

Title: Anti-social Behaviour, Crime and Policing Bill IA No: Lead department or agency: Home Office Other departments or agencies: Department for Communities and Local Government Defra Ministry of Justice Department for Transport	Impact Assessment (IA)		
	Date: 8/10/13		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries:			
Summary: Intervention and Options			RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£m	£m	£m	No
			NA

What is the problem under consideration? Why is government intervention necessary?

The Bill will bring together provisions from the Home Office to deliver commitments outlined in the Home Office Business Plan 2012-2015. It will contribute to a number of Coalition priorities identified in the Home Office Business Plan, including empowering the public to hold the police to account; freeing up the police to fight crime more effectively and efficiently and creating a more integrated criminal justice system. Where appropriate, individual Impact Assessments have been prepared for the main provisions within the Bill. These impact assessments provide greater detail on each problem under consideration, why intervention is necessary and the impact of each provision.

What are the policy objectives and the intended effects?

The Bill will contribute to the implementation of key policy commitments (see Evidence Base page 3 for the full list). These relate in particular to a) simplifying and improving anti-social behaviour powers; b) introducing new approaches to crime prevention and empowering communities; c) tackling forced marriage; d) further reform of policing institutions to support professional standards, integrity and efficiency.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1: Do nothing. Retain the current position
 Option 2: Introduce the Antisocial Behaviour, Crime and Policing Bill which will make a significant contribution to the protection of the public.

Option 2 is the preferred option.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 3-5 years after Royal Assent					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A		Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:  Date: 18 Oct 2013

Summary: Analysis & Evidence

Policy Option 2

Description: Introduce the Anti-social behaviour, Crime and Policing Bill.

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

Monetised costs are detailed in individual impact assessments, total costs are not presented here. In summary the Bill will mainly impact on the public sector, primarily the police, local authorities, CPS and the courts service and the prison and probation service. In the private sector primarily Private Registered Providers of housing (housing associations) will be affected. Some of these groups will also benefit from some of the changes the Bill makes.

Other key non-monetised costs by 'main affected groups'

A number of public bodies will be required to make administrative changes in relation to provisions in the Bill. These non-monetised costs are also detailed in individual impact assessments.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

Full details of the key monetised benefits are detailed in individual impact assessments. There will be benefits to local authorities from introducing simplified processes such as the Community Protection Order. There will be savings to landlords from seeking possession on absolute grounds rather than discretionary grounds.

Other key non-monetised benefits by 'main affected groups'

Several provisions of the Bill have the potential to improve protection to the public. These non-monetised costs by 'main affected groups' are details in individual impact assessments.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
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The above monetised and non-monetised costs and benefits are based on the key assumptions outlined in the individual impact assessments which contain a breakdown of the risks and benefits in further detail. The net present value of each policy is presented in Table 1. These have not been totalled because of the different approaches taken to estimate the impact of each policy. A total figure would not accurately represent all the caveats to the individual figures and is likely to be misleading.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs:	No	NA
Benefits:		
Net:		

Evidence Base (for summary sheets)

Background

The Anti-social Behaviour, Crime and Policing Bill will contribute to delivering the Coalition priorities as published in the Home Office Business Plan 2012-2015. The key priorities it will deliver are to:

- simplify and improve anti-social behaviour powers so that the police, local authorities and others have powers and tools that are effective and easy to use and provide a real deterrent;
- empower the public to hold the police to account for their role in cutting crime;
- free up police time to fight crime more effectively and efficiently by cutting bureaucracy and overhauling police powers in order to cut crime, reduce costs and improve police value for money;
- create a more integrated criminal justice system through helping police and other public services work together across the criminal justice system;
- protect people's freedoms and civil liberties, while protecting our citizens from terrorism; and
- simplify and strengthen powers to protect the public from sexual harm.

This overarching Impact Assessment has been developed to provide an overview of the main provisions of the Bill. The Bill will achieve the above listed priorities through:

- reform of the powers available to deal with anti-social behaviour – streamlining 19 of the current powers down to a faster, more effective six. These measures will reduce bureaucracy and allow frontline professionals to respond to the needs of victims quickly;
- the community trigger, which will give victims and communities the right to require agencies to deal with persistent anti-social behaviour that has previously been ignored. This will ensure that victims of persistent anti-social behaviour have a say in the way their complaints are dealt with;
- the community remedy, which will require PCCs to consult victims and the public on the menu of sanctions available for those committing low-level crime and anti-social behaviour. Police officers will be required to work from the resulting menu – thereby empowering the public to hold the police to account;
- bringing faster relief to victims and witnesses by removing the court's discretion to consider whether it would be reasonable to grant possession of a dwelling house where serious housing related anti-social behaviour or criminality has already been proven, and enabling possession to be sought by landlords where tenants have committed certain offences beyond the locality of the property in exceptional cases;
- protecting people from dangerous dogs by extending the criminal offence of allowing a dog to become dangerously out of control to all places, including inside the dog owner's home;
- strengthening the law on illegal firearms, to ensure that those who supply firearms face punishments commensurate to the seriousness of the crime they commit.
- putting the British Transport Police (BTP) on the same footing as other police forces in respect of firearms authorisation, to reduce the bureaucratic burden on them and support them in protecting the public;
- enabling forced marriage cases to be tackled more effectively;
- further reforming policing by establishing an independent review body to consider police officers' pay and conditions of service; enhancing the powers of the Independent Police Complaints Commission (IPCC) to support its work on improving public confidence in the integrity of the police; providing the College of Policing, the new professional body for policing, with statutory powers to develop police professionalism; enabling Police and Crime Commissioners to appoint as chief constables candidates with policing experience abroad; and making sure that PCCs and chief constables have the right financial and commissioning powers to deliver services for local communities;
- amending port and border powers under Schedule 7 to the Terrorism Act 2000 to ensure they operate fairly;
- providing clear powers in respect of the seizure of invalid travel documents;

- exempting from destruction personal samples (such as blood or hair) that may be disclosed during court proceedings, to ensure that this evidence is available for necessary scrutiny and consideration;
- amending the Extradition Act 2003 in response to Sir Scott Baker's review and to rectify technical flaws that have come to light in the operation of the Act;
- empowering HM Inspector of the Crown Prosecution Service to inspect the Serious Fraud Office, increasing its transparency and accountability;
- extending statutory provisions for witness protection to all those who are considered to be at risk as a result of a possible criminal offence;
- improving the efficiency and proportionality of the criminal justice system by making changes to the operation of the Victim Surcharge and by introducing a monetary threshold for shoplifting offences to be referred to the Crown Court;
- clarifying the circumstances under which compensation is payable for miscarriages of justice;
- rationalising and further strengthening existing preventative orders to better protect any person in the UK from sexual harm; and
- amending the list of specified offences for a Violent Offender Order, enabling the police to restrict the behaviour and movements of offenders who have committed murder overseas, and insert a power for the Secretary of State to prescribe further specified offences by order.

For the main provisions, the rationale, problem under consideration, policy objectives and options have been considered. Some of the provisions listed above have little or minor impact and therefore require no impact assessment.¹ Individual impact assessments have been published alongside the Bill for the following areas:

- new powers to deal with anti-social behaviour (the injunction to prevent nuisance and annoyance, the criminal behaviour order and the police dispersals power);
- the community protection order and community trigger;
- recovery of possession of tenancies on anti-social behaviour grounds;
- the community remedy;
- measures relating to dangerous dogs;
- changes to firearms controls (introducing a new offence of possession of an illegal firearm for supply or transfer, and increasing the penalty for improper importation of firearms);
- criminalisation of the breach of a forced marriage protection order;
- establishing the legislative basis for the College of Policing to discharge its responsibilities;
- powers for Police and Crime Commissioners to commission services for victims of anti-social behaviour;
- clarification of the definition of "miscarriages of justice"; and
- powers to seize invalid travel documents.

The net present values from these impact assessments are presented in the Table 1. A total net present value for the Bill has not been calculated as there are a number of caveats to the costs and benefits presented below which would not be reflected in an overall figure for the Bill.

¹ This is in accordance with BIS guidance.

Table 1: Net present values of policies in the Anti-social Behaviour, Crime and Policing Bill

Policy	Estimated NPV (over 10 years, £ million)	Caveats
Reform of the anti-social behaviour toolkit		
- Introducing new anti-social behaviour powers	£2.3	Not all costs could be quantified and no benefits of reducing anti-social behaviour could be quantified.
- Community protection orders and the community trigger	-£18.5	
- Community remedy	-£2.3	Future volumes could not be anticipated so ongoing costs and any efficiency savings could not be quantified.
Eviction powers	£13.1	Not all costs and benefits could be quantified.
Measures relating to dangerous dogs	-£6.2	Not all benefits could be quantified.
Changes to firearms controls	-£19.0	No benefits could be quantified, NPV only reflects costs.
Forced marriage offence	-£20.7	No benefits could be quantified, NPV only reflects costs.
Breach of Forced Marriage Protection Order	-	No costs or benefits could be quantified.
College of Policing	-	No costs or benefits could be quantified.
Miscarriages of Justice	£0.9	There are no costs associated with this measure.
Powers to seize invalid travel documents	£-0.1	Not all costs and benefits could be quantified.

Antisocial Behaviour

Background

Tackling anti-social behaviour (ASB) is a Coalition priority. The police recorded 2.3 million incidents of anti-social behaviour in the year ending March 2013,² with many more reported to other agencies such as social landlords and local authorities. ASB has a devastating effect not only on individuals and communities but also on the economy. Recent research conducted by One Poll on behalf of RSA insurance suggested that anti-social behaviour cost UK businesses £9.8 billion in 2011.³

Much of what is often described as ASB, such as vandalism, graffiti or harassment, is actually crime. However, even incidents that appear minor in isolation can have a devastating cumulative impact when part of a persistent pattern of behaviour, and such abuse is often targeted at the most vulnerable members of our society.

Civil powers to tackle ASB were intended to prevent the kind of sustained harassment visible in some high-profile cases and give the police an alternative to criminal prosecution where it was difficult to prove that an offence had been committed or where victims were afraid to give evidence. However, victims and practitioners alike have said that many of the formal powers currently available are unsatisfactory. There are too many behaviour-specific powers, which is confusing, and establishing the criminal standard of proof makes the process expensive and slow.

More than ten pieces of related legislation since 1998 have resulted a plethora of powers to deal with a range of ASB problems. This is confusing for both professionals and victims. Having a new power for every problem encourages practitioners to focus on the behaviour itself, not the harm that it is causing to the victim, which can mean that the cumulative impact of targeted ASB on vulnerable individuals is overlooked. Nor are the current powers necessarily effective at changing the behaviour in question, as the ASBO breach rate of 57% demonstrates.⁴

The Home Office consultation

In February 2011, the Home Office launched the consultation *More effective responses to anti-social behaviour*. The consultation proposed a radical streamlining of the existing legislation, giving the police and their partners a handful of faster, more flexible powers to protect victims and tackle a range of problems.

Specifically, the consultation proposed:

- repealing the ASBO and other court orders for anti-social individuals, and replacing them with two new tools that bring together restrictions on future behaviour and support to address underlying problems – a criminal behaviour order that could be attached to a criminal conviction, and a crime prevention injunction that could quickly stop ASB before it escalates;
- ensuring there are powerful incentives on perpetrators to stop behaving antisocially – for example, by linking breach of the new orders to a faster eviction process;
- bringing together many of the existing tools for dealing with place-specific ASB, from persistent litter or noisy neighbours, to street drinking and crack houses, into a public space protection order and a closure power;
- bringing together existing police dispersal powers into a single police power to direct people away from an area for ASB;

² Data taken from the Crime Survey for England and Wales.

³ <http://www.theaccountancy.co.uk/anti-social-behaviour-having-negative-effect-on-uk-businesses-1634.html>

⁴ <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/asbo-stats-england-wales-2011/>

- making informal and out-of-court tools for dealing with ASB more rehabilitative and restorative; and
- introducing a community trigger that gives victims and communities the right to require agencies to deal with persistent ASB.

The consultation asked a number of questions on the detail of the proposals (e.g. which court new orders should be heard in, or on whether there should be different minimum and maximum order lengths for young people and adults). The consultation ran for 14 weeks, receiving 1,074 responses. In addition, the Home Office ran 12 workshops with frontline professionals (e.g. police officers, council and social landlord staff).

The public consultation showed that there was broad support for simplification of the anti-social behaviour toolkit, with 57% of stakeholder consultation respondents (e.g. local authorities, police, Community Safety Partnerships, housing providers, business groups, etc) being supportive of our aims and only 9% against the proposals. Of the public respondents, 40% felt the proposals would improve the response to anti-social behaviour and only 9% felt they would be less effective than the current system.⁵

The Department for Communities and Local Government (DCLG) consultation

DCLG consulted separately in the autumn of 2011 on measures to speed up the eviction of the most anti-social tenants from social housing. The consultation also included proposals to extend the scope of the existing discretionary ground for possession for ASB to include riot-related offences anywhere in the UK (i.e. away from the immediate vicinity of the property).

The Anti-social Behaviour (ASB) White Paper

In May 2012, the Home Office published *Putting victims first: more effective responses to anti-social behaviour*. This set out the Government's final proposals, following both consultation exercises, and put them in the context of a wider need to focus the response to ASB on the needs of victims (particularly repeat and vulnerable victims). The white paper set out how we would support local areas to:

- **focus the response to anti-social behaviour on the needs of victims** – helping agencies to identify and support people at high risk of harm, giving frontline professionals more freedom to do what they know works, and improving our understanding of the experiences of victims;
- **empower communities to get involved in tackling anti-social behaviour** – including by giving victims and communities the power to ensure action is taken to deal with persistent anti-social behaviour through a new community trigger, and making it easier for communities to demonstrate in court the harm they are suffering;
- **ensure professionals are able to protect the public quickly** – giving them faster, more effective formal powers, and speeding up the eviction process for the most anti-social tenants, in response to the consultations by the Home Office and the Department for Communities and Local Government;
- **focus on long-term solutions** – by addressing the underlying issues that drive anti-social behaviour, such as binge drinking, drug use, mental health issues, troubled family backgrounds and irresponsible dog ownership.

In launching the white paper, the Home Secretary committed to publishing the legislation in draft so that it could undergo pre-legislative scrutiny. This was so those who are affected by the changes, including the professionals who will use the new powers and victims seeking protection from targeted abuse, could continue to shape the reforms.

