Briefing: Policing and Crime Act 2017

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Related briefings
Update on The Police and Crime Bill 2016

Summary

This briefing is an update on the Policing and Crime Act 2017, which became law on 31 January 2016. The original Bill was introduced to Parliament in February 2016 and was covered by an LGiU briefing in April that year. The legislation completed its passage through the House of Commons in June and then took until December to complete its way through the House of Lords. It is suggested that those unfamiliar with the Act read the April briefing first.

Besides some tinkering and tidying up, the main provisions of the original Bill made it to the statute book intact, despite criticism and attempted amendments from the opposition benches in both Houses. There are however some new clauses and some not insignificant changes to pre-existing ones. These largely come from the Government, partly in response to criticisms of the Bill during its passage through the two houses. These changes include extending to combined authority mayors the ability of Police and Crime Commissioners (PCC) to take on the function of Fire and Rescue Authorities (FRA), further protections for children and vulnerable adults and provisions for the inspection of fire and rescue services. There are also some significant new clauses in relation to licensing regulations.

Probably the most high profile part of this very wide-ranging legislation is the ‘Alan Turing Law’, which provides a posthumous pardon for thousands of gay men prosecuted under historical homophobic legislation for crimes of which they would be innocent today. This part of the Act comes from amendments introduced in the Lords from the opposition benches, which were accepted by the Government.

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This briefing will be of interest to combined authority mayors, PCCs, Police Chiefs, FRAs and anyone working in local government who is concerned with the emergency services. It is relevant to those involved in licensing at local authority level. It will also be of interest to anyone working in youth justice, safeguarding and mental health provision, as well as those whose work is connected to the London Fire and Emergency Planning Authority (LFEPA). As with the April briefing, this one should be considered in the wider context of ‘law and order’ issues. In May 2016 we had the second ever round of elections for Police and Crime Commissioners and police forces have been grappling with the impact of the final allocations of grants announced by the government in February last year. The controversial Investigatory Powers Act became law in November 2016. Add in heightened post-Brexit referendum levels of hate crime and a renewed focus on the questions of stop and search and ethnic profiling and we have a potent mix. Be aware that the Policing and Crime Act is extensive and wide-ranging in what it covers and that this briefing seeks to focus on the parts relevant to local government.

**Briefing in full**

**Recap on key provisions**

It is worth including a reminder of the key provisions of the original Bill in the form it was introduced in February. The April briefing goes into more detail on these points.

**Collaboration agreements between emergency services**

- This is an attempt to accelerate the rate at which emergency services collaborate, creating a duty on services to consider collaboration in the interests of ‘efficiency or effectiveness’ and a series of steps to encourage it to happen.

**Police and Crime Commissioners taking on role of Fire & Rescue Authorities**

- A PCC can make a ‘Section 4A Proposal’ to the Secretary of State, enabling them to abolish the local FRA and take over its powers and responsibilities.

**Abolition of the London Fire and Emergency Planning Authority**

- The abolition of LFEPA and the creation of a new framework for exercising its powers, more closely under the control of the Mayor of London.

**Police complaints**

- The police complaints set up overhauled, to make it simpler and give PCCs an enhanced role, including an explicit responsibility for ensuring the effectiveness of local police complaints procedures.

**Police volunteers and powers**

- Chief police officers are empowered, with certain restrictions, to designate police powers to police volunteers and civilian employees. A new Schedule is created as an amendment to the Police Reform Act 2002, which is a list of police powers that can’t be designated, such as the powers of arrest, stop and search or powers under counter-terrorism legislation. This leaves a fairly extensive range of police powers that could be conferred.

**Mental Health**

- Important reforms to police powers under sections 135 and 136 of the Mental Health Act 1983, covering the detention of people experiencing mental health problems who have committed no crime.

**Others**

- Also included in the original provisions are safeguarding enhancements, the abolition of Association of Chief
Police Officers and the reform of the Police Federation, the tightening of regulations regarding alcohol licensing under the Licensing Act 2003, changes to rules on pre-charge bail and a number of other reforms.

