

CRIME AND POLICING BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

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

New subsection (6) of clause 59: Power to amend list of specified offences in Schedule 7

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Draft affirmative resolution procedure

Context and Purpose

1. Clause 59 provides for a new offence of carrying out relevant activity with the intention of facilitation child sexual exploitation and abuse. This is designed to cover individuals who are colloquially known as ‘moderators’ or ‘administrators’ of websites containing child sexual abuse material. The term ‘child sexual exploitation and abuse’ is defined in clause 59(4) and covers conduct in the UK that would constitute one of the offences listed in Schedule 7 to the Bill or conduct outside the UK which, had it been undertaken in the UK, would have constituted such an offence. Schedule 7 is divided into three parts listing relevant offences in England and Wales, Scotland and Northern Ireland respectively. New subsection (6) of clause 59 confers a power on the Secretary of State to amend Schedule 7. The Secretary of State must consult the Scottish Ministers and Department of Justice in Northern Ireland before making regulations to amend Parts 2 and 3 of Schedule 7 respectively (new subsections (7) and (8)).

Justification for the delegated power

2. While the offence provided for in clause 59 relates to reserved matters in Scotland and Northern Ireland, the generality of the criminal law relating to child sexual exploitation and abuse is devolved or transferred and it is therefore open to the Scottish Parliament and Northern Ireland Assembly to enact legislation which amends, or repeals offences listed in Parts 2 and 3 of Schedule 7 or creates new offences which it would be appropriate to add to the Schedule. The Scottish Parliament and Northern Ireland Assembly won’t have the legislative competence to amend Schedule 7 so it is necessary to confer a regulation-making power on the Secretary of State to enable them to make any necessary changes to the list of offences in Parts 2 and 3 of the Schedule. While any legislation at Westminster amending or repealing offences listed in Part 1 or creating new offences which should be added to Part 1 can itself make the necessary consequential amendments to Part 1 of Schedule 7, it is considered prudent also to include a power to amend Part 1 of the Schedule to cater for cases where relevant legislation

at Westminster inadvertently fails to make necessary consequential amendments to Part 1.

Justification for the procedure

3. By virtue of a government amendment to clause 167(3)(a), regulations made under clause 59(6) are subject to the draft affirmative procedure. The draft affirmative procedure is considered to be appropriate as any additions to the list of offences in Schedule 7 would have the effect of expanding the scope of the offence in clause 59(1). The draft affirmative procedure is also apt as this is a Henry VIII power.

New clause “*Causing internal concealment of item for criminal purpose*” (6): Power to amend list of specified items

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Draft affirmative resolution procedure

Context and Purpose

4. New clause “*Causing internal concealment of item for criminal purpose*” creates two new criminal offences to tackle coerced internal concealment (one against a child and one against an adult). Coerced internal concealment (also known as “plugging”) refers to the practice whereby criminals conceal or cause the concealment of certain items (usually controlled drugs) inside another person’s body, through compulsion, coercion, deception or through controlling or manipulative behaviour, for criminal purposes. It is most often associated with illegal activity, in particular for the purposes of carrying out county lines¹ related criminal activity. The maximum penalty for both offences on conviction on indictment is 10 years’ imprisonment, a fine, or both.
5. Subsection (8) of the clause includes an exhaustive list of “specified items” for the purposes of both offences. This list includes controlled drugs, psychoactive substances, mobile telephones, SIM cards, electronic devices, cash, payment cards, jewellery and offensive weapons. Subsection (9) confers on the Secretary of State, a power, by regulations, to amend the list of specified items in subsection (8).

Justification for the delegated power

6. The Bill itself provides for the two new offences of coerced internal concealment and sets out the constituent elements of those offences, including that the offence

¹ “County lines” is defined in Criminal exploitation of children and vulnerable adults: county lines (accessible version) - [GOV.UK](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/614442/criminal-exploitation-county-lines-accessible-version.pdf) as “a term used to describe gangs and organised criminal networks involved in exporting illegal drugs into one or more importing areas within the UK, using dedicated mobile phone lines or other form of “deal line”. They are likely to exploit children and vulnerable adults to move and store the drugs and money and they will often use coercion, intimidation, violence (including sexual violence) and weapons”

is only made out where a specified item is concealed inside a person's body. The list of specified items is set out in subsection (8). This is an exhaustive list of items, which includes items that are commonly the subject of internal concealment including drugs, SIM cards, mobile telephones, money and weapons. This ensures that the new offences are sufficiently targeted, as they remain focused on the specific criminal contexts in which coerced internal concealment most often occurs (such as drugs and weapons supply) and the specific harms, such as physical damage or psychological harm, that are most likely to occur as a result of concealment of those items. The nature of county lines and other criminal enterprises is, however, subject to change as criminals frequently adapt, and we may see in future that other items commonly become concealed. It is therefore considered appropriate that the Secretary of State should have the power to amend the list of specified items through secondary legislation, to enable the Government to respond quickly to any coerced internal concealment activity which emerges in future. This is considered justified due to the potential harmfulness of coerced internal concealment and the need to respond to tackle it quickly, together with the fact that in order for the offence to be made out, the defendant must intend, know or reasonably suspect that the specific item has been or may be used in connection with criminal conduct. Moreover, the constituent elements of the offence, including that the offence is only made out where a specified item is concealed, is clearly set out in primary legislation (as is the power to amend that list), which Parliament will have already approved during the passage of the Bill.

