

POLICE, CRIME, SENTENCING AND COURTS BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

The Government has tabled further amendments to the Police, Crime, Sentencing and Courts Bill for the Commons consideration of Lords amendment stage which include three new delegated powers. This supplementary memorandum explains why the powers have been taken and the justification for the procedures selected.

New clause “PACE etc powers for food crime officers” – new section 114C of the Police and Criminal Evidence Act 1984

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

Context and purpose

1. New clause “PACE etc powers for food crime officers” inserts new section 114C into the Police and Criminal Evidence Act 1984 (“the 1984 Act”) to enable the Secretary of State, by regulations, apply any provision of the 1984 Act which relates to investigations of offences conducted by police officers to investigations of offences conducted by food crime officers. This will allow food crime officers to exercise certain powers available to the police. The purpose of the delegated power is to empower the National Food Crime Unit (“NFCU”) of the Food Standards Agency (“FSA”) to investigate food crime offences independently. Food crime is a very serious issue which costs the economy millions of pounds a year and empowering the NFCU in this way will ensure that their specialist knowledge is put to best use and that the burden on police forces, who currently have to exercise many of these powers on the NFCU’s behalf, is reduced.
2. A food crime officer is an officer of the FSA who is acting for the purposes of the performance by the FSA of its functions under the Food Standards Act 1999 or any other enactment (including functions relating to the investigation of offences), and is authorised by the Secretary of State for the purposes of new section 114C.
3. The power also permits consequential amendments to be made to the 1984 Act. By virtue of new section 114C(6C) of the 1984 Act, such regulations may make different provision for different purposes, consequential, supplementary, incidental, transitional, transitory or saving provision.

Justification for taking the power

4. Having established the principle in legislation that police powers contained within the 1984 Act may be extended to food crime officers, the Government considers that secondary legislation is the appropriate mechanism for specifying which of the powers within the 1984 Act should be conferred. The purpose of the power is

to ensure that the functionality of food crime officers is as flexible as possible. The extension of police style powers to other bodies requires various modifications, for example to substitute “the rank of constable” or “inspector” with an appropriate job title or grade in the body obtaining the powers, to replace the concept of “being in uniform” and “documentary evidence that he is a constable”. As such, the approach taken in the 1984 Act to date has been for such applications of powers to be dealt with in secondary legislation e.g. the Police and Criminal Evidence Act 1984 (Application to Revenue and Customs) Order 2015 made under section 114 of the 1984 Act. Section 114B of the 1984 Act also contains an analogous power in relation to the Gangmasters and Labour Abuse Authority.

Justification for the procedure

5. By virtue of new section 114C(7) of the 1984 Act, the power is subject to the negative resolution procedure. We believe this is an appropriate level of scrutiny because the decision to give police style powers to the FSA will, in principle, have been endorsed by Parliament as part of this Bill, and because other similar powers, in sections 113, 114, 114A and 114B of the 1984 Act, are subject to the negative procedure. We note that the Delegated Powers and Regulatory Reform Committee endorsed this approach in their report on the Immigration Bill in session 2015/16 (see 18th Report, paragraph 7).

New clause “PACE etc powers for food crime officers” – new section 39A of the Criminal Justice and Public Order Act 1994

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

Context and purpose

6. New clause “PACE etc powers for food crime officers” inserts new section 39A into the Criminal Justice and Public Order Act 1994 (“the 1994 Act”) to enable the Secretary of State, by regulations, to apply any provision of sections 36 and 37 of the 1994 Act that apply in relation to a constable to apply in relation to a food crime officer. This will allow food crime officers to exercise certain powers available to the police when interviewing suspects detained in custody, specifically around the ability to draw inferences from silence. The purpose of the delegated power is again to empower the NFCU of the FSA to investigate food crime offences independently of police forces.
7. The power also permits consequential amendments to be made to the 1994 Act. By virtue of new section 39A(5) of the 1994 Act, such regulations may make different provision for different purposes, consequential, supplementary, incidental, transitional, transitory or saving provision.

Justification for taking the power

8. Having established the principle in legislation that certain powers contained within the 1994 Act may be extended to food crime officers, the Government considers that secondary legislation is the appropriate mechanism for specifying which of the powers within sections 36 and 37 of the 1994 Act should be conferred. The purpose of the power is to ensure that the functionality of food crime officers is as flexible as possible. The extension of police style powers to other bodies requires various modifications, for example to substitute “the rank of constable” or “inspector” with an appropriate job title or grade in the body obtaining the powers, to replace the concept of “being in uniform” and “documentary evidence that he is a constable”. As such, the approach taken in the 1984 Act to date has been for such applications of powers to be dealt with in secondary legislation, and the Government considers it appropriate to replicate this approach for the 1994 Act to maintain consistency.

Justification for the procedure

9. By virtue of new section 39A(6) of the 1994 Act, the power is subject to the negative resolution procedure. We believe this is an appropriate level of scrutiny because the decision to give police style powers to the FSA will, in principle, have been endorsed by Parliament as part of this Bill, and because other similar powers, in sections 113, 114, 114A and 114B of the 1984 Act, are subject to the negative procedure.

New clause “PACE etc powers for food crime officers” – new section 26E of the Police Reform Act 2002

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Draft negative procedure

Context and purpose

10. New clause “PACE etc powers for food crime officers” inserts new section 26E into the Police Reform Act 2002 (“the 2002 Act”) to enable the Secretary of State, by regulations, to confer functions on the Director General of the Independent Office for Police Conduct (“IOPC”) in relation to officers of the Food Standards Agency (“FSA”) acting in the exercise of functions conferred on them by new section 114C of the 1984 Act and new section 39A of the 1994 Act. This will bring the NFCU of the FSA within the remit of the IOPC. The purpose of the delegated power is to ensure that food crime officers are subject to IOPC investigations and complaints procedures in their exercise of powers usually only available to the police, to ensure a level of independent scrutiny and oversight of these powers.

Justification for taking the power

11. Having established the principle in legislation that use of police powers by food crime officers should be subject to IOPC oversight, the Government considers that secondary legislation is the appropriate mechanism for specifying which of the functions of the IOPC Director General within the 2002 Act should be conferred. Although the NFCU is the law enforcement arm of the FSA, the FSA's purpose and remit go wider than the investigation of food crime, unlike a police force whose primary function is the investigation and prevention of crime. For this reason, the conferral of powers on the IOPC in relation to bodies other than the police can require modification and as such it has previously been the practice to carry out such a conferral by secondary legislation e.g. the National Crime Agency (Complaints and Misconduct) Regulations 2013 made under section 26C of the Police Reform Act 2002. Section 26D of the 2002 Act also contains an analogous power in relation to the Gangmasters and Labour Abuse Authority.

Justification for the procedure

12. The power in new section 26E of the Police Reform Act 2002 is, by virtue of section 105(2) of that Act, subject to the negative procedure. We consider that this is an appropriate level of scrutiny since it is a power to apply existing functions on the face of the primary legislation, with modifications, and this is the same procedure that applies to the similar powers in sections 26C and 26D of the 2002 Act.

Home Office
24 March 2022