



## EXPLANATORY NOTES

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### Serious Organised Crime and Police Act 2005

#### Chapter 15

£10.50



*These notes refer to the Serious Organised Crime and Police Act 2005 (c.15) which received Royal Assent on 7th April 2005*

# **SERIOUS ORGANISED CRIME AND POLICE ACT 2005**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the Serious Organised Crime and Police Act which received Royal Assent on 7th April 2005. They have been prepared by the Home Office in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.
3. A glossary of abbreviations and terms used in these explanatory notes is contained in the annex to the notes.

### **SUMMARY**

#### ***Part 1: The Serious Organised Crime Agency***

4. Chapter 1 of Part 1 establishes the Serious Organised Crime Agency (SOCA), provides for its constitution and defines its functions and general powers and its relationship with Ministers. Chapter 2 of Part 1 enables the Director General of SOCA to designate members of staff of SOCA with some or all of the powers of a constable, a customs officer or an immigration officer. Chapter 3 of Part 1 contains supplementary provision in respect of SOCA. In particular, this Chapter provides for the transfer of staff to SOCA and the procedures for investigating complaints and misconduct.

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***Part 2: Investigations, prosecutions and other measures***

5. Part 2 is divided into 6 Chapters. Chapter 1 enables designated members of staff of SOCA, police constables or officers of Revenue and Customs, acting under the supervision of the Director of Public Prosecutions (DPP), the Director of Revenue and Customs Prosecutions or the Lord Advocate, to compel people to co-operate with an investigation by producing documents and answering questions. There are safeguards against self-incrimination and for the protection of legal privilege.

6. Chapter 2 places the mechanism by which a defendant can plead guilty and offer Queen's Evidence in return for a discounted sentence on a statutory footing.

7. Chapter 3 provides for the making of financial reporting orders. Such orders may be imposed as ancillary orders for certain trigger offences and would enable the financial affairs of serious acquisitive criminals to be monitored from the point of sentence.

8. Chapter 4 places the arrangements for providing protection for witnesses and others on a statutory footing. It places a duty on public authorities to assist protection providers and introduces offences in connection with the unauthorised disclosure of information about protected persons or protection arrangements.

9. Chapter 5 confers delegated powers to enable the Home Secretary and Scottish Ministers to give effect to the EU Framework Decision of July 2003 on the execution of orders freezing property or evidence, and amends an order making power under the Criminal Justice (International Cooperation) Act 1990 to enable the United Kingdom to give effect to the UN Conventions against Transnational Organised Crime and Corruption.

10. Chapter 6 makes a number of amendments to the Proceeds of Crime Act 2002 to improve the effectiveness of the civil recovery scheme and ease the money laundering reporting requirements on the regulated sector.

***Part 3: Police powers etc.***

11. Part 3 makes a number of changes to police powers set out in the Police and Criminal Evidence Act 1984 (PACE) and extends the powers of Community Support Officers (CSOs) and other persons designated or accredited under the provisions of Part 4 of the Police Reform Act 2002.

12. Sections 110, 111, 113 and 114 and Schedule 7 revise the framework of arrest and search powers in PACE. In particular they provide, in the case of a constable's power of arrest, for all offences to be arrestable subject to a necessity test.

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13. Section 112 introduces a new offence of failing to obey a police direction to leave an exclusion area.

14. Section 115 extends the powers of the police, in section 1 of PACE, to stop and search persons suspected of carrying prohibited fireworks.

15. Sections 116 to 118 enable the police to take photographs and fingerprints of persons away from a police station and to take impressions of a person's footwear at a police station. The power to take photographs is extended to CSOs and accredited persons in limited circumstances. Section 116(3) amends section 64A of PACE to allow the police to pass a photograph to the court for the purposes of enforcing the orders of the court. This new power is in addition to that which already allows the police to pass a photograph to the court for the purposes of prosecution. Section 119 amends the definition of an intimate and non-intimate sample.

16. Sections 120 and 121 create a new category of designated person under the Police Reform Act 2002, namely a 'staff custody officer', thereby enabling police staff to undertake custody functions previously restricted to police officers.

17. Sections 122 and 123 and Schedules 8 and 9 extend the powers of CSOs, other designated police staff and accredited persons and enable police staff to access certain information relating to drivers, vehicle registration plate suppliers and motor insurance.

***Part 4: Public order and conduct in public places etc.***

18. Part 4 strengthens the protection afforded by the criminal and civil law against acts of harassment, trespass on sites of national importance and unauthorised demonstrations in the vicinity of Parliament.

19. Sections 125 to 127 amend the Protection of Harassment Act 1997 and Criminal Justice and Police Act 2001 to prohibit intimidating conduct designed to stop persons going about their lawful business, introduce a new offence of harassment of a person in his home and confer additional powers on the police to issue directions for the purpose of stopping harassment of a person in his home.

20. Sections 128 to 131 introduce a new offence of trespass on sites designated by the Secretary of State.

21. Sections 132 to 138 confer additional powers on the police to control demonstrations in Parliament Square or its environs.

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22. Sections 139 to 143 contain provisions relating to Anti-social Behaviour Orders (ASBOs). In particular, they lift the automatic reporting restrictions in Youth Courts in relation to proceedings for breach of an ASBO.

23. Section 144 and Schedule 10 provide for magistrates' courts in England and Wales and Northern Ireland to make parental compensation orders ("PCOs") on application by a local authority or person specified by the Secretary of State in the case of Northern Ireland. The PCO is available where a child under the age of 10 has taken or caused loss or damage to property in the course of behaving anti-socially or committing an act that would have been criminal if he were 10 or over.

#### ***Part 5: Miscellaneous***

24. Sections 145 to 149 introduce two new offences. Section 145 creates a new offence of interference with contractual and similar relationships with the intention of harming an animal research organisation. Section 146 creates a further offence criminalising the intimidation of specified persons connected with an animal research organisation. Section 148 defines 'an animal research organisation' for the purpose of this legislation. Section 147 contains the penalties for offences, and section 149 contains a power for the legislation to be extended by means of affirmative resolution and describes the circumstances in which that power may be used.

25. Sections 150 to 152 introduce a new offence of using an incorrectly registered vehicle and confer powers on the police to require the production of vehicle registration documents and to seize vehicles driven by someone who does not have appropriate insurance or a valid driving licence. Section 153 provides for the disclosure of information about the insurance status of vehicles. Section 154 amends the provisions of the Road Traffic Act relating to breath tests. Sections 155 and 156 enable payments to be made to police authorities in relation to the enforcement of certain traffic offences; such payments would be funded from revenue from fixed penalty notices.

26. Section 157 requires police authorities to publish an annual "local policing summary" and confers powers on the Home Secretary to set minimum requirements in respect of the information to be included in such summaries.

27. Section 158 provides that liability for breaches of health and safety legislation by police forces will normally rest with the office of Chief Constable rather than with the office holder.

28. Section 159 and Schedule 11 amend Part 2 of the Police Reform Act 2002 which sets out the framework for the investigation of complaints against and misconduct by police officers and police staff. The amendments provide that

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disciplinary action may, in certain serious cases, be taken against a police officer before the point at which an investigation into a complaint or misconduct relating to that officer would normally be completed. Section 160 and Schedule 12 provide for the investigation of deaths and serious injuries where there is no suggestion of misconduct.

29. Sections 161 and 162 and Schedule 13 provide for the abolition of the Royal Parks Constabulary and for the transfer of responsibility for policing the Royal Parks to the Metropolitan Police.

30. Sections 163 to 168 and Schedule 14 make amendments to Part 5 of the Police Act 1997 which sets out the framework under which the Criminal Records Bureau (CRB) and Disclosure Scotland operate. In particular, the amendments extend the range of law enforcement agencies from whom non-conviction information may be obtained and enable the CRB and Disclosure Scotland to access passport, driving licence and national insurance number data in order to verify the identity of applicants for a criminal record disclosure.

31. Sections 169 and 170 alter one of the tests for the issue, by the courts, of a witness summons.

32. Section 171 and Schedule 15 extend the provisions of the Private Security Industry Act 2001 to Scotland and thereby provide for the licensing by the Security Industry Authority of security operatives in Scotland.

### ***Part 6: Final provisions***

33. Part 6 deals with the making of orders and regulations under the Act, contains consequential amendments and repeals of existing legislation, and provides for the commencement of the Act. It also contains a free-standing power to make supplementary, incidental or consequential provisions, including a power to amend primary and secondary legislation.

## **BACKGROUND**

34. The Government published the White Paper *One Step Ahead: A 21st Century Strategy to Defeat Organised Crime* (CM 6167) in March 2004. The White Paper set out the Government's three-pronged strategy for tackling organised crime, namely reducing the profit incentive, disrupting the activities of criminal enterprises and increasing the risk to the major players of being caught and convicted. A summary of the responses to the white paper is available on the website: <http://www.homeoffice.gov.uk> and the Government's response was published in

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November 2004<sup>1</sup>. Parts 1 and 2 of the Act are intended to give effect to those provisions of the White Paper that require legislation.

### ***Part 1: The Serious Organised Crime Agency***

35. The White Paper proposed the establishment of a single powerful agency to lead the fight against organised crime – the Serious Organised Crime Agency. SOCA will bring together the National Crime Squad (NCS), the National Criminal Intelligence Service (NCIS), the investigative and intelligence work of Her Majesty's Customs and Excise (HMCE) on serious drug trafficking, and the Immigration Service's responsibilities for organised immigration crime. SOCA will be an intelligence-led organisation. Its core objective will be to reduce the harm caused by organised crime. To achieve this objective SOCA, working with others, will use a variety of strategies, including the investigation and prosecution of criminals involved in serious organised crime, the disruption of supply networks, the confiscation of criminal assets, the taxation of undeclared earnings and improving the defences of the financial sector and others against attack by organised criminals. In discharging its functions, SOCA will co-operate closely with the police, intelligence agencies, Asset Recovery Agency (ARA), Her Majesty's Revenue and Customs (HMRC) (which under the Commissioners for Revenue and Customs Act 2005 will take over the functions of the Inland Revenue and HM Customs and Excise from April 2005), financial regulators, international partners and many others.

36. SOCA's remit will extend throughout the United Kingdom, but with special arrangements in place in recognition of the devolution settlement in Scotland and the particular circumstances of Northern Ireland. In carrying out its functions in Scotland and Northern Ireland, the Agency will work in partnership with the Scottish Drug Enforcement Agency and the Police Service of Northern Ireland respectively.

### ***Part 2: Investigations, prosecutions and other measures***

37. The organised crime White Paper proposed a number of new powers to assist SOCA, the police and HMRC in disrupting and dismantling organised criminal groups. Part 2 of the Act includes the following provisions:

- A power for SOCA staff, police constables and officers of Revenue and Customs, acting under the supervision of the Director of Public Prosecutions (or the new Director of Revenue and Customs Prosecutions), to compel individuals to answer questions or produce relevant documents. Similar powers are already available to the Serious Fraud Office (SFO) under the

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<sup>1</sup> [http://www.homeoffice.gov.uk/docs3/whitepaper\\_consultation\\_intro.html](http://www.homeoffice.gov.uk/docs3/whitepaper_consultation_intro.html)



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provisions of section 2 of the Criminal Justice Act 1987 and ARA under the provisions of sections 357 to 362 of the Proceeds of Crime Act 2002. As with those provisions, Chapter 1 of Part 2 contains safeguards against self-incrimination and the protection of privileged information.

- Placing the common law practice of ‘Queen’s Evidence’ on a statutory footing in England, Wales and Northern Ireland. Existing case law provides for sentence reductions for defendants who plead guilty and co-operate with the prosecution of others.
- Introducing, as part of the sentence that may be imposed on ‘lifestyle criminals’, a new financial reporting order. These orders will impose requirements on offenders to provide, on a regular basis, details of their income, assets and expenditure. The orders would operate for a maximum of 20 years from the point of sentence.
- Placing existing arrangements for the protection of witnesses and others on a statutory footing. The organised crime White Paper made it clear that if defendants are to co-operate against their co-conspirators, they needed strong assurance in respect of their safety. A review of witness protection arrangements ended in September 2004. That review concluded that the case had not been made out for a national witness protection agency, but instead recommended rationalising witness protection arrangements by consolidating force units on a regional basis and having a central unit to provide assistance nationally to the regional units.

### ***Part 3: Police powers etc.***

38. The core framework of police powers used to tackle and investigate crime is set out in PACE and the accompanying Codes of Practice. In 2002, a fundamental review of PACE was carried out by the Home Office and Cabinet Office. The review reported in November 2002<sup>2</sup>.

39. The review concluded that while there was a positive view of PACE and support for the way it had standardised and professionalised police work, there was a recognition that the Act and the Codes required updating and reorganising to ensure that they reflected changes in society over the last 20 years. In particular, the review concluded that changes were needed to address the commonly held observation that PACE had become increasingly rigid over time as a result of the influence of case law and the accumulation of additional legislation. A number of amendments to PACE arising from the review were implemented by Part 1 of the Criminal Justice Act 2003.

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<sup>2</sup> <http://www.homeoffice.gov.uk/docs/pacereview2002.pdf>

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40. Further proposals for the reform of PACE were set out in the consultation paper 'Policing: Modernising Police Powers to Meet Community Needs'<sup>3</sup>. The measures proposed in that consultation set out to:

- Provide the police and other relevant agencies with appropriate powers to tackle crime;
- Remove barriers enabling more effective targeting of criminals; and
- Free-up more time for police officers to take up front-line duties.

41. As well as seeking to modernise police powers in PACE, the consultation paper also set out proposals for further strengthening the effectiveness of police staff and to broaden the range of specialist roles they may perform.

42. Discussion between the Department for Constitutional Affairs and enforcement teams in magistrates courts revealed that the problem of identity denial by fine defaulters was a significant barrier to the effective enforcement of fines and other financial penalties imposed by the courts. Whilst PACE allows for photographs to be used in the prosecution process, photographs cannot currently be passed onto Court Enforcement Officers and Authorised Enforcement Agents for use in the enforcement of fines and criminal penalties set by the courts. The Act achieves this by amending section 64A of PACE.

43. The Police Reform Act 2002 provided for the appointment of CSOs to work in partnership with police officers in the community, with powers to tackle low level crime and anti-social behaviour. The powers of CSOs were extended by the Anti-social Behaviour Act 2003. There are now some 4,500 CSOs across England and Wales. Part 3 of the Act provides for a further limited extension of their powers.

44. The Police Reform Act 2002 also introduced three other categories of 'designated' police staff, namely investigating officers, detention officers and escort officers. Each of these perform specialist roles which do not require the full training and powers of a constable, and therefore free up officers for other duties. Part 3 establishes a new category of designated staff – staff custody officers – and extends the powers of other designated staff as part of a programme of workforce reform to build a more unified police service where police staff play a full part in strengthening operational effectiveness. Details of this programme are set out in the police reform White Paper 'Building Communities, Beating Crime: A better police service for the 21<sup>st</sup> century' (CM 6360, November 2004).

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[http://uk.sitestat.com/homeoffice/homeoffice/s?docs3.PolicingConsultation&ns\\_type=pdf&ns\\_url=%5Bhttp://www.homeoffice.gov.uk/docs3/PolicingConsultation.pdf%5D](http://uk.sitestat.com/homeoffice/homeoffice/s?docs3.PolicingConsultation&ns_type=pdf&ns_url=%5Bhttp://www.homeoffice.gov.uk/docs3/PolicingConsultation.pdf%5D)

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***Part 4: Public order and conduct in public places etc.***

*Harassment*

45. In July 2004 the Government published its strategy for countering animal rights extremists – ‘Animal Welfare: Human Rights - Protecting People from Animal Rights Extremists’. The Government is committed to protecting those who work in the biomedical research sector from animal rights extremists who have used violence, intimidation and harassment in an attempt to prevent those working in the sector going about their lawful business. The Government has made several changes to the law in recent years to strengthen the protection it affords against animal rights extremists. The Criminal Justice and Police Act 2001 gave the police a new power to direct protesters away from homes, where such protests may cause harassment, alarm or distress. More recently, the Anti-social Behaviour Act 2003 amended the definition of a public assembly in the Public Order Act 1986 so that an assembly may consist of ‘a gathering of 2 or more persons’ as opposed to the previous definition of 20 or more persons’. The 2003 Act also extended the offence of aggravated trespass to cover trespass in buildings. The position paper set out three additional measures to counter the extremists; these are set out in sections 125 to 127.

*Trespass on designated sites*

46. In recent years there have been a number of breaches of security at the residences of Her Majesty.

47. Following the incident at Windsor Castle on 21 June 2003 an inquiry was conducted by Commander Frank Armstrong of the City of London Police. Commander Armstrong reported in August 2003 (a summary of his report is available from the Metropolitan Police Service Press Office on 020 7230 2818). His first recommendation was as follows:

“There have been a number of intrusions into Royal premises in recent years, which have resulted in no formal prosecution. Consideration should be given to creating new legislation with a specific offence of trespassing into secure specified (Royal/Government) premises, as there is currently no deterrent.”

48. This recommendation was reinforced by the Report of the Security Commission of May 2004 (Cm 6177), following Ryan Parry’s activities at Buckingham Palace.

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*Demonstrations in the vicinity of Parliament*

49. In November 2003 the House of Commons Select Committee on Procedure published a report on Sessional Orders and procedures (Third Report, Session 2002/3, HC 855). Amongst other things, the Report considered the issue of access to Parliament and demonstrations in Parliament Square. The Committee made the following recommendation:

“We therefore recommend that the Government should introduce appropriate legislation to prohibit long-term demonstrations and to ensure that the laws about access are adequate and enforceable. We also expect the appropriate authorities to explore fully the possibility of using existing legislation to control the use of loud-hailers and other amplification equipment; failing that, the Government should consider legislation on this subject.”

50. The Committee published the Government’s response to the Committee’s Report in May 2004 (Second Special report, 2003/4 Session, HC 613). In response to the recommendation above the Government said:

“The Government's first principle is that the right of free expression under Article 10 of the European Convention on Human Rights should be protected. It **accepts** that access to Parliament must be maintained, the working environment of Parliament safeguarded and the right of people working in Parliament not to be subject to anti-social behaviour. The Government does, however, note with interest the Mayor of London *World Squares for All* proposals for Parliament Square and looks forward to the conclusions of the Steering Group.

The Home Office will, however, undertake a consultation exercise on developing police powers and making sure that the police are empowered to act effectively and proportionately, including using their existing powers, taking into account advice from the Police and Security Service on security implications for the Palace of Westminster as a result of their current review.”

51. The Government duly sought views (in the police powers consultation paper) on the effectiveness of existing legislation to control demonstrations in Parliament Square and whether extending the power to impose conditions on all demonstrations in the vicinity of Parliament would be desirable.

52. The Procedure Committee’s report and the Government's response were debated in the House of Commons on 3 November 2004 (Hansard col. 370-423).

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## ***Part 5: Miscellaneous***

### *Interference with activities of animal research organisations*

53. In July 2004, in the paper “Animal Welfare, Human Rights - Protecting People from Animal Rights Extremists”, the Government announced that it was considering the possibility of making it an offence to cause economic damage to the suppliers of firms or research groups engaged in the legitimate and licensed use of animals for research purposes.