Justification for the procedure

7. By virtue of clause 167(3)(a), as amended, regulations made under subsection (9) of new clause "*Causing internal concealment of item for criminal purpose*" are subject to the draft affirmative procedure. The draft affirmative procedure is considered appropriate as the effect of any regulations would be to alter, and potentially, expand the scope of the offence (albeit in a limited sense – to amend the list of specified items which may be concealed). This level of parliamentary scrutiny is also apt given that it is a Henry VIII power.

New clause "*Secretary of State guidance*": Power to issue guidance about the exercise of functions in relation to child criminal exploitation, cuckooing and causing internal concealment of an item for criminal purposes

New clause "*Department of Justice guidance*": Power to issue guidance about the exercise of functions in relation to child criminal exploitation and cuckooing

<i>Power conferred on:</i>	<i>Secretary of State / Department of Justice in Northern Ireland</i>
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<i>Power exercisable by:</i>	<i>Statutory guidance</i>
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<i>Parliamentary procedure:</i>	<i>None</i>
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Context and purpose

8. Clause 38 of the Bill provides for a new offence of child criminal exploitation (“CCE”) and clauses 39 to 51 and Schedule 5 provide for a new civil order to protect victims of child criminal exploitation and prevent offending and re-offending - the CCE Prevention Order. These provisions currently apply to England and Wales only, but the government has tabled amendments for Report stage which apply the offence (but not CCE Prevention Orders) UK-wide.
9. Clause 53 provides for a new offence of controlling another person’s home for criminal purposes (known colloquially as “cuckooing”). This offence applies UK-wide.
10. New clause “*Causing internal concealment of item for criminal purpose*” creates two new criminal offences of coerced internal concealment (“CIC”). CIC (also known as “plugging”) refers to the practice whereby criminals conceal or causes the concealment of certain items (usually controlled drugs) inside another person’s body, usually through control, coercion, deception or manipulation, to avoid detection. It is most often associated with illegal activity, in particular for the purposes of carrying out county lines related criminal activity. The offences apply to England and Wales.
11. To complement the provisions in Chapter 1 of Part 4, clause 52 confers power on the Secretary of State to issue guidance to “relevant officers” (namely chief officers of police forces in England and Wales, the British Transport Police and Ministry of Defence Police, and the Director General of the National Crime Agency (“NCA”)) about the exercise of their functions in connection with Chapter 1 of Part 4 of the Bill, namely functions in relation to the prevention, detection and investigation of the CCE offence and functions relating to applications for CCE Prevention Orders.
12. The Government has tabled amendments for Commons Report stage which would omit clause 52 and replace it with wider powers to issue statutory guidance in relation to Part 4 as a whole. New clause “*Secretary of State guidance*” enables the Secretary of State to issue statutory guidance to “relevant officers” about the exercise of their functions in respect of:
 - (a) the prevention, detection and investigation of CCE offences under clause 38;
 - (b) CCE prevention orders under clause 40;
 - (c) CCE prevention orders made on conviction under new Chapter 2A of Part 11 of the Sentencing Code;
 - (d) the prevention, detection and investigation of cuckooing offences under clause 53;
 - (e) the prevention, detection and investigation of coerced internal concealment offences under new clause “*Causing internal concealment of item for criminal purpose*”.
13. “Relevant officers” are defined in subsection (3) and (4) as chief officers in England and Wales, the Chief Constable of the British Transport Police (in respect of their functions under Part 4 in England and Wales), the chief constable of the Ministry of Defence Police (in respect of the functions under Part 4 throughout the UK) and

the Director General of the NCA (in respect of their functions under Part 4 in England and Wales, and Northern Ireland).

14. Before issuing any guidance, the Secretary of State is under a duty to consult such persons as the Secretary of State considers appropriate (for example, the National Police Chiefs' Council and the NCA); the duty to consult is disapplied in cases where revisions to the guidance are insubstantial (subsections (6) and (7)). Relevant officers will be under a duty to have regard to the guidance when exercising such functions (subsection (2)).
15. The guidance, and any revisions to it, must be published (subsection (8)).
16. A similar such power is contained in section 5C of the Female Genital Mutilation Act 2003 (as inserted by the Serious Crime Act 2015) and section 77 of the Serious Crime Act 2015 (which provides for guidance about the investigation of the offence of controlling or coercive behaviour in an intimate or family relationship).
17. New clause "*Department of Justice guidance*" confers a similar power on the Department of Justice in Northern Ireland to issue statutory guidance to the Chief Constable of the Police Service of Northern Ireland about the exercise of their functions in respect of the prevention, detection and investigation of the CCE offence under clause 38 and the cuckooing offence under clause 53. Again, the Chief Constable of the Police Service of Northern Ireland is required to have regard to such guidance.

