assent on 13 March 2014*

- section 16 (meaning of “capital expenditure”): defines what constitutes capital expenditure and how the Secretary of State can classify an item of expenditure as being capital expenditure;
  - section 17 (external funds); sets out that borrowing by a chief constable for the purposes of an external fund (for example a trust fund) will not be considered to be borrowing in the usual sense;
  - section 18 (local authority companies etc): allows the Secretary of State to make regulations applying the other provisions of Part 1 to a company set up by a chief constable;
  - section 20 (directions): sets out the conditions under which directions should be given;
  - sections 21 and 22 (accounts): sets out that the Secretary of State can make regulations relating to accounting arrangements which would apply to chief constables. This ensures that the statutory accounting framework that applies to Police and Crime Commissioners also applies to chief constables; and
  - section 24 (application to Wales): enables Welsh Ministers to make regulations in respect of chief constables in Wales (rather than the Secretary of State).
406. New paragraph 7A(5) provides that regulations made by the Secretary of State under any of the provisions in new paragraph 7A(4) will apply to the chief constable of a police force in England in the same way as they apply to a local authority in England.
407. New paragraph 7A(6) provides that regulations made by Welsh Ministers under any of the provisions in new paragraph 7A(4) will apply to the chief constable of a police force in Wales in the same way as they apply to a local authority in Wales.
408. New paragraph 7A(7) provides that any of the provisions specified in new paragraph 7A(4) (and regulations made under them) also apply, so far as relevant, for the purposes of the borrowing powers conferred and restrictions imposed by new paragraph 7A(1) to (3), as well as for the purposes of Part 1 itself.
409. New paragraph 7A(8) provides that any order made under section 217 or 218 of the Local Government and Public Involvement Health Act 2007 (which relate to entities etc. controlled by local authorities), as far as relevant, should be applied to chief constables.
410. *Subsection (2)* amends the provisions of the 2011 Act applying to the Metropolitan Police Commissioner by making changes corresponding to those set out in subsection (1) for chief constables.

### ***Section 142: Grants to local policing bodies***

411. **Section 142** changes the terms under which the Police Main Grant<sup>6</sup> is paid to local policing bodies (namely, Police and Crime Commissioners or, in London, the Mayor’s Office for Policing and Crime and the Common Council of the City of London).
412. *Subsection (1)* amends section 46(1) of the 1996 Act. Section 46(1) current enables the Home Secretary to make grants to local policing bodies “for policing purposes”. As amended, the Home Secretary will be able to make grants to local policing bodies “for the purpose of their functions”. This wider scope for paying grants to local policing bodies is in recognition of their wider responsibilities for commissioning services under the provisions of section 143.

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<sup>6</sup> Police Main Grant funding to the police is distributed by the Home Office and derived from the Police Allocation Formula and the Formula Funding published by the Department for Communities and Local Government. The police also receive funding from the relevant precept component of council tax.

413. *Subsection (2)* makes a corresponding change to 47(1) of the 1996 Act, which makes provision for the Home Secretary to make grants to local policing bodies for the purpose of capital expenditure; and section 92(2), which enables London Boroughs to make grants to the Mayor's Office for Policing and Crime for policing purposes (section 92(1), which enables local authorities to make grants to Police and Crime Commissioners is not constrained by a reference to "for police purposes").
414. Paragraph 102 of Schedule 11 to the Act includes consequential repeals of provisions which previously amended section 46(1) of the 1996 Act and are therefore now spent.

***Section 143: Powers of local policing bodies to provide or commission services***

415. **Section 143** gives local policing bodies power to provide or commission services, in particular support services for victims and witnesses of, and those affected by, crime and anti-social behaviour.
416. *Subsection (1)* describes the types of services that may be provided or commissioned by a local policing body. Specifically, *subsections (1)(a) and (1)(b)* refer to services that the local policing body believes will reduce crime and disorder, and services for victims or witnesses of crime and anti-social behaviour and services for other persons affected by crime or anti-social behaviour. The express reference to anti-social behaviour enables local policing bodies to fund, provide or commission services to victims, witnesses and other affected persons whether or not the anti-social behaviour constitutes a criminal offence.
417. Additionally, *subsection (1)(c)* provides for potential future expansion of the scope of the services that may be commissioned, by way of an order made by the Secretary of State (subject to the negative resolution procedure). *Subsection (2)* enables any order made under subsection (1)(c) to make different provision for different police areas; this will allow any new commissioning powers to be piloted.
418. *Subsection (3)* provides that, as well as entering into contracts for the provision of relevant services, local policing bodies may make grants in connection with those services and can attach conditions to these grants, should that be necessary. Such conditions may, for example, require repayment of the grant in the event of non-provision of the service and periodic reporting of the service provided.

***Section 144: Power to take further fingerprints or non-intimate samples***

419. *Subsection (1)* amends subsections (5A) and (5B) of section 61 of PACE which provide respectively that arrested and charged persons may be fingerprinted without their consent, but generally only if they have not previously been fingerprinted during the course of the investigation. It makes these subsections subject to new section 61(5C), which allows such persons to be fingerprinted again if the investigation was discontinued, the fingerprints were destroyed, and the investigation then resumed.
420. Similarly, *subsection (2)* amends section 63(3ZA) and 63(3A) of PACE which provide respectively that an arrested or charged person may have a non-intimate sample (such as a cheek swab taken for DNA profiling) taken without consent, but generally only if this has not already been done during the course of the investigation. This subsection is made subject to new section 63(3AA), which allows such a person to have a non-intimate sample taken without consent again if the investigation was discontinued, the DNA sample and profile destroyed, and the investigation then resumed.
421. Under Schedule 2A of PACE, if a person is charged or arrested then released without having had their DNA or fingerprints taken, the police may take them later, but only within the following six months. The consequential amendments to Schedule 2A, made by paragraph 86 of Schedule 11 to the Act, apply this principle to the scenario involving retaking above, putting a time limit of six months from the resumption of the investigation on the power to retake DNA or fingerprints.

***Section 145: Power to retain fingerprints or DNA profile in connection with different offence***

422. This section substitutes a new section 63P into PACE. New section 63P provides that fingerprints or a DNA profile taken in connection with the investigation of one offence are to be treated as if they were taken in connection with the investigation of any other offence that the person is subsequently arrested for, charged with, convicted of or given a penalty notice for. This means that provisions in PACE for the retention of fingerprints or DNA profiles where there is a criminal conviction will apply in such cases, without the need for a causal link between the arrest in respect of which the fingerprints and DNA profiles were taken and the subsequent offence.

***Section 146: Retention of personal samples that are or may be disclosable***

423. *Subsection (1)* amends section 63U of PACE which provides for certain exclusions from the PACE retention regime for DNA profiles and fingerprints (collectively referred to as “section 63D material”). Section 63U(5) provides that material need not be destroyed in accordance with sections 63D to 63Q, 63S and 63T (which govern the retention of DNA profiles and fingerprints) where it falls to be disclosed under the CPIA or its associated Code of Practice. *Subsection (1)(a)* inserts a reference to section 63R of PACE (which governs the retention of DNA samples) into section 63U(5) thereby making the retention rules in section 63R subject to the CPIA in the same way as sections 63D to 63Q, 63S and 63T. *Subsection (1)(b)* inserts new subsections (5A) and (5B) into section 63U of PACE. These provide firstly that any sample retained under the CPIA must not be used other than for the purposes of any proceedings for the offence in connection with which it was taken and, secondly, that once the CPIA no longer applies, the sample must be destroyed.
424. *Subsection (2)* makes equivalent amendments to paragraph 20I of Schedule 8 to the Terrorism Act 2000. Paragraphs 20A to 20I of Schedule 8 to the 2000 Act provide for the retention of DNA samples and profiles and of fingerprints taken from persons detained under section 41 of or Schedule 7 to the 2000 Act (that is, persons arrested as suspected terrorists or persons detained under the ports and border control provisions in Schedule 7). The retention regime in Schedule 8 to the 2000 Act is broadly equivalent to that set out in sections 63D to 63T of PACE; in particular paragraph 20I of Schedule 8 replicates section 63U(5) of PACE as described above.

