

THE POLICING AND CRIME BILL

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 82, page 106, line 9 at end insert - “The Secretary of State must, before making regulations under subsection (3)(g) consult such persons as the Secretary of State considers appropriate.”

Clause 94, page 113, line 29 at end insert - “The Secretary of State must, before making regulations under subsection (3)(e) consult such persons as the Secretary of State considers appropriate.”

Clause 94, page 113, line 35 after “of” insert - “the Scottish Parliament and”

Clause 102, page 118, line 2 add at end - “A law enforcement officer is not liable in any criminal or civil proceedings for anything done in the purported performance of functions under this Chapter if the court is satisfied that – (a) the act was done in good faith, and (b) there was reasonable grounds for doing it.”

Clause 95, page 114, line 2 after “State” insert “or Scottish Ministers”

Clause 96, page 114, line 2 after “State” insert “or Scottish Ministers”

Clause 97, page 115, line 2 after “State” insert “or Scottish Ministers”

Clause 99, page 112, line 1 leave out “Police and Criminal Evidence Act 1984 (see section 10 of that Act).” and insert “Investigatory Powers Act 2016 (see section 264).”

Clause 104, page 118, line 38 leave out “Chapter 3 of Part 8 of the Proceeds of Crime Act 2002 (see section 412 of that Act).” and insert “Investigatory Powers Act 2016 (see section 264).”

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Clause 82, page 106, line 9 at end insert - "The Secretary of State must, before making regulations under subsection (3)(g) consult such persons as the Secretary of State considers appropriate."

Effect

This amendment requires the Secretary of State to consult prior to laying the Statutory Instrument creating the regulations before Parliament.

Reason

Clauses 82 relates to the application of the maritime enforcement power and the designation of those law enforcement officers who may exercise the power.

Clause 82(3) lists a number of persons who are "law enforcement officers" for the purposes of Chapter 5 of the Bill. Clause 82(3)(g) designates as a "law enforcement officer", "a person of a description specified in regulations made by the Secretary of State". We note the current draft clause creates an unspecified category of persons and leaves the further designation to secondary legislation. This amendment would require the Secretary of State to consult prior to making such a regulation which designates an, as yet unspecified person, as a law enforcement officer who can exercise the maritime enforcement power.

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Clause 94, page 113, line 29 at end insert - "The Secretary of State must, before making regulations under subsection (3)(e) consult such persons as the Secretary of State considers appropriate."

Effect

This amendment requires the Secretary of State to consult prior to laying the Statutory Instrument creating the regulations before Parliament.

Reason

Clauses 94 relates to the application of the maritime enforcement power and the designation of those law enforcement officers who may exercise the power. Clause 94(3) lists a number of persons who are "law enforcement officers" for the purposes of Chapter 6 of the Bill.

Clause 94(3)(e) designates as a "law enforcement officer", "a person of a description specified in regulations made by the Secretary of State".

Further, Clause 94 has application in Scotland, the current draft clause contains no requirement for the Secretary of State to consult, for example, the Scottish Ministers.

We note the current drafting clause creates an unspecified category of persons and leaves the further designation to secondary legislation. This amendment would require the Secretary of State to consult prior to making such a regulation which designates an, as yet unspecified person, as a law enforcement officer who can exercise the maritime enforcement power.

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Clause 94, page 113, line 35 after “of” insert - “the Scottish Parliament and”

Effect

This amendment provides that any Regulation made in an area of devolved competence would require the consent of the Scottish Ministers and the Scottish Parliament.

Reason

Clauses 94 relates to the application of the maritime enforcement power and designates those law enforcement officers who may exercise the power. Clause 94 confers upon the Secretary of State the power to make regulations to designate law enforcement officers.

If the Secretary of State were to exercise the power in an area of devolved competence, in addition to the Scottish Ministers, the consent of the Scottish Parliament would be required.

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Clause 102, page 118, line 2 add at end - “A law enforcement officer is not liable in any criminal or civil proceedings for anything done in the purported performance of functions under this Chapter if the court is satisfied that – (a) the act was done in good faith, and (b) there was reasonable grounds for doing it.”

Effect

This amendment provides an express exclusion of criminal and civil liability for law enforcement officers in Scotland, in respect of things done in good faith and where there are reasonable grounds for doing it.

Reason

Chapter 6, Clauses 94 to 104 relate to the use of the maritime enforcement power for Scottish Offences. We note that the provisions contain no express exclusion of criminal and civil liability for law enforcement officers in Scotland, in respect of things done in good faith and where there are reasonable grounds for doing it. It is unclear why the provisions relating to the Scottish Offences contain no express exclusion.