### *Vehicle registration and road traffic offences*

54. In August 2004, the Department for Transport published a report (available at [www.publications.dft.gov.uk](http://www.publications.dft.gov.uk)) by Professor David Greenaway of the University of Nottingham into uninsured driving in the United Kingdom. Amongst the recommendations of the report was that ‘police forces should be given the power to seize and, in appropriate circumstances, destroy vehicles that are being driven uninsured’. The Government accepted this recommendation (Department for Transport news release 2004/0111, 11 August 2004) and in October 2004 the Department for Transport issued a consultation paper (‘Seizure of vehicles being driven uninsured’, available at [www.dft.gov.uk](http://www.dft.gov.uk) (consultations)) to seek views on the detail of the powers to be conferred on the police.

### *Local policing information*

55. Amongst the issues addressed in the Government’s police reform Green Paper ‘Policing: Building Safer Communities Together’, published in November 2003 (available at [www.policereform.gov.uk](http://www.policereform.gov.uk)) was the need for forces and police authorities to provide better information about community safety. The consultation sought views on the kind of information about policing that communities would find most useful, and how this information can be most usefully distributed. The responses to the consultation, which were published in September 2004, indicated broad agreement that information on policing should be made more accessible to the public to enable them to better understand what is happening in their area and engage effectively with the police.

56. In the police reform White Paper, ‘Building Communities, Beating Crime: a better police service for the 21<sup>st</sup> century’ (Cm 6360, November 2004), the Government indicated that it regarded the dissemination to the public of better information about community safety and policing as being a necessary first step towards increasing local engagement and accountability. To this end, the White Paper signalled the Government’s intention to introduce statutory minimum requirements in terms of what each household can expect to receive by way of local policing information.

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### *Royal Parks*

57. Policing of the Royal Parks in London is currently the responsibility of the Secretary of State for Culture, Media and Sport under the Parks Regulation Act 1872. Policing has since 1974 been carried out by the Royal Parks Constabulary (RPC), which is part of The Royal Parks, an executive agency of the Department for Culture, Media and Sport. The Royal Parks encompass St James's Park, The Green Park, Hyde Park, Kensington Gardens, The Regent's Park (with Primrose Hill), Greenwich Park, Richmond Park and Bushy Park. In addition, the agency manages and polices other areas in London, notably Brompton Cemetery, Victoria Tower Gardens and Grosvenor Square Gardens. The Secretary of State makes parks regulations under the Parks Regulation (Amendment) Act 1926 which apply to all these areas.

58. A report by Anthony Speed in 2000 identified serious shortcomings with the current arrangements for policing the Royal Parks:

- The RPC lacks an independent police authority;
- Its constables do not have the power to discharge their functions beyond the boundaries of the Royal Parks;
- It has suffered recruitment and retention problems over a long period because it cannot offer the career prospects available in other police forces and constables' pay is pegged to 85.5% of Metropolitan Police Service (MPS) pay.

59. The transfer of policing to the MPS is designed to deal with these issues and so ensure more effective policing of the Royal Parks and more coherent policing across London. In advance of the abolition of the RPC, co-policing of the Royal Parks by the MPS and the RPC has already been introduced from April 2004.

### *Criminal record checks*

60. The current statutory arrangements for criminal record and other checks for employment vetting purposes are set out in Part 5 of the Police Act 1997. In England and Wales these checks are undertaken by the Criminal Records Bureau (CRB), an executive agency of the Home Office, while in Scotland they are undertaken by Disclosure Scotland. In Northern Ireland a project is currently underway to implement Part 5 of the Police Act 1997. It is intended that the Northern Ireland arrangements for conducting checks will be agreed in early summer 2005, following public consultation on proposals.

61. Separately, Sir Michael Bichard's Inquiry (June 2004, HC653) recommended (recommendations 23 and 31) improvements in the CRB's ability to cross-check a variety of databases, so as to increase the quality of its Disclosure service. Specifically, Sir Michael recommended that the CRB should be able to access

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information held by the UK Passport Agency, Driver and Vehicle Licensing Agency and others, in order better to verify the identity of applicants for Disclosures; and be able to seek non-conviction information for the purposes of Enhanced Disclosures from a wider range of police forces and other organisations than at present; and finally be able to access relevant information held in Scotland, Northern Ireland and other jurisdictions on people considered to be unsuitable to work with children or vulnerable adults.

#### *Witness summons*

62. In October 2003, the Home Office issued the consultation paper ‘Securing the attendance of witnesses in court’<sup>4</sup> which invited views on whether to re-introduce witness orders to help address the high level of witness non-attendance in court. The general view of respondents was that the re-introduction of witness orders might undermine existing initiatives to encourage witnesses to come forward and remain engaged in the criminal justice process. There was, however, general acceptance that an element of compulsion could be helpful in targeted cases. On balance, the overall response to the consultation suggested that the way to achieve this was to make more effective use of the existing witness summons as a pre-emptive measure, based on an individual needs/risk assessment before the trial. A summary of the responses was published in January 2005<sup>5</sup>. At present a witness summons may only be issued where the court is satisfied that a person ‘will not voluntarily attend as a witness’. The Government believes that this threshold is too high; in many cases the test may not be met until the witness has failed to turn up at the appointed time leading to further trial delays. Accordingly, sections 169 and 170 of the Act substitute new tests for courts and courts-martial respectively.

#### *Private Security Industry Act 2001: Scotland*

63. The Private Security Industry Act 2001 introduced a mandatory national licensing scheme for certain categories of persons working in the private security industry, namely: door supervisors, security guards, wheel clampers, private investigators, key holders and security consultants. The 2001 Act also provides for a voluntary approved contractor scheme (although with powers to make it mandatory) and established the Security Industry Authority (SIA) as the industry regulator ([www.the-sia.org.uk](http://www.the-sia.org.uk)). The SIA began the licensing of door supervisors in March 2005 and will roll out the licensing of other security operatives through to 2006. The 2001 Act currently extends only to England and Wales.

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<sup>4</sup> [www.homeoffice.gov.uk/justice/legalprocess/witnesses/index.html#Consultation%20Papers](http://www.homeoffice.gov.uk/justice/legalprocess/witnesses/index.html#Consultation%20Papers)

<sup>5</sup> [http://www.homeoffice.gov.uk/docs3/response\\_witnessattendance.html](http://www.homeoffice.gov.uk/docs3/response_witnessattendance.html)

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64. In September 2001 the Scottish Executive issued a consultation paper 'Regulating the Private Security Industry in Scotland'<sup>6</sup> on options for regulating the industry in Scotland. The consultation canvassed four options:

- Self regulation;
- Extend the remit of the SIA to cover Scotland;
- Establish a separate Scottish SIA; and
- Introduce a mandatory local authority licensing system.

65. 72 responses were received to the consultation. The Scottish Executive subsequently announced in March 2003<sup>7</sup> that it had concluded that the most effective and efficient means of regulating the private security industry in Scotland would be by extending the remit of the SIA to Scotland. This included the possibility of extending regulation to include precognition agents in Scotland. During 2003 the Executive separately undertook a further informal consultation with interested parties which confirmed that there was widespread support for this.

## **TERRITORIAL EXTENT**

66. SOCA will operate throughout the United Kingdom and accordingly the majority of Part 1 of the Act extends to the whole of the United Kingdom. The majority of Part 2 also so extends (except that Chapter 1 does not extend to Northern Ireland and chapter 2 does not extend to Scotland). With a few exceptions, Parts 3 and 4 (police powers, public order and conduct in public places) extend to England and Wales only. In Part 5, sections 145 to 149, 157, 161 and 162 extend to England and Wales only.

## **TERRITORIAL APPLICATION: WALES**

67. All provisions in this Act apply to England and Wales. No additional powers are conferred on the National Assembly for Wales, although section 142 provides that the Assembly must be consulted before the Secretary of State makes any order, under new section 1F of the Crime and Disorder Act 1998 which provides for the contracting out of local authority functions in Wales in relation to ASBOs.

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<sup>6</sup> <http://www.scotland.gov.uk/consultations/industry/rpsi-00.asp>

<sup>7</sup> <http://www.scotland.gov.uk/Topics/Justice/Police/16671/6033>



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## **THE ACT**

### **COMMENTARY ON SECTIONS**

#### **Part 1: The Serious Organised Crime Agency**

##### **Chapter 1: SOCA: Establishment and activities**

###### **Section 1: Establishment of Serious Organised Crime Agency**

68. This section provides for the creation of the Serious Organised Crime Agency and for the abolition of the National Criminal Intelligence Service, the National Crime Squad and their respective Service Authorities (all established by Parts 1 and 2 of the Police Act 1997). SOCA will be an executive Non-Departmental Public Body. *Subsection (2)* gives effect to Schedule 1, which sets out details of the constitution and staffing of SOCA.

###### **Schedule 1: The Serious Organised Crime Agency**

###### ***Paragraph 1: Membership***

69. This paragraph determines the membership of the Board of SOCA. It is to consist of a chairman and ordinary members to be appointed by the Secretary of State, the Director General (also appointed by the Secretary of State (*paragraph 9(1)*)), and other ex-officio members to be appointed by the Director General after consulting the chairman. The Secretary of State may determine the number of ordinary members and must ensure that the ordinary members together with the chairman are always in the majority. Thus, for example, if there were five ex-officio members (including the Director General), there must be at least five ordinary members, who with the chairman, would form a majority on the Board. The minimum membership is five, namely the chairman and at least four ordinary and ex-officio members; this ties in with the minimum attendance at any meeting setting the quorum for meetings (*paragraph 17(3)*).

###### ***Paragraphs 2-5: Tenure of office: chairman and ordinary members***

70. The maximum term of appointment for the chairman or ordinary member is to be five years. A person may be re-appointed to either position as long as they have not previously been removed from office by the Secretary of State for any of the reasons in *paragraph 4*.

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***Paragraph 6: Remuneration, pensions etc. of chairman and ordinary members***

71. The Secretary of State may determine the remuneration, allowances, pension and, where necessary, compensation payable by SOCA to the chairman and ordinary members.

***Paragraph 9: The Director General***

72. The appointment of Director General is to be made by the Secretary of State, following consultation with the chairman and Scottish Ministers, for a maximum term of five years. In making the appointment, the Home Secretary would in practice also consult the Secretary of State for Northern Ireland. The terms and conditions of the appointment, the remuneration and allowances shall also be decided by the Secretary of State.

***Paragraph 10: Termination or suspension of appointment of Director General***

73. This paragraph sets out the procedure for terminating or suspending the appointment of the Director General. The Secretary of State may require the Director General to retire or resign in the interests of efficiency or effectiveness, or by reason of any misconduct (*paragraph 10(1)*).

74. Before exercising the power to call upon the Director General to retire or resign the Secretary of State must give the Director General his reasons for removal in writing (and send a copy to the chairman), afford him the opportunity to make representations in person, and consider representations made by or on behalf of the Director General (*paragraph 10(3) to (5)*). The Secretary of State must also consult the chairman of SOCA and Scottish Ministers (*paragraph 10(6)*); in practice the Home Secretary would also consult the Secretary of State for Northern Ireland. Under *paragraph 10(8)* the Home Secretary may suspend the Director General from duty if he considers it necessary to do so to maintain public confidence in SOCA. Again there is a requirement for prior consultation with the chairman of SOCA and Scottish Ministers. The Director General's terms and conditions of appointment may provide for other grounds for suspension or termination of his appointment (*paragraph 10(9)*). Such terms might, for example, provide for the termination of the appointment if the Director General was declared bankrupt.

***Paragraphs 12-13: Remuneration and pensions of staff***

75. These paragraphs enable SOCA to determine the remuneration, allowances and pensions of its employees (excluding the Director General whose remuneration is determined by the Secretary of State in accordance with *paragraph 9(4)*).

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**Paragraph 21: General powers**

76. This paragraph enables SOCA to enter into contracts, acquire property, borrow money and receive gifts or loans, where it decides to do so in connection with the discharge of its functions. SOCA requires the consent of the Secretary of State when acquiring or disposing of property and borrowing money. This consent does not need to be given on a case by case basis. Instead, the Secretary of State may choose to give blanket consent, based on conditions or a class of cases as defined by him.

**Section 2: Functions of SOCA as to serious organised crime**

77. This section sets out the core functions of SOCA in relation to serious organised crime. Additional functions are set out in section 3. These functions will be to prevent and detect serious organised crime and to contribute to the reduction of such crime and to the mitigation of its consequences. In effect, the purpose of SOCA will be to reduce the harm caused by serious organised crime. This purpose reflects the approach for the Agency which was set out in the White Paper *One Step Ahead: A 21<sup>st</sup> Century Strategy to Defeat Organised Crime*. The function of mitigating the consequences of organised crime acknowledges that the prosecution of organised criminals is only one of the strategies that may be employed to tackle organised criminality.

78. *Subsections (3) and (4)* circumscribe the extent to which SOCA may involve itself in serious fraud cases. Tackling revenue fraud is primarily the responsibility of the Commissioners for Revenue and Customs. Accordingly, SOCA may only investigate revenue fraud with the agreement of the Commissioners. Similarly, under the terms of section 1 of the Criminal Justice Act 1987, the SFO has primacy in the investigation of serious or complex fraud. Again, SOCA may only pursue serious non-revenue fraud cases where the SFO declines to act or with the agreement of the Director of the SFO.

79. SOCA may undertake activities directed at reducing the harm caused by revenue and serious or complex fraud that do not involve formal investigations - for example, the dissemination of information to financial institutions on combating types of fraud. Where any functions are undertaken under section 2(1)(b) in connection with revenue fraud SOCA must first consult the Commissioners.

**Section 3: Functions of SOCA as to information relating to crime**

80. This section sets out an additional function of SOCA as to information relating to crime. Under *subsection (1)* SOCA is charged with gathering, storing, analysing and disseminating information relevant to the prevention, detection, investigation or prosecution of offences or to the reduction of crime by other means or the mitigation of its consequences. The function is in relation to crime at large, and not just to serious organised crime, as SOCA will provide information to police forces, special

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police forces and other law enforcement agencies in the discharge of their functions. SOCA may also disseminate information to other persons in pursuit of the reduction, prevention and detection of crime.

81. *Subsection (3)* defines a police force for the purpose of this section, *subsection (4)* defines a law enforcement agency and *subsection (5)* defines a special police force.

#### **Section 4: Exercise of functions: general considerations**

82. This section requires SOCA in exercising its functions to have regard to its current annual plan (issued under section 6), the strategic priorities set by the Secretary of State (determined under section 9), any current performance targets set by the Agency, and codes of practice (issued under section 10).

#### **Section 5: SOCA's general powers**

83. This section confers general powers on SOCA (*subsection (1)*). *Subsection (2)* provides that SOCA may: institute criminal proceedings; at the request of a chief officer of a police force or other law enforcement agency, act in support of that force or agency in the pursuit of their functions; and co-operate with other bodies, including overseas agencies, in pursuit of SOCA's functions. SOCA may carry out activities in relation to other, less serious, crime if it is in pursuit of its overall functions in sections 2 and 3 in relation to serious organised crime (*subsection (3)*). SOCA may, for example, seek to investigate and prosecute a known organised criminal for a lesser offence if that was the most effective means of securing a conviction and custodial sentence. The power to institute criminal proceedings is limited to England, Wales and Northern Ireland; in Scotland responsibility for instituting such proceedings rests with the Lord Advocate and Procurator Fiscal (see section 22).

84. *Subsection (5)* confers a general power to assist governments or other bodies exercising functions of a public nature in countries outside the United Kingdom.

#### **Section 6: Annual plans**

85. This section requires SOCA to produce an 'annual plan' before the beginning of each financial year, to be published as SOCA sees fit. The annual plan must include:

- the priorities SOCA has set itself for the year (*subsection (3)(a)*)
- the strategic priorities set by the Secretary of State (*subsection (3)(b)*)
- any current performance targets established by the Agency (*subsection (3)(c)*)
- a statement of how SOCA intends to meet these priorities over the coming financial year (*subsection (5)*)
- a statement of the financial resources that will be available to SOCA over the course of that year (*subsection (3)(d)*)

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- details of how SOCA intends to carry out its functions in Scotland and in Northern Ireland (*subsection (2)*)

86. Any priorities set by SOCA in accordance with subsection (3)(a) must be consistent with the strategic priorities set by the Secretary of State under section 9, but may encompass other matters (*subsection (4)*). The element of the annual plan that relates to Scotland must be agreed with Scottish Ministers (*subsection (9)(a)*).

87. Before issuing the plan SOCA must consult such other persons as it thinks fit (*subsection (9)(b)*). *Subsection (7)* places a duty on SOCA to send a copy of the plan to specified persons. It is open to SOCA also to send copies to such other persons as it thinks fit.

### **Section 7: Annual reports**

88. This section requires SOCA to publish an annual report at the end of each financial year. The report must include an assessment of the extent to which SOCA has carried out the annual plan for that year.

89. *Subsection (4)* places a duty on SOCA to ensure that a copy of the report is sent to specified persons. It is open to SOCA also to send copies to such other persons as it thinks fit. Copies of the report sent to the Secretary of State and Scottish Ministers must be laid before the UK and Scottish Parliaments (*subsections (6) and (7)*).

### **Section 8: General duty of Secretary of State and Scottish Ministers**

90. This section places a duty on the Secretary of State and Scottish Ministers to exercise their powers in relation to SOCA in a manner best calculated to promote the efficiency and effectiveness of the Agency.

### **Section 9: Strategic priorities**

91. This section gives the Secretary of State power to set strategic priorities for SOCA. Such priorities may, for example, cover the reduction in harm caused by drug trafficking and people smuggling. These 'strategic priorities' are to be set in consultation with SOCA and Scottish Ministers (the Home Secretary would also consult the Secretary of State for Northern Ireland) and need not be limited in scope to the financial year in which they are determined. Under section 6 any annual priorities set by SOCA must be consistent with the ministerial strategic priorities.

### **Section 10: Codes of practice**

92. This section allows the Secretary of State to issue, and as necessary revise, codes of practice relating to the discharge by SOCA of any of their functions. Before issuing a code, the Secretary of State must consult SOCA, Scottish Ministers and other persons he thinks fit (*subsection (3)*). The Home Secretary would, in particular,

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also wish to consult the Secretary of State for Northern Ireland. *Subsections (4) to (6)* require the Secretary of State, subject to a sensitivity test, to lay before Parliament all codes of practice issued under this section.

### **Section 11: Reports to Secretary of State**

93. This section allows the Secretary of State to require SOCA to give him a report on any of its activities. Where the activities concerned are carried out wholly or partly in Scotland, the Secretary of State is first required to consult the Scottish Ministers (*subsection (3)*). The Secretary of State may determine whether these reports are to be published (*subsection (4)*). Where a report is published, it may be published with any sensitive material excised (*subsection (5)*).

### **Section 12: Power to direct submission of action plan**

94. This section provides a mechanism for the Secretary of State to intervene to require remedial measures to be taken to address poor performance by SOCA. *Subsections (1) to (3)* empower the Secretary of State to require SOCA to submit an action plan setting out the remedial measures that the Agency proposes to take to address those aspects of the Agency's performance which has been judged by Her Majesty's Inspectorate of Constabulary (HMIC) to be inefficient or ineffective (or will become so unless such measures are taken). SOCA will have between four and twelve weeks to submit an action plan (*subsection (2)(b)*). A direction to SOCA to produce an action plan may require the inclusion of performance targets and timescales for implementation. It may also require periodic progress reports to be sent to the Secretary of State (*subsection (4)*). *Subsection (5)* limits the Secretary of State's power of direction by providing that he cannot require action in relation to particular cases or individuals.

### **Section 13: Revision of inadequate action plan**

95. This section provides that the Secretary of State may comment on the action plan submitted to him under section 12 where he considers that the remedial measures contained therein are inadequate (*subsection (1)*). SOCA must consider the Secretary of State's comments but it is a matter for SOCA whether to amend the action plan in the light of the Secretary of State's comments (*subsection (4)*).