***Section 145: Powers to seize invalid passports etc***

425. **Section 145** introduces Schedule 8 which provides powers for the seizure of invalid passports and other travel documents.

***Schedule 8: Powers to seize invalid passports etc***

426. *Paragraph 1* sets out the interpretation of key terms in the Schedule. *Paragraph 1(1)* defines an examining officer as a constable, an immigration officer, or a customs official. *Paragraph 1(2)* defines a travel document. *Paragraph 1(3)* defines what constitutes an invalid travel document. *Paragraph 1(4)* defines a port.
427. *Paragraph 2* provides powers to examining officers at ports in respect of invalid travel documents, which are primarily passports issued by the government of any state but can include other documents such as emergency travel documents. These powers may be exercised when the officer believes a person is entering or leaving Great Britain or Northern Ireland, or travelling by air within Great Britain or within Northern Ireland (*paragraph 2(1)*). They empower an examining officer to require a person to hand over all travel documents, to search for travel documents, to inspect travel documents for the purpose of checking their validity, to retain such a document while its validity is checked, and to retain any travel document believed to be invalid (*paragraph 2(2)*). *Paragraph 2(3)* provides that the power to search applies to searches of the person, his or her possessions and any vehicle in which he or she has been or is about to

be travelling. *Paragraph 2(4)* provides that in exercising these powers, an examining officer may, if necessary, use reasonable force. The officer may also authorise another person to carry out a search on his or her behalf. It is a matter for the examining officer to decide how to exercise this power, but it would appear for example that a police community support officer might, if convenient and appropriate, be authorised by such an officer to exercise this power. An examining officer may also stop a person or vehicle for the purpose of exercising the powers in paragraph 2.

428. *Paragraph 3* affords powers of search and seizure to constables in respect of certain cancelled UK passports; these powers are not available to other examining officers. *Paragraph 3(1)* provides that these powers are available outside a port in the case of a person whom the constable reasonably believes to be in a possession of a passport that meets all the criteria in *paragraph 3(2)*: that it was issued by or for Her Majesty's Government; it has been cancelled by the Secretary of State (in practice, the Home Secretary) on grounds of involvement in activities so undesirable that it is contrary to the public interest for the person to have access to passport facilities; and the Secretary of State has specified the passport in an authorisation issued for the use of the powers under this paragraph. *Paragraph 3(3)* provides constables with the power to require the production of travel documents for inspection, to search for and take possession of travel documents, to retain any such documents while their validity is checked, and to retain travel documents that are believed to be invalid. *Paragraph 3(4)* provides that the power of search includes the powers to search the person, his or her possessions, any vehicle in which he or she has been travelling or is about to travel, and any premises on which the constable is lawfully present. *Paragraph 3(5)* provides that a constable may, if necessary, use reasonable force in exercising the powers under this paragraph, and also that a constable may authorise a person to carry out a search on his or her behalf.
429. *Paragraph 4* makes further provisions in relation to the retention and return of seized documents. *Paragraph 4(1)* provides that a document that is retained while its validity is investigated must be checked as soon as possible. If it is found to be valid, or invalid only because it has expired, it must be returned straight away (*paragraph 4(2)*). A passport cannot be retained for checks for longer than seven days unless it has already been found to be invalid for a reason other than expiry (*paragraph 4(3)*). This is because there may be legitimate uses for an expired passport, for example, if it incorporated an extant visa issued by another country. However, a requirement to return an expired travel document does not apply if the officer concerned reasonably believes it to have been intended for use for purposes for which it is no longer valid (*paragraph 4(4)*). A requirement to return a travel document under this paragraph has effect subject to any other provision outside the Schedule under which it may lawfully be retained (*paragraph 4(5)*).
430. *Paragraphs 5(1) and 5(2)* create two offences in relation to the operation of the new powers. These are respectively the offence of failing to hand over travel documents without reasonable excuse, and obstructing or frustrating a search. Both are summary offences with maximum penalties of six months' imprisonment, or a fine (which in Scotland and Northern Ireland may not exceed £5,000), or both (*paragraph 5(3)*).
431. *Paragraph 6* provides an examining officer with the same power of arrest as a constable in respect of these new offences or offences under section 4 or 6 of the Identity Documents Act 2011 (possession of false identity documents with improper intention or without reasonable excuse).

### ***Section 148: Port and border controls***

432. *Section 148* introduces Schedule 9, which makes amendments relating to the port and border controls in Schedule 7 to the Terrorism Act 2000 ("the 2000 Act") and the associated Schedule 8 to that Act which governs the treatment of persons detained under Schedule 7.

**Schedule 9: Port and border controls**

433. *Paragraph 1* of Schedule 9 amends paragraph 1 of Schedule 7 to the 2000 Act, subparagraph (1) of which defines an examining officer for the purpose of Schedule 7 to the 2000 Act, that is, persons who have the powers conferred by Schedule 7 to the 2000 Act to conduct examinations at ports. Paragraph 1(1) of that Schedule currently defines an examining officer as a constable, an immigration officer, or a customs officer designated for the purpose of the Schedule by the Secretary of State and the Commissioners of Revenue and Customs. Paragraph 1(2) amends paragraph 1(1)(b) of Schedule 7 to the 2000 Act so as to limit those immigration officers who may exercise the powers of an examining officer to those designated for the purpose of Schedule 7 by the Secretary of State. *Paragraph 1(3)* inserts new paragraph 1A into Schedule 7 to the 2000 Act which places a duty on the Secretary of State to issue a code of practice which will specify the details of the requisite training to be undertaken by officers who are to act as examining officers or exercise other functions under Schedule 7 and the procedure for making designations. The code of practice must be laid before Parliament and brought into force by an order subject to the affirmative resolution procedure.
434. *Paragraph 2* repeals paragraph 6(4) and inserts a new paragraph 6A into Schedule 7 to the 2000 Act so as to further restrict the maximum period of time a person may be examined under Schedule 7 and prevent questioning from going on for more than an hour unless the person is detained. At present paragraph 6(4) permits detention for up to nine hours from the time a person's examination begins. New paragraph 6A of Schedule 7 to the 2000 Act introduces a separate limit of one hour on the period during which a person may be examined without being detained and then introduces an overall limit of six hours on the period a person may be examined (including any period of detention). Detention of a person under these powers triggers the provisions of Part 1 of Schedule 8 to the 2000 Act which govern the treatment of persons detained under Schedule 7; amongst other things these provisions confer on a detainee the right to inform a person of his or her detention and to consult a solicitor in private.
435. *Paragraph 3* amends paragraph 8 of Schedule 7 to the 2000 Act which relates to the searching of persons examined under that Schedule. New paragraph 8(4) of Schedule 7 prohibits an intimate search of a person. An "intimate search" is defined in new paragraph 8(7) of Schedule 7. New paragraph 8(5) prevents a person from being strip searched (again as defined in new paragraph 8(7)) unless: the person has been detained; an examining officer has reasonable grounds to suspect that the person is concealing something which may be evidence that the person is concerned in the commission, preparation or instigation of acts of terrorism; and a strip search has been authorised by a senior officer (as defined in new paragraph 8(6) of Schedule 7).
436. *Paragraph 4* inserts a new paragraph 11A into Schedule 7 to the 2000 Act. New paragraph 11A expressly provides a power to make and retain copies of anything obtained under paragraphs 5, 8 or 9 of Schedule 7 to the 2000 Act. The copy may be retained for as long as is necessary for the purpose of determining whether a person is involved in the commission, instigation or preparation of terrorism, or for use as evidence in criminal proceedings or in connection with deportation proceedings.
437. Information obtained in this way would be subject to the provisions of the Data Protection Act and the statutory Code of Practice on the Management of Police Information.<sup>7</sup>
438. *Paragraph 5* amends the provisions in Schedule 8 to the 2000 Act which relate to the rights of persons detained under Schedule 7. Currently the rights conferred by Schedule 8, for example the right to consult a solicitor, only apply to persons detained at a police station or places designated as such. Ports do not generally include areas designated as police stations. The amendments made to Schedule 8 by this paragraph extend certain rights conferred under that Schedule to persons detained at ports, airports

