

POLICING AND CRIME BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

The Government has tabled further amendments to the Policing and Crime Bill for Lords Committee stage. These include a number of amendments creating new or modifying existing delegated powers in the Bill. This supplementary memorandum explains the nature of the new power and of the modifications to existing powers and the reasons for these.

Amendment to clause 112(2) – amended section 58(2A) and new section 58(2AA), (2AB) and (2AC) of the Firearms Act 1968: Power to specify obsolete cartridges and ignition systems and minimum age for the purpose of defining an “antique firearm”

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative procedure save where amending regulations remove a description of cartridge or ignition system, in which case negative procedure

1. Paragraphs 248 to 250 of the Government’s delegated powers memorandum detailed the two regulation-making powers in new section 58(2A) of the Firearms Act 1968 (“the 1968 Act”) which confer powers to specify obsolete cartridges and ignition systems for the purposes of defining an “antique firearm”. The clause, as introduced, provided that a firearm is an antique firearm if, amongst other things, its chamber is capable of being used only with a cartridge of a description specified in regulations made by the Secretary of State. It has been pointed out this wording is likely to be problematic given that it may be possible to force fit or modify so as to fit a range of cartridges into such firearms. The Government amendments to clause 112 therefore refine the definition so that it will only capture firearms which retain their original chamber or have a replacement chamber which is identical in all material respects. This has necessitated a revision of the regulation-making powers currently in new subsection (2A) of section 58 of the 1968 Act. The replacement new section 58(2A)(a) of the 1968 Act provides that a firearm is an antique firearm if it meets the conditions in subsection (2AA) or the condition in subsection (2AB). These are that the firearm retains its original chamber or has a replacement chamber which is identical in all material respects and that the chamber is designed for use with a cartridge of a description specified in regulations (new section 58(2AA) of the 1968 Act). As provided for in the Bill on introduction, obsolete ignition systems will also be specified in regulations (new section 58(2AB) of the 1968 Act).
2. In addition, new section 58(2AC) of the 1968 Act provides for a further regulation-making power which will enable the Secretary of State to specify a

number of years since the date of manufacture which must have elapsed for a firearm to be an antique firearm or that the firearm must have been manufactured before a specified date, thereby guarding against modern (and potentially fully functioning) reproductions benefiting from the exemption for antique firearms from the controls in the legislation.

3. The Government is satisfied that these technical changes to the scope of the regulation-making powers (and the addition of the new power at section 58(2AC)) does not alter the case for leaving such matters to secondary legislation or for the level of parliamentary scrutiny provided, as set out in the Government's earlier memorandum.

Amendments to clause 105 - new section 137B(1) of the Criminal Justice and Public Order Act 1994: Power to amend list of "specified offences" in respect of which the additional cross-border powers of arrest may be exercised

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative procedure

Amendments to clause 105 - new section 137D(5) of the Criminal Justice and Public Order Act 1994: Power to amend list of rights of persons arrested under section 137A of the 1994 Act and to further modify application of such rights

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative procedure

4. Chapter 7 of Part 4 of the Bill includes measures to strengthen the existing cross-border powers of arrest contained in Part 10 of the Criminal Justice and Public Order Act 1994 ("the 1994 Act"). In particular, these provisions close a gap in the cross-border arrest powers to ensure that a person who commits an offence in one UK jurisdiction can be arrested without a warrant by an officer from the jurisdiction in which the person is found. The provisions in new section 137A of the 1994 Act (inserted by clause 105 of the Bill) include a number of safeguards, one of which is that the arresting officer must have reasonable grounds for suspecting that a person has committed a "specified offence" in another jurisdiction meaning an offence specified in regulations. In the interests of greater clarity, and to ensure that the police are able to exercise these powers as soon as possible after Royal Assent, the Government now proposes to include a list of "specified offences" on the face of the Bill (as contained in new section 137B(A2) to (A4) and new Schedule 7A to the 1994 Act), but to retain a power to amend the list by regulations.
5. To reflect the fact that the list of specified offences will now be set out on the face of the 1994 Act rather than specified in regulations, the regulation-making power in new section 137B(1) is modified so that it becomes a power to add an

offence to, or remove an offence from, the list of offences for the time being specified in Schedule 7A to the 1994 Act. This revised power is necessary to ensure that the list of relevant offences can be kept up to date, for example to take account of new offences being created or reductions in the maximum penalty for a specified offence such that it is no longer in the interests of justice for it to remain on the list. As befitting a Henry VIII power, the regulations continue to be subject to the affirmative procedure.

6. New section 137D of the 1994 Act (again inserted by clause 105) applies certain existing statutory rights to persons arrested under the new power of arrest (for example, in respect of the information to be given to the arrestee), but includes a power to disapply or modify the specified enactments. Again in the interests of greater clarity, and to ensure that the police are able to exercise these powers as soon as possible after Royal Assent, new Schedule 7B to the 1994 Act sets out the necessary modifications on the face of the 1994 Act.
7. As a consequence of this change of approach, the regulation-making power in new section 137D(5) of the 1994 Act is modified so that it becomes a power to:
 - a) add new rights to the rights set out in new section 137D(2), (3) and (4);
 - b) remove any of the rights which have been added to new section 137D(2), (3) and (4) through the exercise of the regulation-making power (but not to remove the rights already set out in those subsections by Parliament);
 - c) alter the modifications specified for the time being in new Schedule 7B; and
 - d) disapply in specified cases or circumstances any of the rights set out in new section 137D(2), (3) and (4).
8. Such a power is necessary to ensure that any new rights, or changes to existing rights, for arrested persons conferred in any of the three UK jurisdictions can be applied, with any necessary modifications, to persons arrested under these cross-border powers. Any modifications identified, for example as a result of operational experience, will need to be made in a timely manner to ensure the functioning of the power and that the appropriate safeguards for suspects are in place. As explained in paragraph 237 of the Department's original memorandum, while it is appropriate to apply the provisions as to the rights which would be available in the investigating jurisdiction, those provisions need to be modified in order to apply them to the very different context of cross-border arrest and of detention for the limited purpose of enabling re-arrest. The regulation-making power is circumscribed in that the power cannot be used to remove any rights conferred by new section 137D(2), (3) and (4) as enacted in this Bill.
9. The revised regulation-making power in new section 137D(5) may only be exercised with the consent of the Scottish Ministers and the Department of Justice in Northern Ireland. This replaces the narrower requirements in respect of the consent of the devolved administrations in the existing section 137D(7) and (8). This change reflects the unusual nature of legislation dealing with cross-border powers of arrest. For example, the Scottish Government and Northern Ireland Department of Justice will have an interest in, say, the rights and entitlements of England and Wales suspects because they need to ensure

that they could be delivered in practice by Police Scotland or the Police Service of Northern Ireland respectively.

10. For the reasons given in paragraph 239 of the Department's original memorandum, the regulation-making power continues to be subject to the affirmative procedure.

Home Office
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