### **Section 14: Procedure for giving directions under section 12**

96. This section sets out procedural safeguards in relation to the exercise by the Secretary of State of his powers to give directions as to action plans that are contained in section 12. The section places a duty on the Secretary of State to put the evidence that the whole or part of SOCA is failing to the Agency and afford it the opportunity to make representations. He will be under a duty to have regard to such representations. The Secretary of State is further required to afford SOCA the opportunity to put in place its own remedial measures before they are directed to do

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so. The intention is that where such remedial measures fully address the area of concern there would be no need for the Secretary of State to issue a formal direction.

#### **Section 15: Reports relating to directions under section 12**

97. This section requires the Secretary of State to prepare and issue a report on the use of his power under section 12. Any such report must be laid before both Houses of Parliament and the Scottish Parliament.

#### **Section 16: Inspections**

98. Section 16 sets out the arrangements whereby SOCA will be subject to inspection by Her Majesty's Inspectors of Constabulary. It also allows the Secretary of State to initiate an inspection (after consulting the Scottish Ministers in the case of an inspection covering SOCA's activities in Scotland). Where an inspection covers SOCA's activities in Scotland HMIC must conduct the inspection jointly with the Scottish inspectors. The section places a duty on the Secretary of State to make the report of an inspection public, subject to national security and other sensitivity considerations

#### **Section 17: Grants by Secretary of State**

99. This section makes provision for the Secretary of State to make grants to SOCA for each financial year. The amount of, and times at which, grants may be paid will be contained in a determination by the Secretary of State, which can be subsequently varied by him under section 18.

#### **Section 18: Determinations relating to grants under section 17**

100. This section expands upon the Secretary of State's duty to make grants to SOCA under section 17. The Secretary of State is required to issue annual determinations on SOCA grants, in the form of a report which sets out considerations underlying the determination. However, it is open to the Home Secretary to make a determination covering two or more years in order to afford SOCA greater financial stability (*subsection (2)*). A copy of the report must be sent to SOCA and laid before the House of Commons (*subsection (5)*). Determinations may be varied at any time, but in each case a further report is necessary. The Secretary of State can also require SOCA to provide him with information to assist him in reaching a determination, and he can require such information within a specified period (*subsection (6)*).

#### **Section 19: Charges by SOCA and other receipts**

101. The purpose of this section is to authorise SOCA to charge for any goods or services it provides, for example the provision of training. Save where the Secretary of State otherwise directs, any income accrued by SOCA (other than grant income or borrowings or monies received from the Secretary of State in respect of international joint investigation teams) must be paid over to the Secretary of State, who in turn must pay it into the Consolidated Fund.

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### **Section 20: Accounts**

102. This section imposes duties on SOCA governing the keeping of proper accounts and records in relation to those accounts, the preparation of a statement of those accounts for each financial year, and the sending of copies of that statement to the Secretary of State and the Auditor General. The Comptroller and Auditor General is required to examine and certify the SOCA statement of accounts and issue a report to be laid before Parliament.

### **Section 21: Operational responsibility of Director General**

103. This section seeks to enshrine the operational independence of the Director General. It will be for the Home Secretary to set the strategic priorities of SOCA and for the SOCA Board (of which the Director General will be a member) to set other priorities, but thereafter it will be for the Director General to determine which operations to mount and how such operations are to be conducted.

### **Section 22: Activities in Scotland in relation to crime**

104. This section preserves the role of the Lord Advocate in respect of the investigation and prosecution of crime in Scotland. SOCA may only carry out its activities in relation to an offence which it suspects has been committed, or is being committed, in Scotland if it does so with the agreement of the Lord Advocate, and in doing so it must comply with all directions received from him or from the procurator fiscal.

### **Sections 23 and 24: Mutual assistance between SOCA and law enforcement agencies**

105. Sections 23 and 24 make provision for a police force, special police force or other law enforcement agency to call upon SOCA to provide assistance and vice versa. Such assistance will usually take the form of the loan of staff but may also take other forms, such as the loan of facilities or equipment. It is expected that the arrangements for the provision of such mutual assistance will be made voluntarily between the parties concerned and section 23 provides for this. Section 24 contains a reserve power for the Secretary of State to direct either the Director General of SOCA, or the chief officer of a police force in England and Wales or Northern Ireland or the head of a law enforcement agency (other than the Scottish Administration) to provide mutual assistance where there is a failure to agree voluntary arrangements or they cannot be made in time. Any direction to the Commissioners for HMRC may only be made within the consent of the Treasury (*section 24(4)*). Any direction to the Police Service of Northern Ireland would, as a matter of practice, be made by the Secretary of State for Northern Ireland.

106. Where constables or other staff of a police force or law enforcement agency are made available to SOCA under these provisions they will be under the direction and control of the Director General. Similarly, where SOCA staff are made available



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to a police force or other law enforcement agency, they will be under the direction and control of the chief officer or head of the agency, as the case may be (*section 23(6) and (7)*).

107. *Section 23(8) and (9)* make provision for SOCA, police forces and law enforcement agencies to pay for any assistance provided by another party. However, the parties involved in any arrangement for the provision of mutual assistance may decide that there should be no such cross charging. There is a reserve power for the Secretary of State to determine amounts payable in the absence of agreement. But where the assistance is provided for or by a Scottish police force, SDEA or the Scottish Administration, the Scottish Ministers must first be consulted.

#### **Section 25: Directed arrangements: Scotland**

108. *Section 25* provides that in Scotland the Scottish Ministers can direct a Scottish police force or the SDEA to provide assistance to SOCA. Similarly, Scottish Ministers, with the agreement of the Secretary of State, will be able to direct SOCA to provide assistance to a Scottish police force or the SDEA.

#### **Section 26: Use by SOCA of police premises etc.**

109. This section enables SOCA to use premises, equipment, facilities or services of a police force in accordance with an agreement made between them or, in the absence of such an agreement, following a direction by the Secretary of State. It is not expected that SOCA will maintain its own custody facilities; accordingly this section would, for example, allow for the use by the Agency of custody facilities provided by a police force. The Secretary of State may use this power to direct only after notifying the relevant body of his intentions and considering their subsequent representations. *Subsection (6)* makes provision for SOCA to pay to a relevant police authority for the use of any premises etc., but SOCA and the authority in question may decide that any such premises etc. may be provided for use by the Agency free of charge. This section only applies to police forces in England, Wales and Northern Ireland. In carrying out its functions in Scotland, SOCA is expected to work closely with the SDEA and any use of police premises etc. will follow the administrative arrangements the SDEA has made with the 8 Scottish forces.

#### **Section 27: Regulations as to equipment**

110. This section allows the Secretary of State to make regulations governing the equipment used by SOCA. *Subsection (1)* enables regulations to be made prescribing the design and performance of equipment provided or used for the purposes of SOCA.

111. *Subsection (2)* enables regulations to be made requiring SOCA to use specified equipment, or equipment which is of a description specified, or type approved by the Secretary of State. The type approval of equipment may be made subject to conditions as to its use. The use of specified equipment or equipment of a specified description

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may also be prohibited under the regulation-making power. Before making any regulations under section 27, the Secretary of State must consult SOCA and may also consult anyone else he chooses (*subsection (3)*).

112. Regulations made under this section are subject to the negative resolution procedure.

**Section 28: Liability of SOCA for acts of seconded staff etc.**

113. This section establishes SOCA's liability in respect of any unlawful conduct by persons seconded to the Agency or provided for its assistance under section 23, 24 or 25. The Act makes no provision in respect of employees of SOCA because the Agency, as the employer, will be vicariously liable for any unlawful acts committed by its employees in the course of their employment. *Subsection (1)* provides that SOCA will be liable for unlawful conduct committed by persons defined in *subsection (3)* in the carrying out (or purported carrying out) of their functions as members of SOCA's staff.

114. *Subsection (2)* provides that SOCA will be a joint tortfeasor where such unlawful conduct is a tort.

115. *Subsection (3)* provides for section 28 to apply to any person or constable who has been seconded to SOCA or who has been provided by another body to assist SOCA (in accordance with section 23, 24 or 25).

**Section 29: Payment by SOCA of amounts in connection with unlawful conduct of employees etc.**

116. This section confers on SOCA a power to make discretionary payments in respect of damages and costs arising out of unlawful conduct by a member of the Agency's staff (that is both direct employees, secondees and those provided by another body to assist SOCA).

**Section 30: Application of sections 28 and 29 to members of joint investigation teams**

117. The purpose of this section is to provide a legal basis for civil liabilities arising from operations of joint investigation teams involving members of SOCA's staff and law enforcement officers from abroad. The United Kingdom is obliged, if it agrees to the setting up of such teams through its participation in international agreements such as the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, to provide arrangements for the satisfaction of civil claims that may arise from actions of team members when they are not operating in their own country. These arrangements are intended to provide a firm legal basis for the setting up of such teams which are important in strengthening police co-operation between participating countries by allowing for the speedier and

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more effective sharing of information and expertise across national boundaries in combating the common threat from serious and organised crime.

118. The section extends the liability of SOCA by providing that it is to be liable for any unlawful conduct of members of international joint investigation teams (JIT) formed in accordance with the specified international agreements. The section also applies section 29(1) so that SOCA may make discretionary payments in respect of damages and costs arising out of unlawful conduct by members of such teams. The specified agreements may be added to by an order made by the Secretary of State, subject to the negative resolution procedure.

119. *Subsection (6)* provides that where SOCA makes a payment of damages or costs awarded against it for unlawful conduct by a member of a JIT and any reimbursement is made to the Secretary of State under an international agreement for the payment made by SOCA, the Secretary of State must reimburse those funds to SOCA.

### **Section 31: Liability of special police forces and law enforcement agencies for unlawful conduct of SOCA staff**

120. This section establishes special police forces' and law enforcement agencies' liability in respect of any unlawful conduct by a member of SOCA's staff who is provided for its assistance under section 23, 24 or 25. *Subsection (1)* provides that the relevant authority will be liable for unlawful conduct committed by persons defined in *subsection (4)* in the carrying out (or purported carrying out) of their functions whilst assisting SOCA.

121. *Subsection (2)* provides that the relevant authority will be a joint tortfeasor where such unlawful conduct is a tort.

122. *Subsection (3)* confers on the relevant authority a power to make discretionary payments in respect of damages and costs arising out of unlawful conduct by a member of SOCA's staff who has been provided for their assistance.

123. *Subsection (5)* defines the relevant authorities to which this section applies.

### **Section 32: Use of information by SOCA**

124. This section ensures that SOCA can use information obtained in connection with any one of its functions to assist it in exercising any of its other functions. For example, information obtained in the course of a criminal investigation may be used in connection with SOCA's function of preventing serious organised crime.

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### **Section 33: Disclosure of information by SOCA**

125. This section provides that SOCA may disclose information to any person or body for any of the “permitted purposes” set out in *subsection (2)(a) to (e)*. Under *subsection (2)(f)* the Secretary of State will be able to add to the list of disclosure purposes by order which will be subject to affirmative resolution. *Subsection (3)* disappplies any statutory or other restriction on the disclosure of information in respect of any disclosure made by SOCA for a permitted purpose.

126. *Subsection (4)* provides that disclosures of information which contravene the Data Protection Act 1998 (“the 1998 Act”), or section 35(2) of this Act, or are prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (“the 2000 Act”), are not permitted. Neither the 1998 Act or the 2000 Act impose blanket prohibitions on the disclosure of information. In the case of the Data Protection Act, sections 28 and 29 enable personal data to be shared for the purposes of, amongst other things, safeguarding national security, the prevention and detection of crime and the apprehension or prosecution of offenders. Part 1 of the Regulation of Investigatory Powers Act also allows disclosure of information in connection with an interception warrant, for example where a disclosure is authorised under the terms of a warrant or by the person to whom the warrant was issued. It is also implicit that the provisions of the Human Rights Act 1998 would need to be taken into account before any disclosure is made to a permitted person or body.

### **Section 34: Disclosure of information to SOCA**

127. Section 34 enables any person to disclose information to SOCA where the aim is to assist SOCA in the pursuit of any of its functions.

128. *Subsection (4)* deals with information provided on behalf of the Commissioners for Her Majesty's Revenue and Customs. For information to be passed to SOCA, the Commissioners, or an authorised officer of Revenue and Customs, must authorise the disclosure. This is to ensure that there are safeguards in place to protect sensitive personal information held by the Commissioners. As in section 33, any disclosure made under this section is not subject to any statutory or other restriction on disclosure, although the provisions of the Data Protection Act and Part 1 of the Regulation of Investigatory Powers Act apply. It is also implicit that the provisions of the Human Rights Act 1998 would need to be taken into account before any disclosure is made to SOCA by a person under section 34.

### **Section 35: Restrictions on further disclosure**

129. The purpose of this section is to place restrictions on the onward disclosure of information that has been disclosed by SOCA under section 33 or to SOCA by the Commissioners for Her Majesty's Revenue and Customs. In the case of information disclosed by SOCA to a person or body, *subsection (1)* provides that this information may only be passed on, with the consent of SOCA, for a purpose connected with the

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functions of that person or body, for the purpose for which the information was originally disclosed by SOCA, or for any other of the permitted purposes listed in section 33(2). Information disclosed to SOCA by the Commissioners may only be further disclosed where the Commissioners or an authorised officer give their consent, and then only for any of the permitted purposes listed in section 33(2) (*subsection (2)*). This consent might relate to one disclosure or several disclosures defined by the consent (*subsection (3)*).

### **Section 36: General duty of police to pass information to SOCA**

130. For SOCA to discharge its functions effectively it must have access to relevant information about crime at local and force level. To this end, this section imposes a duty on police forces in Great Britain and Northern Ireland, and on special police forces (namely the British Transport Police, Ministry of Defence Police, Civil Nuclear Constabulary and the SDEA) to furnish SOCA with such information.

### **Section 37: General duty on police etc. to assist SOCA**

131. This section places a general duty on any constable, officer of Revenue and Customs, and any members of the armed forces or coastguard to provide assistance to SOCA in the exercise of its functions. A similar duty to assist customs officers is contained in section 11 of the Customs and Excise Management Act 1979.

### **Section 38: Prosecution of offences investigated by SOCA**

132. This section sets out the respective functions of the Director of Revenue and Customs Prosecutions (DRCP) and of the Director of Public Prosecutions (DPP) in respect of offences investigated by SOCA. *Subsection (1)* confers on the DRCP a power to institute and conduct criminal proceedings that arise out of a criminal investigation by SOCA relating to a ‘designated offence’ and a duty to take over the conduct of criminal proceedings instituted by SOCA in respect of such an offence. *Subsection (3)* confers a parallel power and duty on the DPP in respect of a non-designated offence. *Subsections (2)* and *(4)* impose a duty on the DRCP and the DPP respectively to provide advice to SOCA and others in relation to criminal investigations by the Agency and proceedings that arise out of such investigations. *Subsection (5)* applies the provisions in sections 23 and 23A (as inserted by Schedule 8 to the Crime and Disorder Act 1998) of the Prosecution of Offences Act 1985 – which confer a power on the DPP to discontinue proceedings – to proceedings conducted by the DRCP under this section. *Subsection (6)* enables the DRCP to delegate his functions under this section either to a member of the Revenue and Customs Prosecutions Office or to a person (who is not a member of RCPO) appointed by him. *Subsection (7)* is the interpretation subsection. In particular it defines a ‘designated offence’ as an offence which falls to be prosecuted by RCPO by virtue of directions under section 39.

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**Section 39: Directions as to reference of cases and proceedings to appropriate prosecutor**

133. This section provides for the DPP and the DRCP, acting jointly, to issue directions for the purposes of enabling SOCA to identify those of its cases which are to be handled by the CPS and those to be handled by the RCPO. The Directors are required to send a copy of the directions, and any revisions, to SOCA and publish them more widely as they see fit (*subsection (4)*). The DPP's and DRCP's annual reports to the Attorney General must set out any directions, or revisions thereto, given under this section (*subsections (5) and (6)*). *Subsection (8)* ensures that any criminal proceedings are not invalidated as a result of any case being misdirected by SOCA to the wrong prosecutor.

**Section 40: Functions of Director of Revenue and Customs Prosecutions as to persons arrested for designated offence**

134. This section applies sections 37 to 37B (as inserted by Schedule 2 to the Criminal Justice Act 2003) of PACE (which make provision for the duties of custody officers and the DPP in relation to charging) to persons arrested by SOCA in relation to a designated offence, that is one that will be handled by RCPO.

**Section 41: Directions**

135. This section places a duty on anyone to comply with a direction given them by the Secretary of State or the Scottish Ministers under a power provided for in this Chapter. Powers of direction are included in sections 12 (power to direct submission of action plan), 20 (form of accounts), 24 (mutual assistance between SOCA and law enforcement agencies: directed arrangements), 25 (directed arrangements: Scotland) and 26 (use by SOCA of police premises).

**Section 42: Interpretation of Chapter 1**

136. This section provides definitions and meanings for some of the terminology used in Chapter 1, including the terms "chief officer", "the Commissioners", "constable", and "financial year". For the purposes of this Chapter, the definitions of "prevention" and "detection" given in subsection (5) of section 81 of the Regulation of Investigatory Powers Act 2000 apply. That subsection provides that: detecting crime includes—

- (a) establishing by whom, for what purpose, by what means and generally in what circumstances any crime was committed; and
- (b) the apprehension of the person by whom any crime was committed.

## **Chapter 2: SOCA: Special powers of designated staff**

### **Section 43: Designation of SOCA staff as persons having powers of constable etc.**

137. When a person becomes a member of staff of SOCA, any powers that they held in their previous capacity as a constable, officer of Revenue and Customs or immigration officer will no longer be exercisable (see paragraph 138). Instead, the Director General of SOCA may confer some or all of these powers on a member of staff of SOCA according to the business needs of the organisation (*subsection (1)*). A designation under this section may be subject to limitations (*subsection (2)*). These may relate to the powers exercisable (for example, only some of the powers of a constable may be conferred on a particular member of staff) or to the duration of the designation (it may be time limited or last for as long as the person concerned remains a member of staff of SOCA). Powers may be conferred on a member of staff of SOCA irrespective of whether he has previously held such powers (*subsection (4)(b)*). It is open to the Director General to augment the powers previously held by a member of staff, for example a police officer joining SOCA on secondment may have the customs powers of a Revenue and Customs Officer conferred on him in addition to the powers of a constable (*subsection (4)(a)*). However, the Director General must ensure that a person has the capability, aptitude and adequate training appropriate to those powers before a designation is made (*subsection (5)*).

138. *Subsection (6)* provides that where a constable, Revenue and Customs officer or immigration officer becomes an employee of SOCA their previous office is to be treated as suspended. That suspension would end if, say, a member of staff of SOCA who had been a constable returned to work in a police force.

### **Section 44: Delegation of power to designate**

139. This section enables the Director General to delegate his functions (as outlined in section 43) to any employee of SOCA who is employed in a grade or on a pay scale not lower than a grade or pay scale specified by the Secretary of State by order (subject to the negative resolution procedure).

### **Section 45: Modification or withdrawal of designations**

140. This section provides for the modification or withdrawal of a designation given under section 43. The Director General may use this power at any time by notifying the designated person. An employee who has been delegated the power to designate under section 44 may only use this power to modify or withdraw the type of designation they have been authorised to give. For example, a person to whom the power to confer customs officer powers was delegated may not withdraw a designation relating to the powers of a constable. Provided he has the power to act in respect of a particular type of designation, however, a member of staff of SOCA may modify or withdraw a designation even if he did not issue it.