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<sup>7</sup> <http://www.acpo.police.uk/documents/information/2010/201004INFMOP101.pdf>

or international rail stations under Schedule 7. The rights are: the right of a detained person in England and Wales or Northern Ireland to have a named person informed of the fact of his or her detention (paragraph 6 of Schedule 8); the right of a detained person in England and Wales or Northern Ireland to consult a solicitor in private (paragraph 7 of Schedule 8); and the right of a detained person in Scotland to have a solicitor or another person informed of the fact of his or her detention and to consult a solicitor in private (paragraph 16 of Schedule 8). These rights may be qualified by paragraphs 8 and 9 of Schedule 8 in relation to England and Wales and Northern Ireland, and paragraph 17 in relation to Scotland in that a police officer of at least the rank of superintendent may authorise a delay in the exercise of these rights or a non-private legal consultation in certain specified circumstances, for example where informing a person of the fact of someone's detention under Schedule 7 could lead to interference with or harm to evidence of a serious offence. *Paragraph 5* amends these paragraphs of Schedule 8 so that the power of a senior police officer to qualify the rights conferred by paragraphs 6, 7 and 16 of Schedule 8 applies where a person is detained at a port, airport or international rail station other than at a police station.

439. Further clarification and qualification of the right to consult a solicitor is provided by new paragraph 7A of Schedule 8, in respect of a detained person in England, Wales and Northern Ireland, and new paragraph 16A of Schedule 8, in respect of a detained person in Scotland. These are inserted by *paragraph 5(6)* and *(10)*. Where a person detained for examination requests to consult a solicitor, he or she may not be questioned until he or she has consulted a solicitor (or no longer wishes to do so). This right is qualified in that the examining officer may question the detained person if he believes that postponing questioning would prejudice the purpose of the examination (meaning the determination of matters in paragraphs 2 or 3 of Schedule 7). Similarly, the new paragraphs also clarify that a detained person is entitled to consult a solicitor in person, but not if the examining officer reasonably believes that the time that this would take would prejudice the purpose of the examination.
440. *Paragraph 6* amends paragraph 10 of Schedule 8 to the 2000 Act so as to remove the power to take an intimate sample from a person detained under Schedule 7.
441. *Paragraph 7* inserts a new Part 1A (comprising new paragraphs 20K, 20L, 20M and 20N) into Schedule 8 to the 2000 Act, providing for the review of detention under Schedule 7. New paragraph 20K provides that a person's detention under Schedule 7 must be reviewed periodically by a review officer no later than one hour after the start of detention and at subsequent intervals of no more than two hours. The review officer may authorise continued detention only if satisfied that it remains necessary for the purposes of exercising a power conferred by paragraph 2 or 3 of Schedule 7 (questioning for the purpose of determining whether the person appears to be a person who is or was involved in the commission, preparation or instigation of acts of terrorism). If the review officer does not authorise continued detention then the person must be released. The other new paragraphs specify that the review officer must give a detained person or their solicitor an opportunity to make representations about their detention (20L), must ensure that the detained person is informed of their rights (20M) and must make a written record of the review and must inform the detained person if continued detention is authorised (20N).
442. *Paragraph 8* amends Schedule 14 to the 2000 Act to make provision for statutory codes of practice to be issued for certain functions under Schedules 7 and 8 to the 2000 Act, including the functions of reviewing officers.

### ***Section 149: Inspection of the Serious Fraud Office***

443. *Subsection (1)* amends section 2 of the Crown Prosecution Service Inspectorate Act 2000 so that the Chief Inspector of the Crown Prosecution Service has the same powers of inspection for the SFO as he or she has for the CPS. This will include inspection of the SFO's investigative work. The Chief Inspector will also have the same duty to

report to the Attorney General on matters connected with the operation of the SFO as he or she has for the CPS.

444. *Subsection (2)* amends section 3 of the Criminal Justice Act 1987 so that information that has been disclosed to the SFO by HM Revenue and Customs can be disclosed to HMCPSI for the purposes of an inspection. It also ensures SFO can disclose information to HMCPSI which would otherwise be covered by an obligation of secrecy imposed by or under any enactment, other than the Taxes Management Act 1970.

### ***Section 150: Jurisdiction of Investigatory Powers Tribunal over Surveillance Commissioners***

445. **Section 150** amends section 91(10) of the Police Act 1997 (“the 1997 Act”), which in its original form provides that:

“The decisions of the Chief Commissioner or, subject to sections 104 and 106, any other Commissioner (including decisions as to his jurisdiction) shall not be subject to appeal or liable to be questioned in any court

446. However, RIPA established the Investigatory Powers Tribunal (“the IPT”) and provides that it has jurisdiction over the Surveillance Commissioners in certain circumstances. The amendment made by *subsection (3)* therefore clarifies that subsection (10) of section 91 is not to be read as affecting the IPT’s jurisdiction to consider complaints against Surveillance Commissioners’ decisions, including their approval of police and other agencies’ use of certain types of covert surveillance and property interference. *Subsection (2)* removes the reference to section 106, which was repealed by RIPA.

### ***Section 151: Fees for criminal record certificates***

447. This section inserts into section 125 of the 1997 Act, a new subsection (1A). This allows the Secretary of State to take into account, when setting fees for services provided by the Disclosure and Barring Service, the costs associated with applications made under Part 5 of the 1997 Act in respect of volunteers, which are provided free of charge.

### ***Section 152: Powers of community support officers***

448. **Section 152** gives effect to Schedule 10, which amends Part 1 of Schedule 4 to the Police Reform Act 2002 to allow chief constables to designate PCSOs so as to give them additional powers.

### ***Schedule 10: Powers of community support officers***

449. *Paragraph 2* provides that a chief officer may designate PCSOs so as to give them the power to issue fixed penalty notices in respect of a number of cycling and traffic offences, including failure to comply with requirements about lighting and reflectors for bicycles, failure to comply with traffic signs or a traffic direction, carrying a passenger on a cycle, failing to stop for a police constable, driving the wrong way down a one-way street, sounding a horn when stationary or at night and for causing unnecessary noise, not stopping an engine when stationary, contravening a bus lane, opening a door so as to cause injury/danger, and stopping, waiting or parking at or near a school entrance. A chief officer may also designate the power to stop cyclists who have committed certain of these offences (*paragraph 6*). Before a chief officer designates powers in relation to the offence of stopping, waiting or parking at or near a school entrance, he or she must consult local authorities within the force area (*paragraph 3*).
450. *Paragraph 4* provides that PCSOs may be designated so as to give them powers to seize and retain materials and information relevant to the investigation of a crime when lawfully on any premises within the police force area. This will be subject to the safeguards that PACE already applies to constables exercising this power, including protection for legally privileged material, a requirement to provide a record to the



occupier of the premises, and provisions to allow photographs or copies of seized items to be made by or for the owner.

451. *Paragraph 5* provides that PCSOs may be designated so as to give them powers under the House to House Collections Act 1939 to require house to house collectors to provide their name, address, signature and certificate of authority.
452. *Paragraph 2* provides that a PCSO in London may be given the power to issue a fixed penalty notice for an offence under section 15 of the Local Authorities Act 2004 in respect of an offence under section 38(1) of the London Local Authorities Act 1990 or section 27 (1) of the City of Westminster Act 1999 of unlicensed street trading.