⁵ A summary of consultation responses was included in the White Paper. <http://www.official-documents.gov.uk/document/cm83/8367/8367.pdf>

Draft Legislation

In December 2012, the Home Office published these proposals in the form of a draft ASB bill for pre-legislative scrutiny by the Home Affairs Select Committee (HASC). The draft Bill took forward the proposals in the white paper and included provisions to:

- simplify and improve the ASB toolkit by replacing 19 of the current powers with a faster, more effective six - including replacing the Anti-Social Behaviour Order (ASBO) with a civil injunction to prevent nuisance and annoyance, and the criminal behaviour order to deal with more serious perpetrators;
- reform police dispersal powers to make them more effective for constables on the ground;
- rationalise existing powers to deal with environmental ASB and public nuisance, with ten current behaviour-specific powers replaced with new community protection notices and orders;
- reform the current eviction process to ensure that where necessary, landlords are able to move decisively and quickly to evict anti-social tenants and ensure that the balance between the rights of someone faced with losing their home and the victims of ASB is the right one;
- introduce a community trigger giving victims and communities the right to require agencies to deal with persistent anti-social behaviour. The trigger could be activated by a member of the public, a community or a business if repeated complaints about anti-social behaviour have been ignored; and
- introduce a community remedy giving victims of low-level crime and anti-social behaviour a say in the punishment of offenders out of court. This means victims will get justice quickly, and the offender has to face immediate and meaningful consequences for their actions.

The draft legislation was accompanied by four impact assessments so that assumptions could be tested by frontline professionals during the process of pre-legislative scrutiny. This was done through workshops with over 400 frontline professionals from across England and Wales. In addition, the new proposal of a community remedy was opened up to public consultation for 12 weeks.

Anti-social behaviour powers

Final proposals

The proposals streamline the ASB toolkit as set out in the table below:

Current Powers	New Powers
ASBO on Application	Criminal behaviour order Injunction to prevent nuisance and annoyance
ASBO on Conviction	
Drinking Banning Order on Application	
Drinking Banning Order on Conviction	
Anti-Social Behaviour Injunction	
Individual Support Order	
Intervention Order	
Litter Clearing Notice	Community protection notice
Street Litter Clearing Notice	
Graffiti/Defacement Removal Notice	
Designated Public Place Order	Public space protection order
Gating Order	
Dog Control Order	
ASB Premises Closure Order	Closure power
Crack House Closure Order	
Noisy Premises Closure Order	
Section 161 Closure Order	
Section 30 Dispersal Order	Dispersal power
Section 27 Direction to Leave	

This is a wide-ranging simplification of a complex area of law, which spans many current Acts of Parliament and affects the work of a number of agencies, in particular social landlords, the police and local authorities. The Government is committed to ensuring the judiciary have tough powers at their disposal on breach, but also that custody is used in a proportionate way.

Specifically, we will be replacing 19 of the current powers available to frontline professionals with six new faster, more effective ones, including:

- an **injunction to prevent nuisance and annoyance** - a purely civil injunction available in the County Court for adults and the Youth Court for 10 to 17 year olds. It will allow a wide range of agencies, including the police, local councils and social landlords to make applications. Breach by someone aged 10 to 17 would result in a curfew, activity or supervision requirement, or as a very last resort, where the court is satisfied that, in view of the severity or extent of the breach, no other power available to the court is appropriate, could result in custody for up to three months for someone aged 14 to 17 years old. For an adult, breach is treated as contempt of court and can result in a prison sentence of up to two years and/or an unlimited fine.
- a **criminal behaviour order** - available following a conviction for any criminal offence in any criminal court. Breach of the order will be a criminal offence, with a maximum sentence of five years in custody for adults and up to a two-year detention and training order for those under 18, replicating the current ASBO sanctions. This will demonstrate to the offender and the community the seriousness of the breach, and, as it is an order on conviction, there is no risk of criminalising someone for the first time for breach of a civil order.
- a police **dispersal power** - enabling officers to require a person who has committed, or is likely to commit, ASB to leave a specified area and not return for up to 48 hours. Use of the dispersal

power will be authorised by an officer of at least the rank of inspector. The test would be that the constable has reasonable grounds for suspecting that the person's behaviour is contributing to or is likely to contribute to ASB, crime or disorder in the area and that the direction is necessary. The direction should be given in writing.

- a **community protection notice** - issued to deal with a particular problem negatively affecting the community. It could be used to tackle a range of ASB (for example graffiti, littering, dog fouling or using a skateboard somewhere inappropriate). The notice would be issued to stop persistent, unreasonable behaviour that is detrimental to the amenity of the locality or is having a negative impact on the local community's quality of life.
- a **public spaces protection order** - providing councils with a flexible power to put in place local restrictions to address a range of ASB issues in public places, and prevent future problems. This would be different to the current situation as one order would be able to cover a number of issues, rather than needing to follow separate processes for each - reducing bureaucracy and cost for local authorities.
- a **closure power** - providing the police or local authority with new, simpler, closure powers, consolidating four of the powers already available to them. This would make it easier to issue a notice to temporarily close any premises for up to 48 hours if there is, or is likely to be, a nuisance to members of the public or disorder. The police or local authority would have to apply to the magistrates' court if they wished to extend this beyond the 48 hours.

Rationale and impact

Frontline professionals' responses to the consultations have set out what works in tackling anti-social behaviour. They show that a balanced response, incorporating elements of both enforcement and prevention is essential, especially for perpetrators with complex needs. Informal tools can be very effective at dealing with anti-social behaviour by the vast majority of perpetrators.

However, there is recognition among frontline professionals that much of the most serious anti-social behaviour is committed by a persistent minority of people with deep-rooted problems. This group is far smaller, but their actions are higher impact in terms of both the safety of the community and the cost to the tax-payer. Formal court-based tools are designed to deal with this small and problematic group. The take-up by applicant authorities (e.g. the local authority or the police) of the support designed to help people address those problems has been very low. For example, only 8% of ASBOs issued to young people since 2004 had a supportive order attached.⁶

As a result, the reforms give frontline professionals more freedom. Informal, out-of-court disposals are an important part of professionals' toolkit for dealing with anti-social behaviour, offering a proportionate response to first-time offenders or low-level incidents and a chance to intervene early and prevent behaviour from escalating.

The injunction to prevent nuisance and annoyance offers a more proportionate, preventative response than the stand-alone ASBO as it carries a civil sanction – people who breach their injunction will face serious consequences, but will not be criminalised. Both the injunction to prevent nuisance and annoyance and the new criminal behaviour order have the option for court mandated positive requirements to get perpetrators to address the underlying cause of their anti-social behaviour and help prevent future problems – a key failing of the ASBO.

The injunction to prevent nuisance and annoyance will also have a lower standard of proof than the ASBO on application (i.e. the civil "balance of probabilities" rather than the criminal "beyond reasonable doubt"). This should make it quicker and less expensive for agencies to obtain an injunction, by reducing evidence-gathering for them. In having a purely civil order, the police and other local agencies will be

⁶ Taken from Ministry of Justice data on the number of Individual Support Orders issued.

able to act quickly to protect victims and communities from ongoing anti-social behaviour and prevent the harm to victims and communities from escalating.

A number of changes are being proposed to remove bureaucracy associated with the current ASBO on conviction. This will mean that criminal behaviour order applications require less local authority and police time to prepare the case files and less court time to hear the cases.

There are considerable savings to be made for the police and local authorities from the removal of the need to designate a dispersal zone. There are likely to be longer-term benefits associated with the use of positive requirements to change the behaviour of offenders, and potentially reduce future anti-social behaviour and offending.

The new environmental powers cover a wider range of behaviour (all behaviour that is detrimental to the amenity of the locality and/or having a negative impact on the local community's quality of life) rather than specifically stating the behaviour covered (e.g. litter or graffiti). This was highlighted in consultation responses as one of the main advantages of the proposals as it allows the most appropriate agency to deal with the situation and can apply to businesses and individuals.

Environmental anti-social behaviour and nuisance are perceived to be a problem by members of the public across the country.⁷ According to the most recent figures in the Office for National Statistics' Crime Survey for England and Wales (period ending March 2013), 29% of people think that litter is a big problem in their area with a further 21% citing drunk or rowdy individuals and 19% highlighting graffiti or vandalism.⁸

Tackling anti-social behaviour more effectively could reduce costs to organisations and individuals. The most recent HouseMark benchmarking data has suggested that the cost to social landlords of anti-social behaviour has increased to £325m – up from £270m only 12 months previously with reports relating to environmental anti-social behaviour (noise, litter, graffiti, etc.) making up around 60% of the total.⁹

Given the level of public concern and the amount of money agencies spend dealing with local anti-social behaviour, there is a clear rationale for developing a set of simple, faster, more effective formal powers to sit alongside the informal powers in place for dealing with anti-social behaviour. These formal powers are vital in tackling the behaviour of the small minority of perpetrators who do not respond to informal approaches to dealing with their anti-social behaviour.

Further information on the provisions for new anti-social behaviour powers is available in two separate impact assessments published at the same time as the Bill (one covers the criminal behaviour order, the injunction to prevent nuisance and annoyance and police dispersal powers; the other covers the community protection order with the community trigger).

Community empowerment

Final proposal – community trigger

The **community trigger** will give victims and communities the ability to demand that agencies deal with persistent ASB. Importantly, it will require local agencies to communicate their decisions and plan of action to the victim of anti-social behaviour who activates the Trigger.

⁷ <http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/short-story-on-anti-social-behaviour--2011-12/rpt-short-story-on-anti-social-behaviour--2011-12.html>

⁸ http://www.ons.gov.uk/ons/dcp171778_318761.pdf

⁹ Costs for 2011/12. HouseMark, *ASB Benchmarking: Analysis of Results 2012/13*, July 2013.

The community trigger will be a mechanism for victims of ASB to require action, starting with a review of their case. The focus of a community trigger case review is on bringing agencies together to take a more joined up, problem-solving approach to find a solution for the victim. Agencies, including councils, the police, local health teams and registered providers of social housing, will have a duty to undertake a case review when someone requests one and their case meets a locally defined threshold. The threshold and procedure for carrying out the case review will be set by the local agencies. For the purpose of the community trigger, anti-social behaviour is defined as behaviour that is likely to cause harassment, alarm or distress to any member of the public.

Rationale and impact

Long-running problems can destroy a victim's quality of life and shatter a community's trust in police and other agencies. It is often targeted at the most vulnerable people in our communities. A recent report published by HM Inspectorate of Constabulary (HMIC)¹⁰ showed that repeat and vulnerable victims are disproportionately exposed to and harmed by ASB, and that vulnerable people who suffer repeat incidents are most likely to fall through the net. This could be as a result of low level ASB being dealt with on a case by case basis without the full impact on the victim being considered, or reports to a number of agencies resulting in isolated responses that do not fully deal with the issue. 41% of the public who responded to the consultation said the community trigger would improve the way anti-social behaviour is dealt with in their area, compared with only 16% who thought it would make things worse.

We do not expect there to be large numbers of triggers activated as a duty already exists on local agencies to deal with every report of anti-social behaviour. The community trigger will act as a safety net, building on existing good practice and encourage the police, councils, housing providers and other agencies to work together to tackle anti-social behaviour, particularly where the victim is vulnerable. We want the community trigger to give victims, regardless of where they live, the confidence that their reports of anti-social behaviour will be dealt with quickly and effectively. It will ensure that no-one has to suffer persistent, targeted anti-social behaviour over a prolonged period of time before agencies take action.

Further information is available in the separate impact assessment published at the same time as the Bill (a single assessment deals with both the community trigger and community protection order) and in *Empowering communities, protecting victims: Summary report of the community trigger trials* published by the Home Office in May 2013.¹¹

Final proposals – community remedy

The **community remedy** is designed to give victims of low-level crime and ASB a say in the punishment of the offender and has three key elements:

- Police and Crime Commissioners will be required to consult the public on a range of sanctions that can be used to deal with low-level crime and ASB outside of the court system in their police force area, with the Police and Crime Commissioner and chief constable ensuring the final menu is proportionate.
- police officers will work from the resulting menu of sanctions when using two types of out of court disposal – informal community resolutions and conditional cautions.
- the victim must be consulted on the sanction to be offered to the offender and given the option to choose an appropriate sanction from the menu. The police officer in question (or prosecutor in

¹⁰ *Personal, Situational and Incidental Vulnerabilities to ASB Harm: A Follow Up Study*. HMIC, Cardiff University, 2013. <http://www.hmic.gov.uk/publication/personal-situational-and-incident-vulnerabilities-to-anti-social-behaviour-harm-a-follow-up-study/>

¹¹ <https://www.gov.uk/government/publications/empowering-communities-protecting-victims-summary-report-on-the-community-trigger-trials>

some cases) will have ultimate responsibility for ensuring that the sanction offered to the offender is proportionate to the offence.

The options on the menu will depend on the views of the community in each police force area but must each include a punitive, restorative and/or rehabilitative element. They could include, for example:

- mediation (for example, to solve a neighbour dispute);
- the offender signing an Acceptable Behaviour Contract - where they agree not to behave anti-socially in the future, or face more formal consequences;
- participation in structured activities funded by the Police and Crime Commissioner as part of their efforts to reduce crime; or
- reparation to the community (for example, by doing local unpaid work for up to 10 hours).

Rationale and impact

Currently not all victims feel that their opinion counts when sanctions are administered to offenders who commit low-level crime and ASB. Sanctions that involve victims such as community resolutions and conditional cautions are not used consistently across police forces and victims are not always fully involved in the process. The process needs to be more transparent, and victims of crime and the wider public need to be convinced that the sanctions are meaningful and appropriate, rather than a token rebuke. Some plans have already been put in place to achieve this through provisions on conditional cautions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and proposals in the Government's Criminal Justice reform white paper *Swift and Sure Justice*.

The central objective of the community remedy is to help Police and Crime Commissioners (PCCs) make the approach to low-level crime and anti-social behaviour in their area more responsive and accountable to victims and the public, with proportionate but meaningful sanctions.

Dealing with low-level crime and anti-social behaviour out of court means victims get justice swiftly, and the offender has to face immediate consequences for their actions, which could make them less likely to reoffend in the future. The community remedy should help to ensure that a more consistent and transparent approach is taken when considering the views of victims of low-level crime and anti-social behaviour. There are other efficiency benefits from using out of court disposals particularly for the police.

Further information is available in the separate impact assessment on the community remedy published at the same time as the Bill.

Eviction Powers

Background

Anti-social behaviour can have a negative impact on neighbourhoods and communities and is one of the major concerns of social tenants. Survey data from the Social Housing Regulator identifies ASB as one of social tenants' top concerns.

Social landlords have a key role in tackling anti-social behaviour and have a range of tools and powers available at their disposal to tackle ASB in all its forms. HouseMark benchmarking data for 2011/12 suggests over 80% of anti-social behaviour cases successfully resolved by social landlords are resolved through early interventions.¹² Where these sorts of interventions are not successful then social landlords may seek, as a last resort, to evict tenants.

