

EXPLANATORY MEMORANDUM TO
THE POLICING AND CRIME ACT 2017 (CONSEQUENTIAL AMENDMENTS)
REGULATIONS 2018

2018 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Policing and Crime Act 2017 (“the 2017 Act”) included provisions to reform the governance of fire and rescue services in England, the police disciplinary framework and pre-charge bail, extend the powers of police civilian staff and volunteers and strengthen cross-border powers of arrest. The 2017 Act includes a number of consequential amendments to other enactments arising from these measures; these Regulations make further such consequential amendments.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument varies between provisions.

4. Legislative Context

- 4.1 The 2017 Act included the provisions described in paragraphs 4.2 to 4.7 below.

- 4.2 **PCCs: Fire and Rescue Functions.** Section 6 of and Schedule 1 to the 2017 Act made provision for the Secretary of State, in response to a proposal submitted by a Police and Crime Commissioner (“PCC”), to make an order (under new section 4A of the Fire and Rescue Services Act 2004) providing for a PCC for a police area to be the fire and rescue authority (“FRA”) for that area. Part 2 of Schedule 1 to the 2017 Act made amendments to other Acts consequential on these provisions. Section 6 of and Schedule 1 to the 2017 Act came into force on 3 April 2017. The first order under section 4A of the Fire and Rescue Services Act 2004 (“the 2004 Act”) came into force on 1 October 2017 and provides for the PCC for the Essex police area to be the FRA for that area (see the Police, Fire and Crime Commissioner for Essex (Fire and Rescue Authority) Order 2017 (SI 2017/864)).

- 4.3 **London Fire Commissioner.** Sections 9 and 10 of the 2017 Act reformed the governance of the London fire and rescue service by placing overall responsibility of London fire and rescue to the Mayor, abolishing the London Fire and Emergency Planning Authority (“LFEPA”) and transferring its functions to the newly created London Fire Commissioner. Schedule 2 to the 2017 Act made consequential amendments to the Greater London Authority Act 1999 and other enactments. It is

proposed to bring sections 9 and 10 of and Schedule 1 to the 2017 Act into force on 1 April 2018.

- 4.4 Disciplinary proceedings: former members of police forces and former special constables.** Section 29(1)-(3) of the 2017 Act amends sections 50 and 51 of the Police Act 1996 (“the 1996 Act”) to allow for the extension of the police disciplinary regime to former police officers in certain circumstances. Section 29(5) and (6) of the 2017 Act makes consequential amendments to the provisions of the 1996 Act (section 85 and Schedule 6) which deal with appeals against dismissal etc. These provisions came into force on 15 December 2017.
- 4.5 Powers of police civilian staff and volunteers.** Section 38 of the 2017 Act amended Chapter 1 of Part 4 to the Police Reform Act 2002 to enable chief officers of police to confer a wider range of policing powers on police staff and volunteers. Schedule 12 to the 2017 Act made amendments to other Acts consequential on the amendments made by section 38. These provisions came into force on 15 December 2017.
- 4.6 Pre-charge bail.** Chapter 1 of Part 4 of the 2017 Act reformed pre-charge bail, including by providing for a presumption in favour of releasing a suspect without bail and introducing a time limit of 28 days on pre-charge bail, extendable to three months on the authority of a senior officer in complex cases (or for longer periods on the authority of a magistrates’ court). These provisions came into force on 3 April 2017.
- 4.7 Cross-border enforcement.** Chapter 8 of Part 4 to the 2017 Act made changes to Part 10 of the Criminal Justice and Public Order Act 1994 (the 1994 Act) which makes provision for powers of cross-border arrest. Amongst other things, the changes close a gap in the cross-border arrest powers to ensure that a person who commits an offence in one UK jurisdiction and is then found in another UK jurisdiction can be arrested without a warrant by an officer from the jurisdiction in which the person is found. Schedule 17 to the 2017 made consequential amendments to the 1994 Act and other legislation. These provisions are not yet in force.
- 4.8** To support the commencement of the above provisions of the 2017 Act, these Regulations make further consequential amendments to the following legislation:
- i. Fire Services Act 1947;
 - ii. Trustee Investments Act 1961;
 - iii. Contempt of Court Act 1981;
 - iv. Police and Criminal Evidence Act 1984;
 - v. Local Government Finance Act 1988;
 - vi. Criminal Justice and Public Order Act 1994;
 - vii. Police Act 1996;
 - viii. Criminal Justice Act 2003;
 - ix. Fire and Rescue Services Act 2004;
 - x. Housing and Planning Act 2016; and
 - xi. High Speed Rail (London-West Midlands) Act 2017