### ***Section 153: Use of amplified noise in vicinity of the Palace of Westminster***

453. *Section 153* extends the controls on the use of amplified noise equipment in Parliament Square, as provided for in Part 3 of the 2011 Act, to a wider area around the Palace of Westminster (the “Palace of Westminster controlled area”).
454. *Subsection (2)* inserts new section 142A into the 2011 Act, which defines the “Palace of Westminster controlled area”.
455. *Subsections (3) and (4)* enable a constable or authorised officer to direct a person to refrain from or cease using amplified noise equipment in that area, under sections 143 and 144 of the 2011 Act. Failure to comply with such a direction without reasonable excuse is an offence with a maximum penalty on summary conviction of a level 5 fine (currently up to £5,000). On conviction, a court may also make an order for the purpose of preventing the defendant from engaging in further prohibited activity in Parliament Square and the Palace of Westminster controlled area (*subsection (6)*), which amends section 146 of the 2011 Act).
456. *Subsection (5)* amends *section 145* so that the power to seize property that is being used in connection with an offence under *section 143* (for example, speakers or a loudhailer) will also be available in the Palace of Westminster controlled area.
457. The relevant authority, which may authorise the use of amplified noise equipment in the new controlled area, is Westminster City Council or, in relation to land owned by the Royal Parks, the Secretary of State (*subsection (8)*).

### ***Section 154: Littering from vehicles***

458. *Section 154* inserts a new section 88A into the Environmental Protection Act 1990, which confers on the Secretary of State a power to make regulations providing for the keeper of a vehicle (who would be presumed to be the registered keeper if the vehicle is registered) to pay a civil fixed penalty in a case where a littering offence has been committed in respect of the vehicle. Subsection (6) of new section 88A provides a power to make consequential amendments to Part 4 of the Environmental Protection Act 1990 and/or Part 2 of the London Local Authorities Act 2007. Regulations under the new section 88A would be subject to the affirmative procedure on the first use of the power. Any subsequent regulations dealing with the amount of the fixed penalty notice or making consequential amendments to Part 4 of the Environmental Protection Act 1990 or Part 2 of the London Local Authorities Act 2007 would also be subject to the affirmative procedure (subsection (3) of new section 88A). Otherwise, regulations under the new power would be subject to the negative procedure.
459. Subsections (3) and (5) of new section 88A set out the various matters which must or may be included in the regulations, including the amount of the fixed penalties (or how the amount is to be determined), the period for paying a fixed penalty (and for payment within this period to discharge any liability for conviction for the littering offence), provision for the issue of a written notice to the keeper, the persons authorised to issue a penalty notice, rights to make representations and bring appeals, and enforcement. Subsection (4) provides that authority to give a fixed penalty notice can only be given

to a “litter authority” or its officers. The “litter authority” is the body responsible for keeping the land where the offence occurred clear of litter and refuse, for example, the local authority or Highways Agency.

460. [Section 184\(1\)](#) provides for this section to extend to England and Wales, although the power to make regulations under new section 88A of the Environmental Protection Act 1990 is limited to littering offences in England.

## **Part 12: Extradition**

### ***Section 155: Date of extradition hearing***

461. This section amends section 8 of the Extradition Act 2003 (“the 2003 Act”). That section obliges the judge to fix a date for the extradition hearing to begin, inform the person of the contents of the warrant, give the person information about consent and remand the person in custody or on bail. The date fixed for the extradition hearing to begin must not be later than the end of the “permitted period” which is 21 days starting with the date of the arrest. Section 155 inserts a new subsection (4A) into section 8 of the 2003 Act, the effect of which is that in cases where extradition proceedings have been adjourned because the person has been charged with an offence in the UK or is in custody serving a sentence of imprisonment or other form of detention in the UK, the permitted period is extended by the length of the adjournment.

### ***Section 156: Extradition barred if no prosecution decision in requesting territory***

462. *Subsection (2)* inserts new section 12A into the 2003 Act, which provides for a new bar to extradition in Part 1 cases on the grounds of “absence of prosecution decision”. This is intended to ensure that a case is sufficiently advanced in the issuing State (that is, there is a clear intention to bring the person to trial) before extradition can occur, so that people do not spend potentially long periods in pre-trial detention following their extradition, whilst the issuing State continues to investigate the offence.
463. New section 12A will ensure that, in cases where the person is wanted to stand trial, extradition can only go ahead where the issuing State has made a decision to charge the person and a decision to try the person (or is ready to make those decisions). Where it appears to the judge, from considering all relevant information and evidence, that there are reasonable grounds for believing that a decision to charge and a decision to try have not both been taken in the issuing State (and that the person’s absence from that State is not the only reason for that), extradition will be barred unless the issuing State can prove that those decisions have been made (or that the person’s absence from that State is the only reason for the failure to take the decision(s)). The courts have interpreted the provisions of the 2003 Act in a “cosmopolitan” way,<sup>8</sup> mindful of the differences in criminal procedure in other Member States, and it is anticipated that the courts will apply the same approach to the interpretation of section 12A and, in particular, the concepts “decision to charge” and “decision to try”.
464. *Subsection (1)* makes a consequential amendment to section 11(1) of the 2003 Act which requires a judge to consider whether any of the bars to extradition applies. *Subsection (3)* sets out transitional arrangements for cases where a Part 1 warrant (within the meaning of the 2003 Act) has been issued before section 156 is brought into force.

### ***Section 157: Proportionality***

465. *Subsection (2)* inserts new section 21A into Part 1 of the 2003 Act, which will require the courts, in cases where an EAW has been issued in order to prosecute a person for an offence, to consider whether extradition would be (i) disproportionate, and (ii) compatible with the Convention rights (within the meaning of the Human Rights Act

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<sup>8</sup> *Asztalos v Szekszard City Court Hungary* [2010] EWHC 237 (Admin)

1998). Human rights considerations have hitherto been dealt with in Part 1 cases under section 21, but following the amendments made in the Act (including the amendments to section 21 made by paragraph 105 of Schedule 11) that section will only deal with Part 1 cases where the person is unlawfully at large following conviction for an offence, whilst new section 21A will deal with Part 1 cases where the person is wanted for the purpose of prosecution for an offence. Under new section 21A, in deciding whether extradition would be disproportionate, the judge will have to take into account (so far as the judge thinks appropriate) the seriousness of the conduct, the likely penalty and the possibility of the relevant foreign authorities taking less coercive measures than extradition. The judge will not be able to take into account any other matters. If the judge decides that extradition would be disproportionate, the judge will have to discharge the person.

466. *Subsection (1)* makes a consequential amendment to section 11(5) of the 2003 Act to refer to the new section 21A. As a result, in a case where the EAW has been issued in order to prosecute the person for an offence, where a judge concludes that none of the bars to extradition listed in section 11(1) applies, he or she must proceed under new section 21A to consider the issues of human rights and proportionality.
467. *Subsection (3)* inserts new subsections (7A) to (7C) into section 2 of the 2003 Act to provide for the designated authority (currently the National Crime Agency) to operate an administrative proportionality filter in cases where the Part 1 warrant has been issued for the purpose of prosecuting the person for an offence. The aim is to prevent the most disproportionate cases from reaching court. It provides that the designated authority may not issue a certificate under section 2 of the 2003 Act where it is clear that a judge proceeding under section 21A would be required to order the person's discharge on proportionality grounds. In deciding this question, the designated authority must apply guidance issued by the Lord Chief Justice for England and Wales, with the concurrence of the Lord Justice General of Scotland and the Lord Chief Justice of Northern Ireland, for this purpose.
468. *Subsection (4)* requires that in the event that a judge has to consider whether section 21A is compatible with the law of the European Union, the judge must have regard to Article 1(3) of the EAW Framework Decision, which sets out that that Decision shall not have the effect of modifying the obligation to respect fundamental rights and legal principles as enshrined in Article 6 of the Treaty on the European Union. *Subsection (5)* sets out transitional arrangements for circumstances where a Part 1 warrant has been issued before section 157 comes into force.