Existing grounds for possession for anti-social behaviour are discretionary and require the county court, on application from the landlord for possession on an anti-social behaviour ground, to decide that the

¹² [http://www.housemark.co.uk/hmresour.nsf/lookup/ASB_BM_report_2012.pdf/\\$File/ASB_BM_report_2012.pdf](http://www.housemark.co.uk/hmresour.nsf/lookup/ASB_BM_report_2012.pdf/$File/ASB_BM_report_2012.pdf)

ground is made out and that it is reasonable to grant possession. This often results in a very lengthy and expensive court process for landlords and most importantly prolongs the suffering of victims and witnesses. Evidence, from a survey of social landlords by the Social Landlords Crime and Nuisance Group on behalf of Department for Communities and Local Government in 2011 indicates that it takes on average seven months to get an outcome from the courts in anti-social behaviour possession cases.¹³

In addition, the existing discretionary grounds only apply to anti-social behaviour and criminality committed in, or in the locality of, the property. This restricts landlord's ability to take possession action against tenants who commit serious anti-social behaviour and criminality in neighbouring communities or attack or threaten landlords' staff away from their homes.

Proposal

Our key objective in introducing a new absolute ground for possession for anti-social behaviour is to expedite the eviction of those tenants involved in the most serious cases of ASB and thereby bring faster relief to victims and witnesses. Provisions in the Bill remove the court's discretion to consider whether it would be reasonable to grant possession where serious housing related anti-social behaviour or criminality had already been proven in another court and enable possession to be sought for offences committed beyond the locality of the property in certain, limited, circumstances. We are clear that eviction for anti-social behaviour should be used only exceptionally.

Rationale and impact

A lengthy possession process increases costs for landlords and the courts but most importantly prolongs the suffering of victims and witnesses. The principal beneficiaries of these proposals will be those living next to or near tenants whose anti-social behaviour makes their lives a misery. The new absolute ground, which will be available in addition to the existing discretionary ground for possession for ASB, should mean that these cases can be determined more quickly. We also anticipate that there will be a positive impact, in terms of cost and resource savings, on landlords and Her Majesty's Courts and Tribunals Service.

The limitations of the existing discretionary ground were thrown into sharp relief by the "riot tourism" evident in the disturbances of summer 2011 where many tenants were involved in rioting away from their neighbourhoods and landlords were unable to take action under existing grounds. This is the basis for extending the scope of the discretionary ground so that landlords can seek to evict a tenant where they ruin the lives of those in neighbouring communities through rioting and looting or attack or threaten landlords' staff away from their homes.

Further information is available in the separate impact assessment on the provisions for the recovery of possession of a tenancy on anti-social behaviour grounds, published at the same time as the Bill.

¹³ Analysis of over 500 cases from the date of the application for a possession order to possession being granted or the claim being dismissed.

Dangerous Dogs

Not all dog owners take full responsibility for the impacts their dogs have on society. A considerable number of dog attacks occur on private property belonging to the owner, many of which result in serious injury or even death. The law makes it an offence to allow a dog to be dangerously out of control in a public place (or a place it has no right to be), with a maximum penalty of a fine and/or 2 years imprisonment. However, it is not a criminal offence if the incident takes place on the private property belonging to the owner of the dog. Where dogs are dangerously out of control on private property, matters are currently dealt with under civil law where the maximum penalty is a fine of £1,000. This is inadequate, given the potential seriousness – and sometimes life-threatening nature – of these incidents.

Proposal

The Bill would make it a criminal offence to allow a dog to be dangerously out of control on private property belonging to the owner of the dog. The policy objective is to increase the prevalence of responsible dog ownership by increasing the legal sanctions imposed on dog attacks on private property.

Rationale

The existing law on dangerous dogs makes it an offence to allow a dog to be dangerously out of control in a public place, or a place where it has no right to be. The law does not apply to private places where the dog has a right to be (i.e. in the dog owner's home). In recent years, there have been a significant number of dog attacks on people (in many instances children) in the dog owner's home where serious or fatal injuries have been inflicted. Because these attacks have taken place on the dog owner's property, no action can be taken under dangerous dog legislation or indeed other legislation.

In the 2012 consultation,¹⁴ 48% were in favour of extending the law to inside the dog owner's land; 22% were in favour of extending the law to the dog owner's property but not inside dog owner's home; and 30% were not in favour of extending the law (just under 18,000 responded to this question). All key stakeholders supported the proposal to extend to all places (including the Association of Chief Police Officers, Kennel Club, RSPCA and Communications Workers Union). Most of those who objected to extending the law were concerned about the possibility of an intruder prosecuting the home owner whose dog may act to defend its owner. However, there will be a specific exemption for dogs attacking intruders inside the home, such situations are unlikely to arise, which was recommended by the Parliamentary Select Committee on the Environment, Food & Rural Affairs (Efra) in the report on *Dog and Control and Welfare* (February 2013). The measure will therefore redress the balance between dog attacks in public places and those that take place on the dog owner's property.

Along with other measures, this greater penalty will help increase responsible dog ownership, and reduce the numbers of dog attacks on private property belonging to the owner of the dog. This would have the effect of making it safer for visitors or family members, particularly children as well as those people who occasionally need access to private property as part of their work (e.g. postal workers, social workers, nurses, utility workers, emergency workers, etc). It is also more just than the current situation by providing sanctions equivalent to those that apply to dog attacks in public places.

Impact

As a result of the policy, owners may be more responsible for animals leading to fewer dog attacks. This will lead to savings to the NHS in treating dog attack injuries, employers from lower work absence, lower human costs, grief, etc. and reduced loss of life.

It is estimated that the total annual net cost to Government would be in the range of £0.24m - £1.4m. The best estimate is £0.72m. This includes costs to the police, criminal justice system and the prison and probation services.

¹⁴ <https://www.gov.uk/government/consultations/tackling-irresponsible-dog-ownership>

More detailed information is available in the specific impact assessment on these measures published at the same time as the Bill.

Firearms

The average costs to society of a homicide are £1.8 million of which £1.1 million is the physical and emotional impact on the victim and family.¹⁵ The Association of Chief Police Officers Criminal Use of Firearms group (ACPO CUF) and the National Ballistics Intelligence Service (NABIS) have identified a supply chain involving “middle men” who store guns readily and accessible for criminal use. NABIS estimates that there is a relatively small number of firearms available to criminals, but that these weapons are being used in multiple crimes.

The maximum sentence for importation of illegal firearms (an offence that captures a wide range of behaviours) is ten years imprisonment. Currently, under section 5 of the Firearms Act 1968, there is no specific offence in relation to possession of prohibited firearms with intent to supply. This is inconsistent with the legislation for less dangerous firearms (such as hunting rifles) and shotguns, which come under section 3 of the same Act.

Proposal

The policy targets individuals who supply illegal firearms. The Home Affairs Select Committee report on Firearms Control (December 2010)¹⁶ recommended the introduction of new offences for the supply and importation of firearms to ensure that those guilty of such offences face appropriate penalties. This recommendation followed submission of evidence by ACPO CUF and NABIS to the Committee, in which they argued sentencing power for cases involving firearms trafficking should be increased. The Home Office subsequently began a public consultation on legislative changes to firearms control in February 2012 and published a summary of the responses on 22 March 2013.¹⁷

The Bill proposes to:

- amend the Firearms Act 1998 to make it an offence to possess for sale or transfer prohibited weapons or ammunition with a maximum penalty of life imprisonment;
- increase the maximum sentence for the current offence of manufacture, purchase or acquisition and sale or transfer of prohibited weapons or ammunition from 10 years to life imprisonment.

Rationale

The Home Office received 96 responses to the consultation with the majority supporting the changes to the legislation outlined in the consultation document. Eighty-five per cent supported the view that a new offence of possession with intent to supply is needed. Through consultation, the majority of respondents (78%) stated that the current firearms sentencing framework does not reflect appropriately the level of criminality involved in firearms trafficking. Half the respondents who supported the creation of a new offence and an increase in the sentence for importation stated that the maximum sentence should be life.

Victims of firearm related crime, their families and wider society may feel better served by the level of punishment delivered by the CJS. The proposals demonstrate that the Government has responded to the concerns of the police and ballistic experts.

Impact

The provision could give rise to a cost from additional prison places. An additional 31 prison and probation places per year in steady state (for best estimate) would have an average annual cost of £1.02m and present value cost over 10 years of £8.5m. There may be possible benefits to CJS agencies

¹⁵ Based on Home Office unit costs of crime. These can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118042/IOM-phase2-costs-multipliers.pdf

¹⁶ Home Affairs Committee. Third Report of Session 2010-2011. Firearms Control <http://www.publications.parliament.uk/pa/cm/201011/cmselect/cmhaff/447/44702.htm>

¹⁷ Consultation on Legislative Changes to Firearms Controls <https://www.gov.uk/government/consultations/consultation-on-legislative-changes-to-firearms-control>

and society through reduction in firearms offences from deterrence and possible short-term reductions due to incarceration of offenders. However, the evidence, in relation to increasing the severity of punishment, is mixed and the impact has not been quantified.

Further information is available in the separate impact assessment on these provisions published at the same time as the Bill.

British Transport Police (BTP) Firearms Licensing

The BTP is a statutory police force established under the Railways and Transport Safety Act 2003 (see Part 3 and section 20). However, at present, as a consequence of a legislative anomaly, BTP officers are not in the same position as other crown servants (including officers of other police forces) pursuant to section 54(1) of the Firearms Act 1968 (“the 1968 Act”) with regard to purchase, acquisition and possession of firearms.

The BTP had an armed capability until the mid 1980s. In light of the evolving threat from terrorism, it was decided in early 2011 that the BTP should develop an armed capability. To this end, the Home Secretary has issued an authorisation subject to certain conditions, under section 5 of the 1968 Act, for BTP firearms officers to possess, purchase or acquire the firearms prohibited under that section. Each BTP officer must apply for an individual firearms licence.

Proposal and rationale

Whilst it has proved possible to establish an armed capability through the current process, the proposed amendment would allow BTP officers to carry firearms without requiring an individual certificate and so put them on an equal footing with all other police officers. This would support more efficient and effective deployment by BTP. The current situation places a large administrative burden on both the BTP and the territorial police forces. Reliance on personal firearms certificates also has operational impacts, limiting flexibility of deployment, and means that BTP officers do not enjoy the same level of legal protection when carrying firearms.

Impact

The amendment will allow BTP officers to carry firearms without requiring an individual certificate. The impacts will be a reduction in administrative bureaucracy, benefitting individual BTP officers who must prepare the necessary certificate application, BTP management who coordinate the application and authorisation process, and individual police forces who must process and approve the application. There will also be a costs reduction as there is a charge for a certificate and for any renewals, either at expiry or when details change (including a change of residence) and from the removal of the opportunity cost of officers’ time spent completing forms and identifying and liaising with referees. The provision will remove the need for those responsible for the management of firearms, but not their use, to be similarly certificated. It will also increase flexibility because officers will no longer be restricted to the particular firearm stated in the certificate, and facilitate the use of weapons from other forces in joint operations.

Forced marriage

Forced marriage is recognised in the UK and elsewhere as a form of violence against women and men; domestic abuse; a serious abuse of human rights and, where a minor is involved, child abuse. A forced marriage is a marriage in which one or both spouses do not (or, in the case of some vulnerable adults, cannot) consent to the marriage but are coerced into it. The coercion can include physical, psychological, financial, sexual and emotional pressure. Victims of forced marriage can be both women and men, and the marriages may take place in the UK or overseas.

Research carried out by the then Department for Children, Schools and Families in 2009 estimated that the national prevalence of reported cases of forced marriage in England was between 5000 and 8,000.¹⁸

The Forced Marriage (Civil Protection) Act 2007 provides a specific civil remedy for victims and potential victims of forced marriage. Under the civil legislation, the court may make an order – a forced marriage protection order (FMPO) – for the purposes of protecting a person from being forced into marriage or protecting a person who has already been forced into a marriage. A FMPO may contain such prohibitions, restrictions or requirements as the court deems appropriate. This could include provisions not to threaten, harass or use force; to surrender a person's passport or any other travel document; and not to enter into any arrangements for the engagement or marriage of the person to be protected (the victim), whether civil or religious, in the UK or abroad.

The Bill makes two changes to tackle forced marriage more effectively: criminalising forcing someone to marry, and criminalising the breach of a forced marriage protection order. The Government consulted on both of these issues in the Home Office document *Forced Marriage Consultation*, which was launched on 12 December 2011, and responded to the consultation in June 2012.¹⁹

The policy objective is to ensure that forced marriage cases are tackled more effectively. On the whole the Government wishes to:

- reduce the number of forced marriages;
- provide adequate protection and support for victims of forced marriage;
- punish the perpetrators of forced marriage.

Criminalising forced marriage

Proposal

There is already a range of criminal offences that tackle the behaviour typically associated with forcing someone to marry, for example kidnapping, false imprisonment, assault, harassment, child cruelty, child abduction and various sex offences. However, there is no specific offence of forcing someone to marry. The provisions in this Bill will create such an offence.

Rationale

The Government has decided that new criminal offences are necessary, in addition to the civil regime, to act as an effective deterrent, to properly punish perpetrators and to fulfil our international obligations under the Istanbul Convention on preventing and combating violence against women and domestic violence.

On 17 May 2011 the HASC published its Eighth Report of Session 2010-12 on Forced Marriage.²⁰ The report looked at what they perceived as a lack of progress in tackling forced marriage issues and made a number of recommendations for action to prevent forced marriage and provide support to victims,

¹⁸ *Forced Marriage: Prevalence and Service Reports*, <https://www.gov.uk/government/publications/forced-marriage-prevalence-and-service-response>

¹⁹ <https://www.gov.uk/government/consultations/forced-marriage-consultation>

²⁰ <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/880/88002.htm>

including that the Government consider criminalising forced marriage. On 10 October 2011, in a speech about immigration, the Prime Minister described forced marriage as “the most grotesque example of a relationship that isn’t genuine” and announced the Government’s intention to consult on making forcing someone to marry a criminal offence.²¹

The Home Office document *Forced Marriage Consultation* was launched on 12 December 2011. The consultation sought views on whether a specific criminal offence would help to combat forced marriage and how to ensure that a new offence did not prevent or hinder victims from reporting what had happened to them.

A clear majority of respondents, 80%, believed that the current civil remedies and criminal sanctions for forced marriage were not being used effectively. Over half of respondents (54%) thought that a criminal offence of forced marriage should be created; 37% did not think that a new offence should be created; 9% of respondents were undecided.

Impact

There is likely to be a one-off opportunity cost to the police from the training or reading time involved in acquiring sufficient knowledge to deal with a new offence, and there may be training costs for CPS prosecutors. The new offence could also give rise to a relatively small increase in costs to the Criminal Justice System – an estimated £1.18m annual cost as a result of the additional prison places and probation costs, legal aid and HM Courts and Tribunal Service costs. However, a specific offence of forced marriage may allow the CJS to target their powers better against those who force someone to marry. Victims of forced marriage, their families, and society may feel better served by a specific criminal offence. There may also be a deterrent effect, which could reduce the number of offences and benefit potential victims of forced marriage.