Justification for taking the power

18. The Bill itself will provide for the CCE, cuckooing and coerced internal concealment offences and provision in respect of CCE Prevention Orders. The purpose of any guidance under new clauses "*Secretary of State guidance*" and "*Department of Justice guidance*" is to support the police and NCA in giving effect to the provisions in Part 4 of the Bill. There is a vast range of statutory guidance, such as this, issued each year and it is important that guidance can be updated quickly to keep pace with operational good practice.
19. Such statutory guidance would, amongst other things, cover:
 - The intent behind using the CCE offence alongside underlying offences (for example, drugs offences) the child is being exploited to carry out and similar offences (for example, modern slavery offences).
 - How those responsible for applying for CCE Prevention Orders and managing (i.e. monitoring and enforcing) CCE Prevention Orders do so effectively and appropriately. Such guidance may, for example, set out circumstances when it is appropriate to apply for a CCE Prevention Orders rather than other available prevention orders (such as a Serious Crime Prevention Order). Additionally, the guidance will clarify how and to which court applications are to be made, who is best placed to make that application, and give illustrative examples of the types of prohibitions and requirements that may be contained in orders.

- Support implementation of the CIC and cuckooing offences, including how enforcement partners should pursue and investigate cases of CIC and cuckooing, their response when children are identified in connection with CIC or cuckooing, and support for how policing should respond and safeguard victims of exploitation when they are identified as part of an investigation.

Justification for the procedure

20. Any guidance issued under new clauses “*Secretary of State guidance*” and “*Department of Justice guidance*” will not be subject to any parliamentary procedure on the grounds that it would provide practical advice to the police and NCA, including on the investigation of the CCE, cuckooing and coerced internal concealment offences and applications for CCE Prevention Orders. The guidance will not conflict with the provisions in Part 4 of the Bill. Moreover, whilst a relevant officer exercising functions under Part 4 will be required to have regard to the guidance when exercising those functions, the guidance will not be binding. The approach taken in these new clauses is consistent with other legislative provisions providing for statutory guidance, including section 5C of the Female Genital Mutilation Act 2003 and section 77 of the Serious Crime Act 2015.

New clause “*Power to give directions to critical police undertakings*” – new section 40D of the Police Act 1996: Power to give directions to critical police undertakings

Power conferred on: Secretary of State

Power exercisable by: Written direction

Parliamentary procedure: Laying only

Context and Purpose

21. To support delivery of the Government’s Safer Streets Mission, and other manifesto commitments, a Police Efficiency and Collaboration Programme (“PECP”) has been established by the Home Office to achieve cashable savings within policing. As a part of my programme of police reform, in November 2025 the Home Secretary [announced](#) that she intended to establish a new National Centre of Policing (“NCoP”). Amongst other things, the NCoP will bring together the provision of critical support services that local police forces can draw upon, to raise standards and improve efficiency.

22. It is envisaged that two companies, namely BlueLight Commercial Limited and Police Digital Service, whose memberships are primarily Police and Crime Commissioners, will transition into the NCoP. BlueLight Commercial was established by the Home Office and policing sector in June 2020, to work in collaboration with blue light organisations (principally police and fire and rescue services) to deliver efficiency and effective commercial and procurement services. The Police Digital Service is the UK organisation responsible for coordinating, developing, delivering, and managing digital services and solutions for UK policing. Police Digital Service is funded by policing and the Home Office.

23. The Home Secretary will set out further details of the NCoP in a police reform white paper to be published later this year. Primary legislation will be required to establish the NCoP. Ahead of the establishment of the NCoP, the Home Office is seeking to maximise cashable efficiencies for policing and lay the groundwork for the smooth transition of BlueLight Commercial Limited and Police Digital Service into the NCoP. New clause "*Power to give directions to critical police undertakings*" makes paving provision to facilitate these objectives.
24. New section 40D(1) of the Police Act 1996 enables the Secretary of State to give a notice to a "critical police undertaking", as defined in new section 40D(2). New section 40D(2) provides that an undertaking is a "critical police undertaking" if : (a) it provides facilities or services to two or more police forces, (b) the provision of facilities or services to police forces is its principal business activity, (c) it is wholly or partly funded by grants from the Secretary of State, and (d) the Secretary of State considers that the facilities or services it provides to police forces are calculated to promote the efficiency and effectiveness of the police.
25. New section 40D(3) specifies that a critical police undertaking to which a notice has been given must comply with any directions given to it under new section 40D by the Secretary of State. New section 40D(4) provides that a direction given under new section 40D is a direction requiring the critical police undertaking to whom it is given to take, or not to take, action specified in the direction.
26. New section 40D(5) sets out a non-exhaustive list of actions that a direction may require a critical police undertaking to take. These include: (a) entering into agreements, including contracts of employment; (b) appointing officers; (c) exercising a function of management in a particular way; (d) providing information to the Secretary of State.
27. By virtue of new section 40D(6), the Home Secretary may only give such a notice or direction if it is calculated to promote the efficiency and effectiveness of the police.
28. New section 40D(7) requires the Secretary of State to consult a critical police undertaking before giving a notice or direction to the undertaking.
29. New section 40D(10) enables the Secretary of State to vary or revoke a notice or direction by issuing a further notice or direction.