We note that there is an equivalent provision for the exclusion of English and Welsh offences at Chapter 5, Clause 90(5). We would welcome clarification from the Government about the different treatment for Scottish law enforcement officers.

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Clause 95, page 114, line 2 after “State” insert “or Scottish Ministers”

Effect

This amendment provides clarity on the mechanism for obtaining Secretary of State consent for use of the maritime enforcement power in a hot pursuit.

Reason

Chapter 6, Clauses 94 to 104 relate to the use of the maritime enforcement power for Scottish Offences. If the hot pursuit began in Scottish Territorial waters, would the Scottish law enforcement officers be expected to obtain consent for the Secretary of State for the Home Office, or the Scottish Cabinet Secretary for Justice. We welcome clarity from the Government, including whether this process would be included in the Clause 92 Code of Practice, and on the mechanism for obtaining consent in what could be a very short timescale prior to commencement of or during a hot pursuit.

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AMENDMENT TO BE MOVED IN COMMITTEE

Clause 96, page 114, line 2 after “State” insert “or Scottish Ministers”

Effect

This amendment provides clarity on the mechanism for obtaining Secretary of State consent for use of the maritime enforcement power in a hot pursuit.

Reason

Chapter 6, Clauses 94 to 104 relate to the use of the maritime enforcement power for Scottish Offences. If the hot pursuit began in Scottish Territorial waters, would the Scottish law enforcement officers be expected to obtain consent for the Secretary of State for the Home Office, or the Scottish Cabinet Secretary for Justice. We welcome clarity from the Government, including whether this process would be included in the Clause 92 Code of Practice, and on the mechanism for obtaining consent in what could be a very short timescale prior to commencement of or during a hot pursuit.

THE POLICING AND CRIME BILL

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 97, page 115, line 2 after “State” insert “or Scottish Ministers”

Effect

This amendment provides clarity on the mechanism for obtaining Secretary of State consent for use of the maritime enforcement power in a hot pursuit.

Reason

Chapter 6, Clauses 94 to 104 relate to the use of the maritime enforcement power for Scottish Offences. If the hot pursuit began in Scottish Territorial waters, would the Scottish law enforcement officers be expected to obtain consent for the Secretary of State for the Home Office, or the Scottish Cabinet Secretary for Justice. We welcome clarity from the Government, including whether this process would be included in the Clause 92 Code of Practice, and on the mechanism for obtaining consent in what could be a very short timescale prior to commencement of or during a hot pursuit.

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AMENDMENT TO BE MOVED IN COMMITTEE

Clause 99, page 112, line 1 leave out “Police and Criminal Evidence Act 1984 (see section 10 of that Act).” and insert “Investigatory Powers Act 2016 (see section 264).”

Effect

This amendment deletes the current definition of “items subject to legal privilege” and replaces it with an alternative definition.

Reason

Items ‘subject to legal privilege’ is defined within **clause 93**. Clause 93 refers to the definition in the Police and Criminal Evidence Act 1984. We note that this definition is inconsistent with the definition that is currently proposed in draft Clause 264 of the Investigatory Powers Bill¹. The definitions ought to be consistent. This amendment seeks to address that inconsistency.

¹ <http://services.parliament.uk/bills/2015-16/investigatorypowers.html>

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Clause 104, page 118, line 38 leave out “Chapter 3 of Part 8 of the Proceeds of Crime Act 2002 (see section 412 of that Act.” and insert “Investigatory Powers Act 2016 (see section 264).”

Effect

This amendment deletes the current definition of “items subject to legal privilege” and replaces it with an alternative definition.

Reason

Legal professional privilege (LPP), referred to in Scotland as the ‘obligation of confidentiality’ is key to the rule of law and is essential to the administration of justice as it permits information to be communicated between a lawyer and client without fear of it becoming known to a third party without the clear permission of the client. Many UK statutes give express protection of LPP and it is vigorously protected by the courts.

Items ‘subject to legal privilege’ is defined within **clause** 104. Clause 104 refers to the definition in the Proceeds of Crime Act 2002 at section 412, which in turn refers to communications between a ‘professional legal adviser’ and the adviser’s client. However, there is no prescribed definition of ‘professional legal adviser’ leaving this open to ambiguous and wide interpretation.

In addition, we note that this definition is inconsistent with the definition that is currently proposed in draft Clause 239 of the Investigatory Powers Bill². The definitions ought to be consistent. This amendment seeks to address that inconsistency.

² <http://services.parliament.uk/bills/2015-16/investigatorypowers.html>