Criminalising the breach of a forced marriage protection order (FMPO)

Proposal

The provisions in the Bill will make the breach of a FMPO a criminal offence for which arrest without warrant is possible. Currently, a breach of a FMPO in England and Wales is punishable only as a civil contempt of court. Speedy enforcement depends on whether the court attached a power of arrest to the order; if no power of arrest was attached, the victim must apply to the civil court for an arrest warrant.

Rationale

The HASC report mentioned above also considered FMPOs. The Committee suggested there were inadequacies in the monitoring of compliance with a FMPO after it was made and a lack of effective action in cases of breaches. The Government response,²² published in July 2011, accepted that it was timely to review some aspects of the civil legislation again and remained open to considering making it a criminal offence to breach a FMPO.

In his speech of 10 October 2011 (mentioned above), the Prime Minister announced the Government’s intention to criminalise the breach of a FMPO. Consequently, in addition to seeking views on *whether* to criminalise forced marriage, the *Forced Marriage Consultation* document published in December 2011 also sought views on *how* to criminalise the breach of a FMPO.

As set out in the summary of responses to the consultation published in June 2012,²³ a large majority (71%) of respondents agreed with the Government’s proposal to model the new offence on the existing one of breach of a non-molestation order in section 42A of the Family Law Act 1996.

²¹ <https://www.gov.uk/government/speeches/prime-ministers-speech-on-immigration>

²² www.official-documents.gov.uk/document/cm81/8151/8151.pdf

²³ <http://www.homeoffice.gov.uk/publications/about-us/consultations/forced-marriage/forced-marriage-response?view=Binary>

Impact

Due to the very small number of cases in which breach proceedings have been brought to date and the uncertainty of the number of cases after criminalisation, overall costs have not been monetised but are assumed to be minimal.

The new offence will allow the breach of a FMPO to be dealt with more efficiently and effectively. At the moment, if no power of arrest was attached to the original order, the victim has to apply to the civil court for an arrest warrant. Making the breach of a FMPO an offence for which arrest without warrant is possible will allow for more effective enforcement action.

Further information is available in the separate impact assessment on criminalising the breach of a FMPO, published at the same time as the Bill.

College of Policing

The Government indicated in the consultation paper *Policing in the 21st Century* (July 2010) its intention to abolish the National Policing Improvement Agency (NPIA), which had a number of functions in relation to police officer selection, promotion, training and development. In August 2010 the Home Secretary commissioned Chief Constable Peter Neyroud to conduct a review of police leadership and training. His subsequent report (April 2011) recommended the creation of a police professional body “responsible for the key national standards, both individual and organisational, qualification frameworks, leadership and training approaches for the service” (Executive Summary, p.11). In December 2011 the Home Secretary announced to Parliament her intention to accept this recommendation and the College of Policing was established in October 2012 as a private company limited by guarantee.

Proposal and rationale

For some time, crime has been falling and public confidence and satisfaction in policing have been rising.²⁴ The police themselves have demonstrated an increasing sense of professionalism, however, the existing structures at the national level in policing were not sufficient to provide a lead on developing police professionalism. For the real benefits to be felt, a central body was therefore needed with the technical and financial responsibilities of matching training and development needs to resource without the distractions of operational responsibilities. This is why in December 2011, the Home Secretary announced her intention to abolish the National Policing Improvement Agency and establish a professional body for policing.

The College’s role will be to identify the professional standards that should be attained by police officers and staff, and develop or oversee the development of training to secure the attainment of those standards. It is intended that training will be provided increasingly by the private sector, and the role of the College in that regard will be to grant licences to businesses enabling them to deliver training products developed by the College, or to accredit training products developed by businesses.

The Governance of the College is considerably different to anything that has gone before. Representatives of all ranks and grades of police officers and police staff will have a place on its governing board, giving a much wider range of the workforce a say in how the College is run.

The Bill will transfer from the Home Secretary to the College the ability to make regulations and codes of practice on matters such as qualifications for, appointment to, and promotion within, police forces. It will also impose statutory duties under the Equality Act 2010 and Freedom of Information Act 2000, as well as making provisions for the transfer of staff, property, rights and liabilities from the interim College.

Impact

These measures support the policy intention behind the creation of the College of Policing: that the police, as embodied in the College, will assume a greater degree of responsibility for training and professional development. By transferring powers from the Home Secretary to the police, these changes will implement a shift in the balance of responsibility for the provision of police training and development, and the role of Government in these matters will be reduced accordingly.

The clauses in the Bill largely involve a transfer of existing powers from the Home Secretary to the College of Policing. In most cases, where the College wishes to exercise its powers, this decision will require approval by the Home Secretary and there are a specific set of circumstances in which she may decline to make regulations. However, the College is unlikely to propose regulations which are significantly different to the baseline (i.e. what would have happened anyway) and therefore do not involve any additional impacts.

Other elements of the Bill are more likely to create new impacts. In particular, one element of the Bill involves an expansion of the circumstances in which a Code of Practice under s39A of the Police Act

²⁴ Crime Survey for England and Wales.

1996 may be issued. This could lead to increased use of this power. However the College may only impose additional Codes of Practice where it believes that it is necessary to do so in order to promote the efficiency and effectiveness of police forces. Therefore the net effect of any increase in the use of this power is likely to be positive.

Further detail is available in the separate impact assessment on these provisions, published at the same time as the Bill.

Police Remuneration Review Body

The Government committed to a review of police officers' terms and conditions in *Coalition: Our Programme for Government* (2010) and Tom Winsor's Independent Review of Police Officer and Staff Remuneration and Conditions began in October 2010. The Review's Terms of Reference specifically included the way in which police remuneration and conditions are determined and accordingly it made a number of recommendations on this issue in its Final Report (March 2012). In October 2012, the Government launched a consultation to seek views on how best to implement these recommendations on replacing the current police pay machinery with an independent police pay review body.²⁵ In seeking views, the Government set out its belief that Tom Winsor's report as a whole provided a good basis for discussion and consultation.

Proposal and rationale

The provisions in the Bill abolish the Police Negotiating Board (PNB) and establish the Police Remuneration Review Body (PRRB) to consider matters such as pay, allowances and hours of duty for police officers up to the rank of Chief Superintendent in England, Wales and Northern Ireland. They provide that the Senior Salaries Review Body (SSRB) will consider these matters for officers of the rank of assistant chief constable (and London equivalents) and above, although the Home Secretary will retain the power to refer matters relating to their pay to the PRRB where it is in the strategic interests of policing to consider all ranks in the round.

The Home Office received 56 responses to the consultation, from a combination of members of the public, individual officers, staff associations and policing partners. The most substantive responses came from key policing partners, including the police staff associations and the Association of Chief Police Officers (ACPO), as well as the Local Government Association. Broadly speaking, the primary concerns of the staff associations were to ensure that their "voice" is heard in determining police officer pay, and there are provisions to ensure that they are able to make their case. In contrast, ACPO are supportive of Winsor's proposals on a pay review body. The PCCs who submitted responses were supportive but were concerned that provisions be made to ensure that their voices are heard as budget holders.

The Government's overriding concern has been to establish an independent body which is able to take as holistic a view of police remuneration as possible, to take an evidence-based approach, to act in a strategic, forward-looking manner and to avoid constraint by the inefficiencies and time delays brought about by the current system of collective bargaining. The move to the independent Police Remuneration Review Body represents the fairest and most appropriate method of determining police pay and conditions, while including senior officers in the remit of the SSRB is intended to ensure consistency across the public sector in the remuneration of the most senior public servants.

Impact

The estimated budgets of the PNB (which is funded jointly by the Home Office, Scottish Government and Northern Ireland Department of Justice) and the Police Advisory Board for England and Wales in 2013/14 are £435,000 and £25,000 respectively. These figures do not include the costs associated with recruiting the chair, or deputy chair of PNB or PABEW. The estimated costs associated with running the Police Remuneration Review Body and having the Senior Salaries Review Body consider the equivalent issues for chief officer ranks is £450,000 per annum. The estimated costs associated with recruiting the full complement of chair and members of the PRRB is £70,000. Following implementation of reforms to introduce the Police Remuneration Review Body and the College of Policing, the remit of the Police Advisory Board will be reduced, with responsibility for considering ranks, qualifications for appointment and promotion, the periods spent on probation and the maintenance of personal records moving to the College of Policing. However, PABEW will continue to require funding of some £25,000 per annum.

²⁵ <https://www.gov.uk/government/consultations/consultation-on-implementing-a-police-pay-review-body>

Independent Police Complaints Commission (IPCC)

Policing integrity is at the heart of public trust and confidence in the police, without which the police cannot do their job effectively and legitimately. Although recent reports have found that corruption is not endemic in the police, they have made recommendations for strengthening police integrity and ensuring consistency in standards across forces.²⁶ A number of high-profile cases over the past few years have also demonstrated the need for action. On 12 February 2013 the Home Secretary announced in Parliament a package of measures to improve standards of professional behaviour to the highest level. This included the expansion of the IPCC to deal with all serious and sensitive complaints against the police.

The provisions in the Bill build on the 2012 fast-track legislation, in the form of the Police (Complaints and Conduct) Act 2012, to strengthen the IPCC and public confidence in its ability to provide effective and robust oversight of individuals serving with the police. They relate to the IPCC's powers in five areas: private sector contractors carrying out functions for the police; obtaining data from third parties; responses to IPCC recommendations; authorising activities under the Police and Criminal Evidence (PACE) Act 1984; and the IPCC's powers to recommend and direct that a force instigates Unsatisfactory Performance Procedures.

Proposals, rationale and impact

The Home Office has conducted a restricted consultation with both the policing and the private sector stakeholders directly affected by these proposals.

Private sector contractors

Under the Police Reform Act 2002, the IPCC has oversight of a limited number of employees of contractors carrying out detention and escort functions. The Bill will extend oversight to the conduct of all private contractors and their employees working with police forces in England and Wales. Given the wide range of roles carried out by private contractors, the intention is to use regulations to limit the categories of employee who fall within IPCC oversight to ensure proportionate use of this power.

This change was recommended by the Home Affairs Select Committee in its report on the IPCC of 1 February 2013. It recognises the work that is increasingly being done through agreements with private sector contractors. It will create greater parity of accountability amongst policing staff, and will protect the credibility of the complaint system more generally.

This extension of the IPCC's oversight is not expected to create a significant additional burden on its resources which cannot be met from its existing budget. The provisions in the Bill will not themselves result directly in a burden on contractors who carry out functions for the police. They will instead enable the Secretary of State to make regulations which, depending on their content and the terms of individual contracts negotiated between chief officers and each contractor, will determine in each case how the costs resulting from any IPCC investigation might be borne. The Home Office will continue to work with the private sector to ensure that their requirements are reflected in that process.

Information from third parties

The IPCC regularly seeks to obtain information from a range of third parties, which can include personal data (or sensitive personal data) within the meaning of the Data Protection Act 1998 (the 1998 Act). Currently if the IPCC requests information in non-criminal investigations from third parties, their requests are often met with an unwillingness to process the request for fear of breaching their duties under the

²⁶ *Without Fear or Favour – A Review of Police Relationships* HMIC, available at: <http://www.hmic.gov.uk/media/a-review-of-police-relationships-20111213.pdf>; *The Leveson Inquiry: An inquiry into the culture, practices and ethics of the press*, Report of the Right Honourable Lord Justice Leveson, 29 November 2012, available at: http://www.official-documents.gov.uk/document/hc1213/hc07/0780/0780_ii.pdf; *Corruption in the police service in England and Wales – second report – a report based on the IPCC's experience from 2008-2011*, Independent Police Complaints Commission, May 2012, available at <http://www.ipcc.gov.uk>.

1998 Act or other relevant legal constraints. The IPCC has no power to require the information to be provided.

The proposals will extend the IPCC's power to obtain information from third parties in specific circumstances where it is necessary for the IPCC to carry out its statutory functions. They also include safeguards to ensure that its use is proportionate, necessary and justified. These safeguards include a right of appeal to a tribunal if a notice is not issued lawfully and a right to withhold information from disclosure which would amount to self-incrimination. A further set of safeguards balances the need for the IPCC to obtain information necessary to carry out its statutory functions, with the need to ensure that particular types of information that it receives are adequately protected. These protections include a prohibition on the IPCC disclosing, without consent, "sensitive"²⁷ material received from the security or intelligence agencies – or the fact that it has received such material. The same prohibition and consent requirement also extends to material which is not intelligence or intercept material but which, in the opinion of the relevant Secretary of State (or Minister of the Crown), could be damaging to national security, international relations or the economic interests of the United Kingdom if disclosed.

There may be a small administrative burden on any organisation required to disclose data relating to an IPCC investigation. However, this is unlikely to be significant to organisations who will typically already have responsibility for handling such data, and some of whom may already provide data to the IPCC on occasion. The Home Office therefore anticipates a very minimal cost resulting from this power.

Framework for responses to IPCC recommendations

Currently, IPCC recommendations may notify a responsible authority of any institutional or systemic failures identified during the investigation process, but without a corresponding requirement for recipients to acknowledge or respond to them. This situation undermines public confidence in the IPCC, and has attracted criticism from families and community groups, as noted by the recent HASC report.

The proposals will enable the IPCC statutorily to require a recipient of its recommendations to publish a response, within a set period, to recommendations issued on the completion of an investigation. This measure is similar to existing responsibilities for Police and Crime Commissioners to address and recognise the recommendations of HMIC.

Authorising certain search and interview activities under PACE

The proposals will enable a senior designated member of the IPCC's staff to authorise certain activities under the Police and Criminal Evidence (PACE) Act 1984, in respect of which authorisation would otherwise be required by a senior police officer. This measure is important in enabling the IPCC to conduct independent investigations into alleged criminality by those serving with the police. It largely relates to the authorising of specific kinds of searches and would allow an investigator to seek permission to conduct an interview and delay access to legal advice.

Recommending and directing unsatisfactory performance procedures following death or serious injury investigations

The existing provisions in Schedule 3 to the Police Reform Act 2002 allow the IPCC to make specific unsatisfactory performance procedures recommendations following the completion of an investigation into a complaint or a conduct matter. At present, they cannot require similar action arising from death or serious injury investigations.

²⁷ "Sensitive" information for the purposes of this power relates to intelligence service information or intercept material received directly or indirectly from, or relating to, an intelligence service. In practice, this means material from the Security Service, the Secret Intelligence Service, the Government Communication Headquarters, any part of Her Majesty's forces or the part of the Ministry of Defence which engages in intelligence activities.