5. Extent and Territorial Application

5.1 The extent and territorial application of this instrument vary as shown in the table below.

Provision – amendment to:	Extends to E&W and applies to England?	Extends to E&W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Fire Services Act 1947	Yes	No	No	No
Trustee Investments Act 1961	Yes	No	No	No
Contempt of Court Act 1981	Yes	Yes	No	No
Police and Criminal Evidence Act 1984	Yes	Yes	No	No
Local Government Finance Act 1988	Yes	No	No	No
Criminal Justice and Public Order Act 1994	No	No	No	Yes
Police Act 1996	Yes	Yes	No	No
Criminal Justice Act 2003	Yes	Yes	No	No
Fire and Rescue Services Act 2004	Yes	No	No	No
Housing and Planning Act 2016	Yes	No	No	No
High Speed Rail (London-West Midlands) Act 2017	Yes	No	No	No

6. European Convention on Human Rights

6.1 The Minister for Policing and the Fire Service, the Rt. Hon. Nick Hurd MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Policing and Crime Act 2017 (Consequential Amendments) Regulations 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

Amendment to the Fire Services Act 1947, the Fire and Rescue Services Act 2004, the Housing and Planning Act 2016 and the High Speed Rail (London-West Midlands) Act 2017

- 7.1 Regulations 2, 10(3), 11 and 12 make further amendments to four enactments consequential on the provisions of the 2017 Act abolishing the LFEPa and establishing in its place the London Fire Commissioner.
- 7.2 Regulation 2 amends the Fire Services Act 1947 to enable provision to be made in the 1992 Firefighters' Pension Scheme to the effect that holding office as London Fire Commissioner is treated as employment by a fire and rescue authority; as a result the London Fire Commissioner for the time being will be able to be a member of the 1992 Firefighters' Pension Scheme. This is conditional on the individual holding such office having responsibility either for resolving operational incidents or for leading or supporting others in doing so. Regulation 10(3) amends the Fire and Rescue Services Act 2004 to enable similar provision to be made in relation to the 2006 Firefighters' Pension and Compensation Schemes.
- 7.3 Section 210 of the Housing and Planning Act 2016 (not yet in force) places a duty on the local authorities listed in Schedule 20 to that Act to prepare an annual report containing an efficiency and sustainability assessment of buildings on their own estate. Amongst the local authorities listed in Schedule 20 is the LFEPa; Regulation 11 substitutes a reference to the London Fire Commissioner.
- 7.4 The High Speed Rail (London-West Midlands) Act 2017 authorises the construction of Phase One of High Speed 2 by "the nominated undertaker" (nominated by the Secretary of State in accordance with section 45(1) of the Act). Paragraph 3 of Schedule 4 to the Act authorises the nominated undertaker to stop up (that is, close) certain bridleways and footpaths permanently. Paragraph 3(6) requires the nominated undertaker, before making an application for certain bridleways or footpaths to be stopped up, must publish certain details in a local newspaper. This is to include particulars about how affected parties can make representations about the proposals. Under paragraph 3(7) the nominated undertaker must also provide copies of the newspaper notice to every local authority whose area is affected, and place it at each end of the bridleway or footpath. Under paragraph 3(8) any representations received in response to such a notice must be considered before the appropriate Ministers confirm an application. The definition of a local authority for the purposes of paragraph 3(7) includes the London Fire and Emergency Planning Authority (see paragraph 3(11)); Regulation 12 substitutes a reference to the London Fire Commissioner.

Amendments to the Trustee Investments Act 1961, Local Government Finance Act 1988 and Fire and Rescue Services Act 2004

- 7.5 Regulations 3, 6 and 10(2) of, and the Schedule to, the draft Regulations make further amendments to three enactments consequential on the provisions of the 2017 Act enabling the establishment of PCC FRAs by virtue of an order made under section 4A of the 2004 Act. In each case, the policy objective is to apply legislation relevant to existing FRAs to the new class of section 4A FRAs, subject to any appropriate modifications to take account of the PCC governance model.