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**Section 46: Person having powers of a constable**

141. This section details the powers that can be exercised by a member of SOCA's staff who has been designated as having the powers of a constable. Subject to any limitations stipulated in accordance with section 43(2), the designated person will have all the powers and privileges of a constable. By virtue of *subsection (3)* those powers and privileges will in the first instance only be exercisable throughout England and Wales, although they may be extended to Scotland or Northern Ireland by virtue of the provisions in section 47.

**Section 47: Person having powers of constable: Scotland and Northern Ireland**

142. This section explains the conditions under which a member of staff of SOCA may exercise designated powers of a constable in Scotland and Northern Ireland. The agreement of the Scottish Ministers and the Secretary of State (for these purposes it would be the Secretary of State for Northern Ireland) must be obtained before the powers and privileges of a constable may be exercised in the respective parts of the UK (*subsections (2) and (5)*). The Director of SDEA or an officer nominated by him or, in Northern Ireland, an officer of the PSNI of the rank of assistant chief constable or above may agree to a designated member of staff of SOCA exercising the above powers in relation to a particular operation in the relevant territory (*subsections (3) and (6)*).

**Section 48: Person having customs powers**

143. This section enables a member of staff of SOCA who has been designated with the customs powers of a Revenue and Customs officer to exercise relevant customs powers subject to any limitations imposed in accordance with section 43(2). SOCA staff will only need the powers of an officer of Revenue and Customs in respect of non-revenue matters, for example, the illegal importation of drugs or firearms; as a result the power to confer the powers of a Revenue and Customs officer on a member of SOCA's staff is limited to power in respect of "customs matters". The definition of a "customs matter", in *subsection (7)*, is such as to exclude matters which were previously the responsibility of the Inland Revenue (these are set out in Schedule 1 to the Commissioners for Revenue and Customs Act 2005) and the fiscal matters which were previously the responsibility of HMCE (for example VAT and fuel duties). A number of powers of a customs officer (for example the seizure powers in section 179 of the Customs and Excise Management Act 1979) may be used both for revenue purposes and for the purposes of enforcing various prohibitions on importation (for example, of illegal drugs). *Subsection (5)* provides that in such cases the powers may only be exercisable in respect of non-revenue matters, thereby preserving the primacy of HMRC for all revenue matters.

**Section 49: Person having powers of an immigration officer**

144. This section enables a member of staff of SOCA who has been designated with the powers of an immigration officer to exercise all of the powers of an



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immigration officer (as defined by the Immigration Act 1971) subject to any limitations imposed in accordance with section 43(2).

### **Section 50: Designations: supplementary**

145. This section places a duty on any member of staff of SOCA designated with the powers of a constable, customs officer and/or an immigration officer under section 43 to produce evidence of his designation when asked to do so by someone in relation to whom he intends to exercise these powers (*subsection (1)*). A failure to produce evidence of designation does not invalidate the exercise of any powers (*subsection (2)*). *Subsection (3)* ensures that SOCA is liable for any unlawful conduct of any member of SOCA's staff arising from the misuse of the powers conferred by a designation.

### **Section 51: Assaults, obstruction or deception in connection with designations**

146. This section sets out various offences relating to assaulting, obstructing or impersonating designated members of SOCA's staff. They parallel similar offences in relation to police officers and police staff designated under the provisions of Chapter 1 of Part 4 of the Police Reform Act 2002.

147. *Subsection (1)* makes it an offence to assault a designated person acting in the exercise of his powers or to assault a person assisting a designated person who is so acting. *Subsection (2)* makes it an offence to resist or wilfully obstruct a designated person in the exercise of his powers or to resist or wilfully obstruct a person assisting a designated person. *Subsection (3)* makes it an offence, provided there is intent to deceive, to impersonate or pose as a designated person. It is also an offence for a designated person to make any statement or act in a way that falsely suggests that he has powers above and beyond those he in fact has.

148. *Subsections (4)* and *(5)* provides for the penalties for the three offences in England and Wales. In the case of the offences in *subsections (1)* and *(3)* the maximum penalty is a term of imprisonment of 51 weeks or a fine at level 5 on the standard scale (currently £5000) or both, while in the case of a *subsection (2)* offence the maximum penalty is a term of imprisonment of for 51 weeks or a fine at level 3 on the standard scale (currently £1000) or both. *Subsections (7)* and *(8)* set out the maximum penalties in Scotland and Northern Ireland respectively.

### **Section 52: Modification of enactments**

149. This section confers on the Secretary of State a power by order (subject to the affirmative resolution procedure) to provide for statutory provisions to apply with modifications in relation to designated members of staff of SOCA or the exercise of their powers. The purpose of this provision is to adapt statutory provisions relating to constables, Revenue and Customs officers and immigration officers so that they can apply to designated SOCA staff, and to confer upon the Director General relevant

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functions in relation to these designated staff. For example, under the provisions of the Police and Criminal Evidence Act 1984 certain powers of a constable need the authorisation of an officer of a specified rank or above. These provisions will need to be adapted so that they apply by reference to staff of a specified grade within SOCA. A similar power is contained in section 114(2)(a) of PACE in respect of officers of Customs and Excise.

### **Section 53: Employment provisions**

150. The purpose of this section is to ensure that members of staff of SOCA who have been designated with the powers of a constable enjoy the full rights of employees under employment rights legislation, including the right to join a trades union. This provision reflects the fact that employment with SOCA is not to be treated as police service.

### **Section 54: Interpretation of Chapter 2**

151. This section defines terms used in Chapter 2.

## **Chapter 3: SOCA: Miscellaneous and supplementary**

### **Section 55 and Schedule 2: Complaints and misconduct**

152. *Subsection (1)* introduces Schedule 2 which amends Part 2 of the Police Reform Act 2002 in order to extend to SOCA the arrangements therein for the investigation of complaints and conduct matters. Such arrangements include oversight by the Independent Police Complaints Commission (IPCC).

153. *Paragraph 8* of Schedule 2 inserts a new section 26A into Part 2 of the 2002 Act. This section places a duty on the IPCC and SOCA to enter into an agreement as to how the IPCC will operate in relation to SOCA staff and the procedures that will be put into practice. No changes may be made to this agreement without the Secretary of State's agreement, and it may not be terminated unless another agreement has been made to replace it. The IPCC will not have any jurisdiction over matters relating to the direction and control of SOCA. The provisions of Part 2 of the 2002 Act, as amended, will only apply in relation to complaints and conduct matters arising from SOCA's activities in England and Wales.

154. In accordance with the Police (Northern Ireland) Act 1998, the Police Ombudsman has jurisdiction in Northern Ireland. *Subsection (2)* inserts new section 60ZA into the 1998 Act. This provides that SOCA and the Ombudsman may enter into an agreement for the establishment of complaints procedures similar to those that apply in respect of the PSNI. There is a reserve power of the Secretary of State for Northern Ireland to establish complaints procedures in the event that SOCA and the Ombudsman fail to reach an agreement.

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155. There is currently no independent police complaints mechanism in Scotland, but any criminal allegations are investigated by the Lord Advocate and Procurator Fiscal in the normal way. Allegations concerning non-criminal matters will be handled by SOCA's internal complaint process.

**Section 56: Application of discrimination legislation to SOCA seconded staff**

156. Section 56 is concerned with certain provisions of sex, race and disability discrimination legislation having effect in different parts of the United Kingdom and the operation of those provisions in relation to persons seconded to SOCA to serve as members of its staff. *Subsection (1)* provides that for the purposes of the provisions listed in subsection (2) SOCA is to be treated as the employer as respects any act done by the Agency in relation to a seconded person. *Subsection (3)* provides that for the purposes of the provisions listed in subsection (4) SOCA is to be treated as the employer of a seconded person as respects any act done by that person in the performance of his duties).

**Section 57: Assaults or obstruction in connection with joint investigation teams**

157. This section sets out various offences relating to assaulting or obstructing members of an international joint investigation team which is led by a member of SOCA's staff, in accordance with obligations under international agreements to which the United Kingdom is a party. They parallel similar offences in relation to international joint investigation teams provided for in Part 6 of the Police Reform Act 2002.

158. *Subsection (2)* makes it an offence to assault a member of a team who is carrying out his functions as a member of that team. *Subsection (3)* makes it an offence to resist or wilfully obstruct a member of a team who is carrying out such functions.

159. *Subsections (4)* and *(5)* provide for the penalties for the two offences. In the case of an offences under *subsection (2)* the maximum penalty is a term of imprisonment of 51 weeks or a fine at level 5 on the standard scale (currently £5000) or both, while in the case of a *subsection (3)* offence the maximum penalty is a term of imprisonment of 51 weeks or a fine at level 3 on the standard scale (currently £1000) or both. *Subsections (7)* and *(8)* set out the maximum term of imprisonment applicable in Scotland and Northern Ireland respectively.

**Section 58: Transfers to SOCA**

160. Section 58 introduces Schedule 3. This provides for the Secretary of State to make a scheme for transferring to SOCA relevant staff, property, rights and liabilities from NCS, NCIS, the NCS Service Authority, the NCIS Service Authority, HMRC and the Immigration Service.

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## **Section 59 and Schedule 4: Minor and consequential amendments relating to SOCA**

161. This section gives effect to Schedule 4, which makes minor and consequential amendments to other enactments in connection with the establishment of SOCA. The majority of these amendments concern the replacement of statutory references to NCS and NCIS with references to SOCA.

## **Part 2: Investigations, prosecutions, proceedings and proceeds of crime**

### **Chapter 1: Investigatory powers of DPP etc.**

162. The Director of the SFO (as a well as a number of regulatory bodies and the Asset Recovery Agency and in Scotland the Lord Advocate in cases of serious and complex fraud) has the power to compel individuals to co-operate with investigations by producing documents and answering questions. This Chapter provides similar powers for the police, SOCA and HM Revenue and Customs investigations in relation to organised crime, terrorist or certain revenue offences. The powers will only be exercisable by the Director of Public Prosecutions (DPP) or the Director of Revenue and Customs Prosecutions (or prosecutors with delegated authority) or, in Scotland, the Lord Advocate and will not apply to professionally privileged material. Statements made by persons in compliance with a requirement under this Chapter cannot be used in evidence against them, except in very limited circumstances.

### **Sections 60-63: Investigatory powers of DPP etc.; Offences to which this Chapter applies; Disclosure notices; Production of documents**

163. These sections provide that the DPP, the Director of Revenue and Customs Prosecutions and the Lord Advocate (or a prosecutor with delegated authority) can issue a disclosure notice. The sections restrict disclosure notices and the power to enter and seize documents (section 66) to investigations into offences involving: drug trafficking, money laundering, directing terrorism, people trafficking, arms trafficking, counterfeiting, intellectual property theft, pimps and brothels, blackmail, terrorist funding and certain tax and excise fraud offences (section 61). *Subsections (2) and (3)* of section 61 exclude certain offences where amounts less than £5,000 are involved. *Subsections (4) and (5)* of the section confer on the Home Secretary and Scottish Ministers the power to amend this list of offences (or the £5,000 threshold) by order subject to the affirmative resolution procedure. The prosecutor will be able to issue a disclosure notice if there are reasonable grounds for believing that the recipient of the notice can provide information of substantial value to the investigation of any of these offences (section 62(1)). The disclosure notice would be a written notice signed by the prosecutor setting out the requirements on the recipient to answer questions, produce documents or otherwise provide information, as well as where, when and how these requirements should be met (section 62(3) and (4)). The notice can be given to its recipient by a police constable, designated member of staff of SOCA or officer of HM Revenue and Customs (section 62(2)), who will be able to

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take copies or extracts from the specified documents or require the recipient to explain the documents or where any unavailable documents are (section 63).

**Section 64: Restrictions on requiring information etc.**

164. This section excludes the following material from the provisions in this Chapter:

- material subject to legal professional privilege (confidential communications between a professional legal adviser and their client relating to legal advice or proceedings);
- confidential personal records relating to any business or profession;
- confidential journalistic material; and
- confidential banking information - unless the person to whom the obligation of confidence is owed consents to the disclosure or the prosecutor specifically authorises the requirement to be made.

**Section 65: Restrictions on use of statements**

165. This section provides that a statement made by a person in response to a requirement imposed under this Chapter cannot be used in evidence in criminal proceedings against them, other than proceedings for an offence under section 67 or for an offence of giving a false statutory declaration or statement. The only exception is where the person seeks in other criminal proceedings to use another statement which is inconsistent with the statement made in response to the requirement under this Chapter.

**Section 66: Power to enter and seize documents**

166. This section provides for a magistrate, or sheriff in Scotland, to issue a warrant to enter and seize documents where someone has failed to provide documents specified in a disclosure notice or it is not practicable to give a disclosure notice or doing so might seriously prejudice an investigation. The warrant would authorise a constable, a member of SOCA's staff or an officer of HMRC to enter, using force if necessary, and search the premises and seize and retain any specified documents. The constable or other person authorised by the warrant may take other people with him on the search, but must show the warrant to the occupier of the premises on request.

**Section 67: Offences in connection with disclosure notices or search warrants**

167. This section creates new summary offences of failing to comply with a disclosure notice and of obstructing a person in the exercise of a warrant under section 66. The maximum penalty is a level 5 fine (currently £5,000) or a term of imprisonment of 51 weeks (in Scotland, 12 months), or both. The section also creates an offence of making a false or misleading statement which if tried on indictment is punishable by a fine or up to 2 years imprisonment, or both.

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**Section 68: Procedure applicable to search warrants**

168. This section amends Part 1 of Schedule 1 to the Criminal Justice and Police Act 2001 so as to secure that where it is not practicable to determine on the premises being searched whether a document can be seized or to separate it from other material, the material can be seized and removed.

**Section 69: Manner in which disclosure notice may be given**

169. This section provides that a disclosure notice may be given to a person by delivering it to him, leaving it at his proper address or sending it by post to him at that address. The definition of a person's "proper address" is his usual or last-known address. This section does not apply to Scotland.

**Section 70: Interpretation**

170. This section defines terms used in Chapter 1 of Part 2.

**Chapter 2: Offenders assisting investigations and prosecutions**

171. This chapter creates a statutory framework to clarify and strengthen the current common law provisions that provide for immunity and sentence reductions for defendants who co-operate in the investigation and prosecution of their criminal colleagues.

**Section 71: Assistance by offender: immunity from prosecution**

172. This section provides for a designated prosecutor from the Crown Prosecution Service, the Revenue and Customs Prosecutions Office, the Serious Fraud Office or the Northern Ireland Director of Public Prosecutions office to grant a person a conditional immunity from prosecution. The immunity notice itself must be written and specify the offences for which the person will be immune from prosecution in England and Wales or Northern Ireland. The notice will normally include conditions, breach of which would lead to the immunity being revoked.

**Section 72: Assistance by offender: undertakings as to use of evidence**

173. This section provides for a designated prosecutor (as specified in *subsection (4)* of section 71) to grant a person a conditional undertaking that any information that individual provides will not be used in any criminal proceedings, or proceedings under Part 5 of the Proceeds of Crime Act 2002, against that person in England and Wales or Northern Ireland. The notice containing the undertaking must be in writing and specify the circumstances in which the information provided will not be used against that person. The notice will normally include conditions, breach of which would lead to the undertaking being revoked.

**Section 73: Assistance by defendant: reduction in sentence**

174. This section provides that the Crown Court, when sentencing defendants who plead guilty in proceedings before that court and who have entered into a written

agreement to provide assistance in any investigation or prosecution, can take account of the nature and extent of that assistance. *Subsection (3)* requires the court in passing a lower sentence to set out what the sentence would otherwise have been, unless (*subsection (4)*) it is in the public interest not to do so (in which case the court must provide a written notice of what the sentence would have been to the prosecutor and the defendant). *Subsection (5)* provides that this section applies to offences for which there is a minimum sentence and also to sentences fixed by law in determining the minimum period of imprisonment that a person must serve. The intention is that court can in exceptional circumstances exercise its power under *subsection (2)* to reduce a person's sentence or minimum period of imprisonment, as the case maybe, to reflect the assistance provided or offered. *Subsection (6)* provides that the court's decision (or not) to take into account the assistance provided or offered by a person does not affect any other power it may have when determining that person's sentence or minimum term for imprisonment. *Subsection (7)* disapplies the specified provisions, which would otherwise require the court to explain the reasons for passing its sentence on a person, where the court has decided (under *subsection (4)*) that it is not in the public interest to make such an explanation.

#### **Section 74: Assistance by defendant: review of sentence**

175. This section provides that where a person is still serving a sentence imposed by the Crown Court and one of the conditions in *subsection (2)* applies, a specified prosecutor may refer the person's sentence back to the court for review (where possible to the original sentencing judge), where he considers it is in the interests of justice to do so. The *subsection (2)* conditions are that the defendant received a reduced sentence on the basis of an agreement to assist, but then knowingly failed to give that assistance; or the defendant gives or agrees to give assistance after they have been sentenced. *Subsection (5)* gives the court a power to substitute a greater sentence where it considers the person has failed to assist (not exceeding the sentence it could have passed but for the agreement). However, where a person has provided assistance or offered to assist, *subsection (6)* gives the court a power to take that into account and to reduce the individual's sentence accordingly. *Subsections (8)* and *(9)* provide that normal avenues of appeal against sentence apply. *Subsection (13)* ensures that where a person was convicted of an offence for which the sentence was fixed by law, they must have pleaded guilty if their sentence is to be referred back to court for a review under this section.

#### **Section 75: Proceedings under section 74: exclusion of public**

176. This section provides that a court in dealing with a defendant under section 74 can exclude people from the court or impose reporting restrictions, but only to the extent that it is necessary to protect the safety of any person and it is in the interests of justice. The court cannot exclude court staff, parties to the proceedings (or their legal representatives) or others directly concerned with the proceedings.

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### **Chapter 3: Financial reporting orders**

177. Sections 76 to 81 provide for a new ancillary order, available to courts at the point of sentence. The order will require offenders convicted of specified fraud and organised crime lifestyle offences to make such reports of their income and assets as the court sets out in the order.

#### **Section 76: Financial reporting orders: making**

178. This section provides that courts can make a financial reporting order in respect of an offender convicted of an offence set out in *subsection (3)*, where it considers the risk of the offender committing similar offences is sufficiently high.

179. The offences set out in *subsection (3)* are specified deception offences in the Theft Acts 1968 and 1978 or an organised crime lifestyle offence specified in Schedule 2 to the Proceeds of Crime Act 2002. *Subsection (4)* confers a power on the Home Secretary to amend that list by order subject to the affirmative resolution procedure.

180. *Subsections (6) and (7)* provide for a maximum duration of the order of 5 years when made in the magistrates' court and 15 years when made in any higher court (20 years for those sentenced to life imprisonment).

#### **Section 77: Financial reporting orders: making in Scotland**

181. This section makes similar provision to section 76 in respect of Scotland.

182. The offences set out in *subsection (3)* are at common law, the offence of fraud and lifestyle offences under Schedule 4 to the Proceeds of Crime Act 2002. *Subsection (4)* confers a power on the Scottish Ministers to amend that list of offences by order subject to affirmative resolution procedure in the Scottish Parliament.

183. *Subsections (6) and (7)* provide for a maximum duration of the order of 5 years when made by a Sheriff and 15 years when made in the High Court of Justiciary (20 years for those sentenced to life imprisonment).

#### **Section 78: Financial reporting orders: making in Northern Ireland**

184. This section makes similar provision to section 76 in respect of Northern Ireland. The offences set out in *subsection (3)* are the direct Northern Ireland equivalents of those in section 76(3).