### ***Section 158: Hostage-taking considerations***

469. *Subsection (1)* repeals section 16 of the 2003 Act. Section 16 provides that, in Part 1 cases, a person's extradition is barred if the territory requesting extradition is a party to the International Convention against the Taking of Hostages, which was opened for signature at New York on 18 December 1979, and certain conditions apply. This ground of refusal is not included in the EAW Framework Decision and, as such, the repeal of section 16 of the 2003 Act will bring the law in the UK fully into line with the EAW Framework Decision.
470. *Subsection (2)* makes a consequential amendment to section 11(1), which lists the various bars to extradition, removing the reference to section 16. *Subsection (3)* sets out transitional arrangements for circumstances where a Part 1 warrant has been issued before section 158 is brought into force.

### ***Section 159: Request for temporary transfer etc***

471. This section inserts new section 21B (Request for temporary transfer etc) into the 2003 Act. This new section transposes Articles 18 and 19 of the EAW Framework Decision.
472. New section 21B applies in Part 1 cases where the EAW has been issued for the purposes of prosecuting the person for an offence. It will allow, with both the requested

person's and the issuing State's consent, the person's temporary transfer to the issuing State or for the person to speak with the authorities in that State whilst he or she remains in the UK (for example, by video link). Either party will be able to make a request to this effect (new section 21B(2) and (3)). The judge must, if the judge thinks it necessary to allow the other party to consider whether to consent to a request, adjourn proceedings for up to seven days (new section 21B(4)). If that party gives consent, the judge must adjourn proceedings for as long as seems necessary to allow the temporary transfer or conversation to take place (new section 21B(5)(b)). A person will not be able to make a request for temporary transfer if he or she has already consented to a request by the issuing State for temporary transfer (and likewise as regards speaking with the authorities of the issuing State whilst remaining in the UK) (new section 21B(7)). Similarly, a person will only be able to make one request for temporary transfer (and one request to speak with the authorities of the issuing State whilst remaining in the UK) (new section 21B(8)).

473. The effect of this provision will, in some cases, be likely to be the withdrawal of the EAW; for example, in cases where, having spoken with the person, the issuing State decides that he or she is not the person they are seeking or that he or she did not in fact commit the offence in question. In other cases, where extradition goes ahead, the person may spend less time in pre-trial detention, as some of the questions which need to be asked and the processes which need to happen ahead of the trial could take place during or as a result of the temporary transfer or conversation.

### ***Section 160: Appeals***

474. *Subsections (1), (3) and (5)* amend sections 26 (appeal against a judge's decision to order extradition in Part 1 cases), 103 (appeal against a judge's decision to send a case to the Secretary of State in Part 2 cases) and 108 (appeal against decision of the Secretary of State to order extradition in Part 2 cases) of the 2003 Act respectively. *Subsections (2), (4) and (6)* amend sections 28 (appeal against discharge at extradition hearing in Part 1 cases), 105 (appeal against discharge at extradition hearing in Part 2 case) and 110 (appeal against discharge by Secretary of State in Part 2 cases) of the 2003 Act respectively.
475. The effect of the amendments is two-fold. First, they make the requested person's and requesting State's rights of appeal under each of these sections lie only with the leave of the High Court. Second, they set out that the High Court must not refuse to entertain an application for leave to appeal by the requested person solely because it has been submitted outside the normal time period, if the person did everything reasonably possible to ensure that the notice was given as soon as it could be. Normally, notice of appeal must be given within seven days of the extradition order being made in Part 1 cases, and within 14 days of the date on which the Secretary of State informs the person of the order in Part 2 cases.
476. *Subsection (5)* also makes a technical change to section 108 of the 2003 Act to ensure the above amendment to that section takes into account changes made to that section by the Crime and Courts Act 2013.

### ***Section 161: Judge informed after extradition hearing or order that person is charged with offence or serving sentence in United Kingdom***

477. This section inserts new sections 36A, 36B, 118A and 118B into the 2003 Act.
478. The purpose of these new sections is to ensure that where a judge is informed after the end of an extradition hearing (in a Part 1 case) or after extradition has been ordered (in a Part 2 case) that the person to be extradited has been charged with an offence in the UK, his or her extradition *must* be postponed until the conclusion of the UK proceedings. Similarly, if a judge is informed after the end of the hearing or after extradition has been ordered that the person is serving a sentence of imprisonment or another form of detention in the UK, the judge *may* postpone extradition until the person is released from

detention. At present, if, for example, a person is on bail pending his or her surrender to another country and he or she commits a crime in the UK before extradition, he or she must still be extradited no matter how serious the offence is. After that, the UK can either seek the person's temporary surrender or wait until the person has served the sentence in the requesting State. The new provision means that, in such cases, the domestic case must be dealt with first. This is in line with the legislation that applies where such circumstances come to light before the end of the extradition hearing or before extradition is ordered.

### **Section 162: Asylum etc**

479. *Subsections (1) and (2)* amend sections 39 and 121 of the 2003 Act respectively, to ensure that a person who has made an asylum claim (either before or after the initiation of extradition proceedings) must not be extradited before that claim has been finally determined. Sections 39 and 121 currently apply only as regards an asylum claim made after the start of extradition proceedings.
480. *Subsection (3)* amends section 93 of the 2003 Act (which deals with the Secretary of State's consideration of Part 2 cases, once the judge has sent the case to the Secretary of State). It gives the Secretary of State the power to discharge the person if the person has been granted: (i) refugee status, or (ii) leave on the ground that it would be a breach of Article 2 or 3 of the European Convention on Human Rights to remove him or her to the requesting territory. This mirrors the powers which the Secretary of State has under section 70 of the 2003 Act, which applies at the initial stage of proceedings (that is, when the Secretary of State receives a request and must decide whether to issue a certificate). This amendment will ensure that people who are granted status or leave after the certificate has been issued can be discharged.

### **Section 163: Consent to extradition not to be taken as a waiver of speciality rights**

481. This section repeals sections 45(3) and 128(5) of the 2003 Act.
482. The effect of these repeals will be to ensure that when a person consents to his or her extradition, he or she does not thereby lose the benefit of any speciality protection he or she would otherwise have. Speciality protection ensures a person is, in general, only proceeded against for the offence or offences listed in the extradition request. At present, sections 45(3) (for Part 1 cases) and 128(5) (for Part 2 cases) provide that a person waives speciality protection when he or she consents to extradition. Removing this waiver will enable those who wish to be extradited speedily to be surrendered quickly without risking being tried for any other alleged offences. It is anticipated that this will increase the number of people who consent to extradition at their initial hearing, reducing the costs associated with onward legal challenge.

### **Section 164: Definition of "extradition offence"**

483. *Subsection (1)* substitutes new sections 64 and 65 of the 2003 Act for the existing ones. Section 64 defines "extradition offence" for Part 1 cases where the person has not been sentenced. Section 65 defines "extradition offence" for Part 1 cases where the person has been sentenced. *Subsection (2)* inserts new subsection (1A) in section 66 of the 2003 Act (which supplements sections 64 and 65). *Subsection (3)* substitutes new subsections (1) to (5) in section 137 of the 2003 Act for the existing ones. Section 137 defines "extradition offence" for Part 2 cases where the person has not been sentenced. *Subsection (4)* inserts new subsection (7A) into that section. *Subsection (5)* substitutes new subsections (1) to (5) in section 138 of the 2003 Act for the existing ones. Section 138 defines "extradition offence" for Part 2 cases where the person has been sentenced. *Subsection (6)* inserts new subsection (7A) into that section.
484. These amendments to the 2003 Act will, first, simplify the existing definitions of "extradition offence", which are long and complex.

485. Second, they will make clear that in all cases where part of the conduct took place in the UK, that conduct must be criminalised in the UK for extradition to be possible. “Dual criminality” is already a requirement in all cases except those where the conduct falls within the European Framework List (that is, the list of conduct set out in Schedule 2 to the 2003 Act). The changes simply clarify that even in European Framework List cases, *where part of the conduct took place in the UK*, dual criminality is required.
486. Third, they will set out that, in Part 1 cases, where the conduct takes place outside the issuing State, there is no requirement that in corresponding circumstances equivalent conduct would be punishable, under UK law, with imprisonment or another form of detention for a term of 12 months or a greater punishment. The substituted sections 64(4) and 65(4) deal with these cases. At present, these subsections require that the conduct be punishable under UK law with imprisonment or another form of detention for a term of 12 months or a greater punishment. But that requirement does not appear in the EAW Framework Decision. It will remain the case, however, that the conduct must constitute an extra-territorial offence under UK law.

