



# Policing and Crime Act 2017

## 2017 CHAPTER 3

### PART 1

#### EMERGENCY SERVICES COLLABORATION

### CHAPTER 1

#### COLLABORATION AGREEMENTS

## 1 Collaboration agreements

- (1) A collaboration agreement may be made by—
  - (a) one or more persons within a paragraph of subsection (2), and
  - (b) one or more persons within another paragraph of that subsection.
- (2) Those persons are—
  - (a) an ambulance trust in England,
  - (b) a fire and rescue body in England, and
  - (c) a police body in England.
- (3) A collaboration agreement is an agreement in writing that sets out how the parties to the agreement will work together in discharging their functions.
- (4) Subsection (1) does not prevent a person other than a person listed in subsection (2) from being a party to a collaboration agreement.
- (5) This section is subject to section 3 (collaboration agreements: specific restrictions).
- (6) Section 4 makes further provision about collaboration agreements.

#### Commencement Information

**II** [S. 1](#) in force for specified purposes at Royal Assent, see [s. 183](#)

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## 2 Duties in relation to collaboration agreements

- (1) A relevant emergency service in England (“the relevant service”) must keep under consideration whether entering into a collaboration agreement with one or more other relevant emergency services in England could be in the interests of the efficiency or effectiveness of that service and those other services.
- (2) If the relevant service considers that entering into a collaboration agreement with one or more other relevant emergency services in England could be in the interests of the efficiency or effectiveness of that service and those other services (“the proposed collaboration”), the relevant service must notify those other services of the proposed collaboration.
- (3) The relevant service and the other services (“the proposed parties”) must consider whether the proposed collaboration would be in the interests of the efficiency or effectiveness of the proposed parties.
- (4) Subsection (5) applies if—
  - (a) a proposed party is of the view that the proposed collaboration would be in the interests of its efficiency or effectiveness (if it were to give effect to the proposed collaboration, or to give effect to it so far as it relates to that party), and
  - (b) at least one other proposed party is of the view that the proposed collaboration would be in the interests of its efficiency or effectiveness (if it were to give effect to the proposed collaboration, or to give effect to it so far as it relates to that party).
- (5) Each proposed party which is of that view must give effect to the proposed collaboration, or give effect to it so far as it relates to that party, by entering into a collaboration agreement (if the party has power to do so).
- (6) In the application of this section to a local policing body, references to the efficiency or effectiveness of that body include the efficiency or effectiveness of the police force it is responsible for maintaining.
- (7) This section is subject to section 3 (collaboration agreements: specific restrictions).

### Commencement Information

**I2** [S. 2](#) in force for specified purposes at Royal Assent, see [s. 183](#)

## 3 Collaboration agreements: specific restrictions

- (1) Section 2 does not require a relevant emergency service in England to enter into a collaboration agreement if the service is of the view that the proposed collaboration would have an adverse effect on public safety or otherwise have an adverse effect on its efficiency or effectiveness.
- (2) Section 2 does not require an ambulance trust in England to enter into a collaboration agreement that would in the view of that trust have an adverse effect on—
  - (a) its ability to exercise any of its functions other than its functions of providing an emergency ambulance service, or
  - (b) the health service in England (within the meaning of the National Health Service Act 2006).

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- (3) Section 2 applies to an ambulance trust in England only so far as it provides an emergency ambulance service.
- (4) Subsection (5) applies where an ambulance trust in England is considering whether a proposed collaboration would be in the interests of the efficiency or effectiveness of the trust for the purposes of section 2.
- (5) The ambulance trust must have particular regard to any effect that entering into a collaboration agreement pursuant to the proposed collaboration would have on—
  - (a) its ability to exercise any of its functions other than its functions of providing an emergency ambulance service, and
  - (b) the health service in England (within the meaning of the National Health Service Act 2006).
- (6) The London Fire Commissioner must consult the Mayor of London before entering into a collaboration agreement (unless the Mayor is a party to the agreement).
- (7) A combined authority that exercises the functions of a fire and rescue authority by virtue of section 105 or 105A of the Local Democracy, Economic Development and Construction Act 2009 may only enter into a collaboration agreement where the functions of the authority to which the agreement relates are functions of a fire and rescue authority that the combined authority is entitled to exercise.
- (8) An elected mayor who exercises the functions of a fire and rescue authority by virtue of section 107D of the Local Democracy, Economic Development and Construction Act 2009 may only enter into a collaboration agreement where the functions of the mayor to which the agreement relates are functions of a fire and rescue authority that the mayor is entitled to exercise.
- (9) An elected mayor who exercises the functions of a police and crime commissioner by virtue of section 107F of the Local Democracy, Economic Development and Construction Act 2009 may only enter into a collaboration agreement where the functions of the mayor to which the agreement relates are functions of a police and crime commissioner that the mayor is entitled to exercise.
- (10) A chief officer of police of a police force may not enter into a collaboration agreement unless the local policing body responsible for maintaining that police force also enters into the agreement.
- (11) A local policing body must consult the chief officer of police of the police force which the body is responsible for maintaining before entering into a collaboration agreement (unless that chief officer is a party to the agreement).

#### **Commencement Information**

**I3** [S. 3](#) in force for specified purposes at Royal Assent, see [s. 183](#)

#### **4 Collaboration agreements: supplementary**

- (1) A collaboration agreement may, in particular, make provision about the use, for the purposes of the agreement, of a power of a party to the agreement to—
  - (a) make arrangements for the exercise of the party's functions by another person, or

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- (b) exercise functions jointly with another person.
- (2) A collaboration agreement may include provision for payments to be made by the parties to the agreement for the purposes of facilitating that agreement.
- (3) A party to a collaboration agreement may do anything that is necessary or expedient for the purposes of facilitating the agreement.
- (4) Subsection (3) is subject to any restriction imposed on a party by, or by virtue of, an enactment or rule of law.
- (5) A collaboration agreement may not include provision for the delegation of a function where that function may not otherwise be delegated.
- (6) The delegation of a function pursuant to a collaboration agreement does not affect the responsibility of any party to the agreement for the exercise of its functions.
- (7) A collaboration agreement must make provision for a party to withdraw from the agreement where in the view of that party the agreement is no longer in the interests of its efficiency or effectiveness.
- (8) A collaboration agreement may be—
  - (a) varied with the agreement of all of the parties to the agreement, or
  - (b) replaced by a subsequent collaboration agreement.

#### **Commencement Information**

**I4** [S. 4](#) in force for specified purposes at Royal Assent, see [s. 183](#)

## **5 Collaboration agreements: definitions**

- (1) This section has effect for the purposes of this Chapter.
- (2) “Collaboration agreement” has the meaning given by section 1(3).
- (3) “Relevant emergency service in England” means—
  - (a) an ambulance trust in England,
  - (b) a fire and rescue body in England, or
  - (c) a police body in England.
- (4) “Ambulance trust in England” means—
  - (a) an NHS trust all or most of whose hospitals, establishments and facilities are in England and which provides ambulance services, or
  - (b) an NHS foundation trust which provides such services.
- (5) “Fire and rescue body in England” means—
  - (a) a fire and rescue authority in England,
  - (b) a combined authority that exercises the functions of a fire and rescue authority by virtue of section 105 or 105A of the Local Democracy, Economic Development and Construction Act 2009, or
  - (c) an elected mayor who exercises the functions of a fire and rescue authority by virtue of section 107D of that Act.

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- (6) “Fire and rescue authority in England” has the same meaning as in the Fire and Rescue Services Act 2004.
- (7) “Police body in England” means—
- (a) a police and crime commissioner for a police area in England,
  - (b) a chief constable of a police force for a police area in England (see Schedule 1 to the Police Act 1996),
  - (c) the Mayor's Office for Policing and Crime,
  - (d) the Commissioner of Police of the Metropolis,
  - (e) the Common Council of the City of London in its capacity as police authority for the City of London police area,
  - (f) the Commissioner of Police for the City of London, or
  - (g) an elected mayor who exercises the functions of a police and crime commissioner by virtue of section 107F of the Local Democracy, Economic Development and Construction Act 2009.
- (8) “Chief officer” means—
- (a) a chief constable of a police force for a police area in England (see Schedule 1 to the Police Act 1996),
  - (b) the Commissioner of Police of the Metropolis, or
  - (c) the Commissioner of Police for the City of London.
- (9) “Local policing body” means—
- (a) a police and crime commissioner for a police area in England,
  - (b) the Mayor's Office for Policing and Crime,
  - (c) the Common Council of the City of London in its capacity as police authority for the City of London police area, or
  - (d) an elected mayor who exercises the functions of a police and crime commissioner by virtue of section 107F of the Local Democracy, Economic Development and Construction Act 2009.
- (10) “The City of London police area” means the City of London as defined for the purposes of the Acts relating to the City of London police force.

**Modifications etc. (not altering text)**

- C1** S. 5(7)(a)(9)(a) excluded (8.5.2017) by [The Greater Manchester Combined Authority \(Transfer of Police and Crime Commissioner Functions to the Mayor\) Order 2017 \(S.I. 2017/470\)](#), art. 1(2), **Sch. 2 para. 23**

**Commencement Information**

- I5** S. 5 in force for specified purposes at Royal Assent, see [s. 183](#)

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## CHAPTER 2

### POLICE AND CRIME COMMISSIONERS ETC: FIRE AND RESCUE FUNCTIONS

#### 6 **Provision for police and crime commissioner to be fire and rescue authority**

Schedule 1 makes provision for a person who is the police and crime commissioner for an area to be the fire and rescue authority for that area.

#### **Commencement Information**

**I6** S. 6 in force for specified purposes at Royal Assent, see s. 183

#### 7 **Involvement of police and crime commissioner in fire and rescue authority**

- (1) The Local Government Act 1972 is amended in accordance with subsections (2) to (4).
- (2) In section 102 (appointment of committees) after subsection (5) insert—
  - “(6) Subsection (7) applies in relation to—
    - (a) a committee or sub-committee appointed by a local authority in England wholly or partly for the purposes of discharging functions of a fire and rescue authority,
    - (b) a joint committee appointed by two or more local authorities in England wholly or partly for the purposes of discharging such functions, or
    - (c) a sub-committee appointed by any such committee or joint committee wholly or partly for the purposes of discharging such functions.
- (7) A relevant police and crime commissioner may only be appointed to a committee or sub-committee to which this subsection applies in response to a request made by the commissioner to the appointing authority or authorities or, in the case of a sub-committee, to the appointing committee.
- (8) If a request under subsection (7) is made to an appointing authority or authorities or an appointing committee, they must—
  - (a) consider the request,
  - (b) give reasons for their decision to agree to or refuse the request, and
  - (c) publish those reasons in such manner as they think appropriate.
- (9) A relevant police and crime commissioner may attend, speak at and vote at a meeting of a committee to which the commissioner is appointed in accordance with this section only if and to the extent that the business of the meeting relates to the functions of a fire and rescue authority.
- (10) Subsection (11) defines “relevant police and crime commissioner” for the purposes of this section in relation to—
  - (a) a committee or sub-committee appointed by a local authority,
  - (b) a joint committee appointed by two or more local authorities, or
  - (c) a sub-committee appointed by a committee of a local authority or a joint committee of two or more local authorities.

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- (11) For those purposes “relevant police and crime commissioner” means a police and crime commissioner—
- (a) whose area is the same as, or contains all of, the area of that local authority or (as the case may be) one or more of those local authorities, or
  - (b) all or part of whose area falls within the area of that local authority or (as the case may be) one or more of those local authorities.”
- (3) In Part 1 of Schedule 12 (meetings and proceedings of principal councils) after paragraph 6 insert—
- “6ZA (1) A relevant police and crime commissioner may attend, speak at and vote at a meeting of a principal council in England which is a fire and rescue authority.
- (2) Sub-paragraph (1) applies—
- (a) only if and to the extent that the business of the meeting relates to the functions of the principal council as a fire and rescue authority, and
  - (b) only if the council have consented to the participation of the relevant police and crime commissioner in such meetings in response to a request by the commissioner to do so.
- (3) If a request under sub-paragraph (2)(b) is made to a principal council, the council must—
- (a) consider the request,
  - (b) give reasons for their decision to agree to or refuse the request, and
  - (c) publish those reasons in such manner as they think appropriate.
- (4) If the principal council agree to the request, the relevant police and crime commissioner is to be treated as a member of the council for the purposes of the following provisions of this Schedule in the case of a meeting which relates to the functions of the council as a fire and rescue authority—
- (a) paragraph 3(2);
  - (b) paragraph 4(1A);
  - (c) paragraph 5(3);
  - (d) paragraph 6;
  - (e) paragraph 39;
  - (f) paragraph 40;
  - (g) paragraph 41(3);
  - (h) paragraph 43.
- (5) In this paragraph “relevant police and crime commissioner”, in relation to a principal council, means a police and crime commissioner—
- (a) whose area is the same as, or contains all of, the area of the principal council, or
  - (b) all or part of whose area falls within the area of the principal council.”

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- (4) In Part 1A of Schedule 12 (joint authorities etc) in paragraph 6B (application of Part 1) after “this Schedule” insert “ other than paragraph 6ZA ”.
- (5) The Local Government Act 1985 is amended in accordance with subsections (6) and (7).
- (6) In section 26 (metropolitan county fire and rescue authorities)—
- (a) in subsection (3) for “Each” substitute “ Subject to subsection (5), each ”, and
  - (b) after subsection (4) insert—
    - “(5) A metropolitan county fire and rescue authority may appoint a relevant police and crime commissioner to be a member of the authority.
    - (6) An appointment under subsection (5) may only be made in response to a request by the relevant police and crime commissioner.
    - (7) If a request under subsection (6) is made to a metropolitan county fire and rescue authority, the authority must—
      - (a) consider the request,
      - (b) give reasons for their decision to agree to or refuse the request, and
      - (c) publish those reasons in such manner as they think appropriate.
    - (8) In this section “relevant police and crime commissioner”, in relation to a metropolitan county fire and rescue authority, means a police and crime commissioner—
      - (a) whose area is the same as, or contains all of, the area of the authority, or
      - (b) all or part of whose area falls within the area of the authority.”
- (7) In section 34 (chairman, vice-chairman and clerk of metropolitan county fire and rescue authority) in subsection (7) for the “and” at the end of paragraph (b) substitute—
- “(ba) if the chairman is a police and crime commissioner and the authority and the commissioner have agreed that the commissioner should cease to be a member of the authority, the date agreed by the authority and the commissioner as the date on which the commissioner's membership should cease; and”.
- (8) In section 13 of the Local Government and Housing Act 1989 (voting rights of members of certain committees) after subsection (5) insert—
- “(5ZA) Nothing in this section shall prevent the appointment of a police and crime commissioner as a voting member of—
    - (a) any committee or sub-committee appointed by a local authority in England wholly or partly for the purposes of discharging functions of a fire and rescue authority,
    - (b) any joint committee appointed by two or more local authorities in England wholly or partly for the purposes of discharging such functions, or



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- (c) any sub-committee appointed by any such committee or joint committee wholly or partly for the purposes of discharging such functions.
- (5ZB) In subsection (5ZA) “local authority” does not include—
- (a) a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies,
  - (b) a joint authority which is a metropolitan county fire and rescue authority, or
  - (c) the London Fire Commissioner.”
- (9) In Schedule A1 to the Local Government Act 2000 (executive arrangements in England: further provisions) after paragraph 4 insert—
- “Attendance of police and crime commissioner at meetings**
- 4A (1) A relevant police and crime commissioner may attend, speak at and vote at—
- (a) a meeting of an executive of a local authority which is a fire and rescue authority, or
  - (b) a meeting of a committee of such an executive.
- (2) Sub-paragraph (1) applies—
- (a) only if and to the extent that the business of the meeting relates to the functions of the authority as a fire and rescue authority, and
  - (b) only if the executive has consented to the participation of the relevant police and crime commissioner in such meetings in response to a request by the commissioner to do so.
- (3) If a request under sub-paragraph (2)(b) is made to an executive of a local authority, the executive must—
- (a) consider the request,
  - (b) give reasons for its decision to agree to or refuse the request, and
  - (c) publish those reasons in such manner as it thinks appropriate.
- (4) In this paragraph “relevant police and crime commissioner” means a police and crime commissioner—
- (a) whose area is the same as, or contains all of, the area of the local authority, or
  - (b) all or part of whose area falls within the area of the local authority.”
- (10) Section 3 of the Fire and Rescue Services Act 2004 (creation of combined fire and rescue authority: supplementary) is amended in accordance with subsections (11) and (12).
- (11) In subsection (3)(a) for “or by the Secretary of State” substitute “, by the Secretary of State or, in the case of a combined authority for an area which is wholly within England, by the combined authority ”.
- (12) After subsection (5) insert—

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- “(6) The following provisions apply if a scheme under section 2 provides for members of a combined authority to be appointed by the authority.
- (7) The scheme must provide that a relevant police and crime commissioner may only be appointed as a member of the authority in response to a request by the commissioner.
- (8) The scheme must provide that, if such a request is made to the authority, the authority must—
- (a) consider the request,
  - (b) give reasons for its decision to agree to or refuse the request, and
  - (c) publish those reasons in such manner as it thinks appropriate.
- (9) In this section “relevant police and crime commissioner”, in relation to a combined authority, means a police and crime commissioner—
- (a) whose area is the same as, or contains all of, the area of the authority, or
  - (b) all or part of whose area falls within the area of the authority.”

(13) The Localism Act 2011 is amended in accordance with subsections (14) and (15).

(14) In section 27 (duty to promote and maintain high standards of conduct) after subsection (4) insert—

“(4A) In this Chapter “co-opted member” includes a police and crime commissioner who—

    - (a) is entitled to participate in meetings of a county or district council by virtue of paragraph 6ZA of Part 1 of Schedule 12 to the Local Government Act 1972, or
    - (b) is entitled to participate in meetings of an executive of a county or district council by virtue of paragraph 4A of Schedule A1 to the Local Government Act 2000.”

(15) In section 28 (codes of conduct) after subsection (11) insert—

“(11A) Subsections (11B) to (11D) apply if a police and crime commissioner is a member or co-opted member of a relevant authority in the commissioner's capacity as such.

(11B) Arrangements put in place under subsection (6)(b) by the relevant authority must include provision for an allegation against the commissioner to be referred to the police and crime panel for the commissioner's police area.

(11C) If, in response to an allegation referred to it by virtue of subsection (11B), the police and crime panel makes a report or recommendation to the police and crime commissioner under section 28(6) of the Police Reform and Social Responsibility Act 2011, the panel may also make a report or recommendation on the allegation to the relevant authority.

(11D) The relevant authority must take any such report or recommendation into account in determining—

      - (a) whether the police and crime commissioner has failed to comply with the authority's code of conduct,
      - (b) whether to take action in relation to the commissioner, and

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(c) what action to take.”

**Commencement Information**

**I7** S. 7 in force for specified purposes at Royal Assent, see s. 183

**8 Combined authority mayors: exercise of fire and rescue functions**

- (1) The Local Democracy, Economic Development and Construction Act 2009 is amended in accordance with subsections (2) to (4).
- (2) After section 107E insert—

**“107EA Exercise of fire and rescue functions**

- (1) This section applies to a mayor for the area of a combined authority who—
- (a) by virtue of section 107D(1), may exercise functions which are conferred on a fire and rescue authority in that name (“fire and rescue functions”), and
  - (b) by virtue of section 107F(1), may exercise functions of a police and crime commissioner.
- (2) The Secretary of State may by order make provision—
- (a) authorising the mayor to arrange for the chief constable of the police force for the police area which corresponds to the area of the combined authority to exercise fire and rescue functions exercisable by the mayor;
  - (b) authorising that chief constable to arrange for a person within subsection (4) to exercise the chief constable's fire and rescue functions.
- (3) An order under subsection (2) may provide that arrangements made under the order—
- (a) may authorise the exercise of any functions mentioned in that subsection;
  - (b) may authorise the exercise of any functions mentioned in that subsection other than those specified or described in the order;
  - (c) may authorise the exercise of such of the functions mentioned in that subsection as are specified or described in the order.
- (4) The persons mentioned in subsection (2)(b) are—
- (a) members of the chief constable's police force;
  - (b) the civilian staff of that police force, as defined by section 102(4) of the Police Reform and Social Responsibility Act 2011;
  - (c) members of staff transferred to the chief constable under a scheme made by virtue of section 107EC(1);
  - (d) members of staff appointed by the chief constable under section 107EC(2).

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- (5) Provision in an order under section 107D(1) for a function to be exercisable only by the mayor for the area of a combined authority is subject to provision made by virtue of subsection (2).
- (6) This section is subject to—
  - (a) section 107EB (section 107EA orders: procedure), and
  - (b) section 37 of the Fire and Rescue Services Act 2004 (prohibition on employment of police in fire-fighting).
- (7) In this section “fire and rescue functions”, in relation to a chief constable, means—
  - (a) functions which are exercisable by the chief constable by virtue of provision made under subsection (2)(a), and
  - (b) functions relating to fire and rescue services which are conferred on the chief constable by or by virtue of any enactment.

#### **107EB Section 107EA orders: procedure**

- (1) An order under section 107EA(2) may be made in relation to the mayor for the area of a combined authority only if the mayor has requested the Secretary of State to make the order.
- (2) A request under subsection (1) must be accompanied by a report which contains—
  - (a) an assessment of why—
    - (i) it is in the interests of economy, efficiency and effectiveness for the order to be made, or
    - (ii) it is in the interests of public safety for the order to be made,
  - (b) a description of any public consultation which the mayor has carried out on the proposal for the order to be made,
  - (c) a summary of the responses to any such consultation, and
  - (d) a summary of the representations (if any) which the mayor has received about that proposal from the constituent members of the combined authority.
- (3) Before making the request the mayor must publish, in such manner as the mayor thinks appropriate, the mayor's response to the representations made or views expressed in response to any consultations on the proposal.
- (4) Subsections (5) to (7) apply if—
  - (a) the mayor for the area of a combined authority makes a request under subsection (1) for the Secretary of State to make an order under section 107EA(2), and
  - (b) at least two thirds of the constituent members of the combined authority have indicated that they disagree with the proposal for the order to be made.
- (5) The mayor must, in providing the report under subsection (2), provide the Secretary of State with—
  - (a) copies of the representations (if any) made by the constituent members of the combined authority about that proposal, and

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- (b) the mayor's response to those representations and to the responses to any public consultation which the mayor has carried out on that proposal.
- (6) The Secretary of State must—
  - (a) obtain an independent assessment of that proposal, and
  - (b) in deciding whether to make the order, have regard to that assessment and to the material provided under subsection (5) (as well as the material provided under subsection (2)).
- (7) The Secretary of State must publish the independent assessment—
  - (a) as soon as is reasonably practicable after making a determination in response to the proposal, and
  - (b) in such manner as the Secretary of State thinks appropriate.
- (8) An order under section 107EA(2) may be made only if it appears to the Secretary of State that—
  - (a) it is in the interests of economy, efficiency and effectiveness for the order to be made, or
  - (b) it is in the interests of public safety for the order to be made.
- (9) The Secretary of State may not make an order under section 107EA(2) in a case within subsection (8)(a) of this section if the Secretary of State thinks that the order would have an adverse effect on public safety.
- (10) The Secretary of State may, in making an order under section 107EA(2) in relation to the mayor for the area of a combined authority, give effect to the mayor's proposal for the order with such modifications as the Secretary of State thinks appropriate.
- (11) Before making an order which gives effect to such a proposal with modifications, the Secretary of State must consult the mayor and the combined authority on the modifications.
- (12) In this section—
  - “constituent council”, in relation to a combined authority, means—
    - (a) a county council the whole or any part of whose area is within the area of the combined authority, or
    - (b) a district council whose area is within the area of the combined authority;
  - “constituent member”, in relation to a combined authority, means a member of the authority appointed by a constituent council (but does not include the mayor for the area of the combined authority).

### **107EC Section 107EA orders: further provision**

- (1) An order under section 107EA(2) may make provision for the making of a scheme to transfer property, rights and liabilities (including criminal liabilities)—
  - (a) from a fire and rescue authority or the combined authority to the chief constable, or
  - (b) from the chief constable to the combined authority,

*Status: Point in time view as at 22/03/2018.*

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- (including provision corresponding to any provision made by section 17(4) to (6) of the Localism Act 2011).
- (2) A chief constable to whom an order under section 107EA(2) applies may appoint staff for the purpose of the exercise of the chief constable's fire and rescue functions.
- (3) A chief constable to whom an order under section 107EA(2) applies may—
- (a) pay remuneration, allowances and gratuities to members of the chief constable's fire and rescue staff;
  - (b) pay pensions to, or in respect of, persons who are or have been such members of staff;
  - (c) pay amounts for or towards the provision of pensions to, or in respect of, persons who are or have been such members of staff.
- (4) In subsection (3) “allowances”, in relation to a member of staff, means allowances in respect of expenses incurred by the member of staff in the course of employment as such a member of staff.
- (5) Subject to subsections (6) to (8), a person who is employed pursuant to a transfer by virtue of subsection (1) or an appointment under subsection (2) may not at the same time be employed pursuant to an appointment by a chief constable of the police force for a police area under Schedule 2 to the Police Reform and Social Responsibility Act 2011.
- (6) Where an order under section 107EA(2) is in force in relation to the chief constable of the police force for a police area, the person who is for the time being the police force's chief finance officer is to be responsible for the proper administration of financial affairs relating to the exercise of the chief constable's fire and rescue functions.
- (7) Subsection (5) does not prevent a person who is employed as a finance officer for fire functions from being at the same time employed as a finance officer for police functions.
- (8) In subsection (7)—
- “finance officer for fire functions” means a member of a chief constable's fire and rescue staff who—
- (a) is not a chief finance officer of the kind mentioned in subsection (6), and
  - (b) is employed to carry out duties relating to the proper administration of financial affairs relating to the exercise of the chief constable's fire and rescue functions;
- “finance officer for police functions” means a member of a chief constable's civilian staff within the meaning of the Police Reform and Social Responsibility Act 2011 who—
- (a) is not a chief finance officer of the kind mentioned in subsection (6), and
  - (b) is employed to carry out duties relating to the proper administration of a police force's financial affairs.
- (9) Where an order under section 107EA(2) is in force, the combined authority to which the order applies must pay—

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- (a) any damages or costs awarded against the chief constable to whom the order applies in any proceedings brought against the chief constable in respect of the acts or omissions of a member of the chief constable's fire and rescue staff;
  - (b) any costs incurred by the chief constable in any such proceedings so far as not recovered by the chief constable in the proceedings;
  - (c) any sum required in connection with the settlement of any claim made against the chief constable in respect of the acts or omissions of a member of the chief constable's fire and rescue staff, if the settlement is approved by the authority.
- (10) Where an order under section 107EA(2) is in force, the combined authority to which the order applies may, in such cases and to such extent as appears to the authority to be appropriate, pay—
- (a) any damages or costs awarded against a member of the fire and rescue staff of the chief constable to whom the order applies in proceedings for any unlawful conduct of that member of staff;
  - (b) costs incurred and not recovered by such a member of staff in such proceedings;
  - (c) sums required in connection with the settlement of a claim that has or might have given rise to such proceedings.
- (11) In this section—
- “fire and rescue functions” has the same meaning as in section 107EA;
  - “fire and rescue staff”, in relation to a chief constable to whom an order under section 107EA(2) applies, means—
    - (a) staff transferred to the chief constable under a scheme made by virtue of subsection (1);
    - (b) staff appointed by the chief constable under subsection (2).

### **107ED Section 107EA orders: exercise of fire and rescue functions**

- (1) This section applies if—
- (a) an order under section 107EA(2) makes provision in relation to the area of a combined authority, and
  - (b) by virtue of the order, fire and rescue functions exercisable by the mayor for the area of the combined authority are exercisable by the chief constable of the police force for the police area which corresponds to that area.
- (2) The chief constable must secure that good value for money is obtained in exercising—
- (a) functions which are exercisable by the chief constable by virtue of the order, and
  - (b) functions relating to fire and rescue services which are conferred on the chief constable by or by virtue of any enactment.
- (3) The chief constable must secure that other persons exercising functions by virtue of the order obtain good value for money in exercising those functions.
- (4) The mayor must—

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- (a) secure the exercise of the duties which are exercisable by the chief constable or another person by virtue of the order,
  - (b) secure the exercise of the duties relating to fire and rescue services which are imposed on the chief constable by or by virtue of any enactment,
  - (c) secure that functions which are exercisable by the chief constable or another person by virtue of the order are exercised efficiently and effectively, and
  - (d) secure that functions relating to fire and rescue services which are conferred or imposed on the chief constable by or by virtue of any enactment are exercised efficiently and effectively.
- (5) The mayor must hold the chief constable to account for the exercise of such functions.

#### **107EE Section 107EA orders: complaints and conduct matters etc**

- (1) If an order is made under section 107EA(2) that enables arrangements to be made for the exercise of functions by members of a police force or the civilian staff of a police force, the Secretary of State may by order amend Part 2 of the Police Reform Act 2002 (persons serving with the police: complaints and conduct matters etc) in consequence of that provision.
- (2) If an order is made under section 107EA(2) that enables arrangements to be made for the exercise of functions by members of staff transferred to a chief constable under a scheme made by virtue of section 107EC(1) or appointed by a chief constable under section 107EC(2), the Secretary of State may by order make provision of the type described in subsection (3) in relation to those members of staff.
- (3) The provision referred to in subsection (2) is—
  - (a) provision corresponding or similar to any provision made by or under Part 2 of the Police Reform Act 2002;
  - (b) provision applying (with or without modifications) any provision made by or under Part 2 of that Act.
- (4) The Secretary of State may by order, in consequence of any provision made under subsection (2), amend Part 2 of the Police Reform Act 2002.
- (5) Before making an order under this section the Secretary of State must consult—
  - (a) the Police Advisory Board for England and Wales,
  - (b) the Independent Police Complaints Commission,
  - (c) such persons as appear to the Secretary of State to represent the views of police and crime commissioners,
  - (d) such persons as appear to the Secretary of State to represent the views of fire and rescue authorities, and
  - (e) such other persons as the Secretary of State considers appropriate.

#### **107EF Section 107EA orders: application of fire and rescue provisions**

- (1) The Secretary of State may by order—



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- (a) apply (with or without modifications) any provision of a fire and rescue enactment in relation to a person within subsection (2);
  - (b) make, in relation to a person within subsection (2), provision corresponding or similar to any provision of a fire and rescue enactment.
- (2) Those persons are—
- (a) a chief constable of a police force for a police area to whom an order under section 107EA(2) applies,
  - (b) a member of staff transferred to such a chief constable under a scheme made by virtue of section 107EC(1),
  - (c) a member of staff appointed by such a chief constable under section 107EC(2),
  - (d) a member of such a chief constable's police force by whom functions are exercisable by virtue of section 107EA(2)(b), and
  - (e) a member of the civilian staff of such a police force (as defined by section 102(4) of the Police Reform and Social Responsibility Act 2011) by whom functions are exercisable by virtue of section 107EA(2)(b).
- (3) The power conferred by subsection (1)(a) or (b) includes power to apply (with or without modifications) any provision made under a fire and rescue enactment or make provision corresponding or similar to any such provision.
- (4) The Secretary of State may by order amend, revoke or repeal a provision of or made under an enactment in consequence of provision made by virtue of subsection (1).
- (5) In this section “fire and rescue enactment” means an enactment relating to a fire and rescue authority (including, in particular, an enactment relating to an employee of such an authority or property of such an authority).
- (6) References in this section to an enactment or to provision made under an enactment are to an enactment whenever passed or (as the case may be) to provision whenever the instrument containing it is made.

### **107EG Section 107EA orders: application of local policing provisions**

- (1) The Secretary of State may by order—
- (a) apply (with or without modifications) any provision of a local policing enactment in relation to a person within subsection (2);
  - (b) make, in relation to such a person, provision corresponding or similar to any provision of a local policing enactment.
- (2) Those persons are—
- (a) a mayor for the area of a combined authority to whom an order under section 107EA(2) applies,
  - (b) a chief constable to whom such an order applies, and
  - (c) a panel established by virtue of an order under paragraph 4 of Schedule 5C for such an area.

*Status: Point in time view as at 22/03/2018.*

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- (3) The power conferred by subsection (1)(a) or (b) includes power to apply (with or without modifications) any provision made by or under a local policing enactment or make provision corresponding or similar to any such provision.
- (4) The Secretary of State may by order amend, revoke or repeal a provision of or made under an enactment in consequence of provision made by virtue of subsection (1).
- (5) In this section “local policing enactment” means an enactment relating to a police and crime commissioner.
- (6) References in this section to an enactment or to provision made under an enactment are to an enactment whenever passed or (as the case may be) to provision whenever the instrument containing it is made.”
- (3) In section 107D(6)(b) (general functions exercisable by the mayor for the area of a combined authority) after “section 107E” insert “ or 107EA ”.
- (4) In section 120 (interpretation) after the definition of “EPB” insert—
- ““fire and rescue authority” means a fire and rescue authority under the Fire and Rescue Services Act 2004;”.
- (5) In section 26 of the Fire Services Act 1947 (firefighters' pension scheme) (as continued in force by order under section 36 of the Fire and Rescue Services Act 2004) in subsection (5A) (as inserted by paragraph 14 of Schedule 1)—
- (a) omit the “or” at the end of paragraph (a), and
- (b) after paragraph (b) insert—
- “(c) a transfer to the chief constable under a scheme made by virtue of section 107EC(1) of the Local Democracy, Economic Development and Construction Act 2009, or
- (d) an appointment by the chief constable under section 107EC(2) of that Act.”
- (6) In section 63 of the Police Act 1996 (Police Advisory Board for England and Wales) in subsection (4) (as inserted by paragraph 76 of Schedule 1) for “also imposes a requirement” substitute “ and section 107EE of the Local Democracy, Economic Development and Construction Act 2009 also impose requirements ”.
- (7) In section 38 of the Police Reform Act 2002 (police powers for civilian staff) in subsection (11A) (as inserted by paragraph 82 of Schedule 1) after paragraph (b) insert—
- “(c) any member of staff transferred to that chief constable under a scheme made by virtue of section 107EC(1) of the Local Democracy, Economic Development and Construction Act 2009 (transfer of property, rights and liabilities to chief constable to whom fire functions of combined authority may be delegated);
- (d) any member of staff appointed by that chief constable under section 107EC(2) of that Act (appointment of staff by chief constable to whom fire functions of combined authority may be delegated).”
- (8) In section 34 of the Fire and Rescue Services Act 2004 (pensions etc) in subsection (11) (as inserted by paragraph 11 of Schedule 1)—
- (a) omit the “or” at the end of paragraph (a), and

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- (b) after paragraph (b) insert—
  - “(c) transferred to the chief constable under a scheme made by virtue of section 107EC(1) of the Local Democracy, Economic Development and Construction Act 2009, or
  - (d) appointed by the chief constable under section 107EC(2) of that Act.”
- (9) In section 37 of the Fire and Rescue Services Act 2004 (prohibition on employment of police in fire-fighting) (as substituted by paragraph 12 of Schedule 1) in subsection (3)
  - (a) after “whom” insert “—(a)”, and
  - (b) after paragraph (a) insert “, or
    - (b) functions of a fire and rescue authority which are exercisable by the mayor of a combined authority have been delegated under an order under section 107EA(2) of the Local Democracy, Economic Development and Construction Act 2009.”
- (10) In Schedule 8 to the Police Reform and Social Responsibility Act 2011 (appointment, suspension and removal of senior police officers) in paragraph 2 (no appointment until end of confirmation process) in sub-paragraph (1AA) (as inserted by paragraph 93 of Schedule 1) after “section 4H of the Fire and Rescue Services Act 2004” insert “ or section 107EA(2) of the Local Democracy, Economic Development and Construction Act 2009 ”.
- (11) In Schedule 1 to the Public Service Pensions Act 2013 (persons in public service: definitions) in paragraph 6 (fire and rescue workers) in paragraph (aa) (as inserted by paragraph 95 of Schedule 1)—
  - (a) omit the “or” at the end of sub-paragraph (i), and
  - (b) for the “or” at the end of sub-paragraph (ii) substitute—
    - “(iii) transferred to the chief constable under a scheme made by virtue of section 107EC(1) of the Local Democracy, Economic Development and Construction Act 2009, or
    - (iv) appointed by the chief constable under section 107EC(2) of that Act, or”.

#### Commencement Information

**I8** S. 8 in force for specified purposes at Royal Assent, see. s, 183

**I9** S. 8 in force at 17.7.2017 in so far as not already in force by [S.I. 2017/726](#), [reg. 2\(a\)](#)

## CHAPTER 3

### LONDON FIRE COMMISSIONER

#### 9 The London Fire Commissioner

- (1) The London Fire and Emergency Planning Authority is abolished.

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- (2) The functions of the London Fire and Emergency Planning Authority are (subject to this Act) transferred to the London Fire Commissioner.
- (3) Schedule 2—
  - (a) amends the Greater London Authority Act 1999 in consequence of the abolition of the London Fire and Emergency Planning Authority,
  - (b) amends that Act so as to make provision about the London Fire Commissioner, and
  - (c) makes consequential amendments to other Acts.

#### **Commencement Information**

- I10** S. 9 in force for specified purposes at Royal Assent, see s. 183
- I11** S. 9(3) in force at 1.3.2018 for specified purposes by S.I. 2018/227, reg. 2(a)
- I12** S. 9(3) in force at 22.3.2018 for specified purposes by S.I. 2018/227, reg. 3(1)(a)

## **10 Transfer of property, rights and liabilities to the London Fire Commissioner**

- (1) The Secretary of State may make one or more schemes for the transfer of property, rights and liabilities of the London Fire and Emergency Planning Authority to the London Fire Commissioner.
- (2) The things that may be transferred under a transfer scheme include—
  - (a) property, rights and liabilities that could not otherwise be transferred;
  - (b) property acquired, and rights and liabilities arising, after the making of the scheme;
  - (c) criminal liabilities.
- (3) A transfer scheme may make consequential, supplementary, incidental or transitional provision and may in particular—
  - (a) create rights, or impose liabilities, in relation to property transferred;
  - (b) make provision about the continuing effect of things done by the transferor in respect of anything transferred;
  - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the transferor, in respect of anything transferred;
  - (d) make provision for references to the transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee;
  - (e) if the TUPE regulations do not apply in relation to the transfer, make provision which is the same or similar.
- (4) A transfer scheme may provide—
  - (a) for the scheme to be modified by agreement after it comes into effect;
  - (b) for any such modifications to have effect from the date when the original scheme came into effect.
- (5) In this section—
  - (a) references to the transfer of property include the grant of a lease;

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- (b) references to rights and liabilities include rights and liabilities under a contract of employment;
- (c) “TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

#### Commencement Information

**I13** S. 10 in force for specified purposes at Royal Assent, see s. 183

**I14** S. 10 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(c)

## CHAPTER 4

### INSPECTION OF FIRE AND RESCUE SERVICES

#### 11 Inspection of fire and rescue services

(1) The Fire and Rescue Services Act 2004 is amended as follows.

(2) In section 28 (inspectors), before subsection (1) insert—

“(A1) Her Majesty may appoint such number of inspectors of fire and rescue authorities in England (the “English inspectors”) as the Secretary of State may determine.

(A2) Of the persons appointed under subsection (A1) one is to be appointed as the chief fire and rescue inspector for England.

(A3) The English inspectors must inspect, and report on the efficiency and effectiveness of, fire and rescue authorities in England.

(A4) The English inspectors must carry out such other duties for the purpose of furthering the efficiency and effectiveness of fire and rescue authorities in England as the Secretary of State may from time to time direct.

(A5) The chief fire and rescue inspector for England may appoint assistant inspectors and other officers for the purpose of assisting the English inspectors.

(A6) When carrying out an inspection under subsection (A3) of a fire and rescue authority created by an order under section 4A, an English inspector must not review or scrutinise decisions made, or other action taken, by the fire and rescue authority in connection with the discharge of an excluded function.

(A7) For the purposes of subsection (A6), the following are excluded functions in relation to a fire and rescue authority—

- (a) the function of preparing a fire and rescue plan and a fire and rescue statement (within the meaning of Schedule A2);
- (b) the functions that the authority has in its capacity as a major precepting authority for the purposes of Part 1 of the Local Government Finance Act 1992;
- (c) the function of appointing a chief finance officer under section 4D(4);

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- (d) where functions of the authority have been delegated to a chief constable under an order under section 4H, the functions conferred on the authority by section 4J(4) and (5);
  - (e) functions specified, or of a description specified, in relation to that authority in an order made by the Secretary of State.
- (A8) The power under subsection (A7)(e) may be exercised in relation to—
- (a) all fire and rescue authorities created by an order under section 4A,
  - (b) a particular fire and rescue authority created by an order under section 4A, or
  - (c) a particular description of fire and rescue authorities created by an order under section 4A.
- (A9) Schedule A3 makes further provision in relation to the English inspectors.”
- (3) In section 28, in subsection (1)(a), after “fire and rescue authorities” insert “ in Wales ”.
- (4) After section 28 insert—

**“28A Inspection programme and inspection framework etc: England**

- (1) The chief fire and rescue inspector for England must from time to time prepare—
- (a) a document setting out what inspections of fire and rescue authorities in England the English inspectors propose to carry out under section 28(A3) (an “inspection programme”);
  - (b) a document setting out the manner in which the English inspectors propose to carry out the function conferred on them by section 28(A3) (an “inspection framework”).
- (2) The chief fire and rescue inspector for England must obtain the approval of the Secretary of State to an inspection programme or inspection framework before the English inspectors act in accordance with it.
- (3) The Secretary of State may at any time require the chief fire and rescue inspector for England to carry out, or arrange for another English inspector to carry out, an inspection under section 28(A3) of—
- (a) a fire and rescue authority in England;
  - (b) all fire and rescue authorities in England;
  - (c) all fire and rescue authorities in England of a particular type.
- (4) A requirement imposed under subsection (3) may limit the inspection to a particular matter.
- (5) The chief fire and rescue inspector for England or, at the request of that inspector, any other English inspector may carry out an inspection under section 28(A3) of a fire and rescue authority in England that has not been set out in an inspection programme (and has not been required under subsection (3)).
- (6) Before deciding to carry out, or to request another English inspector to carry out, an inspection of a fire and rescue authority in England that has not been set out in an inspection programme, the chief fire and rescue inspector for England must consult the Secretary of State.

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- (7) Nothing in an inspection programme or inspection framework is to be read as preventing an English inspector from making a visit without notice.
  - (8) In this section “English inspector” means an inspector appointed under section 28(A1).”
- (5) After section 28A (as inserted by subsection (4)) insert—

**“28B Publication of inspection reports etc: England**

- (1) The chief fire and rescue inspector for England must arrange for a report prepared under section 28(A3) to be published in such manner as appears to him or her to be appropriate.
  - (2) But the chief fire and rescue inspector for England must exclude from publication under subsection (1) anything that he or she considers—
    - (a) would be against the interests of national security, or
    - (b) might jeopardise the safety of any person.
  - (3) The chief fire and rescue inspector for England must—
    - (a) send a copy of the published report to the Secretary of State, and
    - (b) disclose to the Secretary of State anything excluded from publication by virtue of subsection (2).
  - (4) The chief fire and rescue inspector for England must in each year submit to the Secretary of State a report on the carrying out of inspections under section 28(A3) (during the period since the last report).
  - (5) A report under subsection (4) must include the chief fire and rescue inspector for England's assessment of the efficiency and effectiveness of fire and rescue authorities in England for the period in respect of which the report is prepared.
  - (6) The chief fire and rescue inspector for England must lay before Parliament a copy of a report submitted under subsection (4).
  - (7) In this section “English inspector” means an inspector appointed under section 28(A1).”
- (6) In Schedule A2 (application of legislation relating to police and crime commissioners) (as inserted by Schedule 1 to this Act), in paragraph 8(2) (powers of police and crime panels: modifications of section 28 of the Police Reform and Social Responsibility Act 2011), after paragraph (d) insert—
- “(da) the references in subsection (6) to the commissioner's functions were to the functions of the relevant fire and rescue authority that are excluded functions for the purposes of section 28(A6) of this Act (see section 28(A7)),”.
- (7) After Schedule A2 insert the new Schedule A3 set out in Schedule 3 to this Act.
- (8) A person appointed, before the coming into force of this section, under section 28 of the Fire and Rescue Services Act 2004 for the purpose of obtaining information in relation to the functions of fire and rescue authorities in England (including a person taken to have been so appointed by virtue of subsection (3) of that section) is to be taken—

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- (a) if an inspector, to have been appointed under subsection (A1) of that section, and
- (b) if an assistant inspector or other officer, to have been appointed under subsection (A5) of that section.

#### **Commencement Information**

- I15** S. 11 in force for specified purposes at Royal Assent, see s. 183
- I16** S. 11(1)-(7) in force at 17.7.2017 in so far as not already in force by S.I. 2017/726, reg. 2(b) (with reg. 4)

## **12 Fire safety inspections**

- (1) The Regulatory Reform (Fire Safety) Order 2005 (S.I. 2005/1541) is amended as follows.
- (2) In article 2 (interpretation), in the definition of “fire inspector”—
  - (a) after “inspector” insert “, in relation to Wales,”;
  - (b) for “section 28” substitute “ section 28(1) ”.
- (3) In article 27 (powers of inspectors), after paragraph (4) insert—
 

“(5) This article applies to a person authorised by the Secretary of State under article 25(1)(e) in relation to premises in England as it applies to an inspector; and article 32(2)(d) to (f), with the necessary modifications, applies accordingly.”
- (4) In article 28 (exercise on behalf of fire inspectors etc of their powers by officers of fire brigades)—
  - (a) in paragraph (1)—
    - (i) omit “, or any other person authorised by the Secretary of State under article 25(e),”;
    - (ii) for “and (3)” substitute “ to (4) ”;
  - (b) after paragraph (1) insert—
 

“(1A) The powers conferred by article 27 on an authorised person (by virtue of paragraph (5) of that article) are also exercisable by an employee of a fire and rescue authority in England when authorised in writing by such an authorised person for the purpose of reporting to him or her on any matter falling within the authorised person's functions under this Order; and articles 27(2) to (4) and 32(2)(d) to (f), with the necessary modifications, apply accordingly.”;
  - (c) in paragraph (2), for “, or other person authorised by the Secretary of State,” substitute “ or authorised person ”;
  - (d) after paragraph (2) insert—
 

“(3) In this article, “authorised person” means a person authorised by the Secretary of State under article 25(1)(e) in relation to premises in England.”



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#### Commencement Information

- I17** S. 12 in force for specified purposes at Royal Assent, see s. 183  
**I18** S. 12 in force at 17.7.2017 in so far as not already in force by S.I. 2017/726, reg. 2(c)

## PART 2

### POLICE COMPLAINTS, DISCIPLINE AND INSPECTION

#### CHAPTER 1

##### POLICE COMPLAINTS

### 13 Local policing bodies: functions in relation to complaints

In Part 2 of the Police Reform Act 2002 (complaints and misconduct), after section 13 insert—

#### “13A Local policing bodies: functions in relation to complaints

- (1) The local policing body that maintains a police force may give notice to the chief officer of the police force that it (rather than the chief officer) is to exercise the functions conferred on the chief officer by the provisions specified in subsection (2) or subsections (2) and (3).
- (2) The provisions specified in this subsection are—
  - (a) paragraph 2(6) to (6D) of Schedule 3, and
  - (b) paragraph 2(9) and (10) of Schedule 3 in so far as relating to a determination made for the purposes of paragraph 2(6) to (6C) of that Schedule.
- (3) The provisions specified in this subsection are—
  - (a) section 20, and
  - (b) section 21 in so far as that section relates to complaints.
- (4) In relation to any complaint in respect of which the chief officer is the appropriate authority that is made on or after the day on which a notice under subsection (1) is given—
  - (a) the functions of the chief officer to which the notice relates become functions of the local policing body,
  - (b) references to the chief officer, including in the chief officer's capacity as an appropriate authority, in the provisions specified in subsection (2) or (as the case may be) subsections (2) and (3) are to be read as references to the local policing body, and
  - (c) for the purpose of paragraph 6(1) of Schedule 3, the complaint is to be treated as having been recorded by the chief officer.
- (5) Where the notice under subsection (1) relates to the functions conferred on the chief officer by the provisions specified in subsections (2) and (3),

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subsection (4)(b) does not apply to the references to an appropriate authority in sections 20(2)(a) and (3A)(a) and 21(7)(a) and (8A)(a).

- (6) The Secretary of State may by regulations make provision in connection with the giving of notices under subsection (1) and their withdrawal.
- (7) Regulations under subsection (6) may (amongst other things) make provision about—
  - (a) the steps that a local policing body must take before giving a notice;
  - (b) the circumstances in which a notice may be withdrawn.”

#### **Commencement Information**

**I19** S. 13 in force for specified purposes at Royal Assent, see s. 183

## **14 Definition of police complaint**

(1) Section 12 of the Police Reform Act 2002 (complaints, matters and persons to which Part 2 of the Act applies) is amended as follows.

(2) For subsection (1) substitute—

“(1) In this Part references to a complaint are references (subject to the following provisions of this section) to any expression of dissatisfaction with a police force which is expressed (whether in writing or otherwise) by or on behalf of a member of the public.

(1A) But an expression of dissatisfaction is a complaint for the purposes of this Part—

- (a) where it relates to conduct of a person serving with the police, only if the person in question is a person falling within subsection (1B);
- (b) in any other case, only if the person in question has been adversely affected by the matter about which dissatisfaction is expressed.

(1B) In relation to an expression of dissatisfaction that relates to conduct of a person serving with the police, a person falls within this subsection if the person is—

- (a) a person who claims to be the person in relation to whom the conduct took place;
- (b) a person not falling within paragraph (a) who claims to have been adversely affected by the conduct; or
- (c) a person who claims to have witnessed the conduct.”

(3) In subsection (3)—

- (a) for “subsection (1)(b)” substitute “ subsection (1B)(b) ”;
- (b) for “made by or on behalf of a person who” substitute “ where the person in question ”.

(4) After subsection (4) insert—

“(4A) In this section, “the person in question” means the person expressing dissatisfaction or the person on whose behalf dissatisfaction is being expressed.”

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- (5) In subsection (6), for the words before paragraph (a) substitute “ For the purposes of this Part a person is not to be taken to have authorised another person to make a complaint on his behalf unless— ”.
- (6) Schedule 4 makes amendments of the Police Reform Act 2002 in consequence of the amendments of section 12 of that Act made by this section.

#### **Commencement Information**

**I20** S. 14 in force for specified purposes at Royal Assent, see s. 183

### **15 Duty to keep complainant and other interested persons informed**

- (1) Part 2 of the Police Reform Act 2002 (complaints and misconduct) is amended as follows.
- (2) In section 20 (duty to keep the complainant informed), after subsection (3) insert—
- “(3A) In any case in which a complaint is being handled—
- (a) in accordance with paragraph 6(2A) of Schedule 3 otherwise than by the appropriate authority making arrangements for the complaint to be investigated by the authority on its own behalf, or
  - (b) otherwise than in accordance with Schedule 3 (as to which see paragraph 2(6C) of that Schedule),
- it shall be the duty of the appropriate authority to provide the complainant with all such information as will keep him properly informed, while the complaint is being handled and subsequently, of all the matters mentioned in subsection (4).”
- (3) In section 20, for subsection (4) substitute—
- “(4) The matters of which the complainant must be kept properly informed are—
- (a) the progress of the handling of the complaint;
  - (b) the outcome of the handling of the complaint;
  - (c) any right to apply for a review conferred on the complainant by paragraph 6A or 25 of Schedule 3 (as the case may be);
  - (d) such other matters as may be specified in regulations made by the Secretary of State.
- (4A) The generality of subsection (4)(a) and (b) is not affected by any requirement to notify the complainant that is imposed by any other provision of this Part.”
- (4) In section 20, after subsection (8) insert—
- “(8A) In any case in which there is an investigation of a complaint, the Commission or the appropriate authority may comply with its duty under subsection (1) or (2) (as the case may be) so far as relating to the findings of a report submitted under provision made by virtue of paragraph 20A(4)(b) of Schedule 3, or a report of the investigation submitted under paragraph 22 of Schedule 3, by sending the complainant a copy of the report.
- (8B) Subsection (8A) applies notwithstanding any obligation of secrecy imposed by any rule of law or otherwise but is subject to—

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- (a) regulations made under subsection (5), and
  - (b) section 21A.”
- (5) In section 20(9), after “under this Part” insert “, or who is otherwise involved in the handling of a complaint under this Part, ”.
- (6) In section 21 (duty to provide information for other persons), after subsection (8) insert—
- “(8A) In any case in which—
- (a) the complaint is being handled in accordance with paragraph 6(2A) of Schedule 3 otherwise than by the appropriate authority making arrangements for the complaint to be investigated by the authority on its own behalf, or
  - (b) the recordable conduct matter or DSI matter is being handled in a manner determined by the appropriate authority in accordance with paragraph 10(4D), 11(3E), 14(2) or 14D(2) of Schedule 3 otherwise than by the appropriate authority making arrangements for the matter to be investigated by the authority on its own behalf,
- it shall be the duty of the appropriate authority to provide the interested person with all such information as will keep him properly informed, while the complaint, recordable conduct matter or DSI matter is being handled and subsequently, of all the matters mentioned in subsection (9).”
- (7) In section 21, for subsection (9) substitute—
- “(9) The matters of which the interested person must be kept properly informed are—
- (a) the progress of the handling of the complaint, recordable conduct matter or DSI matter;
  - (b) the outcome of the handling of the complaint, recordable conduct matter or DSI matter;
  - (c) such other matters as may be specified in regulations made by the Secretary of State.
- (9A) The generality of subsection (9)(a) and (b) is not affected by any requirement to notify an interested person that is imposed by any other provision of this Part.”
- (8) In section 21, after subsection (11) insert—
- “(11A) In any case in which there is an investigation of a complaint, recordable conduct matter or DSI matter, the Commission or the appropriate authority may comply with its duty under subsection (6) or (7) (as the case may be) so far as relating to the findings of a report submitted under provision made by virtue of paragraph 20A(4)(b) of Schedule 3, or a report of the investigation submitted under paragraph 22 or 24A of Schedule 3, by sending an interested person a copy of the report.
- (11B) Subsection (11A) applies notwithstanding any obligation of secrecy imposed by any rule of law or otherwise but is subject to—
- (a) regulations made under subsection (10), and
  - (b) section 21A.”