Justification for the delegated power

30. This direction-making power is needed to enable the Secretary of State to maximise cashable savings from national level services (such as the commercial and procurement activities of police forces in England and Wales) in order to free up resources for frontline policing and improve the efficiency and effectiveness of police forces in tackling crime and anti-social behaviour and ensuring public safety. In addition, the direction-making power is needed to facilitate the smooth transition

of services currently being delivered by BlueLight Commercial Limited and Police Digital Service into the NCoP later in this Parliament.

31. A direction-making power is appropriate here because it is not practicable to make specific provision on the face of the Bill for all the potential actions that a critical police undertaking may be required to take or not to take. Moreover, such actions may be detailed and technical in nature and, as such, not appropriate for setting out in primary legislation. A direction-making power also enables the Government to respond quickly and flexibly to changing circumstances.

Justification for the procedure

32. By virtue of new section 40D(9), the Secretary of State must publish and lay before Parliament any notice or directions given under new section 40D; such notices or directions are not otherwise subject to any parliamentary procedure. This approach is considered appropriate as it is not a power to make generally applicable delegated legislation, but rather to direct a specific critical police undertaking to act, or not to act, in a specific way.
33. Similar powers in other legislation are also not subject to any parliamentary procedure, and the Government considers the same approach is appropriate here. For example, the power conferred on the Treasury to give directions to the UK Infrastructure Bank of a specific or general nature about how it is to deliver its objectives is exercised administratively, but without any parliamentary procedure (see section 4 of the UK Infrastructure Bank Act 2023). Similarly, the Secretary of State may give Great British Nuclear directions or guidance; again, such directions or guidance are not subject to any parliamentary procedure beyond a laying requirement in respect of any directions (see section 321 of the Energy Act 2023). A similar approach was recently adopted in the Steel Industry (Special Measures) Act 2025.

Special police forces: barred persons lists and advisory lists

- i) **New clause “*Meaning of “law enforcement employer”*”(1)(k): Power to specify additional law enforcement employers.**
- ii) **New Schedule “*Special police forces: barred persons lists and advisory lists*”, paragraph 1(3): Duty to specify information to be included in barred persons list.**
- iii) **New Schedule “*Special police forces: barred persons lists and advisory lists*”, paragraph 5(1)(b): Power to specify appeal proceedings for the purposes of paragraph 5.**
- iv) **New Schedule “*Special police forces: barred persons lists and advisory lists*”, paragraph 6: Power to make provision in connection with the removal of persons from barred persons lists otherwise than under paragraph 4 or 5.**
- v) **New Schedule “*Special police forces: barred persons lists and advisory lists*”, paragraph 7(2) and (3): Power to require a relevant policing authority to publish information about persons included in the barred persons list maintained by the authority.**

- vi) **New Schedule "*Special police forces: barred persons lists and advisory lists*", paragraph 9(2): Duty to specify information to be included in the advisory list.**
- vii) **New Schedule "*Special police forces: barred persons lists and advisory lists*", paragraph 11(3): Power to make provision in connection with removals from an advisory list otherwise than under paragraph 11(1) or (2).**
- viii) **New Schedule "*Special police forces: barred persons lists and advisory lists*", paragraph 13(e): Power to specify meaning of "disciplinary proceedings" in relation to civilian employees of British Transport Police Authority and Civil Nuclear Police Authority.**

Power conferred on: *Secretary of State*

Power exercisable by: *Regulations made by statutory instrument*

Parliamentary procedure:

- (i) *Draft affirmative resolution procedure*
- (ii)-(viii) *Negative resolution procedure*

Context and purpose

- 34. The Police Barred and Advisory Lists Regulations 2017 (SI 1135/2017), established under Part 4A of the Police Act 1996 (as inserted by the Policing and Crime Act 2017), created the Police Barred List and the Police Advisory List. The Police Barred List holds details of individuals, from territorial forces in England and Wales, who have been dismissed from policing due to gross misconduct or performance and prevents them re-joining policing in the future. The Advisory List captures individuals who have either resigned or retired during an investigation or where someone has left the service before a misconduct allegation (that could have led to their dismissal) comes to light and an investigation is launched. Where disciplinary proceedings are yet to be concluded, the Police Advisory List acts as an interim safeguarding measure available to forces.
- 35. The purpose of this measure is to broadly replicate the Police Act 1996 provisions for the National Crime Agency ("NCA") British Transport Police ("BTP"), Civil Nuclear Constabulary ("CNC") and Ministry of Defence Police ("MDP"). Creating barred and advisory lists for these law enforcement agencies will ensure all dismissed individuals are captured and in turn, strengthen police vetting and increase public confidence in policing.
- 36. New clause "*Law enforcement employers may not employ etc barred persons*", together with new clauses "*Meaning of "law enforcement employer"*", "*Application*

of section (Law enforcement employers may not employ etc barred persons) to Secretary of State and *“Application of section (Law enforcement employers may not employ etc barred persons) to specified law enforcement employer”*, restrict employment, appointments and contracts in relation to people on a number of barred lists. It replaces and extends the existing provisions in sections 88C and 88E of the Police Act 1996, which applies to a more limited list of persons and the police barred list only.