***Section 165: Extradition to the United Kingdom to be sentenced or to serve a sentence***

487. **Section 165** substitutes a new subsection (2A) in section 142 of the 2003 Act. It sets out the test for the issue of a warrant under Part 3 of the 2003 Act, in respect of a person who has been convicted of an extradition offence in the UK. New subsection (2A) removes the requirement for the person to be “unlawfully at large”, instead requiring that extradition is being sought for sentencing or serving a custodial sentence and that either a domestic warrant has been issued or the person may be arrested without warrant.

***Section 166: Detention of extradited person for trial in England and Wales for other offences***

488. **Section 166** inserts a new section 151B into the 2003 Act to implement Article 3 of the Fourth Additional Protocol to the European Convention on Extradition, a multilateral treaty that governs extradition between Council of Europe Member States, other than where the EAW applies. The UK Government signed the protocol on 6 January 2014. New section 151B provides that a person may be detained whilst a request to waive the rule of speciality is being considered by the State that originally extradited him or her to the UK, provided certain conditions are met. Both States must have made the relevant declaration under the European Convention on Extradition and those declarations must still be in force (new section 151B(2)(a)). The Secretary of State must also give notification of the date on which detention is to begin and such notification must be explicitly acknowledged by the other State (new section 151B(2)(c)). The period of detention may not exceed 90 days beginning on the day the request to waive the rule of speciality is received (new section 151B(4)).

***Section 167: Proceedings on deferred warrant or request etc***

489. This section amends sections 180 and 181 of the 2003 Act to ensure that in cases where there are competing extradition requests and one case has been deferred pending the outcome of the other, a judge can only resume proceedings in the deferred cases, or order that extradition is no longer deferred, in cases where the competing request has been disposed of in the requested person’s favour.

***Section 168: Non-UK extradition: transit through the United Kingdom***

490. This section inserts new sections 189A to 189E into the 2003 Act.
491. New section 189A makes provision for the issue of certificates to facilitate the transit through the United Kingdom of a person who is being extradited from one territory to another territory (where neither of those territories is the United Kingdom). Where the destination territory is a Part 1 territory, it will be for the National Crime Agency

to issue a certificate. In any other case, it will be for the Secretary of State to issue a certificate. A certificate will authorise a constable or other authorised officer to escort the person from one form of transportation to another, to take the person into custody to facilitate the transit and/or to search the person (and any item in his or her possession) for (and seize) any item which the person may use to cause physical injury (or, in a case where he or she has been taken into custody, to escape from custody).

492. New section 189B deals with cases where a person is being extradited from one territory to another (where neither of those territories is the United Kingdom) and he or she makes an unscheduled arrival in the United Kingdom. It allows a constable to take the person into custody, for a maximum period of 72 hours, to facilitate the transit of the person through the United Kingdom. There are similar search and seizure powers as appear in new section 189A.
493. New section 189C sets out that the powers in sections 189A and 189B include power to use reasonable force where necessary. It also makes clear that the search powers in those sections do not allow a constable or other authorised officer to require a person to remove any clothing other than an outer coat, jacket, headgear or gloves. Finally, it allows any item seized under those sections to be retained while the person is in transit.
494. New section 189D places a duty on the Secretary of State to issue a code of practice governing the exercise of the powers in new sections 189A and 189B and the retention, use and return of anything seized under those sections. The Secretary of State is required to publish the code in draft form, consider any representations made on the draft and, if considered appropriate, amend the code accordingly. The Secretary of State can then bring the code into effect by order which, by virtue of the amendment made to section 223 of the 2003 Act by paragraph 122 of Schedule 11, is subject to the affirmative resolution procedure. The Secretary of State may revise any such code, using the same procedures as described above. Failure by a police constable or other authorised officer to adhere to any code issued under new section 189D will not of itself make the officer liable under either criminal or civil proceedings. A code of practice made under this section can be admitted in court as evidence. Finally, new section 189D makes provision to deal with the case where the Secretary of State publishes a draft code before the section comes into force.
495. New section 189E defines various terms used in new sections 189A to 189D. Subsection (1) defines an “authorised officer” as a constable or a person who is of a description specified by the Secretary of State by order. Any such order would be subject to the affirmative resolution procedure (see paragraph 122 of Schedule 11).

### ***Section 169: Extradition to a territory that is party to an international Convention***

496. **Section 169** substitutes a new section 193 of the 2003 Act to enable the Secretary of State to designate international Conventions and specify conduct in relation to those conventions. The original section 193 allowed the Secretary of State to designate territories which are parties to Conventions. However, as territories frequently sign up to Conventions, the section proved difficult to operate.
497. Under the new section 193, the Secretary of State will only be able to designate Conventions to which the UK is a party and only specify conduct to which the relevant Convention applies. In the event that a party to one of those Conventions then made an extradition request for a person, it would be open to the Secretary of State to certify that: (i) the requesting State was a party to a Convention designated under section 193; and (ii) the conduct in the request was conduct specified in the designation order for the relevant convention. The effect would be that the 2003 Act would apply to the person’s extradition as if the requesting territory were a territory designated under Part 2 of the Act (with certain modifications, as set out in section 193(4)). Examples of Conventions that could be designated include the UN Conventions on terrorism, the UN Convention against corruption and the UN Convention on transnational organised crime.

***Section 170: Electronic transmission of European arrest warrant etc***

498. This section amends section 204 of the 2003 Act, which makes provision for the information contained in an EAW to be transmitted to the United Kingdom electronically. This is intended to support the implementation of the second generation Schengen Information System (“SIS II”). Under SIS II, the designated authority (currently the National Crime Agency) will be required to consider whether to issue a certificate under section 2 of the 2003 Act on the basis of the information received electronically under the SIS II process. This information will be an English language summary of the information contained within the EAW, together with the original language version of the EAW itself. The amendments to section 204 of the 2003 Act allow certification to take place on the basis of this English language summary and the original language version of the EAW, rather than a translation of the full contents of the EAW.

***Section 171: Discount on sentence for time spent in custody awaiting extradition: England and Wales***

499. This section will ensure that time served in custody prior to extradition from a Part 1 territory, and purely for the purposes of extradition, is counted as time served towards the UK sentence in all situations, as is required under Article 26 of the EAW Framework Decision. As it stands, where a person who was convicted and sentenced in the UK, but who is subsequently unlawfully at large in another EU Member State, the Secretary of State for Justice has discretion as to whether to count time awaiting extradition against the sentence. Section 171 removes the Secretary of State’s discretion.
500. **Section 171** inserts new subsection (3A) into section 49 of the Prison Act 1952. The new subsection provides that if a person who was unlawfully at large has been extradited to the UK from a Part 1 territory for the purpose of serving a sentence, the Secretary of State must exercise his power to count the time spent in custody awaiting extradition against the sentence. However, only time spent in custody solely awaiting extradition can be credited. If the requested person was also held prior to extradition for another reason, for example, on a domestic charge, this will not be credited. In all other situations, in relation to Part 1 territories, time served in custody awaiting extradition is already counted against the UK sentence.

***Section 172: Discount on sentence for time spent in custody awaiting extradition: Scotland***

501. **Section 172** makes corresponding provision for Scotland, by way of amendments to section 210 of the Criminal Procedure (Scotland) Act 1995. Section 210 of that Act makes provision for taking into account time spent in custody awaiting extradition to the United Kingdom, in cases where a person is extradited to be sentenced. As amended, it will refer to the 2003 Act rather than the Extradition Act 1989 as at present. It only applies in cases covered by Part 1 of the 2003 Act.