185. *Subsections (5) and (6)* provide for a maximum duration of the order of 5 years when made by (or on appeal from) a magistrates' court and 15 years when made in a higher court (20 years for those sentenced to life imprisonment).



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### **Section 79: Financial reporting orders: effect**

186. This section sets out the requirements of the order and creates an offence of failing to comply with the order. In making the order, the court will specify: the duration of the order and the frequency of reports; what financial details and supporting documents should be in or accompany each report; and who the reports should be made to and the deadline for providing them (*subsections (1) to (8)*). *Subsection (9)* provides that in Scotland reports will be made to an appropriate person specified as such by order made by the Scottish Ministers. *Subsection (10)* creates a summary criminal offence, committed if the subject of the order fails to comply with any requirement of an order and punishable by a term of imprisonment of up to 51 weeks (12 months in Scotland, 6 months in Northern Ireland) and/or a fine not exceeding level 5 on the standard scale.

### **Section 80: Financial reporting orders: variation and revocation**

187. This section makes provision for applications to the court to vary or revoke an order. An application may be made by either the subject of the order or the person to whom the reports are made.

### **Section 81: Financial reporting orders: verification and disclosure**

188. This section makes provision for the person to whom reports will be made (the 'specified person') to disclose the contents of a report to other people (*subsection (2)*). Similarly, any person may disclose information to the specified person or a person to whom the specified person has disclosed a report (*subsection (3)*). Such disclosures may only be made, however, for the purposes of checking the accuracy of a report, discovering the true position, or preventing, detecting, investigating or prosecuting criminal offences (*subsections (4) and (5)*).

## **Chapter 4: Protection of witnesses and other persons**

### **Section 82: Protection of persons involved in investigations or proceedings**

189. Section 82 makes provision for the protection of witnesses and certain other persons involved in investigations or legal proceedings. Arrangements for protection under section 82 may be made by protection providers (that is, the persons listed in *subsection (5)*). *Subsection (7)* ensures that other powers to provide protection are not affected. This means that persons who are not protection providers will still be able to provide protection to witnesses and others under their existing powers. It also means that protection providers may continue to use other powers. For example, if the only protection required is the provision of a security lock or a panic alarm, a protection provider may think it appropriate to use his existing powers rather than rely on section 82.

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190. *Subsection (1)* allows a protection provider to make appropriate arrangements for protecting people. *Subsection (2)* allows the provider to vary or cancel these arrangements.

191. *Subsection (3)* requires a protection provider to make a record of arrangements made or cancelled specifically under these provisions. The effect of this will be to clarify whether protection is being provided under these provisions or whether it is being provided under other powers (see the comments about subsection (7) in paragraph 189 above).

192. *Subsection (4)* sets out the criteria which the protection provider must consider in deciding whether or not to provide protection.

193. *Subsection (5)* lists the persons who are statutory protection providers for the purposes of the Chapter.

194. *Subsection (6)* enables the Secretary of State, following consultation with Scottish Ministers, to amend by order (subject to the affirmative procedure) the list in Schedule 5 of categories of people who may be eligible for protection.

#### **Schedule 5: Persons specified for the purposes of section 82**

195. Schedule 5 is an exhaustive list of those categories of people who may be protected under these provisions. It includes witnesses, jurors and other people involved in the legal system (*paragraphs 1-12*), law enforcement and other officers (*paragraphs 13-26*), informants (*paragraph 27*), and persons who have or have had a significant connection with a person falling within any of those categories, such as family members (*paragraph 28*).

#### **Section 83: Joint arrangements**

196. This section allows for two or more protection providers to make joint arrangements under these provisions. *Subsection (2)* provides that the powers conferred are exercisable jointly or by one of the providers with the agreement of the others.

#### **Section 84: Transfer of responsibility to other protection provider**

197. This section enables responsibility for the protection of a witness to pass from one protection provider to another in cases such as those where the protected person has relocated. It aims to improve current practice in such cases, where a police force would require its officers to travel long distances in order to continue protection arrangements. This provision would facilitate an agreement, whereby responsibility for such arrangements could be transferred to police officers in the new force area.

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198. An agreement could include provision for the reimbursement of costs incurred (see *subsection (2)*). *Subsection (3)* confers powers on the second protection provider to vary or cancel the arrangements or to transfer the arrangements to a third protection provider. The transfer agreement must be recorded (*subsection (4)*).

#### **Section 85: Duty to assist protection providers**

199. This section places a duty on all public authorities to take reasonable steps to provide assistance to protection providers when requested so to do. This will assist where the public authority is involved in the provision of services directly to citizens, such as education or health authorities, and these services are requested without any historic documentation – or with anonymised documentation – being available for the protected person and other members of his family.

#### **Section 86: Offence of disclosing information about protection arrangements**

200. This section creates an offence which can be committed either by protected persons, those protecting them or third parties if they reveal information about protection arrangements.

#### **Section 87: Defences to liability under section 86**

201. This section sets out defences to the offence in section 86. Examples are where the disclosure is made by the protected person about himself, and does not endanger the safety of any person; or where the disclosure is made for the purposes of the prevention, detection or investigation of crime. If sufficient evidence of such a defence is raised, it will be for the prosecution to prove that the defence is not satisfied (*subsection (7)*). *Subsection (5)* provides that the Secretary of State can by order make provision prescribing circumstances in which disclosure of information under section 86(1) does not constitute an offence in England, Wales and Northern Ireland. *Subsection (6)* provides that Scottish Ministers can by order make provision prescribing circumstances in which disclosure of information under section 86(1) does not constitute an offence in Scotland.

#### **Section 88: Offences of disclosing information relating to persons assuming new identity**

202. This section creates an offence which can be committed either by protected persons, those protecting them or third parties if they reveal information about a protected person's new identity.

#### **Section 89: Defences to liability under section 88**

203. This section sets out defences to an offence in section 88. Examples are where the disclosure is made by the protected person about himself, and does not endanger the safety of any person; or where the disclosure is made for the purposes of the prevention, detection or investigation of crime. If sufficient evidence of such a defence is raised, it will be for the prosecution to prove that the defence is not

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satisfied (*subsection (7)*). *Subsection (5)* provides that the Secretary of State can by order make provision prescribing circumstances in which disclosure of information under section 88(1) or (2) does not constitute an offence in England, Wales and Northern Ireland. *Subsection (6)* provides that Scottish Ministers can by order make provision prescribing circumstances in which disclosure of information under section 88(1) or (2) does not constitute an offence in Scotland.

### **Section 90: Protection from liability**

204. This section exempts a protected person from civil or criminal proceedings if he makes false or misleading statements about his identity in order to ensure that his new identity is not disclosed. Without this section, protected persons (and their family members) with new identities may be committing offences when they claim, for example, social security benefits if they state that they have never been known by any other name.

### **Section 91: Transitional provision**

205. This section allows for arrangements for protection which are already in place on the commencement of section 82 to be treated as having been made under the new statutory provisions. For example, it will be possible for arrangements made for a witness in 2001 to be treated as having been made under the new provisions. One effect of this is that it may be an offence to disclose information about the arrangements under section 86.

206. In order for any pre-commencement protection arrangements to be brought within the statutory scheme, certain conditions must be satisfied (*see subsections (3) to (5)*). In particular, the protection provider must determine that it is appropriate to treat the arrangements as having been made under the new statutory provisions. A record of this determination must be made (*see subsections (6) and (7)*). *Subsections (8) to (11)* ensure that arrangements which were made by the National Criminal Intelligence Service, the National Crime Squad or Her Majesty's Customs and Excise, and which become the responsibility of a protection provider, can also be treated as having been made under the new statutory provisions.

### **Section 92: Transitional provision: supplemental**

207. This section clarifies how sections 86, 88 and 90 apply in cases which are covered by the transitional arrangements. Section 86(1) and (2) and section 88(1) and (2) would only apply where information is disclosed on or after the date of the record of determination specified in section 91(7). Section 90 would only apply where a false or misleading representation is made on or after the date of the record of determination specified in section 91(7).

*These notes refer to the Serious Organised Crime and Police Act 2005 (c.15) which received Royal Assent on 7th April 2005*

### **Section 93: Provision of information**

208. This section requires the protection provider to ensure that the protected person is informed of the implications of arrangements being provided for him/her under these provisions. *Subsection (3)* allows for an explanation to be provided to an appropriate person in cases where the protected person would be unable to understand such an explanation himself. *Subsection (4)* provides that in cases where joint arrangements are made under section 82(1) one protection provider should be nominated to perform this duty.

### **Section 94: Interpretation of Chapter 4**

209. This section provides definitions of expressions used in this Chapter, such as “protected persons” and “persons associated with protected persons”. By virtue of *subsection (6)* a witness includes a person who has provided information which might be used in legal proceedings, whether or not the person is actually called to give evidence. By virtue of *subsection (7)* a witness does not include the accused, unless he is a witness for the prosecution.

## **Chapter 5: International Obligations**

### **Section 95: Enforcement of overseas forfeiture orders**

210. This section amends section 9 of the Criminal Justice (International Co-operation) Act 1990 which provides for the enforcement of overseas forfeiture orders. Section 9 allows an Order in Council to be made for the enforcement of orders, made by courts outside the United Kingdom designated for this purpose, for the forfeiture of anything used (or intended for use) in connection with the commission of an offence to which that section applies. Such items are known as instrumentalities of crime. Section 9(6) sets out the scope of the offences covered by that section. The effect of the amendment is to extend the scope of section 9 to any offence. This provision extends to England, Wales, Scotland and Northern Ireland.

211. The amendment will enable the United Kingdom to give effect to international conventions requiring the enforcement of foreign orders for the forfeiture of instrumentalities in relevant offences. These conventions are the United Nations Convention against Transnational Organised Crime (UNTOC), which was agreed in 2000, and the United Nations Convention against Corruption (UNCAC), which was agreed in 2003.

212. The current Order made under section 9 (the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 1991) is limited to forfeiture orders in respect of drugs offences. The United Kingdom is unable to ratify the Conventions until all legislative requirements have been met.

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### **Section 96: Mutual assistance in freezing property or evidence**

213. *Subsections (1) and (2)* enable the Secretary of State or Scottish Ministers to make an order that provides for the implementation of any obligations of the UK resulting from the Council Framework Decision of July 2003 on the execution in the European Union of orders freezing property or evidence.

214. Under *subsection (3)* the Secretary of State may make any provision that may be made by Act of Parliament subject to the following exceptions. The first exception is in respect of a provision falling within the legislative competence of the Scottish Parliament (*subsection (5)*); the second exception is in respect of something falling within *subsection (7)*. Under *subsection (4)*, the Scottish Ministers may include anything that falls within the legislative competence of the Scottish Parliament (see also *subsection (6)*), but not something falling within *subsection (7)*.

215. *Subsection (7)* restricts the powers conferred upon the Secretary of State and the Scottish Ministers in *subsection (1)*, by excluding the power to:

- a) make any provisions that impose or increase taxation,
- b) make any provisions that take effect from a date that precedes the making of the instrument containing the provisions,
- c) confer any power to legislate by means of orders, rules, regulations or other subordinate instrument, other than rules of procedure for a court or tribunal, and
- d) create offences.

216. *Subsection (8)* qualifies the exclusion in *subsection (7)(c)* restricting the power to legislate.

## **Chapter 6: Proceeds of Crime**

### **Section 97: Confiscation orders by magistrates' courts**

217. Section 97 gives the Secretary of State power by order to make provision to allow magistrates' courts to make confiscation orders under Part 2 or 4 of the Proceeds of Crime Act 2002 (POCA). *Subsection (3)* allows for the order to make amendments to the confiscation provisions in POCA and related legislation to ensure that the magistrates' courts have the powers to make confiscation orders. *Subsection (2)* provides that the power for magistrates' courts to make a confiscation order is subject to a restriction that the amount does not exceed £10,000. Orders above this amount could only be made in a Crown Court.

### **Section 98: Civil recovery: freezing orders**

218. The Proceeds of Crime Act 2002 makes provision for the Director of the Assets Recovery Agency (ARA) to be able to apply to the High Court for a property

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freezing order in civil recovery cases under Part 5 of that Act. The effect of section 246(2) and (7) of that Act is that an interim receiver had to be appointed in every case. Section 98 has the effect of allowing the Director of the ARA in England, Wales and Northern Ireland to be able to apply for a property freezing order as an alternative to an order appointing a receiver, and makes similar provision for Scotland for the Scottish Ministers to apply for a prohibitory property order.

219. Except in Scotland, this section and the associated amendments in Schedule 6 also have the effect of enabling defendants who are subject to civil proceedings to have access to their frozen assets in order to fund the cost of their legal representation. Schedule 6 amends section 252(4) of POCA which prevents defendants in England, Wales and Northern Ireland from being able to fund their legal defence in this way and allows for “reasonable” living expenses to be drawn down from frozen assets named in an order. The amounts able to be drawn down are controlled to avoid dissipation of assets. This can be achieved by prior assessment from the court in accordance with any regulations made by the Lord Chancellor for the purpose and the agreement of the enforcement authority. In Scotland, respondents to an action for civil recovery will continue to be prevented from using frozen assets to fund the cost of legal representation. The intention is that legal aid will continue to be available to them where eligible. The amendment for Scotland still allows, as before, access to funds to meet “reasonable” living expenses or in order to carry on any trade, business, profession or occupation.

**Section 99: Civil recovery: interim receivers' expenses etc.**

220. Section 99 has the effect of allowing the Director of the ARA to meet the remuneration and expenses of a receiver in England, Wales and Northern Ireland from recovered sums after payments referred to in section 280(2) of the Proceeds of Crime Act 2002 have been made. The Director may meet the costs of an appointed interim receiver from sums received from civil recovery proceedings in a manner that directly mirrors that of the criminal provisions in Parts 2 and 4 of the Act. Similar provision is made in respect of interim administrators' fees and expenses in Scotland.

**Section 100: Detention of seized cash: meaning of "48 hours"**

221. The Proceeds of Crime Act 2002 gives powers to the police and HM Revenue and Customs to seize cash derived from or intended for use in crime, and to secure its forfeiture in civil magistrates' or sheriff court proceedings. A constable or an officer of Revenue and Customs can seize and detain cash. However cash may not be detained for a period of more than 48 hours except by order of a magistrate (or a sheriff in Scotland). Previously the calculation of the 48 hour period included all bank holidays and weekends.

222. Section 100 requires any calculation of the 48 hour period to leave out of account Saturdays, Sundays, Christmas Day and Good Friday (which are public

holidays) and any day that is a bank holiday in the part of the United Kingdom in which the cash was seized and, in Scotland, any sheriff court holiday.

**Section 101: Appeal in proceedings for forfeiture of cash**

223. Section 101 has the effect of giving a right of appeal to police and customs officers in all cash forfeiture applications where a court dismisses an application for cash forfeiture. In Scotland, this right is given to the Scottish Ministers as it is they who make cash forfeiture applications. This is in addition to the right of appeal given to a person aggrieved by the making of an order for the forfeiture of cash. The section also has the effect of allowing the appeal court, the Crown Court, to hear an appeal in an appropriate way, for example by way of a rehearing or on a point of law. The section also changes the route of appeal in Scotland: rather than by way of rehearing at the Court of Session, the appeal will be instead to the Sheriff Principal.

**Section 102: Money laundering: defence where overseas conduct is legal under local law**

224. Section 102 amends the three principal money laundering offences in sections 327-329 of the Proceeds of Crime Act 2002 and the offences of failure to disclose money laundering in sections 330-332. The amendments provide a defence to these offences where the person knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a country or territory outside the United Kingdom, and where the criminal conduct was not unlawful under the criminal law applying in that country or territory at the time it occurred. This defence will not apply where the relevant conduct is of a type described by an order made by the Secretary of State.

**Section 103: Money laundering: threshold amounts**

225. Section 103 amends the three principal money laundering offences in sections 327-329 of the Proceeds of Crime Act 2002 (POCA), and inserts a new section 339A on threshold amounts. Under section 327(1)(d) of POCA, a bank or other deposit-taking body would need to make a disclosure to obtain consent before proceeding with any transaction which was suspected of involving criminal property. These amendments would, in certain circumstances, allow deposit-taking bodies to continue to operate accounts without the need to seek consent in each case. They do not apply to the duty to make a disclosure in respect of the initial opening of an account or, as the case may be, the time when the deposit taking body first suspects that the property is criminal property (see section 338(2A) of POCA, as inserted by section 106(5)). A bank or other deposit-taking body would not commit an offence in operating an account of a person suspected of money laundering when the amount of money concerned in the transaction is below £250 or such higher threshold amount as may be specified by a constable or an officer of Revenue and Customs, or by a person authorised by the Director General of NCIS (or, in future, authorised by the Director General of SOCA). Where a deposit-taking body requests a threshold amount higher than the £250 default threshold, one may be specified. The £250 default threshold can



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be varied by order of the Secretary of State. Where a threshold amount (above the £250 default level) has been specified for an account, the specified amount may be varied by any of the officers who could have specified it. Different thresholds may be specified in relation to the operation of the same account (for example, a threshold could be specified for deposits that is higher than the threshold specified for withdrawals).

226. *Subsection (6)* provides a definition of deposit-taking body in section 340 of POCA.

#### **Section 104: Money laundering: disclosures to identify persons and property**

227. Section 104 amends the failure-to-disclose provisions in sections 330-332 of the Proceeds of Crime Act 2002. The obligation to disclose suspicions of money laundering will apply only if: the person required to make a disclosure knows the identity of the person engaged in the money-laundering offence or the whereabouts of any of the laundered property; or the information which would have to be reported discloses, or may assist in uncovering, the identity of the person engaged in that offence or the whereabouts of any of the laundered property.

228. Laundered property is defined in the new subsection (5A) of sections 330-332.

#### **Section 105: Money laundering: form and manner of disclosures**

229. Section 105 replaces subsections (2) and (3) of section 339 of the Proceeds of Crime Act 2002, under subsection (1) of which the Secretary of State has the power to prescribe by order the form and manner in which disclosures about money laundering should be made.

230. *Subsection (2)* amends sections 330(9)(b), 337(5)(b) and 338(5)(b) of the Act by omitting the requirement to follow the employer's procedures when making a disclosure to a nominated officer. Under *subsection (3)* the penalty for failure to make a disclosure in the prescribed form and manner is modified to become punishable by a fine not exceeding level 5 on the standard scale. *Subsection (5)* (which inserts new subsections (1A) to (3) into section 339 of the 2002 Act) provides that a person commits an offence if he makes a disclosure otherwise than in the form and manner prescribed, unless he has a reasonable excuse for not so doing. It also includes the power to request from the person making the disclosure that the person provide information specified or described in the form if that has not been done in making the disclosure. New section 339(3) of POCA makes it clear that there is no obligation to comply with such a request.

#### **Section 106: Money laundering: miscellaneous amendments**

231. Section 106(2) amends section 330 of the Proceeds of Crime Act 2002 so that the nominated officer advising a professional legal adviser in a firm of solicitors is not

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obliged to make a disclosure where the professional legal adviser, who has information that came to him/her in privileged circumstances, has made a report to the nominated officer for the purposes of seeking his/her advice about whether the facts known to him/her give rise to a need to make a formal disclosure.

232. *Subsection (5)* amends section 338 by adding a further condition to the circumstances in which a disclosure will be “authorised” for the purpose of affording a defence to the principal money laundering offences in the Act. This covers the circumstances when the person required to make a disclosure does not initially suspect that the property is criminal property.