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- (9) In Schedule 3—
- (a) in paragraph 23 (action by the Commission in response to an investigation report under paragraph 22), omit sub-paragraphs (4) and (9) to (12);
  - (b) in paragraph 24 (action by the appropriate authority in response to an investigation report under paragraph 22), omit sub-paragraphs (4) and (7) to (10).
- (10) In consequence of the repeal made by subsection (9)(b), Schedule 3 is further amended as follows—
- (a) in paragraph 24, after sub-paragraph (6A) (as inserted by Schedule 5) insert—
    - “(6B) It shall be the duty of the appropriate authority—
    - (a) to take the action which it determines under sub-paragraph (6) that it is required to, or will in its discretion, take, and
    - (b) in a case where that action consists of or includes the bringing of disciplinary proceedings, to secure that those proceedings, once brought, are proceeded with to a proper conclusion.”;
  - (b) in paragraph 27 (duties with respect to disciplinary proceedings etc)—
    - (i) in sub-paragraph (1), omit paragraph (a) (including the “or” at the end);
    - (ii) in sub-paragraph (2)(a), omit “which has been or is required to be notified or, as the case may be,”.
- (11) In consequence of the repeals made by subsection (9), omit the following—
- (a) in the Criminal Justice and Immigration Act 2008, in Schedule 23, paragraph 14(7) and (8);
  - (b) in the Anti-social Behaviour, Crime and Policing Act 2014, in Part 3 of Schedule 11, paragraph 95(6).

#### Commencement Information

**I21** S. 15 in force for specified purposes at Royal Assent, see s. 183

### 16 Complaints, conduct matters and DSI matters: procedure

Schedule 5 amends Schedule 3 to the Police Reform Act 2002 (handling of complaints and conduct matters etc).

#### Commencement Information

**I22** S. 16 in force for specified purposes at Royal Assent, see s. 183

### 17 Initiation of investigations by IPCC

- (1) Schedule 3 to the Police Reform Act 2002 (handling of complaints and conduct matters etc) is amended as follows.

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- (2) In paragraph 4 (reference of complaints to the Commission), in sub-paragraph (7), in the words before paragraph (a), after “occasion” insert “, or that has been treated as having been so referred by virtue of paragraph 4A ”.
- (3) After paragraph 4 insert—

**4A “Power of Commission to treat complaint as having been referred**

- (1) The Commission may treat a complaint that comes to its attention otherwise than by having been referred to it under paragraph 4 as having been so referred.
- (2) Where the Commission treats a complaint as having been referred to it—
- (a) paragraphs 2 and 4 do not apply, or cease to apply, in relation to the complaint except to the extent provided for by paragraph 4(7), and
  - (b) paragraphs 5, 6, 6A, 15 and 25 apply in relation to the complaint as if it had been referred to the Commission by the appropriate authority under paragraph 4.
- (3) The Commission must notify the following that it is treating a complaint as having been referred to it—
- (a) the appropriate authority;
  - (b) the complainant;
  - (c) except in a case where it appears to the Commission that to do so might prejudice an investigation of the complaint (whether an existing investigation or a possible future one), the person complained against (if any).
- (4) Where an appropriate authority receives a notification under sub-paragraph (3) in respect of a complaint and the complaint has not yet been recorded, the appropriate authority must record the complaint.”
- (4) In paragraph 11 (recording etc of conduct matters otherwise than where conduct matters arise in civil proceedings), omit sub-paragraph (5).
- (5) In paragraph 13 (reference of conduct matters to the Commission), in sub-paragraph (7), in the words before paragraph (a), after “occasion” insert “, or that has been treated as having been so referred by virtue of paragraph 13A ”.
- (6) After paragraph 13 insert—

**13A “Power of Commission to treat conduct matter as having been referred**

- (1) The Commission may treat a conduct matter that comes to its attention otherwise than by having been referred to it under paragraph 13 as having been so referred.
- (2) Where the Commission treats a conduct matter as having been referred to it—
- (a) paragraphs 10, 11 and 13 do not apply, or cease to apply, in relation to the matter except to the extent provided for by paragraph 13(7), and
  - (b) paragraphs 14 and 15 apply in relation to the matter as if it had been referred to the Commission by the appropriate authority under paragraph 13.

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- (3) The Commission must notify the following that it is treating a conduct matter as having been referred to it—
  - (a) the appropriate authority;
  - (b) except in a case where it appears to the Commission that to do so might prejudice an investigation of the matter (whether an existing investigation or a possible future one), the person to whose conduct the matter relates.
- (4) Where an appropriate authority receives a notification under sub-paragraph (3) in respect of a conduct matter and the matter has not yet been recorded, the appropriate authority must record the matter.”
- (7) In paragraph 14A (duty to record DSI matters), omit sub-paragraph (2).
- (8) In paragraph 14C (reference of DSI matters to the Commission), in sub-paragraph (3), after “occasion” insert “ , or that has been treated as having been so referred by virtue of paragraph 14CA, ”.
- (9) After paragraph 14C insert—

#### **14CA “Power of Commission to treat DSI matter as having been referred**

- (1) The Commission may treat a DSI matter that comes to its attention otherwise than by having been referred to it under paragraph 14C as having been so referred.
- (2) Where the Commission treats a DSI matter as having been referred to it—
  - (a) paragraphs 14A and 14C do not apply, or cease to apply, in relation to the matter except to the extent provided for by paragraph 14C(3), and
  - (b) paragraphs 14D and 15 apply in relation to the matter as if it had been referred to the Commission by the appropriate authority under paragraph 14C.
- (3) The Commission must notify the appropriate authority that it is treating a DSI matter as having been referred to it.
- (4) Where an appropriate authority receives a notification under sub-paragraph (3) in respect of a DSI matter and the matter has not yet been recorded, the appropriate authority must record the matter.”
- (10) In section 29 of the Police Reform Act 2002 (interpretation of Part 2 of that Act), in subsection (1), in paragraph (a) of the definition of “recordable conduct matter”, for “or 11” substitute “ , 11 or 13A ”.

#### **Commencement Information**

**I23** S. 17 in force for specified purposes at Royal Assent, see s. 183

## **18 IPCC power to require re-investigation**

- (1) In Part 2 of the Police Reform Act 2002 (complaints and misconduct), after section 13A (as inserted by section 13) insert—

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### **“13B Power of the Commission to require re-investigation**

- (1) This section applies where—
  - (a) a report on an investigation of a complaint, recordable conduct matter or DSI matter carried out under the direction of the Commission has been submitted to it under paragraph 22(3) or 24A of Schedule 3, or
  - (b) a report on an investigation of a complaint, recordable conduct matter or DSI matter carried out by a person designated by the Commission has been submitted to it under paragraph 22(5) or 24A of Schedule 3.
- (2) The Commission may at any time determine that the complaint, recordable conduct matter or DSI matter is to be re-investigated if it is satisfied that there are compelling reasons for doing so.
- (3) Where the Commission makes a determination under subsection (2), it must determine that the re-investigation is to take the form of an investigation by the Commission unless subsection (4) applies, in which case the Commission must determine that the re-investigation is to take the form described in that subsection.
- (4) This subsection applies where the Commission determines that it would be more appropriate for the re-investigation to take the form of an investigation by the appropriate authority under the direction of the Commission.
- (5) Where—
  - (a) the Commission determines under subsection (3) or (7) that a re-investigation is to take the form of an investigation by the Commission, and
  - (b) at any time after that the Commission determines that subsection (4) applies in relation to the re-investigation,
 the Commission may make a further determination under this section (to replace the earlier one) that the re-investigation is instead to take the form of an investigation by the appropriate authority under the direction of the Commission.
- (6) Where the Commission determines under subsection (3) or (5) that a re-investigation is to take the form of an investigation by the appropriate authority under the direction of the Commission, the Commission must keep under review whether subsection (4) continues to apply in relation to the re-investigation.
- (7) If, on such a review, the Commission determines that subsection (4) no longer applies in relation to a re-investigation, the Commission must make a further determination under this section (to replace the earlier one) that the re-investigation is instead to take the form of an investigation by the Commission.
- (8) Sub-paragraphs (6) and (7) of paragraph 15 of Schedule 3 shall apply in relation to a further determination under subsection (5) or (7) as they apply in the case of a further determination under sub-paragraph (5A) or (5B) of that paragraph.



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- (9) The other provisions of Schedule 3 shall apply in relation to any re-investigation in pursuance of a determination under this section as they apply in relation to any investigation in pursuance of a determination under paragraph 15.
  - (10) The Commission shall notify the appropriate authority of any determination that it makes under this section and of its reasons for making the determination.
  - (11) The Commission shall also notify the following of any determination that it makes under this section and of its reasons for making the determination—
    - (a) every person entitled to be kept properly informed in relation to the complaint, recordable conduct matter or DSI matter (as the case may be) under section 21;
    - (b) where the determination is made in relation to a complaint, the complainant;
    - (c) the person to whose conduct the re-investigation will relate.
  - (12) The duty imposed by subsection (11) on the Commission shall have effect subject to such exceptions as may be provided for by regulations made by the Secretary of State.
  - (13) Subsections (6) to (8) of section 20 apply for the purposes of subsection (12) as they apply for the purposes of that section.
  - (14) In relation to a matter that was formerly a DSI matter but was recorded as a conduct matter in pursuance of paragraph 21A(5) of Schedule 3, the reference in subsection (10) to the appropriate authority is a reference to the appropriate authority in relation to the person whose conduct was in question.
  - (15) The reference to a report in subsection (1) includes a report on a re-investigation by virtue of this section or paragraph 25 of Schedule 3.”
- (2) Part 3 of Schedule 3 to the Police Reform Act 2002 (handling of complaints and conduct matters etc: investigations and subsequent proceedings) is amended as follows.
  - (3) In paragraph 23 (action by the Commission in response to an investigation report under paragraph 22), after sub-paragraph (1) insert—

“(1A) But if, following the submission of such a report, the Commission determines under section 13B that the complaint or recordable conduct matter is to be re-investigated the provisions of this paragraph other than sub-paragraph (2)(a) do not apply, or cease to apply, in relation to that report.”
  - (4) In paragraph 24A (final reports on investigations: DSI matters), after sub-paragraph (5) (as inserted by Schedule 5) insert—

“(6) But sub-paragraphs (4) and (5) and paragraphs 24B and 24C do not apply, or cease to apply, in relation to a report submitted under sub-paragraph (2) if, following the submission of the report, the Commission determines under section 13B that the DSI matter is to be re-investigated.”
  - (5) In paragraph 27 (duties with respect to disciplinary proceedings etc), after sub-paragraph (1) insert—

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“(1A) But where this paragraph would otherwise apply by virtue of sub-paragraph (1)(c), it does not apply, or ceases to apply, in relation to the investigation if the Commission determines under section 13B that the DSI matter is to be re-investigated.”

- (6) In paragraph 28B (response to recommendation by the Commission under paragraph 28A), at the end insert—

“(12) This paragraph does not apply, or ceases to apply, in relation to a recommendation made by virtue of paragraph 28A(1) if the Commission determines under section 13B that the complaint, recordable conduct matter or DSI matter that the Commission received a report on is to be re-investigated.”

#### **Commencement Information**

**I24** S. 18 in force for specified purposes at Royal Assent, see s. 183

## **19 Sensitive information received by IPCC: restriction on disclosure**

- (1) Part 2 of the Police Reform Act 2002 (complaints and misconduct) is amended as follows.
- (2) After section 21 insert—

### **“21A Restriction on disclosure of sensitive information**

- (1) Where the Commission receives information within subsection (3), the Commission must not disclose (whether under section 11, 20 or 21 or otherwise) the information, or the fact that it has been received, unless the relevant authority consents to the disclosure.
- (2) Where a person appointed under paragraph 18 of Schedule 3 to investigate a complaint or matter (a “paragraph 18 investigator”) receives information within subsection (3), the paragraph 18 investigator must not disclose the information, or the fact that it has been received, to any person other than the Commission unless the relevant authority consents to the disclosure.
- (3) The information is—
- (a) intelligence service information;
  - (b) protected information relating to a relevant warrant;
  - (c) information obtained from a government department which, at the time it is provided to the Commission or the paragraph 18 investigator, is identified by the department as information the disclosure of which may, in the opinion of the relevant authority—
    - (i) cause damage to national security, international relations or the economic interests of the United Kingdom or any part of the United Kingdom, or
    - (ii) jeopardise the safety of any person.
- (4) Where the Commission or a paragraph 18 investigator discloses to another person information within subsection (3), or the fact that the Commission or the paragraph 18 investigator has received it, the other person must not

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disclose that information or that fact unless the relevant authority consents to the disclosure.

(5) In this section—

“government department” means a department of Her Majesty's Government but does not include—

- (a) the Security Service,
- (b) the Secret Intelligence Service, or
- (c) the Government Communications Headquarters (“GCHQ”);

“intelligence service information” means information that was obtained (directly or indirectly) from or that relates to—

- (a) the Security Service,
- (b) the Secret Intelligence Service,
- (c) GCHQ, or
- (d) any part of Her Majesty's forces, or of the Ministry of Defence, which engages in intelligence activities;

“Minister of the Crown” includes the Treasury;

“paragraph 18 investigator” has the meaning given by subsection (2);

“protected information”, in relation to a relevant warrant, means information relating to any of the matters mentioned in section 57(4) of the Investigatory Powers Act 2016 in relation to the warrant;

“relevant authority” means—

- (a) in the case of intelligence service information obtained (directly or indirectly) from or relating to the Security Service, the Director-General of the Security Service;
- (b) in the case of intelligence service information obtained (directly or indirectly) from or relating to the Secret Intelligence Service, the Chief of the Secret Intelligence Service;
- (c) in the case of intelligence service information obtained (directly or indirectly) from or relating to GCHQ, the Director of GCHQ;
- (d) in the case of intelligence service information obtained (directly or indirectly) from or relating to Her Majesty's forces or the Ministry of Defence, the Secretary of State;
- (e) in the case of protected information relating to a relevant warrant, the person to whom the relevant warrant is or was addressed;
- (f) in the case of information within subsection (3)(c)—
  - (i) the Secretary of State, or
  - (ii) the Minister of the Crown in charge of the government department from which the information was obtained (if that Minister is not a Secretary of State);

“relevant warrant” means—

- (a) a warrant under Chapter 1 of Part 2 of the Investigatory Powers Act 2016, or
- (b) a warrant under Chapter 1 of Part 6 of that Act.

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## **21B Provision of sensitive information to the Commission and certain investigators**

- (1) A person who provides information that is intelligence service information or protected information relating to a relevant warrant to the Commission or a paragraph 18 investigator (whether under a provision of this Part or otherwise) must—
  - (a) make the Commission or the paragraph 18 investigator aware that the information is intelligence service information or (as the case may be) protected information relating to a relevant warrant, and
  - (b) provide the Commission or the paragraph 18 investigator with such additional information as will enable the Commission or the paragraph 18 investigator to identify the relevant authority in relation to the information.
- (2) In this section, “intelligence service information”, “protected information relating to a relevant warrant”, “paragraph 18 investigator” and “relevant authority” have the same meaning as in section 21A.”
- (3) In Schedule 3 (handling of complaints and conduct matters etc), in Part 3 (investigations and subsequent proceedings)—
  - (a) omit paragraph 19ZD (sensitive information: restriction on further disclosure of information received under an information notice);
  - (b) in paragraph 22 (final reports on investigations: complaints, conduct matters and certain DSI matters)—
    - (i) after sub-paragraph (6) insert—
 

“(6A) Where a person would contravene section 21A by submitting, or (as the case may be) sending a copy of, a report in its entirety to the appropriate authority under sub-paragraph (2) or (3)(b), the person must instead submit, or send a copy of, the report after having removed or obscured the information which by virtue of section 21A the person must not disclose.”;
    - (ii) in sub-paragraph (8), at the end insert “ except so far as the person is prevented from doing so by section 21A ”;
  - (c) in paragraph 23 (action by the Commission in response to an investigation report under paragraph 22)—
    - (i) in sub-paragraph (1A) (as inserted by section 18), after “sub-paragraph (2)(a)” insert “ (read with sub-paragraph (2ZA)) ”;
    - (ii) after sub-paragraph (2) insert—
 

“(2ZA) Where the Commission would contravene section 21A by sending a copy of a report in its entirety to the appropriate authority under sub-paragraph (2)(a) or to the Director of Public Prosecutions under sub-paragraph (2)(c), the Commission must instead send a copy of the report after having removed or obscured the information which by virtue of section 21A the Commission must not disclose.”;
  - (d) in paragraph 24A (final reports on investigations: other DSI matters), after sub-paragraph (3) insert—

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- “(3A) Where a person would contravene section 21A by sending a copy of a report in its entirety to the appropriate authority under sub-paragraph (2)(b), the person must instead send a copy of the report after having removed or obscured the information which by virtue of section 21A the person must not disclose.”;
- (e) in paragraph 24B (action by the Commission in response to an investigation report under paragraph 24A), after sub-paragraph (1) insert—

“(1A) Sub-paragraph (3A) of paragraph 24A applies for the purposes of sub-paragraph (1) of this paragraph as it applies for the purposes of sub-paragraph (2)(b) of that paragraph.”

#### Commencement Information

**I25** S. 19 in force for specified purposes at Royal Assent, see s. 183

## 20 Investigations by IPCC: powers of seizure and retention

- (1) In Schedule 3 to the Police Reform Act 2002 (handling of complaints and conduct matters etc), in Part 3 (investigations and subsequent proceedings), before paragraph 19A insert—

### “Investigations by the Commission: power of seizure

- 19ZE (1) The powers conferred by this paragraph are exercisable by a person—
- who is designated under paragraph 19(2) in relation to an investigation (the “designated person”), and
  - who is lawfully on any premises for the purposes of the investigation.
- (2) The designated person may seize anything which is on the premises if the designated person has reasonable grounds for believing—
- that it is evidence relating to the conduct or other matter to which the investigation relates, and
  - that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.
- (3) The designated person may require any information which is stored in any electronic form and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible, or from which it can readily be produced in a visible and legible form, if the designated person has reasonable grounds for believing—
- that it is evidence relating to the conduct or other matter to which the investigation relates, and
  - that it is necessary to do so in order to prevent the evidence being concealed, lost, tampered with or destroyed.
- (4) The powers conferred by this paragraph do not authorise the seizure of an item which the designated person exercising the power has reasonable grounds for believing to be an item subject to legal privilege within the meaning of the 1984 Act (see section 10 of that Act).

*Status: Point in time view as at 22/03/2018.*

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- (5) Where a designated person has the power to seize a thing or require information to be produced under this paragraph and under section 19 of the 1984 Act (by virtue of section 97(8) of the 1996 Act or paragraph 19(4)), the designated person is to be treated for all purposes as acting in exercise of the power conferred by section 19 of the 1984 Act.
- (6) In this paragraph “premises” has the same meaning as in the 1984 Act (see section 23 of that Act).

### **Further provision about seizure under paragraph 19ZE**

- 19ZF (1) This paragraph applies where a designated person seizes anything under paragraph 19ZE(2).
- (2) The designated person must provide a notice in relation to the thing seized if requested to do so by a person showing himself—
    - (a) to be the occupier of the premises on which it was seized, or
    - (b) to have had custody or control of it immediately before the seizure.
  - (3) The notice must state what has been seized and the reason for its seizure.
  - (4) The notice must be provided within a reasonable time from the making of the request for it.
  - (5) In this paragraph “designated person” has the same meaning as in paragraph 19ZE.

### **Investigations by the Commission: power of retention**

- 19ZG (1) This paragraph applies to anything which, for the purposes of an investigation in accordance with paragraph 19—
- (a) has been seized under paragraph 19ZE(2) or taken away following a requirement imposed under paragraph 19ZE(3), or
  - (b) is otherwise lawfully in the possession of the Commission.
- (2) Anything to which this paragraph applies may be retained by the Commission for as long as is necessary in all the circumstances, including (amongst other things) so that it may be used as evidence in criminal or disciplinary proceedings or in an inquest held under Part 1 of the Coroners and Justice Act 2009.
  - (3) For the purposes of sub-paragraph (2), the retention of anything to which this paragraph applies is not necessary if having a photograph or copy of the thing would suffice (and the Commission may arrange for the thing to be photographed or copied before it ceases to be retained).

### **Further provision about things retained under paragraph 19ZG**

- 19ZH (1) This paragraph applies to anything which—
- (a) has been seized (whether under paragraph 19ZE(2) or otherwise), and
  - (b) is being retained by the Commission under paragraph 19ZG.

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- (2) If a request for permission to be granted access to a thing to which this paragraph applies is made to the Commission by—
- (a) a person who had custody or control of the thing immediately before it was seized, or
  - (b) someone acting on behalf of such a person,
- the Commission must allow the person who made the request access to it under the supervision of a member of the Commission's staff.
- (3) Sub-paragraph (4) applies if a request for a photograph or copy of a thing to which this paragraph applies is made to the Commission by—
- (a) a person who had custody or control of the thing immediately before it was seized, or
  - (b) someone acting on behalf of such a person.
- (4) The Commission must either—
- (a) allow the person who made the request access to the thing under the supervision of a member of the Commission's staff for the purpose of photographing or copying it, or
  - (b) arrange for the thing to be photographed or copied.
- (5) If the Commission acts under sub-paragraph (4)(b), the Commission must supply the photograph or copy to the person who made the request within a reasonable time from the making of the request.
- (6) The Commission is not obliged to do anything in response to a request under sub-paragraph (2) or (3) if the Commission has reasonable grounds for believing that to do so would prejudice—
- (a) any investigation being carried out in accordance with this Schedule, or
  - (b) any criminal or disciplinary proceedings or any inquest held under Part 1 of the Coroners and Justice Act 2009.”
- (2) In section 21 of the Police and Criminal Evidence Act 1984 (access and copying), at the end insert—

“(10) The references to a constable in subsections (1) and (2) do not include a constable who has seized a thing under paragraph 19ZE of Schedule 3 to the Police Reform Act 2002.”

#### **Commencement Information**

**126** S. 20 in force for specified purposes at Royal Assent, see s. 183

## **21 References to England and Wales in connection with IPCC functions**

- (1) In section 29 of the Police Reform Act 2002 (interpretation of Part 2), at the end insert—
- “(8) References in sections 26, 26BA and 26C to England and Wales include the sea and other waters within the seaward limits of the territorial sea adjacent to England and Wales.”

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- (2) In section 28 of the Commissioners for Revenue and Customs Act 2005 (complaints and misconduct: England and Wales), in subsection (6), at the end insert “, including the sea and other waters within the seaward limits of the territorial sea adjacent to England and Wales”.
- (3) In section 41 of the Police and Justice Act 2006 (immigration and asylum enforcement functions and customs functions: complaints and misconduct), in subsection (7), at the end insert “, including the sea and other waters within the seaward limits of the territorial sea adjacent to England and Wales”.

#### Commencement Information

**I27** S. 21 in force for specified purposes at Royal Assent, see s. 183

## 22 Oversight functions of local policing bodies

- (1) In section 1 of the Police Reform and Social Responsibility Act 2011 (police and crime commissioners), in subsection (8) (duty to hold chief constable to account), after paragraph (c) insert—
  - “(ca) the exercise of the chief constable's functions under Part 2 of the Police Reform Act 2002 in relation to the handling of complaints;”.
- (2) In section 3 of that Act (Mayor's Office for Policing and Crime), in subsection (8) (duty to hold Commissioner of Police of the Metropolis to account), after paragraph (c) insert—
  - “(ca) the exercise of the Commissioner's functions under Part 2 of the Police Reform Act 2002 in relation to the handling of complaints;”.
- (3) In section 6ZA of the Police Act 1996 (power to confer particular functions on the Common Council), in subsection (2), after paragraph (a) insert—
  - “(aa) to hold the Commissioner of Police for the City of London to account for the exercise of the Commissioner's functions under Part 2 of the Police Reform Act 2002 in relation to the handling of complaints;”.

#### Commencement Information

**I28** S. 22 in force for specified purposes at Royal Assent, see s. 183

## 23 Delegation of functions by local policing bodies

- (1) In section 23 of the Police Reform Act 2002 (Part 2 regulations), in subsection (2), after paragraph (p) insert—
  - “(pa) for local policing bodies to have power to delegate the exercise or performance of powers and duties conferred or imposed on them by or under this Part (including powers and duties that are acquired by virtue of giving a notice under section 13A);”.
- (2) In section 18 of the Police Reform and Social Responsibility Act 2011 (delegation of functions by police and crime commissioners), in subsection (3), after paragraph (a) insert—



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- “(aa) arrange, under subsection (1)(b) or (2), for the deputy police and crime commissioner or any other person to exercise a function that the police and crime commissioner has under or by virtue of Part 2 of the Police Reform Act 2002 (see instead section 23(2)(pa) of that Act and regulations made under that provision);”.
- (3) In section 19 of the Police Reform and Social Responsibility Act 2011 (delegation of functions by Mayor's Office for Policing and Crime), in subsection (3), after paragraph (a) insert—
- “(aa) arrange, under subsection (1)(b) or (2), for the Deputy Mayor for Policing and Crime or any other person to exercise a function that the Mayor's Office for Policing and Crime has under or by virtue of Part 2 of the Police Reform Act 2002 (see instead section 23(2)(pa) of that Act and regulations made under that provision);”.
- (4) In section 107 of the Local Government Act 1972 (application of sections 101 to 106 of that Act to the Common Council)—
- (a) in subsection (2), omit the words from the beginning to “and” in the first place it occurs;
- (b) after subsection (2) insert—
- “(2A) The Common Council may not, under section 101(1)(a), arrange for any person to exercise a function that the Common Council has under or by virtue of Part 2 of the Police Reform Act 2002 (see instead section 23(2)(pa) of that Act and regulations made under that provision).”

#### Commencement Information

**I29** S. 23 in force for specified purposes at Royal Assent, see s. 183

## 24 Transfer of staff to local policing bodies

- (1) A local policing body may make one or more schemes for the transfer to itself from the chief officer of police of the police force maintained by the local policing body of rights and liabilities under, or in connection with, a relevant contract of employment provided that the condition in subsection (2) is satisfied in relation to each such scheme.
- (2) The condition referred to in subsection (1) is that it is desirable to make the scheme to enable the local policing body to discharge functions that are, or are to be, conferred on it under or by virtue of the Police Reform Act 2002 as a result of the amendments of that Act made by section 13 of, and paragraph 39 of Schedule 5 to, this Act.
- (3) For the purposes of this section a contract of employment is a relevant contract of employment if it is a contract of employment of a member of the civilian staff of the police force (within the meaning of Part 1 of the Police Reform and Social Responsibility Act 2011) and the staff member is not designated under section 38 of the Police Reform Act 2002.
- (4) The local policing body must obtain the consent of the chief officer of police to the making of the scheme.

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- (5) Where the chief officer of police does not consent to the making of the scheme, the local policing body may make the scheme notwithstanding subsection (4) if the Secretary of State consents to the making of the scheme.
- (6) A scheme under subsection (1) must make provision that has the same or similar effect as the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) (so far as those regulations do not apply in relation to the transfer).

#### **Commencement Information**

**I30** S. 24 in force for specified purposes at Royal Assent, see s. 183

## **CHAPTER 2**

### POLICE SUPER-COMPLAINTS

#### **25 Power to make super-complaints**

After Part 2 of the Police Reform Act 2002 (complaints and misconduct) insert—

#### **“PART 2A**

#### SUPER-COMPLAINTS

##### **29A Power to make super-complaints**

- (1) A designated body may make a complaint to Her Majesty's Chief Inspector of Constabulary that a feature, or combination of features, of policing in England and Wales by one or more than one police force is, or appears to be, significantly harming the interests of the public.
- (2) See section 29B for the meaning of “designated body”.
- (3) In this section-
  - “England and Wales” includes the adjacent United Kingdom waters within the meaning of section 30 of the Police Act 1996,
  - “police force” means any of the following—
    - (a) the metropolitan police force,
    - (b) a police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London),
    - (c) the National Crime Agency,
    - (d) the City of London police force,
    - (e) the Ministry of Defence Police,
    - (f) the Civil Nuclear Constabulary,
    - (g) the British Transport Police.”

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#### Commencement Information

**I31** S. 25 in force for specified purposes at Royal Assent, see s. 183

## 26 Bodies who may make super-complaints

In Part 2A of the Police Reform Act 2002, after section 29A (for which see section 25 above), insert—

### “29B Bodies who may make super-complaints

- (1) In this Part “designated body” means a body designated in regulations made by the Secretary of State.
- (2) The Secretary of State—
  - (a) may make or revoke such a designation if the Secretary of State considers it appropriate to do so, and
  - (b) must make or revoke such a designation if asked to do so by an authorised person.
- (3) The Secretary of State must, in deciding whether to act under subsection (2)
  - (a), apply criteria specified or described in regulations made by the Secretary of State.
- (4) The authorised person must, in deciding whether to ask the Secretary of State to act under subsection (2)(b), apply criteria specified or described in regulations made by the Secretary of State.
- (5) The Secretary of State must, before making regulations under subsection (3) or (4), consult such persons as the Secretary of State considers appropriate.
- (6) In this section “authorised person” means any person specified or described in regulations made by the Secretary of State.”

#### Commencement Information

**I32** S. 26 in force for specified purposes at Royal Assent, see s. 183

## 27 Regulations about super-complaints

- (1) In Part 2A of the Police Reform Act 2002, after section 29B (for which see section 26 above), insert—

### “29C Regulations about super-complaints

- (1) The Secretary of State may by regulations make provision about complaints under section 29A.
- (2) Such provision may, in particular, include provision about—
  - (a) the procedure for dealing with a matter before a complaint is made under section 29A (including who is to deal with the matter),

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- (b) the procedure for dealing with a complaint under section 29A (including who is to deal with the matter),
  - (c) whether, or the extent to which, a matter is to be dealt with under this Part or Part 2.
- (3) Regulations under this section may—
- (a) confer (or enable the conferring of) functions on Her Majesty's Chief Inspector of Constabulary, the Independent Police Complaints Commission, the College of Policing or any other person,
  - (b) apply (with or without modifications), in relation to any matter to be dealt with by the Independent Police Complaints Commission under this Part, any provision made by or under Part 2.”
- (2) After section 10(3) of that Act (general functions of the Commission) insert—
- “(3A) The Commission also has any functions conferred on it by regulations under section 29C of this Act (regulations about super-complaints).”

#### **Commencement Information**

**I33** S. 27 in force for specified purposes at Royal Assent, see s. 183

## **CHAPTER 3**

### WHISTLE-BLOWING: POWER OF IPCC TO INVESTIGATE

#### **28 Investigations by the IPCC: whistle-blowing**

- (1) After Part 2A of the Police Reform Act 2002 (for which see sections 25 to 27 above) insert—

#### **“PART 2B**

#### INVESTIGATION OF CONCERNS RAISED BY WHISTLE-BLOWERS

##### **29D Power to investigate concerns raised by whistle-blowers**

- (1) The Commission may investigate any concern raised by a whistle-blower of which it becomes aware (whether because the whistle-blower has contacted the Commission or for any other reason) but only if the whistle-blower informs the Commission, before the beginning of the investigation, that he or she consents to an investigation taking place.
- (2) In deciding whether to investigate, the Commission must take into account the public interest.
- (3) For the purposes of this Part, a person is a “whistle-blower” if—
  - (a) the person is, or was at any time, under the direction and control of a chief officer of police,

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- (b) the person raises a concern that is about a police force or a person serving with the police,
  - (c) the matter to which the concern relates is not—
    - (i) about the conditions of service of persons serving with the police, or
    - (ii) a matter that is, or could be, the subject of a complaint by the person under Part 2, and
  - (d) at the time the Commission first becomes aware of the concern, the matter to which it relates is not—
    - (i) under investigation under the direction of the Commission in accordance with paragraph 18 of Schedule 3,
    - (ii) under investigation by the Commission in accordance with paragraph 19 of that Schedule,
    - (iii) being dealt with as a complaint under section 29A under regulations under section 29C (regulations about super-complaints), or
    - (iv) under investigation under this Part.
- (4) Subsection (1) is subject to section 29F (which deals with the position where the concern is a conduct matter for the purposes of Part 2) and to section 29G (which deals with the position where the concern is a DSI matter for the purposes of that Part).
- (5) Schedule 3A (which makes provision about the procedure etc where the Commission decides to investigate under subsection (1)) has effect.

#### **29E Commission's powers and duties where it decides not to investigate**

- (1) If the Commission decides not to carry out an investigation under section 29D(1), the Commission must inform the whistle-blower of the decision.
- (2) In such a case, the Commission may, with the consent of the whistle-blower—
  - (a) disclose the nature of the concern to the appropriate authority, and
  - (b) make recommendations in the light of the concern.
- (3) In this Part, except where otherwise provided, “appropriate authority” means—
  - (a) if the concern relates to a chief officer or an acting chief officer, the local policing body for the area of the police force of which he or she is a member;
  - (b) if the concern relates to any other person, the chief officer under whose direction and control that person is;
  - (c) if the concern does not relate to any particular persons, the chief officer of the police force to which the concern relates.
- (4) The Secretary of State may by regulations make further provision about recommendations under subsection (2).
- (5) The regulations may (amongst other things)—
  - (a) describe the kinds of recommendations that the Commission may make under subsection (2);

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- (b) specify the persons to whom the recommendations may be made;
- (c) authorise the Commission to require a response to any recommendation made by the Commission under subsection (2).

#### **29F Special provision for “conduct matters”**

- (1) Before deciding whether to carry out an investigation under section 29D(1), the Commission must consider whether the concern is about a conduct matter for the purposes of Part 2 (see section 12(2)).
- (2) If the Commission determines that the concern is about a conduct matter for the purposes of Part 2—
  - (a) it may not carry out an investigation under section 29D(1), and
  - (b) it must notify the appropriate authority in relation to the person whose conduct is in question of its determination.
- (3) Where the appropriate authority in relation to the person whose conduct is in question is notified under subsection (2), it must record the matter under paragraph 11 of Schedule 3 to this Act as a conduct matter.
- (4) The Secretary of State may by regulations make provision modifying Schedule 3 in relation to a conduct matter that, in accordance with subsection (3), is recorded under paragraph 11 of that Schedule but only for the purpose of making provision for the protection of the anonymity of whistle-blowers.

#### **29G Special provision for “DSI matters”**

- (1) Before deciding whether to carry out an investigation under section 29D(1), the Commission must consider whether the concern is about a death or serious injury matter (“a DSI matter”) for the purposes of Part 2 (see section 12(2A)).
- (2) If the Commission determines that the concern is about a DSI matter for the purposes of Part 2—
  - (a) it may not carry out an investigation under section 29D(1), and
  - (b) it must notify the appropriate authority in relation to the DSI matter.
- (3) Where the appropriate authority in relation to the DSI matter is notified under subsection (2), it must record the matter under paragraph 14A of Schedule 3 to this Act as a DSI matter.
- (4) The Secretary of State may by regulations make provision modifying Schedule 3 in relation to a DSI matter that, in accordance with subsection (3), is recorded under paragraph 14A of that Schedule but only for the purpose of making provision for the protection of the anonymity of whistle-blowers.
- (5) In this section, references to the appropriate authority in relation to a DSI matter have the same meaning as in Part 2 (see section 29).

#### **29H Commission's powers and duties where whistle-blower is deceased**

- (1) The power of the Commission to carry out an investigation under section 29D(1) applies where the whistle-blower dies before the Commission becomes aware of the concern (or before it decides to investigate).

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- (2) Any investigation begun by the Commission under section 29D(1) before the death of the whistle-blower may be continued after the death.
- (3) Where a whistle-blower dies—
  - (a) any requirement under this Part to obtain the consent of the whistle-blower may be satisfied by obtaining the consent of that person's approved representative;
  - (b) any requirement under this Part to give any document or other information to the whistle-blower may be satisfied by giving the document or other information to the person's approved representative;
  - (c) any requirement under this Part not to disclose the identity of the whistle-blower does not apply or (where the Commission became aware of the concern before the death) ceases to apply.
- (4) For the purpose of this section, “approved representative” means a person who has been approved by the Commission for the purposes of this Part.
- (5) The Commission may only approve a person who is—
  - (a) the widow or widower (or surviving civil partner) of the deceased whistle-blower,
  - (b) a personal representative (within the meaning of section 55(1)(xi) of the Administration of Estates Act 1925) of the deceased whistle-blower, or
  - (c) any other person appearing to the Commission to have, by reason of a family or similar relationship with the deceased whistle-blower, a relevant interest in the outcome of the concern.

## 29I Duty to keep whistle-blowers informed

- (1) Where the Commission carries out an investigation under section 29D(1), it must keep the whistle-blower properly informed about the progress of the investigation and its outcome.
- (2) The Secretary of State may by regulations provide for exceptions to the duty under subsection (1).
- (3) The power conferred by subsection (2) may be exercised only to the extent that the Secretary of State considers necessary for any of the permitted non-disclosure purposes.
- (4) “The permitted non-disclosure purposes” are—
  - (a) preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any actual or prospective criminal proceedings;
  - (b) preventing the disclosure of information in any circumstances in which it has been determined in accordance with the regulations that its non-disclosure—
    - (i) is in the interests of national security,
    - (ii) is for the purposes of the prevention or detection of crime or the apprehension or prosecution of offenders,

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- (iii) is for the purposes of the investigation of an allegation of misconduct against the whistle-blower or the taking of disciplinary proceedings or other appropriate action in relation to such an allegation,
  - (iv) is for the purposes of an investigation under Part 2 that relates to the whistle-blower,
  - (v) is required on proportionality grounds, or
  - (vi) is otherwise necessary in the public interest.
- (5) The non-disclosure of information is required on proportionality grounds if its disclosure would cause, directly or indirectly, an adverse effect which would be disproportionate to the benefits arising from its disclosure.

#### **29J Protection of anonymity of whistle-blowers**

- (1) The Secretary of State may by regulations make provision setting out the circumstances in which the Commission is required or authorised to disclose information falling within subsection (2) (or any particular description of such information) to persons specified, or of a description specified, in the regulations.
- (2) The information falling within this subsection is—
  - (a) the identity of a whistle-blower or information that might (whether alone or with other information) tend to reveal that identity;
  - (b) the nature of a concern raised by a whistle-blower.
- (3) The power conferred by subsection (1) may be exercised only to the extent that the Secretary of State considers necessary for any of the permitted disclosure purposes.
- (4) “The permitted disclosure purposes” are—
  - (a) the protection of the interests of national security;
  - (b) the prevention or detection of crime or the apprehension of offenders;
  - (c) the institution or conduct of criminal proceedings;
  - (d) the investigation of allegations of misconduct against whistle-blowers and the taking of disciplinary proceedings or other appropriate action in relation to such allegations;
  - (e) investigations under Part 2 that relate to whistle-blowers;
  - (f) investigations under this Part;
  - (g) any other purpose that is for the protection of the public interest.
- (5) Except as provided by regulations under subsection (1) or by any other provision of this Part, the Commission may not disclose information falling within subsection (2) unless the whistle-blower consents to the disclosure.

#### **29K Other restrictions on disclosure of information**

- (1) The Secretary of State may by regulations make provision setting out the circumstances in which the Commission is required or authorised to disclose information falling within subsection (2) (or any particular description of such information) to persons specified, or of a description specified, in the regulations.



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- (2) The information falling within this subsection is—
  - (a) information relating to an investigation under section 29D;
  - (b) information relating to the outcome of any such investigation.
- (3) The power conferred by subsection (1) may be exercised only to the extent that the Secretary of State considers necessary for any of the permitted disclosure purposes.
- (4) In this section, “the permitted disclosure purposes” has the same meaning as in section 29J.
- (5) Except as provided by regulations under subsection (1) or by any other provision of this Part, the Commission may not disclose information falling within subsection (2).

## 29L Application of provisions of Part 2

- (1) The following provisions of Part 2 apply in relation to the functions of the Commission under this Part as they apply in relation to the functions of the Commission under Part 2—
  - (a) section 15 (general duties of local policing bodies, chief officers and inspectors);
  - (b) section 16 (payment for assistance with investigation);
  - (c) section 17 (provision of information to the Commission);
  - (d) section 18 (inspection of police premises on behalf of the Commission);
  - (e) section 19 (use of investigatory powers by or on behalf of the Commission);
  - (f) section 21A (restriction on disclosure of sensitive information);
  - (g) section 21B (provision of sensitive information to the Commission);
  - (h) section 22 (power of the Commission to issue guidance);
  - (i) section 26 (forces maintained otherwise than by local policing bodies);
  - (j) section 26BA (College of Policing);
  - (k) section 26C (the National Crime Agency).
- (2) Except as provided by subsection (1), the provision made by sections 15 to 29 of Part 2 does not apply in relation to the functions of the Commission under this Part.

## 29M Regulation-making powers: consultation

Before making regulations under this Part, the Secretary of State must consult—

- (a) the Commission,
- (b) such persons as appear to the Secretary of State to represent the views of police and crime commissioners,
- (c) the Mayor's Office for Policing and Crime;
- (d) the Common Council,
- (e) the National Police Chiefs' Council, and

*Status: Point in time view as at 22/03/2018.*

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- (f) such other persons as the Secretary of State thinks fit.

## 29N Interpretation

- (1) In this Part—

“the Commission” means the Independent Police Complaints Commission;

“appropriate authority” has the meaning given by section 29E(3);

“chief officer” means the chief officer of police of any police force; and “acting chief officer” means (as appropriate)—

- (a) a person exercising or performing functions of a chief constable in accordance with section 41 of the Police Reform and Social Responsibility Act 2011,
- (b) a person exercising powers or duties of the Commissioner of Police of the Metropolis in accordance with section 44 or 45(4) of that Act, or
- (c) a person exercising duties of the Commissioner of Police for the City of London in accordance with section 25 of the City of London Police Act 1839;

“conduct” has the same meaning as in Part 2 (see section 29(1));

“whistle-blower” has the meaning given by section 29D(3).

- (2) References in this Part to a person serving with the police have the same meaning as in Part 2 (see section 12(7)).”

- (2) After Schedule 3 to the Police Reform Act 2002 insert the new Schedule 3A set out in Schedule 6 to this Act.

- (3) In section 10 of that Act, after subsection (3A) (for which see section 27 above), insert—

“(3B) The Commission also has the functions which are conferred on it by Part 2B (whistle-blowing).”

- (4) In section 105 of that Act, in subsection (5), after “Part 2” insert “ or 2B ”.

- (5) In section 63 of the Police Act 1996 (Police Advisory Board for England and Wales), in subsection (3)(b), after “Part 2” insert “ or 2B ”.

### Commencement Information

**I34** [S. 28](#) in force for specified purposes at Royal Assent, see [s. 183](#)

## CHAPTER 4

### POLICE DISCIPLINE

## 29 Disciplinary proceedings: former members of police forces and former special constables

- (1) The Police Act 1996 is amended as follows.

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*Status: Point in time view as at 22/03/2018.*

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(2) In section 50 (regulations for police forces), after subsection (3) (regulations concerning disciplinary proceedings) insert—

“(3A) Regulations under this section may provide for the procedures that are established by or under regulations made by virtue of subsection (3) to apply (with or without modifications) in respect of the conduct, efficiency or effectiveness of any person where—

- (a) an allegation relating to the conduct, efficiency or effectiveness of the person comes to the attention of a chief officer of police, a local policing body or the Independent Police Complaints Commission,
- (b) at the time of the alleged misconduct, inefficiency or ineffectiveness the person was a member of a police force, and
- (c) condition A, B or C is satisfied in relation to the person.

(3B) Condition A is that the person ceases to be a member of a police force after the allegation first comes to the attention of a person mentioned in subsection (3A) (a).

(3C) Condition B is that the person had ceased to be a member of a police force before the allegation first came to the attention of a person mentioned in subsection (3A)(a) but the period between the person having ceased to be a member of a police force and the allegation first coming to the attention of a person mentioned in subsection (3A)(a) does not exceed the period specified in regulations under this section.

(3D) Condition C is that—

- (a) the person had ceased to be a member of a police force before the allegation first came to the attention of a person mentioned in subsection (3A)(a),
- (b) the period between the person having ceased to be a member of a police force and the allegation first coming to the attention of a person mentioned in subsection (3A)(a) exceeds the period specified for the purposes of condition B, and
- (c) the alleged misconduct, inefficiency or ineffectiveness is such that, if proved, the person could have been dealt with by dismissal if the person had still been a member of a police force.

(3E) Regulations made by virtue of subsection (3A) as they apply in a case where condition C is satisfied in relation to a person must provide that disciplinary proceedings may be taken against the person in respect of the alleged misconduct, inefficiency or ineffectiveness only if the Independent Police Complaints Commission determines that taking such proceedings would be reasonable and proportionate having regard to—

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

(3F) Regulations made by virtue of subsection (3A) may make provision about matters to be taken into account by the Independent Police Complaints Commission for the purposes of subsection (3E)(a) to (c).

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(3G) Regulations made by virtue of subsection (3A) must provide that disciplinary proceedings which are not the first disciplinary proceedings to be taken against the person in respect of the alleged misconduct, inefficiency or ineffectiveness may be taken only if they result from a re-investigation of the allegation (whether carried out under regulations under this section or under the Police Reform Act 2002) that begins within the period specified in the regulations.

The period specified must begin with the date when the person ceased to be a member of a police force.”

(3) In section 51 (regulations for special constables), after subsection (2A) (regulations concerning disciplinary proceedings) insert—

“(2B) Regulations under this section may provide for the procedures that are established by or under regulations made by virtue of subsection (2A) to apply (with or without modifications) in respect of the conduct, efficiency or effectiveness of any person where—

- (a) an allegation relating to the conduct, efficiency or effectiveness of the person comes to the attention of a chief officer of police, a local policing body or the Independent Police Complaints Commission,
- (b) at the time of the alleged misconduct, inefficiency or ineffectiveness the person was a special constable, and
- (c) condition A, B or C is satisfied in relation to the person.

(2C) Condition A is that the person ceases to be a special constable after the allegation first comes to the attention of a person mentioned in subsection (2B) (a).

(2D) Condition B is that the person had ceased to be a special constable before the allegation first came to the attention of a person mentioned in subsection (2B) (a) but the period between the person having ceased to be a special constable and the allegation first coming to the attention of a person mentioned in subsection (2B)(a) does not exceed the period specified in regulations under this section.

(2E) Condition C is that—

- (a) the person had ceased to be a special constable before the allegation first came to the attention of a person mentioned in subsection (2B) (a),
- (b) the period between the person having ceased to be a special constable and the allegation first coming to the attention of a person mentioned in subsection (2B)(a) exceeds the period specified for the purposes of condition B, and
- (c) the alleged misconduct, inefficiency or ineffectiveness is such that, if proved, the person could have been dealt with by dismissal if the person had still been a special constable.

(2F) Regulations made by virtue of subsection (2B) as they apply in a case where condition C is satisfied in relation to a person must provide that disciplinary proceedings may be taken against the person in respect of the alleged misconduct, inefficiency or ineffectiveness only if the Independent Police

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Complaints Commission determines that taking such proceedings would be reasonable and proportionate having regard to—

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

(2G) Regulations made by virtue of subsection (2B) may make provision about matters to be taken into account by the Independent Police Complaints Commission for the purposes of subsection (2F)(a) to (c).

(2H) Regulations made by virtue of subsection (2B) must provide that disciplinary proceedings which are not the first disciplinary proceedings to be taken against the person in respect of the alleged misconduct, inefficiency or ineffectiveness may be taken only if they result from a re-investigation of the allegation (whether carried out under regulations under this section or under the Police Reform Act 2002) that begins within the period specified in the regulations.

The period specified must begin with the date when the person ceased to be a special constable.”

(4) In section 84 (representation etc at disciplinary and other proceedings)—

- (a) in subsection (1)—
  - (i) after “50(3)” insert “ or (3A) ”;
  - (ii) after “51(2A)” insert “ or (2B) ”;
- (b) in subsection (4)—
  - (i) in the definition of “the officer concerned”, after “constable” insert “ or, as the case may be, the former member of a police force or the former special constable, ”;
  - (ii) in the definition of “relevant authority”, after “authority” insert “ , in relation to proceedings conducted under regulations made in pursuance of section 50(3) or section 51(2A), ”;
  - (iii) after the definition of “relevant authority” insert—

““relevant authority”, in relation to proceedings conducted under regulations made in pursuance of section 50(3A) or section 51(2B), means—

- (a) where the officer concerned is a former member of a police force (other than a former chief officer of police), or a former special constable, the chief officer of police of the police force of which the officer was last a member, or for which the officer was last appointed as a special constable;
- (b) where the officer concerned is a former chief officer of police, the local policing body for the police force of which the officer was last a member;”.

(5) In section 85 (appeals against dismissal etc), in subsection (1), after “constable” insert “ , or a former member of a police force or a former special constable, ”.

(6) In Schedule 6 (appeals to Police Appeals Tribunals), in paragraph 10—

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- (a) in paragraph (b), before “means” insert “, except in relation to an appeal under section 85 that relates to proceedings conducted under regulations made in pursuance of section 50(3A) or section 51(2B), ”;
  - (b) after paragraph (b) insert—
    - “(ba) the relevant local policing body”, in relation to an appeal under section 85 that relates to proceedings conducted under regulations made in pursuance of section 50(3A) or section 51(2B), means the local policing body which maintains—
      - (i) the police force of which the appellant was last a member, or
      - (ii) the police force for the area for which the appellant was last appointed as a special constable,
 as the case may be.”
- (7) Regulations made in pursuance of section 50(3A) or 51(2B) of the Police Act 1996 (as inserted by subsections (2) and (3))—
- (a) may not make provision in relation to a person who ceases to be a member of a police force or a special constable (as the case may be) before the coming into force of subsections (2) and (3);
  - (b) may make provision in relation to a person who ceases to be a member of a police force or a special constable (as the case may be) after the coming into force of this section even though the alleged misconduct, inefficiency or ineffectiveness occurred at a time before the coming into force of subsections (2) and (3), but only if the alleged misconduct, inefficiency or ineffectiveness is such that, if proved, there could be a finding in relation to the person in disciplinary proceedings that the person would have been dismissed if the person had still been a member of a police force or a special constable.
- (8) Schedule 7 makes amendments of the Ministry of Defence Police Act 1987, the Railways and Transport Safety Act 2003 and the Energy Act 2004 which produce an equivalent effect to the amendments made by this section.

#### **Commencement Information**

- I35** S. 29 in force for specified purposes at Royal Assent, see s. 183
- I36** S. 29(1)-(7) in force at 15.12.2017 in so far as not already in force by S.I. 2017/1139, reg. 2(a) (as amended by S.I. 2017/1162, reg. 2)
- I37** S. 29(8) in force at 15.12.2017 for specified purposes by S.I. 2017/1139, reg. 2(b) (as amended by S.I. 2017/1162, reg. 2)

### **30 Police barred list and police advisory list**

- (1) After Part 4 of the Police Act 1996, insert the Part set out in Schedule 8 to this Act.
- (2) In consequence of the new Part 4A of the Police Act 1996 (as inserted by Schedule 8), the Police Reform and Social Responsibility Act 2011 is amended as follows.
- (3) In section 42 (appointment of Commissioner of Police of the Metropolis), after subsection (3A) insert—

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- “(3AA) But a person who would be eligible for appointment by virtue of subsection (3A) is not eligible for appointment at a time when the person is included in the police barred list maintained under section 88B of the Police Act 1996.”
- (4) In section 43 (Deputy Commissioner of Police of the Metropolis), after subsection (3) insert—
- “(3A) The Secretary of State may not recommend to Her Majesty that She appoint a person as the Deputy Commissioner of Police of the Metropolis unless that person is eligible for appointment.
- (3B) A person is not eligible for appointment at a time when the person is included in the police barred list maintained under section 88B of the Police Act 1996.”
- (5) In Part 1 of Schedule 8 (appointment of Chief Constables), in paragraph 1—
- (a) the existing text becomes sub-paragraph (1);
- (b) after that sub-paragraph insert—
- “(2) The police and crime commissioner also has duties under section 88C of the Police Act 1996 (effect of inclusion in police barred list) in relation to the appointment of a chief constable.”
- (6) The Secretary of State may by regulations made by statutory instrument make provision that—
- (a) corresponds or is similar to that made by or under Part 4A of the Police Act 1996 (as inserted by Schedule 8), and
- (b) relates to a person who is, or has been, employed or appointed by a person with functions of a public nature exercisable in, or in relation to, England and Wales that relate to policing or law enforcement (other than a chief officer of police or a local policing body, within the meaning of the Police Act 1996).
- (7) A statutory instrument containing regulations under subsection (6) is subject to annulment in pursuance of a resolution of either House of Parliament.