37. In particular, new clause *“Law enforcement employers may not employ etc barred persons”* requires a “law enforcement employer” before employing or appointing any person to undertake pre-employment/pre-appointment checks against the barred lists specified in subsection (8) of the new clause. Where a barred person is included in a barred list, the law enforcement employer must not employ or appoint that person. Subsections (3) to (7) of the new clause makes similar provisions in respect of secondees, contractors and others so that a law enforcement employer must not second, enter into a contract etc with a person which would permit a barred person to carry out a role from which they would be barred if they were directly employed. New clause *“Duty on law enforcement employers to check advisory lists”* imposes a similar requirement on law enforcement employers to undertake checks against the various advisory lists (as listed in subsection (6)), however this new clause does not extend the bar on a person from being employed or appointed.
38. New clause *“Meaning of “law enforcement employer”*” defines the term “law enforcement employer”. The term covers, amongst others, chief officers of police, local policing bodies, the Director General of the NCA, HM Chief Inspector of Constabulary, the Secretary of State when exercising functions relating to MDP, and the Independent Office for Police Conduct. Subsection (1)(k) of new clause *“Law enforcement employers may not employ etc barred persons”* enables the Secretary of State to add to the list of law enforcement employers by regulations, the effect of which would be to require any specified person to undertake the pre-employment/pre-appointment checks required by new clause *“Law enforcement employers may not employ etc barred persons”*. This regulation-making power may only be used to add persons exercising law enforcement functions, that is functions of a public nature relating to policing or law enforcement (subsection (2) and (5)). Where a specified person has both law enforcement functions and other functions, the requirement to undertake pre-employment checks may be imposed only insofar as the person to be employed is to be engaged in undertaking relevant law enforcement functions (see subsection (3)). Regulations may specify the Secretary of State insofar as they exercise specified law enforcement functions other than those relating to MDP (subsection (4)). Regulations made under subsection (1)(k) may not contain provision that is within the legislative competence of the Scottish Parliament or Northern Ireland Assembly (subsections (6) and (7)).
39. Paragraphs 1 and 9 of new Schedule *“Special police forces: barred persons lists and advisory lists”* requires the British Transport Police Authority (“BTPA”), Civil Nuclear Police Authority (“CNPA”), Director General of the NCA and the Secretary of State to maintain a barred persons list and an advisory list (respectively). Paragraph 1(3) of the new Schedule enables regulations to be made by the

Secretary of State specifying the information relating to a barred individual which must be included in each barred persons list. Such information is expected to mirror the Police Barred list including but not limited to name, date of birth, rank or grade and a brief description of the conduct that led to their dismissal. Paragraph 9(2) confers a similar power on the Secretary of State, by regulations, to specify the information relating to an individual which must be included in the advisory lists. This is expected to include details around the individual who resigns or retires from a force following an allegation about their conduct, efficiency or effectiveness but before the disciplinary process has concluded; or where an allegation is received within a specified period after the individual had left the force, which if proven, would have led to dismissal had they still been serving.

40. Paragraph 4 provides for the removal of NCA officers and constables from the barred persons list in certain circumstances. Paragraph 5 similarly provides for the removal of civilian employees of the CNPA or BTPA from barred persons lists in certain circumstances. Paragraph 5(1)(b) and (2) require the relevant policing authority to remove a person from the barred persons list where the finding that the person would have been dismissed is set aside at proceedings that are identified as appeal proceedings by regulations made by the Secretary of State.
41. Paragraph 6 of the new Schedule confers a power for the Secretary of State to make further provision in connection with the removal of persons from barred persons lists for reasons other than those provided for in paragraphs 4 or 5.
42. Paragraph 7 provides for the publication of information in barred persons lists. Paragraph 7(2) confers on the Secretary of State a power to require a relevant policing authority (excluding the NCA) to publish information about persons included in the barred persons list maintained by the authority. Paragraph 7(3) sets out a non-exhaustive list of the matters that may be addressed in such regulations, including the information that is to be published, when it should be published, the length of time it should remain published and how it should be published.
43. Paragraph 11(1) and (2) sets out the circumstances in which a relevant policing authority must remove a person from the advisory list. Paragraph 11(3) confers on the Secretary of State a power to make provision relating to removals from the advisory list, on grounds otherwise than those set out in paragraph 11(1) and (2), of persons included in the advisory list by virtue of paragraphs 10(1) and (2).
44. Paragraph 13(e) confers power to define the terms “disciplinary proceedings” in relation to a civilian employee of the BTPA or the CNPA.