Changes to the original Bill

Although its core provisions remain essentially in place, there were some significant changes to the legislation on its passage to gaining Royal Assent. Most of these changes were amendments introduced by the Government, either to tidy up the drafting or in response to proposals from the back benches and the opposition benches. There were also a small number of significant amendments introduced from the opposition benches that were ultimately accepted by the Government. The changes can be divided into those that modify an existing provision and those that are new.

Note that there were a large number of attempts from the opposition benches to amend the legislation during its passage through Parliament which were not successful.

Modifications to existing provisions

Renaming of Police and Crime Commissioners who take on Fire & Rescue role

- In response to a proposed amendment by Amanda Milling MP (Conservative), the government recognised that where a PCC takes on the role of FRA, a new designation would be required to make it clear to constituents that this change had occurred. Although Amanda Milling’s amendment was not accepted, one of the amendments the Government introduced for the committee stage in the House of Lords did this. It introduces the new title of ‘Police, Fire and Crime Commissioner’ and a corresponding change for the Police and Crime Panel to ‘Police, Fire and Crime Panel’. Naturally these titles only apply if a PCC takes on the FRA role, not otherwise. This amendment was accepted by the Lords during the first committee stage on 14th

Enabling combined authority mayors to take over Fire and Rescue Authority functions

- The Bill in its original form was not explicit that the ability of Police and Crime Commissioners to make a Section 4A application to the Secretary of State also enabled combined authority mayors, who fulfil the functions of Police and Crime Commissioners, to take a similar step. ‘Section 4A’ is a new section in the Fire and Rescue Act 2004, inserted by Schedule 1 of the Policing and Crime Act. Under a new section 8 in the Policing and Crime Act, the legislation now includes provision for combined authority mayors to request the Secretary of State to allow the Police Chief Constable for the area to exercise Fire & Rescue Authority functions. In a similar set up to a Section 4A application, the mayor must submit a report showing that such a change would either be ‘in the interest of economy, efficiency and effectiveness, or in the ‘interest of public safety’. The Secretary of State is obliged to get an independent assessment of the proposal before either approving it, approving it with modifications, or rejecting it. A key distinction between the power under section 8 and a Section 4A application is that whereas a PCC can make a further Section 4F proposal to delegate the FRA role to the Chief Constable for the area, for a combined authority mayor the role is automatically delegated that way.

Single employer model

- Government amendments to the legislation enable both PCCs and combined authority mayors who take on the FRA role to implement the ‘single employer model’, by delegating their powers to a single chief officer for policing and fire.

Strengthened duty for PCCs to consult ahead of a Section 4A application

- Amendments introduced in the Lords by the Government in response to criticism of the original format strengthened the duty for a PCC to consult local people and include an explicit duty to consult with persons representing the views of affected employees and members of the police force. Where the relevant upper tier authorities do not agree with the PCC’s proposal, the PCC would additionally be required to provide a summary of the views expressed by these representatives to the Home Secretary with the material they provide regarding the summary of views expressed by the public and the representations of the relevant
Obligation on the Home Secretary to publish assessments of proposals

- In cases where two thirds of relevant local authorities object to a Section 4A or 4F proposal, the original form of the Bill required the Home Secretary to commission an independent assessment of the proposal. Amendments introduced by the Government in the Lords, again in response to criticism, require the Home Secretary to publish the results of such an assessment.

Modifications around police complaints - restrictions on disclosure of sensitive information

- Additional provisions were added to the reforms to police complaints in Part Two, Chapter One of the Act, such as restrictions on the disclosure of sensitive information received by the IPCC and on powers of seizure and retention during investigations.

Police discipline - clarification of period after retiring that investigation can be carried out

- The original Bill introduced a process for disciplinary action against former police officers, where an allegation arose before they resigned or retired, or arose within a period of time following the resignation or retirement. The key purpose is to prevent officers who would have faced disciplinary sanctions had they remained on the force avoiding the process and then later re-joining with an unblemished record. The period of time in question following resignation or retirement is to be specified by regulation, but the Government has stated its intention to specify the period at 12 months. It also introduced amendments to the Lords that set aside this 12-month period in ‘exceptional circumstances’. This new process flows from the findings of the Hillsborough Inquest, which highlighted the problem of former police officers who might have been guilty of serious misconduct avoiding any kind of sanction.