### **Section 107: Money laundering offences**

233. Section 107 amends sections 364 and 415 of the Proceeds of Crime Act 2002 and widens the meaning of money laundering offences so that it includes the principal money laundering offences under legislation in force before the 2002 Act. This will enable the investigation powers in Part 8 of the Act to be used in investigating old money laundering offences.

### **Section 108: International co-operation**

234. Section 108(4) amends section 447(3) of the Proceeds of Crime Act 2002 to extend the meaning of an external investigation to include the extent and whereabouts of criminal property. Section 445 of the Act gives power to enable assistance to be given in the UK for the purposes of external investigations.

### **Section 109: Minor and consequential amendments relating to Chapter 6**

235. This section gives effect to Schedule 6 which makes further minor and consequential amendments to POCA.

## **Part 3: Police powers etc.**

### **Sections 110 and 111: Powers of arrest**

236. Section 110 amends the powers of arrest available to a constable under the Police and Criminal Evidence Act (PACE) 1984. These currently derive primarily from sections 24 and 25 of PACE and are based on the application of the concept of seriousness attached to the offence.

237. The exercise of arrest powers will be subject to a test of necessity based around the nature and circumstances of the offence and the interests of the criminal justice system. An arrest will only be justified if the constable believes it is necessary for any of the reasons set out in the new section 24(5) of PACE. Further guidance will be given to a constable on the exercise of the powers in a new Code of Practice to be issued under section 66 of PACE (as amended by section 110(3)). The new section 24A of PACE sets out the power of arrest for persons other than constables. The

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exercise of the citizen's power of arrest will be limited to indictable offences. Section 111 and Schedule 7 make consequential and other amendments and repeals. In particular Part 1 of Schedule 7 repeals specific powers of arrest which are now unnecessary following the introduction of a general power of arrest. Part 2 of Schedule 7 provides a gloss for the same purpose on enactments where the power of arrest could not be separated out. A very limited number of specific powers of arrest have been retained in their existing form. These primarily relate to powers of arrest in connection with transport offences. This approach may be contrasted with section 26 of PACE which contained a general repeal of powers of arrest existing before that Act came into force. Some of the specific repeals in Schedule 7 may overlap with the effect of section 26 of PACE. Part 3 of Schedule 7 contains amendments consequential on the repeal of the definitions and concepts of an arrestable offence and a serious arrestable offence. In general police powers which available in cases involving serious arrestable offences and arrestable offences will now be available in cases involving indictable only or triable either way offences. Part 4 of Schedule 7 contains purely consequential amendments.

### **Section 112: Power to direct a person to leave a place**

238. This section provides for a new offence of failing to obey a police direction to leave an exclusion area. It applies to those offenders, both adults and juveniles, who have had an exclusion requirement imposed as part of a community sentence, a suspended sentence order or a licence condition on release from custody. The offence carries the power of arrest without warrant. The maximum penalty is a term of imprisonment not exceeding 51 weeks or a fine not exceeding level 4 on the standard scale, or both.

239. *Subsection (1)* provides that a constable may direct a person to leave a place where he has reasonable grounds to believe that the person is in an exclusion area at a time when he is prohibited from entering that area under the requirements of his sentence or licence condition.

240. *Subsections (2) and (3)* establish the scope of the offence.

241. *Subsection (6)* provides the power of arrest without warrant and is a transitional provision that will fall, by virtue of *subsection (7)*, once the arrest provisions in section 106 come into effect.

242. *Subsection (8)(a)* extends the meaning of “sentence of imprisonment” and “prison” so as to include juvenile detention and conditions of release. *Subsection (8)(b)* clarifies the meaning of “release”, to ensure that its meaning is clear in relation to a prisoner serving intermittent custody.

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### **Section 113: Search warrants: premises**

243. This section extends the current provisions under PACE for the issue of warrants to search premises and seize evidence. It also introduces an extension to the specific premises warrant to cover more than one set of premises.

244. *Subsections (2) to (4)* amend section 8 of PACE. *Subsection (4)* introduces a new type of warrant known as an “all premises warrant”. A constable will be able to apply for this type of warrant when it is necessary to search all premises occupied or controlled by an individual, but it is not reasonably practicable to specify all such premises at the time of applying for the warrant. The warrant will allow access to all premises occupied or controlled by that person, both those which are specified on the application, and those which are not. It will still be possible to obtain a warrant which relates to one set of premises, now known as a “specific premises warrant” (*subsection (4)*).

245. *Subsections (5) to (8)* amend section 15 of PACE, which sets out the safeguards for applications for search warrants. *Subsection (7)* sets out what must be included in an application for a “specific premises warrant” or an “all premises warrant”. *Subsection (8)* makes a consequential change.

246. *Subsection (9)* amends section 16 of PACE so as to require, in the case of an “all premises warrant”, for any entry into premises which have not been specified in the warrant to be authorised in writing by an officer of at least the rank of inspector.

247. *Subsections (10) to (15)* amend Schedule 1 to PACE. *Subsection (14)* inserts a new paragraph 12A, setting out the grounds on which a judge may issue an “all premises warrant”, namely that there are reasonable grounds for believing it is necessary to search more than one set of premises occupied or controlled by a particular person, and that it is not reasonably practicable to specify them all. *Subsections (11) to (13)* and *(15)* make consequential changes.

### **Section 114: Search warrants: other amendments**

248. This section makes further amendments to PACE in respect of search warrants.

249. *Subsection (2)* inserts new subsections (1C) and (1D) into section 8 of PACE; these provide that a warrant (either an “all premises warrant” or a “specific premises warrant”) may authorise access on more than one occasion, if necessary.

250. *Subsections (3) to (7)* amend section 15 of PACE. *Subsection (4)* sets out the information which an application for a warrant authorising multiple entry must include. In particular, the applicant must set out the grounds on which a multiple entry warrant has been sought.

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251. *Subsection (8)* amends section 16 of PACE to provide that the second and any subsequent entries must be authorised in writing by an officer of the rank of inspector or above. It also extends the lifetime of the warrant from one month to three months (see the amendment to section 16(3)).

### **Section 115: Power to stop and search for prohibited fireworks**

252. The Fireworks Regulations 2004 (SI no. 2004/1836), which were made under the Fireworks Act 2003, make it an offence, subject to certain exceptions, for persons under the age of 18 to possess adult fireworks in public places, and for any person to possess category 4 fireworks (professional display fireworks). This section amends section 1 of PACE to provide the police with the power to stop and search in respect of these two offences. Where any prohibited fireworks are found as a result of a search, the constable conducting the search will be able to seize the fireworks in question. The use of the power will be governed by the procedures and safeguards set out in PACE Code A (Exercise by police officers of statutory powers of stop and search).

### **Section 116: Photographing of suspects etc**

253. This section amends section 64A of PACE. *Subsection (2)* enables a person to be photographed, with or without his consent, by a constable elsewhere than at a police station. The power is exercisable if one of the following conditions is met: the person has been arrested by a constable for an offence; been taken into custody by a constable after having been arrested for an offence by a person other than a constable; been made subject to a requirement to wait by a CSO; or issued with a fixed penalty notice by a constable, CSO or accredited person.

254. *Subsection (3)* amends section 64A to allow the police to pass a photograph to the court for the purposes of enforcing the orders of the court. This new power is in addition to that which allows the police to pass a photograph to the court for the purposes of prosecution.

255. *Subsection (5)* amends the definition of photograph in section 64A of PACE to include a moving image.

### **Section 117: Fingerprints**

256. PACE already contains a detailed regime governing the taking of fingerprints without consent. In summary, fingerprints may be taken from a person in police detention following their arrest for a recordable offence, on charge/summons for such an offence and following conviction for such an offence (sections 61 and 27 of PACE). Fingerprints can be taken in other circumstances with the consent of the individual.

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257. When the police are dealing with a person suspected of an offence, but prior to any arrest, questions may arise as to the person's identity. The police will try to verify the person's identity but if this is not possible the suspect will normally be arrested.

258. The police have been developing mobile digital fingerprint readers that can be connected to the National Automated Fingerprint Identification System (NAFIS) by mobile communications technology. This will provide the police with the capability to take fingerprints away from the police station. Fingerprint impressions of two fingers are taken and checked against NAFIS in a matter of minutes. Where the check against NAFIS results in a match the officer will then be in a more informed position to decide on the appropriate course of action. The fingerprints would also be subject to a speculative search against the database of fingerprints recovered from crime scenes.

259. This section amends section 61 of PACE so as to provide a power for the police to take a person's fingerprints prior to an arrest and away from a police station in circumstances where:-

- the constable reasonably suspects that the person is committing, or attempting to commit an offence, or has committed or attempted to commit an offence; and
- either the name of the person is unknown to, and cannot be readily ascertained by, the constable or the constable has reasonable grounds for doubting whether the name given by the person is his real name.

260. *Subsection (5)* amends section 63A of PACE so as to allow fingerprints taken as above to be checked against the NAFIS database of fingerprints and speculatively searched against the database of fingerprints recovered from crime scenes.

261. *Subsection (7)* amends section 64 of PACE to enable DNA samples and fingerprints taken from deceased persons to be checked against the national DNA and fingerprint databases for identification purposes. Section 64 currently restricts the purposes for which the National Fingerprint Database, known as NAFIS, and the National DNA Database may be used to those related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution. Consequently, where a person is suspected of having died as a result of a crime, if necessary the databases may be used to help identify the victim. However, in circumstances where a person has died of natural causes or as a result of a disaster such as the tsunami in South East Asia at the end of 2004, neither database may be used to help identify a deceased person's body or body parts.

263. The amendment to section 64 of PACE made by *subsection (7)* has therefore been introduced to remove the disparity in the circumstances in which the databases may be used to help identify a deceased person. The amendment will also allow the

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database of footwear impressions to be used for identification of deceased persons or body parts although in practice it is unlikely that database will be of any assistance. This amendment came into force on Royal Assent.

263. *Subsections (8) to (10)* amend section 64 of PACE to make it clear that fingerprints taken prior to arrest will not be retained nor added to NAFIS.

### **Section 118: Impressions of footwear**

264. The Forensic Science Service (FSS) maintains two databases of footwear impressions. One database (the Mark Intelligence Index) contains impressions recovered from crime scenes. Footwear impressions are recovered from around 20-30% of all crime scenes. The other database (the National Footwear Reference Collection) contains impressions from different items of footwear not linked to any individual and is registered under the Data Protection Act 1998. Most manufacturers supply the FSS with photographs and footwear impressions from any new product for loading on to the database.

265. *Subsection (2)* of this section inserts a new section 61A into PACE. The section will allow the police to take an impression of a person's footwear with or without consent. An impression may only be taken without consent where a person has been arrested for, charged with, or informed that he will be reported for a recordable offence and he has not previously had an impression of his footwear taken in the course of the investigation for the offence.

266. *Subsections (3) and (4)* make a number of consequential amendments to sections 63A and 64 of PACE to allow footwear impressions to be retained and searched against the National Footwear Reference Collection and speculatively searched against the Mark Intelligence Index.

### **Section 119: Intimate samples**

267. Section 65 of PACE contains definitions of both an intimate and non-intimate sample. The distinction is important in that an intimate sample can only be taken with consent; a non-intimate sample may be taken without consent. Section 65 defines an intimate sample as:

- a sample of blood, semen, or any other tissue fluid, urine or pubic hair;
- a dental impression;
- a swab taken from a person's body orifice other than the mouth.

268. In a suspected case of sexual assault, the police may want to take swabs of the coronal sulcus, shaft or glans of the penis from a male suspect and also perineum or vulval swabs and swabs from matted pubic hair from a victim or female suspect.

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These types of swab fall outside the current definition of an intimate sample. This section amends the definitions of both non-intimate and intimate samples to make it clear that such swabs are intimate samples with the result that such a swab can only be taken with consent. It will consequently avoid any possible allegation of assault against the police if they decide they need such a swab to be taken in the course of an investigation and it gives added protection to the rights of the suspect.

269. Under section 62(10) of PACE, if the appropriate consent to the taking of an intimate sample from a person is refused without good cause, in any proceedings against that person the court may draw such inferences from the refusal as appear proper.

### **Sections 120 and 121: Staff custody officers: designation and amendments to PACE**

270. Sections 120 and 121 will provide chief officers of police with the ability to designate police staff as ‘staff custody officers’ under section 38 of the Police Reform Act 2002 (the “2002 Act”). Designated staff custody officers can be appointed custody officers of designated police stations under section 36(2) of PACE and can perform the functions of a custody officer under section 36(7) of that Act. Police staff cannot be designated as staff custody officers unless the chief officer is satisfied that they are suitable, capable and adequately trained. Designated custody officers will be subject to the PACE Codes and to the complaints process of the Independent Police Complaints Commission.

### **Section 122: Powers of designated and accredited persons**

271. This clause amends the provisions of Part 4 of the 2002 Act in respect of designated and accredited persons. *Subsection (2)* amends section 42 of the 2002 Act in order to provide that an investigating officer designated under section 38 of that Act may, on the authority of an Inspector or above, be directed not to wear a uniform for specific and individual operations.

272. *Subsection (3)* amends paragraphs 1 and 15A of Schedule 4 to the 2002 Act. Part 1 of that Schedule sets out the powers which may be conferred on community support officers. Community support officers are civilian employees of police authorities designated by chief officers to exercise a range of powers. Those powers include the power to issue a fixed penalty notice for certain offences, including the offences mentioned in the first column of the Table in section 1(1) of the Criminal Justice and Police Act 2001, but the Secretary of State may limit community support officers’ powers insofar as they relate to particular, listed, offences. The effect of the amendment is to make a technical change to the procedure by which the Secretary of State may add to or remove from the list of offences for which community support officers may not issue fixed penalty notices. Instead of making a separate order which has to be read in conjunction with that list, the Secretary of State is given a power to



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amend the list itself. *Subsections (4), (5) and (6)* make corresponding amendments for accredited persons. These are suitably skilled and trained non-police employees involved in the provision of community safety who, pursuant to a scheme established and maintained by a chief officer of police under the 2002 Act, may be accredited by chief officers with powers to undertake specified functions in support of the police. *Subsection (7)* introduces Schedules 8 and 9. These amend Schedules 4 and 5 to the 2002 Act, which set out the powers which may be given to designated and accredited persons.

### **Schedule 8: Powers of designated and accredited persons**

273. This Schedule adds to the list of powers which may be exercised by suitably designated and accredited persons under the 2002 Act. Part 1 of the Schedule sets out additional powers that can be exercised by designated persons if the power is conferred on him by his designation. Part 2 sets out additional powers that can be exercised by an accredited person if specified in his accreditation. The powers will only be conferred on designated persons or accredited persons where the chief officer of police is satisfied that the person is suitable, capable and has received adequate training.

#### **Part 1: Designated persons**

274. Part 1 of Schedule 8 amends Schedule 4 to the 2002 Act and lists new powers that can be conferred on designated persons by chief officers. The new powers for community support officers include a power to direct traffic and place traffic signs on roads, a power to deal with begging, a power to search detained persons for items that could cause injury or assist escape, a power to enforce certain licensing offences, a power to enter certain premises to enforce licensing offences, a power to enforce byelaws, a power to search persons for alcohol and tobacco in certain circumstances and a power to deal with possession of controlled drugs. They will increase the powers available to community support officers to deal with community safety issues and anti-social behaviour offences.

275. *Paragraph 2* inserts a new paragraph 1A into Schedule 4 to the 2002 Act. The purpose of paragraph 1A is to enable chief officers of police to designate community support officers with the power to require a name and address without also conferring on them the power to detain. If a designation applies this paragraph to a community support officer then he or she may require the name and address of a person who has committed a relevant offence in the relevant police area or a relevant licensing offence within or outside of the relevant police area. The relevant police area is the police area in which a community support officer's designation applies. *Sub-paragraph (5)* of paragraph 1A makes it an offence to fail to comply with a requirement to give name and address and a person guilty of such an offence shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale. The terms "relevant

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offence”, “relevant licensing offence” and “relevant byelaw” have the meaning given in paragraph 2 of the 2002 Act. Paragraph 1A(2) allows for a community support officer’s designation to specify that he or she has the power to require a name and address only for certain relevant offences or relevant licensing offences. This means that chief officers will not have to designate a community support officer with the power to a require name and address for all relevant offences and relevant licensing offences. Paragraph 1A(4) specifies that a community support officer may enforce a relevant byelaw only within the place which the byelaw relates to.

276. *Paragraph 3* amends paragraph 2 of Schedule 4 to the 2002 Act. This paragraph of the 2002 Act applies if a community support officer’s designation specifies that it applies to him or her. *Paragraph 3(3)(a)* of Schedule 8 provides that if a person fails to comply with a requirement under Paragraph 1A(3) or if a person gives a name and address which the community support officer has reasonable grounds for suspecting is false or inaccurate, the community support officer can detain the other person for up to 30 minutes, pending the arrival of a constable. The detained person may choose, if asked, to accompany the community support officer to a police station rather than wait. Any person who fails to comply with the request to give his name and address or who makes off while being detained or being accompanied to the police station is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

277. *Paragraph 3(2)* provides that a community support officer may only be designated with the power in paragraph 2 of Schedule 4 to the 2002 Act if his or her designation also applies paragraph 1A to him or her.

278. *Paragraph 3* also enables chief officers to confer on community support officers powers to deal with begging. Under section 3 of the Vagrancy Act 1824 it is an offence to beg in any public place, or to encourage a child to beg. Under section 4 of that Act it is an offence, for a person who has already been convicted of an offence under section 3, to sleep in certain unoccupied premises or in the open air without being able to give a valid reason for doing so, to show wounds or deformities to aid begging and to collect money for charitable purposes under false pretence. *Sub-paragraph (7)* makes offences under sections 3 and 4 of the Vagrancy Act 1824 into relevant offences. *Sub-paragraph (4)* inserts paragraph 2(3B) into Schedule 4 to the 2002 Act. This enables CSOs to be designated with the powers to require a person to stop committing an offence under sections 3 and 4 of the Vagrancy Act 1824 and, if a person refuses to comply with this requirement to detain that person. *Sub-paragraph (5)* allows a person who has been thus detained to elect to be accompanied to a police station instead of waiting for a constable to arrive. *Sub-paragraph (6)* makes it an offence to make off while subject to a requirement to wait if a community support officer has required a person to stop committing an offence under sections 3 and 4 of the Vagrancy Act 1824, that person has failed to do so and has been required to wait

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by the community support officer accordingly. A person committing this offence shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale. Paragraph 3 also adds to the powers of community support officers to deal with licensing offences. *Paragraph 3(8)* inserts paragraph 2(6A) into Schedule 4 to the 2002 Act which specifies the offences under the Licensing Act 2003 that constitute relevant licensing offences. Community support officers may exercise their powers with regard to licensing offences in any police area, not just the relevant police area.

279. *Paragraph 3(3)* limits the powers of community support officers with regard to the offences under paragraph 3(8) of this Schedule that are most likely to be committed by licence holders. Where a community support officer has reason to believe that the offences of sale of alcohol to a person who is drunk, sale of alcohol to children or allowing the consumption of alcohol by children have been committed by a person on licensed premises the community support officer will have the power to require the person's name and address but will not have the power to detain the person if the requirement is not met or a false or inaccurate answer is given. The limited power for community support officers to enter licensed premises in paragraph 9 of Schedule 8 will facilitate the use of these alcohol-related powers.