Justification for taking the power

45. The new clauses and new Schedule make provision for the BTPA, CNPA, NCA and MDP to establish and maintain barred persons lists and an advisory list, places a duty on law enforcement employers to undertake pre-employment/pre-appointment checks against those (and other similar) lists and prohibits a law enforcement employer from employing/appointing a person who is on a barred

persons list. Having provided for these core elements of the scheme on the face of the Bill, the government considers appropriate to leave secondary detail to delegated legislation. In adopting this approach, these new clauses and new Schedule adopt the same approach as provided for in Part 4A of the Police Act 1996 (as inserted by the Policing and Crime Act 2017). The delegated powers provided for here broadly mirror those contained in Part 4A of the Police Act 1996 and in exercising such powers the Secretary of State is expected to make provision similar to that contained in the Police Barred and Advisory Lists Regulations 2017.

46. In relation to the power in subsection (1)(k) of new clause "*Meaning of "law enforcement employer"*", this may only be exercised to add persons exercising law enforcement functions. This power may be used to require law enforcement bodies such as Border Force or HM Prisons and Probation Service to undertake pre-employment checks against the barred lists. This regulation-making power recognises that there are potentially a wide range of bodies exercising law enforcement functions and, as such, it is appropriate to consider on a case-by-case basis whether to subject them to the duty imposed by new clause "*Law enforcement employers may not employ etc barred persons*". The ability to extend the duties imposed by this new clause will also ensure that persons dismissed from the NCA, BTP, CNC or MDP for misconduct cannot then be reemployed in another law enforcement capacity.
47. In relation to the regulation-making powers conferred by paragraphs 1(3) and 9(2) of new Schedule "*Special police forces: barred persons lists and advisory lists*", it is considered appropriate to leave the detail of the information to be contained in the barred persons lists and advisory lists to secondary legislation. This approach recognises that much of the disciplinary and performance frameworks governing the NCA, BTP, CNC and MDP is itself set out in secondary legislation and changes to these frameworks may necessitate changes to the categories of information to be included in the barred persons lists and advisory lists.
48. Paragraphs 5(1)(b), 6, 11(3) and 13(e) of the new Schedule confers powers relating to making further provisions relating to removal of persons from the barred persons lists and advisory lists. As indicated above, the disciplinary and performance frameworks governing NCA, BTP, CNC and MDP officers is itself set out in secondary legislation and changes to these frameworks may necessitate additions to the circumstances in which an officer should be removed from the barred persons lists or advisory lists. In addition, the disciplinary system for civilian BTP and CNC police staff is set out in policy and guidance, rather than in primary or secondary legislation, as such it is not practicable to define in paragraph 13 the meaning of "disciplinary proceedings" in respect of such staff or to set out in primary legislation all the circumstances in which civilian employees should be removed from the barred persons lists. These delegated powers also afford the flexibility to specify other circumstances where it would be appropriate to remove a person from the barred persons lists or advisory lists, for example following the death of the person or a judicial review.

49. The regulatory-making power in paragraph 7(2) will enable the criteria for determining what should be published to be kept under review and to broaden (or narrow) such categories over time. This regulation-making power recognises that there may be circumstances where information about an individual should not be put into the public domain. The expectation is that the great majority of the names included on this barred list (except the NCA) will be published. In allowing exceptions to be made, this regulation-making power recognises that there will be certain limited exceptions, for example where publication of the name of a dismissed individual, may result in a significant risk of harm to the individual or other affected person, such as vulnerable witnesses or victims.

Justification for the procedure

50. By virtue of clause 167(3)(a), as amended, regulations made under subsection (1)(k) of new clause “*Meaning of “law enforcement employer”*” are subject to the draft affirmative procedure. This is considered appropriate as the effect of any such regulations would be place new duties on the specified person exercising law enforcement functions as well as further narrowing the opportunities for employment of persons included in a barred persons list. The application of the draft affirmative procedure mirrors the procedure applying to the equivalent power in section 88C(5)(e) of the Police Act 1996 as recommended by the Delegated Powers and Regulatory Reform Committee in its third [report](#) of session 2016/17.

51. By virtue of clause 167(4), all the other regulation-making powers specified above are subject to the negative resolution procedure. This is considered to provide an appropriate level of parliamentary scrutiny as the regulations deal with largely procedural matters that are secondary to the core elements of the scheme set out in primary legislation. The application of the negative procedure mirrors the approach for the equivalent powers in the Police Act 1996.

52. In commenting on the provisions in the Policing and Crime Bill which inserted Part 4A of the Police Act 1996, the Delegated Powers and Regulatory Reform Committee commented “In general, we do not find either the delegations or the negative procedure to be inappropriate, because the new sections themselves set out much of the detail of the new “barring” and “advisory” arrangements, and most of the delegated powers are not concerned with matters of substance” (third [report](#) of session 2016/17).