The proposals will enable the IPCC to recommend and direct the appropriate authority to carry out “unsatisfactory performance procedures” in relation to a Death or Serious Injury (DSI) investigation as well as in a complaint or a conduct matter.

Appointment of chief officers of police

The issue of choosing police leaders is of the highest importance to the future of the police. It was among the matters considered in Tom Winsor's Independent Review of Police Officer and Staff Remuneration and Conditions.²⁸ It is also a priority for the College of Policing, the new professional body for the police, which has a focus on developing the qualifications, training, practice and procedure for police officers and staff.

The Government ran a public consultation on implementing three of Tom Winsor's recommendations for widening and better managing the pool of talent from which police leaders are drawn: a fast-track scheme to the rank of inspector; direct entry at superintendent level; and revising the eligibility criteria for chief constables (and the Commissioner of the Metropolitan Police Service).²⁹ The Government's response was published on 14 October 2013. This provision in the Bill relates to the last of the three recommendations, in respect of chief constables.

Proposal

This provision will amend the requirement that to be eligible for the post of chief constable a person must have served as a police constable in the UK. It will specify that a person can be appointed as a chief constable if they have served as a constable in the UK or if they have been a police officer in an approved overseas force at the approved rank.

It will also provide that the College of Policing will be responsible for making designations as to which countries, police forces and ranks can be considered. The designation will have to be approved by the Home Secretary.

Rationale

The purpose of this provision is to widen the pool from which Police and Crime Commissioners (PCCs) can draw to recruit chief constables.

It also recognises that the operational responsibility and accountability of a chief constable means that any applicant will need extensive policing experience. In most cases it is expected that PCCs will choose their chief constable from senior officers already serving in the UK but when there is someone else, who is or has been a police leader overseas and who has an exceptional record of achievement, PCCs should have the ability to appoint them. This option should also be available to the Home Secretary in making a recommendation to Her Majesty for the appointment of the Metropolitan Police Commissioner.

Impact

There are 42 posts that will be eligible to appoint qualified officers from overseas forces. Vacancies arise five to 15 times a year but we would expect these provisions to be used infrequently.

Should a PCC use this provision to appoint a chief constable from overseas he or she will work with the College of Policing to determine what levels of support and training will be needed to help the new appointee to apply their experience in a UK context.

²⁸ See the review's Final Report. <http://webarchive.nationalarchives.gov.uk/20130312170833/http://review.police.uk/publications/part-2-report/>

²⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/175510/consultation-document.pdf

Police and Crime Commissioners

The Bill includes provisions that take account of the reform of police governance under the Police Reform and Social Responsibility Act 2011. These provisions address two main issues: facilitating efficient financial administration of police forces and implementing reforms to the way that support services for victims and witnesses are commissioned.

Financial arrangements

Proposal and rationale

The first set of measures would facilitate the financial administration of police forces by: allowing chief constables and the MPS Commissioner to borrow under certain circumstances; subjecting them to the same controls as local authorities in respect of capital receipts, investments and accounts; and extending to Police and Crime Commissioners and the Mayor's Office of Policing and Crime (MOPAC) the prohibition on entering into credit agreements that already applies to chief constables and the MPS Commissioner. This will enable more effective cash management by chief constables (and the Met Commissioner) and prevent chief constables (and the Met Commissioner) from building up uncontrolled debt and engaging in risky investment.

Impact

The direct impact of this will be that chief constables (and the MPS Commissioner) will be able to have access to an overdraft and a credit card (if the PCC deems this to be necessary). It will also ensure that the same comprehensive capital control framework applies to both PCCs and chief constables.

Powers of local policing bodies to provide or commission services

Proposal and rationale

In respect of services for victims, on 2 July 2012 the Government published its response to the consultation *Getting it Right for Victims and Witnesses* alongside an impact assessment that covered the provisions that this Bill is proposing for victims.³⁰ This Bill proposes to extend this provision to victims, witnesses and any other persons affected by an offence and/or anti-social behaviour.

The Bill will create a clear statutory basis upon which local policing bodies (Police and Crime Commissioners and MOPAC) can commission services and improve the range and quality of provision to victims of crime. Some services will continue to be commissioned at the national level but the majority will be commissioned locally, by local policing bodies, using funding provided to them by the Government for the purpose. The kinds of victims' services that LPBs will commission may include practical measures such as the provision of information, refuges or shelters, financial support and guidance, and advice and assistance on security measures. They may also include emotional support services such as counselling, treatment for post-traumatic stress disorder and peer support groups. They may also include restorative justice measures involving interaction with the offender.

Impact

Assessing the impact of the change to enable PCCs to commission services would require local research to be conducted, which would require engagement with victims and partner organisations and also an exercise to monitor and measure the performance of providers. The costs of this may reduce the amount spent on frontline services.

These measures should be considered in conjunction with the impact assessments published with the Government's consultation response and with this Bill, on reforms to increase and extend the Victim Surcharge and to use revenue raised from an increase in motoring Fixed Penalty Notices (by the

³⁰ <https://consult.justice.gov.uk/digital-communications/victims-witnesses>

Department for Transport) to generate additional funding (of up to an estimated £50m) for support services for victims.

The new local commissioning process is also expected to shift resources toward victims most in need which means some organisations may receive less funding and therefore victims who are less in need may receive a lower level of support.

However, overall, victims should benefit from improvements in the suitability and quality of services resulting from additional research into their needs and a more rigorous commissioning process. PCCs would be expected to have an understanding of local issues and work collaboratively with other statutory service providers which should improve the responsiveness and effectiveness of support for victims. In particular, victims most in need of support are likely to benefit as the PCC would reallocate resources for services to them. The proposal would provide PCCs with the opportunity to shape the design of services, reduce duplication of services and be directly accountable to the people in their area.

Further information on PCCs commissioning services for victims of anti-social behaviour is available in the separate impact assessment published at the same time as the Bill.

Retention of samples

As part of the Coalition commitment to introduce greater safeguards in the operation of the National DNA Database,³¹ the Protection of Freedoms Act 2012 requires biological samples taken for police investigations to be destroyed after six months. This was intended to cover samples taken so that they could be analysed in order to produce a DNA profile, which is a record on the DNA database representing a very small part of a person's DNA. As the DNA profile is sufficient to match a person to DNA found at crime scenes, the rationale was that the samples should be destroyed to remove the possibility of further analysis being carried out in the future which might impinge on privacy by deriving further information on the person's genetic makeup.

Proposal

The provision in the Bill would treat samples required for evidential purposes in court cases in the same way as other types of forensic evidence for court (principally DNA profiles and fingerprints). It would introduce limited exceptions to this requirement to destroy samples after six months, with appropriate safeguards. Other types of evidence, such as DNA profiles and fingerprints, are protected by the Criminal Procedure and Investigations Act 1996 (CPIA) so that they can be retained as long as they are needed for investigation and prosecution. The proposal is to extend this protection to samples, whether taken under the Police and Criminal Evidence Act 1984 or the Terrorism Act 2000. Samples could only be used in proceedings relating to the particular crime in connection with which they were taken. As soon as the CPIA ceases to apply (that is, when the samples are no longer needed for possible disclosure), they would have to be destroyed.

Rationale

The Protection of Freedoms Act makes a clear distinction between material collected for database purposes and material collected as evidence in court. Material collected for database purposes has clear limits on its retention (in general, innocent people may not have their biometrics retained) while the retention of material for court purposes is regulated by CPIA. This distinction is not made for physical samples. However, work to implement the provision in the Protection of Freedoms Act ahead of its commencement has shown that its wording could cause practical difficulties in some cases. It would require biological samples of all types to be destroyed, including blood, semen, urine, saliva, hair and skin swabs. This affects not only samples used for adding profiles to the DNA database but also those used for purposes such as testing for drug and alcohol use, violent and sexual contact between suspects and victims, and exposure to chemicals such as those associated with explosives, firearms, or drug production.

As a consequence, a sample which becomes relevant to disputed issues in court proceedings may have been destroyed by the time those proceedings take place. This could make it difficult for the evidence to be tested. To avoid such a situation, the proposal protects personal samples by bringing them within the same arrangements that cover other types of evidence, such as DNA profiles and fingerprints. Privacy remains protected by the safeguard that samples may only be used in proceedings relating to the particular crime in connection with which they were taken.

Impact

The Protection of Freedoms Act as currently worded requires the police to apply for a court order extending the permitted retention period whenever a sample may be needed for disclosure in court proceedings more than six months after the date it was taken. At a very approximate estimate, there are about 8,000 cases a year (each of which may involve multiple samples) in which extended retention may be required. Applying for court orders in all these cases would impose administrative costs on both the police and courts. By removing the requirement for court orders in such cases, the provision would avoid

³¹ In *The Coalition: Our Programme for Government* (May 2010)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf

this cost being incurred. Also, an issue may not arise until after a sample has been destroyed, in which case it would be impossible to address it correctly in court proceedings, thereby jeopardising a just outcome. Similarly, the provision will remove this risk.

As the application process for retention has not been implemented, data does not exist on the time that would be required of police and courts in dealing with an application. But the following example illustrates that the proposal could save the public sector millions of pounds per year. Note, however that these values are not necessarily cashable because, for instance, court buildings are not divisible.

	Cases	Time required (range)	Time required (best estimate)	Cost per hour	Total burden (range)	Total burden (best estimate)
Police	8,000	1 to 5	3	£32.87	£0.3 - 1.3m	£0.8m
Courts	8,000	0.5 to 3	1	£554	£2.2 - 13.3m	£4.4m
Total					£2.5 – 14.6m	£5.2m

Time requirements are estimates.

Police cost per hour is Home Office estimate for sergeant and below, including “on costs” in 2011/12 prices.

Courts cost per hour is HMCTS estimate for Magistrates Court in 2010/11 prices.

In addition to these benefits, the cost of a miscarriage of justice, because of the lack of original sample material to prove or eliminate an individual, need to be considered. Against these benefits needs to be considered the risk that removing the formal application process for retention of sample cases could result in some instances of samples being retained inappropriately. This could result in a loss of confidence in the criminal justice system, and/or a negative impact on individuals’ privacy. However, there are explicit safeguards in both the Protection of Freedoms Act and this Bill to prevent this happening.

Seizure of invalid travel documents

The Government's ability to disrupt individuals from travelling abroad to engage in terrorism-related and other serious or organised criminal activity has become increasingly important with developments in Syria and other parts of the world. The Royal Prerogative power can be used to disrupt individuals who seek to travel on a British passport to engage in terrorism-related activity or other serious criminal activity abroad which then impacts on the UK. The Home Secretary has the discretion, under the Royal Prerogative, to refuse or withdraw a British passport on public interest grounds. The public interest criteria were updated in a Written Ministerial Statement on 25 April 2013.³² However, there are no explicit enforcement powers to require the return of a cancelled passport.

There is also a need to clarify the statutory powers available to Border Force officers (immigration officers and designated customs officials) and police officers at ports to disrupt people who seek to use invalid travel documents to enter or leave the UK. Invalid travel documents are those that are cancelled, expired, not issued by the government or authority by which they purport to be issued or have been altered in an unauthorised way. Immigration officers can examine people entering or leaving the UK for the purpose of determining their nationality and leave status, and have powers of arrest in cases where there is a reasonable suspicion that a person has committed a criminal offence. However, they have no power to require a British citizen to hand over a cancelled passport for the purpose of inspecting and seizing it.

Proposal

The proposal is to create two new powers of search and seizure for invalid travel documents, to address these gaps.

The first power would enable Border Force officers and police officers to search for and seize invalid travel documents at the border.

The second power would enable police officers, on the authorisation of the Secretary of State (the Home Secretary), to search for and seize passports cancelled on public interest grounds under the Royal Prerogative "in country". This power would only be exercisable where there are reasonable grounds to believe that the person being targeted was in possession of a cancelled passport.

Two offences would be created to ensure that the powers could be enforced. These would be:

- failing without reasonable excuse to hand over all travel documents when required; and
- intentionally obstructing or seeking to frustrate a search for these documents.

For both, the maximum sentence would be six months' imprisonment or a fine or both.

Rationale

One of the key aims in refusing or withdrawing a passport under the Royal Prerogative is to disrupt the travel of individuals seeking to engage in terrorism-related and other serious criminal activity abroad. The lack of an explicit power and direct mechanism to remove a passport that has been cancelled on public interest grounds under the Royal Prerogative makes Government intervention necessary.

There is no power for a Crown official, such as a Border Force officer, to search a person for the purpose of seizing a cancelled passport, even though passports remain the property of the Crown at all times. There is also no direct power for a police officer to retrieve a passport cancelled on public interest grounds. Without new powers, individuals of concern may remain in possession of a passport, which appears valid on the face of it and they might seek to use for travel, even though it has been cancelled.

³² <https://www.gov.uk/government/speeches/the-issuing-withdrawal-or-refusal-of-passports>

The search and seizure statutory powers that are available at the border to make sure that invalid travel documents can be removed from individuals need to be clarified. For example, immigration officers have existing powers to search for and seize documents for immigration purposes at points of entry into and embarkation from the UK. However, these powers are not available to designated customs officials or police officers, nor are they available in cases where officers already know that a person has a right to enter and remain in the UK (such as with British citizens). Having an explicit power for immigration officers, customs officials and police officers to examine and seize invalid travel documents would bring clarity to this area and enable invalid travel documents to be seized at the border from people who should not have them.

Impact

The main groups affected by this policy would be the individuals who would be targeted on an intelligence-led basis to remove their invalid travel documents, the general public, Border Force, the police, and the Ministry of Justice.

The policy is likely to affect very few people directly as it will be intelligence-led and not targeted at the general public.

The powers would help protect the public by disrupting, for example, travel for terrorism-related purposes; and ensure that justice is upheld in respect of those seeking to travel on invalid travel documents for criminal purposes such as to circumvent immigration controls. More clarity would be provided for immigration, customs and police officers on the powers available at port to examine and seize documents. This would enhance their ability to seize invalid travel documents from people who should not have these documents in their possession at port.

There are potential resource costs in terms of raising awareness about the new statutory powers and training. For Border Force, this cost is estimated to be £96.5k in the first year.³³ For the police, it is estimated to be £38.1k in the first year.³⁴ **Therefore the total cost of familiarisation is £134.6k.** This would be offset by increased effectiveness, resulting from the new powers, in protecting the public from the harms associated with individuals travelling on invalid documents.

Given the small number of cases that are likely to be involved, any downstream impact on the criminal justice system arising from the new offences is likely to be minimal.

Further information is available in a separate impact assessment on this provision, published alongside this overarching impact assessment.

³³ Hourly wage calculated using the Border Force "actual average costs" in 2013/14 prices.