***Section 173: Discount on sentence for time spent in custody awaiting extradition: Northern Ireland***

502. **Section 173** makes provisions for Northern Ireland similar to those that section 171 makes for England and Wales. In Northern Ireland law, section 38 of the Prison Act (Northern Ireland) 1953 already provides that in cases where a person is sentenced *prior* to extradition from an EU Member State, a discount on sentence is given for time spent in custody awaiting extradition. Section 173 of the Act provides that a discount will also be given where the person is sentenced *post*-extradition.

***Section 174: Criminal Procedure Rules to apply to extradition proceedings etc***

503. This section will make appeals to the High Court in extradition cases subject to the Criminal (rather than Civil) Procedure Rules. This will mean that the whole extradition



process is governed by the same procedure rules. Extradition hearings before a District Judge are already conducted according to the Criminal Procedure Rules.

504. *Subsection (1)* amends section 68 of the Courts Act 2003 which defines a criminal court for the purposes of determining those courts to which Criminal Procedure Rules are to apply; the amendment includes within the definition of a criminal court the High Court when exercising its jurisdiction under the 2003 Act. *Subsection (2)* amends section 1 of the Civil Procedure Act 1997 so as to exclude the High Court when exercising its jurisdiction under the 2003 Act from the list of courts subject to the civil procedure rules. *Subsection (3)* inserts new subsection (9) into section 157 of the 2003 Act so as to provide that criminal procedure rules may make provision about an application for a production order in an extradition case. Such an order, which is made by a Judge, requires the person to whom it is directed to give an investigator access to material that is relevant to an investigation but which the person could not otherwise lawfully disclose, for example, banking or other financial records. *Subsection (4)* inserts new subsection (10) in section 160 of the 2003 Act so as to provide that civil procedure rules may make provision about an application for and issue of a search and seizure warrant relating to special procedure material or excluded material in an extradition case. In summary, “excluded” material means personal records, medical samples and material created by a journalist, which someone holds in confidence and which relates to someone else; and “special procedure” material means other material created for professional or business purposes which someone holds in confidence.

## **Part 13: Criminal Justice and Court Fees**

### ***Section 175: Compensation for miscarriages of justice***

505. Section 133 of the Criminal Justice Act 1988 requires the Secretary of State to pay compensation where a person’s conviction for a criminal offence has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice.
506. *Subsection (1)* inserts new subsection (1ZA) into section 133 of the Criminal Justice Act 1988, providing a statutory definition of “miscarriage of justice”. In accordance with this new provision, the Secretary of State would only pay compensation for a “miscarriage of justice” where the new or newly discovered fact (on the basis of which the conviction was reversed) shows beyond reasonable doubt that the person did not commit the offence of which they were convicted. This will have effect for cases where the conviction took place in England and Wales, or for Northern Ireland cases where section 133(6H) of the 1988 Act applies. Section 133(6H) applies to those applications for compensation in Northern Ireland involving sensitive national security information which are determined by the Secretary of State rather than the Department of Justice in Northern Ireland.
507. *Subsection (2)(a)* specifies that the new provision will apply to the determination of any application for compensation made on or after the date on which the section comes into force.
508. *Subsection (2)(b)* provides the new provision will also apply to an application made before the date the section comes into force, but which has not been finally determined by the Secretary of State by that date. This will include applications which, though originally determined before the section comes into force, subsequently fall to be reconsidered by the Secretary of State, for example, following a successful application for judicial review.

### ***Section 176: Low-value shoplifting***

509. *Subsection (3)* inserts new section 22A into the Magistrates’ Courts Act 1980, which provides that low-value shoplifting is a summary offence (new section 22A(1)). This is subject to one exception: an adult defendant is to be given the opportunity to elect

Crown Court trial, and if the defendant so elects, the offence is no longer summary and will be sent to the Crown Court (new section 22A(2)). Otherwise, the effect of new section 22A is that offences of low-value shoplifting cannot be sent to the Crown Court for trial or committed there for sentence; they will attract a maximum penalty of six months' custody; and they will be brought within the procedure in section 12 of the Magistrates' Courts Act 1980 that enables defendants in summary cases to be given the opportunity to plead guilty by post. Shoplifting is not a specific offence as such but constitutes theft under section 1 of the Theft Act 1968; accordingly new section 22A(3) defines shoplifting for the purposes of this provision, which applies if the value of the stolen goods is £200 or less. New section 22A(4) provides that for these purposes the value of the goods is to be determined by the price at which they were offered for sale rather than the intrinsic value, and also for the value involved in several shoplifting offences to be aggregated where they are charged at the same time. So, for example, where a person is charged with three counts of shoplifting, having allegedly taken £80 worth of goods from three separate shops, the new procedure would not apply in that case as the aggregate sum exceeds the £200 threshold.

510. New section 22A(5) provides that for offences of low-value shoplifting tried summarily (as they must be unless the defendant elects), the maximum penalty is six months' imprisonment or a fine. New section 22A(6) prevents appeals from being brought on the basis of disputed decisions as to whether the offence was low-value shoplifting. New section 22A(7) provides that an offence of shoplifting includes secondary offences such as aiding and abetting.
511. *Subsection (4)* amends section 143 of the Magistrates' Court Act 1980 to enable the £200 threshold to be uprated in line with inflation. An order made under section 143 is subject to the negative resolution procedure.
512. *Subsection (5)* amends section 1 of the Criminal Attempts Act 1981 to provide that it is an offence to attempt to commit low-value shoplifting. That section otherwise only applies to attempts to commit offences which are indictable offences.
513. *Subsection (6)* provides that certain powers conferred by the Police and Criminal Evidence Act 1984 ("PACE") on the police and others in respect of indictable offences remain available in respect of low-value shoplifting, notwithstanding that it is reclassified as summary-only. The powers concerned include a power of arrest exercisable by a person other than a constable (for example, a store detective), powers enabling police officers to enter and search premises and vehicles in various circumstances for the purposes of searching for evidence in connection with an investigation or arresting individuals suspected of committing offences, and powers enabling a magistrate to authorise such entry and search.
514. *Subsection (7)* is a further consequential which makes a parallel amendment to the provisions which correspond to PACE for Service law.
515. *Subsection (8)* provides that the amendments do not apply to cases in which proceedings have been instituted before the date of commencement.

### ***Section 177: Marital coercion***

516. **Section 177** repeals section 47 of the Criminal Justice Act 1925 (coercion of married woman by husband) to abolish the defence of marital coercion in England and Wales.

### ***Section 178: Protection arrangements for persons at risk***

517. Chapter 4 of Part 1 of the Serious Organised Crime and Police Act 2005 ("SOCPA") makes provision for the protection of persons involved in investigations and legal proceedings. Section 82 enables a "protection provider" (usually in practice the police) to make appropriate protection arrangements for a person whose safety is at risk by virtue of being a person specified in Schedule 5 to SOCPA. Those specified in

Schedule 5 include witnesses, jurors and other people who are or have been involved in legal proceedings, law enforcement officers and other persons involved in the administration of justice, and the family of such persons or others with a close personal relationship with them.

518. **Section 178** amends section 82 of SOCPA so as to enable a protection provider to make protection arrangements for anyone whose safety may be at risk by virtue of another person's possible or actual criminal conduct. The making of such arrangements will not be dependent on being a person specified in Schedule 5. In particular, this would enable arrangements to be made to prevent a person from becoming a victim of a crime where the nature of the threat is such that they do not come within any of the categories in Schedule 5 (for example, an actual or potential witness in legal proceedings) but protection arrangements are nonetheless considered to be necessary.
519. *Subsection (2)(b)* amends section 82(1) of SOCPA so as to allow protection arrangements to be made in respect of any person the protection provider reasonably believes is at risk from the criminal conduct, or possible criminal conduct, of another person. Criminal conduct is defined in new section 82(5A) (inserted by *subsection (2)(c)*) as conduct which would constitute an offence in England and Wales or Scotland (regardless of whether it was committed there).
520. New section 82(5B) (also inserted by *subsection(2)(c)*) makes clear that there is nothing to prevent arrangements being made under this provision in respect of a person who has formerly been subject to non-statutory protection arrangements. *Subsection (7)* provides that the provisions in this section will not affect protection arrangements made under section 82 of SOCPA before the coming into force of the section.
521. *Subsections (2)(b)* and *(3) to (6)* make consequential repeals to Chapter 4 of Part 1 of SOCPA, in particular they repeal Schedule 5 to SOCPA (made redundant by the wider power to make protection arrangements) and the redundant transitional provisions in sections 91 and 92 of SOCPA.