New clause “Section (“*Extraction of online information following seizure of electronic devices*”): *interpretation*” (2): Power to amend list of enforcement officers and senior officers for purposes of clause “*Extraction of online information following seizure of electronic devices*”

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Draft affirmative resolution procedure

Context and Purpose

53. Data stored on electronic devices is vital for both the investigation of crime, particularly in serious and organised crime, including immigration crime, terrorism, hostile state activity and sexual abuse cases, and to protect UK national security. Advances in technology resulted in this data increasingly being stored in the cloud and accessed from online accounts connected to the device, rather than being stored on the device itself.
54. This type of data is commonly referred to as data in the cloud, otherwise known as remotely stored electronic data ("RSED"). RSED includes accounts with end-to-end encrypted communication or social media services such as Telegram, Instagram or Facebook and cloud storage and productivity services such as Microsoft OneDrive or Google Drive.
55. It is therefore necessary to update the existing framework for the investigation of electronic data to reflect changes in technology and to bring the UK in line with international practice. Without these updates, vital evidence and intelligence could be missed.
56. New clause "*Extraction of online information following seizure of electronic devices*" creates an explicit new power for law enforcement agencies, subject to strong safeguards, to access specified online accounts and extract information where they have seized a device under existing powers. This will require authorisation by a senior officer and include a requirement to use other means of accessing the information where practicable. The exercise of the powers will also be subject to a statutory code of practice.
57. By virtue of subsection (1) of new clause "*Extraction of online information following seizure of electronic devices*", the power to access RSED is vested in an "enforcement officer" who has been authorised for the purpose by a "senior officer". Subsection (1) of new clause "*Section ("Extraction of online information following seizure of electronic devices"): interpretation*" defines an "enforcement officer" and "senior officer" for the purposes of new clause "*Extraction of online information following seizure of electronic devices*". Subsection (2) enables the Secretary of State, by regulations, to amend the table in subsection (1) so as to add or remove a reference to a person or to modify a description of a person mentioned in that table.

Justification for the power

58. The case has been made for the persons listed in new clause "*Extraction of online information following seizure of electronic devices*" to make use of these powers as they have responsibilities for the prevention, detection, investigation or prosecution of crime and they have an operational requirement to access RSED to support those purposes. It is possible that over time other agencies with relevant law enforcement functions with an operational requirement to access RSED will be identified and the power will need to be extended to them as quickly as possible once the case has been established. It is also possible that persons who are listed

may see their responsibilities change, such that they no longer need to access to RSED, or their name changed.

59. An analogous power is contained in section 44 of the Police, Crime, Sentencing and Courts Act 2022 which enables the Secretary of State to amend Schedule 3 to that Act which lists persons authorised to extract information stored on a digital device from that device for purposes including preventing, detecting, investigating or prosecuting a criminal offence.

Justification for the procedure

60. By virtue of the amendment to clause 167(3), as amended, regulations made under subsection (2)(a) or (b) of new clause “*Section (“Extraction of online information following seizure of electronic devices”): interpretation*” adding or removing a reference to a person are subject to the draft affirmative procedure. By virtue of clause 167(4), regulations made under subsection (2)(c) of new clause “*Section (“Extraction of online information following seizure of electronic devices”): interpretation*” modifying the description of a person mentioned in the table are subject to the negative procedure. Regulations adding a person to or removing a person from the table in subsection (1) of new clause “*Section (“Extraction of online information following seizure of electronic devices”): interpretation*” will have the effect of altering the list of enforcement officers previously approved by Parliament and, in the former case, would expand the list of persons who may access RSED. As such, it is appropriate to subject any such regulations to the draft affirmative resolution procedure. The affirmative procedure is also appropriate in such circumstances given that this is a Henry VIII power. However, the negative resolution procedure is considered to afford an adequate level of scrutiny for any regulations which do no more than reflect a change in the description of a person listed in the table. Any such regulations will not have the effect of increasing or reducing the categories of person who can exercise these powers, so the negative resolution procedure is considered appropriate.

New clause “*Section (Extraction of online information following seizure of electronic devices): confidential information*”: Power to provide for circumstances in which the duty to make inaccessible or delete protected information does not apply

Power Conferred on: Secretary of State

Power Exercisable by: Regulations made by Statutory Instrument

Parliamentary Procedure: Draft affirmative resolution procedure

Context and purpose

61. New clause “*Section (Extraction of online information following seizure of electronic devices): confidential information*” applies where it appears to any person that information extracted under new clause “*Extraction of online information following seizure of electronic devices*” includes confidential information. Confidential material within the meaning of the clause includes “confidential journalistic

material” within the meaning of the Investigatory Powers Act 2016 and “protected material”, which includes items subject to legal privilege, excluded material and special procedure material.

62. Where confidential material has been extracted, subsection (2) of new clause “*Section (Extraction of online information following seizure of electronic devices): confidential information*” creates a duty that such information must be made inaccessible or, where the extraction involved a copy being made, for the copy to be destroyed. Where confidential information is comprised in other information and it is not reasonably practicable to separate the confidential information from the relevant information without prejudicing its use in relation to a reasonably line of enquiry, the duty is disapplied, but the material must not be examined or copied or put to any other use than to enable the use of the relevant information.
63. Subsection (7) of new clause “*Section (Extraction of online information following seizure of electronic devices): confidential information*” provides a power for the Secretary of State to provide for circumstances in which the duty in subsection (2) of the clause does not apply to certain types of protected material not including items subject to legal privilege.