Protective searches under the Mental Health Act

- The reforms to powers under the Mental Health Act 1983 included in the Act will now include at section 81 rules regarding ‘protective searches’ of individuals removed under sections 135 or 136. This means that where police officers have a warrant under the Act, they could search the person to whom it relates if they have reasonable grounds to believe that person poses a danger to themselves or other people and ‘is concealing on his or her person an item that could be used to cause physical injury to himself or herself or to others’.

Further provisions to protect children and vulnerable adults

- The original Bill set out to extend provisions in the Sexual Offences Act 2003 relating to the sexual exploitation of children to include the streaming of images. In response to criticism from Barnardo’s that this was a missed opportunity to do more and following an attempted amendment from a group of Labour MPs, the government added a further section relating to the regulation of taxis and private hire vehicles. The Secretary of State is now empowered to issue guidance to public authorities ‘as to how their licensing functions under taxi and private hire vehicle legislation may be exercised so as to protect children, and vulnerable individuals who are 18 or over, from harm’.

Abolition of LFEPA modifications

Amendments in the Lords modified Schedule 2 of the Act, which relates to the new office of London Fire Commissioner. The original Bill would have banned the Deputy Mayor for Fire from being an elected Councillor. This is no longer the case.

Further amendments bring the functions of the new Fire and Emergency Committee of the Greater London Assembly more closely into line of those of the Assembly’s Policing and Crime Panel so that the Committee can investigate and report on the actions and decisions of the Deputy Mayor for Fire or on other matters of importance to fire and rescue services in Greater London.

New provisions

- There are also some new provisions that were added. Some of the additions occurred during the
Inspection of fire and rescue services

- A new Chapter was introduced to the Bill by the Government covering the inspection of fire and rescue services. The background to this is that the existing legislative framework for inspection under s.28 of the Fire and Rescue Act 2004 is dormant. FRAs have been relying on a system of peer review, which has been identified as having significant limitations. The 2004 framework is also considered inadequate. In May 2016, then Home Secretary Theresa May announced the intention to introduce an enhanced inspection framework as an amendment to the Policing and Crime Bill. The changes amend the 2004 Act to provide greater powers for inspectors, greater transparency in inspection arrangements and reporting. PCCs who take on the FRA role are not covered by the new arrangements, but are expected to introduce their own system that mirrors them. For more information read this Home Office briefing.

Renaming/re-organising the IPCC

- A new Chapter 6 in Part 2 renames and reorganises the IPCC. It will now become the Office for Police Conduct and instead of being run by several commissioners will have a Director General appointed by the Queen. The move has been broadly accepted as a positive step.

Anonymity for victims of forced marriage

- A widely welcomed new section provides for anonymity for victims of forced marriage. Section 175 of the Act amends the Anti-Social Behaviour, Crime and Policing Act 2014 to include a new Schedule 6A prohibiting the identification of victims of forced marriage in publications, including online and social media. The provisions are modelled on an existing law that does the same for victims of Female Genital Mutilation. One of the intentions of the change is that it will give victims greater confidence to come forward.

Pyrotechnic devices at live music events

- During the report stage in the House of Commons Nigel Adams MP (Con) tabled an amendment to make it an offence for a member of the public to be in possession of pyrotechnic devices at a live music event. This was motivated by figures showing an increasing problem in this area, with the crowd management company Showsec reporting 255 incidents involving fireworks, flares or other pyrotechnic devices at their events in 2014. In response to the proposed amendment the government promised to bring forward its own amendment on this topic at the committee stage in the Lords.

- The new clause makes it an offence to be in possession (without the consent of the organiser of the event) of a firework, flare or other pyrotechnic article at a place where a qualifying musical event is being held in England, any other place that is being used to regulate entry to or departure from the event, or any other place providing facilities to attendees of the event. The definition of a ‘qualifying event’ will be defined by regulations. It is a summary only offence with a maximum penalty of three months’ imprisonment or a level 3 fine (£1000 at present).