#### **Commencement Information**

**I38** S. 30 in force for specified purposes at Royal Assent, see s. 183

**I39** S. 30 in force at 15.12.2017 in so far as not already in force by S.I. 2017/1139, reg. 2(c) (as amended by S.I. 2017/1162, reg. 2)

### **31 Appeals to Police Appeals Tribunals**

- (1) Schedule 6 to the Police Act 1996 (appeals to Police Appeals Tribunals) is amended as follows.
- (2) In paragraph 1 (appeal by a senior officer), in sub-paragraph (1), in the words before paragraph (a), for “Secretary of State” substitute “relevant person”.
- (3) In paragraph 2 (appeal by a member of a police force other than a senior officer or by a special constable), in sub-paragraph (1)—
- (a) in the words before paragraph (a), for “relevant local policing body” substitute “relevant person”;

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- (b) omit paragraph (d);
  - (c) at the end insert—
    - “(e) one shall be a lay person.”
- (4) After paragraph 2 insert—
- “2A
- (1) For the purposes of paragraphs 1 and 2, “the relevant person” means the person determined in accordance with rules made by the Secretary of State.
  - (2) Rules under sub-paragraph (1) may make—
    - (a) different provision for different cases and circumstances;
    - (b) provision for the relevant person to be able to delegate the power to appoint the members of a tribunal.
  - (3) A statutory instrument containing rules under sub-paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.”
- (5) In paragraph 10 (interpretation)—
- (a) after paragraph (a) insert—
    - “(aa) lay person” means a person who is not, and has never been—
      - (i) a member of a police force or a special constable,
      - (ii) a member of the civilian staff of a police force, including the metropolitan police force, within the meaning of Part 1 of the Police Reform and Social Responsibility Act 2011 (see section 102(4) and (6) of that Act),
      - (iii) a person employed by the Common Council of the City of London in its capacity as police authority who is under the direction and control of the Commissioner of Police for the City of London,
      - (iv) a police and crime commissioner,
      - (v) a member of staff of a police and crime commissioner, or of the Mayor's Office for Policing and Crime, within the meaning of Part 1 of the Police Reform and Social Responsibility Act 2011 (see section 102(3) and (5) of that Act),
      - (vi) a constable within the meaning of Part 1 of the Police and Fire Reform (Scotland) Act 2012 (2012 asp 8) (see section 99 of that Act),
      - (vii) a member of the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve,
      - (viii) a member of the British Transport Police Force or a special constable appointed under section 25 of the Railways and Transport Safety Act 2003,
      - (ix) an employee of the British Transport Police Authority appointed under section 27 of the Railways and Transport Safety Act 2003,
      - (x) a member of the Ministry of Defence Police,
      - (xi) a person (other than a member of the Ministry of Defence Police) who is under the direction and



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- control of the chief constable for the Ministry of Defence Police,
  - (xii) a member of the Civil Nuclear Constabulary, or
  - (xiii) an employee of the Civil Nuclear Police Authority appointed under paragraph 6 of Schedule 10 to the Energy Act 2004,”;
- (b) omit sub-paragraph (c).
- (6) In consequence of the other provision made by this section—
- (a) in the Criminal Justice and Immigration Act 2008, in Part 1 of Schedule 22, omit paragraph 11(6)(b);
  - (b) in the Police Reform and Social Responsibility Act 2011, in Part 1 of Schedule 16, omit paragraph 47(2)(b).

#### Commencement Information

**I40** S. 31 in force for specified purposes at Royal Assent, see s. 183

## 32 Guidance concerning disciplinary proceedings and conduct etc

- (1) Section 87 of the Police Act 1996 (guidance concerning disciplinary proceedings etc) is amended as follows.
- (2) For subsections (1) to (1A) substitute—
- “(1) The Secretary of State may issue guidance as to the discharge of their disciplinary functions to—
- (a) local policing bodies,
  - (b) chief officers of police,
  - (c) other members of police forces,
  - (d) civilian police employees, and
  - (e) the Independent Police Complaints Commission.”
- (3) Before subsection (2) insert—
- “(1B) The College of Policing may, with the approval of the Secretary of State, issue guidance to the persons mentioned in subsection (1)(a) to (c) as to the discharge of their disciplinary functions in relation to members of police forces and special constables and former members of police forces and former special constables.”
- (4) After subsection (4) insert—
- “(4A) In this section “disciplinary functions” means—
- (a) functions in relation to the conduct, efficiency and effectiveness of, and the maintenance of discipline of, the following persons (including functions in relation to disciplinary proceedings)—
    - (i) members of police forces;
    - (ii) special constables;
    - (iii) civilian police employees;
  - (b) functions in relation to disciplinary proceedings against persons who were, but have ceased to be, persons falling within paragraph (a).”

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(5) For subsection (5) substitute—

“(5) In this section—

“civilian police employee” means—

- (a) a member of the civilian staff of a police force, including the metropolitan police force (within the meaning of Part 1 of the Police Reform and Social Responsibility Act 2011), or
- (b) a person employed by the Common Council of the City of London in its capacity as police authority who is under the direction and control of the Commissioner of Police for the City of London;

“disciplinary proceedings”—

- (a) in relation to a member of a police force or a special constable, or a former member of a police force or a former special constable, means any proceedings under regulations under section 50 or 51 that are identified as disciplinary proceedings by those regulations;
- (b) in relation to any other person, means any proceedings identified as disciplinary proceedings by regulations made by the Secretary of State for the purposes of this section.”

(6) After subsection (5) insert—

“(6) A statutory instrument containing regulations under paragraph (b) of the definition of “disciplinary proceedings” in subsection (5) is subject to annulment in pursuance of a resolution of either House of Parliament.”

(7) After section 87 of the Police Act 1996 insert—

**“87A Guidance concerning conduct etc**

- (1) The Secretary of State may issue guidance as to matters of conduct, efficiency and effectiveness to—
  - (a) members of police forces,
  - (b) special constables, and
  - (c) civilian police employees.
- (2) The College of Policing may, with the approval of the Secretary of State, issue guidance of the type described in subsection (1) to the persons mentioned in paragraphs (a) and (b) of that subsection.
- (3) It shall be the duty of every person to whom any guidance under this section is issued to have regard to the guidance.
- (4) A failure by a person to whom guidance under this section is issued to have regard to the guidance shall be admissible in evidence in any disciplinary proceedings brought against the person.
- (5) In this section “civilian police employees” and “disciplinary proceedings” have the same meaning as in section 87.”

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### Commencement Information

**141** S. 32 in force for specified purposes at Royal Assent, see s. 183

## CHAPTER 5

### IPCC: RE-NAMING AND ORGANISATIONAL CHANGE

#### 33 Independent Office for Police Conduct

- (1) The body corporate known as the Independent Police Complaints Commission—
  - (a) is to continue to exist, and
  - (b) is to be known instead as the Independent Office for Police Conduct.
- (2) Section 9 of the Police Reform Act 2002 (which established the Independent Police Complaints Commission) is amended in accordance with subsections (3) to (8).
- (3) For the heading substitute “ The Independent Office for Police Conduct ”.
- (4) For subsection (1) substitute—
  - “(1) The body corporate previously known as the Independent Police Complaints Commission—
    - (a) is to continue to exist, and
    - (b) is to be known instead as the Independent Office for Police Conduct.”
- (5) For subsection (2) substitute—
  - “(2) The Office is to consist of—
    - (a) a Director General appointed by Her Majesty, and
    - (b) at least six other members.
  - (2A) The other members must consist of—
    - (a) persons appointed as non-executive members (see paragraph 1A of Schedule 2), and
    - (b) persons appointed as employee members (see paragraph 1B of that Schedule),but the powers of appointment under those paragraphs must be exercised so as to secure that a majority of members of the Office (including the Director General) are non-executive members.”
- (6) In subsection (3)—
  - (a) for “chairman of the Commission” substitute “ Director General ”;
  - (b) omit “, or as another member of the Commission,”.
- (7) In subsection (5)—
  - (a) for “The Commission shall not—” substitute “ Neither the Office nor the Director General shall— ”;
  - (b) for “Commission's” substitute “Office's”.
- (8) In subsection (6) for “Commission” substitute “ Office ”.

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- (9) Schedule 9 makes further provision in relation to the Independent Office for Police Conduct.

#### Commencement Information

- I42** S. 33 in force for specified purposes at Royal Assent, see s. 183  
**I43** S. 33(9) in force at 17.7.2017 for specified purposes by S.I. 2017/726, reg. 2(d)  
**I44** S. 33 in force at 8.1.2018 in so far as not already in force by S.I. 2017/1249, reg. 2 (with reg. 3)

### 34 Exercise of functions

- (1) Section 10 of the Police Reform Act 2002 (general functions of the Commission) is amended in accordance with subsections (2) to (5) (see also paragraph 17 of Schedule 9 for further minor and consequential amendments).
- (2) For “Commission”, in each place except as otherwise provided by subsection (5) (including in the heading and in provisions inserted by amendments made by this Act), substitute “ Director General ”.
- (3) In subsection (2)—
- (a) in paragraph (a), at the end insert “ or other concerns raised by virtue of Part 2B (whistle-blowing) ”;
  - (b) in paragraph (c), after “complaints” insert “ or other concerns ”.
- (4) After subsection (5) insert—
- “(5A) In carrying out functions the Director General must have regard to any advice provided to the Director General by the Office (see section 10A(1)(c)).”
- (5) In subsection (7), for “Commission”, in the first place it occurs, substitute “ Office ”.
- (6) After that section insert—

#### “10A General functions of the Office

- (1) The functions of the Office are—
- (a) to secure that the Office has in place appropriate arrangements for good governance and financial management,
  - (b) to determine and promote the strategic aims and values of the Office,
  - (c) to provide support and advice to the Director General in the carrying out of the Director General's functions, and
  - (d) to monitor and review the carrying out of such functions.
- (2) The Office also has such other functions as are conferred on it by any other enactment (whenever passed or made).
- (3) The Office is to perform its functions for the general purpose of improving the way in which the Director General's functions are carried out (including by encouraging the efficient and effective use of resources in the carrying out of those functions).
- (4) In carrying out its functions the Office must in particular have regard to public confidence in the existence of suitable arrangements with respect to the

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matters mentioned in section 10(2) and with the operation of the arrangements that are in fact maintained with respect to those matters.

- (5) The Office may do anything which appears to it to be calculated to facilitate, or is incidental or conducive to, the carrying out of its functions.

### **10B Efficiency etc in exercise of functions**

The Director General and the Office must carry out their functions efficiently and effectively.

### **10C Strategy for exercise of functions**

- (1) The Director General and the Office must jointly—
- (a) prepare a strategy for the carrying out of their functions, and
  - (b) review the strategy (and revise it as appropriate) at least once every 12 months.
- (2) The strategy must set out how the Director General and the Office propose to carry out their functions in the relevant period.
- (3) The strategy must also include a plan for the use during the relevant period of resources for the carrying out of functions of the Director General and the Office.
- (4) The Director General and the Office must each give effect to the strategy in carrying out their functions.
- (5) The Director General and the Office must jointly publish a strategy (or revised strategy) prepared under this section (stating the time from which it takes effect).
- (6) In this section “relevant period”, in relation to a strategy, means the period of time that is covered by the strategy.

### **10D Code of practice**

- (1) The Director General and the Office must jointly prepare a code of practice dealing with the relationship between the Director General and the Office.
- (2) In doing so, they must (in particular) seek to reflect the principle that the Director General is to act independently when making decisions in connection with the carrying out of the Director General's functions.
- (3) The code must include provision as to the following—
- (a) how the strategy required by section 10C is to be prepared, reviewed and revised;
  - (b) the matters to be covered by the strategy and the periods to be covered by it from time to time;
  - (c) how the carrying out of functions by the Director General is to be monitored and reviewed by other members of the Office;
  - (d) the giving of advice to the Director General by other members of the Office in connection with the carrying out of functions by the Director General;

*Status: Point in time view as at 22/03/2018.*

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- (e) the keeping of written records of instances where the Director General has not followed advice given by other members of the Office and the reasons for not doing so;
  - (f) how non-executive members of the Office are to give practical effect to the requirement imposed by subsection (2).
- (4) The Code may include whatever other provision the Director General and the Office think appropriate.
- (5) The Director General and the Office must jointly review the code regularly and revise it as appropriate.
- (6) The Director General and the Office must each comply with the code.
- (7) The Director General and the Office must jointly publish a code (or revised code) prepared under this section (stating the time from which it takes effect).”

#### Commencement Information

- I45** S. 34 in force for specified purposes at Royal Assent, see [s. 183](#)
- I46** S. 34(1)(2)(4)-(6) in force at 8.1.2018 in so far as not already in force by [S.I. 2017/1249](#), [reg. 2](#) (with [reg. 3](#))

### 35 Public records

- (1) In Schedule 1 to the Public Records Act 1958 (definition of public records), in Part 2 of the Table at the end of paragraph 3, insert at the appropriate place—

“Independent Office for Police Conduct.”

- (2) The records that become public records for the purposes of that Act as a result of the amendment made by subsection (1) include all records of the Independent Office for Police Conduct of the kind mentioned in paragraph 3(1) of Schedule 1 to that Act (whether created before or after the coming into force of this section, and whether created under that name or under the name of the Independent Police Complaints Commission).
- (3) If the amendment made by subsection (1) comes into force before subsection (1) of section 33 comes into force, the reference in that amendment to the Independent Office for Police Conduct is, until subsection (1) of that section comes into force, to be read as a reference to the Independent Police Complaints Commission.

#### Commencement Information

- I47** [S. 35](#) in force for specified purposes at Royal Assent, see [s. 183](#)
- I48** [S. 35](#) in force at 8.1.2018 in so far as not already in force by [S.I. 2017/1249](#), [reg. 2](#) (with [reg. 3](#))

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## CHAPTER 6

### INSPECTION

#### 36 Powers of inspectors to obtain information, access to police premises etc

- (1) In Schedule 4A to the Police Act 1996 (further provision about Her Majesty's Inspectors of Constabulary), for paragraphs 6A and 6B substitute—

##### “Powers of inspectors to obtain information etc

- 6A (1) An inspector may serve on a person a notice requiring the person—
- (a) to provide the inspector with any information or documents that the inspector reasonably requires for the purposes of an inspection under section 54;
  - (b) to produce or deliver up to the inspector any evidence or other things that the inspector reasonably requires for those purposes.

This is subject to sub-paragraphs (6) to (9).

- (2) A notice under this paragraph must—
- (a) specify or describe the information, documents, evidence or other things that are required by the inspector;
  - (b) specify the period within which the information, documents, evidence or other things must be provided, produced or delivered up;
  - (c) where the notice is served on a person who has a right of appeal under paragraph 6D, give details of that right of appeal.
- (3) In a case where a notice is served on a person who has a right of appeal under paragraph 6D, a period specified under sub-paragraph (2)(b) must not end before the end of the period within which the appeal could be brought.
- (4) A notice under this paragraph may specify the form and manner in which any information, documents, evidence or other things are to be provided, produced or delivered up.
- (5) An inspector may cancel a notice under this paragraph by written notice to the person on whom it was served.
- (6) A notice under this paragraph must not be used to obtain information, or any document or other thing, from—
- (a) the Security Service,
  - (b) the Secret Intelligence Service,
  - (c) the Government Communications Headquarters,
  - (d) any part of Her Majesty's forces, or of the Ministry of Defence, which engages in intelligence activities,
  - (e) the Crown Prosecution Service,
  - (f) the Service Prosecuting Authority, or
  - (g) the Serious Fraud Office.

*Status: Point in time view as at 22/03/2018.*

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- (7) A notice under this paragraph must also not be used to obtain information, or any document or other thing, from any person if—
- (a) the information, or the document or other thing, was obtained by that person (directly or indirectly) from a body or other entity mentioned in sub-paragraph (6), or
  - (b) the information, or the document or other thing, relates to a body or other entity mentioned in that sub-paragraph.
- (8) A notice under this paragraph must not require a person—
- (a) to provide information that might incriminate the person;
  - (b) to provide an item subject to legal privilege within the meaning of the Police and Criminal Evidence Act 1984 (see section 10 of that Act);
  - (c) to make a disclosure that would be prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016;
  - (d) to provide information that was 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 the information.
- (9) A notice under this paragraph must not require a postal or telecommunications operator to provide communications data.
- (10) In sub-paragraph (9), “communications data”, “postal operator” and “telecommunications operator” have the same meanings as in the Investigatory Powers Act 2016 (see sections 261 and 262 of that Act).
- (11) In this paragraph—
- “document” means anything in which information of any description is recorded;
- “inspector” means—
- (a) an inspector of constabulary,
  - (b) a person appointed under section 56 as an assistant inspector of constabulary or staff officer to the inspectors of constabulary, or
  - (c) a person authorised by an inspector of constabulary to act on behalf of the inspector for the purposes of this paragraph.

### **Powers of inspectors to obtain access to police premises**

- 6B (1) An inspector may serve on a person a notice requiring the person to allow the inspector access, which the inspector reasonably requires for the purposes of an inspection under section 54, to—
- (a) premises that are occupied (wholly or partly) for the purposes of—
    - (i) a police force,
    - (ii) a local policing body,
    - (iii) a person providing services, in pursuance of contractual arrangements (but without being employed by a chief officer of police of the police force or its local policing



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- body), to assist a police force in relation to the discharge of its chief officer's functions, or
- (iv) any other person who is, by virtue of any enactment, carrying out any of the activities of a police force, and
- (b) documents and other things on those premises.
- (2) A notice under this paragraph must—
- (a) specify or describe the premises to which the inspector requires access;
- (b) specify the time when access is required (which may be immediately after the service of the notice).
- (3) Where there are reasonable grounds for not allowing the inspector to have access to the premises at the time specified under sub-paragraph (2) (b), the requirement under this paragraph has effect as a requirement to secure that access is allowed to the inspector at the earliest practicable time specified by the inspector after there cease to be such grounds.
- (4) An inspector may cancel a notice under this paragraph by written notice to the person on whom it was served.
- (5) In this paragraph “document” and “inspector” have the same meanings as in paragraph 6A (and, for that purpose, the reference in paragraph (c) of the definition of “inspector” in paragraph 6A(11) to paragraph 6A is to be read as a reference to this paragraph).

#### **Failure to comply with notice under paragraph 6A or 6B**

- 6C (1) If a person who has received a notice under paragraph 6A or 6B—
- (a) fails or refuses without reasonable excuse to do what is required by the notice, or
- (b) (in the case of a notice under paragraph 6A) knowingly or recklessly provides information in response to the notice that is false in a material respect,
- the chief inspector of constabulary may certify in writing to the High Court that the person has failed to comply with the notice.
- (2) The High Court may then inquire into the matter and, after hearing any witness who may be produced against or on behalf of the person, and after hearing any statement offered in defence, deal with the person as if the person had committed a contempt of court.

#### **Appeals against notices under paragraph 6A**

- 6D (1) A person on whom a notice is served under paragraph 6A may appeal against the notice to the First-tier Tribunal on the ground that the notice is not in accordance with the law.
- (2) The right of appeal conferred by sub-paragraph (1) does not apply where the notice is served on a person who is—
- (a) a member of a police force;
- (b) a special constable;

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- (c) a member of the civilian staff of a police force, including the metropolitan police force (within the meaning of Part 1 of the Police Reform and Social Responsibility Act 2011);
  - (d) a local policing body or a person employed by a local policing body;
  - (e) a person providing services, in pursuance of contractual arrangements (but without being employed by a chief officer of police of a police force or its local policing body), to assist a police force in relation to the discharge of its chief officer's functions;
  - (f) a person employed by a person providing services as mentioned in paragraph (e);
  - (g) any other person who is, by virtue of any enactment, carrying out any of the activities of a police force.
- (3) If an appeal is brought, any requirement imposed by the notice is of no effect pending the determination or withdrawal of the appeal.
- (4) If the Tribunal considers that the notice is not in accordance with the law—
- (a) it must quash the notice, and
  - (b) it may give directions regarding the service of a further notice under paragraph 6A.

**Sensitive information: restriction on further disclosure**

- 6E (1) Where an inspector receives information within sub-paragraph (2), the inspector must not disclose the information, or the fact that it has been received, unless the relevant authority consents to the disclosure.
- (2) The information is—
- (a) intelligence service information;
  - (b) protected information relating to a relevant warrant;
  - (c) information obtained from a government department which, at the time it is provided to the inspector, is identified by the department as information the disclosure of which may, in the opinion of the relevant authority—
    - (i) cause damage to national security, international relations or the economic interests of the United Kingdom or any part of the United Kingdom, or
    - (ii) jeopardise the safety of any person.
- (3) Where an inspector discloses to another person information within sub-paragraph (2), or the fact that the inspector has received it, the other person must not disclose that information or that fact unless the relevant authority consents to the disclosure.
- (4) A prohibition on disclosure in sub-paragraph (1) or (3) does not apply to disclosure by one inspector to another.
- (5) In this paragraph—
- “government department” means a department of Her Majesty's Government but does not include—

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- (a) the Security Service,
- (b) the Secret Intelligence Service, or
- (c) the Government Communications Headquarters (“GCHQ”);

“inspector” means—

- (a) an inspector of constabulary,
- (b) a person appointed under section 56 as an assistant inspector of constabulary or staff officer to the inspectors of constabulary, or
- (c) a person authorised by an inspector of constabulary to act on behalf of the inspector in receiving information (whether under paragraph 6A or otherwise);

“intelligence service information” means information that was obtained (directly or indirectly) from or that relates to—

- (a) the Security Service,
- (b) the Secret Intelligence Service,
- (c) GCHQ, or
- (d) any part of Her Majesty's forces, or of the Ministry of Defence, which engages in intelligence activities;

“Minister of the Crown” includes the Treasury;

“protected information”, in relation to a relevant warrant, means information relating to any of the matters mentioned in section 57(4) of the Investigatory Powers Act 2016 in relation to the warrant;

“relevant authority” means—

- (a) in the case of intelligence service information obtained (directly or indirectly) from or relating to the Security Service, the Director-General of the Security Service;
- (b) in the case of intelligence service information obtained (directly or indirectly) from or relating to the Secret Intelligence Service, the Chief of the Secret Intelligence Service;
- (c) in the case of intelligence service information obtained (directly or indirectly) from or relating to GCHQ, the Director of GCHQ;
- (d) in the case of intelligence service information obtained (directly or indirectly) from or relating to Her Majesty's forces or the Ministry of Defence, the Secretary of State;
- (e) in the case of protected information relating to a relevant warrant, the person to whom the relevant warrant is or was addressed;
- (f) in the case of information within sub-paragraph (2)(c)—
  - (i) the Secretary of State, or
  - (ii) the Minister of the Crown in charge of the government department from which the information was obtained (if that Minister is not a Secretary of State);

“relevant warrant” means—

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- (a) a warrant under Chapter 1 of Part 2 of the Investigatory Powers Act 2016, or
- (b) a warrant under Chapter 1 of Part 6 of that Act.

### Provision of sensitive information to inspectors

- 6F (1) A person who provides information that is intelligence service information or protected information relating to a relevant warrant to an inspector (whether under a provision of this Schedule or otherwise) must—
- (a) make the inspector aware that the information is intelligence service information or (as the case may be) protected information relating to a relevant warrant, and
  - (b) provide the inspector with such additional information as will enable the inspector to identify the relevant authority in relation to the information.
- (2) In this paragraph, “inspector”, “intelligence service information”, “protected information relating to a relevant warrant” and “relevant authority” have the same meaning as in paragraph 6E.”

- (2) Omit section 86 of the Police Reform and Social Responsibility Act 2011 (which is spent as a result of subsection (1) above).

#### Commencement Information

**I49** S. 36 in force for specified purposes at Royal Assent, see s. 183

**I50** S. 36 in force at 2.5.2017 in so far as not already in force by S.I. 2017/399, reg. 4(a)

### 37 Inspectors and inspections: miscellaneous

- (1) In section 54 of the Police Act 1996 (appointment and functions of inspectors of constabulary), after subsection (6) insert—

“(7) For the purposes of this section, a police force includes—

- (a) staff appointed by the chief officer of police of the police force;
- (b) staff appointed by a local policing body if, or to the extent that, they are employed to assist the police force;
- (c) persons providing services, in pursuance of contractual arrangements (but without being employed by the chief officer of police of the police force or its local policing body), to assist the police force in relation to the discharge of its chief officer's functions;
- (d) any other persons if, or to the extent that, they are engaged by virtue of any enactment in carrying out the activities of the police force.”

- (2) In section 55 of that Act (publication of reports of inspections), after subsection (5) insert—

“(5A) The comments of the local policing body, together with any comments submitted by the chief officer of police and any response to those comments by the local policing body, must be published before the end of the period of 56 days beginning with the day on which the report is published.

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- (5B) If the published report includes a recommendation, the comments of the local policing body must include an explanation of—
- (a) the action the local policing body has taken or proposes to take in response to the recommendation, or
  - (b) why the local policing body has not taken, or does not propose to take, any action in response.”
- (3) In that section, in subsection (6), for the words after “subsection (5)” substitute “to—
- (a) the inspectors of constabulary, and
  - (b) the Secretary of State.”
- (4) In section 56 of that Act (assistant inspectors and staff officers), in subsections (1) and (2), for “Secretary of State” substitute “ chief inspector of constabulary ”.
- (5) In paragraph 2 of Schedule 4A to that Act (inspection programmes and inspection frameworks)—
- (a) in sub-paragraph (1)(a), for “he proposes” substitute “ the inspectors of constabulary propose ”;
  - (b) in sub-paragraph (1)(b), for “he proposes to carry out his” substitute “ they propose to carry out their ”;
  - (c) after sub-paragraph (5) insert—
    - “(6) The chief inspector of constabulary or, at the request of the chief inspector, any other inspector may carry out inspections that have not been set out in an inspection programme (and have not been required under section 54(2B) or requested under section 54(2BA)).
    - (7) Before deciding to carry out, or to request another inspector to carry out, an inspection that has not been set out in an inspection programme, the chief inspector of constabulary must consult —
      - (a) the Secretary of State, and
      - (b) the local policing body for the police force to which the inspection relates.”
- (6) In Schedule 6 to the Crime and Courts Act 2013 (inspection and complaints), in paragraph 4, after sub-paragraph (1) insert—
- “(1A) The comments must be published before the end of the period of 56 days beginning with the day on which the HMIC report is published by the Secretary of State.
- (1B) If the HMIC report includes a recommendation, the comments must include an explanation of—
- (a) the action the Director General has taken or proposes to take in response to the recommendation, or
  - (b) why the Director General has not taken, or does not propose to take, any action in response.”

#### Commencement Information

**I51** S. 37 in force for specified purposes at Royal Assent, see s. 183

**I52** S. 37 in force at 2.5.2017 in so far as not already in force by S.I. 2017/399, reg. 4(a) (with regs. 7, 8)

*Status: Point in time view as at 22/03/2018.*

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## PART 3

### POLICE WORKFORCE AND REPRESENTATIVE INSTITUTIONS

#### CHAPTER 1

##### POLICE WORKFORCE

###### *Powers of police civilian staff and volunteers*

### **38 Powers of police civilian staff and police volunteers**

- (1) Chapter 1 of Part 4 of the Police Reform Act 2002 (exercise of police powers etc by civilians) is amended as follows.
- (2) In section 38 (police powers for civilian staff), for subsections (1) and (2) substitute—
  - “(1) The chief officer of police of any police force may designate a relevant employee as either or both of the following—
    - (a) a community support officer;
    - (b) a policing support officer.
  - (1A) The chief officer of police of any police force may designate a police volunteer as either or both of the following—
    - (a) a community support volunteer;
    - (b) a policing support volunteer.”
- (3) In that section, omit subsections (5A) to (6A).
- (4) In that section, before subsection (7) insert—
  - “(6B) The powers and duties that may be conferred or imposed on a person designated under this section are—
    - (a) any power or duty of a constable, other than a power or duty specified in Part 1 of Schedule 3B (excluded powers and duties);
    - (b) where the person is designated as a community support officer or a community support volunteer, any power or duty that is described in Schedule 3C as a power or duty of a community support officer or community support volunteer.
  - (6C) The Secretary of State may by regulations amend Part 1 of Schedule 3B so as to add to the list of powers and duties specified in it.
  - (6D) Part 2 of Schedule 3B makes provision about the application of legislation in relation to powers or duties of a constable that may be exercised or performed by a person designated under this section.
  - (6E) Any power or duty of a constable that is conferred or imposed on a person designated under this section by a chief officer of police of a police force may (subject to provision included in the designation under subsection (6F)) be exercised or performed by the person—
    - (a) in the area of that police force, and

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- (b) in any cases or circumstances in which it could be exercised or performed by a constable who is a member of that force.
- (6F) A designation under this section may provide that any power or duty of a constable that is conferred or imposed by the designation may be exercised or performed by the person designated—
- (a) in such areas outside the area of the police force in question as are specified in the designation (as well as within the area of the police force);
  - (b) only in such parts of the area of that police force as are specified in the designation;
  - (c) only in cases or circumstances so specified.”
- (5) In that section, after subsection (7) insert—
- “(7A) A police volunteer authorised or required to do anything by virtue of a designation under this section —
- (a) shall not be authorised or required by virtue of that designation to engage in any conduct otherwise than while acting as a police volunteer;
  - (b) shall be so authorised or required subject to such restrictions and conditions (if any) as may be specified in the designation.”
- (6) In that section, after subsection (9) insert—
- “(9A) The chief officer of police of a police force must ensure that no person designated by the chief officer under this section is authorised to use a firearm, within the meaning given by section 57(1) of the Firearms Act 1968, in carrying out functions for the purposes of the designation.
- (9B) However, subsection (9A) does not apply to—
- (a) the use of a weapon, designed or adapted for the discharge of either of the following substances, for the purpose of discharging either of those substances—
    - (i) the substance, commonly known as “CS spray”, that is produced by the use of 2-chlorobenzalmalononitrile;
    - (ii) the substance, commonly known as PAVA spray, that is produced by the use of pelargonic acid vanillylamide;
  - (b) the use of a weapon for a purpose specified in regulations made by the Secretary of State;
  - (c) the use of a weapon of a description specified in regulations made by the Secretary of State, whether generally or for a purpose so specified.”
- (7) In that section, after subsection (9B) (as inserted by subsection (6) above) insert—
- “(9C) A statutory instrument containing regulations under subsection (6C) or (9B) (b) or (c) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”
- (8) In that section, at the end insert—
- “(12) In this section, “police volunteer” means a person who is under the direction and control of the chief officer making a designation under subsection (1A)

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otherwise than because the person is a constable, a special constable or a relevant employee.

(13) For the purpose of subsection (12), a person is to be treated as a relevant employee only in relation to times when the person is acting in the course of the person's employment.”

(9) In the heading to section 38, after “civilian staff” insert “ and volunteers ”.

(10) Omit section 38A (standard powers and duties of community support officers).

(11) After Schedule 3 insert —

- (a) the new Schedule 3B set out in Schedule 10 to this Act, and
- (b) (after that new Schedule) the new Schedule 3C set out in Schedule 11 to this Act.

#### Commencement Information

**I53** S. 38 in force for specified purposes at Royal Assent, see s. 183

**I54** S. 38 in force at 15.12.2017 in so far as not already in force by S.I. 2017/1139, reg. 2(d) (with regs. 4, 5) (as amended by S.I. 2017/1162, reg. 2)

### 39 Application of Firearms Act 1968 to the police: special constables and volunteers

(1) The Firearms Act 1968 is amended as follows.

(2) In section 54 of that Act (Application of Parts 1 and 2 to Crown servants), in subsection (3)—

(a) after paragraph (b) insert—

“(ba) a community support volunteer or a policing support volunteer designated under section 38 of the Police Reform Act 2002 by the chief constable of a police force in England and Wales.”;

(b) after paragraph (f) insert “, or

(g) a community support volunteer or a policing support volunteer designated under section 38 of the Police Reform Act 2002 (as it applies by virtue of section 28 of the Railways and Transport Safety Act 2003) by the Chief Constable of the British Transport Police Force.”

(3) In section 57 of that Act (interpretation), in subsection (4), after the definition of “imitation firearm” insert—

““member of a police force” means—

- (a) as respects England and Wales, a constable who is a member of a police force or a special constable appointed under section 27 of the Police Act 1996;
- (b) as respects Scotland, a constable within the meaning of section 99 of the Police and Fire Reform (Scotland) Act 2012 (2012 asp 8);

“member of the British Transport Police Force” includes a special constable appointed under section 25 of the Railways and Transport Safety Act 2003.”.



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#### Commencement Information

- I55** S. 39 in force for specified purposes at Royal Assent, see s. 183
- I56** S. 39 in force at 15.12.2017 in so far as not already in force by S.I. 2017/1139, reg. 2(e) (as amended by S.I. 2017/1162, reg. 2)

### 40 Training etc of police volunteers

- (1) After section 53E of the Police Act 1996 (guidance about civilian staff employed by local policing bodies and chief officers) insert—

#### “53F Guidance about designated police volunteers

- (1) The College of Policing may issue guidance to chief officers of police about—
- (a) the experience or qualifications that it would be appropriate for a person to have before being designated as a community support volunteer or a policing support volunteer under section 38 of the Police Reform Act 2002;
  - (b) the training to be undertaken by a person before being so designated or after being so designated.
- (2) The College may from time to time revise the whole or any part of any guidance issued under this section.
- (3) The College must publish any guidance issued under this section and any revision of it.
- (4) Each chief officer of police must have regard to guidance issued under this section.”
- (2) In section 97 of the Criminal Justice and Police Act 2001 (regulations for police forces about police training etc), in subsection (6)(c)—
- (a) omit the “or” at the end of sub-paragraph (ii);
  - (b) after sub-paragraph (iii) insert “or
  - (iv) a person designated as a community support volunteer or a policing support volunteer under section 38 of the Police Reform Act 2002.”

#### Commencement Information

- I57** S. 40 in force for specified purposes at Royal Assent, see s. 183
- I58** S. 40 in force at 15.12.2017 in so far as not already in force by S.I. 2017/1139, reg. 2(f) (as amended by S.I. 2017/1162, reg. 2)

### 41 Police volunteers: complaints and disciplinary matters

- (1) In section 12 of the Police Reform Act 2002 (complaints, matters and persons to which Part 2 of the Act applies), in subsection (7) (what it means to be a person serving with the police)—
- (a) omit the “or” at the end of paragraph (b);

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- (b) at the end of paragraph (c) insert “; or
  - (d) he is a person designated as a community support volunteer or a policing support volunteer under section 38.”
- (2) In section 87 of the Police Act 1996 (guidance concerning disciplinary proceedings etc), in subsection (4A)(a) (as inserted by section 32), after sub-paragraph (iii) insert—
  - “(iv) persons designated as community support volunteers or policing support volunteers under section 38 of the Police Reform Act 2002;”.
- (3) In section 87A of the Police Act 1996 (guidance concerning conduct etc) (as inserted by section 32), in subsection (1)—
  - (a) omit the “and” at the end of paragraph (b);
  - (b) at the end of paragraph (c) insert “, and
    - (d) persons designated as community support volunteers or policing support volunteers under section 38 of the Police Reform Act 2002.”
- (4) In Schedule 6 to the Police Act 1996 (appeals to Police Appeals Tribunals), in paragraph 10(aa) (as inserted by section 31), after paragraph (iii) insert—
  - “(iiia) a person designated as a community support volunteer or a policing support volunteer under section 38 of the Police Reform Act 2002;”.

#### **Commencement Information**

**I59** S. 41 in force for specified purposes at Royal Assent, see s. 183

**I60** S. 41 in force at 15.12.2017 in so far as not already in force by S.I. 2017/1139, reg. 2(g) (as amended by S.I. 2017/1162, reg. 2)

## **42 Police volunteers: police barred list and police advisory list**

- (1) Part 4A of the Police Act 1996 (police barred list and police advisory list) (as inserted by Schedule 8) is amended as follows.
- (2) In section 88C (effect of inclusion in police barred list), at the end insert—
  - “(9) Before designating a person as a community support volunteer or a policing support volunteer under section 38 of the Police Reform Act 2002, a chief officer of police must check with the College of Policing whether the person is a barred person.
  - (10) A chief officer of police may not designate a barred person as a community support volunteer or a policing support volunteer under section 38 of the Police Reform Act 2002.”
- (3) In section 88I (duty to report resignations and retirements to College of Policing)—
  - (a) in the heading, after “retirements” insert “ etc ”;
  - (b) in subsection (1), after paragraph (b) insert—
    - “(c) the person’s designation as a community support volunteer or a policing support volunteer under section 38 of the Police Reform Act 2002 is withdrawn and the reason, or one of

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- the reasons, for the withdrawal of the designation relates to conduct, efficiency or effectiveness;
- (d) the person, having been designated as a community support volunteer or a policing support volunteer under section 38 of the Police Reform Act 2002, decides to stop volunteering as a police volunteer (within the meaning of that section) after a relevant allegation about the person comes to the attention of the relevant authority.”;
- (c) in subsection (4), after paragraph (d) insert—
- “(e) in relation to a person falling within subsection (1)(c) or (d), the chief officer of police by whom the person was designated.”;
- (d) in subsection (6)(b), at the end insert “ or (as the case may be) the person's designation as a community support volunteer or a policing support volunteer being withdrawn if the person had not decided to stop volunteering ”.
- (4) In section 88K (effect of inclusion in police advisory list), at the end insert—
- “(8) Before designating a person as a community support volunteer or a policing support volunteer under section 38 of the Police Reform Act 2002, a chief officer of police must check with the College of Policing whether the person is included in the police advisory list.”
- (5) In section 88L (removal from police advisory list), in subsection (7)—
- (a) the words from “a person who,” to the end of the subsection become paragraph (a);
- (b) after that paragraph insert—
- “(b) a person who was designated as a community support volunteer or a policing support volunteer under section 38 of the Police Reform Act 2002.”

#### Commencement Information

- I61** S. 42 in force for specified purposes at Royal Assent, see s. 183
- I62** S. 42 in force at 15.12.2017 in so far as not already in force by S.I. 2017/1139, reg. 2(h) (as amended by S.I. 2017/1162, reg. 2)

### 43 Police volunteers: inspection

- (1) In section 54 of the Police Act 1996 (appointment and functions of inspectors of constabulary), in subsection (7) (as inserted by section 37), after paragraph (a) insert—
- “(aa) persons designated as community support volunteers or policing support volunteers under section 38 of the Police Reform Act 2002;”.
- (2) In Schedule 4A to the Police Act 1996 (further provision about Her Majesty's Inspectors of Constabulary), in paragraph 6D (as inserted by section 36), after subparagraph (2)(c) insert—
- “(ca) a person designated as a community support volunteer or a policing support volunteer under section 38 of the Police Reform Act 2002;”.

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**Commencement Information**

- I63** S. 43 in force for specified purposes at Royal Assent, see s. 183  
**I64** S. 43 in force at 15.12.2017 in so far as not already in force by S.I. 2017/1139, reg. 2(i) (as amended by S.I 2017/1162, reg. 2)

**44 Restrictions on designated persons acting as covert human intelligence sources**

In section 29 of the Regulation of Investigatory Powers Act 2000 (authorisation of covert human intelligence sources), after subsection (6) insert—

“(6A) An authorisation under this section may not have the effect of authorising a covert human intelligence source who is a person designated under section 38 of the Police Reform Act 2002 to establish contact in person with another person.”

**Commencement Information**

- I65** S. 44 in force for specified purposes at Royal Assent, see s. 183  
**I66** S. 44 in force at 15.12.2017 in so far as not already in force by S.I. 2017/1139, reg. 2(j) (as amended by S.I 2017/1162, reg. 2)

**45 Further amendments consequential on section 38 etc**

Schedule 12—

- (a) makes further amendments in consequence of the amendments made by section 38 (see Parts 1 and 2 of that Schedule), and
- (b) makes minor correcting amendments of the Police Reform Act 2002 (see Part 3 of that Schedule).

**Commencement Information**

- I67** S. 45 in force for specified purposes at Royal Assent, see s. 183  
**I68** S. 45 in force at 15.12.2017 in so far as not already in force by S.I. 2017/1139, reg. 2(k) (as amended by S.I 2017/1162, reg. 2)

*Removal of powers of police to appoint traffic wardens*

**46 Removal of powers of police in England and Wales to appoint traffic wardens**

- (1) Sections 95 to 97 of the Road Traffic Regulation Act 1984 (traffic wardens), so far as extending to England and Wales, are repealed.
- (2) Those sections, so far as extending to Scotland, are amended as follows.
- (3) In section 95 (appointment of traffic wardens), omit subsection (1).
- (4) In subsection (2) of that section, for “any such functions as are mentioned in subsection (1) above” substitute “, in aid of the police, functions normally undertaken by the police in connection with the control and regulation of, or the enforcement of the law relating to, traffic (including pedestrians) or stationary vehicles”.

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- (5) In subsection (3) of that section, omit “under subsection (1) or”.
- (6) In subsection (4) of that section—
  - (a) omit “(whether in England and Wales or in Scotland)”;
  - (b) for “subsection (1)” substitute “ subsection (2) ”;
  - (c) in paragraph (b)—
    - (i) omit “or (in England and Wales) with the Secretary of State”;
    - (ii) omit “or, as the case may be, by the Secretary of State”.
- (7) Omit subsection (4A) of that section.
- (8) In section 96 (additional powers of traffic wardens), in subsection (2), omit paragraphs (a), (b) and (d).
- (9) In section 97 (supplementary provisions as to traffic wardens), in subsection (3), omit, in both places where it occurs, “the Common Council or”.
- (10) Schedule 13 makes further amendments consequential on the repeal made by subsection (1).

#### **Commencement Information**

**I69** S. 46 in force for specified purposes at Royal Assent, see s. 183

### *Police rank structure*

#### **47 Power to make regulations about police ranks**

After section 50 of the Police Act 1996 insert—

##### **“50A Regulations for police forces: ranks**

- (1) The Secretary of State may by regulations specify the ranks that may be held by members of police forces, other than chief officers of police.
- (2) The ranks must include the rank of constable.
- (3) The Secretary of State may by regulations make provision that is consequential on, or incidental or supplemental to, regulations under subsection (1).
- (4) The power conferred by subsection (3) includes power to—
  - (a) repeal, revoke or otherwise amend legislation that (in relation to members of police forces in England and Wales) makes provision with respect to ranks that are not specified in regulations under subsection (1);
  - (b) make other amendments of legislation that are consequential on regulations under subsection (1).
- (5) In subsection (4), “legislation” means any provision of—
  - (a) an Act (including this Act),
  - (b) subordinate legislation within the meaning of the Interpretation Act 1978,

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- (c) an Act of the Scottish Parliament or an instrument made under such an Act,
  - (d) a Measure or Act of the National Assembly for Wales or an instrument made under a Measure or Act of that Assembly, or
  - (e) Northern Ireland legislation or an instrument made under Northern Ireland legislation.
- (6) Regulations under this section may include transitional, transitory or saving provision.
- (7) Regulations under this section may make different provision for different cases or circumstances.

#### **50B Regulations under section 50A: procedure**

- (1) A statutory instrument containing regulations under section 50A may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (2) If the College of Policing submits to the Secretary of State a draft of regulations under section 50A, then (subject to subsection (3)) the Secretary of State must—
- (a) lay before each House of Parliament for approval a draft of a statutory instrument containing regulations in terms of the draft prepared by the College of Policing, and
  - (b) if the draft of the statutory instrument is approved by both Houses of Parliament, make the regulations in those terms.
- (3) The duty under subsection (2) does not apply if the Secretary of State considers—
- (a) that it would be unlawful to make regulations in terms of the draft,
  - (b) that it would impair the efficiency of the police to do so, or
  - (c) that it would for some other reason be wrong to do so.
- (4) The Secretary of State may not lay before each House of Parliament for approval a draft of a statutory instrument containing regulations under section 50A unless—
- (a) the draft is laid in accordance with the duty under subsection (2), or
  - (b) the College of Policing has approved the text of the regulations.”

#### **Commencement Information**

**170** S. 47 in force for specified purposes at Royal Assent, see s. 183

#### **48 Section 47: consequential amendments**

- (1) The Police Act 1996 is amended as follows.
- (2) Omit—
- (a) section 9H (other members of the metropolitan police force);
  - (b) section 13 (other members of police forces).

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- (3) Section 50 (regulations for police forces) is amended as follows.
- (4) Omit subsection (2)(a).
- (5) In subsection (2ZA), after “under”, in the second place it occurs, insert “ section 50A (regulations as to police ranks) or under ”.
- (6) In each of subsections (2ZB) and (2ZC), for “subsection (2)(a), (b), (c) or (g)” substitute “ subsection (2)(b), (c) or (g) ”.

**Commencement Information**

I71 S. 48 in force for specified purposes at Royal Assent, see s. 183

## CHAPTER 2

### REPRESENTATIVE INSTITUTIONS

#### 49 Duties of Police Federation for England and Wales in fulfilling its purpose

In section 59 of the Police Act 1996 (Police Federations), after subsection (1) insert—

“(1A) In fulfilling that purpose, the Police Federation for England and Wales must—

- (a) protect the public interest,
- (b) maintain high standards of conduct, and
- (c) maintain high standards of transparency.”

**Commencement Information**

I72 S. 49 in force for specified purposes at Royal Assent, see s. 183

#### 50 Freedom of Information Act etc: Police Federation for England and Wales

The Police Federation for England and Wales is to be treated for the purposes of—

- (a) the Freedom of Information Act 2000,
- (b) the Data Protection Act 1998, and
- (c) section 18 of the Inquiries Act 2005,

as if it were a body listed in Part 5 of Schedule 1 to the 2000 Act (public authorities).

**Commencement Information**

I73 S. 50 in force for specified purposes at Royal Assent, see s. 183

#### 51 Removal of references to ACPO

Schedule 14 removes references in legislation to the Association of Chief Police Officers and replaces most of them with references to the National Police Chiefs' Council.

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#### Commencement Information

**I74** S. 51 in force for specified purposes at Royal Assent, see s. 183

## PART 4

### POLICE POWERS

#### CHAPTER 1

##### PRE-CHARGE BAIL

###### *Release without bail or on bail*

#### **52 Arrest elsewhere than at a police station: release before charge**

- (1) Section 30A of the Police and Criminal Evidence Act 1984 (release of a person arrested elsewhere than at police station) is amended as follows.
- (2) In the heading for “Bail” substitute “ Release of a person arrested ”.
- (3) In subsection (1)—
  - (a) omit “on bail”, and
  - (b) at the end insert “—
    - (a) without bail unless subsection (1A) applies, or
    - (b) on bail if subsection (1A) applies.”
- (4) After subsection (1) insert—
 

“(1A) This subsection applies if—

  - (a) the constable is satisfied that releasing the person on bail is necessary and proportionate in all the circumstances (having regard, in particular, to any conditions of bail which would be imposed), and
  - (b) a police officer of the rank of inspector or above authorises the release on bail (having considered any representations made by the person).”
- (5) In subsection (2) omit “on bail”.

#### Commencement Information

**I75** S. 52 in force for specified purposes at Royal Assent, see s. 183

#### **53 Section 52: consequential amendments**

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) In section 18(5)(a) (circumstances in which a search after arrest may be conducted) omit “on bail”.



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- (3) In section 30 (arrest elsewhere than at police station)—
  - (a) in subsection (1B) for “on bail” substitute “ of a person arrested elsewhere than at police station ”,
  - (b) in subsection (7A) omit the words from “or releasing” to the end, and
  - (c) in subsections (10) and (11) for “on bail” substitute “ under section 30A ”.
- (4) Section 30B (section 30A: notices) is amended as follows.
- (5) In the heading omit “Bail under”.
- (6) In subsection (1) for “grants bail to” substitute “ releases ”.
- (7) In subsection (2)—
  - (a) omit the “and” before paragraph (b), and
  - (b) after paragraph (b) insert “and
  - (c) whether the person is being released without bail or on bail”.
- (8) In subsection (3) for “The notice” substitute “ A notice given to a person who is released on bail ”.
- (9) In section 30C (section 30A: supplemental)—
  - (a) in the heading omit “Bail under”, and
  - (b) in subsection (4) omit “on bail”.

#### **Commencement Information**

**I76** [S. 53](#) in force for specified purposes at Royal Assent, see [s. 183](#)

## **54 Release from detention at a police station**

- (1) Section 34 of the Police and Criminal Evidence Act 1984 (limitations on police detention) is amended as follows.
- (2) In subsection (5) for the words from “without” to the end substitute “—
  - (a) without bail unless subsection (5A) applies, or
  - (b) on bail if subsection (5A) applies.”
- (3) After subsection (5) insert—

“(5A) This subsection applies if—

  - (a) it appears to the custody officer—
    - (i) that there is need for further investigation of any matter in connection with which the person was detained at any time during the period of the person's detention, or
    - (ii) that, in respect of any such matter, proceedings may be taken against the person or the person may be given a youth caution under section 66ZA of the Crime and Disorder Act 1998, and
  - (b) the pre-conditions for bail are satisfied.”
- (4) Section 37 of the Police and Criminal Evidence Act 1984 (duties of custody officer before charge) is amended as follows.

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- (5) In subsection (2) for the words from “either” to the end substitute “—
- (a) without bail unless the pre-conditions for bail are satisfied, or
  - (b) on bail if those pre-conditions are satisfied,
- (subject to subsection (3)) ”.
- (6) In subsection (3) for “so believing” substitute “ believing that the person's detention without being charged is necessary to secure or preserve evidence relating to an offence for which the person is under arrest or to obtain such evidence by questioning the person ”.
- (7) In subsection (7) for paragraphs (b) and (c) substitute—
- “(b) shall be released without charge and without bail unless the pre-conditions for bail are satisfied,
  - (c) shall be released without charge and on bail if those pre-conditions are satisfied but not for the purpose mentioned in paragraph (a), or”.
- (8) In subsection (8A)(b) for “(b)” substitute “ (c) ”.

#### Commencement Information

I77 S. 54 in force for specified purposes at Royal Assent, see s. 183

## 55 Release following arrest for breach of bail etc

- (1) Section 37CA of the Police and Criminal Evidence Act 1984 (release following arrest for breach of bail) is amended as follows.
- (2) In the heading and subsection (1) for “section 37(7)(b)” substitute “ section 37(7)(c) ”.
- (3) In subsection (2)(b) for the words from “, either” to the end substitute “—
- (i) without bail unless the pre-conditions for bail are satisfied, or
  - (ii) on bail if those pre-conditions are satisfied.”
- (4) In subsection (4) at the end insert “ (and the reference in section 50A to any conditions of bail which would be imposed is to be read accordingly) ”.
- (5) In section 37D(4A) of the Police and Criminal Evidence Act 1984 (power to keep a person in police detention) for “section 37(7)(b)” substitute “ section 37(7)(c) ”.

#### Commencement Information

I78 S. 55 in force for specified purposes at Royal Assent, see s. 183

## 56 Release from further detention at police station

- (1) In section 41(7) of the Police and Criminal Evidence Act 1984 (limits on period of detention without charge) for the words from “either” to the end substitute “—
- (a) without bail unless the pre-conditions for bail are satisfied, or
  - (b) on bail if those pre-conditions are satisfied.”

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(2) Section 42 of the Police and Criminal Evidence Act 1984 (authorisation of continued detention) is amended as follows.

(3) In subsection (10)—

- (a) omit “, either on bail or without bail”, and
- (b) for the words from “, unless” to the end substitute “—
  - (a) without bail unless the pre-conditions for bail are satisfied, or
  - (b) on bail if those pre-conditions are satisfied,

(subject to subsection (10A))”.

(4) After subsection (10) insert—

“(10A) Subsection (10) does not apply if—

- (a) the person has been charged with an offence, or
- (b) the person's continued detention is authorised or otherwise permitted in accordance with section 43.”

#### **Commencement Information**

**179** [S. 56](#) in force for specified purposes at Royal Assent, see [s. 183](#)

### **57 Warrants of further detention: release**

(1) Section 43 of the Police and Criminal Evidence Act 1984 (warrants of further detention) is amended as follows.

(2) In subsection (15) for the words from “, either” to the end substitute “—

- (a) without bail unless the pre-conditions for bail are satisfied, or
- (b) on bail if those pre-conditions are satisfied.”

(3) In subsection (18) for the words from “be released” to the end substitute “, unless the person is charged, be released from police detention upon or before the expiry of the warrant—

- (a) without bail unless the pre-conditions for bail are satisfied, or
- (b) on bail if those pre-conditions are satisfied.”

(4) In section 44(7) of the Police and Criminal Evidence Act 1984 (extension of warrants of further detention) for the words from “, either” to the end substitute “—

- (a) without bail unless the pre-conditions for bail are satisfied, or
- (b) on bail if those pre-conditions are satisfied.”

#### **Commencement Information**

**180** [S. 57](#) in force for specified purposes at Royal Assent, see [s. 183](#)

### **58 Meaning of “pre-conditions for bail”**

After section 50 of the Police and Criminal Evidence Act 1984 insert—

*Status: Point in time view as at 22/03/2018.*

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### **“50A Interpretation of references to pre-conditions for bail**

For the purposes of this Part the following are the pre-conditions for bail in relation to the release of a person by a custody officer—

- (a) that the custody officer is satisfied that releasing the person on bail is necessary and proportionate in all the circumstances (having regard, in particular, to any conditions of bail which would be imposed), and
- (b) that an officer of the rank of inspector or above authorises the release on bail (having considered any representations made by the person or the person's legal representative).”

#### **Commencement Information**

**I81** S. 58 in force for specified purposes at Royal Assent, see s. 183

### **59 Release without bail: fingerprinting and samples**

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) In section 61(5A) (fingerprinting of person arrested for a recordable offence) —
  - (a) in paragraph (a) omit “in the case of a person who is on bail,”, and
  - (b) in paragraph (b) omit “in any case,”.
- (3) In section 63(3ZA) (taking of non-intimate sample from person arrested for a recordable offence)—
  - (a) in paragraph (a) omit “in the case of a person who is on bail,”, and
  - (b) in paragraph (b) omit “in any case,”.

#### **Commencement Information**

**I82** S. 59 in force for specified purposes at Royal Assent, see s. 183

### **60 Release under section 24A of the Criminal Justice Act 2003**

- (1) Section 24A of the Criminal Justice Act 2003 (arrest for failure to comply with conditions attached to conditional caution) is amended as follows.
- (2) In subsection (2) for paragraphs (b) and (c) substitute—
  - “(b) released without charge and without bail (with or without any variation in the conditions attached to the caution) unless paragraph (c)(i) and (ii) applies, or
  - (c) released without charge and on bail if—
    - (i) the release is to enable a decision to be made as to whether the person should be charged with the offence, and
    - (ii) the pre-conditions for bail are satisfied.”
- (3) In subsections (3)(a) and (4) for “subsection (2)(b)” substitute “ subsection (2)(c) ”.
- (4) After subsection (8) insert—

*Status: Point in time view as at 22/03/2018.*

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“(8A) In subsection (2) the reference to the pre-conditions for bail is to be read in accordance with section 50A of the 1984 Act.”

**Commencement Information**

**I83** S. 60 in force for specified purposes at Royal Assent, see s. 183

*Conditions of bail*

**61 Bail before charge: conditions of bail etc**

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) In section 46A(1A) (power of arrest for failure to answer police bail) for “section 37, 37C(2)(b) or 37CA(2)(b) above” substitute “ this Part ”.
- (3) Section 47 (bail after arrest) is amended as follows.
- (4) In subsection (1A) for the words from “section 37” to “cases” substitute “ this Part (except sections 37C(2)(b) and 37CA(2)(b)) ”.
- (5) In subsections (1B) and (1C) omit “37.”.