- 7.1 The amendments to the Local Government Finance Act 1988 (“the 1988 Act”) ensure that, where a PCC FRA is established under section 4A of the 2004 Act, their Chief Finance Officer complies with the duties set out in Part 8 of the 1988 Act regarding proper financial administration of the Authority. Until these provisions come into force, transitional arrangements were made for the first section 4A FRA (see Articles 11 to 15 of the Police, Fire and Crime Commissioner for Essex (Fire and Rescue Authority) Order 2017 (SI 2017/864)).
- 7.2 The amendments to the Trustee Investments Act 1961 bring section 4A FRAs within the scope of that Act. That Act makes provision about the investment powers of trustees where these are not specifically set out in a trust deed. It imposes restrictions on the range of investments that trustees might select, particularly on wider range investments such as equities.
- 7.3 The amendment to section 24 of the 2004 Act modifies the applications of the provisions in that section relating to best value inspections. A section 4A FRA is not a ‘best value authority’ and the various legislative provisions applying to best value authorities will not apply to it. However, section 24 of the 2004 Act applies sections 10 to 13A of the Local Government Act 1999 (best value inspections) to the duty of an FRA (including a PCC FRA), under section 21(7) of the 2004 Act, to have regard to the Fire and Rescue National Framework. The provision in regulation 10(2) ensures that the section 4A FRA (and therefore the Police, Fire and Crime Commissioner) is not subject to inspection, but instead subject to scrutiny by the relevant police and crime panel. This is consistent with the arrangements for inspection of section 4A FRAs in section 28 of the 2004 Act.

Amendment to the Contempt of Court Act 1981

- 7.4 The Contempt of Court Act 1981 (“the 1981 Act”) makes provision for “the strict liability rule”, under which it is a contempt to publish anything that creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced. The rule only applies to publications made while the proceedings are “active”. The strict liability rule is designed to ensure that a defendant’s right to a fair trial is not prejudiced by adverse publicity. As the law currently stands, criminal proceedings are still regarded as “active” when an individual is released on bail after arrest. However, this is not the case for individuals who are released without bail while investigations are ongoing, consequently such individuals do not receive the protection of the strict liability rule. Under the reformed pre-charge bail system, there is a presumption in favour of release without bail, unless bail is both necessary and proportionate. With a large proportion of individuals now being released without bail while the police investigation continues, Regulation 4 amends the 1981 Act to ensure that such individuals receive the same protection as those who would previously have been released on bail prior to the coming into force of the reforms in the 2017 Act.

Amendment to the Police and Criminal Evidence Act 1984

- 7.5 Under the provisions in Chapter 1 of Part 4 of the Police Reform Act 2002 (“the 2002 Act”), a chief officer of police could designate police civilian staff as a community support officer, investigating officer, detention officer or escort officer and confer on them certain specified powers of a constable relevant to the role (that is, the powers listed in Schedule 4 to the 2002 Act). The 2017 Act amended the 2002 Act to replace the four categories of designated staff with two new categories: community support

officers and policing support officers. In addition, the 2017 Act enabled a chief officer to confer any of the powers of a constable on a community support officer or policing support officer, with the exception of the excluded powers listed in Part 1 of new Schedule 3B to the 2002 Act. As a consequence of this change, the 2017 Act repealed Parts 1 and 2 of Schedule 4 to the 2002 Act which set out the powers that could, under the old scheme, be conferred on police support officers and investigating officers respectively. Amongst the provisions repealed was paragraph 22 of Schedule 4 which makes provision for a power to transfer persons into the custody of investigating officers.

- 7.6 In repealing 22 of Schedule 4 to the 2002 Act, the 2017 Act omitted to make a consequential amendment to section 188(2A) of the Police and Criminal Evidence Act 1984 which provides that where a person is in another's lawful custody by virtue of, amongst other things, paragraph 22 of Schedule 4 to the 2002 Act, that person shall be treated as being in police detention. Regulation 5 repeals the redundant reference to paragraph 22 of Schedule 4 to the 2002 Act.