280. *Paragraph 3* also provides for community support officers to be able to enforce byelaws. *Sub-paragraph (7)* has the effect that offences under relevant byelaws constitute relevant offences. *Sub-paragraph (8)* inserts new sub-paragraphs (6B), (6C), (6D), (6E) and (6F) into paragraph 2 of Schedule 4 to the 2002 Act. Sub-paragraph (6B) defines a relevant byelaw as a byelaw that has been made by a relevant body and which has been agreed between the chief officer of the police force and the relevant byelaw-making body. Sub-paragraph (6E) sets out a list of relevant byelaw-making bodies and also provides that this list may be added to by order. Sub-paragraph (6F) provides that an order may specify that relevant byelaws may be agreed between the chief officer of a police force and the Secretary of State, rather than between the chief officer of a police force and a relevant byelaw-making body. Sub-paragraphs (6C) and (6D) provide for the publication of a list of relevant byelaws by chief officers and the amendment of that list. *Paragraph 3(4)* inserts a new paragraph 2(3A) into Schedule 4 to the 2002 Act to provide that where a CSO has been designated with the power to enforce a relevant byelaw by requiring a name and address under paragraph 1A(3), if that byelaw allows a constable to enforce it by removing a person from a certain place, then the CSO will have the power of a constable to enforce the byelaw in that way.

281. *Paragraph 4* inserts a new paragraph 2A into Schedule 4 to the 2002 Act. Where the powers in this paragraph are specified in a community support officer's designation, it gives him a limited power to search persons detained under paragraph 2(3) or (3B) of Schedule 4 to the 2002 Act for any item that could be used to injure himself or others if the community support officer believes the person could be

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dangerous. It also gives community support officers a power to search a detained person for anything that could be used to assist escape. Under *sub-paragraph (3)* a community support officer is required to inform a person from whom he has seized any item where he can make inquiries about its recovery and to comply with the instructions of a constable about what to do with any seized item. This limited search power will help to increase the safety of community support officers when exercising the power of detention.

282. *Paragraph 5* makes an amendment consequential on the insertion of paragraph 1A into Schedule 4 to the 2002 Act.

283. *Paragraphs 6 and 10* insert new paragraphs 3A and 11B into Schedule 4 to the 2002 Act. Where the powers in these paragraphs are specified in a community support officer's designation it gives the community support officer powers to direct traffic and to require the name and address of a person who fails to comply with directions. Community support officers can already be designated with the power under paragraph 12 of Schedule 4 to the 2002 Act to control traffic for the purposes of escorting a load of exceptional dimensions. Where designated, the powers in *paragraph 10* of this Schedule enable community support officers to direct traffic in other situations, based on the powers constables have under sections 35 and 37 of the Road Traffic Act 1988. This will allow community support officers to direct a person driving a vehicle to stop or follow a line of traffic and also to direct pedestrians. Community support officers will also have the power to direct traffic for the purposes of conducting a traffic survey. Where designated, the powers in *paragraph 6* of this Schedule enable a community support officer to require either a driver or a pedestrian to give their name and address under paragraph 3A(1) on failure to follow the directions of a community support officer or a police officer. If a person refuses to give their name and address, or gives an answer which a community support officer has reasonable grounds for suspecting to be false or inaccurate, then the community support officer can detain the person for 30 minutes until the arrival of a constable or, if the person elects on being offered, can accompany the person to a police station. A community support officer may only detain a person if he or she has been designated with the powers under paragraph 2 of the 2002 Act. A community support officer will only be able to exercise the powers set out in paragraphs 6 and 10 of this Schedule within his own police force area. Community support officers may not be designated with powers under new paragraph 11B of Schedule 4 to the 2002 Act unless they are also designated with powers under new paragraph 3A. These powers will enable community support officers to assist with traffic management at public events, road traffic accidents and other incidents where traffic diversions are necessary.

284. *Paragraph 7* makes minor adjustments to paragraph 4 of Schedule 4 to the 2002 Act in the light of the insertion into that Schedule of paragraph 1A. *Paragraph*

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8 extends the powers of community support officers with regards to alcohol, tobacco and controlled drugs. It inserts a new paragraph 7A into Schedule 4 to the 2002 Act. Where a community support officer has imposed a requirement on a person under paragraph 5 or 6 of Schedule 4 to the 2002 Act, the community support officer reasonably believes that the person is in possession of alcohol and that person fails to surrender it then new paragraph 7A gives the community support officer the power to search the person for alcohol and seize and dispose of any alcohol found. Paragraph 7A gives community support officers a similar power with regard to tobacco where a community support officer has sought to seize tobacco from a person aged under 16 under paragraph 7 of Schedule 4 to the 2002 Act. The new paragraph also provides that it is an offence to fail to consent to be searched, and that community support officers must inform persons that they propose to search that it is an offence to refuse. A person guilty of this offence shall be liable, on summary conviction, to fine not exceeding level 3 on the standard scale. A community support officer may require the name and address of a person refusing to be searched; sub-paragraphs (3), (4) and (5) of paragraph 2 of Schedule 4 to the 2002 Act apply if a person refuses to comply with this requirement or gives a false or inaccurate name and address and if a community support officer's designation applies paragraph 2 to him or her. Paragraph 7A(4) provides for certain limitations on the powers of community support officers to search for alcohol and tobacco.

285. Paragraph 3(2) of Schedule 4 to the 2002 Act enables community support officers whose designation applies paragraph 3 to them to detain persons acting in an anti-social manner if they fail to comply with a requirement to give name and address or give a name and address that the community support officer has reasonable grounds for suspecting to be false. Paragraphs 3A(2) and 7A(8) inserted by this Schedule also enable community support officers to detain if a person fails to satisfactorily meet a requirement to give name and address for certain road traffic offences or having refused to be searched for alcohol or tobacco. *Paragraph 3(10)* inserts into Schedule 4 to the 2002 Act a new paragraph 2(8) which provides that community support officers may not use the power of detention under paragraphs 3(2), 3A(2) or 7A(8) unless their designation has applied paragraph 2 to the community support officer in question.

286. *Paragraph 8* also inserts new paragraph 7B into Schedule 4 to the 2002 Act. This paragraph provides for community support officers to seize and retain controlled drugs when found unlawfully in a person's possession. Community support officers must comply with a constable's instructions about what to do with any controlled drugs seized and if a person maintains that he or she is lawfully in possession of the controlled drug then the community support officer must inform the person about where inquiries can be made about its recovery. If a community support officer finds a controlled drug unlawfully in a person's possession or reasonably believes that a person is in unlawful possession of a controlled drug then the community support officer may require the person's name and address. The paragraph makes it an offence

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to fail to comply with this requirement and a person guilty of this offence shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale. New paragraph 7C provides that where a person fails to give their name and address or gives a false or inaccurate name and address when required under new paragraph 7B then sub-paragraphs (3), (4) and (5) of paragraph 2 of Schedule 4 to the 2002 Act apply as long as the community support officer's designation specifies that paragraph 2 applies to them.

287. *Paragraph 9* inserts a new paragraph 8A into Schedule 4 to the 2002 Act. Where the powers in this paragraph are specified in a community support officer's designation it gives the community support officer a limited power to enter and search licensed premises under section 180 of the Licensing Act 2003 if he believes that one of the licensing offences specified in paragraph 2(6A) of Schedule 4 to the 2002 Act has been, or is being committed. These licensing offences are all connected with the sale and consumption of alcohol by and to young people and persons who are already drunk. Community support officers will be able to enter any premises, other than clubs, for the purposes of investigating a relevant licensing offence with a constable. However, community support officers will be able to enter premises alone only where they reasonably believe that a premises licence, a licence that permits a premises to sell alcohol, authorises the sale of alcohol for consumption off the premises. This limited power of entry and search will add to community support officers' existing powers to deal with alcohol-related anti-social behaviour and those that supply alcohol to young people.

288. *Paragraph 11* inserts a new paragraph 13A into Schedule 4 to the 2002 Act. Where the powers in this paragraph are specified in the designation of a community support officer, the community support officer has the same power to place temporary traffic signs on a road in extraordinary circumstances as a constable under section 67 of the Road Traffic Regulation Act 1984. It will be an offence for a driver to fail to comply with a traffic sign placed by a community support officer under this paragraph. The purpose of this power is to give community support officers an additional power to help them to provide assistance road traffic accidents and other road incidents.

289. *Paragraph 12* extends to community support officers the power to photograph a person who has been arrested, detained or given fixed penalty notices elsewhere than at a police station.

290. *Paragraphs 13 to 15* provide that an investigating officer may apply for and execute warrants issued under section 26 of the Theft Act 1968 and section 23(3) of the Misuse of Drugs Act 1971. These warrants permit investigating officers to search persons and to enter premises and to seize stolen goods and controlled drugs related to offences and documents relating to drugs offences. A warrant will be granted only

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under section 26 of the 1968 Act where a justice of the peace is satisfied that there is reasonable cause to believe that stolen goods are in a person's custody or are being stored on a premises. A warrant will be granted under section 23(3) of the 1971 Act only where a justice of the peace is satisfied that there are reasonable grounds for suspecting that controlled drugs are being possessed unlawfully by a person on premises or documents related to a drugs offence are present on those premises. Investigating officers will not be able to use force to enter those premises unless they are in the company and under the supervision of a constable, unless they are entering for the purpose of saving life or limb or preventing serious damage to property.

291. *Paragraph 16* inserts a new paragraph 33A into Schedule 4 to the 2002 Act to give to detention officers the power to take footwear impressions.

## **Part 2: Accredited persons**

292. This Part lists the new powers that can be conferred on persons accredited under a community safety accreditation scheme under section 41 of the 2002 Act by a chief officer. The powers set out in this Part add to those that may be conferred on accredited persons which are listed in Schedule 5 to the 2002 Act (as amended by the Anti-social Behaviour Act 2003). The new powers include a power to direct traffic and a power to deal with begging. Additional powers for accredited persons are intended to enable them to deal more effectively with anti-social behaviour and to help in their community safety role.

293. *Paragraph 18* amends paragraph 2(3) of Schedule 5 to the 2002 Act and will give an accredited person the power to require the name and address of a person that he believes has committed an offence under sections 3 or 4 of the Vagrancy Act 1824. Any person who refuses to give their name and address on request is guilty of an offence punishable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

294. *Paragraphs 19 and 20* insert paragraphs 3A and 8B into Schedule 5 to the 2002 Act. These make equivalent provision in respect of accredited persons as paragraphs 6 and 10 do for community support officers by enabling them to direct traffic and to require the name and address of a person who fails to follow directions.

295. *Paragraph 21* gives to accredited persons the power to photograph a person to whom they have issued a fixed penalty notice.

## **Schedule 9: Additional powers and duties of designated persons**

296. Schedule 9 makes a number of amendments to Schedule 4 to the 2002 Act which lists the powers exercisable by civilians who have been appointed as

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community support officers, investigating officers, detention officers or escort officers.

297. Schedule 9 clarifies the position of community support officers and escort officers of having legal custody of a suspect under their control until the individual has been transferred into the custody of a police officer. In addition the amendments enable the community support officer to use reasonable force to keep the individual under control and prevent him from escaping from their custody.

298. The Schedule also places a general duty on investigation and detention officers and on staff custody officers to assist officers or other designated staff to keep control of a detainee or prevent him from escaping, regardless of whether that individual is under their control at the time and enables the designated officer to use reasonable force. In the case of investigation and detention officers the use of these powers can only be used in the confines of the police station, however, for escort officers the powers extend to the immediate vicinity of the police station.

### **Section 123: Provision of information for use by police staff**

299. This section amends section 71 of the Criminal Justice and Court Services Act 2000 and sections 18 and 36 of the Vehicles (Crime) Act 2001. It gives police staff the same access to data under those provisions as police officers already have. For this purpose, police staff are persons, other than police officers, employed by a police authority and under the direction and control of the relevant force's chief officer. Police staff of the British Transport Police are persons employed by the British Transport Police Authority and under the direction and control of the Chief Constable of the British Transport Police Force.

300. The section enables police staff, in the course of their existing duties and to the extent permitted by the three legislative provisions being amended, to access certain information regarding drivers' licences and the validity of such licences, information contained in the register of persons carrying on business as registration plate suppliers and certain motor insurance information.

### **Section 124: Interpretation of Part 3**

301. This section explains that each mention of the term "PACE" in Part 3 refers to the Police and Criminal Evidence Act 1984.

## **Part 4: Public order and conduct in public places etc.**

### **Section 125: Harassment intended to deter lawful activities**

302. A number of companies have been granted injunctions under section 3 of the Protection from Harassment Act 1997 ("the 1997 Act") to protect their employees



from harassment by animal rights protestors. Despite this, it is not clear how far the 1997 Act can be used to protect employees of a company or a company itself.

303. Under section 1 of the 1997 Act the term “harassment” applies to a course of conduct which harasses or alarms another or which causes that person distress. The conduct has to take place on at least two occasions. Section 2 of the 1997 Act makes it a criminal offence for a person to pursue a course of conduct which amounts to harassment of another and which that person knows amounts to harassment of the other. Section 3 provides a civil remedy which enables a victim to seek an injunction against a person who is harassing them or may be likely to do so. To secure a conviction under section 2 it needs to be proven that there is a course of conduct in which one person harassed another on at least two occasions. The courts have applied a strict interpretation of the word “another” which has confined the application of this provision to harassment of individuals and thus it is unclear how far employees of a company can benefit from this provision when they have not previously themselves been harassed even though a fellow employee has been.

304. Section 125 seeks to address this. *Subsection (2)* amends section 1 of the 1997 Act by inserting a new subsection (1A) which makes it an offence for a person to pursue a course of conduct involving the harassment of two or more persons on separate occasions which he knows or ought to know involves harassment and the purpose of which is to persuade any person (not necessarily one of the persons being harassed) not to do something he is entitled to do or to do something he is not under any obligation to do. It is not intended to catch lawful lobbying or peaceful protesting. A person distributing leaflets outside a shop about which they are protesting, for example, would not be caught unless they were to actually threaten or intimidate the person to whom they were handing out the leaflet and that person felt harassed, alarmed or distressed. There would also have to be at least two separate incidents amounting to a course of conduct. The sort of behaviour which will engage the new offence is activity involving threats and intimidation which forces an individual or individuals to stop doing lawful business with another company or with another individual.

305. *Subsection (5)* inserts a new section 3A in the 1997 Act. This new section allows for an injunction to be sought where there is an actual or apprehended breach of new section 1(1A). New section 3A(2) defines who can apply to the High Court or county court for an injunction, namely the person who is the victim of the course of conduct or any person at whom the persuasion is aimed. In other words, where people who work for a particular company are being harassed in order to persuade them not to work for that company, or in order to persuade the company not to supply another company, either the employees themselves or the company in question could apply for an injunction.

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306. *Subsection (7)* amends the definition of course of conduct in section 7(3) of the 1997 Act to clarify that, in the case of conduct in relation to two or more persons, course of conduct means conduct on at least one occasion in relation to each person.

**Section 126: Harassment etc of a person in his home**

307. *Subsection (1)* inserts a new section 42A in the Criminal Justice and Police Act 2001 to create a new offence of harassment etc of a person in his home.

308. Currently, section 42 of the Criminal Justice and Police Act 2001 gives the police the power to issue a direction to any person who is outside or in the vicinity of a person's home and who they reasonably believe is there to represent to the resident, or persuade the resident, that he should not do something that he is entitled to do (or should do something that he is not obliged to do) and his presence amounts to or is likely to cause the resident harassment, alarm or distress.

309. The new offence criminalises behaviour of broadly the same kind as that which currently enables the police to issue a direction under section 42 of the Criminal Justice and Police Act 2001.

310. New section 42A(1) (a) to (d) sets out the four ingredients of the new offence which need to be proved. A person will commit an offence if (i) he is present outside or in the vicinity of any premises that are used as a dwelling; (ii) he is there to represent to the resident or another individual, or persuade the resident or another individual, that he should not do something he is entitled to do or should do something he is not obliged to do; (iii) the person intends his presence to amount to harassment, alarm or distress to the resident or knows or ought to know that his presence is likely to do so; and (iv) his presence amounts to or is likely to result in harassment of the resident or another individual.

311. New section 42A(2) defines the individuals who can be subjected to harassment by a person under subsection (1) - namely, the resident, someone in the resident's dwelling or a person in a nearby dwelling, for example a neighbour.

312. New section 42A(3) clarifies that a person's presence in subsections (1)(c) and (d) can be a person's presence on his own or with other people.

313. New section 42A(5) sets out the penalty for the offence under subsection (1).

314. New section 42A(7) clarifies that "dwelling" in section 42A has the same meaning as in Part 1 of the Public Order Act 1986, namely "any structure or part of a structure occupied as a person's home or as other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied...".

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315. *Subsection (2)* provides a constable in uniform with a power to arrest anyone who he reasonably suspects is committing or has committed an offence under new section 42A. By virtue of *subsection (3)* this arrest power will cease to have effect on the commencement of section 110 of this Act which provides a new arrest regime for offences.

**Section 127: Harassment etc: police direction to stay away from person's home**

316. Section 127 amends section 42 of the Criminal Justice and Police Act 2001 (the “2001 Act”) to make it an offence for a person, where he is subject to a direction to leave the vicinity, to return within a period of up to 3 months (the precise length of time to be specified by a constable) for the purposes of representing to or persuading a person not to do something he is entitled to do, or to do something he is not obliged to do.

317. It is doubtful whether a direction issued by a police officer under section 42 could lawfully direct a person to stay away from the premises for anything other than a relatively short period of time. Section 127 addresses this point.

318. *Subsection (2)* substitutes a new section 42(4) of the 2001 Act, which sets out the requirements that may be imposed by a direction. This gives a police constable the discretion to require someone either just to leave the vicinity of the premises in question, or to leave the vicinity and not to return to it within a specified period of up to 3 months.

319. The effect of *subsections (3) and (4)* of section 127 is to create different offences and penalties for non-compliance with a direction, depending on the requirements imposed by the direction.

320. *Subsection (3)* amends subsection 42(7), which is the current offence and penalty for knowingly contravening a direction given by a constable, to make it clear that the offence in 42(7) does not apply to situations where a requirement to leave the vicinity and not to return within a specified period has not been complied with.

321. *Subsection (4)* inserts new subsections (7A) to (7C) in section 42 of the 2001 Act. New subsection (7A) creates a new offence of failure to comply with a direction to leave the vicinity and not to return within a specified period for the purposes of representing to or persuading the resident that he should do something or not to do something. New subsection (7B) sets out the penalty for an offence committed under subsection (7A).

322. New subsection (7C) is a transitional provision which takes into account the alteration of penalties for summary offences in the Criminal Justice Act 2003. Until

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section 281(5) of the Criminal Justice Act 2003 comes into force, the maximum custodial penalty for the new offence will be 6 months.

### **Section 128: Offence of trespassing on designated site**

323. This section creates a criminal offence in England, Wales and Northern Ireland, of trespassing on sites designated by order by the Secretary of State. *Subsection (3) (a) to (c)* specify the circumstances in which the Secretary of State may designate a site. The Secretary of State may designate a site if (a) it is Crown land (defined in *subsections (8) and (9)*), (b) it is privately owned by either the Monarch or the immediate heir to the Throne, or (c) it appears to the Secretary of State that it is appropriate to do so in the interests of national security.

324. *Subsection (4)* provides a defence to a person charged with an offence under this section whilst *subsection (6)* states proceedings may not be brought against a person for this offence without the consent of the relevant Attorney General.

### **Section 129: Corresponding Scottish offence**

325. This section provides a corresponding offence of entering, or being on, a designated site in Scotland without lawful authority. However, the Secretary of State may only designate sites in Scotland in the interests of national security (*subsection (3)*). *Subsection (4)* provides a defence to a person charged with an offence under this section.