**Commencement Information**

**I84** S. 61 in force for specified purposes at Royal Assent, see s. 183

*Time limits on period of bail*

**62 Limit on period of bail under section 30A of PACE**

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) Section 30B (section 30A: notices) is amended as follows.
- (3) For subsection (4) substitute—
  - “(4) The notice must also specify—
    - (a) the police station which the person is required to attend, and
    - (b) the time on the bail end date when the person is required to attend the police station.”
- (4) Omit subsection (4A)(c) and the “and” before it.
- (5) Omit subsection (5).
- (6) In subsection (6) for the words from “(5)” to the end substitute “ to attend at a different time or an additional time ”.
- (7) After subsection (6) insert—
  - “(6A) A person may not be required under subsection (6) to attend a police station at a time which is after the bail end date in relation to the person.”

*Status: Point in time view as at 22/03/2018.*

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(8) After subsection (7) insert—

“(8) In this section “bail end date”, in relation to a person, means the last day of the period of 28 days beginning with the day after the day on which the person was arrested for the offence in relation to which bail is granted under section 30A.”

(9) In section 30CA (bail under section 30A: variation of conditions by police) omit subsection (1)(b) and the “or” before it.

(10) In section 30D(3) (meaning of “specified” in section 30D(1)) omit “or (5)”.

#### Commencement Information

**I85** S. 62 in force for specified purposes at Royal Assent, see s. 183

### 63 Limits on period of bail without charge under Part 4 of PACE

After section 47 of the Police and Criminal Evidence Act 1984 insert—

#### “47ZA Limits on period of bail without charge

- (1) This section applies in relation to the power conferred on a custody officer, when releasing a person on bail under this Part, to appoint a time for the person to attend at a police station in accordance with section 47(3)(c).
- (2) The power must be exercised so as to appoint a time on the day on which the applicable bail period in relation to the person ends, unless subsection (3) or (4) applies.
- (3) This subsection applies where—
  - (a) at the time of the exercise of the power the person is on bail under this Part in relation to one or more offences other than the relevant offence, and
  - (b) the custody officer believes that it is appropriate to align the person's attendance in relation to the relevant offence with the person's attendance in relation to the one or more other offences.
- (4) This subsection applies where the custody officer believes that a decision as to whether to charge the person with the relevant offence would be made before the end of the applicable bail period in relation to the person.
- (5) Where subsection (3) or (4) applies, the power may be exercised so as to appoint a time on a day falling before the end of the applicable bail period in relation to the person.
- (6) This section is subject to section 47ZL.
- (7) In this section references to attendance are to attendance at a police station in accordance with section 47(3)(c).
- (8) In this Part the “relevant offence”, in relation to a person, means the offence in respect of which the power mentioned in subsection (1) is exercised in relation to the person.

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#### **47ZB Applicable bail period: initial limit**

- (1) In this Part the “applicable bail period”, in relation to a person, means—
  - (a) in an SFO case, the period of 3 months beginning with the person's bail start date, or
  - (b) in an FCA case or any other case, the period of 28 days beginning with the person's bail start date.
- (2) The applicable bail period in relation to a person may be extended under sections 47ZD to 47ZG or treated as extended under section 47ZJ(3).
- (3) Subsection (1) and sections 47ZD to 47ZG are subject to sections 47ZL and 47ZM.
- (4) For the purposes of this Part—
  - (a) a person's bail start date is the day after the day on which the person was arrested for the relevant offence,
  - (b) an “FCA case” is a case in which—
    - (i) the relevant offence in relation to the person is being investigated by the Financial Conduct Authority, and
    - (ii) a senior officer confirms that sub-paragraph (i) applies,
  - (c) an “SFO case” is a case in which—
    - (i) the relevant offence in relation to the person is being investigated by the Director of the Serious Fraud Office, and
    - (ii) a senior officer confirms that sub-paragraph (i) applies, and
  - (d) “senior officer” means a police officer of the rank of superintendent or above.

#### **47ZC Applicable bail period: conditions A to D in sections 47ZD to 47ZG**

- (1) This section applies for the purposes of sections 47ZD to 47ZG.
- (2) Condition A is that the decision-maker has reasonable grounds for suspecting the person in question to be guilty of the relevant offence.
- (3) Condition B is that the decision-maker has reasonable grounds for believing—
  - (a) in a case where the person in question is or is to be released on bail under section 37(7)(c) or 37CA(2)(b), that further time is needed for making a decision as to whether to charge the person with the relevant offence, or
  - (b) otherwise, that further investigation is needed of any matter in connection with the relevant offence.
- (4) Condition C is that the decision-maker has reasonable grounds for believing—
  - (a) in a case where the person in question is or is to be released on bail under section 37(7)(c) or 37CA(2)(b), that the decision as to whether to charge the person with the relevant offence is being made diligently and expeditiously, or
  - (b) otherwise, that the investigation is being conducted diligently and expeditiously.

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- (5) Condition D is that the decision-maker has reasonable grounds for believing that the release on bail of the person in question is necessary and proportionate in all the circumstances (having regard, in particular, to any conditions of bail which are, or are to be, imposed).
- (6) In this section “decision-maker” means—
  - (a) in relation to a condition which falls to be considered by virtue of section 47ZD, the senior officer in question;
  - (b) in relation to a condition which falls to be considered by virtue of section 47ZE, the appropriate decision-maker in question;
  - (c) in relation to a condition which falls to be considered by virtue of section 47ZF or 47ZG, the court in question.

#### **47ZD Applicable bail period: extension of initial limit in standard cases**

- (1) This section applies in relation to a person if—
  - (a) the applicable bail period in relation to the person is the period mentioned in section 47ZB(1)(b),
  - (b) that period has not ended, and
  - (c) a senior officer is satisfied that conditions A to D are met in relation to the person.
- (2) The senior officer may authorise the applicable bail period in relation to the person to be extended so that it ends at the end of the period of 3 months beginning with the person's bail start date.
- (3) Before determining whether to give an authorisation under subsection (2) in relation to a person, the senior officer must arrange for the person or the person's legal representative to be informed that a determination is to be made.
- (4) In determining whether to give an authorisation under subsection (2) in relation to a person, the senior officer must consider any representations made by the person or the person's legal representative.
- (5) The senior officer must arrange for the person or the person's legal representative to be informed whether an authorisation under subsection (2) has been given in relation to the person.

#### **47ZE Applicable bail period: extension of limit in designated cases**

- (1) This section applies in relation to a person if—
  - (a) the person's case is an SFO case, or
  - (b) a senior officer has authorised an extension of the applicable bail period in relation to the person under section 47ZD.
- (2) A qualifying prosecutor may designate the person's case as being an exceptionally complex case (a “designated case”).
- (3) If an appropriate decision-maker is satisfied that conditions A to D are met in relation to the person in a designated case, the decision-maker may authorise the applicable bail period in relation to the person to be extended so that it ends at the end of the period of 6 months beginning with the person's bail start date.



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- (4) An appropriate decision-maker is—
  - (a) a member of staff of the Financial Conduct Authority who is of the description designated for the purposes of this paragraph by the Chief Executive of the Authority (in an FCA case),
  - (b) a member of the Serious Fraud Office who is of the Senior Civil Service (in an SFO case), or
  - (c) a qualifying police officer (in any other case).
- (5) Before determining whether to give an authorisation under subsection (3) in relation to a person—
  - (a) the appropriate decision-maker must arrange for the person or the person's legal representative to be informed that a determination is to be made, and
  - (b) if the appropriate decision-maker is a qualifying police officer, the officer must consult a qualifying prosecutor.
- (6) In determining whether to give an authorisation under subsection (3) in relation to a person, the appropriate decision-maker must consider any representations made by the person or the person's legal representative.
- (7) The appropriate decision-maker must arrange for the person or the person's legal representative to be informed whether an authorisation under subsection (3) has been given in relation to the person.
- (8) Any designation under subsection (2) must be made, and any authorisation under subsection (3) must be given, before the applicable bail period in relation to the person has ended.
- (9) In this section—

“qualifying police officer” means a police officer of the rank of commander or assistant chief constable or above, and

“qualifying prosecutor” means a prosecutor of the description designated for the purposes of this section by the Chief Executive of the Financial Conduct Authority, the Director of the Serious Fraud Office or the Director of Public Prosecutions.

#### **47ZF Applicable bail period: first extension of limit by court**

- (1) This section applies in relation to a person if—
  - (a) the person's case is an SFO case,
  - (b) a senior officer has authorised an extension of the applicable bail period in relation to the person under section 47ZD, or
  - (c) an appropriate decision-maker has authorised an extension of the applicable bail period in relation to the person under section 47ZE.
- (2) Before the applicable bail period in relation to the person ends a qualifying applicant may apply to a magistrates' court for it to authorise an extension of the applicable bail period in relation to the person under this section.
- (3) If the court is satisfied that—
  - (a) conditions B to D are met in relation to the person, and
  - (b) the case does not fall within subsection (7),

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it may authorise the applicable bail period to be extended as specified in subsection (4).

- (4) The applicable bail period is to end—
- (a) in a case falling within subsection (1)(a) or (b), at the end of the period of 6 months beginning with the person's bail start date;
  - (b) in a case falling within subsection (1)(c), at the end of the period of 9 months beginning with the person's bail start date.
- (5) If the court is satisfied that—
- (a) conditions B to D are met in relation to the person, and
  - (b) the case falls within subsection (7),
- it may authorise the applicable bail period to be extended as specified in subsection (6).
- (6) The applicable bail period is to end—
- (a) in a case falling within subsection (1)(a) or (b), at the end of the period of 9 months beginning with the person's bail start date;
  - (b) in a case falling within subsection (1)(c), at the end of the period of 12 months beginning with the person's bail start date.
- (7) A case falls within this subsection if the nature of the decision or further investigations mentioned in condition B means that that decision is unlikely to be made or those investigations completed if the applicable bail period in relation to the person is not extended as specified in subsection (6).
- (8) In this section “qualifying applicant” means—
- (a) a constable,
  - (b) a member of staff of the Financial Conduct Authority who is of the description designated for the purposes of this subsection by the Chief Executive of the Authority,
  - (c) a member of the Serious Fraud Office, or
  - (d) a Crown Prosecutor.

#### **47ZG Applicable bail period: subsequent extensions of limit by court**

- (1) Subsections (2) to (6) apply where a court has authorised an extension of the applicable bail period in relation to a person under section 47ZF.
- (2) Before the applicable bail period in relation to the person ends a qualifying applicant may apply to a magistrates' court for it to authorise an extension of the applicable bail period in relation to the person under this section.
- (3) If the court is satisfied that—
- (a) conditions B to D are met in relation to the person, and
  - (b) the case does not fall within subsection (8),
- it may authorise the applicable bail period to be extended as specified in subsection (4).
- (4) The applicable bail period is to end at the end of the period of 3 months beginning with the end of the current applicable bail period in relation to the person.

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- (5) If the court is satisfied that—
  - (a) conditions B to D are met in relation to the person, and
  - (b) the case falls within subsection (8),it may authorise the applicable bail period to be extended as specified in subsection (6).
- (6) The applicable bail period is to end at the end of the period of 6 months beginning with the end of the current applicable bail period in relation to the person.
- (7) Where a court has authorised an extension of the applicable bail period in relation to a person under subsection (3) or (5), a qualifying applicant may make further applications under subsection (2) (and subsections (3) to (6) apply accordingly).
- (8) A case falls within this subsection if the nature of the decision or further investigations mentioned in condition B means that that decision is unlikely to be made or those investigations completed if the current applicable bail period in relation to the person is not extended as specified in subsection (6).
- (9) For the purposes of this section—
  - (a) references to the current applicable bail period in relation to a person are to the applicable bail period applying to the person when the application under this section is made (subject to section 47ZJ(3)), and
  - (b) “qualifying applicant” has the same meaning as in section 47ZF.

#### **47ZH Sections 47ZF and 47ZG: withholding sensitive information**

- (1) This section applies where a qualifying applicant makes an application to a magistrates' court under section 47ZF or 47ZG in relation to a person.
- (2) The qualifying applicant may apply to the court for it to authorise the specified information to be withheld from the person and any legal representative of the person.
- (3) The court may grant an application under subsection (2) only if satisfied that there are reasonable grounds for believing that the specified information is sensitive information.
- (4) For the purposes of this section information is sensitive information if its disclosure would have one or more of the following results—
  - (a) evidence connected with an indictable offence would be interfered with or harmed;
  - (b) a person would be interfered with or physically injured;
  - (c) a person suspected of having committed an indictable offence but not yet arrested for the offence would be alerted;
  - (d) the recovery of property obtained as a result of an indictable offence would be hindered.
- (5) In this section “specified information” means the information specified in the application under subsection (2).

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#### **47ZI Sections 47ZF to 47ZH: proceedings in magistrates' court**

- (1) An application made to a magistrates' court under section 47ZF or 47ZG in relation to a person is to be determined by a single justice of the peace on written evidence unless subsection (2) or (3) applies.
- (2) This subsection applies if—
  - (a) the effect of the application would be to extend the applicable bail period in relation to the person so that it ends at or before the end of the period of 12 months beginning with the person's bail start date, and
  - (b) a single justice of the peace considers that the interests of justice require an oral hearing.
- (3) This subsection applies if—
  - (a) the effect of the application would be to extend the applicable bail period in relation to the person so that it ends after the end of the period of 12 months beginning with the person's bail start date, and
  - (b) the person, or the person who made the application, requests an oral hearing.
- (4) If subsection (2) or (3) applies, the application is to be determined by two or more justices of the peace sitting otherwise than in open court.
- (5) Where an application under section 47ZF or 47ZG in relation to a person is to be determined as mentioned in subsection (4), the justices may direct that the person and any legal representative of the person be excluded from any part of the hearing.
- (6) The justices may give a direction under subsection (5) only if satisfied that there are reasonable grounds for believing that sensitive information would be disclosed at the part of the hearing in question.
- (7) An application under section 47ZH is to be determined by a single justice of the peace on written evidence unless the justice determines that the interests of justice require an oral hearing.
- (8) If the justice makes a determination under subsection (7)—
  - (a) the application is to be determined by two or more justices of the peace sitting otherwise than in open court, and
  - (b) the justices hearing the application must direct that the person to whom the application relates and any legal representative of the person be excluded from the hearing.
- (9) In this section “sensitive information” has the meaning given in section 47ZH(4).

#### **47ZJ Sections 47ZF and 47ZG: late applications to magistrates' court**

- (1) This section applies where—
  - (a) an application under section 47ZF or 47ZG is made to a magistrates' court before the end of the applicable bail period in relation to a person, but

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- (b) it is not practicable for the court to determine the application before the end of that period.
- (2) The court must determine the application as soon as is practicable.
- (3) The applicable bail period in relation to the person is to be treated as extended until the application is determined.
- (4) If it appears to the court that it would have been reasonable for the application to have been made in time for it to have been determined by the court before the end of the applicable bail period in relation to the person, it may refuse the application.

#### **47ZK Rules**

Criminal Procedure Rules may make provision in connection with applications under sections 47ZF, 47ZG and 47ZH and the proceedings for determining such applications.

#### **47ZL Applicable bail period and bail return date: special case of release on bail under section 37(7)(a) or 37C(2)(b)**

- (1) This section applies where a person is released on bail under section 37(7)(a) or 37C(2)(b).
- (2) The running of the applicable bail period in relation to the person—
  - (a) does not begin (in the case of a first release on bail), or
  - (b) is suspended (in any other case),(subject to subsection (6)).
- (3) Accordingly section 47ZA does not apply to the exercise of the power mentioned in section 47ZA(1) when releasing the person on bail.
- (4) Subsections (5) and (6) apply if a DPP request is made in relation to the person.
- (5) A custody officer must exercise the power mentioned in section 47(4A) to appoint a different time for the person to attend at the police station (and section 47(4B) to (4D) applies accordingly).
- (6) The applicable bail period in relation to the person—
  - (a) begins to run on the day on which the DPP request is made (in the case of a first release on bail), or
  - (b) resumes running on that day (in any other case).
- (7) Subsection (8) applies where—
  - (a) a DPP request has been made in relation to the person, and
  - (b) the applicable bail period in relation to the person would end before the end of the period of 7 days beginning with the day on which the DPP request was made.
- (8) The running of the applicable bail period in relation to the person is suspended for the number of days necessary to secure that the applicable bail period ends at the end of the period of 7 days beginning with the day on which the DPP request was made.

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- (9) Subsections (10) and (11) apply if the DPP request made in relation to the person is met.
- (10) The running of the applicable bail period in relation to the person is suspended.
- (11) Accordingly section 47(4D) does not apply to any exercise of the power under section 47(4A).
- (12) For the purposes of this section—
  - (a) a “DPP request”, in relation to a person, means a request by the Director of Public Prosecutions for the further information specified in the request to be provided before the Director decides under section 37B(2) whether there is sufficient evidence to charge the person with the relevant offence,
  - (b) a DPP request is met when the further information specified in the request is provided, and
  - (c) references to the case of a first release on bail are to a case where the person has not been released on bail in relation to the relevant offence under any other provision of this Part or under section 30A.

#### **47ZM Applicable bail period: special cases of release on bail under section 30A and periods in hospital**

- (1) Subsections (2) and (3) apply where a person was released on bail under section 30A.
- (2) The period of 28 days mentioned in section 30B(8) in relation to the person is to be treated as being the period of 28 days mentioned in section 47ZB(1)(b) in relation to the person.
- (3) Any reference to the relevant offence, in relation to the person, is to be read as a reference to the offence in respect of which the power in section 30A(1) was exercised.
- (4) Subsection (5) applies if, at any time on the day on which the applicable bail period in relation to a person would end, the person is in hospital as an in-patient.
- (5) The running of the applicable bail period in relation to the person is to be treated as having been suspended for any day on which the patient was in hospital as an in-patient.”

#### **Commencement Information**

**186** S. 63 in force for specified purposes at Royal Assent, see s. 183

#### **64 Section 63: consequential amendments**

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) Section 37D (release on bail under section 37) is amended as follows.
- (3) Omit subsections (1) to (3).

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- (4) In subsections (4) to (5) for “subsection (1) above” substitute “ section 47(4A) ”.
- (5) Section 47 (bail after arrest) is amended as follows.
- (6) In subsection (3)(c) at the end insert “ (subject to section 47ZA) ”.
- (7) After subsection (4) insert—
  - “(4A) Where a person has been granted bail under this Part subject to a duty to attend at a police station, a custody officer may subsequently appoint a different time, or an additional time, at which the person is to attend at the police station to answer bail.
  - (4B) The custody officer must give the person notice in writing of the exercise of the power under subsection (4A).
  - (4C) The exercise of the power under subsection (4A) does not affect the conditions of bail (if any).
  - (4D) A custody officer may not appoint a time for a person's attendance under subsection (4A) which is after the end of the applicable bail period in relation to the person.
  - (4E) Subsection (4D) is subject to section 47ZL.”
- (8) In the Criminal Justice Act 2003—
  - (a) in section 24A(5)(b) (purposes for which person may be kept in police detention) for “section 37D(1)” substitute “ section 47(4A) ”, and
  - (b) in section 24B(5) (application of provisions of the Police and Criminal Evidence Act 1984)—
    - (i) omit paragraph (a), and
    - (ii) in paragraph (c) at the end insert “ except subsections (4D) and (4E) ”.

#### **Commencement Information**

**187** S. 64 in force for specified purposes at Royal Assent, see s. 183

### *Re-arrest of person released under provisions of PACE*

#### **65 Release under provisions of PACE: re-arrest**

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) In section 30C(4) (re-arrest without warrant of person released under section 30A) for the words from “new” to the end substitute “ , since the person's release, new evidence has come to light or an examination or analysis of existing evidence has been made which could not reasonably have been made before the person's release ”.
- (3) In section 41(9) (re-arrest without warrant of person released under section 41(7)) for the words from “new” to “since” substitute “ , since the person's release, new evidence has come to light or an examination or analysis of existing evidence has been made which could not reasonably have been made before ”.

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- (4) In section 42(11) (re-arrest without warrant of person released under section 42(10)) for the words from “new” to “since” substitute “ , since the person's release, new evidence has come to light or an examination or analysis of existing evidence has been made which could not reasonably have been made before ”.
- (5) In section 43(19) (re-arrest without warrant of person released under section 43(18)) for the words from “new” to “since” substitute “ , since the person's release, new evidence has come to light or an examination or analysis of existing evidence has been made which could not reasonably have been made before ”.
- (6) In section 47(2) (re-arrest without warrant of person released on bail subject to a duty to attend at a police station) for the words from “new” to the end substitute “ , since the person's release, new evidence has come to light or an examination or analysis of existing evidence has been made which could not reasonably have been made before the person's release ”.

#### Commencement Information

**188** S. 65 in force for specified purposes at Royal Assent, see s. 183

#### *Notification of decision not to prosecute*

### **66 Duty to notify person released under section 34, 37 or 37CA of PACE that not to be prosecuted**

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) In section 34 (limitations on police detention) after subsection (5A) (inserted by section 54 of this Act) insert—
  - “(5B) Subsection (5C) applies where—
    - (a) a person is released under subsection (5), and
    - (b) the custody officer determines that—
      - (i) there is not sufficient evidence to charge the person with an offence, or
      - (ii) there is sufficient evidence to charge the person with an offence but the person should not be charged with an offence or given a caution in respect of an offence.
  - (5C) The custody officer must give the person notice in writing that the person is not to be prosecuted.
  - (5D) Subsection (5C) does not prevent the prosecution of the person for an offence if new evidence comes to light after the notice was given.
  - (5E) In this Part “caution” includes—
    - (a) a conditional caution within the meaning of Part 3 of the Criminal Justice Act 2003;
    - (b) a youth conditional caution within the meaning of Chapter 1 of Part 4 of the Crime and Disorder Act 1998;
    - (c) a youth caution under section 66ZA of that Act.”



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- (3) Section 37 (duties of custody officer before charge) is amended as follows.
- (4) After subsection (6) insert—
- “(6A) Subsection (6B) applies where—
- (a) a person is released under subsection (2), and
  - (b) the custody officer determines that—
    - (i) there is not sufficient evidence to charge the person with an offence, or
    - (ii) there is sufficient evidence to charge the person with an offence but the person should not be charged with an offence or given a caution in respect of an offence.
- (6B) The custody officer must give the person notice in writing that the person is not to be prosecuted.
- (6C) Subsection (6B) does not prevent the prosecution of the person for an offence if new evidence comes to light after the notice was given.”
- (5) After subsection (8) insert—
- “(8ZA) Where—
- (a) a person is released under subsection (7)(b) or (c), and
  - (b) the custody officer makes a determination as mentioned in subsection (6A)(b),
- subsections (6B) and (6C) apply.”
- (6) Section 37B (consultation with Director of Public Prosecutions) is amended as follows.
- (7) After subsection (5) insert—
- “(5A) Subsection (5) does not prevent the prosecution of the person for an offence if new evidence comes to light after the notice was given.”
- (8) Omit subsection (9).
- (9) In section 37CA (release following arrest for breach of bail) after subsection (4) insert—
- “(5) Subsection (6) applies where—
- (a) a person is released under subsection (2), and
  - (b) a custody officer determines that—
    - (i) there is not sufficient evidence to charge the person with an offence, or
    - (ii) there is sufficient evidence to charge the person with an offence but the person should not be charged with an offence or given a caution in respect of an offence.
- (6) The custody officer must give the person notice in writing that the person is not to be prosecuted.
- (7) Subsection (6) does not prevent the prosecution of the person for an offence if new evidence comes to light after the notice was given.”

*Status: Point in time view as at 22/03/2018.*

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- (10) In section 24B(2) of the Criminal Justice Act 2003 (application of provisions of Police and Criminal Evidence Act 1984)—
- (a) in paragraph (d) for “(5)” substitute “ (5E) ”, and
  - (b) in paragraph (f) for “(6)” substitute “ (6C) ”.

#### Commencement Information

**189** S. 66 in force for specified purposes at Royal Assent, see s. 183

### 67 Duty to notify person released under any of sections 41 to 44 of PACE that not to be prosecuted

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) In section 41 (limits on period of detention without charge) after subsection (9) insert—
  - “(10) Subsection (11) applies where—
    - (a) a person is released under subsection (7), and
    - (b) a custody officer determines that—
      - (i) there is not sufficient evidence to charge the person with an offence, or
      - (ii) there is sufficient evidence to charge the person with an offence but the person should not be charged with an offence or given a caution in respect of an offence.
  - (11) The custody officer must give the person notice in writing that the person is not to be prosecuted.
  - (12) Subsection (11) does not prevent the prosecution of the person for an offence if new evidence comes to light after the notice was given.”
- (3) In section 42 (authorisation of continued detention) after subsection (11) insert—
  - “(12) Subsection (13) applies where—
    - (a) a person is released under subsection (10), and
    - (b) a custody officer determines that—
      - (i) there is not sufficient evidence to charge the person with an offence, or
      - (ii) there is sufficient evidence to charge the person with an offence but the person should not be charged with an offence or given a caution in respect of an offence.
  - (13) The custody officer must give the person notice in writing that the person is not to be prosecuted.
  - (14) Subsection (13) does not prevent the prosecution of the person for an offence if new evidence comes to light after the notice was given.”
- (4) In section 43 (warrants of further detention) after subsection (19) insert—
  - “(20) Subsection (21) applies where—
    - (a) a person is released under subsection (15) or (18), and

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- (b) a custody officer determines that—
  - (i) there is not sufficient evidence to charge the person with an offence, or
  - (ii) there is sufficient evidence to charge the person with an offence but the person should not be charged with an offence or given a caution in respect of an offence.
- (21) The custody officer must give the person notice in writing that the person is not to be prosecuted.
- (22) Subsection (21) does not prevent the prosecution of the person for an offence if new evidence comes to light after the notice was given.”
- (5) In section 44 (extension of warrants of further detention) after subsection (8) insert—
  - “(9) Subsection (10) applies where—
    - (a) a person is released under subsection (7), and
    - (b) a custody officer determines that—
      - (i) there is not sufficient evidence to charge the person with an offence, or
      - (ii) there is sufficient evidence to charge the person with an offence but the person should not be charged with an offence or given a caution in respect of an offence.
  - (10) The custody officer must give the person notice in writing that the person is not to be prosecuted.
  - (11) Subsection (10) does not prevent the prosecution of the person for an offence if new evidence comes to light after the notice was given.”

#### **Commencement Information**

**190** S. 67 in force for specified purposes at Royal Assent, see s. 183

#### *Breach of pre-charge bail conditions relating to travel*

### **68 Offence of breach of pre-charge bail conditions relating to travel**

- (1) This section applies where—
  - (a) a person is arrested under section 24 of the Police and Criminal Evidence Act 1984, or under Article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)), in respect of an offence mentioned in section 41(1) or (2) of the Counter-Terrorism Act 2008,
  - (b) the person is released without charge and on bail under Part 4 of the 1984 Act or (as the case may be) Part 5 of the 1989 Order, and
  - (c) the release on bail is subject to a travel restriction condition.
- (2) Each of the following is a travel restriction condition—
  - (a) a condition that the person must not leave the United Kingdom,
  - (b) a condition that the person must not enter any port, or one or more particular ports, in the United Kingdom,

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- (c) a condition that the person must not go to a place in Northern Ireland that is within one mile of the border between Northern Ireland and the Republic of Ireland,
  - (d) a condition that the person must surrender all of his or her travel documents or all of his or her travel documents that are of a particular kind,
  - (e) a condition that the person must not have any travel documents, or travel documents of a particular kind, in his or her possession (whether the documents relate to that person or to another person),
  - (f) a condition that the person must not obtain, or seek to obtain, any travel documents (whether relating to that person or to another person) or travel documents of a particular kind.
- (3) The person commits an offence if—
- (a) the person's release on bail is subject to the travel restriction condition mentioned in subsection (2)(a) and he or she fails to comply with the condition, or
  - (b) the person's release on bail is subject to a travel restriction condition mentioned in subsection (2)(b) to (f) and he or she fails, without reasonable excuse, to comply with the condition.
- (4) A person guilty of an offence under subsection (3) is liable—
- (a) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding 12 months (or, in relation to offences committed before section 154(1) of the Criminal Justice Act 2003 comes into force, 6 months) or to a fine, or to both;
    - (ii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine, or to both.
- (5) Where an offence under this section is committed by a person released without charge and on bail under Part 4 of the Police and Criminal Evidence Act 1984, the offence is to be treated as having been committed in England and Wales (whether or not the conduct constituting the offence took place there).
- (6) Where an offence under this section is committed by a person released without charge and on bail under Part 5 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)), the offence is to be treated as having been committed in Northern Ireland (whether or not the conduct constituting the offence took place there).
- (7) Section 69 defines words used in subsection (2).

#### **Commencement Information**

**191** S. 68 in force for specified purposes at Royal Assent, see s. 183

## **69 Offence of breach of pre-charge bail conditions relating to travel: interpretation**

- (1) This section defines words used in section 68(2).

*Status: Point in time view as at 22/03/2018.*

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- (2) “Travel document” means anything that is or appears to be—
- (a) a passport, or
  - (b) a ticket or other document that permits a person to make a journey by any means from a place within the United Kingdom to a place outside the United Kingdom.
- (3) “Passport” means—
- (a) a United Kingdom passport (within the meaning of the Immigration Act 1971),
  - (b) a passport issued by or on behalf of the authorities of a country or territory outside the United Kingdom, or by or on behalf of an international organisation, or
  - (c) a document that can be used (in some or all circumstances) instead of a passport.
- (4) “Port” means—
- (a) an airport,
  - (b) a sea port,
  - (c) a hoverport,
  - (d) a heliport,
  - (e) a railway station where passenger trains depart for places outside the United Kingdom, or
  - (f) any other place at which a person is able, or attempting, to get on or off any craft, vessel or vehicle in connection with leaving the United Kingdom.

**Commencement Information**

**I92** S. 69 in force for specified purposes at Royal Assent, see s. 183

## CHAPTER 2

### RETENTION OF BIOMETRIC MATERIAL

#### **70 Retention of fingerprints and DNA profiles: PACE**

- (1) Part 5 of the Police and Criminal Evidence Act 1984 (questioning and treatment of persons by police) is amended as follows.
- (2) In section 63F (retention of section 63D material: persons arrested for or charged with a qualifying offence), after subsection (2) insert—
- “(2A) In subsection (2), references to a recordable offence include an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence if done in England and Wales (and, in the application of subsection (2) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted).”
- (3) In that section, after subsection (11) insert—

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“(12) For the purposes of the definition of “excluded offence” in subsection (11)—

- (a) references to a recordable offence or a qualifying offence include an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence or (as the case may be) a qualifying offence if done in England and Wales (whether or not it constituted such an offence when the person was convicted), and
- (b) in the application of paragraph (b) of that definition in relation to an offence under the law of a country or territory outside England and Wales, the reference to a relevant custodial sentence of 5 years or more is to be read as a reference to a sentence of imprisonment or other form of detention of 5 years or more.”

(4) In section 63H (retention of section 63D material: persons arrested for or charged with a minor offence), after subsection (2) insert—

“(2A) In subsection (2), the reference to a recordable offence includes an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence if done in England and Wales (whether or not it constituted such an offence when the person was convicted).”

(5) In that section, in subsection (3), after “section 63F(11)” insert “ (read with section 63F(12)) ”.

(6) After section 63I insert—

**“63IA Retention of material: persons convicted of an offence outside England and Wales after taking of section 63D material**

- (1) This section applies where—
  - (a) section 63D material is taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of an offence,
  - (b) at any time before the material is required to be destroyed by virtue of this Part of this Act, the person is convicted of an offence under the law of a country or territory outside England and Wales, and
  - (c) the act constituting the offence mentioned in paragraph (b) would constitute a recordable offence if done in England and Wales.

(2) The material may be retained indefinitely.

(3) This section does not apply where section 63KA applies.”

(7) In the heading of section 63J, at the end insert “ : other cases ”.

(8) In section 63K (retention of section 63D material: exception for persons under 18 convicted of minor offence), after subsection (1) insert—

“(1A) In subsection (1)(a)(ii), the reference to a recordable offence includes an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence if done in England and Wales (whether or not it constituted such an offence when the person was convicted).”

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(9) In that section, after subsection (5) insert—

“(5A) In subsection (5), the reference to a recordable offence includes an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence if done in England and Wales.”

(10) After section 63K insert—

**“63KA Retention of section 63D material under section 63IA: exception for persons under 18 convicted of first minor offence outside England and Wales**

- (1) This section applies where—
- (a) section 63D material is taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of an offence,
  - (b) at any time before the material is required to be destroyed by virtue of this Part of this Act, the person is convicted of an offence under the law of a country or territory outside England and Wales,
  - (c) the act constituting the offence mentioned in paragraph (b) would constitute a recordable offence if done in England and Wales but would not constitute a qualifying offence,
  - (d) the person is aged under 18 at the time of the offence mentioned in paragraph (b), and
  - (e) the person has not previously been convicted of a recordable offence.
- (2) In subsection (1)(e), the reference to a recordable offence includes an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence if done in England and Wales (whether or not it constituted such an offence when the person was convicted).
- (3) Where the person is sentenced to imprisonment or another form of detention for less than 5 years in respect of the offence mentioned in subsection (1)(b), the section 63D material may be retained until the end of the period consisting of the term of the sentence plus 5 years.
- (4) Where the person is sentenced to imprisonment or another form of detention for 5 years or more in respect of the offence mentioned in subsection (1)(b), the material may be retained indefinitely.
- (5) Where the person is given a sentence other than a sentence of imprisonment or other form of detention in respect of the offence mentioned in subsection (1)(b), the material may be retained until the end of the period of 5 years beginning with the date on which the person was arrested for the offence (or, if the person was not arrested for the offence, the date on which the person was charged with it).
- (6) But if, before the end of the period within which material may be retained by virtue of this section, the person is again convicted of a recordable offence, the material may be retained indefinitely.

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- (7) In subsection (6), the reference to a recordable offence includes an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence if done in England and Wales.”
- (11) In section 63N (retention of section 63D material given voluntarily), after subsection (4) insert—
- “(5) The reference to a recordable offence in subsection (3)(a) includes an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence if done in England and Wales.
- (6) The reference to a recordable offence in subsections (3)(b) and (4), and the reference to a qualifying offence in subsection (4), includes an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence or (as the case may be) a qualifying offence if done in England and Wales (whether or not it constituted such an offence when the person was convicted).”

#### **Commencement Information**

**I93** S. 70 in force for specified purposes at Royal Assent, see s. 183

## **71 Retention of fingerprints and DNA profiles: Terrorism Act 2000**

- (1) Schedule 8 to the Terrorism Act 2000 (detention) is amended as follows.
- (2) In paragraph 20B (retention of paragraph 20A material: persons detained under section 41), after sub-paragraph (2) insert—
- “(2A) In sub-paragraph (2) —
- (a) the reference to a recordable offence includes an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute—
- (i) a recordable offence under the law of England and Wales if done there, or
- (ii) a recordable offence under the law of Northern Ireland if done there,
- (and, in the application of sub-paragraph (2) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted);
- (b) the reference to an offence in Scotland which is punishable by imprisonment includes an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute an offence under the law of Scotland which is punishable by imprisonment if done there (and, in the application of sub-paragraph (2) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted).”



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(3) In paragraph 20C (retention of paragraph 20A material: persons detained under Schedule 7), after sub-paragraph (2) insert—

“(2A) In sub-paragraph (2) —

(a) the reference to a recordable offence includes an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute—

(i) a recordable offence under the law of England and Wales if done there, or

(ii) a recordable offence under the law of Northern Ireland if done there,

(and, in the application of sub-paragraph (2) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted);

(b) the reference to an offence in Scotland which is punishable by imprisonment includes an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute an offence under the law of Scotland which is punishable by imprisonment if done there (and, in the application of sub-paragraph (2) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted).”

(4) In paragraph 20D (interpretation), after sub-paragraph (5) insert—

“(5A) For the purposes of sub-paragraph (4)—

(a) a person is to be treated as having previously been convicted in England and Wales of a recordable offence if —

(i) the person has previously been convicted of an offence under the law of a country or territory outside the United Kingdom, and

(ii) the act constituting the offence would constitute a recordable offence under the law of England and Wales if done there (whether or not it constituted such an offence when the person was convicted);

(b) a person is to be treated as having previously been convicted in Northern Ireland of a recordable offence if—

(i) the person has previously been convicted of an offence under the law of a country or territory outside the United Kingdom, and

(ii) the act constituting the offence would constitute a recordable offence under the law of Northern Ireland if done there (whether or not it constituted such an offence when the person was convicted);

(c) a person is to be treated as having previously been convicted in Scotland of an offence which is punishable by imprisonment if—

(i) the person has previously been convicted of an offence under the law of a country or territory outside the United Kingdom, and

(ii) the act constituting the offence would constitute an offence punishable by imprisonment under the law of Scotland if

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- done there (whether or not it constituted such an offence when the person was convicted);
- (d) the reference in sub-paragraph (4)(b) to a qualifying offence includes a reference to an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute a qualifying offence under the law of England and Wales if done there or (as the case may be) under the law of Northern Ireland if done there (whether or not it constituted such an offence when the person was convicted).
- (5B) For the purposes of paragraphs 20B and 20C and this paragraph—
- (a) offence, in relation to any country or territory outside the United Kingdom, includes an act punishable under the law of that country or territory, however it is described;
- (b) a person has in particular been convicted of an offence under the law of a country or territory outside the United Kingdom if—
- (i) a court exercising jurisdiction under the law of that country or territory has made in respect of such an offence a finding equivalent to a finding that the person is not guilty by reason of insanity, or
- (ii) such a court has made in respect of such an offence a finding equivalent to a finding that the person is under a disability and did the act charged against the person in respect of the offence.”

**Commencement Information**

**194** S. 71 in force for specified purposes at Royal Assent, see s. 183

## CHAPTER 3

### POWERS UNDER PACE: MISCELLANEOUS

#### **72 PACE: entry and search of premises for the purpose of arrest**

In section 17 of the Police and Criminal Evidence Act 1984 (entry for the purpose of arrest) after subsection (1)(caa) insert—

- “(cab) of arresting a person under any of the following provisions—
- (i) section 30D(1) or (2A);
- (ii) section 46A(1) or (1A);
- (iii) section 5B(7) of the Bail Act 1976 (arrest where a person fails to surrender to custody in accordance with a court order);
- (iv) section 7(3) of the Bail Act 1976 (arrest where a person is not likely to surrender to custody etc);
- (v) section 97(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (arrest where a child is suspected of breaking conditions of remand);”.

*Status: Point in time view as at 22/03/2018.*

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#### Commencement Information

**I95** S. 72 in force for specified purposes at Royal Assent, see s. 183

### 73 PACE: treatment of those aged 17

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) In section 30A (bail elsewhere than at police station), in subsection (3B)(d), for “under the age of 17” substitute “under the age of 18”.
- (3) In section 63B (testing for presence of class A drugs)—
  - (a) in subsection (5A), for “has not attained the age of 17” substitute “has not attained the age of 18”;
  - (b) in subsection (10), in the definition of “appropriate adult”, for “has not attained the age of 17” substitute “has not attained the age of 18”.
- (4) In section 65 (which makes provision to supplement the provisions of Part 5 on the questioning and treatment of persons by the police), in subsection (1), in the definition of “appropriate consent”, in paragraph (a), for “has attained the age of 17 years” substitute “has attained the age of 18 years”.

#### Commencement Information

**I96** S. 73 in force for specified purposes at Royal Assent, see s. 183

### 74 PACE: detention: use of live links

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) After section 45 insert—

*“Use of live links*

#### **45ZA Functions of extending detention: use of live links**

- (1) The functions of a police officer under section 42(1) or (2) may be performed, in relation to an arrested person who is held at a police station, by an officer who is not present at the police station but has access to the use of a live link if—
  - (a) a custody officer considers that the use of the live link is appropriate,
  - (b) the arrested person has had advice from a solicitor on the use of the live link, and
  - (c) the appropriate consent to the use of the live link has been given.
- (2) In subsection (1)(c), “the appropriate consent” means—
  - (a) in relation to a person who has attained the age of 18, the consent of that person;

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- (b) in relation to a person who has not attained that age but has attained the age of 14, the consent of that person and of his or her parent or guardian;
  - (c) in relation to a person who has not attained the age of 14, the consent of his or her parent or guardian.
- (3) The consent of a person who has not attained the age of 18 (but has attained the age of 14), or who is a vulnerable adult, may only be given in the presence of an appropriate adult.
- (4) Section 42 applies with the modifications set out in subsections (5) to (7) below in any case where the functions of a police officer under that section are, by virtue of subsection (1), performed by an officer who is not at the police station where the arrested person is held.
- (5) Subsections (5)(b) and (9)(iii) and (iv) of that section are each to be read as if, instead of requiring the officer to make a record, they required the officer to cause another police officer to make a record.
- (6) Subsection (6) of that section is to be read as if it required the officer to give the persons mentioned in that subsection an opportunity to make representations—
- (a) if facilities exist for the immediate transmission of written representations to the officer, either in writing by means of those facilities or orally by means of the live link, or
  - (b) in any other case, orally by means of the live link.
- (7) Subsection (9) of that section is to be read as if the reference in paragraph (b) to the right conferred by section 58 were omitted.
- (8) In this section—

“live link” means an arrangement by which an officer who is not present at the police station where an arrested person is held is able to see and hear, and to be seen and heard by, the arrested person and the arrested person's solicitor (and for this purpose any impairment of eyesight or hearing is to be disregarded);

“vulnerable adult” means a person aged 18 or over who may have difficulty understanding the purpose of an authorisation under section 42(1) or (2) or anything that occurs in connection with a decision whether to give such an authorisation (whether because of a mental disorder or for any other reason);

“appropriate adult”, in relation to a person who has not attained the age of 18, means—

- (a) the person's parent or guardian or, if the person is in the care of a local authority or voluntary organisation, a person representing that authority or organisation,
- (b) a social worker of a local authority, or
- (c) if no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over who is not a police officer or a person employed for, or engaged on, police purposes;

“appropriate adult”, in relation to a vulnerable adult, means—

- (a) a relative, guardian or other person responsible for the vulnerable adult's care,

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- (b) a person who is experienced in dealing with vulnerable adults but who is not a police officer or a person employed for, or engaged on, police purposes, or
  - (c) if no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over who is not a police officer or a person employed for, or engaged on, police purposes.
- (9) In subsection (8), in both definitions of “appropriate adult”, “police purposes” has the meaning given by section 101(2) of the Police Act 1996.

#### **45ZB Warrants for further detention: use of live links**

- (1) A magistrates' court may give a live link direction for the purpose of the hearing of an application under section 43 for a warrant authorising further detention of a person, or the hearing of an application under section 44 for an extension of such a warrant, if—
- (a) a custody officer considers that the use of a live link for that purpose is appropriate,
  - (b) the person to whom the application relates has had legal advice on the use of the live link,
  - (c) the appropriate consent to the use of the live link has been given, and
  - (d) it is not contrary to the interests of justice to give the direction.
- (2) In subsection (1)(c), “the appropriate consent” means—
- (a) in relation to a person who has attained the age of 18, the consent of that person;
  - (b) in relation to a person who has not attained that age but has attained the age of 14, the consent of that person and of his or her parent or guardian;
  - (c) in relation to a person who has not attained the age of 14, the consent of his or her parent or guardian.
- (3) Where a live link direction is given, the requirement under section 43(2)(b) for the person to whom the application relates to be brought before the court for the hearing does not apply.
- (4) In this section—
- “live link direction” means a direction that a live link be used for the purposes of the hearing;
  - “live link” means an arrangement by which a person (when not in the place where the hearing is being held) is able to see and hear, and to be seen and heard by, the court during a hearing (and for this purpose any impairment of eyesight or hearing is to be disregarded);
  - “vulnerable adult” means a person aged 18 or over who may have difficulty understanding the purpose of the hearing or what occurs at it (whether because of a mental disorder or for any other reason);
  - “appropriate adult”, in relation to a person aged under 18, means—
    - (a) the person's parent or guardian or, if the person is in the care of a local authority or voluntary organisation, a person representing that authority or organisation,
    - (b) a social worker of a local authority, or

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- (c) if no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over who is not a police officer or a person employed for, or engaged on, police purposes;
  - “appropriate adult”, in relation to a vulnerable adult, means—
    - (a) a relative, guardian or other person responsible for the appropriate adult's care,
    - (b) a person who is experienced in dealing with vulnerable adults but who is not a police officer or a person employed for, or engaged on, police purposes, or
    - (c) if no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over who is not a police officer or a person employed for, or engaged on, police purposes.
- (5) In subsection (4), in both definitions of “appropriate adult”, “police purposes” has the meaning given by section 101(2) of the Police Act 1996.”
- (3) In section 45 (detention before charge-supplementary), in subsection (1), for “sections 43 and 44” substitute “ sections 43, 44 and 45ZB ”.
- (4) In section 45A—
  - (a) for the heading substitute “ Use of live links for other decisions about detention ”;
  - (b) in subsection (1)(b), for the words from “video-conferencing facilities” to the end substitute “ a live link ”;
  - (c) in subsection (3), for “the facilities mentioned in subsection (1) above” substitute “ a live link ”;
  - (d) in subsection (7), in each of paragraphs (a)(i) and (b), for “the video-conferencing facilities” substitute “ the live link ”;
  - (e) for subsection (10) substitute—
    - “(10) In this section, “live link”, in relation to any functions, means an arrangement by which the functions may be performed by an officer who is not present at the police station where an arrested person is held but who is able (for the purpose of the functions) to see and hear, and to be seen and heard by, the arrested person and any legal representative of that person (and for this purpose any impairment of eyesight or hearing is to be disregarded).”
- (5) In consequence of the amendments made by subsection (4), in section 40A—
  - (a) in subsection (2)(a), for “video-conferencing facilities” substitute “ a live link ”;
  - (b) in subsection (5), for “video-conferencing facilities” substitute “ live link ”.

#### **Commencement Information**

**I97** S. 74 in force for specified purposes at Royal Assent, see s. 183

## **75 PACE: interviews: use of live links**

- (1) Section 39 of the Police and Criminal Evidence Act 1984 (responsibilities in relation to persons detained) is amended as follows.

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- (2) In subsection (2)(a), for “a police officer investigating an offence for which that person is in police detention” substitute “another police officer at the police station where the person is in police detention, for the purpose of an interview that is part of the investigation of an offence for which the person is in police detention or otherwise in connection with the investigation of such an offence”.
- (3) After subsection (3) insert—
- “(3A) Subsections (3B) and (3C) apply if the custody officer, in accordance with any code of practice issued under this Act, transfers or permits the transfer of a person in police detention to an officer mentioned in subsection (2)(a) for the purpose of an interview that is to be conducted to any extent by means of a live link by another police officer who is investigating the offence but is not at the police station where the person in police detention is held at the time of the interview.
- (3B) The officer who is not at the police station has the same duty as the officer mentioned in subsection (2)(a) to ensure that the person is treated in accordance with the provisions of this Act and of any such codes of practice as are mentioned in subsection (1).
- (3C) If the person detained is subsequently returned to the custody of the custody officer, the officer who is not at the police station also has the same duty under subsection (3) as the officer mentioned in subsection (2)(a).
- (3D) For the purpose of subsection (3C), subsection (3) applies as if the reference to “in his custody” were a reference to “being interviewed”.
- (3E) In subsection (3A), “live link” means an arrangement by which the officer who is not at the police station is able to see and hear, and to be seen and heard by, the person in police detention, any legal representative of that person and the officer who has custody of that person at the police station (and for this purpose any impairment of eyesight or hearing is to be disregarded).”

#### **Commencement Information**

**198** S. 75 in force for specified purposes at Royal Assent, see s. 183

## **76 PACE: audio recording of interviews**

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) In section 60 (which currently makes provision about the tape-recording of interviews)
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- (a) in subsection (1), in each of paragraphs (a) and (b), for “tape-recording” substitute “audio recording”;
- (b) in the heading of the section, for “Tape-recording” substitute “Audio recording”.
- (3) In section 113 (application of Act to armed forces), in subsection (4)(a), for “tape-recording” substitute “audio recording”.

*Status: Point in time view as at 22/03/2018.*

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**Commencement Information**

**I99** S. 76 in force for specified purposes at Royal Assent, otherwise 31.3.2017, see s. 183

**77 PACE: duty to notify person interviewed that not to be prosecuted**

After section 60A of the Police and Criminal Evidence Act 1984 insert—

**“60B Notification of decision not to prosecute person interviewed**

- (1) This section applies where—
- (a) a person suspected of the commission of a criminal offence is interviewed by a police officer but is not arrested for the offence, and
  - (b) the police officer in charge of investigating the offence determines that—
    - (i) there is not sufficient evidence to charge the person with an offence, or
    - (ii) there is sufficient evidence to charge the person with an offence but the person should not be charged with an offence or given a caution in respect of an offence.
- (2) A police officer must give the person notice in writing that the person is not to be prosecuted.
- (3) Subsection (2) does not prevent the prosecution of the person for an offence if new evidence comes to light after the notice was given.
- (4) In this section “caution” includes—
- (a) a conditional caution within the meaning of Part 3 of the Criminal Justice Act 2003;
  - (b) a youth conditional caution within the meaning of Chapter 1 of Part 4 of the Crime and Disorder Act 1998;
  - (c) a youth caution under section 66ZA of that Act.”

**Commencement Information**

**I100** S. 77 in force for specified purposes at Royal Assent, see s. 183

**78 PACE: consultation on codes of practice**

In section 67 of the Police and Criminal Evidence Act 1984 (codes of practice: supplementary), after subsection (4) insert—

- “(4A) The duty to consult under subsection (4) does not apply to a revision of a code where the Secretary of State considers that—
- (a) the revision is necessary in consequence of legislation, and
  - (b) the Secretary of State has no discretion as to the nature of the revision.
- (4B) Where, in consequence of subsection (4A), a revision of a code is issued without prior consultation with the persons mentioned in subsection (4), the Secretary



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of State must (at the same time as issuing the revision) publish a statement that, in his or her opinion, paragraphs (a) and (b) of subsection (4A) apply to the revision.

(4C) In subsection (4A), “legislation” means any provision of—

- (a) an Act,
- (b) subordinate legislation within the meaning of the Interpretation Act 1978.”

#### **Commencement Information**

**I101** S. 78 in force for specified purposes at Royal Assent, see s. 183

### **79 Definition of “appropriate adult” in criminal justice legislation**

- (1) In section 63B of the Police and Criminal Evidence Act 1984 (testing for presence of Class A drugs), in subsection (10), in paragraph (c), in the definition of “appropriate adult”, for “a person employed by the police” substitute “ a person employed for, or engaged on, police purposes; and “police purposes” has the meaning given by section 101(2) of the Police Act 1996 ”.
- (2) In section 66ZA of the Crime and Disorder Act 1998 (youth cautions), in subsection (7) (which defines “appropriate adult”), in paragraph (d), for “a person employed by the police” substitute “ a person employed for, or engaged on, police purposes; and “police purposes” has the meaning given by section 101(2) of the Police Act 1996 ”.
- (3) In section 161 of the Criminal Justice Act 2003 (pre-sentence drug testing), in subsection (8) (which defines “appropriate adult”), in paragraph (c), for “a person employed by the police” substitute “ a person employed for, or engaged on, police purposes; and “police purposes” has the meaning given by section 101(2) of the Police Act 1996 ”.

#### **Commencement Information**

**I102** S. 79 in force for specified purposes at Royal Assent, see s. 183

## **CHAPTER 4**

### **POWERS UNDER THE MENTAL HEALTH ACT 1983**

### **80 Extension of powers under sections 135 and 136 of the Mental Health Act 1983**

- (1) The Mental Health Act 1983 is amended as follows.
- (2) In section 135 (warrant to search for and remove patients), after subsection (1) insert—

“(1A) If the premises specified in the warrant are a place of safety, the constable executing the warrant may, instead of removing the person to another place of safety, keep the person at those premises for the purpose mentioned in subsection (1).”

*Status: Point in time view as at 22/03/2018.*

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- (3) In subsection (3) of that section—
- (a) for “under this section” substitute “ under subsection (1) ”;
  - (b) before “may” insert “ , or kept at the premises specified in the warrant under subsection (1A), ”.
- (4) In section 136 (mentally disordered persons found in public places), for subsection (1) substitute—
- “(1) If a person appears to a constable to be suffering from mental disorder and to be in immediate need of care or control, the constable may, if he thinks it necessary to do so in the interests of that person or for the protection of other persons—
- (a) remove the person to a place of safety within the meaning of section 135, or
  - (b) if the person is already at a place of safety within the meaning of that section, keep the person at that place or remove the person to another place of safety.
- (1A) The power of a constable under subsection (1) may be exercised where the mentally disordered person is at any place, other than—
- (a) any house, flat or room where that person, or any other person, is living, or
  - (b) any yard, garden, garage or outhouse that is used in connection with the house, flat or room, other than one that is also used in connection with one or more other houses, flats or rooms.
- (1B) For the purpose of exercising the power under subsection (1), a constable may enter any place where the power may be exercised, if need be by force.”
- (5) After subsection (1B) of that section (inserted by subsection (4) above) insert—
- “(1C) Before deciding to remove a person to, or to keep a person at, a place of safety under subsection (1), the constable must, if it is practicable to do so, consult—
- (a) a registered medical practitioner,
  - (b) a registered nurse,
  - (c) an approved mental health professional, or
  - (d) a person of a description specified in regulations made by the Secretary of State.”
- (6) In subsection (2) of that section, for “removed to” substitute “ removed to, or kept at, ”.
- (7) For the heading of that section substitute “ Removal etc of mentally disordered persons without a warrant ”.

#### **Commencement Information**

**I103** S. 80 in force for specified purposes at Royal Assent, see s. 183

**I104** S. 80 in force at 11.12.2017 in so far as not already in force by S.I. 2017/1017, reg. 3(a) (with reg. 4)

## **81 Restrictions on places that may be used as places of safety**

- (1) The Mental Health Act 1983 is amended as follows.

