CRIME AND POLICING BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

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

New clause "*Obscenity etc offences: technology testing defence*": Power to authorise technology such as AI models to be tested for prohibited material, without offences being committed in the course of the testing

Power conferred on: *Secretary of State*

Power exercisable by: *Regulations made by statutory instrument*

Parliamentary procedure: *Draft affirmative resolution procedure*

New clause "*Technology testing defence: meaning of "relevant offence"*": Power to amend meaning of "relevant offence"

Power conferred on: *Secretary of State*

Power exercisable by: *Regulations made by statutory instrument*

Parliamentary procedure: *Draft affirmative resolution procedure*

Context and Purpose

1. The rapid advancement and accessibility of AI technologies without adequate safeguards, have significantly increased the volume of AI-generated child sexual abuse material (CSAM), extreme pornography (EP) and non-consensual intimate images (NCII) circulating online. These tools are now easily accessible, lowering the threshold for criminal exploitation by both existing and new offenders. AI is being actively misused to generate harmful and illegal content, with women and children disproportionately targeted.

2. Under current legislation companies are legally blocked, or face significant legal risk, from testing an AI's capability to produce CSAM, EP and NCII. Developers cannot identify when safeguards fail or verify the effectiveness of any interventions. To ensure robust safety standards continuous testing is critical to mitigate risks.

3. Clause 63(5) to (8) already confers a power on the Secretary of State by regulations to authorise the carrying out of tests either by the Secretary of State or by a person specified in the regulations and the doing of things, including the retention of information, in connection with such tests for the purpose of investigating child sexual abuse image-generators. New clause "*Obscenity etc offences: technology testing defence*" (which replaces the provisions in clause 63(5) to (8)) expands this regulation-making power so that regulations may provide

for defences to relevant offences for persons who are authorised by the Secretary of State to carry out technology testing activities (see subsection (1) of the new clause). The power is such that the Secretary of State may authorise a person within the Home Office or other government department to undertake technology testing activities. This provision will enhance the protection of women and children and prevent the criminal misuse of AI technologies, improving long term safety by design and resilience of future AI development.

4. "Technology testing activities" is defined in subsection (2). The definition covers testing of technology for the purpose of investigating whether a technology (such as AI) may have been made or adapted for use for creating, or facilitating the creation of prohibited material, or to establish whether the technology may be used to create, or facilitate the creation of, prohibited material. "Prohibited material" is defined in subsection (3) as anything in relation to which a relevant offence, as defined in new clause "*Technology testing defence: meaning of "relevant offence""*, may be committed.

5. Subsection (4) of the new clause provides that regulations made under subsection (1) may include provision:

    (a) for authorisations to be subject to conditions (which may be specified in the regulations or determined administratively by the Secretary of State);
    (b) for the variation, suspension, or withdrawal of authorisations and conditions;
    (c) for the enforcement of any breaches of conditions (which may include provision creating criminal offences subject to a maximum penalty of a fine);
    (d) for fees to be payable to the Secretary of State, as a means of recovering costs incurred by the Secretary of State in exercising functions under the regulations (that is, the authorisation process and monitoring compliance with conditions).

6. Subsections (2) to (4) of new clause "*Technology testing defence: meaning of "relevant offence""* specifies the offences for which the technology testing defence is to be available. Subsection (5) of the new clause enables the Secretary of State, by regulations, to amend subsections (2) to (4).

7. For both these regulation-making powers, the Secretary of State is required to consult with the Scottish Ministers and Department of Justice in Northern Ireland before making regulations containing provision that would be within the legislative competence of the Scottish Parliament and Northern Ireland Assembly as the case may be.

<u>Justification for the delegated power</u>

8. The expanded regulation-making power provided for in new clause "*Obscenity etc offences: technology testing defence*" would provide legislative cover for organisations who have a legitimate need to test and/or investigate technologies, such as CSA image-generators, with a view to preventing future crimes and safeguarding children and vulnerable adults. Under these amendments, the Bill itself would establish the principle that a person may be authorised to undertake testing in relation to prohibited material and that in undertaking such testing they

are not caught by a relevant offence. Having established this principle it is appropriate to leave to administrative arrangements the authorisation of persons to undertake such testing and the conditions (which are likely to be technical in nature) under which such testing may take place. The persons authorised to undertake such testing may change over time and it is important that new or revised authorisations can be made promptly to ensure there is not a gap in the ability to test CSA image-generators or similar technologies which could increase the risk of harm to children and others.

9. It is in the public interest to enable AI testing for investigatory purposes, but also for the purpose of enhancing safety of future AI tools. However, the rate of development and change in artificial intelligence technology means that aspects of a testing regime is likely to require change over time, in order to ensure safe testing and serve the public. Given the serious nature of the underlying offences, detailed considerations of requirements for testing will be necessary. As a result, this is an occasion where it is suitable to use secondary legislation in order to master detail and afford a measure of agility. In setting out the defence in secondary legislation, we want to ensure that we have requisite powers to ensure adequate management of risk associated with authorising actors to rely on the defence. Alternative mitigations are being explored, however, the Government is alive to risks such as an authorised tester failing substantially to comply with imposed safety conditions. The sensitivity of testing material and the gravity of the underlying offences may require that some form of criminal recourse (with a maximum penalty of a fine) is available in relation to this narrow group of authorised, but non-compliant, testers. It is considered appropriate and proportionate to retain the power to create a criminal offence by secondary legislation, should the fully developed testing regime require such recourse.

10. The regulation-making power in subsection (5) of new clause "*Technology testing defence: meaning of "relevant offence"*" is considered necessary to enable the list of relevant offences in subsections (2) to (4) to be updated in the light of any changes to the criminal law relating to prohibited images. The generality of the criminal law in this area is devolved or transferred and it is therefore open to the Scottish Parliament and Northern Ireland Assembly to enact legislation which amends, or repeals offences listed in subsections (3) and (4) of the new clause or creates new offences which it would be appropriate to add to those subsections. The regulation-making power will enable the Secretary of State to make any necessary changes to the list of offences in subsections (3) and (4). While any legislation at Westminster amending or repealing offences listed in subsection (2) or creating new offences which should be added to subsection (2) can itself make the necessary consequential amendments to that subsection, it is considered prudent also to include a power to amend subsection (2) to cater for cases where relevant legislation at Westminster inadvertently fails to make necessary consequential amendments to that subsection.

<u>Justification for the procedure</u>

11. By virtue of an amendment to clause 198(3)(a) of the Bill, regulations made under new clause *Obscenity etc offences: technology testing defence*" are subject to the draft affirmative resolution procedure. This is considered to provide an appropriate

level of parliamentary scrutiny as the effect of such regulations would be to provide for a defence to child sexual abuse and other serious offences provided for in primary legislation. Moreover, such regulations confer a power to create new offences which, of itself, would justify the affirmative procedure.

12. By virtue of an amendment to clause 198(3)(a) of the Bill, regulations made under subsection (5) of new clause "*Technology testing defence: meaning of "relevant offence""* are subject to the draft affirmative resolution procedure. This is considered appropriate as the effect of any such regulations could be to expand the scope of a defence created by regulations made under new clause *Obscenity etc offences: technology testing defence*". The affirmative procedure is also apt given the Henry VIII nature of the power.

13. Authorisations made by the Secretary of State under new clause "*Technology testing defence: authorisations*" are not subject to any parliamentary procedure. This is considered appropriate as the designation of a person to undertake technology testing and specifying the conditions under which such testing may take place is essentially a contractual or regulatory process to be undertaken within the framework provided for in primary legislation.

Home Office
12 November 2025