Licensing

The original Bill included provisions related to alcohol licensing, specifically regarding summary reviews and interim steps, as well as the review of personal licenses. Government amendments in the Lords modified two other aspects of licensing regulation:

1. Introduces rules regarding Cumulative Impact Assessments of the impact of licensed premises on promoting the licensing objectives.
2. Overhauls the law in relation to late night levies to encourage take up and therefore increase revenue raised towards the cost of policing. The changes are:

   - allowing licensing authorities to target specific geographical locations
   - extending the levy to late night refreshment venues
   - enabling a PCC to request a licensing authority to propose a levy
   - requiring a licensing authority to publish information about how funds raised by the levy are spent, so those paying can be clear about where the money is going.
All changes to licensing regulations are covered by Part 7 of the Act (Sections 137-144).

Other new provisions

- There are also other new provisions in the law, relating to cross-border enforcement, the retention of biometric material and the seizure of invalid travel documents.

Criticism and government response

Back in April Andy Burnham, shadow home secretary at the time, described the Bill in mixed terms, saying the plans for police volunteers and merged emergency services "spoiled what would otherwise be a good Bill". At the conclusion of the third reading in the House of Commons in June his position was much the same, saying: “...this Bill... is a decidedly mixed bag. On the one hand it makes improvements to police accountability, but on the other it undermines the independence of the fire service and the police service by allowing volunteers to replace front-line staff. None the less, the Bill leaves this House in a better state than it came to us in.”

He went on to reiterate Labour’s opposition to the greater use of volunteers in the police service and the provisions regarding the take-over of fire and rescue authorities by PCCs. He also criticised the government for failing to take advantage of an opportunity to “make some real changes on the back of the historic Hillsborough verdict”. Amendments proposed by Labour in this area had been rejected by the Government. For more on this point read the debate from the third reading.

In the committee stage in the House of Commons Barnardo’s, the Children’s Society and the NSPCC welcomed the provision closing the loop hole in relation to streaming images of children, but were critical that the Bill was not doing more to protect children and young people. The discussion covered various areas where the Government might act. One suggestion from Barnardo’s was in relation to taxi regulation and they have welcomed the addition of provisions in the Bill to this end, while calling for further steps to taken.

The Local Government Association has criticised the provisions allowing PCCs to take over FRAs, saying this should only be allowed to happen when the relevant local authorities and local residents agree. Lyn Brown MP (Labour) did table an amendment to this end, but it was rejected by the Government and defeated in the House of Commons. The human rights organisation Liberty has been critical of various aspects of the Bill, including giving PCCs a prominent role in police complaints procedures and the extension of police powers to volunteers, stating “Allowing individual police chiefs to decide what their volunteer officers can and can’t do will create a confusing patchwork of powers across the country – and leave the door open to abuses”.

It is worth noting that there was an attempt in the House of Lords to amend the legislation to require the Government to instigate an independent inquiry into the police handling of complaints relating to allegations of corrupt relationships between the police and newspaper organisations. This would have been very similar to Part 2 of the Leveson inquiry (AKA Leveson 2), but the amendment was rejected by the Government and then dropped by the Lords.

Comment

The changes and additions made to the legislation during its passage through Parliament have not altered its core provisions, i.e. collaboration agreements between emergency services, PCCs taking over FRAs and the enhanced use of police volunteers. Attempts to alter or remove these provisions during the Bill’s passage through Parliament failed.

The main provisions of the legislation are likely to have a significant impact on the administration of the emergency services. It is hard to predict, and will be hard to measure, the effectiveness of the attempt to encourage collaboration between services, given that some collaboration is already taking place. It is also hard to predict how many PCCs will seek to take on the FRA role or how successful such moves will be. The general

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criticism of the PPC policy that it politicises the police force could then be extended to fire and rescue services. Overall, the Act means a reduction of the role of local authorities in the administration of emergency services, in favour of PCCs. If it is successful it will also mean that emergency services collaborate more effectively and that costs are reduced – a very important goal in a time of tightened police budgets. The extension of police powers to volunteers is something that opponents of the provisions will no doubt watch closely as they are put into practice. Again it is hard to predict how well the policy will work, but its success or failure should be relatively easy to assess, by looking at how extensively it is used and whether it results in a rise in complaints.

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