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- (2) In section 135 (warrant to search for and remove patients), in subsection (6), omit the words “the occupier of which is willing temporarily to receive the patient”.
- (3) After subsection (6) of that section insert—
- “(7) For the purpose of subsection (6)—
- (a) a house, flat or room where a person is living may not be regarded as a suitable place unless—
- (i) if the person believed to be suffering from a mental disorder is the sole occupier of the place, that person agrees to the use of the place as a place of safety;
- (ii) if the person believed to be suffering from a mental disorder is an occupier of the place but not the sole occupier, both that person and one of the other occupiers agree to the use of the place as a place of safety;
- (iii) if the person believed to be suffering from a mental disorder is not an occupier of the place, both that person and the occupier (or, if more than one, one of the occupiers) agree to the use of the place as a place of safety;
- (b) a place other than one mentioned in paragraph (a) may not be regarded as a suitable place unless a person who appears to the constable exercising powers under this section to be responsible for the management of the place agrees to its use as a place of safety.”
- (4) After subsection (7) of that section (inserted by subsection (3) above) insert—
- “(8) This section is subject to section 136A which makes provision about the removal and taking of persons to a police station under this section.”
- (5) In section 136, after subsection (4) insert—
- “(5) This section is subject to section 136A which makes provision about the removal and taking of persons to a police station, and the keeping of persons at a police station, under this section.”
- (6) After section 136 insert—

**“136A Use of police stations as places of safety**

- (1) A child may not, in the exercise of a power to which this section applies, be removed to, kept at or taken to a place of safety that is a police station.
- (2) The Secretary of State may by regulations—
- (a) provide that an adult may be removed to, kept at or taken to a place of safety that is a police station, in the exercise of a power to which this section applies, only in circumstances specified in the regulations;
- (b) make provision about how adults removed to, kept at or taken to a police station, in the exercise of a power to which this section applies, are to be treated while at the police station, including provision for review of their detention.
- (3) Regulations under this section—
- (a) may make different provision for different cases;

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- (b) may make provision that applies subject to specified exceptions;
  - (c) may include incidental, supplementary or consequential provision or transitional, transitory or saving provision.
- (4) The powers to which this section applies are—
- (a) the power to remove a person to a place of safety under a warrant issued under section 135(1);
  - (b) the power to take a person to a place of safety under section 135(3A);
  - (c) the power to remove a person to, or to keep a person at, a place of safety under section 136(1);
  - (d) the power to take a person to a place of safety under section 136(3).
- (5) In this section—
- (a) “child” means a person aged under 18;
  - (b) “adult” means a person aged 18 or over.”

#### Commencement Information

**I105** S. 81 in force for specified purposes at Royal Assent, see s. 183

**I106** S. 81 in force at 11.12.2017 in so far as not already in force by S.I. 2017/1017, reg. 3(b) (with reg. 4)

## 82 Periods of detention in places of safety etc

- (1) The Mental Health Act 1983 is amended as follows.
- (2) In section 135 (warrant to search for and remove patients)—
- (a) in subsection (3), for “72 hours” substitute “ the permitted period of detention ”;
  - (b) after subsection (3) insert—
 

“(3ZA) In subsection (3), “the permitted period of detention” means—

    - (a) the period of 24 hours beginning with—
      - (i) in a case where the person is removed to a place of safety, the time when the person arrives at that place;
      - (ii) in a case where the person is kept at the premises specified in the warrant, the time when the constable first entered the premises to execute the warrant; or
    - (b) where an authorisation is given in relation to the person under section 136B, that period of 24 hours and such further period as is specified in the authorisation.”;
  - (c) in subsection (3A), for “the period of 72 hours” substitute “ the permitted period of detention ”;
  - (d) in subsection (3B), for “the period of 72 hours” substitute “ the permitted period of detention ”.
- (3) In section 136 (mentally disordered persons found in public places)—
- (a) in subsection (2), for “72 hours” substitute “ the permitted period of detention ”;
  - (b) after subsection (2) insert—
 

“(2A) In subsection (2), “the permitted period of detention” means—

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- (a) the period of 24 hours beginning with—
    - (i) in a case where the person is removed to a place of safety, the time when the person arrives at that place;
    - (ii) in a case where the person is kept at a place of safety, the time when the constable decides to keep the person at that place; or
  - (b) where an authorisation is given in relation to the person under section 136B, that period of 24 hours and such further period as is specified in the authorisation.”;
  - (c) in subsection (3), for “the period of 72 hours” substitute “ the permitted period of detention ”;
  - (d) in subsection (4), for “the period of 72 hours” substitute “ the permitted period of detention ”.
- (4) After section 136A (inserted by section 81) insert—

#### “136B Extension of detention

- (1) The registered medical practitioner who is responsible for the examination of a person detained under section 135 or 136 may, at any time before the expiry of the period of 24 hours mentioned in section 135(3ZA) or (as the case may be) 136(2A), authorise the detention of the person for a further period not exceeding 12 hours (beginning immediately at the end of the period of 24 hours).
- (2) An authorisation under subsection (1) may be given only if the registered medical practitioner considers that the extension is necessary because the condition of the person detained is such that it would not be practicable for the assessment of the person for the purpose of section 135 or (as the case may be) section 136 to be carried out before the end of the period of 24 hours (or, if the assessment began within that period, for it to be completed before the end).
- (3) If the person is detained at a police station, and the assessment would be carried out or completed at the station, the registered medical practitioner may give an authorisation under subsection (1) only if an officer of the rank of superintendent or above approves it.”
- (5) In section 138 (retaking of patients escaping from custody), in subsection (3), for the words from “after the expiration of the period” to the end of the subsection substitute “—
  - (a) in a case where the person escapes while being removed to a place of safety in the execution of a warrant under section 135(1) or under section 136(1), after the end of the period of 24 hours beginning with the escape;
  - (b) in a case where the person escapes after the beginning of the period that is the permitted period of detention in relation to the person under section 135(3ZA) or 136(2A), after the end of that period (taking into account any authorisation under section 136B(1) that was given before the person escaped).”

#### Commencement Information

**I107** S. 82 in force for specified purposes at Royal Assent, see s. 183

**I108** S. 82 in force at 11.12.2017 in so far as not already in force by S.I. 2017/1017, reg. 3(c) (with reg. 4)

*Status: Point in time view as at 22/03/2018.*

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### 83 **Protective searches: individuals removed etc under section 135 or 136 of the Mental Health Act 1983**

After section 136B of the Mental Health Act 1983 (inserted by section 82) insert—

#### “136C Protective searches

- (1) Where a warrant is issued under section 135(1) or (2), a constable may search the person to whom the warrant relates if the constable has reasonable grounds for believing that the person—
  - (a) may present a danger to himself or herself or to others, and
  - (b) is concealing on his or her person an item that could be used to cause physical injury to himself or herself or to others.
- (2) The power to search conferred by subsection (1) may be exercised—
  - (a) in a case where a warrant is issued under section 135(1), at any time during the period beginning with the time when a constable enters the premises specified in the warrant and ending when the person ceases to be detained under section 135;
  - (b) in a case where a warrant is issued under section 135(2), at any time while the person is being removed under the authority of the warrant.
- (3) Where a person is detained under section 136(2) or (4), a constable may search the person, at any time while the person is so detained, if the constable has reasonable grounds for believing that the person—
  - (a) may present a danger to himself or herself or to others, and
  - (b) is concealing on his or her person an item that could be used to cause physical injury to himself or herself or to others.
- (4) The power to search conferred by subsection (1) or (3) is only a power to search to the extent that is reasonably required for the purpose of discovering the item that the constable believes the person to be concealing.
- (5) The power to search conferred by subsection (1) or (3)—
  - (a) does not authorise a constable to require a person to remove any of his or her clothing other than an outer coat, jacket or gloves, but
  - (b) does authorise a search of a person's mouth.
- (6) A constable searching a person in the exercise of the power to search conferred by subsection (1) or (3) may seize and retain anything found, if he or she has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or herself or to others.
- (7) The power to search a person conferred by subsection (1) or (3) does not affect any other power to search the person.”

#### **Commencement Information**

**I109** S. 83 in force for specified purposes at Royal Assent, see s. 183

**I110** S. 83 in force at 11.12.2017 in so far as not already in force by S.I. 2017/1017, reg. 3(d) (with reg. 4)

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*Status: Point in time view as at 22/03/2018.*

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## CHAPTER 5

### MARITIME ENFORCEMENT: ENGLISH AND WELSH OFFENCES

#### *Application of maritime enforcement powers: general*

#### **84 Application of maritime enforcement powers: general**

- (1) A law enforcement officer may, for the purpose of preventing, detecting, investigating or prosecuting an offence under the law of England and Wales, exercise any of the maritime enforcement powers in relation to—
  - (a) a United Kingdom ship in England and Wales waters, foreign waters or international waters,
  - (b) a ship without nationality in England and Wales waters or international waters,
  - (c) a foreign ship in England and Wales waters or international waters, or
  - (d) a ship, registered under the law of a relevant territory, in England and Wales waters or international waters.
- (2) In this Chapter, “the maritime enforcement powers” are the powers set out in—
  - (a) section 88 (power to stop, board, divert and detain);
  - (b) section 89 (power to search and obtain information);
  - (c) section 90 (power of arrest and seizure).
- (3) The following persons are “law enforcement officers” for the purpose of this Chapter—
  - (a) a constable who is a member of a police force in England and Wales,
  - (b) a special constable appointed under section 27 of the Police Act 1996,
  - (c) a constable who is a member of the British Transport Police Force,
  - (d) a port constable, within the meaning of section 7 of the Marine Navigation Act 2013, or a person appointed to act as a constable under provision made by virtue of section 16 of the Harbours Act 1964,
  - (e) a designated customs official within the meaning of Part 1 of the Borders, Citizenship and Immigration Act 2009 (see section 14(6) of that Act),
  - (f) a designated NCA officer who is authorised by the Director General of the National Crime Agency (whether generally or specifically) to exercise the powers of a law enforcement officer under this Chapter, or
  - (g) a person of a description specified in regulations made by the Secretary of State.
- (4) Regulations under subsection (3)(g) are to be made by statutory instrument.
- (5) A statutory instrument containing regulations under subsection (3)(g) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) This section is subject to section 85 (which makes provision about when the authority of the Secretary of State is required before the maritime enforcement powers are exercised in reliance on this section).

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#### **Commencement Information**

**1111** S. 84 in force for specified purposes at Royal Assent, see s. 183

*Status: Point in time view as at 22/03/2018.*

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**II12** S. 84 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(d)

## 85 Restriction on exercise of maritime enforcement powers

- (1) The authority of the Secretary of State is required before a law enforcement officer exercises any of the maritime enforcement powers, in reliance on section 84(1), in relation to a United Kingdom ship in foreign waters.
- (2) The Secretary of State may give authority under subsection (1) only if the State, or the relevant territory, in whose waters the powers would be exercised consents to the exercise of the powers.
- (3) The authority of the Secretary of State is required before a law enforcement officer exercises any of the maritime enforcement powers, in reliance on section 84(1), in relation to a foreign ship, or a ship registered under the law of a relevant territory, within the territorial sea adjacent to England and Wales or in international waters.
- (4) The Secretary of State may give authority under subsection (3) in relation to a foreign ship only if—
  - (a) the home state has requested the assistance of the United Kingdom for the purpose of preventing, detecting, investigating or prosecuting an offence under the law of England and Wales,
  - (b) the home state has authorised the United Kingdom to act for that purpose, or
  - (c) the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) otherwise permits the exercise of the powers in relation to the ship.

### Commencement Information

**II13** S. 85 in force for specified purposes at Royal Assent, see s. 183

**II14** S. 85 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(d)

### *Ships in Scotland waters: hot pursuit*

## 86 Hot pursuit of ships in Scotland waters

- (1) A law enforcement officer may, for the purpose of preventing, detecting, investigating or prosecuting an offence under the law of England and Wales, exercise any of the maritime enforcement powers in relation to a ship in Scotland waters if—
  - (a) the ship is pursued there,
  - (b) immediately before the pursuit of the ship, the ship was in England and Wales waters or international waters,
  - (c) before the pursuit of the ship, a signal was given for it to stop,
  - (d) the signal was given in such a way as to be audible or visible from the ship, and
  - (e) the pursuit of the ship is not interrupted.
- (2) For the purposes of subsection (1)(e), pursuit is not interrupted by reason only of the fact that—
  - (a) the method of carrying out the pursuit, or
  - (b) the identity of the ship or aircraft carrying out the pursuit,
 changes during the course of the pursuit.



*Status: Point in time view as at 22/03/2018.*

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- (3) This section is subject to section 87 (which requires the authority of the Secretary of State before the maritime enforcement powers are exercised in relation to a foreign ship, or a ship registered under the law of a relevant territory, within the territorial sea adjacent to Scotland).

#### Commencement Information

**I115** S. 86 in force for specified purposes at Royal Assent, see s. 183

**I116** S. 86 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(d)

### 87 Restriction on exercise of maritime enforcement powers in hot pursuit

- (1) The authority of the Secretary of State is required before a law enforcement officer exercises any of the maritime enforcement powers, in reliance on section 86, in relation to a foreign ship, or a ship registered under the law of a relevant territory, within the territorial sea adjacent to Scotland.
- (2) The Secretary of State may give authority under subsection (1) in relation to a foreign ship only if—
- the home state has requested the assistance of the United Kingdom for the purpose of preventing, detecting, investigating or prosecuting an offence under the law of England and Wales,
  - the home state has authorised the United Kingdom to act for that purpose, or
  - the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) otherwise permits the exercise of the powers in relation to the ship.

#### Commencement Information

**I117** S. 87 in force for specified purposes at Royal Assent, see s. 183

**I118** S. 87 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(d)

### *The maritime enforcement powers*

### 88 Power to stop, board, divert and detain

- (1) This section applies if a law enforcement officer has reasonable grounds to suspect that—
- an offence under the law of England and Wales is being, or has been, committed on a ship in relation to which the powers conferred by this section are exercisable by virtue of section 84 or 86, or
  - a ship in relation to which those powers are so exercisable is otherwise being used in connection with the commission of an offence under that law.
- (2) The law enforcement officer may—
- stop the ship;
  - board the ship;
  - require the ship to be taken to a port in England and Wales or elsewhere and detained there.

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- (3) Except as provided by subsection (5), the authority of the Secretary of State is required before a law enforcement officer may exercise the power conferred by subsection (2) (c) to require the ship to be taken to a port outside the United Kingdom.
- (4) The Secretary of State may give authority for the purposes of subsection (3) only if the State, or the relevant territory, in which the port is located is willing to receive the ship.
- (5) If the law enforcement officer is acting under authority given for the purposes of section 85(3) or 87(1), the law enforcement officer may require the ship to be taken to—
  - (a) a port in the home state or relevant territory in question, or
  - (b) if the home state or relevant territory requests, a port in any other State or relevant territory willing to receive the ship.
- (6) The law enforcement officer may require the master of the ship, or any member of its crew, to take such action as is necessary for the purposes of subsection (2)(c).
- (7) A law enforcement officer must give notice in writing to the master of any ship detained under this section.
- (8) The notice must state that the ship is to be detained until the notice is withdrawn by the giving of a further notice in writing signed by a law enforcement officer.

#### **Commencement Information**

**I119** S. 88 in force for specified purposes at Royal Assent, see s. 183

**I120** S. 88 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(d)

## **89 Power to search and obtain information**

- (1) This section applies if a law enforcement officer has reasonable grounds to suspect that there is evidence relating to an offence under the law of England and Wales (other than items subject to legal privilege) on a ship in relation to which the powers conferred by this section are exercisable by virtue of section 84 or 86.
- (2) The law enforcement officer may search—
  - (a) the ship;
  - (b) anyone found on the ship;
  - (c) anything found on the ship (including cargo).
- (3) The law enforcement officer may require a person found on the ship to give information about himself or herself or about anything found on the ship.
- (4) The power to search conferred by subsection (2) is a power to search only to the extent that it is reasonably required for the purpose of discovering evidence of the kind mentioned in subsection (1).
- (5) The power to search a person conferred by subsection (2) does not authorise a law enforcement officer to require the person to remove any clothing in public other than an outer coat, jacket or gloves.
- (6) In exercising a power conferred by subsection (2) or (3), a law enforcement officer may (amongst other things)—

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- (a) open any containers;
  - (b) require the production of documents, books or records relating to the ship or anything on it, other than anything that the law enforcement officer has reasonable grounds to believe to be an item subject to legal privilege;
  - (c) make photographs or copies of anything the production of which the law enforcement officer has power to require.
- (7) The power in subsection (6)(b) to require the production of documents, books or records includes, in relation to documents, books or records kept in electronic form, power to require the provision of the documents, books or records in a form in which they are legible and can be taken away.
- (8) The power of a law enforcement officer under subsection (2)(b) or (c) or (3) may be exercised on the ship or elsewhere.

#### Commencement Information

**I121** S. 89 in force for specified purposes at Royal Assent, see s. 183

**I122** S. 89 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(d)

## 90 Power of arrest and seizure

- (1) This section applies if a law enforcement officer has reasonable grounds to suspect that an offence under the law of England and Wales has been, or is being, committed on a ship in relation to which the powers conferred by this section are exercisable by virtue of section 84 or 86.
- (2) The law enforcement officer may arrest without warrant anyone whom the officer has reasonable grounds for suspecting to be guilty of the offence.
- (3) The law enforcement officer may seize and retain anything found on the ship which appears to the officer to be evidence of the offence, other than anything that the officer has reasonable grounds to believe to be an item subject to legal privilege.
- (4) The power of a law enforcement officer under subsection (2) or (3) may be exercised on the ship or elsewhere.

#### Commencement Information

**I123** S. 90 in force for specified purposes at Royal Assent, see s. 183

**I124** S. 90 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(d)

### *Supplementary provision*

## 91 Maritime enforcement powers: supplementary: protective searches

- (1) This section applies where a power conferred by section 88 is exercised in relation to a ship.
- (2) A law enforcement officer may search any person found on the ship for anything which the officer has reasonable grounds to believe the person might use to—
- (a) cause physical injury,

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- (b) cause damage to property, or
  - (c) endanger the safety of any ship.
- (3) The power under subsection (2) may be exercised on board the ship or elsewhere.
- (4) A law enforcement officer searching a person under subsection (2) may seize and retain anything found if the law enforcement officer has reasonable grounds to believe that the person might use it for a purpose mentioned in paragraphs (a) to (c) of that subsection.
- (5) Anything seized under subsection (4) may be retained only for so long as there are reasonable grounds to believe that it might be used as mentioned in that subsection.
- (6) The power to search a person conferred by subsection (2) does not authorise a law enforcement officer to require the person to remove any clothing in public, other than an outer coat, jacket or gloves.

#### Commencement Information

**I125** [S. 91](#) in force for specified purposes at Royal Assent, see [s. 183](#)

**I126** [S. 91](#) in force at 1.3.2018 in so far as not already in force by [S.I. 2018/227](#), [reg. 2\(d\)](#)

## 92 Maritime enforcement powers: other supplementary provision

- (1) A law enforcement officer may—
- (a) be accompanied by other persons, and
  - (b) take equipment or materials,
- to assist the officer in the exercise of powers under this Chapter.
- (2) A law enforcement officer may use reasonable force, if necessary, in the performance of functions under this Chapter.
- (3) A person accompanying a law enforcement officer under subsection (1) may perform any of the officer's functions under this Chapter, but only under the officer's supervision.
- (4) A law enforcement officer must produce evidence of the officer's authority if asked to do so.
- (5) A law enforcement officer is not liable in any criminal or civil proceedings for anything done in the purported performance of functions under this Chapter if the court is satisfied that—
- (a) the act was done in good faith, and
  - (b) there were reasonable grounds for doing it.
- (6) The powers conferred by this Chapter do not affect any other powers that a law enforcement officer may have.

#### Commencement Information

**I127** [S. 92](#) in force for specified purposes at Royal Assent, see [s. 183](#)

**I128** [S. 92](#) in force at 1.3.2018 in so far as not already in force by [S.I. 2018/227](#), [reg. 2\(d\)](#)

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### 93 Maritime enforcement powers: offences

- (1) A person commits an offence if the person—
  - (a) intentionally obstructs a law enforcement officer in the performance of functions under this Chapter, or
  - (b) fails without reasonable excuse to comply with a requirement imposed by a law enforcement officer in the performance of those functions.
- (2) A person who provides information in response to a requirement imposed by a law enforcement officer in the performance of functions under this Chapter commits an offence if—
  - (a) the information is false in a material particular, and the person either knows it is or is reckless as to whether it is, or
  - (b) the person intentionally fails to disclose any material particular.
- (3) A law enforcement officer may arrest without warrant anyone whom the officer has reasonable grounds for suspecting to be guilty of an offence under this section.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine.

#### Commencement Information

**I129** S. 93 in force for specified purposes at Royal Assent, see s. 183

**I130** S. 93 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(d)

### 94 Maritime enforcement powers: code of practice

- (1) The Secretary of State must prepare and issue a code of practice in respect of the practice to be followed by law enforcement officers when arresting a person under the power conferred by section 90.
- (2) The code must, in particular, provide guidance as to the information to be given to the person at the time of arrest (whether about procedural rights or other matters).
- (3) A failure of a law enforcement officer to comply with any provision of the code does not of itself render the law enforcement officer liable to any criminal or civil proceedings.
- (4) The code—
  - (a) is admissible in evidence in criminal and civil proceedings, and
  - (b) may be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.
- (5) The Secretary of State may at any time revise the whole or any part of the code.
- (6) The code, or any revision of the code, does not come into operation until the Secretary of State so provides by regulations.
- (7) Regulations under this section are to be made by statutory instrument.
- (8) A statutory instrument containing regulations under this section that bring the code into operation may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

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- (9) A statutory instrument containing regulations under this section that bring a revision of the code into operation must be laid before Parliament (if the regulations are made without a draft having been laid and approved as mentioned in subsection (8)).
- (10) Where a statutory instrument, or draft of a statutory instrument, is laid under this section, the code or revision of the code to which it relates must also be laid.

#### Commencement Information

**I131** S. 94 in force for specified purposes at Royal Assent, see s. 183

**I132** S. 94 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(d)

## 95 Interpretation

(1) In this Chapter—

“designated NCA officer” means a National Crime Agency officer who is either or both of the following—

- (a) an officer designated under section 10 of the Crime and Courts Act 2013 as having the powers and privileges of a constable;
- (b) an officer designated under that section as having the powers of a general customs official;

“England and Wales waters” means the sea and other waters within the seaward limits of the territorial sea adjacent to England and Wales;

“foreign ship” means a ship which—

- (a) is registered in a State other than the United Kingdom, or
- (b) is not so registered but is entitled to fly the flag of a State other than the United Kingdom;

“foreign waters” means the sea and other waters within the seaward limits of the territorial sea adjacent to any relevant territory or State other than the United Kingdom;

“home state”, in relation to a foreign ship, means—

- (a) the State in which the ship is registered, or
- (b) the State whose flag the ship is otherwise entitled to fly;

“international waters” means waters beyond the territorial sea of the United Kingdom or of any other State or relevant territory;

“items subject to legal privilege” has the same meaning as in the Police and Criminal Evidence Act 1984 (see section 10 of that Act);

“law enforcement officer” has the meaning given by section 84(3);

“maritime enforcement powers” has the meaning given by section 84(2);

“relevant territory” means—

- (a) the Isle of Man;
- (b) any of the Channel Islands;
- (c) a British overseas territory;

“Scotland waters” means the sea and other waters within the seaward limits of the territorial sea adjacent to Scotland;

“ship” includes every description of vessel (including a hovercraft) used in navigation;

“ship without nationality” means a ship which—

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- (a) is not registered in, or otherwise entitled to fly the flag of, any State or relevant territory, or
  - (b) sails under the flags of two or more States or relevant territories, or under the flags of a State and relevant territory, using them according to convenience;  
“United Kingdom ship” means a ship which—
    - (a) is registered under Part 2 of the Merchant Shipping Act 1995,
    - (b) is a Government ship within the meaning of that Act,
    - (c) is not registered in any State or relevant territory but is wholly owned by persons each of whom has a United Kingdom connection, or
    - (d) is registered under an Order in Council under section 1 of the Hovercraft Act 1968.
- (2) For the purposes of paragraph (c) of the definition of “United Kingdom ship” in subsection (1), a person has a “United Kingdom connection” if the person is—
- (a) a British citizen, a British overseas territories citizen or a British Overseas citizen,
  - (b) an individual who is habitually resident in the United Kingdom, or
  - (c) a body corporate which is established under the law of a part of the United Kingdom and has its principal place of business in the United Kingdom.
- (3) References in this Chapter to the United Nations Convention on the Law of the Sea include references to any modifications of that Convention agreed after the passing of this Act that have entered into force in relation to the United Kingdom.

#### Commencement Information

**I133** S. 95 in force for specified purposes at Royal Assent, see s. 183

**I134** S. 95 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(d)

## CHAPTER 6

### MARITIME ENFORCEMENT: SCOTTISH OFFENCES

#### *Application of maritime enforcement powers: general*

#### **96 Application of maritime enforcement powers: general**

- (1) A law enforcement officer may, for the purpose of preventing, detecting or investigating an offence under the law of Scotland, exercise any of the maritime enforcement powers in relation to—
- (a) a United Kingdom ship in Scotland waters, foreign waters or international waters,
  - (b) a ship without nationality in Scotland waters or international waters,
  - (c) a foreign ship in Scotland waters or international waters, or
  - (d) a ship, registered under the law of a relevant territory, in Scotland waters or international waters.
- (2) In this Chapter, “the maritime enforcement powers” are the powers set out in—

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- (a) section 100 (power to stop, board, divert and detain);
  - (b) section 101 (power to search and obtain information);
  - (c) section 102 (power of arrest and seizure).
- (3) The following persons are “law enforcement officers” for the purpose of this Chapter—
- (a) a constable within the meaning of section 99 of the Police and Fire Reform (Scotland) Act 2012 (2012 asp 8),
  - (b) a constable who is a member of the British Transport Police Force,
  - (c) a designated customs official within the meaning of Part 1 of the Borders, Citizenship and Immigration Act 2009 (see section 14(6) of that Act),
  - (d) a designated NCA officer who is authorised by the Director General of the National Crime Agency (whether generally or specifically) to exercise the powers of a law enforcement officer under this Chapter, or
  - (e) a person of a description specified in regulations made by the Secretary of State.
- (4) Regulations under subsection (3)(e) are to be made by statutory instrument.
- (5) A statutory instrument containing regulations under subsection (3)(e) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Regulations under subsection (3)(e) may not make devolved provision except with the consent of the Scottish Ministers.
- (7) For the purpose of subsection (6), regulations under subsection (3)(e) make devolved provision if and to the extent that the effect of the regulations is to confer functions under this Chapter on a person of a description specified in the regulations and it would be within the legislative competence of the Scottish Parliament to confer those functions on persons of that description in an Act of the Scottish Parliament.
- (8) This section is subject to section 97 (which makes provision about when the authority of the Secretary of State is required before the maritime enforcement powers are exercised in reliance on this section).

#### **Commencement Information**

**I135** S. 96 in force for specified purposes at Royal Assent, see s. 183

**I136** S. 96 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(e)

## **97 Restriction on exercise of maritime enforcement powers**

- (1) The authority of the Secretary of State is required before a law enforcement officer exercises any of the maritime enforcement powers, in reliance on section 96(1), in relation to a United Kingdom ship in foreign waters.
- (2) The Secretary of State may give authority under subsection (1) only if the State, or the relevant territory, in whose waters the powers would be exercised consents to the exercise of the powers.
- (3) The authority of the Secretary of State is required before a law enforcement officer exercises any of the maritime enforcement powers, in reliance on section 96(1), in



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relation to a foreign ship, or a ship registered under the law of a relevant territory, within the territorial sea adjacent to Scotland or in international waters.

- (4) The Secretary of State may give authority under subsection (3) in relation to a foreign ship only if—
- (a) the home state has requested the assistance of the United Kingdom for the purpose of preventing, detecting or investigating an offence under the law of Scotland,
  - (b) the home state has authorised the United Kingdom to act for that purpose, or
  - (c) the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) otherwise permits the exercise of the powers in relation to the ship.

#### Commencement Information

**I137** S. 97 in force for specified purposes at Royal Assent, see s. 183

**I138** S. 97 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(e)

### *Ships in England and Wales waters: hot pursuit*

## **98 Hot pursuit of ships in England and Wales waters**

- (1) A law enforcement officer may, for the purpose of preventing, detecting or investigating an offence under the law of Scotland, exercise any of the maritime enforcement powers in relation to a ship in England and Wales waters if—
- (a) the ship is pursued there,
  - (b) immediately before the pursuit of the ship, the ship was in Scotland waters or international waters,
  - (c) before the pursuit of the ship, a signal was given for it to stop,
  - (d) the signal was given in such a way as to be audible or visible from the ship, and
  - (e) the pursuit of the ship is not interrupted.
- (2) For the purposes of subsection (1)(e), pursuit is not interrupted by reason only of the fact that—
- (a) the method of carrying out the pursuit, or
  - (b) the identity of the ship or aircraft carrying out the pursuit,
- changes during the course of the pursuit.
- (3) This section is subject to section 99 (which requires the authority of the Secretary of State before the maritime enforcement powers are exercised in relation to a foreign ship, or a ship registered under the law of a relevant territory, within the territorial sea adjacent to England and Wales).

#### Commencement Information

**I139** S. 98 in force for specified purposes at Royal Assent, see s. 183

**I140** S. 98 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(e)

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## 99 Restriction on exercise of maritime enforcement powers in hot pursuit

- (1) The authority of the Secretary of State is required before a law enforcement officer exercises any of the maritime enforcement powers, in reliance on section 98 in relation to a foreign ship, or a ship registered under the law of a relevant territory, within the territorial sea adjacent to England and Wales.
- (2) The Secretary of State may give authority under subsection (1) in relation to a foreign ship only if—
  - (a) the home state has requested the assistance of the United Kingdom for the purpose of preventing, detecting or investigating an offence under the law of Scotland,
  - (b) the home state has authorised the United Kingdom to act for that purpose, or
  - (c) the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) otherwise permits the exercise of the powers in relation to the ship.

### Commencement Information

**I141** S. 99 in force for specified purposes at Royal Assent, see s. 183

**I142** S. 99 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(e)

### *The maritime enforcement powers*

## 100 Power to stop, board, divert and detain

- (1) This section applies if a law enforcement officer has reasonable grounds to suspect that—
  - (a) an offence under the law of Scotland is being, or has been, committed on a ship in relation to which the powers conferred by this section are exercisable by virtue of section 96 or 98, or
  - (b) a ship in relation to which those powers are so exercisable is otherwise being used in connection with the commission of an offence under that law.
- (2) The law enforcement officer may—
  - (a) stop the ship;
  - (b) board the ship;
  - (c) require the ship to be taken to a port in Scotland or elsewhere and detained there.
- (3) Except as provided by subsection (5), the authority of the Secretary of State is required before a law enforcement officer may exercise the power conferred by subsection (2) (c) to require the ship to be taken to a port outside the United Kingdom.
- (4) The Secretary of State may give authority for the purposes of subsection (3) only if the State, or the relevant territory, in which the port is located is willing to receive the ship.
- (5) If the law enforcement officer is acting under authority given for the purposes of section 97(3) or 99(1), the law enforcement officer may require the ship to be taken to—
  - (a) a port in the home state or relevant territory in question, or
  - (b) if the home state or relevant territory requests, a port in any other State or relevant territory willing to receive the ship.

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- (6) The law enforcement officer may require the master of the ship, or any member of its crew, to take such action as is necessary for the purposes of subsection (2)(c).
- (7) A law enforcement officer must give notice in writing to the master of any ship detained under this section.
- (8) The notice must state that the ship is to be detained until the notice is withdrawn by the giving of a further notice in writing signed by a law enforcement officer.

#### Commencement Information

**1143** S. 100 in force for specified purposes at Royal Assent, see s. 183

**1144** S. 100 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(e)

### 101 Power to search and obtain information

- (1) This section applies if a law enforcement officer has reasonable grounds to suspect that there is evidence relating to an offence under the law of Scotland (other than items subject to legal privilege) on a ship in relation to which the powers conferred by this section are exercisable by virtue of section 96 or 98.
- (2) The law enforcement officer may search—
  - (a) the ship;
  - (b) anyone found on the ship;
  - (c) anything found on the ship (including cargo).
- (3) The law enforcement officer may require a person found on the ship to give information about himself or herself.
- (4) The power to search conferred by subsection (2) is a power to search only to the extent that it is reasonably required for the purpose of discovering evidence of the kind mentioned in subsection (1).
- (5) The power to search a person conferred by subsection (2) does not authorise a law enforcement officer to require the person to remove any clothing in public other than an outer coat, jacket or gloves.
- (6) In exercising a power conferred by subsection (2) or (3), a law enforcement officer may (amongst other things)—
  - (a) open any containers;
  - (b) require the production of documents, books or records relating to the ship or anything on it, other than anything that the law enforcement officer has reasonable grounds to believe to be an item subject to legal privilege;
  - (c) make photographs or copies of anything the production of which the law enforcement officer has power to require.
- (7) The power in subsection (6)(b) to require the production of documents, books or records includes, in relation to documents, books or records kept in electronic form, power to require the provision of the documents, books or records in a form in which they are legible and can be taken away.
- (8) The power of a law enforcement officer under subsection (2)(b) or (c) or (3) may be exercised on the ship or elsewhere.

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#### **Commencement Information**

- I145** S. 101 in force for specified purposes at Royal Assent, see s. 183  
**I146** S. 101 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(e)

### **102 Power of arrest and seizure**

- (1) This section applies if a law enforcement officer has reasonable grounds to suspect that an offence under the law of Scotland has been, or is being, committed on a ship in relation to which the powers conferred by this section are exercisable by virtue of section 96 or 98.
- (2) The law enforcement officer may arrest without warrant anyone whom the officer has reasonable grounds for suspecting to be guilty of the offence.
- (3) The law enforcement officer may seize and retain anything found on the ship which appears to the officer to be evidence of the offence, other than anything that the officer has reasonable grounds to believe to be an item subject to legal privilege.
- (4) The power of a law enforcement officer under subsection (2) or (3) may be exercised on the ship or elsewhere.

#### **Commencement Information**

- I147** S. 102 in force for specified purposes at Royal Assent, see s. 183  
**I148** S. 102 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(e)

#### *Supplementary provision*

### **103 Maritime enforcement powers: supplementary: protective searches**

- (1) This section applies where a power conferred by section 100 is exercised in relation to a ship.
- (2) A law enforcement officer may search any person found on the ship for anything which the officer has reasonable grounds to believe the person might use to—
  - (a) cause physical injury,
  - (b) cause damage to property, or
  - (c) endanger the safety of any ship.
- (3) The power under subsection (2) may be exercised on board the ship or elsewhere.
- (4) A law enforcement officer searching a person under subsection (2) may seize and retain anything found if the law enforcement officer has reasonable grounds to believe that the person might use it for a purpose mentioned in paragraphs (a) to (c) of that subsection.
- (5) Anything seized under subsection (4) may be retained only for so long as there are reasonable grounds to believe that it might be used as mentioned in that subsection.

*Status: Point in time view as at 22/03/2018.*

*Changes to legislation: Policing and Crime Act 2017 is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (6) The power to search a person conferred by subsection (2) does not authorise a law enforcement officer to require the person to remove any clothing in public, other than an outer coat, jacket or gloves.

#### Commencement Information

**I149** S. 103 in force for specified purposes at Royal Assent, see s. 183

**I150** S. 103 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(e)

### 104 Maritime enforcement powers: other supplementary provision

- (1) A law enforcement officer may—
- be accompanied by other persons, and
  - take equipment or materials,
- to assist the officer in the exercise of powers under this Chapter.
- (2) A law enforcement officer may use reasonable force, if necessary, in the performance of functions under this Chapter.
- (3) A person accompanying a law enforcement officer under subsection (1) may perform any of the officer's functions under this Chapter, but only under the officer's supervision.
- (4) A law enforcement officer must produce evidence of the officer's authority if asked to do so.
- (5) The powers conferred by this Chapter do not affect any other powers that a law enforcement officer may have.

#### Commencement Information

**I151** S. 104 in force for specified purposes at Royal Assent, see s. 183

**I152** S. 104 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(e)

### 105 Maritime enforcement powers: offences

- (1) A person commits an offence if the person—
- intentionally obstructs a law enforcement officer in the performance of functions under this Chapter, or
  - fails without reasonable excuse to comply with a requirement imposed by a law enforcement officer in the performance of those functions.
- (2) A person who provides information in response to a requirement imposed by a law enforcement officer in the performance of functions under this Chapter commits an offence if—
- the information is false in a material particular, and the person either knows it is or is reckless as to whether it is, or
  - the person intentionally fails to disclose any material particular.
- (3) A law enforcement officer may arrest without warrant anyone whom the officer has reasonable grounds for suspecting to be guilty of an offence under this section.

*Status: Point in time view as at 22/03/2018.*

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- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### Commencement Information

**I153** S. 105 in force for specified purposes at Royal Assent, see s. 183

**I154** S. 105 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(e)

## 106 Interpretation

- (1) In this Chapter—

“designated NCA officer” means a National Crime Agency officer who is either or both of the following—

- (a) an officer designated under section 10 of the Crime and Courts Act 2013 as having the powers and privileges of a constable who is entitled to exercise the powers and privileges of a Scottish constable (see paragraph 11(3) to (5) of Schedule 5 to that Act);
- (b) an officer designated under that section as having the powers of a general customs official;

“England and Wales waters” means the sea and other waters within the seaward limits of the territorial sea adjacent to England and Wales;

“foreign ship” means a ship which—

- (a) is registered in a State other than the United Kingdom, or
- (b) is not so registered but is entitled to fly the flag of a State other than the United Kingdom;

“foreign waters” means the sea and other waters within the seaward limits of the territorial sea adjacent to any relevant territory or State other than the United Kingdom;

“home state”, in relation to a foreign ship, means—

- (a) the State in which the ship is registered, or
- (b) the State whose flag the ship is otherwise entitled to fly;

“international waters” means waters beyond the territorial sea of the United Kingdom or of any other State or relevant territory;

“items subject to legal privilege” has the same meaning as in Chapter 3 of Part 8 of the Proceeds of Crime Act 2002 (see section 412 of that Act);

“law enforcement officer” has the meaning given by section 96(3);

“maritime enforcement powers” has the meaning given by section 96(2);

“relevant territory” means—

- (a) the Isle of Man;
- (b) any of the Channel Islands;
- (c) a British overseas territory;

“Scotland waters” means the sea and other waters within the seaward limits of the territorial sea adjacent to Scotland;

“ship” includes every description of vessel (including a hovercraft) used in navigation;

“ship without nationality” means a ship which—

*Status: Point in time view as at 22/03/2018.*

*Changes to legislation: Policing and Crime Act 2017 is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) is not registered in, or otherwise entitled to fly the flag of, any State or relevant territory, or
  - (b) sails under the flags of two or more States or relevant territories, or under the flags of a State and relevant territory, using them according to convenience;
- “United Kingdom ship” means a ship which—
- (a) is registered under Part 2 of the Merchant Shipping Act 1995,
  - (b) is a Government ship within the meaning of that Act,
  - (c) is not registered in any State or relevant territory but is wholly owned by persons each of whom has a United Kingdom connection, or
  - (d) is registered under an Order in Council under section 1 of the Hovercraft Act 1968.
- (2) For the purposes of paragraph (c) of the definition of “United Kingdom ship” in subsection (1), a person has a “United Kingdom connection” if the person is—
- (a) a British citizen, a British overseas territories citizen or a British Overseas citizen,
  - (b) an individual who is habitually resident in the United Kingdom, or
  - (c) a body corporate which is established under the law of a part of the United Kingdom and has its principal place of business in the United Kingdom.
- (3) References in this Chapter to the United Nations Convention on the Law of the Sea include references to any modifications of that Convention agreed after the passing of this Act that have entered into force in relation to the United Kingdom.

#### Commencement Information

**I155** S. 106 in force for specified purposes at Royal Assent, see s. 183

**I156** S. 106 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(e)

## CHAPTER 7

### MARITIME ENFORCEMENT: NORTHERN IRISH OFFENCES

#### Commencement Information

**I157** Pt. 4 Ch. 7 in force at 1.3.2018 by S.R. 2018/34, art. 2

#### *Application of maritime enforcement powers: general*

#### **107 Application of maritime enforcement powers: general**

- (1) A law enforcement officer may, for the purpose of preventing, detecting or investigating an offence under the law of Northern Ireland, exercise any of the maritime enforcement powers in relation to—
- (a) a United Kingdom ship in Northern Ireland waters,
  - (b) a ship without nationality in Northern Ireland waters,
  - (c) a foreign ship in Northern Ireland waters, or

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- (d) a ship, registered under the law of a relevant territory, in Northern Ireland waters.
- (2) In this Chapter, “the maritime enforcement powers” are the powers set out in—
- (a) section 109 (power to stop, board, divert and detain);
  - (b) section 110 (power to search and obtain information);
  - (c) section 111 (power of arrest and seizure).
- (3) The following persons are “law enforcement officers” for the purpose of this Chapter—
- (a) a constable who is a member of the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve,
  - (b) a person appointed as a special constable in Northern Ireland by virtue of provision incorporating section 79 of the Harbours, Docks, and Piers Clauses Act 1847,
  - (c) a designated customs official within the meaning of Part 1 of the Borders, Citizenship and Immigration Act 2009 (see section 14(6) of that Act),
  - (d) a designated NCA officer who is authorised by the Director General of the National Crime Agency (whether generally or specifically) to exercise the powers of a law enforcement officer under this Chapter, or
  - (e) a person of a description specified in regulations made by the Secretary of State.
- (4) Regulations under subsection (3)(e) are to be made by statutory instrument.
- (5) A statutory instrument containing regulations under subsection (3)(e) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Regulations under subsection (3)(e) may not make devolved provision except with the consent of the Department of Justice in Northern Ireland.
- (7) For the purposes of subsection (6), regulations under subsection (3)(e) make devolved provision if and to the extent that—
- (a) the effect of the regulations is to confer functions under this Chapter on a person of a description specified in the regulations,
  - (b) it would be within the legislative competence of the Northern Ireland Assembly to confer those functions on persons of that description in an Act of the Northern Ireland Assembly, and
  - (c) the consent of the Secretary of State would not be required under section 8 of the Northern Ireland Act 1998 in relation to a Bill conferring such functions.
- (8) This section is subject to section 108 (which makes provision about when the authority of the Secretary of State is required before the maritime enforcement powers are exercised in reliance on this section).

#### **Commencement Information**

**I158** S. 107 in force for specified purposes at Royal Assent, see s. 183



*Status: Point in time view as at 22/03/2018.*

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## 108 Restriction on exercise of maritime enforcement powers

- (1) The authority of the Secretary of State is required before a law enforcement officer exercises any of the maritime enforcement powers, in reliance on section 107(1), in relation to a foreign ship, or a ship registered under the law of a relevant territory, within the territorial sea adjacent to Northern Ireland.
- (2) The Secretary of State may give authority under subsection (1) in relation to a foreign ship only if—
  - (a) the home state has requested the assistance of the United Kingdom for the purpose of preventing, detecting or investigating an offence under the law of Northern Ireland,
  - (b) the home state has authorised the United Kingdom to act for that purpose, or
  - (c) the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) otherwise permits the exercise of the powers in relation to the ship.

### Commencement Information

**1159** [S. 108](#) in force for specified purposes at Royal Assent, see [s. 183](#)

### *The maritime enforcement powers*

## 109 Power to stop, board, divert and detain

- (1) This section applies if a law enforcement officer has reasonable grounds to suspect that—
  - (a) an offence under the law of Northern Ireland is being, or has been, committed on a ship in relation to which the powers conferred by this section are exercisable by virtue of section 107, or
  - (b) a ship in relation to which those powers are so exercisable is otherwise being used in connection with the commission of an offence under that law.
- (2) The law enforcement officer may—
  - (a) stop the ship;
  - (b) board the ship;
  - (c) require the ship to be taken to a port in Northern Ireland.
- (3) The law enforcement officer may require the master of the ship, or any member of its crew, to take such action as is necessary for the purposes of subsection (2)(c).
- (4) A law enforcement officer must give notice in writing to the master of any ship detained under this section.
- (5) The notice must state that the ship is to be detained until the notice is withdrawn by the giving of a further notice in writing signed by a law enforcement officer.

### Commencement Information

**1160** [S. 109](#) in force for specified purposes at Royal Assent, see [s. 183](#)

*Status: Point in time view as at 22/03/2018.*

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## 110 Power to search and obtain information

- (1) This section applies if a law enforcement officer has reasonable grounds to suspect that there is evidence relating to an offence under the law of Northern Ireland (other than items subject to legal privilege) on a ship in relation to which the powers conferred by this section are exercisable by virtue of section 107.
- (2) The law enforcement officer may search—
  - (a) the ship;
  - (b) anyone found on the ship;
  - (c) anything found on the ship (including cargo).
- (3) The law enforcement officer may require a person found on the ship to give information about himself or herself.
- (4) The power to search conferred by subsection (2) is a power to search only to the extent that it is reasonably required for the purpose of discovering evidence of the kind mentioned in subsection (1).
- (5) The power to search a person conferred by subsection (2) does not authorise a law enforcement officer to require the person to remove any clothing in public other than an outer coat, jacket or gloves.
- (6) In exercising a power conferred by subsection (2) or (3), a law enforcement officer may (amongst other things)—
  - (a) open any containers;
  - (b) require the production of documents, books or records relating to the ship or anything on it, other than anything that the law enforcement officer has reasonable grounds to believe to be an item subject to legal privilege;
  - (c) make photographs or copies of anything the production of which the law enforcement officer has power to require.
- (7) The power in subsection (6)(b) to require the production of documents, books or records includes, in relation to documents, books or records kept in electronic form, power to require the provision of the documents, books or records in a form in which they are legible and can be taken away.
- (8) The power of a law enforcement officer under subsection (2)(b) or (c) or (3) may be exercised on the ship or elsewhere.

### Commencement Information

**1161** [S. 110](#) in force for specified purposes at Royal Assent, see [s. 183](#)

## 111 Power of arrest and seizure

- (1) This section applies if a law enforcement officer has reasonable grounds to suspect that an offence under the law of Northern Ireland has been, or is being, committed on a ship in relation to which the powers conferred by this section are exercisable by virtue of section 107.
- (2) The law enforcement officer may arrest without warrant anyone whom the officer has reasonable grounds for suspecting to be guilty of the offence.

*Status: Point in time view as at 22/03/2018.*

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- (3) The law enforcement officer may seize and retain anything found on the ship which appears to the officer to be evidence of the offence, other than anything that the officer has reasonable grounds to believe to be an item subject to legal privilege.
- (4) The power of a law enforcement officer under subsection (2) or (3) may be exercised on the ship or elsewhere.

#### **Commencement Information**

**I162** [S. 111](#) in force for specified purposes at Royal Assent, see [s. 183](#)

### *Supplementary provision*

#### **112 Maritime enforcement powers: supplementary: protective searches**

- (1) This section applies where a power conferred by section 109 is exercised in relation to a ship.
- (2) A law enforcement officer may search any person found on the ship for anything which the officer has reasonable grounds to believe the person might use to—
  - (a) cause physical injury,
  - (b) cause damage to property, or
  - (c) endanger the safety of any ship.
- (3) The power under subsection (2) may be exercised on board the ship or elsewhere.
- (4) A law enforcement officer searching a person under subsection (2) may seize and retain anything found if the law enforcement officer has reasonable grounds to believe that the person might use it for a purpose mentioned in paragraphs (a) to (c) of that subsection.
- (5) Anything seized under subsection (4) may be retained only for so long as there are reasonable grounds to believe that it might be used as mentioned in that subsection.
- (6) The power to search a person conferred by subsection (2) does not authorise a law enforcement officer to require the person to remove any clothing in public, other than an outer coat, jacket or gloves.

#### **Commencement Information**

**I163** [S. 112](#) in force for specified purposes at Royal Assent, see [s. 183](#)

#### **113 Maritime enforcement powers: other supplementary provision**

- (1) A law enforcement officer may—
  - (a) be accompanied by other persons, and
  - (b) take equipment or materials,to assist the officer in the exercise of powers under this Chapter.
- (2) A law enforcement officer may use reasonable force, if necessary, in the performance of functions under this Chapter.

*Status: Point in time view as at 22/03/2018.*

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- (3) A person accompanying a law enforcement officer under subsection (1) may perform any of the officer's functions under this Chapter, but only under the officer's supervision.
- (4) A law enforcement officer must produce evidence of the officer's authority if asked to do so.
- (5) The powers conferred by this Chapter do not affect any other powers that a law enforcement officer may have.

**Commencement Information**

**I164** [S. 113](#) in force for specified purposes at Royal Assent, see [s. 183](#)

**114 Maritime enforcement powers: offences**

- (1) A person commits an offence if the person—
  - (a) intentionally obstructs a law enforcement officer in the performance of functions under this Chapter, or
  - (b) fails without reasonable excuse to comply with a requirement imposed by a law enforcement officer in the performance of those functions.
- (2) A person who provides information in response to a requirement imposed by a law enforcement officer in the performance of functions under this Chapter commits an offence if—
  - (a) the information is false in a material particular, and the person either knows it is or is reckless as to whether it is, or
  - (b) the person intentionally fails to disclose any material particular.
- (3) A law enforcement officer may arrest without warrant anyone whom the officer has reasonable grounds for suspecting to be guilty of an offence under this section.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Commencement Information**

**I165** [S. 114](#) in force for specified purposes at Royal Assent, see [s. 183](#)

**115 Interpretation**

- (1) In this Chapter—
 

“designated NCA officer” means a National Crime Agency officer who is either or both of the following—

  - (a) an officer designated under section 10 of the Crime and Courts Act 2013 as having the powers and privileges of a constable who is entitled to exercise the powers and privileges of a Northern Ireland constable (see paragraph 11(6) of Schedule 5 to that Act);
  - (b) an officer designated under that section as having the powers of a general customs official;

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“foreign ship” means a ship which—

- (a) is registered in a State other than the United Kingdom, or
- (b) is not so registered but is entitled to fly the flag of a State other than the United Kingdom;

“home state”, in relation to a foreign ship, means—

- (a) the State in which the ship is registered, or
- (b) the State whose flag the ship is otherwise entitled to fly;

“items subject to legal privilege” has the same meaning as in the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (see article 12 of that Order);

“law enforcement officer” has the meaning given by section 107(3);

“maritime enforcement powers” has the meaning given by section 107(2);

“Northern Ireland waters” means the sea and other waters within the seaward limits of the territorial sea adjacent to Northern Ireland;

“relevant territory” means—

- (a) the Isle of Man;
- (b) any of the Channel Islands;
- (c) a British overseas territory;

“ship” includes every description of vessel (including a hovercraft) used in navigation;

“ship without nationality” means a ship which—

- (a) is not registered in, or otherwise entitled to fly the flag of, any State or relevant territory, or
- (b) sails under the flags of two or more States or relevant territories, or under the flags of a State and relevant territory, using them according to convenience;

“United Kingdom ship” means a ship which—

- (a) is registered under Part 2 of the Merchant Shipping Act 1995,
- (b) is a Government ship within the meaning of that Act,
- (c) is not registered in any State or relevant territory but is wholly owned by persons each of whom has a United Kingdom connection, or
- (d) is registered under an Order in Council under section 1 of the Hovercraft Act 1968.

- (2) For the purposes of paragraph (c) of the definition of “United Kingdom ship” in subsection (1), a person has a “United Kingdom connection” if the person is—
  - (a) a British citizen, a British overseas territories citizen or a British Overseas citizen,
  - (b) an individual who is habitually resident in the United Kingdom, or
  - (c) a body corporate which is established under the law of a part of the United Kingdom and has its principal place of business in the United Kingdom.
- (3) References in this Chapter to the United Nations Convention on the Law of the Sea include references to any modifications of that Convention agreed after the passing of this Act that have entered into force in relation to the United Kingdom.

*Status: Point in time view as at 22/03/2018.*

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### Commencement Information

**I166** S. 115 in force for specified purposes at Royal Assent, see s. 183

## CHAPTER 8

### CROSS-BORDER ENFORCEMENT

#### **116 Extension of cross-border powers of arrest: urgent cases**

- (1) In Part 10 of the Criminal Justice and Public Order Act 1994 (cross-border enforcement), after section 137 insert—

#### **“137A Additional cross-border powers of arrest etc: urgent cases**

- (1) A constable of a police force in England and Wales may arrest a person in England and Wales without a warrant if—
- (a) the constable has reasonable grounds for suspecting that the person has committed a specified offence in Scotland or in Northern Ireland, and
  - (b) the constable also has reasonable grounds for believing that it is necessary to arrest the person—
    - (i) to allow the prompt and effective investigation of the offence, or
    - (ii) to prevent any prosecution for the offence from being hindered by the disappearance of the person.
- (2) A constable of a police force in Scotland may arrest a person in Scotland without a warrant if—
- (a) the constable has reasonable grounds for suspecting that the person has committed a specified offence in England and Wales or in Northern Ireland, and
  - (b) the constable is satisfied that it would not be in the interests of justice to delay the arrest either to enable a warrant for the person's arrest to be obtained and then executed under section 136 or to enable a power of arrest under section 137 to be exercised.
- (3) Without prejudice to the generality of subsection (2)(b), it would not be in the interests of justice to delay an arrest for a purpose mentioned in that subsection if the constable reasonably believes that, unless the person is arrested without delay, the person will obstruct the course of justice in any way, including by seeking to avoid arrest or interfering with witnesses or evidence.
- (4) A constable of a police force in Northern Ireland may arrest a person in Northern Ireland without a warrant if—
- (a) the constable has reasonable grounds for suspecting that the person has committed a specified offence in England and Wales or in Scotland, and
  - (b) the constable also has reasonable grounds for believing that it is necessary to arrest the person—

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- (i) to allow the prompt and effective investigation of the offence,  
or
  - (ii) to prevent any prosecution for the offence from being hindered by the disappearance of the person.
- (5) The power conferred by subsection (1) or (2) may be exercised by a constable appointed under section 24 of the Railways and Transport Safety Act 2003 in England and Wales or (as the case may be) in Scotland.
- (6) The following provisions apply in relation to an arrest under this section by a constable of a person suspected of having committed a specified offence in England and Wales or in Northern Ireland—
- (a) where the arrest is in England and Wales under subsection (1) or in Northern Ireland under subsection (4), the constable has the powers of entry and search conferred by section 137E;
  - (b) where the arrest is in Scotland under subsection (2), the constable has the same powers of entry and search for the purpose of the arrest as a constable of a police force in Scotland would have if there were reasonable grounds for suspecting that the offence had been committed in Scotland;
  - (c) the constable has the powers conferred by section 139 in relation to the arrested person;
  - (d) the constable may use reasonable force, if necessary, in arresting the person or in exercising the powers conferred by sections 137E and 139.
- (7) Where a constable is arresting under this section a person suspected of having committed a specified offence in Scotland, the constable has the same powers as a constable of a police force in Scotland would have if arresting the person for the offence in Scotland.
- (8) In this section—
- “constable of a police force”, in relation to Northern Ireland, means a member of the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve;
  - “specified offence” has the meaning given by section 137B.