³⁴ Estimates of police provided by police contact. Hourly wage calculated using Home Office estimates of police time. These were calculated using CIPFA (Chartered Institute of Public Finance and Accounts) and ASHE (Annual Survey of Hours and Earnings) data for 2011/12, figures were then inflated by 1% to take into account the pay increase in 2013. On-costs of 30% from the Standard Cost Model, Better Regulation Framework were applied.

Stop and search and detention powers at ports

Schedule 7 to the Terrorism Act 2000 (“Schedule 7”) provides counter-terrorism port and border powers. It enables an examining officer to stop, search, question and detain a person travelling through a port/airport or the border area. This is to determine whether that person is or appears to be concerned with the commission, preparation or instigation of acts of terrorism. Schedule 7 is an important part of the UK’s counter-terrorism strategy but there are concerns that it can operate unfairly. David Anderson QC, the Independent Reviewer of Terrorism Legislation, has made recommendations to improve the use of this power. The Government has reviewed possible improvements which can be made to Schedule 7 to maintain the protection of the UK border and continue to respect individuals’ human rights. A public consultation, *Review of the Operation of Schedule 7*, was launched in September 2012, and the Government’s response was published on 11 July 2013.³⁵

Proposal and rationale

The existing powers have potential to result in conduct that might interfere with individuals’ rights disproportionately – and be liable to successful challenge in the domestic courts and before the ECHR. The amendments to Schedule 7 will reduce potential for the powers to be operated in a way that may interfere with individuals’ rights unnecessarily or disproportionately – whilst still retaining the operational effectiveness of the provisions.

The Bill includes provisions for a package of amendments to ensure that Schedule 7 powers operate fairly and transparently. These include:

- Reducing the maximum legal period of examination from 9 to 6 hours. Between 1 January 2009 and 31 March 2012 only 3% of examinations continued for over one hour. Only 1 in 2000 examinations last more than 6 hours.³⁶
- Requiring that all examinations beyond 1 hour require detention. This will afford the individual a right to access legal advice.
- Requiring a supervising officer to review the need for continued examination following detention. This may help to minimise the length of detentions and provide added protection to the examinee.
- Giving individuals detained under Schedule 7 the statutory right to have a person informed of their detention and to consult a solicitor privately, at public expense. This is current practice following a Home Office Circular issued in July 2011.
- Requiring the Secretary of State to make provision in the statutory Code of Practice about the training to be undertaken by examining or review officers. This would ensure Schedule 7 is used only by officers trained to use the powers and that the power is operated to consistently high standards.
- Amending the basis for undertaking strip searches to require suspicion and a supervising officer’s authority. Strip searches are extremely rare, but data on numbers is not currently available. The power to perform strip searches is necessary and would put in primary legislation what is guidance in the statutory Code of Practice.
- Repealing the power to take intimate DNA samples from persons detained during a Schedule 7 examination. The power to take intimate samples could be removed without compromising the operational effectiveness of Schedule 7.
- Making express provision for the retention of things obtained in an examination to determine whether a person or goods being examined is or has been concerned, or used in terrorism. The copy may be retained for as long as is necessary for the purpose of determining whether a person is involved in the commission, instigation or preparation of terrorism, or for use as evidence in criminal proceedings or in connection with deportation proceedings.

³⁵ <https://www.gov.uk/government/consultations/review-of-the-operation-of-schedule-7>

³⁶ Data provided by ACPO TAM National Co-ordinator Protect and Prepare.

The overarching intention of these changes is to help ensure that Section 7 is used effectively, fairly and proportionately.

Impact

The changes to Schedule 7 will not affect the private sector, civil society organisations or public services and will not impose additional costs on businesses. There may be some additional administrative costs incurred as a result of the proposed changes, for example the requirement to train examining and supervising officers. However, these costs are not likely to exceed £0.5 million and can be managed within existing police budgets. All persons detained under Schedule 7, regardless of location, are already within the scope of criminal legal aid.

Inspection of the Serious Fraud Office

The Serious Fraud Office (SFO) came into existence on 1 April 1988. It was created by the Criminal Justice Act 1987 (“the 1987 Act”) to investigate and prosecute serious or complex fraud. The Director of the SFO is appointed by the Attorney General (section 1(2) of the 1987 Act) and he discharges his functions under the superintendence of the Attorney. In terms of appointment and accountability, the Director of the SFO occupies a position directly analogous to the Director of Public prosecutions, and is similarly accountable to Parliament through the Attorney General.

An inspection of the SFO by HMCPsi was undertaken on a voluntary basis in 2012. In advance of this inspection issues were raised in relation to the powers of HMCPsi to undertake such an inspection and, in particular, whether HMCPsi was able to compel SFO to disclose documents to it in order to carry out the inspection. The Attorney General has since set out his intention to give HMCPsi statutory powers of inspection in a Written Ministerial Statement on irregular redundancy payments to senior SFO staff laid on 4 December 2012.³⁷

Proposal, rationale and impact

To date there have been no clear statutory powers of independent and external inspection of the operation of the SFO. Independent inspection of criminal justice agencies both improves public confidence in the criminal justice system and builds its effectiveness by making recommendations for improvement. Providing statutory powers to the Chief Inspector will ensure that she/he can undertake an inspection at any time and not only when invited to by the SFO. Statutory powers will also provide the Chief Inspector with a clear gateway for accessing information and documents that have been provided to the SFO in confidence for the purposes of prosecution. Overall, these changes will provide greater scrutiny of the operation of SFO in England and Wales, allowing the Attorney General to give a more robust assurance to Parliament in the execution of his superintendence of the SFO. The Director of the SFO and the Chief Inspector of CPSi welcome the extension. Provision for the inspection of SFO will be met within HMCPsi’s existing resource.

³⁷ House of Commons, Official Report, column 51WS-52WS.

Extradition

Effective extradition processes are crucial to fighting cross-border crime. The Government commissioned the Review of the United Kingdom's Extradition Arrangements, which was led by Rt. Hon Sir Scott Baker and reported in October 2011. The Review undertook public consultation, and the representations it received were published in October 2012.³⁸ In its response to the report,³⁹ the Government accepted a number of recommendations that require legislation. New legislation was passed in the Crime and Courts Act 2013 including the implementation of a new forum bar to extradition, and transferring the discretion to consider final human rights representations from the Secretary of State to the High Court.

The Baker review also considered the operation of the European Arrest Warrant (EAW) in detail. The Home Secretary announced a series of amendments to the Extradition Act to Parliament on 9 July 2013. These amendments focus on domestic changes to improve the operation of the European Arrest Warrant (EAW) and address the concerns of Parliament, NGOs and critics of the EAW.

Further amendments to the Act are also intended to fix technical problems that have come to light since the Act entered into force.

Proposal, rationale and impact

Issues raised by the Baker Review and other technical amendments

The technical and procedural amendments in the Bill include changes to the way in which extradition processes interact with those for considering asylum claims, to provide greater consistency between the treatment of those who apply for or are granted asylum at different stages in the extradition proceedings. There are also changes to the appeals process to enable fairer and more efficient disposal of appeals, enabling the High Court to allow appeals outside the statutory time limits in exceptional circumstances and to filter out inarguable appeals to reduce the burden of unmeritorious appeals that currently delay hearings. This amendment was recommended in the Baker review which found that success rate of appeals was extremely low: less than 13 % in 2010. This amendment will get the balance right between ensuring proper protection for those subject to an extradition request while ensuring they do not delay their proper surrender by burdening the courts with unmeritorious appeals. Both the requested person and requesting state will have to seek leave to appeal to the High Court. The amendments also allow police forces to facilitate transit through the UK of individuals being extradited between other countries.

Further technical amendments to the EAW include:

- Ensuring that the extradition hearing need not take place within 21 days of arrest where the judge has adjourned proceedings so that domestic criminal matters may be dealt with, or a domestic sentence be served;
- Deferring surrender until any domestic proceedings have concluded;
- Enabling the Secretary of State to designate international conventions to which the UK is a party (and specify conduct in relation to those conventions), which will allow for requests made pursuant to such conventions to be dealt with within the framework of the 2003 Act;
- Clarifying that in cases where there are competing extradition requests and proceedings in one have been adjourned, those proceedings may only be resumed where the other request has been refused;
- Applying the Criminal Procedure Rules to extradition appeals to the High Court, and require that extradition is postponed if the judge is informed after the extradition hearing that the person has been charged with an offence in the UK.

³⁸ <https://www.gov.uk/government/publications/uk-extradition-arrangements-evidence-given-to-the-review-panel>

³⁹ <http://www.official-documents.gov.uk/document/cm84/8458/8458.pdf>

These measures are designed to improve the efficiency of the operation of the Extradition Act 2003, and to help reduce the overall length of time cases take. Overall, the changes are likely to be cost neutral or may lead to small savings both to the courts and to prosecutors in the long term. The transit amendments may lead to a small cost increase for the police, although the number of incidences where persons are transited through the UK and the UK police are required to use their escort powers is expected to be small. This cost increase will be spread across a number of police forces, although it is expected that the Metropolitan Police will be responsible for the majority of transit requests, as persons will most likely be transited through London airports.

Changes to the operation of the EAW

The EAW has been in operation since 1 January 2004 and is given effect by Parts 1 and 3 of the Extradition Act 2003. The principal purpose of the EAW is to speed up the extradition process between EU Member States. Concerns have been raised about the operation of the EAW since the Extradition Act 2003 came into force by Parliament, non-governmental organisations such as Liberty, and members of the public. Concerns generally relate the issue of EAWs for trivial offences. There are also concerns regarding the use of EAWs to question suspects, rather than using less coercive measures, as well as the prospect of extraditing UK nationals for offences that are not criminal in UK law. Concerns have also been raised about the problem of lengthy pre-trial detention and poor prison conditions in some member states.

This new legislation will enable the UK courts to deal with the long standing issue of **proportionality** and we will bar surrender where the issuing state is neither ready to charge nor try the person. This will help to deal with the problem of lengthy **pre-trial detention**. We will also make it clear to judges that **dual-criminality** is required in all cases where the conduct took part in whole or in part in the UK. We will allow people to retain their speciality protection (so that they are not charged with other offences when extradited) if they choose to consent to extradition.

In summary, our reforms to the EAW comprise the following:

- Judges will be required to consider whether extradition would be proportionate. This is in addition to requiring the judge to be satisfied that extradition would be compatible with the person's Convention rights. This will apply in all cases where the EAW has been issued in order to prosecute the person. It is anticipated that this will give rise to increased legal challenge in the short term, although it is expected that caselaw will quickly develop that will define what constitutes a disproportionate request. The aim is to ensure that resources are directed at dealing with more serious cross-border crime, rather than to matters which should be tackled in a different way (for example, by way of a fine or a court summons);
- The courts will be required to bar surrender where the issuing State has not yet taken both a decision to charge and a decision to try a person, unless his or her presence in that country is required in order to do so. The aim is to avoid the person spending potentially long periods in pre-trial detention following extradition while the issuing State continues to investigate the offence;
- We will allow the requested person and the issuing State to speak to one another, if they both consent, before extradition takes place. It will allow for the temporary transfer of the person to the issuing State and also for the person to speak with the authorities in that State whilst he or she remains in the UK (e.g. by video link). In some cases, it is to be expected that the result of this will be the withdrawal of the EAW - e.g. in cases where, having spoken with the person, the issuing State decides that he or she is not the person they are seeking or that he or she did not in fact commit the offence in question. The person would then be discharged from proceedings;
- In all EAW cases where part of the conduct took place in the UK, and is not criminal here, the judge must refuse extradition for that conduct. The amendments will ensure that dual criminality is required in all cases where the conduct took place in whole or in part in the UK;

- We will ensure that where a person consents to extradition, he or she retains “speciality protection” – which prevents the person being tried for offences other than those set out in the EAW. This is expected to increase the number of people who consent to extradition at first hearing, thereby speeding up the process and reducing the burden on the appeals system;
- We will ensure that we are fully compliant with Article 26 of the EAW Framework Decision, and will provide that time spent held on an EAW pending extradition to serve a sentence will always be counted as time served towards the sentence;
- We will make a technical change to remove the bar on extradition to States party to the International Convention against the Taking of Hostages.

We do not anticipate that these changes will give rise to any significant additional resource burdens, indeed, in particular, in the longer term we would expect savings to arise from the more proportionate use of EAWs.

Compensation for miscarriages of justice

The State has offered compensation to persons who have suffered a miscarriage of justice since 1905 to recognise the hardships caused by a wrongful conviction. The legislation that provides for such compensation to be paid now is s.133 of the Criminal Justice Act 1988, which implements in the UK article 14(6) of the International Covenant on Civil and Political Rights.

Proposals and rationale

Currently, section 133 of the Criminal Justice Act 1988 does not define what a Miscarriage of Justice is and the Government has to rely on case law to define how we assess eligibility. As a result, the definition is subject to frequent change and its application is regularly the subject of legal challenge. The fact that the definition has generated a significant body of case law demonstrates a lack of agreement amongst the judiciary of what the term should mean. A clear definition enshrined in statute would make it easier for meritorious claimants to claim, and would make decisions on eligibility more transparent, and less likely to be the subject of legal challenge.

The proposed amendment will make clear that a “miscarriage of justice” for the purposes of s.133 has only occurred, and compensation is only payable, where the Secretary of State is satisfied that the applicant was innocent of the offence for which they were convicted. The effect of the amendment will extend to England and Wales and to those decisions in Northern Ireland that are taken by the Secretary of State for Northern Ireland rather than by the Department of Justice (i.e. cases involving information the disclosure of which may be against the interests of national security). Recent decisions by the courts have exposed conflicting interpretations of the term “miscarriage of justice” and this provision will provide greater clarity and certainty as to eligibility for State compensation. By confirming a relatively narrow definition, the provision would generate a more transparent, predictable and consistent approach to identifying cases where a miscarriage of justice has taken place.

Impact

There are currently around 40-50 miscarriage of justice applications per year, of which around 2 are accepted. The provision to amend the definition of a miscarriage of justice is not necessarily expected to reduce the number of applications that are accepted, but it may reduce the number of applications received owing to a more predictable outcome. This would lead to a reduction in costs associated with processing applications. The increased transparency and certainty should also reduce the number of challenges to decisions on miscarriage applicants and associated judicial review costs. There is a potential risk of an initial spike in the number of applications for leave to judicially review decisions, but we would not expect many of these applications to succeed.

Further information is available in the separate impact assessment on this provision published at the same time as the Bill.

Monetary thresholds for shoplifting offences

The Government is committed to improving the way that the criminal justice system operates, reducing delays and bureaucracy for the benefit of the police, prosecutors, courts and – most importantly – victims. As part of this work, the Home Secretary announced on 16 May 2012 that police-led specified proceedings processes would be simplified and expanded. The provisions in the Bill build on these changes by making changes to the treatment of shoplifting offences, which will enable these to be captured within police-led processes where appropriate.