Justification for the power

64. The powers under new clause “*Section (Extraction of online information following seizure of electronic devices)*” apply where an electronic device has been seized under an existing power in legislation.
65. Additionally, by virtue of subsection (1) of “*Section (Extraction of online information following seizure of electronic devices: interpretation)*” the powers may be exercised by a wide range of different law enforcement agencies with varying requirements to regularly access certain protected material of the kind mentioned in paragraphs (a)(ii) and (iii), b(ii), and (c)(ii) and (iii) of subsection (6) of new clause “*Section (Extraction of online information following seizure of electronic devices): confidential information*” to meet their core law enforcement functions. For instance, the Serious Fraud Office has bespoke seizure powers, including under the Criminal Justice Act 1987. Taking into account the functions of the organisation, the primary purpose of the seizure powers is to obtain business material (as included in the definition of “protected material” by virtue of subsection (6)(a)(ii) of new clause “*Section (Extraction of online information following seizure of electronic devices): confidential information*”. Such business material is not considered confidential material within the Criminal Justice Act 1987, but it would become confidential material if stored in an online account under the new clause and therefore not be accessible by the Serious Fraud Office.
66. The Government considers that accounting for these particular circumstances and making the power in new clause “*Section (Extraction of online information following seizure of electronic devices)*” operate effectively and ensure the duties created by clause “*Section (Extraction of online information following seizure of electronic devices): confidential information*” apply consistently with existing legislation is best achieved through setting this out in regulations. This is so that due consideration can be given to the balance between ensuring that vital evidence pertaining to key

law enforcement activities is not made inaccessible, while ensuring that sufficient safeguards are in place.

67. The Government considers that it would never be appropriate for the duty in subsection (2) not to apply to items subject to legal privilege or in respect of which a claim to confidentiality of communications could be maintained in legal proceedings. This material is therefore not included in the power. Excluded material is included (within the meaning of section 11 of the Police and Criminal Evidence Act 1984 (“PACE 1984”) and Article 13 of the Police and Criminal Evidence (Northern Ireland) Order 1989) (“PACE 1989”), which includes confidential journalistic material, and special procedure material (within the meaning of section 14 of PACE 1984 and Article 16 of PACE 1989).

Justification for the procedure

68. By virtue of clause 167(3), as amended, regulations made under subsection (7) of new clause “*Section (“Extraction of online information following seizure of electronic devices”): confidential information*” will be subject to the draft affirmative procedure. The regulations will have the effect that certain types of protected material will not be captured by the duty in subsection (2) of new clause “*Section (“Extraction of online information following seizure of electronic devices”): confidential information*” and may therefore be used as evidence in criminal investigations in the same way as other information extracted under the power in new clause “*Section (“Extraction of online information following seizure of electronic devices”)*”. As such, it is appropriate to subject any such regulations to the draft affirmative resolution procedure.

New clause “*Section (Extraction of online information following seizure of electronic devices): code of practice*”: Duty to issue a code of practice regarding the exercise of powers relating to extraction of online information

Power Conferred on: Secretary of State

Power Exercisable by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution

Context and purpose

69. New clause “*Section (Extraction of online information following seizure of electronic devices): code of practice*” places a duty on the Secretary of State to issue a code of practice containing guidance for enforcement officers and senior officers about the exercise of the powers in new clause “*Extraction of online information following seizure of electronic devices*” in respect of the extraction of online information from digital devices. In preparing the code, the Secretary of State is required to consult the Information Commissioner, the Investigatory Powers Commissioner, the Scottish Ministers, the Department of Justice in Northern Ireland, and such other persons as the Secretary of State considers appropriate. Once prepared, the code must be laid before Parliament and published, and is to be brought into force by regulations. The code may be revised from time to time – and the provisions on

consultation, laying, publication and bringing into force apply to revisions (other than revisions which the Secretary of State considers to be insubstantial, where there is no duty to consult).

Justification for the power

70. The Government considers that a code of practice will assist enforcement officers and senior officers understanding the purpose and appropriate use of the new powers and considerations they should be making before relying on the powers. A code of practice will provide guidance to all enforcement officers and senior officers who use the powers on the purposes for which the powers can be used and by which authority. It will deliver greater consistency and ensure that those authorised persons relying on the power will be better able to achieve an effective balance between pursuing the purposes for which the powers may be exercised (for example, investigating crime) and the rights of persons whose electronic devices have been seized in the course of an investigation.
71. There is a vast range of statutory guidance, such as this, issued each year and it is important that guidance can be updated quickly to keep pace with good practice in the exercise of these powers and with the evolution of technology. The guidance will be prepared in consultation with the Information Commissioner and others.

Justification for the procedure

72. The code (and any revised code) will be brought into force by regulations subject to the negative procedure (see subsection (5) of new clause "*Section (Extraction of online information following seizure of electronic devices): code of practice*" read with clause 167(4)). In this instance, provision for parliamentary scrutiny is considered appropriate because of the intrusive nature of the powers provided for in new clause "*Extraction of online information following seizure of electronic devices*" and the level of parliamentary and public interest in the investigation and prosecution of crimes. The code will not conflict with, or alter the scope of, the powers which will be set out in primary legislation and will be prepared in consultation with the Information Commissioner and others.

Home Office
10 June 2025