### **137B Meaning of “specified offence” for the purposes of section 137A**

- (1) In section 137A, “specified offence” has the meaning given by this section.
- (2) An offence committed in England and Wales is a specified offence if it is—
- (a) an offence (including an offence under the common law) that is punishable by virtue of any statutory provision with imprisonment or another form of detention for a term of 10 years or with a greater punishment,
  - (b) an offence specified in Part 1 of Schedule 7A,
  - (c) an offence of attempting or conspiring to commit, or of inciting the commission of, an offence mentioned in paragraph (a) or (b), or
  - (d) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to an offence mentioned in paragraph (a) or (b).

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*Status: Point in time view as at 22/03/2018.*

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- (3) An offence committed in Scotland is a specified offence if it is—
- (a) an offence (including an offence under the common law) that is punishable by virtue of any statutory provision with imprisonment or another form of detention for a term of 10 years or with a greater punishment,
  - (b) an offence specified in Part 2 of Schedule 7A, or
  - (c) an offence of attempting or conspiring to commit, or of inciting the commission of, an offence mentioned in paragraph (a) or (b).
- (4) An offence committed in Northern Ireland is a specified offence if it is—
- (a) an offence (including an offence under the common law) that is punishable by virtue of any statutory provision with imprisonment or another form of detention for a term of 10 years or with a greater punishment,
  - (b) an offence specified in Part 3 of Schedule 7A,
  - (c) an offence of attempting or conspiring to commit, or of inciting the commission of, an offence mentioned in paragraph (a) or (b), or
  - (d) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to an offence mentioned in paragraph (a) or (b).
- (5) The Secretary of State may by regulations made by statutory instrument amend Part 1, 2 or 3 of Schedule 7A so as to add an offence to, or remove an offence from, the offences for the time being specified in the Part.
- (6) Regulations under subsection (5) may add an offence to a Part of Schedule 7A only if—
- (a) the offence is indictable, and
  - (b) the Secretary of State considers that it is necessary in the interests of justice to add the offence to the Part.
- (7) For the purpose of subsection (6)(a), an offence is indictable if—
- (a) in the case of an offence under the law of England and Wales, it is an indictable offence in England and Wales;
  - (b) in the case of an offence under the law of Scotland, it may be tried on indictment in Scotland;
  - (c) in the case of an offence under the law of Northern Ireland, it is an indictable offence in Northern Ireland.
- (8) The Secretary of State may not make regulations under subsection (5) unless the Scottish Ministers and the Department of Justice in Northern Ireland consent to the making of the regulations.
- (9) A statutory instrument containing regulations under subsection (5) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (10) In this section—
- (a) a description of an offence in subsection (2)(a) or (b) or (4)(a) or (b) includes such an offence committed by aiding, abetting, counselling or procuring;



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- (b) a description of an offence in subsection (3)(a) or (b) includes such an offence committed by involvement art and part or by aiding, abetting, counselling or procuring;
- (c) “statutory provision” means any provision of—
  - (i) an Act or subordinate legislation within the meaning of the Interpretation Act 1978;
  - (ii) an Act of the Scottish Parliament or an instrument made under such an Act;
  - (iii) a Measure or Act of the National Assembly for Wales or an instrument made under such a Measure or Act;
  - (iv) Northern Ireland legislation or an instrument made under Northern Ireland legislation.

### **137C Detention for the purpose of re-arrest**

- (1) A person arrested under section 137A in respect of a specified offence may be detained but only for the purpose of—
  - (a) enabling a warrant for the person's arrest in respect of the offence to be obtained and then executed under section 136, or
  - (b) enabling the person to be re-arrested under section 137.
- (2) The person may be detained for that purpose—
  - (a) for an initial period of 3 hours beginning with the time of the arrest;
  - (b) for a second period of no more than 21 hours beginning with the end of the initial period, but only if detention for that period is authorised by both an officer of at least the rank of inspector in the arresting force and an officer of at least the rank of inspector in the investigating force;
  - (c) for a third period of no more than 12 hours beginning with the end of the second period, but only if detention for that period is authorised by both an officer of a rank above that of inspector in the arresting force and an officer of a rank above that of inspector in the investigating force.
- (3) An officer of the arresting force may give an authorisation for the purpose of subsection (2)(b) or (c) only if satisfied that it is in the interests of justice to do so.
- (4) An officer of the investigating force may give an authorisation for the purpose of subsection (2)(b) only if satisfied that—
  - (a) there are reasonable grounds to suspect that the person has committed the specified offence,
  - (b) a constable intends that the person be arrested as soon as is reasonably practicable (whether by the obtaining and execution of a warrant under section 136 or under section 137) and is acting expeditiously for that purpose, and
  - (c) it is in the interests of justice to give the authorisation.
- (5) An officer of the investigating force may give an authorisation for the purpose of subsection (2)(c) only if satisfied that—

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- (a) there continue to be reasonable grounds to suspect that the person has committed the specified offence,
  - (b) a constable intends that the person be arrested as soon as is reasonably practicable (whether by the obtaining and execution of a warrant under section 136 or under section 137) and is acting expeditiously for that purpose, and
  - (c) it is in the interests of justice to give the authorisation.
- (6) If, at any time while the person is detained, an appropriate officer in the investigating force is satisfied that it is no longer in the interests of justice for the person to be detained—
- (a) the officer must notify the arresting force, and
  - (b) the person must be released immediately.
- (7) In subsection (6), “appropriate officer” means—
- (a) in relation to the person's detention for the initial period, any constable;
  - (b) in relation to the person's detention for the second period, an officer of at least the rank of inspector;
  - (c) in relation to the person's detention for the third period, an officer of a rank above that of inspector.
- (8) In this section—
- “arresting force” means the police force of which the constable who arrested the person under section 137A is a member;
- “investigating force” means the police force that is investigating the specified offence which the person arrested under section 137A is suspected of having committed;
- “specified offence” has the same meaning as in section 137A (see sections 137A(8) and 137B).
- (9) In subsection (8), in the definition of “investigating force”, the reference to a police force includes a reference to—
- (a) the National Crime Agency;
  - (b) any of the following (to the extent that their functions relate to the investigation of offences)—
    - (i) officers of Revenue and Customs;
    - (ii) immigration officers;
    - (iii) designated customs officials within the meaning of Part 1 of the Borders, Citizenship and Immigration Act 2009 (see section 14(6) of that Act).
- (10) In the application of this section in a case where the investigating force is a police force mentioned in subsection (9)(a) or (b)—
- (a) the reference to a constable in subsections (4)(b) and (5)(b), and the reference to a constable in the investigating force in subsection (7) (a), is to be read as a reference to a National Crime Agency officer designated under section 9 or 10 of the Crime and Courts Act 2013 (“a designated NCA officer”), an officer of Revenue and Customs, an immigration officer or a designated customs official (as the case may be);

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- (b) any reference to an officer of at least, or above, the rank of inspector in the investigating force is to be read as a reference to a designated NCA officer, an officer of Revenue and Customs, an immigration officer or a designated customs official (as the case may be) of at least, or above, the equivalent grade.

### **137D Rights of persons arrested under section 137A**

- (1) A person arrested under section 137A must be informed of the following matters as soon as is practicable after the arrest—
  - (a) the purpose for which the person may be detained under section 137C;
  - (b) the provision made by that section about the periods for which the person may be detained.
- (2) The following provisions apply in relation to persons arrested under section 137A in respect of a specified offence committed in England and Wales (subject to the modifications made by Part 1 of Schedule 7B)—
  - (a) section 28 of the Police and Criminal Evidence Act 1984 (information to be given on arrest);
  - (b) section 56 of that Act (right to have someone informed when arrested);
  - (c) section 58 of that Act (access to legal advice);
  - (d) section 31 of the Children and Young Persons Act 1933 (separation of children and young persons from adults in police stations, courts etc);
  - (e) section 34 of that Act (additional protection for children and young persons).
- (3) The following provisions apply in relation to persons arrested under section 137A in respect of a specified offence committed in Scotland (subject to the modifications made by Part 2 of Schedule 7B)—
  - (a) section 3 of the Criminal Justice (Scotland) Act 2016 (asp 1) (information to be given on arrest);
  - (b) Chapter 5 of Part 1 of that Act (rights of suspects in police custody);
  - (c) section 51 of that Act (duty to consider child's well-being);
  - (d) section 52 of that Act (duties in relation to children in custody).
- (4) The following provisions apply in relation to persons arrested under section 137A in respect of a specified offence committed in Northern Ireland (subject to the modifications made by Part 3 of Schedule 7B)—
  - (a) Article 30 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)) (information to be given on arrest);
  - (b) Article 57 of that Order (right to have someone informed when arrested);
  - (c) Article 59 of that Order (access to legal advice);
  - (d) Article 9 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I.9)) (separation of child in police detention from adults charged with offences);
  - (e) Article 10 of that Order (additional protection for children and young persons).

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- (5) The Secretary of State may by regulations made by statutory instrument—
  - (a) amend this section so as to add to the provisions that for the time being apply as mentioned in subsection (2), (3) or (4);
  - (b) amend this section so as to remove any of those provisions that were added by virtue of paragraph (a);
  - (c) amend Schedule 7B so as to alter the modifications for the time being made by that Schedule, including by adding a modification or removing one;
  - (d) amend Schedule 7B so as to provide that any of the provisions that for the time being apply as mentioned in subsection (2), (3) or (4) do not apply in cases or circumstances set out in the Schedule.
- (6) Regulations under subsection (5) may include consequential provision, including provision amending any statutory provision; and, for that purpose, statutory provision has the same meaning as in section 137B (see subsection (10)(c) of that section).
- (7) The Secretary of State may not make regulations under subsection (5) unless the Scottish Ministers and the Department of Justice in Northern Ireland consent to the making of the regulations.
- (8) A statutory instrument containing regulations under subsection (5) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (9) In the application of Schedule 7B in a case where the investigating force is a police force mentioned in section 137C(9)(a) or (b), any reference to an officer of at least, or above, a particular rank in the investigating force is to be read as a reference to a designated NCA officer, an officer of Revenue and Customs, an immigration officer or a designated customs official (as the case may be) of at least, or above, the equivalent grade.”
- (2) After Schedule 7 to that Act insert, as Schedule 7A to that Act, the Schedule set out in Schedule 15 to this Act.
- (3) After Schedule 7A to that Act (as inserted by subsection (2) above) insert, as Schedule 7B to that Act, the Schedule set out in Schedule 16 to this Act.

#### **Commencement Information**

**I167** S. 116 in force for specified purposes at Royal Assent, see s. 183

**I168** S. 116 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(f)

### **117 Cross-border enforcement: powers of entry to effect arrest**

In Part 10 of the Criminal Justice and Public Order Act 1994 (cross-border enforcement), after section 137D (as inserted by section 116) insert—

#### **“137E Entry and search for the purposes of arrest**

- (1) A constable may enter and search any premises—

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- (a) for the purpose of executing in England and Wales under section 136(2) (b) a warrant issued in Northern Ireland;
  - (b) for the purpose of executing in Northern Ireland under section 136(3) (a) a warrant issued in England and Wales;
  - (c) for the purpose of arresting a person in Northern Ireland under section 137(1) in respect of a relevant England and Wales offence;
  - (d) for the purpose of arresting a person in England and Wales under section 137(3) in respect of a relevant Northern Ireland offence;
  - (e) for the purpose of arresting a person in England and Wales under section 137A(1) in respect of a specified offence committed in Northern Ireland;
  - (f) for the purpose of arresting a person in Northern Ireland under section 137A(4) in respect of a specified offence committed in England and Wales.
- (2) In subsection (1)—
- (a) “relevant England and Wales offence” means—
    - (i) an offence that is an indictable offence in England and Wales;
    - (ii) an offence mentioned in section 17(1)(c) or (caa) of the Police and Criminal Evidence Act 1984;
  - (b) “relevant Northern Ireland offence” means—
    - (i) an offence that is an indictable offence in Northern Ireland;
    - (ii) an offence mentioned in Article 19(1)(ba) to (c) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)).
- (3) The powers of entry and search conferred by subsection (1)—
- (a) are exercisable only if the constable has reasonable grounds for believing that the person whom he is seeking is on the premises, and
  - (b) are limited, in relation to premises consisting of two or more separate dwellings, to powers to enter and search—
    - (i) any part of the premises which the occupier of any dwelling comprised in the premises uses in common with the occupier of any other such dwelling, and
    - (ii) any such dwelling in which the constable has reasonable grounds for believing that the person whom he is seeking may be.
- (4) The power of search conferred by subsection (1) is only a power to search to the extent that is reasonably required for the purpose for which the power of entry is exercised.
- (5) In this section, “premises” includes any place and, in particular, includes—
- (a) any vehicle, vessel, aircraft or hovercraft,
  - (b) any offshore installation,
  - (c) any renewable energy installation, and
  - (d) any tent or movable structure.

“Offshore installation” has the meaning given to it by section 44 of the Petroleum Act 1998.

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“Renewable energy installation” has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004 (see section 104 of that Act).”

#### Commencement Information

**I169** S. 117 in force for specified purposes at Royal Assent, see s. 183

**I170** S. 117 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(f)

### 118 Cross-border enforcement: officers of Revenue and Customs

In section 87 of the Finance Act 2007 (cross-border exercise of powers: officers of Revenue and Customs), in subsection (4) for “only in the exercise of a function relating to tax (including duties and tax credits)” substitute “ in the exercise of any function of the Commissioners for Her Majesty's Revenue and Customs or of officers of Revenue and Customs, within the meaning of the Commissioners for Revenue and Customs Act 2005 (see section 51(2) to (2B) of that Act) ”.

#### Commencement Information

**I171** S. 118 in force for specified purposes at Royal Assent, see s. 183

**I172** S. 118 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(f)

### 119 Cross-border enforcement: minor and consequential amendments

Schedule 17—

- (a) makes minor amendments of Part 10 of the Criminal Justice and Public Order Act 1994 (cross-border enforcement), and
- (b) makes amendments consequential on the other amendments of that Part made by this Chapter.

#### Commencement Information

**I173** S. 119 in force for specified purposes at Royal Assent, see s. 183

**I174** S. 119 in force at 1.3.2018 in so far as not already in force by S.I. 2018/227, reg. 2(f)

## CHAPTER 9

### MISCELLANEOUS

### 120 Powers to require removal of disguises: oral authorisation

In section 60AA of the Criminal Justice and Public Order Act 1994 (powers to require removal of disguises), for subsection (6) substitute—

- “(6) Subject to subsection (6A), an authorisation under subsection (3)—
- (a) shall be in writing and signed by the officer giving it; and
  - (b) shall specify—
    - (i) the grounds on which it is given;

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- (ii) the locality in which the powers conferred by this section are exercisable; and
  - (iii) the period during which those powers are exercisable.
- (6A) An authorisation under subsection (3) need not be given in writing where it is not practicable to do so but any oral authorisation—
- (a) must state the matters which would otherwise have to be specified under subsection (6); and
  - (b) must be recorded in writing as soon as it is practicable to do so.
- (6B) A direction under subsection (4) shall be given in writing or, where that is not practicable, recorded in writing as soon as it is practicable to do so.”

#### **Commencement Information**

**1175** [S. 120](#) in force for specified purposes at Royal Assent, see [s. 183](#)

## **PART 5**

### **POLICE AND CRIME COMMISSIONERS AND POLICE AREAS**

#### *Deputy PCCs etc: terms and eligibility*

#### **121 Term of office of deputy police and crime commissioners**

- (1) Schedule 1 to the Police Reform and Social Responsibility Act 2011 (police and crime commissioners) is amended in accordance with subsections (2) and (3).
- (2) In paragraph 8 (the deputy police and crime commissioner), for sub-paragraph (3) substitute—
  - “(3) The terms and conditions of a person appointed as the deputy police and crime commissioner must ensure that the term of office ends no later than the sixth day after the day of the poll at the next ordinary election of police and crime commissioners (that is, the day on which the term of office of the appointing police and crime commissioner would, if there were no vacancy in the office before then, end in accordance with section 50(7)(b)).
  - (3A) The terms and conditions must also provide for the deputy police and crime commissioner's appointment to end when, following an election held under section 51 to fill a vacancy in the office of the appointing police and crime commissioner, the person elected makes and delivers a declaration of acceptance of office under section 70(1).
  - (3B) Subject to sub-paragraphs (3) and (3A), the terms and conditions may make such provision about termination as the appointing police and crime commissioner thinks appropriate.”
- (3) In that paragraph, omit sub-paragraph (5).
- (4) The amendments made by this section apply in relation to the terms and conditions of a person appointed as a deputy police and crime commissioner before this section

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comes into force (as well as to the terms and conditions of a person appointed after it comes into force).

- (5) But the amendments do not apply in relation to the terms and conditions of a person appointed as a deputy police and crime commissioner before this section comes into force if, at the time when it comes into force, an election held under section 51 of the 2011 Act to fill a vacancy in the office of police and crime commissioner for the police area in question is in progress.
- (6) For the purpose of subsection (5), an election held under section 51 of the 2011 Act is in progress during the period—
- (a) beginning with the time when the vacancy in the office of police and crime commissioner occurred, and
  - (b) ending immediately after the person elected to fill the vacancy has made and delivered a declaration of acceptance under section 70(1) of that Act.

#### **Commencement Information**

**I176** S. 121 in force for specified purposes at Royal Assent, see [s. 183](#)

## **122 Eligibility of deputy police and crime commissioners for election**

- (1) In section 65 of the Police Reform and Social Responsibility Act 2011 (disqualification from election or holding office as police and crime commissioner: police grounds), after subsection (1) insert—
- “(1A) Subsection (1)(e)(i) does not prevent a deputy police and crime commissioner—
- (a) from being elected as police and crime commissioner at an ordinary election of police and crime commissioners;
  - (b) from being elected at an election held under section 51 to fill a vacancy in the office of police and crime commissioner if, on the day on which the person is nominated as a candidate at the election and at all times between that day and the declaration of the result of the election, the deputy is acting as police and crime commissioner under section 62.”
- (2) Section 65(1A)(b) of the 2011 Act (as inserted by subsection (1) above) does not apply in relation to an election held under section 51 of that Act to fill a vacancy in the office of police and crime commissioner if the election is in progress at the time this section comes into force.
- (3) For the purpose of subsection (2), an election held under section 51 of the 2011 Act is in progress during the period—
- (a) beginning with the time when the vacancy in the office of police and crime commissioner occurred, and
  - (b) ending immediately after the person elected to fill the vacancy has made and delivered a declaration of acceptance under section 70(1) of that Act.

#### **Commencement Information**

**I177** S. 122 in force for specified purposes at Royal Assent, see [s. 183](#)



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## **123 Deputy Mayor for Policing and Crime as member of local authority**

- (1) Section 1 of the Local Government and Housing Act 1989 (disqualification and political restriction of certain local authority officers and staff) is amended as follows.
- (2) In subsection (9) (references to a person holding a politically restricted post under a local authority include every member of the staff of an elected local policing body) omit “, except for a deputy police and crime commissioner”.
- (3) After that subsection insert—
  - “(10) The reference in subsection (9) to every member of the staff of an elected local policing body does not include a deputy police and crime commissioner.
  - (11) For the purposes of subsection (1) only, the reference in subsection (9) to every member of the staff of an elected local policing body does not include the Deputy Mayor for Policing and Crime appointed under section 19(1)(a) of the Police Reform and Social Responsibility Act 2011.”

### **Commencement Information**

**1178** S. 123 in force for specified purposes at Royal Assent, see s. 183

### *Names of police areas*

## **124 Amendments to the names of police areas**

- (1) After section 31 of the Police Act 1996 insert—

### *“Amendment of names of police areas*

#### **31A Power to amend names of police areas**

- (1) The Secretary of State may by regulations amend any name of a police area specified in the first column of Schedule 1 (police areas).
  - (2) A statutory instrument containing regulations under subsection (1) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”
- (2) In consequence of the amendment made by subsection (1), in section 1(2)(a) of that Act (police areas), in the words in brackets, for “any amendment made to that Schedule by an order” substitute “ any amendment made to the first column of that Schedule by regulations under section 31A or any amendment made to the second column, or to the first and second columns, by an order ”.

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## PART 6

### FIREARMS AND PYROTECHNIC ARTICLES

#### *Firearms*

#### **125 Firearms Act 1968: meaning of “firearm” etc**

- (1) The Firearms Act 1968 is amended as follows.
- (2) In section 57 (interpretation), in subsection (1), for the words from the beginning to the end of paragraph (c) substitute—
  - “(1) In this Act, the expression “firearm” means—
    - (a) a lethal barrelled weapon (see subsection (1B));
    - (b) a prohibited weapon;
    - (c) a relevant component part in relation to a lethal barrelled weapon or a prohibited weapon (see subsection (1D));
    - (d) an accessory to a lethal barrelled weapon or a prohibited weapon where the accessory is designed or adapted to diminish the noise or flash caused by firing the weapon;”.
- (3) In that section, before subsection (2) insert—
 

“(1B) In subsection (1)(a), “lethal barrelled weapon” means a barrelled weapon of any description from which a shot, bullet or other missile, with kinetic energy of more than one joule at the muzzle of the weapon, can be discharged.

“(1C) Subsection (1) is subject to section 57A (exception for airsoft guns).”
- (4) In that section, after subsection (1C) (as inserted by subsection (3) above) insert—
 

“(1D) For the purposes of subsection (1)(c), each of the following items is a relevant component part in relation to a lethal barrelled weapon or a prohibited weapon—

  - (a) a barrel, chamber or cylinder,
  - (b) a frame, body or receiver,
  - (c) a breech block, bolt or other mechanism for containing the pressure of discharge at the rear of a chamber,

but only where the item is capable of being used as a part of a lethal barrelled weapon or a prohibited weapon.”
- (5) After section 57 insert—

#### **“57A Exception for airsoft guns**

- (1) An “airsoft gun” is not to be regarded as a firearm for the purposes of this Act.
- (2) An “airsoft gun” is a barrelled weapon of any description which—
  - (a) is designed to discharge only a small plastic missile (whether or not it is also capable of discharging any other kind of missile), and
  - (b) is not capable of discharging a missile (of any kind) with kinetic energy at the muzzle of the weapon that exceeds the permitted level.

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- (3) “Small plastic missile” means a missile that—
  - (a) is made wholly or partly from plastics,
  - (b) is spherical, and
  - (c) does not exceed 8 millimetres in diameter.
- (4) The permitted kinetic energy level is—
  - (a) in the case of a weapon which is capable of discharging two or more missiles successively without repeated pressure on the trigger, 1.3 joules;
  - (b) in any other case, 2.5 joules.”
- (6) After section 57A (as inserted by subsection (5) above) insert—

**“57B Power to amend section 57(1D)**

- (1) The Secretary of State may by regulations made by statutory instrument amend section 57(1D) so as to make different provision for the purposes of section 57(1)(c) about the meaning of a relevant component part in relation to a lethal barrelled weapon or a prohibited weapon.
- (2) Regulations under this section may include—
  - (a) incidental, supplementary or consequential provision;
  - (b) transitional, transitory or saving provision.
- (3) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

**Commencement Information**

**I179** S. 125 in force for specified purposes at Royal Assent, see s. 183

**I180** S. 125 in force at 2.5.2017 in so far as not already in force by S.I. 2017/399, reg. 4(b)

**126 Firearms Act 1968: meaning of “antique firearm”**

- (1) Section 58 of the Firearms Act 1968 (particular savings) is amended in accordance with subsections (2) and (3).
- (2) After subsection (2) (which makes provision about antique firearms) insert—

“(2A) For the purposes of subsection (2), a firearm is an “antique firearm” if—

  - (a) either the conditions in subsection (2B) are met or the condition in subsection (2C) is met, and
  - (b) if an additional condition is specified in regulations under subsection (2D), that condition is also met.
- (2B) The conditions in this subsection are that—
  - (a) the firearm's chamber or, if the firearm has more than one chamber, each of its chambers is either—
    - (i) a chamber that the firearm had when it was manufactured, or

*Status: Point in time view as at 22/03/2018.*

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- (ii) a replacement for such a chamber that is identical to it in all material respects;
  - (b) the firearm's chamber or (as the case may be) each of the firearm's chambers is designed for use with a cartridge of a description specified in regulations made by statutory instrument by the Secretary of State (whether or not it is also capable of being used with other cartridges).
- (2C) The condition in this subsection is that the firearm's propulsion system is of a description specified in regulations made by statutory instrument by the Secretary of State.
- (2D) The Secretary of State may by regulations made by statutory instrument specify either of the following conditions for the purposes of subsection (2A) (b)—
- (a) a condition that a number of years specified in the regulations has elapsed since the date on which the firearm was manufactured;
  - (b) a condition that the firearm was manufactured before a date specified in the regulations.
- (2E) In its application to Scotland, subsection (2C) does not apply in relation to a firearm that is an air weapon.
- (2F) Regulations under subsection (2B), (2C) or (2D) may make different provision for different purposes.
- (2G) Subject to subsection (2H), a statutory instrument containing regulations under subsection (2B), (2C) or (2D) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (2H) A statutory instrument containing regulations under subsection (2B) or (2C) which contain only provision amending regulations previously made under that subsection so as to remove a description of cartridge or a description of propulsion system from the descriptions specified in those regulations is subject to annulment in pursuance of a resolution of either House of Parliament.”
- (3) In subsection (2)—
- (a) in paragraph (a), for “section 21” substitute “ sections 19, 20 and 21 ”;
  - (b) in paragraph (b), for “section 21” substitute “ section 19, 20 or 21 ”.
- (4) Subsections (5) to (7) apply where—
- (a) immediately before the coming into force of regulations under section 58(2B), (2C) or (2D) of the Firearms Act 1968 (as inserted by subsection (2) above), a person has in his or her possession a firearm that is an antique firearm for the purposes of section 58(2) of that Act, and
  - (b) in consequence of the coming into force of the regulations, the firearm ceases to be an antique firearm for those purposes.
- (5) Section 5 of the Firearms Act 1968 does not apply in relation to the possession of the firearm by the person unless—
- (a) the person carries on a business as a firearms dealer, and
  - (b) the firearm is in his or her possession for the purpose of the business.

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- (6) An application by the person for a certificate under section 1 or 2 of that Act in respect of possession of the firearm may not be refused on the ground that the person does not have a good reason for having the firearm in his or her possession.
- (7) An application by the person for the renewal of a certificate issued under section 1 or 2 of that Act in respect of possession of the firearm may not be refused on the ground that the person does not have a good reason for having the firearm in his or her possession.
- (8) The provision made by subsections (4) to (7) does not prevent additional transitional provision being made (under the power conferred by section 183(9)) in connection with the coming into force of this section (including provision for enabling certificates and authorisations under the Firearms Act 1968 to be issued or granted before this section comes fully into force).

#### Commencement Information

**I181** S. 126 in force for specified purposes at Royal Assent, see [s. 183](#)

## 127 Possession of articles for conversion of imitation firearms

After section 4 of the Firearms Act 1968 (conversion of weapons) insert—

### “4A Possession of articles for use in connection with conversion

- (1) A person, other than a registered firearms dealer, commits an offence if—
  - (a) the person has in his or her possession or under his or her control an article that is capable of being used (whether by itself or with other articles) to convert an imitation firearm into a firearm, and
  - (b) the person intends to use the article (whether by itself or with other articles) to convert an imitation firearm into a firearm.
- (2) A person guilty of an offence under this section is liable—
  - (a) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding 12 months (or, in relation to offences committed before section 154(1) of the Criminal Justice Act 2003 comes into force, 6 months) or to a fine, or to both;
    - (ii) in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.”

#### Commencement Information

**I182** [S. 127](#) in force for specified purposes at Royal Assent, see [s. 183](#)

**I183** [S. 127](#) in force at 2.5.2017 in so far as not already in force by [S.I. 2017/399, reg. 4\(c\)](#)

*Status: Point in time view as at 22/03/2018.*

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## 128 Controls on defectively deactivated weapons

After section 8 of the Firearms (Amendment) Act 1988 insert—

### “8A Controls on defectively deactivated weapons

- (1) It is an offence for a person who owns or claims to own a defectively deactivated weapon—
  - (a) to make the weapon available for sale or as a gift to another person, or
  - (b) to sell it or give it (as a gift) to another person.
- (2) Subsection (1)(a) does not apply if—
  - (a) the weapon is made available for sale or as a gift only to a person who is outside the EU (or to persons all of whom are outside the EU), and
  - (b) it is made so available on the basis that, if a sale or gift were to take place, the weapon would be transferred to a place outside the EU.
- (3) Subsection (1)(b) does not apply if—
  - (a) the weapon is sold or given to a person who is outside the EU (or to persons all of whom are outside the EU), and
  - (b) in consequence of the sale or gift, it is (or is to be) transferred to a place outside the EU.
- (4) For the purpose of this section, something is a “defectively deactivated weapon” if—
  - (a) it was at any time a firearm,
  - (b) it has been rendered incapable of discharging any shot, bullet or other missile (and, accordingly, has either ceased to be a firearm or is a firearm only by virtue of the Firearms Act 1982), but
  - (c) it has not been rendered so incapable in a way that meets the technical specifications for the deactivation of the weapon that apply at the time when the weapon is made available for sale or as a gift or (as the case may be) when it is sold or given as a gift.
- (5) The Secretary of State must publish a document setting out the technical specifications that apply for the purposes of subsection (4)(c) (“the technical specifications document”).
- (6) The technical specifications document may set out different technical specifications for different kinds of weapon.
- (7) The Secretary of State—
  - (a) may from time to time revise the technical specifications document, and
  - (b) where it is revised—
    - (i) must publish the document as revised, and
    - (ii) specify in it the date on which any changes to the technical specifications that apply for the purposes of subsection (4)(c) take effect.
- (8) In the case of a weapon rendered incapable as mentioned in subsection (4)(b) before 8 April 2016, subsection (1)(a) or (b) does not apply if the weapon is made available for sale or as a gift, or (as the case may be) sold or given, by

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or on behalf of a museum in respect of which a museum firearms licence is in force to another museum in respect of which such a licence is in force.

- (9) References in this section to “sale” include exchange or barter (and references to sell are to be construed accordingly).
- (10) In this section, “museum firearms licence” means a licence granted under the Schedule to the Firearms (Amendment) Act 1988.
- (11) A person guilty of an offence under this section is liable—
- (a) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding 12 months (or, in relation to offences committed before section 154(1) of the Criminal Justice Act 2003 comes into force, 6 months) or to a fine, or to both;
    - (ii) in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.”

#### Commencement Information

**I184** S. 128 in force for specified purposes at Royal Assent, see s. 183

**I185** S. 128 in force at 2.5.2017 in so far as not already in force by S.I. 2017/399, reg. 4(d)

### 129 Controls on ammunition which expands on impact

- (1) The Firearms Act 1968 is amended in accordance with subsections (2) and (3).
- (2) In section 5 (weapons subject to general prohibition), in subsection (1A), for paragraph (f) substitute—
- “(f) any ammunition which is designed to be used with a pistol and incorporates a missile designed or adapted to expand on impact;”.
- (3) In section 5A (exemptions from requirement of authority under section 5), in subsection (8)(a), after “which”, in the first place it occurs, insert “ is designed to be used with a pistol and ”.
- (4) In consequence of the amendment made by subsection (2), omit section 9 of the Firearms (Amendment) Act 1997.

#### Commencement Information

**I186** S. 129 in force for specified purposes at Royal Assent, see s. 183

**I187** S. 129 in force at 2.5.2017 in so far as not already in force by S.I. 2017/399, reg. 4(e)

### 130 Authorised lending and possession of firearms for hunting etc

- (1) After section 11 of the Firearms Act 1968 insert—

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### **“11A Authorised lending and possession of firearms for hunting etc**

- (1) A person (“the borrower”) may, without holding a certificate under this Act, borrow a rifle or shot gun from another person on private premises (“the lender”) and have the rifle or shot gun in his or her possession on those premises if—
  - (a) the four conditions set out in subsections (2) to (5) are met, and
  - (b) in the case of a rifle, the borrower is aged 17 or over.
- (2) The first condition is that the borrowing and possession of the rifle or shot gun are for either or both of the following purposes—
  - (a) hunting animals or shooting game or vermin;
  - (b) shooting at artificial targets.
- (3) The second condition is that the lender—
  - (a) is aged 18 or over,
  - (b) holds a certificate under this Act in respect of the rifle or shot gun, and
  - (c) is either—
    - (i) a person who has a right to allow others to enter the premises for the purposes of hunting animals or shooting game or vermin, or
    - (ii) a person who is authorised in writing by a person mentioned in sub-paragraph (i) to lend the rifle or shot gun on the premises (whether generally or to persons specified in the authorisation who include the borrower).
- (4) The third condition is that the borrower's possession and use of the rifle or shot gun complies with any conditions as to those matters specified in the lender's certificate under this Act.
- (5) The fourth condition is that, during the period for which the rifle or shot gun is borrowed, the borrower is in the presence of the lender or—
  - (a) where a rifle is borrowed, a person who, although not the lender, is aged 18 or over, holds a certificate under this Act in respect of that rifle and is a person described in subsection (3)(c)(i) or (ii);
  - (b) where a shot gun is borrowed, a person who, although not the lender, is aged 18 or over, holds a certificate under this Act in respect of that shot gun or another shot gun and is a person described in subsection (3)(c)(i) or (ii).
- (6) Where a rifle is borrowed on any premises in reliance on subsection (1), the borrower may, without holding a firearm certificate, purchase or acquire ammunition on the premises, and have the ammunition in his or her possession on those premises for the period for which the firearm is borrowed, if—
  - (a) the ammunition is for use with the firearm,
  - (b) the lender's firearm certificate authorises the lender to have in his or her possession during that period ammunition of a quantity not less than that purchased or acquired by, and in the possession of, the borrower, and
  - (c) the borrower's possession and use of the ammunition complies with any conditions as to those matters specified in the certificate.”



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- (2) In consequence of the amendment made by subsection (1), omit the following—
- (a) section 11(5) of the Firearms Act 1968;
  - (b) section 16 of the Firearms (Amendment) Act 1988.

#### Commencement Information

**I188** S. 130 in force for specified purposes at Royal Assent, see s. 183

**I189** S. 130 in force at 2.5.2017 in so far as not already in force by S.I. 2017/399, reg. 4(f)

### 131 Limited extension of firearm certificates etc

- (1) After section 28A of the Firearms Act 1968 (certificates: supplementary) insert—

#### “28B Certificates: limited extension

- (1) This section applies where—
- (a) an application is made for the renewal of a certificate on or before the day which falls 8 weeks before the day at the end of which the certificate is due to expire, but
  - (b) the chief officer of police does not determine whether or not to grant the application before the certificate is due to expire.
- (2) The certificate continues in force by virtue of this subsection until whichever of the following events occurs first—
- (a) the chief officer determines whether or not to grant the application;
  - (b) the extension period ends.
- (3) In subsection (2), “the extension period” means the period of 8 weeks beginning with the day after the day at the end of which the certificate was due to expire.
- (4) If the event mentioned in subsection (2)(a) occurs first, and the chief officer grants the application, any period for which the certificate continued in force under subsection (2) is to be treated for the purposes of section 28A(1) as part of the period for which the renewed certificate is in force.
- (5) This section does not apply in relation to the renewal of a certificate granted or last renewed in Northern Ireland.”
- (2) In consequence of the amendment made by subsection (1), in section 28A of that Act (certificates: supplementary), after subsection (1) insert—

“(1A) Subsection (1) is subject to the provision made by section 28B for circumstances in which a certificate may continue in force after the period of five years from the date when it was granted or last renewed.”

#### Commencement Information

**I190** S. 131 in force for specified purposes at Royal Assent, see s. 183

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*Status: Point in time view as at 22/03/2018.*

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## **132 Applications under the Firearms Acts: fees**

- (1) After section 32 of the Firearms Act 1968 (fee for certificate and exemption from paying it in certain cases) insert—

### **“32ZA Fees in connection with authority under section 5**

- (1) The Secretary of State may by regulations authorise the appropriate national authority to require payment of a fee before an authority under section 5 is granted, varied or renewed.
  - (2) Regulations under subsection (1) must specify the amount of any fee that may be charged.
  - (3) The regulations may make different provision for different cases (including specifying different fees for different cases).
  - (4) The regulations may include—
    - (a) incidental, supplementary or consequential provision;
    - (b) transitional, transitory or saving provision.
  - (5) Regulations under this section are to be made by statutory instrument.
  - (6) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
  - (7) In this section, “the appropriate national authority” means—
    - (a) in or as regards England and Wales, the Secretary of State;
    - (b) in or as regards Scotland, the Scottish Ministers.”
- (2) Before section 16 of the Firearms (Amendment) Act 1988 insert—

### **“15B Fees in connection with approvals under section 15**

- (1) The Secretary of State may by regulations authorise the appropriate national authority to require payment of a fee before an approval under section 15 is granted, varied or renewed.
- (2) Regulations under subsection (1) must specify the amount of any fee that may be charged.
- (3) The regulations may make different provision for different cases (including specifying different fees for different cases).
- (4) The regulations may include—
  - (a) incidental, supplementary or consequential provision;
  - (b) transitional, transitory or saving provision.
- (5) Regulations under this section are to be made by statutory instrument.
- (6) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section, “the appropriate national authority” means—
  - (a) in or as regards England and Wales, the Secretary of State;
  - (b) in or as regards Scotland, the Scottish Ministers.”

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(3) In the Schedule to the Firearms (Amendment) Act 1988 (firearms and ammunition in museums), omit paragraph 3.

(4) In that Schedule, before paragraph 4 insert—

“3A (1) The Secretary of State may by regulations authorise the appropriate national authority to require payment of a fee before a licence is granted, varied or renewed.

(2) Regulations under sub-paragraph (1) must specify the amount of any fee that may be charged.

(3) The regulations may make different provision for different cases (including specifying different fees for different cases).

(4) The regulations may include—

- (a) incidental, supplementary or consequential provision;
- (b) transitional, transitory or saving provision.

(5) Regulations under this paragraph are to be made by statutory instrument.

(6) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of either House of Parliament.

(7) In this section, “the appropriate national authority” means—

- (a) in or as regards England and Wales, the Secretary of State;
- (b) in or as regards Scotland, the Scottish Ministers.”

(5) In consequence of the amendment made by subsection (2), omit section 15(6) of the Firearms (Amendment) Act 1988.

#### **Commencement Information**

**1191** [S. 132](#) in force for specified purposes at Royal Assent, see [s. 183](#)

### **133 Guidance to police officers in respect of firearms**

(1) The Firearms Act 1968 is amended as follows.

(2) After section 55 insert—

#### **“55A Guidance as to exercise of police functions**

(1) The Secretary of State may issue guidance to chief officers of police as to the exercise of their functions under, or in connection with, this Act.

(2) The Secretary of State may revise any guidance issued under this section.

(3) The Secretary of State must arrange for any guidance issued under this section, and any revision of it, to be published.

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- (4) A chief officer of police must have regard to any guidance issued under this section.
- (5) Before issuing guidance under this section, the Secretary of State must consult—
  - (a) the National Police Chiefs' Council, and
  - (b) the chief constable of the Police Service of Scotland.”
- (3) In section 44 (appeals against police decisions), after subsection (3) insert—
 

“(3A) The court or sheriff hearing an appeal must have regard to any guidance issued under section 55A that is relevant to the appeal.”

**Commencement Information**

**1192** S. 133 in force for specified purposes at Royal Assent, see s. 183

*Pyrotechnic articles*

**134 Possession of pyrotechnic articles at musical events**

- (1) It is an offence for a person to have a pyrotechnic article in his or her possession at any time when the person is—
  - (a) at a place where a qualifying musical event is being held, or
  - (b) at any other place that is being used by a person responsible for the organisation of a qualifying musical event for the purpose of—
    - (i) regulating entry to, or departure from, the event, or
    - (ii) providing sleeping or other facilities for those attending the event.
- (2) Subsection (1) does not apply—
  - (a) to a person who is responsible for the organisation of the event, or
  - (b) to a person who has the article in his or her possession with the consent of a person responsible for the organisation of the event.
- (3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 51 weeks (or, in relation to offences committed before section 281(5) of the Criminal Justice Act 2003 comes into force, 3 months), or to a fine not exceeding level 3 on the standard scale, or to both.
- (4) In this section, “pyrotechnic article” means an article that contains explosive substances, or an explosive mixture of substances, designed to produce heat, light, sound, gas or smoke, or a combination of such effects, through self-sustained exothermic chemical reactions, other than—
  - (a) a match, or
  - (b) an article specified, or of a description specified, in regulations made by statutory instrument by the Secretary of State.
- (5) In this section, “qualifying musical event” means an event at which one or more live musical performances take place and which is specified, or of a description specified, in regulations made by statutory instrument by the Secretary of State.

*Status: Point in time view as at 22/03/2018.*

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- (6) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

**Commencement Information**

**I193** [S. 134](#) in force for specified purposes at Royal Assent, see [s. 183](#)

**PART 7**

ALCOHOL AND LATE NIGHT REFRESHMENT

*Licensing*

**135 Meaning of “alcohol”: inclusion of alcohol in any state**

In the Licensing Act 2003, in section 191(1) (meaning of “alcohol”) after “liquor” insert “ (in any state) ”.

**Commencement Information**

**I194** [S. 135](#) in force for specified purposes at Royal Assent, see [s. 183](#)

**I195** [S. 135](#) in force at 6.4.2017 in so far as not already in force by [S.I. 2017/399, reg. 3\(a\)](#)

**136 Interim steps pending review: representations**

- (1) In the Licensing Act 2003, section 53B (interim steps pending review) is amended as follows.
- (2) In subsection (6) at the beginning insert “ Subject to subsection (9A), ”.
- (3) After subsection (9) insert—

“(9A) Where the relevant licensing authority has determined under subsection (8) whether to withdraw or modify the interim steps taken, the holder of the premises licence may only make further representations under subsection (6) if there has been a material change in circumstances since the authority made its determination.”

**Commencement Information**

**I196** [S. 136](#) in force for specified purposes at Royal Assent, see [s. 183](#)

**I197** [S. 136](#) in force at 6.4.2017 in so far as not already in force by [S.I. 2017/399, reg. 3\(b\)](#)

**137 Summary reviews of premises licences: review of interim steps**

- (1) The Licensing Act 2003 is amended as follows.
- (2) Section 53C (review of premises licence following review notice) is amended as follows.

*Status: Point in time view as at 22/03/2018.*

*Changes to legislation: Policing and Crime Act 2017 is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) In subsection (2)—

- (a) at the end of paragraph (a) insert “ and ”,
- (b) in paragraph (b) omit “and”, and
- (c) omit paragraph (c).

(4) After subsection (11) insert—

“(12) Section 53D makes provision about the application and review of any interim steps that have been taken under section 53B in relation to a premises licence before a decision under this section comes into effect in relation to the licence.”

(5) After section 53C insert—

**“53D Interim steps pending section 53C decision coming into effect**

- (1) At the hearing to consider an application for a review under section 53A, the relevant licensing authority must review any interim steps that have been taken by the relevant licensing authority under section 53B that have effect on the date of the hearing.
- (2) In conducting the review under this section, the relevant licensing authority must—
  - (a) consider whether the interim steps are appropriate for the promotion of the licensing objectives;
  - (b) consider any relevant representations; and
  - (c) determine whether to withdraw or modify the interim steps taken.
- (3) The power of the relevant licensing authority on a review under this section includes a power to take any of the following interim steps—
  - (a) the modification of the conditions of the premises licence;
  - (b) the exclusion of the sale of alcohol by retail from the scope of the licence;
  - (c) the removal of the designated premises supervisor from the licence;
  - (d) the suspension of the licence;
 and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.
- (4) Any interim steps taken under subsection (3) apply until—
  - (a) the end of the period given for appealing against a decision made under section 53C,
  - (b) if the decision under section 53C is appealed against, the time the appeal is disposed of, or
  - (c) the end of a period determined by the relevant licensing authority (which may not be longer than the period of time for which such interim steps could apply under paragraph (a) or (b)).
- (5) Any interim steps taken under section 53B in relation to a premises licence cease to have effect when the decision made under section 53C comes into effect.
- (6) In subsection (2) “relevant representations” means representations which—

*Status: Point in time view as at 22/03/2018.*

*Changes to legislation: Policing and Crime Act 2017 is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) are relevant to one or more of the licensing objectives, and
  - (b) meet the requirements of subsection (7).
- (7) The requirements are—
- (a) that the representations are made by the holder of the premises licence, a responsible authority or any other person within the period prescribed under subsection 53A(3)(e),
  - (b) that they have not been withdrawn, and
  - (c) if they are made by a person who is not a responsible authority, that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
- (8) Where the relevant licensing authority determines that any representations are frivolous or vexatious, it must notify the person who made them of the reasons for that determination.
- (9) A decision under this section may be appealed (see paragraph 8B of Part 1 of Schedule 5 (appeals: premises licences)).”
- (6) Part 1 of Schedule 5 (appeals: premises licences) is amended as follows.
- (7) After paragraph 8A (summary review of premises licence) insert—

#### **8B “Review of interim steps**

- (1) This paragraph applies where a review of interim steps is decided under section 53D (review of interim steps at a summary review of a premises licence).
  - (2) An appeal may be made against that decision by—
    - (a) the chief officer of police for the police area (or each police area) in which the premises are situated, or
    - (b) the holder of the premises licence.
  - (3) An appeal under this paragraph must be heard by the magistrates' court within the period of 28 days beginning with the day on which the appellant commenced the appeal (see paragraph 9(2)).”
- (8) This section does not apply to an application made under section 53A of the Licensing Act 2003 (summary reviews on application of senior police officer) where a decision in relation to that application has been made under section 53C (review of premises licence following review notice) before the coming into force of this section.

#### **Commencement Information**

**I198** S. 137 in force for specified purposes at Royal Assent, see s. 183

**I199** S. 137 in force at 6.4.2017 in so far as not already in force by S.I. 2017/399, reg. 3(c)

### **138 Personal licences: licensing authority powers in relation to convictions**

- (1) The Licensing Act 2003 is amended as follows.

*Status: Point in time view as at 22/03/2018.*

*Changes to legislation: Policing and Crime Act 2017 is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) In section 10(4)(a) (functions that may not be delegated to an officer) after subparagraph (xii) insert—
- “(xiii) section 132A(8) and (12) (revocation or suspension of licence by local authority where it becomes aware of convictions or immigration penalties),”.
- (3) After section 132 (licence holder's duty to notify licensing authority of convictions) insert—

**“132A Convictions etc of licence-holder: powers of licensing authority**

- (1) This section applies where a licensing authority has granted a personal licence and it becomes aware (whether by virtue of section 123(1), 131 or 132 or otherwise) that the holder of the licence ( “ the licence holder ”) has been, at any time before or after the grant of the licence—
- (a) convicted of any relevant offence or foreign offence, or
  - (b) required to pay an immigration penalty.
- (2) But this section does not apply at any time when in the case of a licence holder who has been convicted of any relevant offence or foreign offence—
- (a) the licence holder has appealed against a conviction for, or any sentence imposed in relation to, a relevant offence or foreign offence and that appeal has not been disposed of, or
  - (b) the time limit for appealing against such a conviction or sentence has not expired.
- (3) The relevant licensing authority may—
- (a) suspend the licence for a period not exceeding six months, or
  - (b) revoke the licence.
- (4) If the relevant licensing authority is considering whether to suspend or revoke the licence, the authority must give notice to the licence holder.
- (5) A notice under subsection (4) must invite the licence holder to make representations regarding—
- (a) the relevant offence, foreign offence or immigration penalty that has caused the relevant licensing authority to issue the notice,
  - (b) any decision of a court under section 129 or 130 in relation to the licence, and
  - (c) any other relevant information (including information regarding the licence holder's personal circumstances).
- (6) The licence holder may make representations under subsection (5) to the relevant licensing authority within the period of 28 days beginning with the day the notice was issued.
- (7) Before deciding whether to suspend or revoke the licence the relevant licensing authority must take into account—
- (a) any representations made by the licence holder under this section,
  - (b) any decision of a court under section 129 or 130 of which the licensing authority is aware, and
  - (c) any other information which the authority considers relevant.



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- (8) Having taken into account the matters described in subsection (7) the relevant licensing authority may make a decision whether to suspend or revoke a licence, unless subsection (9) applies.
- (9) This subsection applies where the relevant licensing authority has taken into account the matters described in subsection (7) and proposes not to revoke the licence.
- (10) Where subsection (9) applies the authority must—
- (a) give notice to the chief officer of police for its area that it proposes not to revoke the licence, and
  - (b) invite the officer to make representations regarding the issue of whether the licence should be suspended or revoked having regard to the crime prevention objective.
- (11) The chief officer of police may make representations under subsection (10) (b) to the relevant licensing authority within the period of 14 days beginning with the day the notice was received.
- (12) Where the relevant licensing authority has given notice to the chief officer of police under subsection (10)(a), the authority must take into account—
- (a) any representations from the officer, and
  - (b) the matters described in subsection (7),
- and then make a decision whether to suspend or revoke the licence.
- (13) The relevant licensing authority must give notice of any decision made under subsection (8) or (12) to the licence holder and the chief officer of police, including reasons for the decision.
- (14) A decision under this section does not have effect—
- (a) until the end of the period given for appealing against the decision, or
  - (b) if the decision is appealed against, until the appeal is disposed of.
- (15) A decision under subsection (8) or (12) may be appealed (see paragraph 17(5A) of Part 3 of Schedule 5 (appeals: personal licences)).”
- (4) In paragraph 17 of Part 3 of Schedule 5 (appeals: personal licences) after subparagraph (5A) insert—
- “(5B) Where a licensing authority revokes or suspends a personal licence under section 132A(8) or (12) the holder of the licence may appeal against that decision.”

#### **Commencement Information**

**I200** S. 138 in force for specified purposes at Royal Assent, see s. 183

**I201** S. 138 in force at 6.4.2017 in so far as not already in force by S.I. 2017/399, reg. 3(d)

### **139 Licensing Act 2003: addition of further relevant offences**

- (1) Schedule 4 to the Licensing Act 2003 (personal licence: relevant offences) is amended as follows.

*Status: Point in time view as at 22/03/2018.*

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- (2) In paragraph 18 (sexual offences), after paragraph (a) insert—
- “(aa) listed in Schedule 3 to the Sexual Offences Act 2003 (sexual offences for the purposes of notification and orders);”.
- (3) After paragraph 19 (violent offences) insert—
- “19A An offence listed in Part 1 of Schedule 15 to the Criminal Justice Act 2003 (specified violent offences).”
- (4) After paragraph 22 (fraud offences) insert—
- “22ZA An offence under any of the following provisions of the Violent Crime Reduction Act 2006—
- (a) section 28 (using someone to mind a weapon);
- (b) section 36 (manufacture, import and sale of realistic imitation firearms).”
- (5) After paragraph 23A (offences under the Psychoactive Substances Act 2016) insert—
- “23B An offence listed in section 41 of the Counter-Terrorism Act 2008 (terrorism offences).”

**Commencement Information**

**I202** [S. 139](#) in force for specified purposes at Royal Assent, see [s. 183](#)

**I203** [S. 139](#) in force at 6.4.2017 in so far as not already in force by [S.I. 2017/399](#), [reg. 3\(e\)](#)

**140 Licensing Act 2003: guidance**

In the Licensing Act 2003, in section 182 (guidance) omit subsections (2) and (4) to (6).

**Commencement Information**

**I204** [S. 140](#) in force for specified purposes at Royal Assent, see [s. 183](#)

**I205** [S. 140](#) in force at 6.4.2017 in so far as not already in force by [S.I. 2017/399](#), [reg. 3\(f\)](#)

**141 Cumulative impact assessments**

- (1) The Licensing Act 2003 is amended as follows.
- (2) In section 5 (statement of licensing policy), after subsection (6C) insert—
- “(6D) In determining or revising its policy, a licensing authority must have regard to any cumulative impact assessments published by it under section 5A.
- (6E) A licensing statement must—

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*Status: Point in time view as at 22/03/2018.*

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- (a) summarise any cumulative impact assessments published by the licensing authority under section 5A, and
  - (b) explain how the licensing authority has discharged its duty under subsection (6D).”
- (3) After section 5 insert—

**“5A Cumulative impact assessments**

- (1) A licensing authority may publish a document (“a cumulative impact assessment”) stating that the licensing authority considers that the number of relevant authorisations in respect of premises in one or more parts of its area described in the assessment is such that it is likely that it would be inconsistent with the authority's duty under section 4(1) to grant any further relevant authorisations in respect of premises in that part or those parts.
- (2) A cumulative impact assessment must set out the evidence for the authority's opinion as set out in the assessment in accordance with subsection (1).
- (3) For the purposes of this section, “relevant authorisations” means—
  - (a) premises licences;
  - (b) club premises certificates.
- (4) A cumulative impact assessment may relate to all relevant authorisations or only to relevant authorisations of a kind described in the assessment.
- (5) Before publishing a cumulative impact assessment, the licensing authority must consult the persons mentioned in section 5(3).
- (6) For the purposes of the consultation, the licensing authority must provide the persons mentioned in section 5(3) with the following information—
  - (a) the reasons why it is considering publishing a cumulative impact assessment;
  - (b) a general indication of the part or parts of its area which it is considering describing in the assessment;
  - (c) whether it considers that the assessment will relate to all relevant authorisations or only to relevant authorisations of a particular kind.
- (7) Where a licensing authority publishes a cumulative impact assessment, it must, before the end of each relevant period, consider whether it remains of the opinion stated in the assessment.
- (8) Before deciding whether it remains of that opinion, the licensing authority must consult the persons mentioned in section 5(3).
- (9) If the licensing authority is no longer of that opinion—
  - (a) it must publish a statement to that effect, and
  - (b) the duties in section 5(6D) and (6E) and subsection (7) of this section cease to apply in relation to the assessment.
- (10) If the licensing authority remains of that opinion, it must revise the cumulative impact assessment so that it—
  - (a) includes a statement to that effect, and
  - (b) sets out the evidence as to why the authority remains of that opinion.