The police have always been able to prosecute low level offences (“specified proceedings”) directly where the defendant does not contest the case against them. These powers have recently been extended to enable the police (i) to continue the prosecution where a defendant does not respond to a summons or postal charge, and where a defendant pleads guilty but makes exceptional hardship representations to avoid a driving ban, and (ii) to prosecute directly a number of additional offences (SI 2012/1635, SI 2012/2067 and SI 2012/2681). In parallel, eight pathfinder areas have put in place a best practice model of processes and procedures for specified proceedings and are trialling the implementation of the changes set out above.

Shoplifting is a high-volume crime that imposes significant costs on communities, businesses and the economy. Over 80,000 cases of shoplifting come before the courts each year, and the fact that the vast majority of these are dealt with in magistrates’ courts⁴⁰ (where most cases result in a guilty plea) makes shoplifting a suitable offence for the simpler, more proportionate police-led process.

Proposal

The provisions mean that cases of shoplifting where the value of the property stolen is £200 or less will be dealt with as summary only offences. This procedural change will prevent these cases being sent to the Crown Court for trial, except where the defendant chooses Crown Court trial (so that the right to a trial by jury is not undermined). The change will facilitate the prosecution of such cases by the police (rather than by the Crown Prosecution Service) and ensure that such cases are dealt with in a more proportionate and efficient way.

The provisions also make consequential amendments to some powers under the Police and Criminal Evidence Act (PACE) 1984, which are only applicable to indictable offences, primarily the powers of arrest, and entry and search of premises in the pursuit of investigations, as well as the citizens’ power of arrest. They ensure that these powers can continue to be used for cases of shop theft of goods worth £200 or less, as they are currently.

Rationale and impact

The vast majority of shop theft cases are already heard and sentenced in the magistrates’ courts (as noted above, of the approximate 80,000 shoplifting cases heard in 2011, just over 1,000 were sent to the Crown Court). Research into shop theft, undertaken for the Sentencing Advisory Panel in 2006,⁴¹ showed that the median value of goods stolen was £40, and that 90% of cases involved property worth less than £200. Magistrates have a range of sentencing powers, up to a maximum of 6 months’ imprisonment, which enable them to impose appropriate sentences for shoplifting, including repeat offending (in 2010, approximately 16% of shoplifting convictions in the magistrates’ courts resulted in immediate custody).

Providing for these cases to be automatically treated as summary-only will enable uncontested cases to be incorporated into the simpler specified proceedings process. These police-led processes are designed to reduce court hearings and adjournments, as well as to increase the discretion of the police

⁴⁰ In 2011, just over 1,000 were sent to the Crown Court – Ministry of Justice Judicial and Court statistics

⁴¹ Research for the Sentencing Advisory Panel in 2006 <http://www.lccsa.org.uk/assets/documents/consultation/researchreport-theft0806.pdf>

to see cases all the way through to completion in the criminal justice system. At the same time, CPS resource is freed up to focus on more serious, complex cases. Nine pathfinder areas are currently implementing a best practice model for the police-led approach and this will be evaluated later this year.

The effect of the consequential amendments to PACE is not to add any new powers but merely to preserve the status quo.

Extension of scope of witness protection schemes

The Serious Organised Crime and Police Act 2005 (“SOCPA”) provides for the protection of specified persons under schedule 5 to the Act whose physical safety is at risk, including witnesses in legal proceedings, those who have held certain posts in the criminal justice system and persons closely associated to such a person (e.g. family members). ACPO guidance of January 2012 for England and Wales widened the definition of protected person for operational purpose in line with ECHR Article 2 case law.

The current provision does not include a person not specified in Schedule 5 whose life may be at risk and who the state generally (and the police in particular) would be obliged to protect under Article 2 of the ECHR. Those persons include potential victims of honour based violence who are taken into a protection programme before any criminal offence is committed and therefore do not and will not necessarily have any involvement in criminal proceedings. Although the lack of statutory provision in relation to those schemes is not a barrier to the necessary protection being provided, the safeguards available both to protected persons and those involved in the administration of protection arrangements in SOCPA would not apply.

Proposal and objectives

The proposal will repeal the current schedule 5 to SOCPA and bring within the scheme any individual where there is a risk to that person’s safety as a result of a possible criminal offence. The particular aim of this change is to ensure that any non-statutory arrangement which gives effect to the state’s positive obligations under Article 2 of the European Convention on Human Rights to take preventative operational measures to protect life, might be brought within the ambit of SOCPA. The proposed legislation will apply in England, Wales and Scotland.

Rationale

This change brings the legislation in line with current police operating practice to protect any person where there is a real and immediate threat to life and obligations under Article 2 of the ECHR. However, the Protection Provider will still assess and decide who is eligible for protection arrangements.

Impact

It is not anticipated that this proposal will lead to an increase in the number of protected persons or impose additional costs to the police as it is simply aimed at updating legislation in accordance with operational practice. There are clear police procedures and guidance on assessing the threat to life whilst the decision to take someone into the scheme resides with the Protection Provider based on this assessment. Extending existing statutory provision may produce additional benefits associated with greater confidence and consistency in the justice system by bringing non-statutory arrangements into statute.

It is not expected that this change will lead to any significant increase in the number of protected persons. There may be a small increase as people who have been offered protection but are not covered by the statutory scheme are brought under the new provision.

Victim Surcharge

The Victim Surcharge was implemented in 2007 and was only payable when the court imposed a fine at a flat rate of £15. Under the Criminal Justice Act 2003 (Surcharge) Order 2012 (“the 2012 Order”), which came into force on 1 October 2012, the Victim Surcharge ordered on fines was increased and extended to a wider range of in-court disposals including community and custodial sentences, with the revenue being used to fund victim services. As a result of these changes, the Surcharge became payable by offenders subject to an immediate custodial sentence when imposed by the Crown Court.

Proposal, rationale, and objectives

The Surcharge has not yet been extended to cases dealt with by magistrates’ courts because, unlike the Crown Court, magistrates’ courts may commit an offender to prison at the same time as making certain financial impositions (including the Surcharge) in cases where the offender is sentenced to immediate custody or is serving a custodial sentence at the time of conviction. It is also currently not possible to make a reduction to the value of the Victim Surcharge when the associated fine has been remitted (i.e. reduced), either partially or entirely.

The Bill would prevent magistrates’ courts when sentencing an adult to an immediate custodial sentence from ordering additional days to be served in custody in lieu of payment of the Victim Surcharge. This provision would enable the Victim Surcharge to be extended to offenders sentenced to an immediate custodial sentence by the magistrates’ courts through subsequent amendments to secondary legislation, without creating the possibility of inconsistent treatment by magistrates’ and Crown Courts. In doing so, it would support the overall policy intention of the Victim Surcharge, that offenders contribute more towards the cost of providing support services to victims of crime and that the amount to be paid reflects the seriousness of the sentence.

The Bill will also make a technical amendment so that it is possible for the court to make a consequential adjustment to the amount of the Victim Surcharge when remitting a fine. Therefore, for example, where the court initially imposed a fine of £500 with an accompanying Surcharge of £50, if that fine is subsequently reduced to £300, the Surcharge must be reduced by the court to £30 (requirement of the 2012 Order that the Surcharge must be ordered at 10% of the fine amount with a £20 minimum and £120 maximum).

Impact

The provision to amend section 82 of the Magistrates’ Courts Act 1980 (“the 1980 Act”) to ensure that extra days may not be added to a sentence of immediate imprisonment in lieu of the Victim Surcharge could see an increase in HMCTS enforcement workload to collect the amount from those offenders who do not pay the Surcharge ordered while in custody but at the end of their sentence. However we are unable to estimate the likely payment rate of the Surcharge by the cohort of offenders sentenced to immediate custodial sentences of up to and including six months by magistrates’ courts and therefore the scale of the impact on enforcement activities. The Surcharge reforms introduced by the 2012 Order are estimated to raise up to an additional £20m, of which up to £5-6m is estimated to be raised from Surcharge imposed on offenders given an immediate custodial sentence. This provision will therefore help to maximise the component part of the up to £5-6m Victim Surcharge revenue that is expected to be raised from those offenders given an immediate custodial sentence in the magistrates’ courts, once the secondary 2012 Order has been amended to require a magistrates’ court to order a Surcharge in these cases.

This provision would also prevent the National Offender Management Services incurring the potential costs associated with keeping a large number of offenders in custody for the additional days, in the event that magistrates’ courts were under a duty to order a Surcharge when imposing an immediate sentence of imprisonment, and regularly decided to add extra days in lieu of the Surcharge. As the magistrates’ court cannot currently order the Surcharge on an immediate sentence of imprisonment, this will not be

an actual reduction in the costs of additional days in custody, but rather a prevention of the costs being incurred.

Provision to amend section 85 of the 1980 Act and section 165 of the Criminal Justice Act 2003 directing the court when remitting a fine to make a consequential reduction to any Victim Surcharge may lead to a reduction in Surcharge revenue. We are unable to quantify this amount due to the absence of data relating to the volume and values of fines which are remitted. We do not expect any additional costs to HMCTS as fines are remitted upon the request of the offender and the work to consequently reduce the Surcharge would be absorbed as part of this work. This provision will however ensure that the Victim Surcharge ordered with a fine continues to be reflective of the seriousness of the sentence.

Police Community Support Officers' powers

Neighbourhood policing is a vital tool in providing communities with the visibility they want from the police and giving officers the ability to work alongside the public to tackle the issues that really matter.

PCSOs are an essential element in the successful delivery of neighbourhood policing; their introduction in 2002 sought to address negative public perceptions of crime (despite a falling crime rate) by providing a constant and visible police presence within the community.

PCSOs are generally deployed in community policing teams to:

- engage the public;
- provide visible policing presence in the community;
- enforce the law and prevent crime – particularly dealing with low level crime and anti-social behavior; and,
- gather information and “community intelligence”.

The powers available to PCSOs are prescribed within Schedule 4 of the Police Reform Act 2002. Under this legislation, PCSOs have 20 standard powers with a range of additional powers that may be granted at the local chief constable's discretion.

PCSOs are now an established part of the policing family. The total number in England and Wales was 14,205 (FTE) as at 31 March 2013, comprising 6.6% of the workforce (FTE).⁴² A report by the Office for National Statistics on “public perceptions of policing” found that adults who reported high visibility of police or PCSOs were more than twice as likely to rate their local police positively (68%).⁴³ Providing visibility on the streets is a key strength of the PCSO role, helping to build and maintain public confidence in police.

Proposal

The Bill would extend the list of discretionary powers available for designation to PCSOs to include the power to issue a fixed penalty notice for cycling without lights under section 42 of the Road Traffic Act 1988.

Rationale

The policy objective is to enhance forces' ability to respond to the specific needs and priorities identified by their communities, without detracting from PCSOs' key role of engagement.

At present, the majority of PCSOs have over 30 powers to call upon whilst on patrol, including powers to:

- confiscate alcohol;
- confiscate tobacco from persons under 16;
- direct traffic and pedestrians;
- enter premises to save life and prevent damage to property;
- remove abandoned vehicles;
- issue fixed penalty notices (for example, for cycling on the pavement, dog fouling, littering, graffiti);
- demand a name and address of a person acting in an anti-social manner;
- seize vehicles used to cause alarm;
- search property in matters relating to terrorism (with a constable); and

⁴² Home Office: Police workforce statistics, England and Wales, March 2013 <https://www.gov.uk/government/publications/police-workforce-england-and-wales-31-march-2013>

⁴³ Focus on Public Perceptions of Policing, Findings from the 2011/12 Crime Survey for England and Wales

- seize drugs.

In limited circumstances, they can require a suspect to remain with them until a police officer arrives.

These powers ensure a focus on the delivery of neighbourhood policing and a distinction between the role of a PCSO and that of a police officer. It is important to retain clarity as to the different roles of PCSOs and police officers and this has been reinforced by the recent HMIC report *Valuing the Police*, which noted that there could be potential concerns regarding neighbourhood policing and the additional dependency being placed on PCSOs.⁴⁴

It has become apparent that there is an inconsistency in PCSOs' powers to respond to cycling offences. Specifically, they can be designated to issue penalties for cycling on a footpath but cannot be authorised to issue a penalty notice for cycling without lights. The introduction of the power to issue a fixed penalty notice for cycling without lights would complement the existing package of powers and would be a proportionate step to remedy this matter. Additionally this power will increase the opportunity for PCSOs to engage with, and educate members of the community about the importance of cycle safety and help to prevent future incidents.

The proposal supports the two principles that underpin PCSO powers generally: making them available would enhance PCSOs' effective delivery of neighbourhood policing without undermining their ability to get to know their local area and actively build relationships with their communities.

Impact

This power would be available for designation at the discretion of the relevant chief constable, and therefore the impact will vary depending on whether, and the extent to which, a given force adopts it.

Where PCSOs are designated to use this power, there may be cost implications for forces arising from the additional training required to ensure they are used in accordance with the law. Based on consultation we anticipate that the financial implications will be negligible. In respect of new PCSOs, training in the new powers would be subsumed into the existing initial training package. A small additional cost may be encountered to up-skill those PCSOs who have already completed their initial training.

This would be offset by benefits to forces from the reduction in the burden placed on police officers. PCSOs are ideally placed within communities to respond to offences of this nature and use of the power would be in keeping with their role to tackle low-level crime and anti-social behaviour. Based on the feedback we received from forces, it is not considered that this specific power would create an unmanageable burden on PCSOs and risk taking them off the streets.

The wider benefits of the new power are expected to be felt by local communities, particularly in respect of road safety. A number of studies show that the deployment of PCSOs has had positive impact on the public.

There is good evidence that the local implementation of neighbourhood policing – a central plank of which was the introduction of PCSOs – has had a number of positive outcomes across communities. An evaluation of the National Reassurance Policing Programme (the pilot for community policing), for example, tested the impact of targeted foot patrol, proactive community engagement and problem-solving at a neighbourhood level.⁴⁵ These three activities – which PCSOs played an important role in delivering – were found to have had a positive impact in terms of:

⁴⁴ HMIC, Policing in Austerity: rising to the challenge, 2013 <http://www.hmic.gov.uk/media/policing-in-austerity-rising-to-the-challenge.pdf>

⁴⁵ Tuffin et al. An evaluation of the impact of the national reassurance policing program, 2006 <http://library.npia.police.uk/docs/hors/hors296.pdf>

- dealing with victimization;
- improving public perceptions of crime and disorder and contributing to feelings of safety; and,
- increasing public confidence in the police.