Amendment to the Criminal Justice and Public Order Act 1994

- 7.7 The amendments to Part 10 of the Criminal Justice and Public Order Act 1994 made by Chapter 8 of Part 4 to the 2017 Act, extend the scope of the cross border powers of arrest in the three Home Jurisdictions (England and Wales, Scotland and Northern Ireland) and, for the first time, provide for the arrest and detention without warrant of a suspect wanted in one jurisdiction by a constable of another jurisdiction in which the person resides.
- 7.8 Regulation 7 makes a further amendment to subsection (9) of section 137 (which makes provision in respect of cross border powers of arrest) as a consequence of one made to that subsection by paragraph 2(4) of Schedule 17 to the 2017 Act. The effect of the amendment made to section 137(9) by the 2017 Act was to leave a reference (in the definition of a designated police station) to “the 1989 Order” undefined. Regulation 7 simply now substitutes “the Police and Criminal Evidence (Northern Ireland) Order 1989” for “the 1989 Order”.

Amendments to the Police Act 1996

- 7.9 The amendment to section 85 of the 1996 Act made by section 29(5) of the 2017 Act has the effect of allowing the Secretary of State to make provision, in rules, specifying the cases in which a former officer may appeal to a police appeals tribunal. That change was made further to the amendments to sections 50 and 51 of the 1996 Act made by section 29(1)-(3) of the 2017 Act, allowing for the extension of the police disciplinary regime to former officers in certain circumstances. Regulation 8 of these Regulations makes further minor changes to the 1996 Act in consequence of those amendments: namely, it amends Schedule 6 to provide that the scheme set out there in respect of the composition of police appeals tribunals applies to tribunals established to determine appeals by former officers as they apply to appeals by serving officers.

Amendment to the Criminal Justice Act 2003

- 7.10 Part 3 of the Criminal Justice Act 2003 (“the 2003 Act”) makes provision for conditional cautions. A conditional caution may be issued as an alternative to a prosecution if the offender admits the offence and accepts the condition(s). If the conditions are complied with or completed within the timescales determined, the case is finalised and there is no prosecution. If, however, the conditions are not complied with, a prosecution may follow. Section 24A of the 2003 Act enables a constable to

arrest a person without warrant if the constable has reasonable grounds for believing that the offender has failed, without reasonable excuse, to comply with any of the conditions attached to the conditional caution. Section 24B of the 2003 Act then applies provisions of the Police and Criminal Evidence Act 1984 (“PACE”) where a person has been arrested under section 24A. Subsection (5) of section 24B of the 2003 Act applies certain provisions of PACE where a person has been released on pre-charge bail under section 24(2)(b) of the 2003 Act. Amendments made by section 60 of the 2017 Act now mean that a person will now be released on bail under section 24A(2)(c); a consequential amendment (made by Regulation 9) is therefore required to update the cross-reference.

Consolidation

7.11 Not applicable.

8. Consultation outcome

8.1 The amendments relating to section 4A FRAs were shared with a Home Office-led implementation group, which includes policing and fire representatives, during consideration of the legislative framework for first PCC FRA; no concerns were raised.

8.2 Where appropriate, the provisions in these Regulations also reflect consultation with other relevant Government departments, including HM Treasury (in respect of the consequential amendments relating to section 4A FRAs and the London Fire Commissioner), the Attorney General’s Office and Ministry of Justice (in respect of the amendment to the 1981 Act).

8.3 The amendments relating to the London Fire Commissioner accessing the firefighters’ pension scheme were considered by interested parties including representative bodies, Greater London Authority (“GLA”), National Fire Chiefs’ Council and the LFEPA. Responses were received from GLA and LFEPA who were both supportive of the proposed changes.

8.4 The Department does not otherwise consider it necessary to consult on the other minor and technical amendments made by these draft Regulations.

9. Guidance

9.1 These Regulations are not considered to require additional guidance over and above that produced, or to be produced, to support the implementation of the substantive provisions in the 2017 Act.

10. Impact

10.1 There is no material financial impact on business, charities or voluntary bodies.

10.2 There is no additional impact on the public sector. In a number of cases existing duties which have some resource implications, for example to undertake an annual building efficiency and sustainability assessment, is transferred from one body to another.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The amendments to the Contempt of Court Act 1981 will change how the strict liability rule applies to all publications, including those produced by small businesses, however, the effect of the amendments is effectively to restore the position that existed before the reforms to pre-charge bail, as provided for in Chapter 1 of Part 4 of the 2017 Act, came into force.
- 11.2 The other legislative changes do not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The provisions in these Regulations will be reviewed in conjunction with the normal post-legislative review of the 2017 Act three to five years after Royal Assent.

13. Contact

- 13.1 Charles Goldie at the Home Office - Telephone: 020 7035 6773 or email: Charles.Goldie1@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.