*Status: Point in time view as at 22/03/2018.*

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- (11) A licensing authority must publish any revision of a cumulative impact assessment.
- (12) In subsection (7), “relevant period” means the period of three years beginning with the publication of the cumulative impact assessment or a revision of the cumulative impact assessment.”

**Commencement Information**

**I206** S. 141 in force for specified purposes at Royal Assent, see s. 183

*Late night levy*

**142 Late night levy requirements**

- (1) Section 125 of the Police Reform and Social Responsibility Act 2011 (late night levy requirement) is amended as follows.
- (2) For subsections (1) and (2) substitute—
- “(1) In this Chapter, “a late night levy requirement” means a requirement to pay a late night levy in accordance with this Chapter.
- (2) A licensing authority may decide that a late night levy requirement is to apply in its area or in a part of its area in respect of—
- (a) relevant late night alcohol authorisations relating to premises in the area or the part, or
- (b) relevant late night alcohol authorisations and relevant late night refreshment authorisations relating to premises in the area or the part.
- (2A) Accordingly, references in this Chapter to a late night authorisation to which a late night levy requirement relates are references to any relevant late night alcohol authorisation or relevant late night refreshment authorisation in respect of which the late night levy requirement applies.
- (2B) A licensing authority may decide under subsection (2) that different late night levy requirements are to apply in different parts of its area.”
- (3) In subsection (3)(a), after “supply of alcohol” insert “ or late night refreshment ”.
- (4) Omit subsection (4).
- (5) Schedule 18 makes further amendments of Chapter 2 of Part 2 of the Police Reform and Social Responsibility Act 2011 (late night levy).

**Commencement Information**

**I207** S. 142 in force for specified purposes at Royal Assent, see s. 183

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## PART 8

### FINANCIAL SANCTIONS

#### *Interpretation*

#### **143 Interpretation**

- (1) This section sets out definitions that apply for the purposes of this Part.
- (2) “EU financial sanctions Regulation” means an EU Regulation adopted under Article 215 of the Treaty on the Functioning of the European Union to the extent that the Regulation—
  - (a) imposes prohibitions or obligations for one or more of the following purposes—
    - (i) freezing funds or economic resources;
    - (ii) preventing funds or economic resources being made available;
    - (iii) prohibiting or restricting access to financial markets or financial services;
  - (b) makes provision to supplement prohibitions or obligations of the kind mentioned in paragraph (a).
- (3) “UN financial sanctions Resolution” means a resolution adopted by the Security Council of the United Nations to the extent that the resolution provides under article 41 of the Charter of the United Nations for States to take measures that—
  - (a) impose prohibitions or obligations for one or more of the following purposes—
    - (i) freezing funds or economic resources;
    - (ii) preventing funds or economic resources being made available;
    - (iii) prohibiting or restricting access to financial markets or financial services;
  - (b) make provision to supplement prohibitions or obligations of the kind mentioned in paragraph (a).
- (4) “Financial sanctions legislation” means—
  - (a) an EU financial sanctions Regulation;
  - (b) an instrument made under section 2(2) of the European Communities Act 1972 for the purpose of implementing, or otherwise in relation to, EU obligations created or arising by or under an EU financial sanctions Regulation;
  - (c) a provision of an Act or of subordinate legislation (within the meaning of the Interpretation Act 1978) where the purpose of the provision is to implement a UN financial sanctions Resolution;
  - (d) a freezing order under section 4 of the Anti-terrorism, Crime and Security Act 2001;
  - (e) a direction under Schedule 7 to the Counter-Terrorism Act 2008 to the extent that it contains a requirement of a kind mentioned in paragraph 13 of that Schedule (limiting or ceasing business), paragraph 17 of that Schedule and Part 5 of that Schedule so far as it relates to the enforcement of a requirement of a kind mentioned in paragraph 13 of that Schedule.

*Status: Point in time view as at 22/03/2018.*

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- (5) The reference in subsection (2) to Article 215 of the Treaty on the Functioning of the European Union includes a reference to any of Articles 60, 301 and 308 of the Treaty establishing the European Community (as it had effect before 1 December 2009).

**Modifications etc. (not altering text)**

- C2** S. 143 extended to specified territories (2.11.2017) by [The Policing and Crime Act \(Financial Sanctions\) \(Overseas Territories\) Order 2017 \(S.I. 2017/984\)](#), arts. 1(2), 4, [Sch.](#)

**Commencement Information**

- I208** S. 143 in force for specified purposes at Royal Assent, see [s. 183](#)  
**I209** S. 143 in force at 1.4.2017 in so far as not already in force by [S.I. 2017/482](#), [reg. 2](#)

*Enhanced maximum penalties*

**144 Powers to create offences under section 2(2) ECA 1972: maximum term of imprisonment**

- (1) Paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972 applies with the following modifications in relation to the exercise of the powers conferred by section 2(2) of that Act (“the section 2(2) powers”) to make provision for the purposes of implementing, or otherwise in relation to, EU obligations created or arising by or under an EU financial sanctions Regulation.
- (2) The prohibition arising under paragraph 1(1)(d) on the creation of offences punishable by imprisonment for more than a period specified in that paragraph does not apply to the exercise of the section 2(2) powers for those purposes.
- (3) Instead, the section 2(2) powers may not be exercised for those purposes to create an offence punishable by imprisonment for a period exceeding—
- (a) in the case of conviction on indictment, 7 years;
  - (b) in the case of summary conviction—
    - (i) in relation to England and Wales, 12 months or, in relation to offences committed before section 154(1) of the Criminal Justice Act 2003 comes into force, 6 months;
    - (ii) in relation to Scotland, 12 months;
    - (iii) in relation to Northern Ireland, 6 months.
- (4) Subsection (5) applies where, at any time before this section comes into force, the section 2(2) powers have been exercised for those purposes to create an offence punishable by imprisonment.
- (5) The section 2(2) powers may (at any time after this section comes into force) be exercised for those purposes to vary the provision made for the maximum period of imprisonment by making any provision that could (by virtue of subsections (2) and (3)) be made if the offence were created after this section comes into force.
- (6) A variation made in reliance on subsection (5) does not affect the penalty for an offence if any act or other event proof of which is required for conviction of the offence takes place before this section comes into force.

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#### Commencement Information

**I210** S. 144 in force for certain purposes at Royal Assent, see s. 183

**I211** S. 144 in force at 1.4.2017 in so far as not already in force by S.I. 2017/482, reg. 2

### 145 Other offences: maximum term of imprisonment

- (1) Schedule 3 to the Anti-terrorism, Crime and Security Act 2001 (freezing orders) is amended in accordance with subsections (2) and (3).
- (2) In paragraph 7 (offences), for sub-paragraph (6)(a) and (b) substitute—
  - “(a) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding 12 months (or, in relation to offences committed before section 154(1) of the Criminal Justice Act 2003 comes into force, 6 months) or to a fine, or to both;
    - (ii) in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;
    - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine, or to both.”
- (3) In that paragraph, in sub-paragraph (7), for the words from “on summary conviction” to the end of the sub-paragraph substitute “—
  - (a) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding 12 months (or, in relation to offences committed before section 154(1) of the Criminal Justice Act 2003 comes into force, 6 months) or to a fine, or to both;
    - (ii) in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;
    - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.”
- (4) Schedule 7 to the Counter-Terrorism Act 2008 (terrorist financing and money laundering) is amended in accordance with subsections (5) to (9).
- (5) In paragraph 30 (offence of failure to comply with requirement imposed by direction), after sub-paragraph (4) insert—
  - “(4A) In a case where a person is guilty of an offence under this paragraph by failing to comply with a requirement of a kind mentioned in paragraph 13, the person is liable—
    - (a) on summary conviction—

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- (i) in England and Wales, to imprisonment for a term not exceeding 12 months (or, in relation to offences committed before section 154(1) of the Criminal Justice Act 2003 comes into force, 6 months) or to a fine, or to both;
    - (ii) in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;
    - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine, or to both.”
- (6) In sub-paragraph (5) of that paragraph, at the beginning insert “ In any other case, ”.
- (7) In paragraph 30A (offence of relevant person circumventing requirements), after sub-paragraph (1) insert—
  - “(1A) In a case where a person is guilty of an offence under this paragraph in relation to a requirement of a kind mentioned in paragraph 13, the person is liable—
    - (a) on summary conviction—
      - (i) in England and Wales, to imprisonment for a term not exceeding 12 months (or, in relation to offences committed before section 154(1) of the Criminal Justice Act 2003 comes into force, 6 months) or to a fine, or to both;
      - (ii) in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;
      - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both;
    - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine, or to both.”
- (8) In sub-paragraph (2) of that paragraph, at the beginning insert “ In any other case, ”.
- (9) In paragraph 31 (offences in connection with licences), in sub-paragraph (2), for the words from “on conviction on indictment” to the end of the sub-paragraph substitute “—
  - (a) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding 12 months (or, in relation to offences committed before section 154(1) of the Criminal Justice Act 2003 comes into force, 6 months) or to a fine, or to both;
    - (ii) in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;
    - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.”



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- (10) The amendments made by this section do not affect the penalty for an offence if any act or other event proof of which is required for conviction of the offence takes place before this section comes into force.

#### **Commencement Information**

**I212** S. 145 in force for specified purposes at Royal Assent, see s. 183

**I213** S. 145 in force at 1.4.2017 in so far as not already in force by S.I. 2017/482, reg. 2

### *Civil sanctions*

#### **146 Power to impose monetary penalties**

- (1) The Treasury may impose a monetary penalty on a person if it is satisfied, on the balance of probabilities, that—
- (a) the person has breached a prohibition, or failed to comply with an obligation, that is imposed by or under financial sanctions legislation, and
  - (b) the person knew, or had reasonable cause to suspect, that the person was in breach of the prohibition or (as the case may be) had failed to comply with the obligation.
- (2) The amount of the penalty is to be such amount as the Treasury may determine but it may not exceed the permitted maximum.
- (3) In a case where the breach or failure relates to particular funds or economic resources and it is possible to estimate the value of the funds or economic resources, the permitted maximum is the greater of—
- (a) £1,000,000, and
  - (b) 50% of the estimated value of the funds or resources.
- (4) In any other case, the permitted maximum is £1,000,000.
- (5) In subsection (3), “funds” and “economic resources” have the same meanings as they have in the financial sanctions legislation that contains the prohibition or obligation in respect of which the monetary penalty is imposed.
- (6) The Treasury must keep the amount for the time being specified in subsection (3)(a) or (4) under review.
- (7) The Treasury may by regulations made by statutory instrument amend subsection (3) (a) or (4) so as to substitute another amount for the amount for the time being specified in it.
- (8) Regulations under subsection (7) may include transitional provision.
- (9) Before making regulations under subsection (7), the Treasury must consult such persons as it considers appropriate.
- (10) A statutory instrument containing regulations under subsection (7) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

*Status: Point in time view as at 22/03/2018.*

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- (11) Any monetary penalty payable under this section is recoverable by the Treasury as a civil debt.
- (12) Any monetary penalty received by the Treasury by virtue of this section must be paid into the Consolidated Fund.
- (13) This section does not authorise the imposition of a monetary penalty on the Crown.

#### **Commencement Information**

**I214** S. 146 in force for specified purposes at Royal Assent, see s. 183

**I215** S. 146 in force at 1.4.2017 in so far as not already in force by S.I. 2017/482, reg. 2

### **147 Monetary penalties: procedural rights**

- (1) Before imposing a monetary penalty on a person under section 146, the Treasury must inform the person of its intention to do so.
- (2) The Treasury must also—
  - (a) explain the grounds for imposing the penalty,
  - (b) specify the amount of the penalty,
  - (c) explain that the person is entitled to make representations, and
  - (d) specify the period within which any such representations must be made.
- (3) If (having considered any representations), the Treasury decides to impose the penalty, the Treasury must—
  - (a) inform the person of its decision,
  - (b) explain that the person is entitled to seek a review by a Minister of the Crown, and
  - (c) specify the period within which the person must inform the Treasury that the person wishes to seek such a review.
- (4) If the person seeks a review, the Minister may—
  - (a) uphold the decision to impose the penalty and its amount,
  - (b) uphold the decision to impose the penalty but substitute a different amount, or
  - (c) cancel the decision to impose the penalty.
- (5) A review under subsection (4) must be carried out by the Minister personally.
- (6) If on a review under subsection (4) the Minister decides to uphold the Treasury's decision to impose the penalty and its amount, or to uphold the Treasury's decision to impose the penalty but to substitute a different amount, the person may appeal (on any ground) to the Upper Tribunal.
- (7) On an appeal under subsection (6), the Upper Tribunal may quash the Minister's decision and if it does so may—
  - (a) quash the Treasury's decision to impose the penalty;
  - (b) uphold that decision but substitute a different amount for the amount determined by the Treasury (or, in a case where the Minister substituted a different amount, by the Minister).

*Status: Point in time view as at 22/03/2018.*

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- (8) In this section, “Minister of the Crown” means the holder of an office in Her Majesty’s Government in the United Kingdom.

#### Commencement Information

- I216** [S. 147](#) in force for specified purposes at Royal Assent, see [s. 183](#)  
**I217** [S. 147](#) in force at 1.4.2017 in so far as not already in force by [S.I. 2017/482, reg. 2](#)

### 148 Monetary penalties: bodies corporate and unincorporated associations

- (1) If a monetary penalty is payable under section 146 by a body, the Treasury may also impose a monetary penalty on an officer of the body if it is satisfied, on the balance of probabilities, that the breach or failure in respect of which the monetary penalty is payable by the body—
- took place with the consent or connivance of the officer, or
  - was attributable to any neglect on the part of the officer.
- (2) In subsection (1)—
- “body” means a body corporate, a partnership or an unincorporated body other than a partnership;
- “officer of a body” means—
- in relation to a body corporate, a director, manager, secretary or other similar officer of the body or a person purporting to act in any such capacity;
  - in relation to a partnership, a partner or a person purporting to act as a partner;
  - in relation to an unincorporated body other than a partnership, a person who is concerned in the management or control of the body or purports to act in the capacity of a person so concerned.
- (3) Sections 146(2) to (5), (11) and (12) and 147 apply in relation to a monetary penalty that may be imposed under subsection (1) as they apply in relation to a monetary penalty that may be imposed under section 146(1).

#### Commencement Information

- I218** [S. 148](#) in force for specified purposes at Royal Assent, see [s. 183](#)  
**I219** [S. 148](#) in force at 1.4.2017 in so far as not already in force by [S.I. 2017/482, reg. 2](#)

### 149 Monetary penalties: supplementary

- (1) The Treasury must issue guidance as to—
- the circumstances in which it may consider it appropriate to impose a monetary penalty under section 146 or 148, and
  - how it will determine the amount of the penalty.
- (2) The Treasury must, at such intervals as it considers appropriate, publish reports about the imposition of monetary penalties under section 146 or 148.

*Status: Point in time view as at 22/03/2018.*

*Changes to legislation: Policing and Crime Act 2017 is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### **Commencement Information**

**I220** S. 149 in force for specified purposes at Royal Assent, see s. 183

**I221** S. 149 in force at 1.4.2017 in so far as not already in force by S.I. 2017/482, reg. 2

#### *Other provisions about enforcement*

### **150 Deferred prosecution agreements**

In Part 2 of Schedule 17 to the Crime and Courts Act 2013 (which lists the offences in relation to which a deferred prosecution agreement may be entered into), after paragraph 26 insert—

- “26A (1) An offence under an instrument made under section 2(2) of the European Communities Act 1972 for the purpose of implementing, or otherwise in relation to, EU obligations created or arising by or under an EU financial sanctions Regulation.
- (2) An offence under an Act or under subordinate legislation where the offence was created for the purpose of implementing a UN financial sanctions Resolution.
- (3) An offence under paragraph 7 of Schedule 3 to the Anti-terrorism, Crime and Security Act 2001 (freezing orders).
- (4) An offence under paragraph 30 or 30A of Schedule 7 to the Counter-Terrorism Act 2008 where the offence relates to a requirement of the kind mentioned in paragraph 13 of that Schedule.
- (5) An offence under paragraph 31 of Schedule 7 to the Counter-Terrorism Act 2008.
- (6) In this paragraph—
- “EU financial sanctions Regulation” and “UN financial sanctions Resolution” have the same meanings as in Part 8 of the Policing and Crime Act 2017 (see section 143 of that Act);
- “subordinate legislation” has the same meaning as in the Interpretation Act 1978.”

#### **Commencement Information**

**I222** S. 150 in force for specified purposes at Royal Assent, see s. 183

**I223** S. 150 in force at 1.4.2017 in so far as not already in force by S.I. 2017/482, reg. 2

### **151 Serious crime prevention orders**

- (1) Schedule 1 to the Serious Crime Act 2007 (which lists the offences in respect of which serious crime prevention orders may be made) is amended as follows.
- (2) In Part 1 (England and Wales), after paragraph 13A insert—

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*Status: Point in time view as at 22/03/2018.*

*Changes to legislation: Policing and Crime Act 2017 is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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### 13B “Financial sanctions legislation

- (1) An offence under an instrument made under section 2(2) of the European Communities Act 1972 for the purpose of implementing, or otherwise in relation to, EU obligations created or arising by or under an EU financial sanctions Regulation.
  - (2) An offence under an Act or under subordinate legislation where the offence was created for the purpose of implementing a UN financial sanctions Resolution.
  - (3) An offence under paragraph 7 of Schedule 3 to the Anti-terrorism, Crime and Security Act 2001 (freezing orders).
  - (4) An offence under paragraph 30 or 30A of Schedule 7 to the Counter-Terrorism Act 2008 where the offence relates to a requirement of the kind mentioned in paragraph 13 of that Schedule.
  - (5) An offence under paragraph 31 of Schedule 7 to the Counter-Terrorism Act 2008.
  - (6) In this paragraph—
    - “EU financial sanctions Regulation” and “UN financial sanctions Resolution” have the same meanings as in Part 8 of the Policing and Crime Act 2017 (see section 143 of that Act);
    - “subordinate legislation” has the same meaning as in the Interpretation Act 1978.”
- (3) In Part 1A (Scotland), after paragraph 16M —

### 16MA “Financial sanctions legislation

- (1) An offence under an instrument made under section 2(2) of the European Communities Act 1972 for the purpose of implementing, or otherwise in relation to, EU obligations created or arising by or under an EU financial sanctions Regulation.
- (2) An offence under an Act or under subordinate legislation where the offence was created for the purpose of implementing a UN financial sanctions Resolution.
- (3) An offence under paragraph 7 of Schedule 3 to the Anti-terrorism, Crime and Security Act 2001 (freezing orders).
- (4) An offence under paragraph 30 or 30A of Schedule 7 to the Counter-Terrorism Act 2008 where the offence relates to a requirement of the kind mentioned in paragraph 13 of that Schedule.
- (5) An offence under paragraph 31 of Schedule 7 to the Counter-Terrorism Act 2008.
- (6) In this paragraph—
  - “EU financial sanctions Regulation” and “UN financial sanctions Resolution” have the same meanings as in Part 8 of the Policing and Crime Act 2017 (see section 143 of that Act);

*Status: Point in time view as at 22/03/2018.*

*Changes to legislation: Policing and Crime Act 2017 is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

“subordinate legislation” has the same meaning as in the Interpretation Act 1978.”

(4) In Part 2 (Northern Ireland), after paragraph 29 insert—

**29A “Financial sanctions legislation**

- (1) An offence under an instrument made under section 2(2) of the European Communities Act 1972 for the purpose of implementing, or otherwise in relation to, EU obligations created or arising by or under an EU financial sanctions Regulation.
- (2) An offence under an Act or under subordinate legislation where the offence was created for the purpose of implementing a UN financial sanctions Resolution.
- (3) An offence under paragraph 7 of Schedule 3 to the Anti-terrorism, Crime and Security Act 2001 (freezing orders).
- (4) An offence under paragraph 30 or 30A of Schedule 7 to the Counter-Terrorism Act 2008 where the offence relates to a requirement of the kind mentioned in paragraph 13 of that Schedule.
- (5) An offence under paragraph 31 of Schedule 7 to the Counter-Terrorism Act 2008.
- (6) In this paragraph—

“EU financial sanctions Regulation” and “UN financial sanctions Resolution” have the same meanings as in Part 8 of the Policing and Crime Act 2017 (see section 143 of that Act);

“subordinate legislation” has the same meaning as in the Interpretation Act 1978.”

**Commencement Information**

**I224** S. 151 in force for specified purposes at Royal Assent, see s. 183

**I225** S. 151 in force at 1.4.2017 in so far as not already in force by S.I. 2017/482, reg. 2

*Avoidance of delay: temporary regulations*

**152 Implementation of UN financial sanctions Resolutions: temporary regulations**

- (1) Where a UN financial sanctions Resolution is adopted, the Treasury may by regulations made by statutory instrument make such provision as it considers appropriate for the implementation of the Resolution.
- (2) Regulations under this section must provide for the regulations to cease to have effect at whichever of the following times first occurs—
  - (a) the time when an EU financial sanctions Regulation made for the purpose of implementing the UN financial sanctions Resolution enters into force;
  - (b) the end of a day specified in the regulations, which may not be a day that falls more than 30 days after the day on which the UN financial sanctions Resolution is adopted.

*Status: Point in time view as at 22/03/2018.*

*Changes to legislation: Policing and Crime Act 2017 is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) At any time before the end of the day specified in the regulations under subsection (2) (b), the Treasury may amend the regulations (by making further regulations) so as to substitute for the day specified in the regulations in accordance with subsection (2)(b) a different day, which may not be a day that falls more than 60 days after the day on which the UN financial sanctions Resolution is adopted.
- (4) The power conferred by subsection (3) may be exercised on only one occasion.
- (5) Subsection (3) does not affect the power (by virtue of section 14 of the Interpretation Act 1978) to amend regulations under subsection (1) for a purpose other than that mentioned in subsection (3).
- (6) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Section 153 makes further provision about regulations under this section.

#### Commencement Information

**I226** S. 152 in force for certain purposes at Royal Assent, see s. 183

**I227** S. 152 in force at 1.4.2017 in so far as not already in force by S.I. 2017/482, reg. 2

### 153 Content of regulations under section 152

- (1) Regulations under section 152 may impose prohibitions for such of the following purposes as are relevant to the UN financial sanctions Resolution that is being implemented by the regulations—
  - (a) freezing funds or economic resources owned, held or controlled by designated persons;
  - (b) preventing funds or economic resources being made available to, or for the benefit, of designated persons.
- (2) In subsection (1), “designated person” means a person who is specified in any of the following instruments as a person in relation to whom the measures required by the UN financial sanctions Resolution are to be taken—
  - (a) the UN financial sanctions Resolution or any other UN financial sanctions Resolution;
  - (b) an instrument made by an organ of the United Nations for the purpose of specifying the persons in relation to whom the measures required by the Resolution are to be taken.

For the purpose of this subsection, “person” includes (in addition to an individual and a body of persons corporate or unincorporate) any organisation and any association or combination of persons.

- (3) Regulations under section 152 must describe the designated persons to whom the prohibitions in the regulations relate but may do so by referring to any of the instruments mentioned in subsection (2) or in any other way; and, where the persons are described by referring to any of those instruments, the regulations may provide for the reference in the regulations to the instrument to have effect as a reference to the instrument as varied or supplemented from time to time.

*Status: Point in time view as at 22/03/2018.*

*Changes to legislation: Policing and Crime Act 2017 is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) The regulations may create exceptions to any prohibitions included in the regulations by virtue of subsection (1), including provision for any of those prohibitions not to apply to anything done under the authority of a licence issued by the Treasury under the regulations.
- (5) The regulations may make provision—
  - (a) for requiring a person who is subject to a prohibition, or any other person of a description specified in the regulations, to provide information to the Treasury;
  - (b) authorising or restricting the disclosure of information so provided.
- (6) The regulations may make provision for the enforcement of any prohibitions or requirements set out in the regulations, including provision for preventing any prohibitions from being circumvented.
- (7) The provision that may be made under subsection (6) includes—
  - (a) the creation of offences;
  - (b) provision corresponding or similar to sections 146 to 149 (civil sanctions).
- (8) The regulations may not create an offence punishable by imprisonment for a period exceeding—
  - (a) in the case of conviction on indictment, 7 years;
  - (b) in the case of summary conviction—
    - (i) in relation to England and Wales, 12 months or, in relation to offences committed before section 154(1) of the Criminal Justice Act 2003 comes into force, 6 months;
    - (ii) in relation to Scotland, 12 months;
    - (iii) in relation to Northern Ireland, 6 months.
- (9) The regulations may provide that a person is not to be subject to any form of liability in consequence of anything done by that person under the regulations.
- (10) The regulations may bind the Crown but they may not—
  - (a) provide for the Crown to be criminally liable, or
  - (b) provide for the Crown to be liable to pay a monetary penalty.
- (11) The regulations may include—
  - (a) incidental, supplementary or consequential provision;
  - (b) transitional or transitory provision.
- (12) The regulations may—
  - (a) make different provision for different purposes;
  - (b) confer a discretion on any person.

#### **Commencement Information**

**I228** S. 153 in force for certain purposes at Royal Assent, see s. 183

**I229** S. 153 in force at 1.4.2017 in so far as not already in force by S.I. 2017/482, reg. 2



*Status: Point in time view as at 22/03/2018.*

*Changes to legislation: Policing and Crime Act 2017 is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

*Avoidance of delay: temporary listing*

**154 Linking of UN financial sanctions Resolutions with EU financial sanctions Regulations**

- (1) For the purposes of section 155, the Treasury may by regulations made by statutory instrument provide that a United Nations financial sanctions Resolution specified in the regulations is linked to an EU financial sanctions Regulation specified in the regulations.
- (2) The regulations may provide for any reference in the regulations to a United Nations financial sanctions Resolution or to an EU financial sanctions Regulation to have effect as a reference to the United Nations financial sanctions Resolution or (as the case may be) to the EU financial sanctions Regulation as varied or supplemented from time to time.
- (3) A statutory instrument containing regulations under subsection (1) is subject to annulment in pursuance of a resolution of either House of Parliament.

**Commencement Information**

**I230** S. 154 in force for certain purposes at Royal Assent, see s. 183

**I231** S. 154 in force at 1.4.2017 in so far as not already in force by S.I. 2017/482, reg. 2

**155 Implementation of UN financial sanctions Resolutions: temporary listing**

- (1) This section applies where—
  - (a) regulations under section 154 provide that a UN financial sanctions Resolution is linked to an EU financial sanctions Regulation,
  - (b) a person is designated for the purposes of the UN financial sanctions Resolution, and
  - (c) at the time the person is designated for those purposes, the person is not included in the list of persons, set out in the EU financial sanctions Regulation, to whom the prohibitions contained in the Regulation relate (“the EU list”).
- (2) The person is to be treated for a temporary period as if the person were included in the EU list (as well as being designated for the purposes of the UN financial sanctions Resolution).
- (3) The temporary period referred to in subsection (2) begins at the time the person is designated for the purposes of the UN financial sanctions Regulation.
- (4) The temporary period ends—
  - (a) at the end of the day on which the person is (otherwise than under subsection (2)) included in the EU list;
  - (b) if the person is not included in the EU list before the end of the period of 30 days beginning with the day after the day on which the person is designated for the purposes of the UN financial sanctions Resolution, at the end of that period of 30 days.
- (5) For the purposes of this section, a person is designated for the purposes of a UN financial sanctions Resolution if the person is specified in any of the following

*Status: Point in time view as at 22/03/2018.*

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instruments as a person in relation to whom the measures required by the UN financial sanctions Resolution are to be taken—

- (a) the UN financial sanctions Resolution or any other UN financial sanctions Resolution;
- (b) an instrument made by an organ of the United Nations for the purpose of specifying the persons in relation to whom the measures required by the Resolution are to be taken.

For the purpose of this subsection, “person” includes (in addition to an individual and a body corporate or unincorporate) any organisation and any association or combination of persons.

- (6) This section applies where a person is designated for the purposes of the UN financial sanctions Resolution before this section comes into force (as well as where the person is designated after this section comes into force) but, in such a case, the temporary period begins on the day on which this section comes into force.

**Modifications etc. (not altering text)**

- C3** S. 155 extended to certain territories (2.11.2017) by [The Policing and Crime Act \(Financial Sanctions\) \(Overseas Territories\) Order 2017 \(S.I. 2017/984\)](#), arts. 1(2), 6, **Sch.**

**Commencement Information**

- I232** S. 155 in force for certain purposes at Royal Assent, see s. 183
- I233** S. 155 in force at 1.4.2017 in so far as not already in force by [S.I. 2017/482](#), **reg. 2**

*Power to extend to Bailiwick of Guernsey etc*

**156 Extension to the Bailiwick of Guernsey, Isle of Man and BOTs**

- (1) Her Majesty may by Order in Council provide for regulations under section 152(1) (whether made before or after the making of the Order in Council) to extend with or without modifications to—
  - (a) the Bailiwick of Guernsey;
  - (b) the Isle of Man;
  - (c) any of the British overseas territories.
- (2) Her Majesty may by Order in Council provide for section 143, regulations under section 154 (whether made before or after the making of the Order in Council) and section 155 to extend with or without modifications to—
  - (a) the Bailiwick of Guernsey;
  - (b) the Isle of Man;
  - (c) any of the British overseas territories.
- (3) The power conferred by subsection (1) or (2), so far as relating to regulations, includes power to provide for the regulations as amended from time to time to extend as mentioned in that subsection.
- (4) The modifications that may be specified in an Order in Council under subsection (1) include a modification of any provision included in the regulations about the time at which the regulations are to cease to have effect.

*Status: Point in time view as at 22/03/2018.*

*Changes to legislation: Policing and Crime Act 2017 is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) A modification included in an Order in Council by virtue of subsection (4)—
- (a) may have the effect that the regulations (as extended by the Order in Council) continue to have effect after the time when the regulations have ceased to have effect under the law of England and Wales, Scotland and Northern Ireland, but
  - (b) must secure that the regulations (as so extended) cease to have effect on a day that falls no later than 120 days after the day on which the relevant UN financial sanctions Resolution is adopted.
- (6) In subsection (5), “the relevant UN financial sanctions Resolution” means the UN financial sanctions Resolution that is being implemented by the regulations.

#### Commencement Information

**I234** [S. 156](#) in force for certain purposes at Royal Assent, see [s. 183](#)

**I235** [S. 156](#) in force at 1.4.2017 in so far as not already in force by [S.I. 2017/482, reg. 2](#)

## PART 9

### MISCELLANEOUS AND GENERAL

#### CHAPTER 1

##### MISCELLANEOUS

##### *Police collaboration*

#### **157 Power to enter into police collaboration agreements**

- (1) The Police Act 1996 is amended in accordance with subsections (2) to (4).
- (2) In section 22A (collaboration agreements)—
- (a) in subsection (1)(b), for “and two or more policing bodies” substitute “and—
    - (i) one or more policing bodies together with one or more other persons, or
    - (ii) if no other person is a party to the agreement, two or more policing bodies.”;
  - (b) in subsection (6), for “(1)” substitute “(1)(a)”.
- (3) In section 23F (collaboration agreements: guidance), after subsection (2) insert—
- “(3) The Secretary of State may give other persons who exercise functions of a public nature guidance about collaboration agreements or related matters, and those persons must have regard to the guidance in exercising such functions.”
- (4) In section 23G (collaboration agreements: directions), after subsection (2) insert—
- “(2A) The Secretary of State may give one or more other persons who exercise functions of a public nature directions about collaboration agreements or related matters.”

*Status: Point in time view as at 22/03/2018.*

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- (5) Schedule 19 contains amendments in relation to cases where the Director General of the National Crime Agency is a party to a collaboration agreement under section 22A of the Police Act 1996 (as amended by this section).

**Commencement Information**

**I236** S. 157 in force for specified purposes at Royal Assent, otherwise 31.3.2017, see s. 183

*NCA powers*

**158 Powers of NCA officers in relation to customs matters**

- (1) The Crime and Courts Act 2013 is amended as follows.
- (2) In section 9 (Director General: customs powers of Commissioners & operational powers)—
- (a) in subsection (2), after paragraph (b) insert—
- “(ba) the powers of a general customs official;”;
- (b) in subsection (8), in the definition of “operational power”, after paragraph (b) insert—
- “(ba) a power of a general customs official;”.
- (3) In section 10 (operational powers of other NCA officers), in subsection (1) after paragraph (b) insert—
- “(ba) the powers of a general customs official;”.
- (4) In Schedule 5 (police, customs and immigration powers), after Part 5 (designation: powers of officers of Revenue and Customs) insert—

**“PART 5A**

DESIGNATIONS: POWERS OF GENERAL CUSTOMS OFFICIALS

***NCA officers***

- 18A (1) If an NCA officer is designated as a person having the powers of a general customs official, the NCA officer has, in relation to any customs matter, the same powers as a general customs official would have.
- (2) But that is subject to any limitation included in the designation.

***Powers only exercisable in relation to customs matters***

- 18B If a power of a general customs official is exercisable both—
- (a) in relation to a customs matter, and
- (b) in relation to any other matter,
- the power is exercisable by a designated officer only in relation to the customs matter.

*Status: Point in time view as at 22/03/2018.*

*Changes to legislation: Policing and Crime Act 2017 is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### ***Powers exercisable under warrant***

- 18C (1) This paragraph applies to an enactment if it provides for the issuing of warrants which authorise a general customs official to exercise any power in relation to a customs matter.
- (2) For the purpose of enabling a designated officer to exercise that power in relation to a customs matter, the enactment has effect as if the designated officer were a general customs official.”
- (5) In paragraph 26 of that Schedule (modification of references), after paragraph (c) insert—
- “(ca) a power of a general customs official is exercisable by any NCA officer, a reference to a general customs official in any enactment which relates to that power is to be taken to be, or to include, a reference to any NCA officer by whom that power is exercisable;”.
- (6) In paragraph 27 of that Schedule (power to make further provision), in sub-paragraph (2), after paragraph (d)(ii) insert—
- “(iia) one or more grades of, or pay scales applicable to, general customs officials;”.
- (7) In paragraph 28 of that Schedule (functions of third parties relating to constables etc: extension to NCA), in sub-paragraph (2), after paragraph (c) insert—
- “(ca) a general customs official,”.

#### **Commencement Information**

**I237** S. 158 in force for specified purposes at Royal Assent, otherwise 31.3.2017, see s. 183

### *Requirements to confirm nationality*

#### **159 Requirement to state nationality**

In the UK Borders Act 2007, after section 43 (supply of police information) insert—

##### **“43A Requirement to state nationality**

- (1) An individual who is arrested for an offence must state his or her nationality if required to do so by an immigration officer or a constable in accordance with this section.
- (2) A requirement may be imposed on an individual under subsection (1) only if the immigration officer or constable suspects that the individual may not be a British citizen.
- (3) When imposing a requirement under subsection (1) the immigration officer or constable must inform the individual that an offence may be committed if the individual fails to comply with a requirement imposed under this section.
- (4) The immigration officer or constable must make a written record of the imposition of a requirement under subsection (1) as soon as practicable.

*Status: Point in time view as at 22/03/2018.*

*Changes to legislation: Policing and Crime Act 2017 is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) The written record is to be made in the presence of the individual where this is practicable.

### **43B Offence of not giving nationality**

- (1) A person commits an offence if, without reasonable excuse, the person fails to comply with a requirement imposed in accordance with section 43A, whether by providing false or incomplete information or by providing no information.
- (2) Information provided by a person in response to a requirement imposed in accordance with section 43A is not admissible in evidence in criminal proceedings against that person other than proceedings for an offence under this section.
- (3) A person who is guilty of an offence under subsection (1) is liable—
- (a) on summary conviction in England and Wales, to either or both of the following—
    - (i) imprisonment for a term not exceeding 51 weeks (or 6 months if the offence was committed before the commencement of section 281(5) of the Criminal Justice Act 2003);
    - (ii) a fine;
  - (b) on summary conviction in Northern Ireland, to either or both of the following—
    - (i) imprisonment for a term not exceeding 6 months;
    - (ii) a fine not exceeding level 5 on the standard scale.”

#### **Commencement Information**

**I238** S. 159 in force for specified purposes at Royal Assent, see s. 183

## **160 Requirement to produce nationality document**

In the UK Borders Act 2007, after section 46 (seizure of nationality documents) insert—

### **“46A Requirement to produce nationality document**

- (1) This section applies where—
- (a) an individual has been arrested on suspicion of the commission of an offence, and
  - (b) the individual is to be released after arrest (whether or not on bail)—
    - (i) before a decision is taken on whether the individual should be charged with an offence, or
    - (ii) after being charged with an offence.
- (2) Before the individual is released an immigration officer or a constable may give the individual a notice requiring the production of a nationality document not later than 72 hours after the individual is released.

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*Status: Point in time view as at 22/03/2018.*

*Changes to legislation: Policing and Crime Act 2017 is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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- (3) A notice may be given under subsection (2) only if the immigration officer or constable giving it suspects that the individual may not be a British citizen.
- (4) A notice under subsection (2) must be given in writing.
- (5) The notice must include statements that—
  - (a) the individual to whom it is given must produce the nationality document not later than 72 hours after the individual is released, and
  - (b) an offence may be committed if an individual fails to comply with a notice given under this section.
- (6) The notice must also set out—
  - (a) the person to whom the document must be produced, and
  - (b) the means by which the document must be produced.
- (7) In this section, and in sections 46B and 46C—

“nationality document” means a passport relating to the individual or, if there is no passport relating to the individual, one or more documents that enable the individual's nationality or citizenship to be established;

“passport” means—

  - (a) a United Kingdom passport (within the meaning of the Immigration Act 1971),
  - (b) a passport issued by or on behalf of the authorities of a country or territory outside the United Kingdom, or by or on behalf of an international organisation, or
  - (c) a document that can be used (in some or all circumstances) instead of a passport.

#### **46B Retention of nationality document etc**

- (1) An immigration officer or constable may retain a nationality document produced in response to a notice under section 46A (2) while the immigration officer or constable suspects that—
  - (a) the individual to whom the document relates may be liable to removal from the United Kingdom in accordance with a provision of the Immigration Acts, and
  - (b) retention of the document may facilitate the individual's removal.
- (2) Section 28I of the Immigration Act 1971 (seized material: access and copying) has effect in relation to a nationality document produced by an individual in response to a notice under section 46A (2) and retained by an immigration officer as if the nationality document had been seized when the individual had custody or control of it.
- (3) Section 21 of the Police and Criminal Evidence Act 1984 or Article 23 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (seized material: access and copying) has effect in relation to a nationality document produced by an individual in response to a notice under section 46A (2) and retained by a constable in England and Wales or Northern Ireland as if the nationality document had been seized when the individual had custody or control of it.

*Status: Point in time view as at 22/03/2018.*

*Changes to legislation: Policing and Crime Act 2017 is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### **46C Offence of failing to produce nationality document**

- (1) A person commits an offence if, without reasonable excuse, the person fails to comply with a notice given in accordance with section 46A.
- (2) The fact that a person deliberately destroyed or disposed of a nationality document is not a reasonable excuse for the purposes of subsection (1) unless the destruction or disposal was—
  - (a) for a reasonable cause, or
  - (b) beyond the control of the person charged with the offence.
- (3) In subsection (2)(a) “reasonable cause” does not include the purpose of—
  - (a) delaying the handling or resolution of a claim or application or the taking of a decision,
  - (b) increasing the chances of success of a claim or application, or
  - (c) complying with instructions given by a person who offers advice about, or facilitates, immigration into the United Kingdom, unless in the circumstances of the case it is unreasonable to expect non-compliance with the instructions or advice.
- (4) A person who is guilty of an offence under subsection (1) is liable—
  - (a) on summary conviction in England and Wales, to either or both of the following—
    - (i) imprisonment for a term not exceeding 51 weeks (or 6 months if the offence was committed before the commencement of section 281(5) of the Criminal Justice Act 2003);
    - (ii) a fine;
  - (b) on summary conviction in Scotland, to either or both of the following—
    - (i) imprisonment for a term not exceeding 12 months;
    - (ii) a fine not exceeding level 5 on the standard scale;
  - (c) on summary conviction in Northern Ireland, to either or both of the following—
    - (i) imprisonment for a term not exceeding 6 months;
    - (ii) a fine not exceeding level 5 on the standard scale.”

#### **Commencement Information**

**I239** S. 160 in force for specified purposes at Royal Assent, see s. 183

### **161 Pilot schemes**

- (1) The Secretary of State may by regulations made by statutory instrument provide for any provision of sections 159 and 160 to come into force for a period of time to be specified in or under the regulations for the purpose of assessing the effectiveness of the provision.
- (2) Regulations under subsection (1) may make different provision for different purposes or different areas.
- (3) More than one set of regulations may be made under subsection (1).



*Status: Point in time view as at 22/03/2018.*

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- (4) Provision included in regulations under subsection (1) does not affect the provision that may be included in relation to sections 159 and 160 in regulations under section 183 (commencement).

**Commencement Information**

**I240** S. 161 in force for specified purposes at Royal Assent, see s. 183

**162 Requirement to give information in criminal proceedings**

In the Courts Act 2003, after section 86 (alteration of place fixed for Crown Court trial) insert—

**“86A Requirement to give information in criminal proceedings**

- (1) A person who is a defendant in proceedings in a criminal court must provide his or her name, date of birth and nationality if required to do so at any stage of proceedings by the court.
- (2) Criminal Procedure Rules must specify the stages of proceedings at which requirements are to be imposed by virtue of subsection (1) (and may specify other stages of proceedings when such requirements may be imposed).
- (3) A person commits an offence if, without reasonable excuse, the person fails to comply with a requirement imposed by virtue of subsection (1), whether by providing false or incomplete information or by providing no information.
- (4) Information provided by a person in response to a requirement imposed by virtue of subsection (1) is not admissible in evidence in criminal proceedings against that person other than proceedings for an offence under this section.
- (5) A person guilty of an offence under subsection (3) is liable on summary conviction to either or both of the following—
  - (a) imprisonment for a term not exceeding 51 weeks (or 6 months if the offence was committed before the commencement of section 281(5) of the Criminal Justice Act 2003), or
  - (b) a fine.
- (6) The criminal court before which a person is required to provide his or her name, date of birth and nationality may deal with any suspected offence under subsection (3) at the same time as dealing with the offence for which the person was already before the court.
- (7) In this section a “criminal court” is, when dealing with any criminal cause or matter—
  - (a) the Crown Court;
  - (b) a magistrates' court.”

**Commencement Information**

**I241** S. 162 in force for specified purposes at Royal Assent, see s. 183

*Status: Point in time view as at 22/03/2018.*

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**I242** S. 162 in force at 13.11.2017 in so far as not already in force by S.I. 2017/1017, reg. 2

### *Seizure etc of travel documents*

#### **163 Powers to seize etc invalid travel documents**

- (1) Schedule 8 to the Anti-social Behaviour, Crime and Policing Act 2014 (Powers to seize invalid passports etc) is amended as follows.
- (2) For the italic heading before paragraph 3 substitute “ Powers of search and seizure etc: places other than ports ”.
- (3) In paragraph 3, for sub-paragraph (1) substitute—
  - “(1) An examining officer who is a constable or a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971 may exercise any of the powers under this paragraph, at a place that is not a port, if the examining officer reasonably believes that a person is in possession of a cancelled UK passport or an invalid non-UK travel document.”
- (4) In that paragraph, in sub-paragraph (2)—
  - (a) for “This paragraph applies to a passport” substitute “A passport is “a cancelled UK passport”;
  - (b) at the end of paragraph (a) insert “ and ”;
  - (c) omit the “and” at the end of paragraph (b);
  - (d) omit paragraph (c).
- (5) After sub-paragraph (2) insert—
 

“(2A) An invalid travel document is “an invalid non-UK travel document” if it is, or appears to be, a passport or other document which has been issued by or for the government of a state other than the United Kingdom.”
- (6) In that paragraph—
  - (a) in sub-paragraph (3)—
    - (i) in paragraph (a), for “the constable” substitute “ the examining officer ”;
    - (ii) in paragraph (b), for “the constable” substitute “ the examining officer ”;
    - (iii) in paragraph (d), for “the constable believes” substitute “ the examining officer reasonably believes ”;
  - (b) in sub-paragraph (4)—
    - (i) in paragraph (c), for “the constable believes” substitute “ the examining officer reasonably believes ”;
    - (ii) in paragraph (d), for “the constable” substitute “ the examining officer ”;
  - (c) in sub-paragraph (5)—
    - (i) in the opening words, for “A constable” substitute “ An examining officer ”;
    - (ii) in sub-paragraph (b), for “the constable's behalf” substitute “ the examining officer's behalf ”.

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(7) After paragraph 3 insert—

**3A “Powers of entry, search and seizure etc: constables**

- (1) A constable may exercise any of the powers under this paragraph in relation to any premises, other than premises forming part of a port, if the constable reasonably believes that a cancelled UK passport or an invalid non-UK travel document is on the premises (whether or not in the possession of a person who is also on the premises).
  - (2) The powers are—
    - (a) to enter the premises;
    - (b) to search the premises for travel documents and to take possession of any that the constable finds;
    - (c) to inspect any travel document taken and to retain it while its validity is checked;
    - (d) (subject to paragraph 4) to retain any travel document taken that the constable reasonably believes to be invalid.
  - (3) A constable—
    - (a) may if necessary use reasonable force for the purpose of exercising a power under this paragraph;
    - (b) may authorise a person to carry out on the constable's behalf a search under this paragraph.
  - (4) This paragraph does not affect any power of a constable under paragraph 3(3), (4)(a) to (c) or (5) in relation to a person on any premises entered under sub-paragraph (2)(a).”
- (8) In paragraph 4 (retention or return of documents seized)—
- (a) in sub-paragraph (1), for “2(2)(c) or 3(3)(c)” substitute “ 2(2)(c), 3(3)(c) or 3A(2)(c) ”;
  - (b) after sub-paragraph (2) insert—

“(2A) If it is established that a travel document taken from any premises under paragraph 3A—

    - (a) is valid, or
    - (b) is invalid only because it has expired,

it must be returned to the person to whom it was issued straight away.”;
  - (c) after sub-paragraph (3) insert—

“(3A) A travel document taken from premises under paragraph 3A must be returned to the person to whom it was issued before the end of the period of 7 days beginning with the day on which it was taken, unless during that period it is established that the document is invalid for some reason other than expiry.”;
  - (d) in sub-paragraph (4), for “(2)(b) or (3)” substitute “ (2)(b), (2A), (3) or (3A) ”;
  - (e) in that sub-paragraph, after “from whom he or she took the document” insert “ or (as the case may be) to whom it was issued ”;
  - (f) in sub-paragraph (5), for “(2) or (3)” substitute “ (2), (2A), (3) or (3A) ”.

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- (9) In paragraph 5 (offences), in sub-paragraph (2), for “a search under paragraph 2 or 3” substitute “ the exercise of a power of search under paragraph 2, 3 or 3A, or the exercise of a power of entry under paragraph 3A, ”.
- (10) In paragraph 6 (power of arrest), for “2” substitute “ 2 or 3 ”.

#### **Commencement Information**

**I243** S. 163 in force for specified purposes at Royal Assent, see s. 183

### *Pardons for certain abolished offences etc*

#### **164 Posthumous pardons for convictions etc of certain abolished offences: England and Wales**

- (1) A person who has been convicted of, or cautioned for, an offence specified in subsection (3) and who has died before this section comes into force is pardoned for the offence if two conditions are met.
- (2) Those conditions are that—
- (a) the other person involved in the conduct constituting the offence consented to it and was aged 16 or over, and
  - (b) any such conduct at the time this section comes into force would not be an offence under section 71 of the Sexual Offences Act 2003 (sexual activity in a public lavatory).
- (3) The offences to which subsection (1) applies are—
- (a) an offence under section 12 of the Sexual Offences Act 1956 (buggery) or under section 13 of that Act (gross indecency between men);
  - (b) an offence under any of the following provisions (which made provision similar to section 12 of the Sexual Offences Act 1956)—
    - (i) 25 Hen. 8 c. 6 (1533) (an Act for the punishment of the vice of buggery);
    - (ii) 2 & 3 Edw. 6 c. 29 (1548) (an Act against sodomy);
    - (iii) 5 Eliz. 1 c. 17 (1562) (an Act for the punishment of the vice of buggery);
    - (iv) section 15 of 9 Geo. 4 c. 31 (1828) (an Act for consolidating and amending the law relating to offences against the person);
    - (v) section 61 of the Offences against the Person Act 1861;
  - (c) an offence under section 11 of the Criminal Law Amendment Act 1885 (which made provision similar to section 13 of the Sexual Offences Act 1956).
- (4) The list of offences in subsection (3) is to be read as if it also included the corresponding service offences and, for that purpose, the corresponding service offences are—
- (a) an offence under an enactment set out in subsection (5) which is such an offence by virtue of any of the enactments mentioned in subsection (3);
  - (b) an offence under section 32 of 13 Chas. 2 c. 9 (1661) (An Act for the regulation and better government of the navy);

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- (c) an offence under section 29 of 22 Geo. 2 c. 33 (1749) (An Act for amending and consolidating the laws relating to the navy);
  - (d) an offence of sodomy mentioned in, and punishable under, section 38 of the Naval Discipline Act 1860, section 38 of the Naval Discipline Act 1861, section 41 of the Naval Discipline Act 1864 or section 45 of the Naval Discipline Act 1866.
- (5) The enactments referred to in subsection (4)(a) are—
- (a) section 45 of the Naval Discipline Act 1866;
  - (b) section 41 of the Army Act 1881;
  - (c) section 41 of the Air Force Act 1917;
  - (d) section 70 of the Army Act 1955;
  - (e) section 70 of the Air Force Act 1955;
  - (f) section 42 of the Naval Discipline Act 1957.
- (6) The reference in subsection (2)(b) to an offence under section 71 of the Sexual Offences Act 2003 is to be read as including a reference to an offence under section 42 of the Armed Forces Act 2006 which is such an offence by virtue of section 71 of that Act of 2003.
- (7) Subject to subsection (8), the following provisions of section 101 of the Protection of Freedoms Act 2012 apply for the purposes of this section and section 167(1) (so far as relating to this section) as they apply for the purposes of Chapter 4 of Part 5 of that Act—
- (a) in subsection (1), the definitions of “caution”, “conviction”, and “sentence” (and the related definition of “service disciplinary proceedings”);
  - (b) subsections (2) and (5) to (7).
- (8) The definition of “service disciplinary proceedings” in section 101(1) of the 2012 Act applies in accordance with subsection (7) with the modification that it also includes any proceedings (whether in England and Wales or elsewhere) under—
- (a) 13 Chas. 2 c. 9 (1661) (An Act for the regulation and better government of the navy),
  - (b) 22 Geo. 2 c. 33 (1749) (An Act for amending and consolidating the laws relating to the navy), or
  - (c) the Naval Discipline Act 1860, the Naval Discipline Act 1861 or the Naval Discipline Act 1864.
- (9) Except in relation to service disciplinary proceedings, this section applies only in relation to persons convicted or cautioned in England and Wales.

## **165 Other pardons for convictions etc of certain abolished offences: England and Wales**

- (1) This section applies to a person who has been convicted of, or cautioned for, an offence mentioned in section 92(1) of the Protection of Freedoms Act 2012 and who is living at the time this section comes into force.
- (2) If, at the time this section comes into force, the person's conviction or caution has become a disregarded conviction or caution under Chapter 4 of Part 5 of the Protection of Freedoms Act 2012, the person is pardoned for the offence.

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- (3) If, at any time after this section comes into force, the person's conviction or caution becomes a disregarded conviction or caution under Chapter 4 of Part 5 of the Protection of Freedoms Act 2012, the person is also pardoned for the offence at that time.
- (4) Expressions used in this section or section 167(1) (so far as relating to this section) and in Chapter 4 of Part 5 of the Protection of Freedoms Act 2012 have the same meaning in this section or (as the case may be) section 167(1) as in that Chapter (see section 101 of that Act).

## **166 Power to provide for disregards and pardons for additional abolished offences: England and Wales**

- (1) The Secretary of State may by regulations made by statutory instrument amend section 92 of the Protection of Freedoms Act 2012 (power of Secretary of State to disregard convictions or cautions) so as to add further offences to the list of offences specified in subsection (1) of that section.
- (2) An offence may be added to that list only if—
  - (a) it was an offence under the law of England and Wales,
  - (b) it has been repealed or, in the case of an offence at common law, abolished, and
  - (c) either—
    - (i) the offence expressly regulated homosexual activity, or
    - (ii) although the offence did not expressly regulate homosexual activity, it appears to the Secretary of State that those responsible for investigating occurrences of the offence targeted occurrences involving, or connected with, homosexual activity.
- (3) Regulations under subsection (1) adding an offence may also amend section 92 so as to provide that, in relation to the offence, condition A is that it appears to the Secretary of State that matters specified in the amendment apply (in substitution for the matters specified in subsection (3)(a) and (b) of that section).
- (4) Regulations under subsection (1) may make consequential amendments of Chapter 4 of Part 5 of the 2012 Act.
- (5) Regulations under subsection (1) adding an offence must also provide for any person who has been convicted of, or cautioned for, the offence to be pardoned where—
  - (a) the person has died before the regulations come into force or the person dies during the period of 6 months beginning with the day on which they come into force, and
  - (b) the conditions specified in the regulations are met.
- (6) Those conditions must correspond to the matters that are specified in condition A in section 92 of the 2012 Act as it applies in relation to the offence (that is, the matters which must appear to the Secretary of State to apply in order for condition A to be met).
- (7) Subsection (5)(a) does not apply in relation to a person who dies during the period of 6 months if, before the person's death, the person's conviction of, or caution for, the offence becomes a disregarded conviction or caution under Chapter 4 of Part 5 of the 2012 Act (and, accordingly, the person is pardoned for the offence before death under section 165(3) of this Act).