Follow-up research, one year later, found that the positive results from this programme were sustained for a second year.⁴⁶

Local evaluations have also reported positive results. One study from West Yorkshire – specifically on the impact of PCSOs – found that **75%** of the people who were surveyed felt reassured by the presence of PCSOs on the streets. The study also suggested that PCSOs make a valuable contribution in terms of reducing and detecting crime.⁴⁷

Similarly, a study conducted in Leeds and Bradford found that in the PCSO beat area, there was a 10% reduction in crime.⁴⁸ Even more impressive, the same study revealed that in both Leeds and Bradford, there was a 47% and 46% (respectively) fall in the number of robberies during the 12 months following their introduction.

We would therefore expect that addressing this gap in PCSOs powers would help to maintain or increase public confidence and safety.

Specifically, based on discussions with forces, we recognise that the introduction of the power to issue a fixed penalty notice for cycling without lights is proportionate and complements the existing package of powers available to PCSOs. This power will enhance PCSOs ability to engage with, and educate cyclists of the community about the importance of cycle safety, enhancing community safety.

Giving these additional powers could result in a nominal increase in the number of fixed penalty notices issued by PCSOs; however, as this is a discretionary power we expect any increase to be minimal. There will be no financial gain for police forces as income made from these notices will go into the Consolidated Fund.⁴⁹

⁴⁶ Quinton and Morris, Neighborhood policing: the impact of piloting and early national implementation, 2008
<http://webarchive.nationalarchives.gov.uk/20110218135832/rds.homeoffice.gov.uk/rds/pdfs08/rdsolr0108.pdf>

⁴⁷ Long et al, A visible difference: an evaluation of the second phase of the Police Community Support Office in West Yorkshire, 2006
<http://shura.shu.ac.uk/995/1/fulltext.pdf>

⁴⁸ Crawford et al, Patrolling with a Purpose: An Evaluation of Police Community Support Officers in Leeds and Bradford City Centre's. 2004
CCJS Press.

⁴⁹ The consolidated fund receives the proceeds of taxation and certain other government receipts.

Disclosure and Barring Service

The Disclosure and Barring Service (“DBS”) was established in 2012 to carry out the functions previously undertaken by the Criminal Records Bureau and the Independent Safeguarding Authority. It provides various products and services related to the disclosure of criminal record information. These include issuing criminal record certificates to people working in sensitive positions of trust – for example, working with children. The fee for a certificate is currently either £26 or £44, depending on the type of check required.

The Secretary of State sets the fees that are charged for these services, with reference to the cost of DBS carrying out its functions.

Volunteers are not charged for criminal records checks, in order to reduce barriers to volunteering while helping to protect the vulnerable people with whom they work. The cost of providing criminal records checks for volunteers is therefore reflected in the overall fees for the service, based on a cost recovery basis, which are charged to fee-paying applicants.

Proposal

The provisions in the Bill would allow the Secretary of State to take account of the cost of providing services to volunteers for free when setting the fees for other applicants. In effect, this would provide explicit statutory authority for cross subsidy.

Rationale

This measure is necessary due to the change in legal status arising from the new DBS, which is a non-departmental public body. Previously, the criminal records bureau was responsible for checks and was an agency of the Home Office. Measures were in place to permit the Home Secretary to set fees taking account of costs of checks for volunteers. Specific statutory provision is required to enable this to be done for the fees applying to DBS checks, although interim arrangements have been put in place under measures in the Finance (No 2) Act 1987.

Impact

The proposal will allow criminal records check to remain free of charge to volunteers working in those areas for which checks are available – including working with children and other vulnerable groups. Around 20% of applications for checks are for volunteers. The current DBS income from fees is £147m. However cross-subsidisation already occurs to ensure the DBS does not make a loss. Therefore no additional impact on non-volunteer applicants is expected.

Protection from sexual harm

At present, there are two orders which can place restrictions on sex offenders who have been convicted, been subject to a finding by a court or cautioned in relation to a relevant offence, and one order which can be imposed on any adult thought to pose a risk of sexual harm to a child:

- **Sexual Offences Prevention Orders (SOPOs)** can be imposed where an offender has been convicted of a relevant sexual or violent offence and prohibitions are necessary to protect the public from serious sexual harm. A SOPO prohibits the offender from doing anything described in the order;
- **Foreign Travel Orders (FTOs)** can be imposed where an offender has been convicted of a sexual offence against children and there is evidence that they intend to commit further sexual offences against children abroad. A FTO prohibits travel to the country or countries specified in it, and
- **Risk of Sexual Harm Orders (RoSHOs)** can be imposed where a person aged 18 or over has done a specified act in relation to a child under 16 on at least two occasions. To obtain a RoSHO, it is not necessary for the defendant to have a conviction for a sexual (or any) offence. A RoSHO prohibits the defendant from doing anything described in it.

SOPOs may be made by the court at conviction/sentence, and all three orders may be made by the court as a freestanding measure on the application of the police. These orders are provided for in the Sexual Offences Act 2003.

Proposal

Our intention is to simplify and rationalise the existing orders by introducing:

- Sexual Harm Prevention Order – a **post-conviction** order which replaces the SOPO and FTO and can apply to those convicted of a relevant sexual (or other) offence; and
- Sexual Risk Order – a **non-conviction** order which replaces the RoSHO can apply to any individual who poses a risk of sexual harm.

The orders will be used to tailor conditions and restrictions on sex offenders and those who pose a risk of sexual harm on a case-by-case basis. Both will be available for the purposes of protecting both under-18s and adults.

To impose an order the court will have to be satisfied that the individual poses a risk of sexual harm to adults or children in the UK and/or that the individual poses a risk of sexual harm to children or vulnerable adults outside of the UK. The post-conviction order will be available to the courts at sentencing following conviction. The police and National Crime Agency (“NCA”) will be able to apply to the court for either order.

It will be a criminal offence if, without reasonable excuse, an individual subject to either of the new orders does anything that the order prohibits. The penalties will be:

- (a) on summary conviction, imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, imprisonment for a term not exceeding 5 years.

Rationale

Practitioners, including the police and the Child Exploitation and Online Protection Centre have raised concerns about the practical efficacy of the existing orders. In April 2012, the Association of Chief Police Officers Child Protection and Abuse Investigation Working Group commissioned an independent review.

This was carried out by Hugh Davies QC in consultation with expert practitioners and a report was published on 15 May 2013.⁵⁰ The report reinforced concerns about the existing orders, in particular their flexibility and their remit (in terms of who they can be imposed on and who they are designed to protect).

The measures included in the Bill are intended to address these concerns and to ensure that the orders are as effective as possible at protecting the public from sexual harm.

Impact

Rationalising the existing orders will also simplify the landscape (thereby giving greater clarity to the police, with a possible time/cost saving), and help to ensure that the police and others are able to exercise their professional discretion. Whilst there may be an initial impact in terms of the training required, we expect that the majority of this will be addressed via existing training. There may be a positive impact in terms of a more flexible civil order being more effective in managing the risks posed by individuals, and thereby reducing the numbers of further sexual offences committed – benefitting the public directly and, in the long term, potentially reducing the number of these cases that must be dealt with by the police, Her Majesty’s Courts and Tribunals Service and other parts of the criminal justice system. This is because the reformed orders will address barriers in the existing statutory framework to preventing abuse, which have been identified by Hugh Davies and others. The Davies Review identified that, for example, the requirement for individuals to have a conviction for sexual offences against children in order to have foreign travel restrictions imposed, the requirement for an individual to have been found to have done a sexual act towards a child on *two* occasions in order to be granted a RoSHO and the threshold for a SOPO being that the individual poses a risk of “*serious* sexual harm” are all factors which have limited the use of the existing orders. The new orders address these points to allow the police and the courts the flexibility to tailor orders to individual cases.

Therefore, while we expect that there will be some increase in the number of applications for orders, we also expect that the impact on the criminal justice system will be offset by the prevention of offences being committed (therefore resulting in fewer cases coming to court). The number of orders currently imposed and what we might expect under the proposed new system are set out below.

Sexual Harm Prevention Order

The Sexual Harm Prevention Order (SHPO) will replace the SOPO and FTO, and will be used to tailor conditions and restrictions on offenders on a case-by-case basis. To impose a SHPO the court will have to be satisfied that the individual has been convicted of a specified sexual or violent crime (in Schedule 3 or 5 of the Sexual Offences Act 2003) and either poses a risk of sexual harm to adults or children in the UK or poses a risk of sexual harm to children or vulnerable adults outside of the UK. A SHPO may prohibit the person from doing anything described in it, including preventing travel overseas (where the individual poses a risk outside of the UK). The order will be available to the courts at sentencing following conviction, and the police and NCA will be able to apply to the magistrates’ court to impose an order at a later date.

⁵⁰ http://www.ecpat.org.uk/sites/default/files/the_davies_review.pdf

The number of SOPOs and FTOs imposed under the current system are as follows:

Year	SOPOs imposed	FTOs imposed
2006/07	1,114	3
2007/08	1,440	1
2008/09	1,512	12
2009/10	1,862	15
2010/11	2,438	22
2011/12	2,658	14

Source: MAPPA annual report 2011/12⁵¹

The proposed changes will bring together the provisions available under current SOPOs and FTOs into one post-conviction order. There may be some increase, for example in orders imposed to restrict foreign travel, but we do not expect a significant increase from the combined figures above.

Sexual Risk Order

Sexual Risk Order (SRO) will replace the RoSHO and will be used to tailor conditions and restrictions on offenders on a case-by-case basis. To impose an order the court will have to be satisfied that the individual has committed a sexual act that suggests that he or she poses a risk of sexual harm to adults or children in the UK and/or that he or she poses a risk of sexual harm to children or vulnerable adults outside of the UK. A SRO may prohibit the person from doing anything described in it, including preventing travel overseas (where the individual poses a risk outside of the UK). The police and NCA officers will be able to apply to the magistrates' court for an order to be imposed.

Information from the police, probation service, and prison service suggests that the number of RoSHOs imposed has historically been low – for example, as at November 2012 there were circa 44 RoSHOs in force in England.⁵² We expect the number of non-conviction orders imposed to be higher, however, given the baseline is low we do not expect a significant impact on the CJS.

Whilst it is possible that a higher number than at present may breach the order, we consider that the number is again likely to be very low – so any impact on the courts, prison or probation services will also be low. Data on the number that currently breach is not available.

⁵¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/192840/mappa-annual-report-11-12.pdf

⁵² Answer to PQ 123358.

Protection from violence

Violent Offender Orders (VOOs) are civil preventative orders which can be made by the courts on application from the police to impose restrictions on offenders convicted of specified violent offences who pose a risk of serious violent harm to the public. Such restrictions are designed to protect the public from serious violent harm, for example by prohibiting an offender's access to certain places, premises, events or people to whom they pose the highest risk. VOOs may also be applied to offenders with convictions for a specified offence which was committed overseas. The current list of specified offences comprises:

- manslaughter;
- an offence under section 4 of the Offences against the Person Act 1861 (c. 100) (soliciting murder);
- an offence under section 18 of that Act (wounding with intent to cause grievous bodily harm);
- an offence under section 20 of that Act (malicious wounding);
- attempting to commit murder or conspiracy to commit murder; or
- a relevant service offence.

Proposal

Our intention is to amend the list of specified offences to include acts giving rise to a conviction outside of the UK which, had the act been committed in the UK, would have resulted in a conviction for murder. In addition, the Bill inserts a power made by the Secretary of State to prescribe further specified offences. This power is subject to the affirmative procedure.

Rationale

The police, National Offender Management Service, and Independent Police Complaints Commission have highlighted concerns in relation to the list of specified offences for a VOO. At present, the offence of murder is not a specified offence, because in the UK this offence carries a mandatory life sentence and so on release from prison an offender convicted of murder is on licence and could have licence conditions which fulfil the same functions as a VOO, rendering a VOO unnecessary. However, a consequence of this is that an offender who has committed murder overseas and then comes to reside in the UK cannot have a VOO imposed.

The measures included in the Bill are intended to address this anomaly and also to ensure that the list of offences can be updated swiftly so that where new offences are introduced, adding them to the list of specified offences for a VOO does not require primary legislation.

Impact

Given the likely narrow pool of offenders this concerns, we expect any increase in the number of VOOs applied for to be minimal. However, by enabling the courts to make orders in respect of murder convictions abroad, the proposal could improve public protection. The decision as to whether to apply for a VOO is taken at a local level by the police. Data on VOO is not collected at a national level and so was not available to inform a quantitative assessment of this proposal.

Allowing the Secretary of State to prescribe additional offences could also improve public protection by ensuring that existing offences can be added as new specified offences as needed.

Court and tribunal fees

In 2012/13 the cost of running the non-criminal business administered by Her Majesty's Courts and Tribunals Service (HMCTS) was around £975 m. Of this amount, around 49% was funded through fees (£477m) with the remaining 51% funded by the taxpayer via the Ministry of Justice (£500m). The funding provided from public money comprises two elements: supplementing fees where services are provided free of charge, or where they are set below full cost, and funding fee remissions, which are intended to ensure that people who would otherwise have difficulty paying fees still have access to justice.

The Government's aim is to reduce the taxpayer subsidy for HMCTS civil business while maintaining a fair remission system. The Government is considering a number of options to achieve this end. The Government response to the consultation on fee remissions was published on 9 September and the new remissions scheme came into effect from 6 October 2013. The Government intends to bring forward shortly for consultation specific proposals to achieve full cost recovery and to set enhanced fees above costs for certain proceedings. The provision in the Bill addresses this latter approach.

Proposal

The Bill would enable the Lord Chancellor to set fees at amounts that exceed costs for proceedings in the civil and family courts in England and Wales, for proceedings in tribunals for which the Lord Chancellor is responsible, proceedings in the Court of Protection and for services provided by the Office of the Public Guardian (OPG). However, it would not prescribe any specific fees for the relevant services. In order to set fees, an order or regulation would be required, with specific proposals having first been subject to a public consultation. This procedure would be subject to Parliamentary scrutiny: the first time the new power was used it would be subject to the affirmative procedure, with any changes thereafter made following the negative resolution procedure.

Rationale

The courts, tribunals and the OPG play a critical role in a fair, democratic society, providing access to justice for those who need it to protect their fundamental rights and to ensure that the rule of law can be enforced. It is therefore essential that sound and sustainable funding is in place so that they are appropriately resourced. This needs to be delivered while at the same time reducing public spending, in line with the spending review settlement.

The Government is seeking the enhanced fee charging power to ensure that litigants who can afford to do so make a greater contribution to the costs of providing these services, and to make a corresponding reduction to the burden on the taxpayer.

Impact

The provision in the Bill is an enabling one and is not expected to have a direct impact itself. There would, however, be impacts arising from prescribing fees through secondary legislation. Depending on the specific fees set, these are likely to affect in particular HMCTS, and businesses and members of the public using its services. The Government will consult on detailed proposals and will publish an accompanying impact assessment. The impacts will be considered fully as part of the analysis of responses to the consultation and an updated impact assessment published with the Government's response.