### ***Section 179: Surcharges: imprisonment in default and remission of fines***

522. Under section 82(1) of the Magistrates' Court Act 1980 ("the 1980 Act"), a magistrates' court may, at the point that it convicts a person, commit the offender to prison in a limited number of circumstances for a default in paying certain financial impositions including the Victim Surcharge payable under section 161A of the Criminal Justice Act 2003. These circumstances include, under section 82(1)(c), a case where the offender is sentenced to a term of immediate imprisonment or detention in a young offenders' institution, or is serving such a term at the time he or she is convicted.
523. *Subsection (1)* inserts a new subsection (1A) into section 82 of the 1980 Act to prevent section 82(1)(c) from applying to the Victim Surcharge. This will ensure that the Victim Surcharge may not be discharged as extra days added to an immediate sentence of imprisonment.
524. Where a fine has been imposed following conviction in either a magistrates' court or the Crown Court, they can currently use the powers in section 85 of the 1980 Act and section 165 of the Criminal Justice Act to remit the whole or any part of the fine when the court believes, for example, that a change of circumstances of the offender warrants such action. These provisions currently determine what should happen to other impositions which are dependent on the amount of a fine where it is remitted (for example, number of hours of unpaid work a person may be required to undertake to discharge an unpaid fine). However, no provision is currently made for making a corresponding reduction in the amount of the Victim Surcharge where the associated fine has been reduced or nullified in exercise of these powers to remit a fine. *Subsections (2)* and *(3)* amend section 85 of the 1980 Act and section 165 of the Criminal Justice Act respectively to address this lacuna. New section 85(3A) of the 1980 Act and new section 165(5) of the Criminal Justice Act 2003 direct the court when remitting a fine

to make a consequential adjustment of the previously ordered Surcharge. Thus, for example, where the court originally ordered a fine of £500, with an accompanying Surcharge of £50, and that fine is subsequently reduced to £300, the Surcharge must be reduced by the court to £30.

### ***Section 180: Court and tribunal fees***

525. This section confers on the Lord Chancellor a power to make regulations in connection with court and tribunal fees. *Subsection (1)* provides the Lord Chancellor with a power, subject to Treasury agreement, to prescribe fees under certain enactments of an amount which is designed to exceed the cost to which those activities relate (“enhanced fees”).
526. *Subsection (2)* sets out the enactments under which the power to charge an enhanced fee applies. Its effect is that such fees can be charged for things done in the civil and family courts in England and Wales, tribunals, the Office of the Public Guardian and the Court of Protection.
527. *Subsection (3)* requires the Lord Chancellor in using this power to have regard to:
- the financial position of the courts and tribunals; and
  - the competitiveness of the legal services market.
528. *Subsections (5)* and *(6)* set out the purpose for charging enhanced fees, namely, financing the efficient and effective running of the relevant court and tribunal services and of the efficient and effective discharge of the functions of the Office of the Public Guardian.
529. *Subsections (7)* and *(8)* provide that any statutory instrument brought forward to introduce an enhanced fee is subject to the affirmative resolution procedure, except where the increase is made solely to reflect inflation, in which case the negative resolution procedure applies.

## **Part 14: General**

### ***Section 181: Amendments***

530. *Subsection (1)* introduces Schedule 11 which contains minor and consequential amendments to other enactments.
531. *Subsection (2)* enables the Secretary of State, by order, to make provision consequential upon the Act, including consequential amendments to other enactments. Any such order which amends primary legislation is subject to the affirmative resolution procedure; otherwise the negative resolution procedure applies (see section 182(2) and (4)).
532. *Subsection (3)* enables the Secretary of State, by order, to make amendments to sections 136 and 142 of the Sexual Offences Act 2003 that are consequential on the coming into force of any amendments to Part 2 of that Act made by the Criminal Justice Act (Northern Ireland) 2013.
533. *Subsection (4)* enables the Welsh Ministers, by order, to make provision consequential upon the provisions in sections 94 to 98 and 100 of the Act (and the associated provisions in Schedules 3 and 11), including consequential amendments to other enactments. Any such order which amends primary legislation is subject to the affirmative resolution procedure; otherwise the negative resolution procedure applies (see section 182(3) and (5)).

### ***Schedule 11: Minor and consequential amendments***

534. *Paragraph 43* amends Schedule 7 to the Government of Wales Act 2006 (legislative competence of the Welsh Assembly) to update the reference to ‘anti-social behaviour orders’ to reflect the changes in this Act. This maintains the status quo as regards

*These notes refer to the Anti-Social Behaviour, Crime and Policing Act 2014 (c.12) which received Royal Assent on 13 March 2014*

the legislative competence of the National Assembly for Wales (see Written Minister Statement of 11 February 2014, Official Report column 44WS).

535. *Paragraphs 84 and 85* amend the Police Pensions Act 1976 to enable a senior police officer appointed to the College of Policing to continue to remain a member of the police pension scheme.
536. *Paragraph 92* amends Part 6 of Schedule 1 to the Freedom of Information Act 2000 to include the College of Policing and the Police Remuneration Review Body as bodies subject to that Act.
537. *Paragraph 95* amends Schedule 3 to the Police Reform Act 2002 to ensure that certain reporting requirements applying to the IPCC are subject to the consent framework set out in new paragraph 19ZD of that Schedule (inserted by section 137). This consent framework ensures that the IPCC cannot disclose certain information, which has been provided to it pursuant to an information notice, to a third party without the consent of the relevant authority who provided the information in question.
538. *Paragraph 96* amends Part 1 of Schedule 19 to the Equality Act 2010 to include the College of Policing as one of the bodies subject to the equality duty.
539. *Paragraph 97* makes consequential amendments to section 7 of the Police Reform and Social Responsibility Act 2011, arising from the provisions in section 143. The effect is to broaden the scope of what must be included in the annual Police and Crime Plan that elected local policing bodies are required to publish under section 6 of the 2011 Act. At present section 6(1)(f) of the 2011 Act requires the Police and Crime Plan to specify the crime and disorder reduction grants which the elected local policing body is to make in accordance with the powers in section 9 of that Act. The new section 7(1)(ea) and substituted section 7(1)(f) instead requires the Police and Crime Plan to specify the services commissioned and provided under the new powers in subsection (1) of section 143 and any grants made under that section.
540. *Paragraph 98* repeals section 9 of the 2011 Act which enables local policing bodies to make crime and disorder reduction grants. Such power is now superseded by the commissioning power conferred by section 143(3).
541. *Paragraph 101* makes a consequential amendment to the Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013, in relation to consultation by Scottish Ministers on regulations concerning police pensions and other benefits, to reflect the replacement in Scotland of the Police Negotiating Board for the United Kingdom with the Police Negotiating Board for Scotland.

***Section 182: Orders and regulations***

542. This section sets out the parliamentary procedure in respect of various order- and regulation-making powers provided for in the Act.

***Section 184: Extent***

543. This section sets out the extent of the provisions in the Act (see paragraphs 110 to 113 for further details).

***Section 185: Commencement***

544. This section provides for commencement (see paragraphs 547 to 549 for further details).
545. *Subsections (7), (8) and (9)* enable the Secretary of State, the Welsh Ministers and Scottish Ministers respectively, by order, to make transitional, transitory or saving provisions in connection with the coming into force of the provisions of the Act. Such an order is not subject to any parliamentary procedure.

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***Section 186: Short title***

546. This section sets out the short title for the Act.