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- (8) The regulations must make provision which has a comparable effect in relation to the pardons provided for by the regulations and the offences to which those pardons relate as section 164(4) to (9) of this Act has in relation to the pardons provided for by section 164(1) to (3) and the offences to which they relate.
- (9) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (10) In this section, “caution”, “conviction”, “disregarded caution” and “disregarded conviction” have the same meaning as in Chapter 4 of Part 5 of the 2012 Act (see section 101 of that Act).

#### Commencement Information

**I244** S. 166 in force for specified purposes at Royal Assent, see s. 183

### 167 Sections 164 to 166: supplementary

- (1) A pardon under section 164 or 165, or under regulations under section 166, does not—
- affect any conviction, caution or sentence, or
  - give rise to any right, entitlement or liability.
- (2) Nothing in this section or in sections 164 to 166 or regulations under section 166 affects the prerogative of mercy.

### 168 Disregarding certain convictions etc for abolished offences: Northern Ireland

- (1) After Chapter 4 of Part 5 of the Protection of Freedoms Act 2012 (disregarding certain convictions for buggery etc) insert—

#### “CHAPTER 5

##### DISREGARDING CERTAIN CONVICTIONS FOR BUGGERY ETC: NORTHERN IRELAND

##### *General*

#### 101A Power of Department of Justice to disregard certain convictions or cautions

- (1) A person who has in Northern Ireland been convicted of, or cautioned for, an offence under—
- Article 19 of the Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247 (N.I. 13)) (buggery),
  - Article 7 of the Homosexual Offences (Northern Ireland) Order 1982 (S.I. 1982/1536 (N.I. 19)) (procuring others to commit homosexual acts),
  - section 61 of the Offences against the Person Act 1861 (buggery), or

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- (d) section 11 of the Criminal Law Amendment Act 1885 (indecent acts between men),  
 may apply to the Department of Justice in Northern Ireland for the conviction or caution to become a disregarded conviction or caution.
- (2) A conviction or caution becomes a disregarded conviction or caution when conditions A and B are met.
- (3) In relation to an offence under Article 7 of the Homosexual Offences (Northern Ireland) Order 1982, Condition A is that the Department of Justice in Northern Ireland decides that it appears that—
- (a) the conduct procured was conduct involving persons who consented to it and were aged 17 or over (whether or not that conduct occurred), and
  - (b) the conduct procured would not now be an offence under Article 75 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)) (sexual activity in a public lavatory).
- (4) In relation to any other offence mentioned in subsection (1), Condition A is that the Department of Justice in Northern Ireland decides that it appears that—
- (a) the other person involved in the conduct constituting the offence consented to it and was aged 17 or over, and
  - (b) any such conduct now would not be an offence under Article 75 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)).
- (5) Condition B is that—
- (a) the Department of Justice in Northern Ireland has given notice of the decision to the applicant under section 101C(4)(b), and
  - (b) the period of 14 days beginning with the day on which the notice was given has ended.
- (6) Sections 101D to 101G explain the effect of a conviction or caution becoming a disregarded conviction or caution.

### **101B Applications to the Department of Justice**

- (1) An application under section 101A must be in writing.
- (2) It must state—
- (a) the name, address and date of birth of the applicant,
  - (b) the name and address of the applicant at the time of the conviction or caution,
  - (c) so far as known to the applicant, the time when and the place where the conviction was made or the caution given and, for a conviction, the case number, and
  - (d) such other information as the Department of Justice in Northern Ireland may require.
- (3) It may include representations by the applicant or written evidence about the matters mentioned in condition A in section 101A.



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### 101C Procedure for decisions by the Department of Justice

- (1) In considering whether to make a decision of the kind mentioned in condition A in section 101A, the Department of Justice in Northern Ireland must, in particular, consider—
  - (a) any representations or evidence included in the application, and
  - (b) any available record of the investigation of the offence and of any proceedings relating to it that the Department of Justice in Northern Ireland considers to be relevant.
- (2) The Department of Justice in Northern Ireland may not hold an oral hearing for the purpose of deciding whether to make a decision of the kind mentioned in condition A in section 101A.
- (3) Subsection (4) applies if the Department of Justice in Northern Ireland—
  - (a) decides that it appears as mentioned in condition A in section 101A, or
  - (b) makes a different decision in relation to the matters mentioned in that condition.
- (4) The Department of Justice in Northern Ireland must—
  - (a) record the decision in writing, and
  - (b) give notice of it to the applicant.

#### *Effect of disregard*

### 101D Effect of disregard on police and other records

- (1) The Department of Justice in Northern Ireland must by notice direct the relevant data controller to delete details, contained in relevant official records, of a disregarded conviction or caution.
- (2) A notice under subsection (1) may be given at any time after condition A in section 101A is met but no deletion may have effect before condition B in that section is met.
- (3) Subject to that, the relevant data controller must delete the details as soon as reasonably practicable.
- (4) Having done so, the relevant data controller must give notice to the person who has the disregarded conviction or caution that the details of it have been deleted.
- (5) In this section—
 

“delete”, in relation to such relevant official records as may be prescribed, means record with the details of the conviction or caution concerned—

  - (a) the fact that it is a disregarded conviction or caution, and
  - (b) the effect of it being such a conviction or caution,

“the general names database” means the names database held by the Secretary of State for the use of constables,

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“the Northern Ireland names database” means the names database maintained by the Department of Justice in Northern Ireland for the purpose of recording convictions and cautions,

“official records” means records containing information about persons convicted of, or cautioned for, offences and kept by any court, police force, government department or local or other public authority in Northern Ireland for the purposes of its functions,

“prescribed” means prescribed by order of the Department of Justice in Northern Ireland,

“relevant data controller” means—

(a) in relation to the general names database or the Northern Ireland names database, the Chief Constable of the Police Service of Northern Ireland,

(b) in relation to other relevant official records, such persons as may be prescribed,

“relevant official records” means—

(a) the general names database,

(b) the Northern Ireland names database, and

(c) such other official records as may be prescribed.

(6) An order under this section may make different provision for different purposes.

(7) Any power to make an order under this section is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

(8) A statutory rule containing an order under this section is subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I))).

### **101E Effect of disregard for disclosure and other purposes**

(1) A person who has a disregarded conviction or caution is to be treated for all purposes in law as if the person has not—

(a) committed the offence,

(b) been charged with, or prosecuted for, the offence,

(c) been convicted of the offence,

(d) been sentenced for the offence, or

(e) been cautioned for the offence.

(2) In particular—

(a) no evidence is to be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in Northern Ireland to prove that the person has done, or undergone, anything within subsection (1)(a) to (e), and

(b) the person is not, in any such proceedings, to be asked (and, if asked, is not to be required to answer) any question relating to the person's past which cannot be answered without acknowledging or referring to the conviction or caution or any circumstances ancillary to it.

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- (3) Where a question is put to a person, other than in such proceedings, seeking information with respect to the previous convictions, cautions, offences, conduct or circumstances of any person—
  - (a) the question is to be treated as not relating to any disregarded conviction or caution, or any circumstances ancillary to it (and the answer to the question may be framed accordingly), and
  - (b) the person questioned is not to be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose that conviction or caution or any circumstances ancillary to it in answering the question.
- (4) Any obligation imposed on any person by any enactment or rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person is not to extend to requiring the disclosure of a disregarded conviction or caution or any circumstances ancillary to it.
- (5) A disregarded conviction or caution, or any circumstances ancillary to it, is not a proper ground for—
  - (a) dismissing or excluding a person from any office, profession, occupation or employment, or
  - (b) prejudicing the person in any way in any office, profession, occupation or employment.
- (6) This section is subject to section 101F but otherwise applies despite any enactment or rule of law to the contrary.
- (7) See also section 101G (meaning of “proceedings before a judicial authority” and “circumstances ancillary to a conviction or caution”).

#### **101F Saving for Royal pardons etc**

Nothing in section 101E affects any right of Her Majesty, by virtue of Her Royal prerogative or otherwise, to grant a free pardon, to quash any conviction or sentence, or to commute any sentence.

#### **101G Section 101E: supplementary**

- (1) In section 101E, “proceedings before a judicial authority” includes (in addition to proceedings before any of the ordinary courts of law) proceedings before any tribunal, body or person having power—
  - (a) by virtue of any enactment, law, custom or practice,
  - (b) under the rules governing any association, institution, profession, occupation or employment, or
  - (c) under any provision of an agreement providing for arbitration with respect to questions arising under that agreement,
 to determine any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question.
- (2) For the purposes of section 101E, circumstances ancillary to a conviction are any circumstances of—
  - (a) the offence which was the subject of the conviction;

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- (b) the conduct constituting the offence;
  - (c) any process or proceedings preliminary to the conviction;
  - (d) any sentence imposed in respect of the conviction;
  - (e) any proceedings (whether by appeal or otherwise) for reviewing the conviction or any such sentence;
  - (f) anything done in pursuance of, or undergone in compliance with, any such sentence.
- (3) For the purposes of section 101E, circumstances ancillary to a caution are any circumstances of—
- (a) the offence which was the subject of the caution;
  - (b) the conduct constituting the offence;
  - (c) any process preliminary to the caution (including consideration by any person of how to deal with the offence and the procedure for giving the caution);
  - (d) any proceedings for the offence which take place before the caution is given;
  - (e) anything which happens after the caution is given for the purposes of bringing any such proceedings to an end;
  - (f) any judicial review proceedings relating to the caution.

#### *Appeals and other supplementary provision*

#### **101H Appeal against refusal to disregard convictions or caution**

- (1) The applicant may appeal to the High Court in Northern Ireland if—
  - (a) the Department of Justice in Northern Ireland makes a decision of the kind mentioned in section 101C (3)(b), and
  - (b) the High Court gives permission for an appeal against the decision.
- (2) On such an appeal, the High Court must make its decision only on the basis of the evidence that was available to the Department of Justice in Northern Ireland.
- (3) If the High Court decides that it appears as mentioned in condition A in section 101A, it must make an order to that effect.
- (4) Otherwise, it must dismiss the appeal.
- (5) A conviction or caution to which an order under subsection (3) relates becomes a disregarded conviction or caution when the period of 14 days beginning with the day on which the order was made has ended.
- (6) There is no appeal from a decision of the High Court under this section.

#### **101I Advisers**

- (1) The Department of Justice in Northern Ireland may appoint persons to advise whether, in any case referred to them by the Department of Justice in Northern Ireland, the Department of Justice in Northern Ireland should decide as mentioned in condition A in section 101A.

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*Status: Point in time view as at 22/03/2018.*

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- (2) The Department of Justice in Northern Ireland may disclose to a person so appointed such information (including anything within section 101C (1)(a) or (b)) as the Department of Justice considers relevant to the provision of such advice.
- (3) The Department of Justice in Northern Ireland may pay expenses and allowances to a person so appointed.

### 101J Interpretation: Chapter 5

- (1) In this Chapter—
  - “caution” means a caution or a warning given to a person in Northern Ireland in respect of an offence which, at the time the caution or warning is given, that person has admitted,
  - “conviction” includes—
    - (a) a conviction in respect of which an order has been made discharging the person concerned absolutely or conditionally, and
    - (b) a finding in any criminal proceedings (including a finding linked with a finding of insanity) that a person has committed an offence or done the act or made the omission charged,
  - “disregarded caution” is a caution which has become a disregarded caution by virtue of this Chapter,
  - “disregarded conviction” is a conviction which has become a disregarded conviction by virtue of this Chapter,
  - “document” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its provision or production include providing or producing a copy of the information in legible form,
  - “information” includes documents,
  - “notice” means notice in writing,
  - “official records” has the meaning given by section 101D(5).
- (2) Paragraph (a) of the definition of “conviction” applies despite Article 6 of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)) (which deems a conviction of a person discharged not to be a conviction).
- (3) In this Chapter, a reference to an offence includes—
  - (a) a reference to an attempt, conspiracy or incitement to commit that offence, and
  - (b) a reference to aiding, abetting, counselling or procuring the commission of that offence.
- (4) In the case of an attempt, conspiracy or incitement, the references in this Chapter to the conduct constituting the offence are references to the conduct to which the attempt, conspiracy or incitement related (whether or not that conduct occurred).
- (5) For the purposes of subsections (3) and (4) an attempt to commit an offence includes conduct which—

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- (a) consisted of frequenting with intent to commit the offence any river, canal, street, highway, place of public resort or other location mentioned in section 4 of the Vagrancy Act 1824 (as it then had effect) in connection with frequenting by suspected persons or reputed thieves, and
  - (b) was itself an offence under that section.”
- (2) In Article 2 of the Rehabilitation of Offenders (Northern Ireland) Order 1978 (S.I. 1978/1908 (N.I. 27) (interpretation), after paragraph (3) insert—
- “(3A) This Order does not apply to any disregarded conviction or caution within the meaning of Chapter 5 of Part 5 of the Protection of Freedoms Act 2012.
- (3B) Accordingly, references in this Order to a conviction or caution do not include references to any such disregarded conviction or caution.”
- (3) In the heading of Chapter 4 of Part 5 of the Protection of Freedoms Act 2012, at the end insert “ : England and Wales ”.
- (4) In section 92 of that Act, after subsection (5) insert—
- “(6) Except in relation to service disciplinary proceedings, this section applies only in relation to persons convicted or cautioned in England and Wales.”

#### **Commencement Information**

**I245** S. 168 in force for specified purposes at Royal Assent, see s. 183

### **169 Posthumous pardons for convictions etc of certain abolished offences: Northern Ireland**

- (1) A person who has in Northern Ireland been convicted of, or cautioned for, an offence specified in subsection (2) and who has died before this section comes into force is pardoned for the offence if the conditions that apply under this section in relation to the offence are met.
- (2) The offences to which subsection (1) applies are—
- (a) an offence under Article 19 of the Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247 (N.I. 13)) (buggery);
  - (b) an offence under Article 7 of the Homosexual Offences (Northern Ireland) Order 1982 (S.I. 1982/1536 (N.I. 19)) (procuring others to commit homosexual acts);
  - (c) an offence under any of the following earlier provisions—
    - (i) 10 Chas. 1 sess. 2 c. 20 (1634) (an Act for the punishment of the vice of buggery);
    - (ii) section 18 of 10 Geo. 4 c. 34 (1829) (an Act for consolidating and amending the statutes in Ireland relating to offences against the person) (buggery);
    - (iii) section 61 of the Offences against the Person Act 1861 (buggery);
    - (iv) section 11 of the Criminal Law Amendment Act 1885 (gross indecency between men).

*Status: Point in time view as at 22/03/2018.*

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- (3) In relation to an offence under Article 7 of the Homosexual Offences (Northern Ireland) Order 1982, the conditions that apply are that—
- (a) the conduct procured was conduct involving persons who consented to it and were aged 17 or over (whether or not that conduct occurred), and
  - (b) the conduct procured would not now be an offence under Article 75 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)) (sexual activity in a public lavatory).
- (4) In relation to any other offence mentioned in subsection (2), the conditions that apply are that—
- (a) the other person involved in the conduct constituting the offence consented to it and was aged 17 or over, and
  - (b) any such conduct at the time this section comes into force would not be an offence under Article 75 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)) (sexual activity in a public lavatory).
- (5) The following provisions of section 101J of the Protection of Freedoms Act 2012 apply for the purposes of this section and section 172(1) (so far as relating to this section) as they apply for the purposes of Chapter 5 of Part 5 of that Act—
- (a) in subsection (1), the definitions of “caution” and “conviction”;
  - (b) subsections (2) to (5).

#### Commencement Information

**I246** [S. 169](#) in force for specified purposes at Royal Assent, see [s. 183](#)

### 170 Other pardons for convictions etc of certain abolished offences: Northern Ireland

- (1) This section applies to a person who has in Northern Ireland been convicted of, or cautioned for, an offence mentioned in section 101A(1) of the Protection of Freedoms Act 2012 and who is living at the time this section comes into force.
- (2) If, at any time after this section comes into force, the person's conviction or caution becomes a disregarded conviction or caution under Chapter 5 of Part 5 of the Protection of Freedoms Act 2012, the person is also pardoned for the offence at that time.
- (3) Expressions used in this section or section 172(1) (so far as relating to this section) and in Chapter 5 of Part 5 of the Protection of Freedoms Act 2012 have the same meaning in this section or (as the case may be) section 172(1) as in that Chapter (see section 101J of that Act).

#### Commencement Information

**I247** [S. 170](#) in force for specified purposes at Royal Assent, see [s. 183](#)

*Status: Point in time view as at 22/03/2018.*

*Changes to legislation: Policing and Crime Act 2017 is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## **171 Power to provide for disregards and pardons for additional abolished offences: Northern Ireland**

- (1) The Department of Justice in Northern Ireland may by regulations amend section 101A of the Protection of Freedoms Act 2012 (power of Department of Justice to disregard convictions or cautions) so as to add further offences to the list of offences specified in subsection (1) of that section.
- (2) An offence may be added to that list only if—
  - (a) it was an offence under the law of Northern Ireland (or, in the case of an offence that applied before Northern Ireland became a separate legal jurisdiction, an offence under the law of Ireland),
  - (b) it has been repealed or, in the case of an offence at common law, abolished, and
  - (c) either—
    - (i) the offence expressly regulated homosexual activity, or
    - (ii) although the offence did not expressly regulate homosexual activity, it appears to the Department of Justice that those responsible for investigating occurrences of the offence targeted occurrences involving, or connected with, homosexual activity.
- (3) Regulations under subsection (1) adding an offence may also amend section 101A so as to provide that, in relation to the offence, condition A is that it appears to the Department of Justice that matters specified in the amendment apply (in substitution for the matters specified in subsection (4)(a) and (b) of that section).
- (4) Regulations under subsection (1) may make consequential amendments of Chapter 5 of Part 5 of the 2012 Act.
- (5) Regulations under subsection (1) adding an offence must also provide for any person who has been convicted of, or cautioned for, the offence to be pardoned where—
  - (a) the person has died before the regulations come into force or the person dies during the period of 6 months beginning with the day on which they come into force, and
  - (b) the conditions specified in the regulations are met.
- (6) Those conditions must correspond to the matters that are specified in condition A in section 101A of the 2012 Act as it applies in relation to the offence (that is, the matters which must appear to the Department of Justice to apply in order for condition A to be met).
- (7) Subsection (5)(a) does not apply in relation to a person who dies during the period of 6 months if, before the person's death, the person's conviction of, or caution for, the offence becomes a disregarded conviction or caution under Chapter 5 of Part 5 of the 2012 Act (and, accordingly, the person is pardoned for the offence before death under section 170(2) of this Act).
- (8) The regulations must make provision which has a comparable effect in relation to the pardons provided for by the regulations and the offences to which those pardons relate as section 169(5) of this Act has in relation to the pardons provided for by section 169(1) to (4) and the offences to which they relate.
- (9) The power to make regulations under subsection (1) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573) (N.I. 12)).



*Status: Point in time view as at 22/03/2018.*

**Changes to legislation:** Policing and Crime Act 2017 is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (10) Regulations under this section may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (11) In this section, “caution”, “conviction”, “disregarded caution” and “disregarded conviction” have the same meaning as in Chapter 5 of Part 5 of the 2012 Act (see section 101J of that Act).

#### Commencement Information

**I248** S. 171 in force for specified purposes at Royal Assent, see s. 183

### 172 Sections 169 to 171: supplementary

- (1) A pardon under section 169 or 170, or under regulations under section 171, does not—
- affect any conviction, caution or sentence, or
  - give rise to any right, entitlement or liability.
- (2) Nothing in this section or in sections 169 to 171 or regulations under section 171 affects the prerogative of mercy.

#### Commencement Information

**I249** S. 172 in force for specified purposes at Royal Assent, see s. 183

#### *Forced marriage: anonymity for victims*

### 173 Anonymity of victims of forced marriage: England and Wales

- (1) In Part 10 of the Anti-social Behaviour, Crime and Policing Act 2014 (forced marriage), after section 122 insert—

#### **“122A Anonymity of victims of forced marriage: England and Wales**

Schedule 6A (anonymity of victims of forced marriage) has effect.”

- (2) Insert, as Schedule 6A to that Act, the following Schedule—

#### “SCHEDULE 6A

Section 122A

#### ANONYMITY OF VICTIMS OF FORCED MARRIAGE

#### *Prohibition on the identification of victims in publications*

- (1) This paragraph applies where an allegation has been made that an offence of forced marriage has been committed against a person.
- (2) No matter likely to lead members of the public to identify the person, as the person against whom the offence is alleged to have been committed, may be included in any publication during the person's lifetime.

*Status: Point in time view as at 22/03/2018.*

**Changes to legislation:** *Policing and Crime Act 2017 is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) In any criminal proceedings before a court, the court may direct that the restriction imposed by sub-paragraph (2) is not to apply (whether at all or to the extent specified in the direction) if the court is satisfied that either of the following conditions is met.
- (4) The first condition is that the conduct of a person's defence at a trial of an offence of forced marriage would be substantially prejudiced if the direction were not given.
- (5) The second condition is that—
  - (a) the effect of sub-paragraph (2) is to impose a substantial and unreasonable restriction on the reporting of the proceedings, and
  - (b) it is in the public interest to remove or relax the restriction.
- (6) A direction under sub-paragraph (3) does not affect the operation of sub-paragraph (2) at any time before the direction is given.
- (7) In this paragraph, “the court” means a magistrates' court or the Crown Court.

*Penalty for breaching prohibition imposed by paragraph 1(2)*

- 2 (1) If anything is included in a publication in contravention of the prohibition imposed by paragraph 1(2), each of the persons responsible for the publication is guilty of an offence.
- (2) A person guilty of an offence under this paragraph is liable, on summary conviction, to a fine.
- (3) The persons responsible for a publication are as follows—

<b><i>Type of publication</i></b>	<b><i>Persons responsible</i></b>
Newspaper or other periodical	Any person who is a proprietor, editor or publisher of the newspaper or periodical.
Relevant programme	Any person who— <ol style="list-style-type: none"> <li>(a) is a body corporate engaged in providing the programme service in which the programme is included, or</li> <li>(b) has functions in relation to the programme corresponding to those of an editor of a newspaper.</li> </ol>
Any other kind of publication	Any person who publishes the publication.

- (4) If an offence under this paragraph is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
  - (a) a senior officer of a body corporate, or
  - (b) a person purporting to act in such a capacity,
 the senior officer or person (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (5) “Senior officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate; and for this purpose

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“director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

- (6) Proceedings for an offence under this paragraph may not be instituted except by, or with the consent of, the Attorney General.

*Offence under paragraph 2: defences*

- 3 (1) This paragraph applies where a person (“the defendant”) is charged with an offence under paragraph 2 as a result of the inclusion of any matter in a publication.
- (2) It is a defence for the defendant to prove that, at the time of the alleged offence, the defendant was not aware, and did not suspect or have reason to suspect, that—
- (a) the publication included the matter in question, or
  - (b) the allegation in question had been made.
- (3) It is a defence for the defendant to prove that the publication in which the matter appeared was one in respect of which the victim had given written consent to the appearance of matter of that description.
- (4) The defence in sub-paragraph (3) is not available if—
- (a) the victim was under the age of 16 at the time when his or her consent was given, or
  - (b) a person interfered unreasonably with the peace and comfort of the victim with a view to obtaining his or her consent.
- (5) In this paragraph, “the victim” means the person against whom the offence of forced marriage in question is alleged to have been committed.

*Special rules for providers of information society services*

- 4 (1) Paragraph 2 applies to a domestic service provider who, in the course of providing information society services, publishes prohibited matter in an EEA state other than the United Kingdom (as well as to a person, of any description, who publishes prohibited matter in England and Wales).
- (2) Proceedings for an offence under paragraph 2, as it applies to a domestic service provider by virtue of sub-paragraph (1), may be taken at any place in England and Wales.
- (3) Nothing in this paragraph affects the operation of any of paragraphs 6 to 8.
- 5 (1) Proceedings for an offence under paragraph 2 may not be taken against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the derogation condition is met.
- (2) The derogation condition is that taking proceedings—
- (a) is necessary for the purposes of the public interest objective,
  - (b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective, and
  - (c) is proportionate to that objective.
- (3) “The public interest objective” means the pursuit of public policy.

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- 6 (1) A service provider does not commit an offence under paragraph 2 by providing access to a communication network or by transmitting, in a communication network, information provided by a recipient of the service, if the service provider does not—
  - (a) initiate the transmission,
  - (b) select the recipient of the transmission, or
  - (c) select or modify the information contained in the transmission.
- (2) For the purposes of sub-paragraph (1)—
  - (a) providing access to a communication network, and
  - (b) transmitting information in a communication network,include the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.
- (3) Sub-paragraph (2) does not apply if the information is stored for longer than is reasonably necessary for the transmission.
- 7 (1) A service provider does not commit an offence under paragraph 2 by storing information provided by a recipient of the service for transmission in a communication network if the first and second conditions are met.
- (2) The first condition is that the storage of the information—
  - (a) is automatic, intermediate and temporary, and
  - (b) is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request.
- (3) The second condition is that the service provider—
  - (a) does not modify the information,
  - (b) complies with any conditions attached to having access to the information, and
  - (c) if sub-paragraph (4) applies, promptly removes the information or disables access to it.
- (4) This sub-paragraph applies if the service provider obtains actual knowledge that—
  - (a) the information at the initial source of the transmission has been removed from the network,
  - (b) access to it has been disabled, or
  - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.
- 8 (1) A service provider does not commit an offence under paragraph 2 by storing information provided by a recipient of the service if—
  - (a) the service provider had no actual knowledge when the information was provided that it was, or contained, a prohibited publication, or
  - (b) on obtaining actual knowledge that the information was, or contained, a prohibited publication, the service provider promptly removed the information or disabled access to it.
- (2) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

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### Interpretation

#### 9 (1) In this Schedule—

“domestic service provider” means a service provider established in England and Wales, Scotland or Northern Ireland;

“the E-Commerce Directive” means Directive [2000/31/EC](#) of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce);

“information society services”—

(a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive [98/34/EC](#) of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and

(b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”;

“non-UK service provider” means a service provider established in an EEA state other than the United Kingdom;

“offence of forced marriage” means an offence under section 121;

“programme service” has the same meaning as in the Broadcasting Act 1990 (see section 201(1) of that Act);

“prohibited material” means any material the publication of which contravenes paragraph 1(2);

“publication” includes any speech, writing, relevant programme or other communication (in whatever form) which is addressed to, or is accessible by, the public at large or any section of the public;

“recipient”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;

“relevant programme” means a programme included in a programme service;

“service provider” means a person providing an information society service.

#### (2) For the purposes of the definition of “publication” in sub-paragraph (1)—

(a) an indictment or other document prepared for use in particular legal proceedings is not to be taken as coming within the definition;

(b) every relevant programme is to be taken as addressed to the public at large or to a section of the public.

#### (3) For the purposes of the definitions of “domestic service provider” and “non-UK service provider” in sub-paragraph (1)—

(a) a service provider is established in a particular part of the United Kingdom, or in a particular EEA state, if the service provider—

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- (i) effectively pursues an economic activity using a fixed establishment in that part of the United Kingdom, or that EEA state, for an indefinite period, and
  - (ii) is a national of an EEA state or a company or firm mentioned in Article 54 of the Treaty on the Functioning of the European Union;
- (b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider;
- (c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider's activities relating to that service.”

#### **Commencement Information**

**I250** S. 173 in force for specified purposes at Royal Assent, otherwise 31.3.2017, see s. 183

### **174 Anonymity of victims of forced marriage: Northern Ireland**

- (1) After Part 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c.2 (N.I.)) insert—

#### **“PART 4A**

##### PROTECTION OF VICTIMS OF FORCED MARRIAGE

#### **24A Anonymity of victims of forced marriage**

Schedule 3A (anonymity of victims of forced marriage) has effect.”

- (2) Insert, as Schedule 3A to that Act, the following Schedule—

#### **“SCHEDULE 3A**

Section 24A

##### ANONYMITY OF VICTIMS OF FORCED MARRIAGE

#### *Prohibition on the identification of victims in publications*

- 1 (1) This paragraph applies where an allegation has been made that an offence of forced marriage has been committed against a person.
- (2) No matter likely to lead members of the public to identify the person, as the person against whom the offence is alleged to have been committed, may be included in any publication during the person's lifetime.
- (3) In any criminal proceedings before a court, the court may direct that the restriction imposed by sub-paragraph (2) is not to apply (whether at all or to the extent specified in the direction) if the court is satisfied that either of the following conditions is met.

*Status: Point in time view as at 22/03/2018.*

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- (4) The first condition is that the conduct of a person's defence at a trial of an offence of forced marriage would be substantially prejudiced if the direction were not given.
- (5) The second condition is that—
  - (a) the effect of sub-paragraph (2) is to impose a substantial and unreasonable restriction on the reporting of the proceedings, and
  - (b) it is in the public interest to remove or relax the restriction.
- (6) A direction under sub-paragraph (3) does not affect the operation of sub-paragraph (2) at any time before the direction is given.
- (7) In this paragraph, “the court” means a magistrates' court, a county court or the Crown Court.

*Penalty for breaching prohibition imposed by paragraph 1(2)*

- 2 (1) If anything is included in a publication in contravention of the prohibition imposed by paragraph 1(2), each of the persons responsible for the publication is guilty of an offence.
- (2) A person guilty of an offence under this paragraph is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.
- (3) The persons responsible for a publication are as follows—

<b><i>Type of publication</i></b>	<b><i>Persons responsible</i></b>
Newspaper or other periodical	Any person who is a proprietor, editor or publisher of the newspaper or periodical.
Relevant programme	Any person who— <ol style="list-style-type: none"> <li>(a) is a body corporate engaged in providing the programme service in which the programme is included, or</li> <li>(b) has functions in relation to the programme corresponding to those of an editor of a newspaper.</li> </ol>
Any other kind of publication	Any person who publishes the publication.

- (4) Proceedings for an offence under this paragraph may not be instituted except by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.

*Offence under paragraph 2: defences*

- 3 (1) This paragraph applies where a person (“the defendant”) is charged with an offence under paragraph 2 as a result of the inclusion of any matter in a publication.
- (2) It is a defence for the defendant to prove that, at the time of the alleged offence, the defendant was not aware, and did not suspect or have reason to suspect, that—
  - (a) the publication included the matter in question, or

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- (b) the allegation in question had been made.
- (3) It is a defence for the defendant to prove that the publication in which the matter appeared was one in respect of which the victim had given written consent to the appearance of matter of that description.
- (4) The defence in sub-paragraph (3) is not available if—
  - (a) the victim was under the age of 16 at the time when his or her consent was given, or
  - (b) a person interfered unreasonably with the peace and comfort of the victim with a view to obtaining his or her consent.
- (5) In this paragraph, “the victim” means the person against whom the offence of forced marriage in question is alleged to have been committed.

*Special rules for providers of information society services*

- 4 (1) Paragraph 2 applies to a domestic service provider who, in the course of providing information society services, publishes prohibited matter in an EEA state other than the United Kingdom (as well as to a person, of any description, who publishes prohibited matter in Northern Ireland).
- (2) Proceedings for an offence under paragraph 2, as it applies to a domestic service provider by virtue of sub-paragraph (1), may be taken at any place in Northern Ireland.
- (3) Nothing in this paragraph affects the operation of any of paragraphs 6 to 8.
- 5 (1) Proceedings for an offence under paragraph 2 may not be taken against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the derogation condition is met.
- (2) The derogation condition is that taking proceedings—
  - (a) is necessary for the purposes of the public interest objective,
  - (b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective, and
  - (c) is proportionate to that objective.
- (3) “The public interest objective” means the pursuit of public policy.
- 6 (1) A service provider does not commit an offence under paragraph 2 by providing access to a communication network or by transmitting, in a communication network, information provided by a recipient of the service, if the service provider does not—
  - (a) initiate the transmission,
  - (b) select the recipient of the transmission, or
  - (c) select or modify the information contained in the transmission.
- (2) For the purposes of sub-paragraph (1)—
  - (a) providing access to a communication network, and
  - (b) transmitting information in a communication network,
 include the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.



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- (3) Sub-paragraph (2) does not apply if the information is stored for longer than is reasonably necessary for the transmission.
- 7 (1) A service provider does not commit an offence under paragraph 2 by storing information provided by a recipient of the service for transmission in a communication network if the first and second conditions are met.
- (2) The first condition is that the storage of the information—
- (a) is automatic, intermediate and temporary, and
  - (b) is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request.
- (3) The second condition is that the service provider—
- (a) does not modify the information,
  - (b) complies with any conditions attached to having access to the information, and
  - (c) if sub-paragraph (4) applies, promptly removes the information or disables access to it.
- (4) This sub-paragraph applies if the service provider obtains actual knowledge that—
- (a) the information at the initial source of the transmission has been removed from the network,
  - (b) access to it has been disabled, or
  - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.
- 8 (1) A service provider does not commit an offence under paragraph 2 by storing information provided by a recipient of the service if—
- (a) the service provider had no actual knowledge when the information was provided that it was, or contained, a prohibited publication, or
  - (b) on obtaining actual knowledge that the information was, or contained, a prohibited publication, the service provider promptly removed the information or disabled access to it.
- (2) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

### *Interpretation*

- 9 (1) In this Schedule—
- “domestic service provider” means a service provider established in England and Wales, Scotland or Northern Ireland;
- “the E-Commerce Directive” means Directive [2000/31/EC](#) of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce);
- “information society services”—
- (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive [98/34/EC](#) of

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the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and

- (b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”;

“non-UK service provider” means a service provider established in an EEA state other than the United Kingdom;

“offence of forced marriage” means an offence under section 16;

“programme service” has the same meaning as in the Broadcasting Act 1990 (see section 201(1) of that Act);

“prohibited material” means any material the publication of which contravenes paragraph 1(2);

“publication” includes any speech, writing, relevant programme or other communication (in whatever form) which is addressed to, or is accessible by, the public at large or any section of the public;

“recipient”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;

“relevant programme” means a programme included in a programme service;

“service provider” means a person providing an information society service.

- (2) For the purposes of the definition of “publication” in sub-paragraph (1)—
- (a) an indictment or other document prepared for use in particular legal proceedings is not to be taken as coming within the definition;
  - (b) every relevant programme is to be taken as addressed to the public at large or to a section of the public.
- (3) For the purposes of the definitions of “domestic service provider” and “non-UK service provider” in sub-paragraph (1)—
- (a) a service provider is established in a particular part of the United Kingdom, or in a particular EEA state, if the service provider—
    - (i) effectively pursues an economic activity using a fixed establishment in that part of the United Kingdom, or that EEA state, for an indefinite period, and
    - (ii) is a national of an EEA state or a company or firm mentioned in Article 54 of the Treaty on the Functioning of the European Union;
  - (b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider;
  - (c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider's activities relating to that service.”

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- (1) In the Protection from Harassment Act 1997 —
- (a) in section 4 (putting people in fear of violence), in subsection (4)(a), for “five years” substitute “ ten years ”;
  - (b) in section 4A (stalking involving fear of violence or serious alarm or distress), in subsection (5)(a), for “five years” substitute “ ten years ”.
- (2) In the Crime and Disorder Act 1998, in section 32 (racially or religiously aggravated harassment etc), in subsection (4)(b) (which specifies the penalty on conviction on indictment for an offence under that section which consists of a racially or religiously aggravated offence under section 4 or 4A of the Protection from Harassment Act 1997), for “seven years” substitute “ 14 years ”.
- (3) The amendments made by this section apply only in relation to an offence committed on or after the day on which this section comes into force.
- (4) Where the course of conduct constituting an offence is found to have occurred over a period of 2 or more days, or at some time during a period of 2 or more days, the offence must be taken for the purposes of subsection (3) to have been committed on the last of those days.

**Commencement Information****I252** S. 175 in force for specified purposes at Royal Assent, see s. 183*Protection of children and vulnerable adults***176 Child sexual exploitation: streaming indecent images**

In section 51(2) of the Sexual Offences Act 2003 (sexual exploitation of children: interpretation), in paragraph (b), at the end insert “ or streamed or otherwise transmitted ”.

**Commencement Information****I253** S. 176 in force for specified purposes at Royal Assent, otherwise 31.3.2017, see s. 183

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**177 Licensing functions under taxi and PHV legislation: protection of children and vulnerable adults**

- (1) The Secretary of State may issue guidance to public authorities as to how their licensing functions under taxi and private hire vehicle legislation may be exercised so as to protect children, and vulnerable individuals who are 18 or over, from harm.
- (2) The Secretary of State may revise any guidance issued under this section.
- (3) The Secretary of State must arrange for any guidance issued under this section, and any revision of it, to be published.
- (4) Any public authority which has licensing functions under taxi and private hire vehicle legislation must have regard to any guidance issued under this section.
- (5) Before issuing guidance under this section, the Secretary of State must consult—
  - (a) the National Police Chiefs' Council,
  - (b) persons who appear to the Secretary of State to represent the interests of public authorities who are required to have regard to the guidance,
  - (c) persons who appear to the Secretary of State to represent the interests of those whose livelihood is affected by the exercise of the licensing functions to which the guidance relates, and
  - (d) such other persons as the Secretary of State considers appropriate.
- (6) In this section, “taxi and private hire vehicle legislation” means—
  - (a) the London Hackney Carriages Act 1843;
  - (b) sections 37 to 68 of the Town Police Clauses Act 1847;
  - (c) the Metropolitan Public Carriage Act 1869;
  - (d) Part 2 of the Local Government (Miscellaneous Provisions) Act 1976;
  - (e) the Private Hire Vehicles (London) Act 1998;
  - (f) the Plymouth City Council Act 1975 (c.xx).

**Commencement Information**

**I254** [S. 177](#) in force for specified purposes at Royal Assent, see [s. 183](#)

*Coroners' investigations into deaths*

**178 Coroners' investigations into deaths: meaning of “state detention”**

- (1) Section 48 of the Coroners and Justice Act 2009 (interpretation of Part 1: general) is amended as follows.
- (2) In subsection (1), in the definition of “state detention”, after “subsection (2)” insert “(read with subsection (2A))”.
- (3) In subsection (2), at the beginning insert “Subject to subsection (2A),”.
- (4) After subsection (2) insert—
 

“(2A) But a person is not in state detention at any time when he or she is deprived of liberty under section 4A(3) or (5) or 4B of the Mental Capacity Act 2005.”

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### Commencement Information

**I255** S. 178 in force for specified purposes at Royal Assent, see s. 183

## *Powers of Scottish litter authorities*

### **179 Powers of litter authorities in Scotland**

(1) In Part 4 of the Environmental Protection Act 1990 (litter etc), after section 91 insert—

#### **“92 Summary proceedings by litter authorities**

- (1) Where a principal litter authority in Scotland other than a joint board is satisfied as respects—
  - (a) any relevant Crown land,
  - (b) any relevant land of a designated statutory undertaker,
  - (c) any relevant land of a designated educational institution, or
  - (d) any relevant land within a litter control area of a local authority,
 that it is defaced by litter or refuse or that defacement of it by litter or refuse is likely to recur, the authority shall serve a notice (a “litter abatement notice”) imposing either the requirement or the prohibition or both the requirement and the prohibition specified in subsection (2).
- (2) The requirement and prohibition referred to in subsection (1) are as follows, namely—
  - (a) a requirement that the litter or refuse be cleared within a time specified in the notice;
  - (b) a prohibition on permitting the land to become defaced by litter or refuse.
- (3) The litter abatement notice shall be served—
  - (a) as respects relevant Crown land, on the appropriate Crown authority;
  - (b) as respects relevant land of a designated statutory undertaker, on the undertaker;
  - (c) as respects relevant land of a designated educational institution, on the governing body of the institution or on the education authority responsible for the management of the institution;
  - (d) in any other case, on the occupier of the land or, if it is unoccupied, on the owner of the land.
- (4) The person served with the notice may appeal against the notice to the sheriff by way of application within the period of 21 days beginning with the date on which the notice was served.
- (5) If, on any appeal under subsection (4), the appellant proves that, as respects the land in question, he has complied with his duty under section 89(1), the court shall allow the appeal.
- (6) If a person on whom a litter abatement notice is served, without reasonable excuse, fails to comply with or contravenes the requirement or prohibition imposed by the notice, he shall be guilty of an offence and liable on summary

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conviction to a fine not exceeding level 4 on the standard scale together with a further fine of an amount equal to one-twentieth of that level for each day on which the offence continues after the conviction.

- (7) In any proceedings for an offence under subsection (6), it shall be a defence for the person charged to prove that he has complied, as respects the land in question, with his duty under section 89(1).
- (8) A direction under section 89(6A) or a code of practice under section 89(7) shall be admissible in evidence in any proceedings under this section and, if any provision of such a direction or code appears to the court to be relevant to any question in the proceedings, it shall be taken into account in determining that question.
- (9) If a person on whom a litter abatement notice is served fails to comply with the requirement imposed by the notice in respect of any land, the authority may, subject to subsection (10)—
  - (a) enter on the land and clear the litter or refuse, and
  - (b) recover from that person the expenditure attributable to their having done so, except such of the expenditure as that person shows was unnecessary in the circumstances.
- (10) Subsection (9) does not apply in relation to relevant Crown land or relevant land of statutory undertakers.

### **93 Street litter control notices**

- (1) A principal litter authority in Scotland other than a joint board may, with a view to the prevention of accumulations of litter or refuse in and around any street or open land adjacent to any street, issue notices (“street litter control notices”) imposing requirements on occupiers of premises in relation to such litter or refuse, in accordance with this section and section 94.
- (2) If the authority is satisfied, in respect of any premises which are of a description prescribed under section 94(1)(a) and have a frontage on a street in their area, that—
  - (a) there is recurrent defacement by litter or refuse of any land, being part of the street or open land adjacent to the street, which is in the vicinity of the premises,
  - (b) the condition of any part of the premises which is open land in the vicinity of the frontage is, and if no notice is served is likely to continue to be, detrimental to the amenities of the locality by reason of the presence of litter or refuse, or
  - (c) there is produced, as a result of the activities carried on on the premises, quantities of litter or refuse of such nature and in such amounts as are likely to cause the defacement of any part of the street, or of open land adjacent to the street, which is in the vicinity of the premises,

the authority may serve a street litter control notice on the occupier or, if the premises are unoccupied, on the owner of the premises.
- (3) A notice shall, subject to section 94(2), (3) and (4)—

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- (a) identify the premises and state the grounds under subsection (2) on which it is issued;
- (b) specify an area of open land which adjoins or is in the vicinity of the frontage of the premises on the street;
- (c) specify, in relation to that area or any part of it, such reasonable requirements as the authority considers appropriate in the circumstances;

and, for the purposes of paragraph (b), an area which includes land on both sides of the frontage of the premises shall be treated as an area adjoining that frontage.

- (4) In this section and section 94—

“notice” means a street litter control notice;

“open land” means land in the open air;

“the premises”, in relation to a notice, means the premises in respect of which the notice is issued;

“specified area” means the area specified in a notice under subsection (3)(b); and

“street” means a relevant highway, a relevant road or any other highway or road over which there is a right of way on foot.

#### **94 Street litter: supplementary provisions**

- (1) The Scottish Ministers may by order prescribe—

- (a) the descriptions of commercial or retail premises in respect of which a street litter control notice may be issued;
- (b) the descriptions of land which may be included in a specified area; and
- (c) the maximum area of land which may be included in a specified area;

and different descriptions or maximum dimensions may be prescribed under paragraph (b) or (c) for different cases or circumstances.

An order under this subsection is subject to the negative procedure.

- (2) The power to describe premises or land under subsection (1)(a) or (b) includes power to describe the premises or land by reference to occupation or ownership or to the activities carried on there.

- (3) The land comprised in a specified area—

- (a) shall include only land of one or more of the descriptions prescribed under subsection (1)(b);
- (b) shall not include any land which is not—
  - (i) part of the premises,
  - (ii) part of a street,
  - (iii) relevant land of a principal litter authority, or
  - (iv) land under the direct control of any other local authority; and
- (c) shall not exceed any applicable maximum area prescribed under subsection (1)(c);

but a specified area shall not include any part of the premises which is or is part of a litter control area.

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- (4) The requirements which may be imposed by a notice shall relate to the clearing of litter or refuse from the specified area and may in particular require—
- (a) the provision or emptying of receptacles for litter or refuse;
  - (b) the doing within a period specified in the notice of any such thing as may be so specified (including the standards to which any such thing must be done); or
  - (c) the doing (while the notice remains in force) at such times or intervals, or within such period, of any such thing as may be so specified;
- but a notice may not require the clearing of litter or refuse from any carriageway, except at a time when the carriageway is closed to all vehicular traffic.
- (5) In relation to so much of the specified area as is not part of the premises the authority shall take account, in determining what requirements to impose, of their own duties under this Part or otherwise, and of any similar duties of any other local authority, in relation to that land.
- (6) An authority proposing to serve a notice shall—
- (a) inform the person on whom the notice is to be served;
  - (b) give him the opportunity to make representations about the notice within the period of 21 days beginning with the day on which he is so informed; and
  - (c) take any representations so made into account in making their decision.
- (7) A person on whom a notice is served may appeal against the notice to the sheriff by way of application; and the court may quash the notice or may quash, vary or add to any requirement imposed by the notice.
- (8) If it appears to the authority that a person has failed or is failing to comply with any requirement imposed by a notice, the authority may apply to the sheriff by way of application for an order requiring the person to comply with the requirement within such time as may be specified in the order.
- (9) A person who, without reasonable excuse, fails to comply with an order under subsection (8) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.”
- (2) Any order under section 94(1) of the Environmental Protection Act 1990 which had effect immediately before the coming into force of paragraph 21 of Schedule 11 to the Anti-social Behaviour, Crime and Policing Act 2014—
- (a) is (so far as extending to Scotland) revived on the coming into force of this section, and
  - (b) has effect on its revival as if made under section 94(1) of that Act as re-enacted with modifications by this section.



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## CHAPTER 2

### GENERAL

#### 180 Consequential amendments, repeals and revocations

- (1) The Secretary of State may by regulations made by statutory instrument make such provision as the Secretary of State considers appropriate in consequence of this Act other than Part 8.
- (2) The Treasury may by regulations made by statutory instrument make such provision as the Treasury considers appropriate in consequence of Part 8.
- (3) Regulations under subsection (1) or (2)—
  - (a) may include transitional, transitory or saving provision;
  - (b) may repeal, revoke or otherwise amend any provision of primary or subordinate legislation (including legislation passed or made in the same Session as this Act).
- (4) A statutory instrument containing (whether alone or with other provision) regulations under this section that repeal, revoke or otherwise amend any provision of primary legislation is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (5) A statutory instrument containing regulations under this section that do not repeal, revoke or otherwise amend any provision of primary legislation is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this section—
  - “primary legislation” means—
    - (a) an Act;
    - (b) an Act of the Scottish Parliament;
    - (c) a Measure or Act of the National Assembly for Wales;
    - (d) Northern Ireland legislation;
  - “subordinate legislation” means—
    - (a) subordinate legislation within the meaning of the Interpretation Act 1978;
    - (b) an instrument made under an Act of the Scottish Parliament;
    - (c) an instrument made under a Measure or Act of the National Assembly for Wales;
    - (d) an instrument made under Northern Ireland legislation.

#### 181 Financial provision

The following are to be paid out of money provided by Parliament—

- (a) any expenditure incurred under or by virtue of this Act by the Secretary of State;
- (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

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## 182 Extent

- (1) Except as provided by subsections (2) to (6), this Act extends only to England and Wales.
- (2) The following provisions extend to England and Wales, Scotland and Northern Ireland—
  - (a) section 6, so far as relating to paragraphs 81, 95 and 96 of Schedule 1, and those paragraphs;
  - (b) section 8(11);
  - (c) section 9(3), so far as relating to paragraphs 108 and 121 of Schedule 2, and those paragraphs;
  - (d) section 16, so far as relating to paragraphs 22 and 47(h)(i) of Schedule 5, and those paragraphs;
  - (e) section 21(2) and (3);
  - (f) section 29(8), so far as relating to paragraphs 1 to 5 of Schedule 7, and those paragraphs;
  - (g) section 33(9), so far as relating to paragraphs 56(10), 59, 60, 61, 63, 64, 66, 68, 69 and 74 of Schedule 9, and those paragraphs;
  - (h) section 35;
  - (i) section 37(6);
  - (j) section 45, so far as relating to paragraphs 6, 13 and 14 of Schedule 12, and those paragraphs;
  - (k) section 46(10), so far as relating to paragraph 2 of Schedule 13, and that paragraph;
  - (l) section 47, so far as relating to the inserted sections 50A(3) to (7) and 50B of the Police Act 1996;
  - (m) section 50;
  - (n) section 71;
  - (o) section 76(3);
  - (p) sections 116 to 119 and Schedules 15, 16 and 17;
  - (q) sections 143 to 149 and 151 to 156;
  - (r) section 157(5) and Schedule 19;
  - (s) section 158;
  - (t) sections 160 and 161;
  - (u) section 163;
  - (v) this Chapter.
- (3) The following provisions extend to England and Wales and Scotland (but not to Northern Ireland)—
  - (a) section 6, so far as relating to paragraphs 11, 14, 20 to 22, 33, 35, 52, 55, 59 to 66, 72 to 75, 80 and 85 of Schedule 1, and those paragraphs;
  - (b) section 7(8);
  - (c) section 8(5) and (8);
  - (d) section 9(3), so far as relating to paragraphs 30, 31, 33, 34, 48, 50, 74, 77, 80, 84 to 91, 99, 106 and 116 of Schedule 2, and those paragraphs;
  - (e) section 29(8), so far as relating to paragraphs 6 to 14 of Schedule 7, and those paragraphs;

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- (f) section 33(9), so far as relating to paragraphs 62 and 72 of Schedule 9, and those paragraphs;
  - (g) section 39;
  - (h) section 45, so far as relating to paragraphs 8, 12 and 17 of Schedule 12, and those paragraphs;
  - (i) section 46(10), so far as relating to paragraphs 4 and 6 of Schedule 13, and those paragraphs;
  - (j) section 49;
  - (k) section 51, so far as relating to paragraphs (a), (b) and (d) of paragraph 7 of Schedule 14, and those paragraphs;
  - (l) sections 84(2) to (5), 86 to 92 and 95;
  - (m) sections 96(2) to (7), 98 to 104 and 106;
  - (n) section 123;
  - (o) sections 125 to 133.
- (4) The following provisions extend to England and Wales and Northern Ireland (but not to Scotland)—
- (a) section 51, so far as relating to paragraphs 2(2), 3(2) and (3)(d) and 5(b) and (c) of Schedule 14, and those paragraphs;
  - (b) sections 68 and 69;
  - (c) section 159.
- (5) The following provisions extend to Scotland only—
- (a) section 46(2) to (9);
  - (b) sections 96(1) and (8), 97 and 105;
  - (c) section 179.
- (6) The following provisions extend to Northern Ireland only—
- (a) Chapter 7 of Part 4;
  - (b) sections 168(1) and (2) and 169 to 172;
  - (c) section 174.
- (7) The power under section 60(4) of the UK Borders Act 2007 may be exercised so as to extend to any of the Channel Islands or the Isle of Man any amendment made by or under this Act of any part of that Act (with or without modification).

## **183 Commencement**

- (1) Except as provided by subsections (2) to (6), this Act comes into force on such day as the Secretary of State may by regulations made by statutory instrument appoint.
- (2) Chapter 7 of Part 4 comes into force on such day as the Department of Justice in Northern Ireland appoints by order.
- (3) Part 8 comes into force on such day as the Treasury may by regulations made by statutory instrument appoint.
- (4) Sections 168 to 170 and 172 come into force on such day as the Department of Justice in Northern Ireland appoints by order.
- (5) The following provisions come into force on the day on which this Act is passed—
  - (a) section 124;

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*Status: Point in time view as at 22/03/2018.*

*Changes to legislation: Policing and Crime Act 2017 is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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- (b) sections 164, 165 and 167;
  - (c) section 179;
  - (d) this Chapter;
  - (e) any other provision of this Act so far as is necessary for enabling the exercise on or after the day on which this Act is passed of any power to make provision by subordinate legislation (within the meaning of the Interpretation Act 1978) or to issue codes of practice or guidance.
- (6) The following provisions come into force at the end of the period of 2 months beginning with the day on which this Act is passed—
- (a) section 76;
  - (b) section 157 and Schedule 19;
  - (c) section 158;
  - (d) sections 173 and 174;
  - (e) section 176.
- (7) Regulations under subsection (1) or (3), or an order under subsection (2) or (4), may appoint different days for different purposes.
- (8) Before making regulations appointing a day for the coming into force of any provision of sections 96 to 106 the Secretary of State must consult the Scottish Ministers.
- (9) The Secretary of State may by regulations made by statutory instrument make such transitional, transitory or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act other than Chapter 7 of Part 4, Part 8 or sections 168 to 172.
- (10) The Department of Justice in Northern Ireland may by order make such transitional, transitory or saving provision as it considers appropriate in connection with the coming into force of any provision of Chapter 7 of Part 4.
- (11) The Treasury may by regulations made by statutory instrument make such transitional, transitory or saving provision as the Treasury considers appropriate in connection with the coming into force of any provision of Part 8.
- (12) The Department of Justice in Northern Ireland may by order make such transitional, transitory or saving provision as the Department of Justice in Northern Ireland considers appropriate in connection with the coming into force of sections 168, 169, 170 and 172.
- (13) The power to make regulations under subsection (9) or (11), or an order under subsection (10) or (12), includes power to make different provision for different purposes.
- (14) The powers conferred on the Department of Justice in Northern Ireland by subsections (2), (4), (10) and (12) are exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

## **184 Short title**

This Act may be cited as the Policing and Crime Act 2017.

**Status:**

Point in time view as at 22/03/2018.

**Changes to legislation:**

Policing and Crime Act 2017 is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.