### **Section 130: Designated sites: powers of arrest**

326. This section gives a constable in England and Wales a power to arrest without warrant an individual who he reasonably suspects is committing or has committed an offence under section 128. Once section 110 is in force, this will not apply. A similar power in respect of Northern Ireland is achieved by *subsection (2)* which states that an offence under section 128 is an arrestable offence under the Police and Criminal Evidence (Northern Ireland) Order 1989. *Subsection (3)* gives a constable in Scotland a power to arrest without warrant an individual who he reasonably suspects is committing or has committed an offence under section 129.

### **Section 131: Designated sites: access**

327. This section has the result that various public access rights in England, Wales, Scotland and Northern Ireland will not be exercisable in relation to land which is the subject of a designation order made under section 128(2) or 129(2) as appropriate. *Subsection (1)* lists the public access legislation, namely section 2(1) of the Countryside and Rights of Way Act 2000, Part III of the Countryside (Northern Ireland) Order 1983 and section 1 of the Land Reform (Scotland) Act 2003 (asp2). *Subsection (2)* permits the Secretary of State to take any necessary steps to inform members of the public of the effect of the designation order, including in particular

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displaying notices on or near the relevant site. *Subsections (3) and (4)* set out the circumstances in which the Secretary of State may take such steps.

**Section 132: Demonstrating without authorisation in designated area**

328. *Subsection (1)* creates the offence of organising or taking part in a demonstration, or carrying out a demonstration alone, without an authorisation in the designated area, which is defined in section 138. *Subsections (3), (4) and (5)* provide exemptions for lawful industrial disputes and public processions.

**Section 133: Notice of demonstrations in designated area**

329. *Subsection (1)* requires that a person seeking authorisation for a demonstration gives written notice to the Commissioner of Police of the Metropolis. *Subsection (2)* provides that if it is reasonably practicable, notice is to be given not less than 6 clear days before the demonstration is to start. If not reasonably practicable, notice is to be given as soon as it is. In all cases at least 24 hours' notice must be given.

330. *Subsection (3)* requires that the notice is given by the organiser and *subsection (4)* sets out what the notice must include. *Subsections (5) and (6)* set out how the notice can be delivered to the Metropolitan Police.

**Section 134: Authorisation of demonstrations in designated area**

331. *Subsections (1) and (2)* set out that if a written notice complying with section 133 is received the Commissioner must give authorisation for the demonstration.

332. *Subsection (3)* allows the Commissioner to impose conditions on those taking part in or organising a demonstration, if, in his reasonable opinion they are necessary for the purpose of preventing any of the following:

- (a) hindrance to any person wishing to enter or leave the Palace of Westminster,
- (b) hindrance to the proper operation of Parliament,
- (c) serious public disorder,
- (d) serious damage to property,
- (e) disruption to the life of the community,
- (f) a security risk in any part of the designated area,

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(g) risk to the safety of members of the public (including any taking part in the demonstration).

333. *Subsection (4)* sets out details of the conditions the Commissioner may impose. *Subsection (5)* set out what the authorisation must specify. *Subsection (6)* requires the Commissioner to give notice in writing of the authorisation and of certain other specified matters.

334. *Subsection (7)* makes it an offence not to comply with a condition or to diverge from the particulars specified in the authorisation. *Subsection (8)* creates a defence if a person can prove that failure arose from causes beyond his control or from something done with the agreement or by the direction of a police officer.

#### **Section 135: Supplementary directions**

335. This section allows the senior officer at the scene to impose additional conditions or to vary conditions imposed by the Commissioner or later by a police officer if the senior officer reasonably believes that they are necessary for preventing the results set out in section 134(3).

336. *Subsection (5)* defines "senior police officer" as the most senior in rank at the scene.

#### **Section 136: Offences under sections 132 to 135: penalties**

337. *Subsections (1) to (4)* set out the penalties for the offences under sections 132 to 135. *Subsection (5)* provides a constable in uniform with a power to arrest anyone whom he reasonably suspects is committing an offence under these sections. This arrest power will cease to have effect on the commencement of section 110 of this Act which provides a new arrest regime for offences.

#### **Section 137: Loudspeakers in designated area**

338. *Subsection (1)* states that a loudspeaker shall not be operated, at any time for any purpose in a street within the designated area. *Subsections (2) and (3)* set out the exceptions. *Subsection (4)* sets out the penalties for operating a loudspeaker in contravention of the prohibition.

#### **Section 138: The designated area**

339. *Subsection (1)* provides for "the designated area" to be defined in an order (subject to the negative resolution procedure) made by the Secretary of State. *Subsection (3)* states that no point in the designated area may be more than one kilometre from Parliament Square.

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### **Section 139: Orders about anti-social behaviour etc**

340. This section amends the Crime and Disorder Act 1998 (“the 1998 Act”). *Subsection (2)* provides that in proceedings for breach of an anti-social behaviour order pursuant to section 1(10) of the 1998 Act, a copy of the court order as granted (including any maps and details of any prohibitions) can be put before the court as evidence that an order has been made, without the need for a statement formally proving the making of the original order.

341. *Subsection (3)* amends section 1A of the 1998 Act to provide an order making power enabling the Secretary of State to add to the list of “relevant authorities” that may apply for anti-social behaviour orders. *Subsection (4)* provides that the court can adjourn the proceedings for consideration of a section 1C order (anti-social behaviour orders on conviction). This adjournment can take place after sentence has been passed.

342. *Subsections (6) to (9)* give the court the power to grant an interim order in relation to an application for an order under section 1 or 1B or a request under section 1C of the 1998 Act pending a full hearing.

343. *Subsection (10)* provides that the court can adjourn the proceedings for consideration of a Football Banning Order as set out in section 14A of the Football Spectators Act 1989. This adjournment can take place after sentence has been passed.

### **Section 140: Variation and discharge of anti-social behaviour orders made on conviction**

344. This section also amends the Crime and Disorder Act 1998. *Subsection (4)* inserts new section 1CA which allows a “relevant authority” as set out in section 1(1A) or the Crown Prosecution Service (CPS) to apply to vary or discharge an anti-social behaviour order made on conviction (that is, a section 1C order). At present only the subject of a section 1C order may make such an application.

345. New subsection 1CA (7) provides that no section 1C order shall be discharged before two years have passed since the date of the order without the consent of the defendant and the DPP. This is replicating the same principle that exists for section 1 and 1B orders, where the two parties to the application have to consent (section 1(9)).

### **Section 141: Anti-social behaviour orders etc.: reporting restrictions**

346. This section disapplies automatic reporting restrictions for breaches, committed by children and young persons, of anti-social behaviour orders and orders made under sections 1B and 1C of the Crime and Disorder Act 1998. *Subsection (2)* provides that in proceedings brought against a child or young person for breach of such an order, a court will not be bound by automatic reporting restrictions in section 49 of the Children and Young Persons Act 1933. However, the court will retain

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discretion to apply reporting restrictions. *Subsection (3)* provides that breaches of anti-social behaviour orders made on conviction will also be covered by this amendment.

**Section 142: Contracting out of local authority functions relating to anti-social behaviour orders**

347. This section amends Part 1 of the Crime and Disorder Act 1998 (“the 1998 Act”), by inserting a new section 1F – Contracting out of local authority functions. Section 1 of the 1998 Act provides power for a 'relevant authority' to apply for an Anti-social Behaviour Order (ASBO) in respect of any person aged over 10.

348. Subsection (1) of new section 1F of the 1998 Act enables the Secretary of State to make an order which may specify a person to whom local authorities may contract out their ASBO functions, which may be exercised by that person or employees of his.

349. Subsection (2)(a) and (b) of new section 1F provides that the order may specify conditions on how the local authority must make arrangements for contracting out its ASBO functions. Subsection (2)(c) also enables the local authority to make its own conditions when contracting out its ASBO functions.

350. Subsection (3)(a) of new section 1F provides that the order may specify whether the local authority may contract out all or some of its ASBO functions (under section 1 of the 1998 Act). Subsection (3) also provides that the order may specify whether the local authority can make arrangements enabling a person specified in the order to exercise its ASBO functions generally, or only in specific cases or areas.

351. Subsection (4) of new section 1F provides that the order may specify that the person to whom the local authority may contract out its ASBO functions, may be treated as if he were a public body for the purposes of section 1 of the Local Authorities (Goods and Services) Act 1970. This may be necessary to enable the local authority to provide to the specified person any goods or services to facilitate the exercise of the contracted out ASBO function.

352. Prior to the making of an order, subsection (5) of new section 1F requires the Secretary of State to consult the National Assembly for Wales where the order specifies relevant authorities in Wales, such representatives of local government and any other persons as he thinks appropriate.

353. Subsection (6) of new section 1F provides that, notwithstanding any contracting out arrangements the local authority may wish to make, the local authority still retains the power to discharge its ASBO functions (under Section 1 of the 1998 Act).



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354. Subsection (7) of new section 1F provides that the following provisions of the Deregulation and Contracting Out Act 1994 apply to the contracting out of ASBO functions:

- section 72 (effect of contracting out);
- section 73 (termination of contracting);
- section 75 and Schedule 15 (provision relating to disclosure of information);
- paragraph 3 of Schedule 16 (authorised persons to be treated as officers of local authority).

355. Subsection (8) of new section 1F ensures that the application of the provision mentioned in subsection (7) operates in relation to a person specified by an order under this section to whom a local authority has contracted out its functions.

356. Subsection (9) of new section 1F provides that local authorities and the persons to whom they may contract out their ASBO functions, must have regard to any guidance issued by the Secretary of State for the purposes of section 1F. Subsection (10) enables an order to make different provision for different purposes. Subsection (11) of new section 1F enables an order to include consequential, supplemental, incidental, transitional or savings provisions. Subsection (12) of new section 1F defines local authorities for the purposes of this section.

357. *Subsections (2) and (3) of section 142 makes minor consequential amendments to the 1998 Act.*

**Section 143: Special measures for witnesses in proceedings for anti-social behaviour orders etc.**

358. This section amends the Crime and Disorder Act 1998 by inserting a new section 11. *Subsection (2) of new section 11 makes provision for special measures directions, as set out in Chapter 1 of Part 2 of the Youth Justice and Criminal Evidence Act 1999, to be made in proceedings relating to anti-social behaviour orders. These proceedings are listed in subsection (1). They are proceedings in a magistrates' court on application for an anti-social behaviour order, proceedings in a magistrates' court or Crown Court on application for an anti-social behaviour order following conviction, and proceedings in a magistrates' court on application for an interim anti-social behaviour order. At present special measures directions under the Youth Justice and Criminal Evidence Act apply to vulnerable and intimidated witnesses in the context of criminal proceedings only.*

359. *Subsection (4) of new section 11 provides for the appropriate rules of court to apply, subject to any modification provided for by the rules.*

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360. *Subsection (5)* of new section 11 applies sections 47, 49 and 51 of the Youth Justice and Criminal Evidence Act 1999. These sections relate to restrictions on reporting special measures directions and associated offences.

#### **Section 144: Parental compensation orders**

361. This section gives effect to schedule 10.

#### **Schedule 10: Parental compensation orders**

362. Paragraph 2 inserts into the Crime and Disorder Act 1998 new sections 13A to 13E which provide power for magistrates' courts in England and Wales to make parental compensation orders ("PCOs") on application by a local authority.

363. *New section 13A: Parental compensation orders.* This provides that the magistrates' court will be able to make a PCO where it is satisfied to the civil standard of proof that a child under the age of 10 has taken or caused loss or damage to property in the course of behaving anti-socially or committing an act that would have been criminal if he were 10 or over (subsection (2)) and where making the order would be desirable in the interests of preventing a repetition of the behaviour in question (subsection (1)). The order will require the child's parent(s) or guardian(s) (other than a local authority) to pay compensation to any person or persons affected by the taking of the property or by its loss or damage.

364. "Parent" is defined in part 1 of the Family Law Reform Act 1987 and includes either of the natural parents whether or not they were or are married to each other. The definition of "guardian" is from the Children and Young Persons Act 1933: any person who has for the time being the care of the child. Courts cannot make a local authority subject to PCO.

365. The Secretary of State will be able to vary by order the maximum amount of compensation that a parent or guardian can be required to pay which is currently set at £5,000 (subsections (4) & (5)). The court will have the same powers to enforce a PCO as it does to enforce a sum ordered to be paid on conviction such as a fine (subsection (6)).

366. *New section 13B: Parental compensation orders.* This new section allows the court to specify how the compensation is to be paid (this can be by instalment) and sets out factors the court must take into account when deciding the level of compensation. These include any compensation the parent or guardian has paid on a voluntary basis, any reparation the child has completed and the parents' or guardians' means. The court will be able to order parents or guardians to provide a statement of their financial circumstances and failure to comply will be an offence, as will knowingly making a false statement. Both offences are punishable with a fine.

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367. New *section 13C: Parental compensation orders: supplemental*. This provides that before making a PCO in favour of a person the court must take his or her views into account and consider the child's family circumstances and the likely effect of the order. Subsection (3) requires the court to explain the effect of the order, the consequences of failing to comply and that the court may review it on the application of the parents, guardians or local authority. The court can vary or discharge the order.

368. New *section 13D: Parental compensation orders: appeal*. This new section allows parents or guardians to appeal to the Crown Court against the PCO or the amount of compensation.

369. New *section 13E: Effect of parental compensation order on subsequent award of damages in civil proceedings*. This new section specifies that if a person who has had a PCO made in his favour brings civil proceedings his claim will be assessed without regard to the PCO but the amount of compensation paid under the PCO will be deducted from the amount of damages recovered.

370. Paragraph 3 amends section 8 of the 1998 Act so that a parenting order can be made in the same proceedings as a PCO. Part 2 of Schedule 10 makes equivalent provisions for PCOs in Northern Ireland.

## **Part 5: Miscellaneous**

### **Section 145: Interference with contractual relationships so as to harm animal research organisation**

371. This section creates a new criminal offence. *Subsections (1) to (4)* need to be read together as these describe the new offence. There are two steps involved in establishing whether an offence has been committed under these provisions. Firstly, a person needs to either commit a crime or a tortious act causing loss or damage (see paragraph 372 below), or threaten someone that they or someone else will commit a crime or such a tortious act, with the intention of harming an "animal research organisation" (as defined in section 148). Secondly, this needs to be likely or intended to cause the person against whom the crime or relevant tortious act is committed or threatened to fail to perform a contractual obligation, to withdraw from a contract or to decide not to enter into a contract. For this purpose "contract" and "contractual" include non-contractual arrangements.

372. A tortious act is an act which is wrong in civil law but is not a criminal offence. The normal remedy is for the victim of the tort to sue for damages in the civil courts. The effect of the section is to make a tortious act which causes loss or damage, and which is committed with the necessary intention, a criminal offence. By virtue of subsection 3(b), no offence is committed if the only relevant tortious act is inducement to breach a contract. The effect of this subsection is to ensure that no

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offence is committed by those peacefully advocating or representing that one person should cease doing business with another on the basis that that others connection to an animal research organisation.

373. *Subsection (5)* defines what is meant by “harming” an animal research organisation - to cause such an organisation loss or damage of any kind, or to prevent or hinder such an organisation from carrying on any of its activities.

374. *Subsections (6) and (7)* ensure that the offence will not be committed where the act on which it might otherwise be based is a tortious act done in contemplation or furtherance of a “trade dispute” as defined in the Trade Union and Labour Relations (Consolidation) Act 1992.

#### **Section 146: Intimidation of persons connected with animal research organisation**

375. *Subsection (1)*, read with *subsection (5)*, creates a further criminal offence. It is committed where a person (“A”), with the intention of persuading another person (“B”) not to do something he is entitled to do, or to do something he is not obliged to do, threatens B that A himself or someone else will commit a crime or do a tortious act causing loss or damage to B or someone else, and A does so wholly or mainly because B has a connection with an animal research organisation.

376. *Subsection (2)* lists the kinds of persons who are connected, directly or indirectly, with an animal research organisation for the purpose of the offence. The list includes the employees and office holders of animal research organisations; people with a financial interest in those organisations (including shareholders) or who give financial support to them; suppliers and customers and those with a financial interest in them or who financially support them, and people personally known to these people; students at educational establishments that are animal research organisations are included. In turn, those who supply and are customers of these people, or are known to them, are also included.

377. *Subsection (3)* has the effect that for the purposes of the list in subsection (2) the term “office holder” includes directors, managers and secretaries of companies, charity trustees, and partners in partnerships. *Subsection (4)* ensures for the purposes of the list in subsection (2) that the terms “customer” and “supplier” include customers and suppliers of goods, services and facilities. *Subsection (6)* gives the Secretary of State the power to amend subsection (2) (the list of connected persons) by means of an order subject to the affirmative resolution procedure. *Subsections (7) and (8)* exclude acts done in contemplation or furtherance of a trade dispute from the scope of the offence and operate in the same way as subsections (6) and (7) of section 142.

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**Section 147: Penalty for offences under sections 145 and 146**

378. *Subsection (1)* sets out the penalties on conviction for the new offences. A trial may take place either in a magistrates' court or in a Crown Court. If a person is found guilty by a magistrates' court, the maximum sentence is 51 weeks imprisonment, or a fine equal to statutory maximum (currently £5,000), or both. If a person is found guilty in a Crown Court, the maximum sentence is 5 years' imprisonment, an unlimited fine, or both.

379. *Subsection (2)* provides that prosecutions can only be instituted by or with the consent of the Director of Public Prosecutions.

**Section 148: Animal research organisations**

380. Section 148 defines animal research organisations for the purposes of the two offences in sections 145 and 146. The persons and organisations are listed in *subsections (2) and (3)*. *Subsection (2)* describes the first group of people and organisations: they are the owners, lessees or licensees of premises where procedures regulated under the Animals (Scientific Procedures) Act 1986 may take place or where animals to be used in such procedures may be bred or supplied from. *Subsection (3)* lists a second category of persons and organisations: they are the employers of holders of licences to carry out regulated procedures on animals, and of persons named in certificates designating places where the breeding or supply of animals for use in such procedures may take place, and those who engage such people under contracts for their services.

381. *Subsection (4)* gives the Secretary of State a power, by means of an order subject to the affirmative resolution procedure, to amend the section to include any other description of persons who are involved in regulated procedures under the 1986 Act, or have a direct connection with such persons.

**Section 149: Extension of sections 145 to 147**

382. Section 149 gives the Secretary of State the power, by means of an order subject to the affirmative resolution procedure, to extend the scope of the new offences created in sections 145 and 146 so that the offences apply in relation to criminal acts and tortious acts causing loss or damage done in relation to other descriptions of persons or organisations.

383. *Subsection (2)* imposes a restriction on the order making power in *subsection (1)*. It has the effect that the Secretary of State may only make an order if satisfied that a series of events has taken place that were directed at the description of persons or organisations, or people connected with them, which would have been offences under sections 145 and 146 had they been directed at animal research organisations or people connected with them.

**Section 150: Offence in respect of incorrectly registered vehicles**

384. This section inserts a new section 43C into the Vehicle Excise and Registration Act 1994 (“the 1994 Act”). It creates a new offence of using, on a public road or in a public place, a vehicle which is incorrectly registered if vehicle excise duty is chargeable on that vehicle or that vehicle is an exempt vehicle in respect of which a nil licence is required to be in force. A vehicle is incorrectly registered if the name and address of the keeper are not recorded on the register provided for by the Secretary of State under the 1994 Act. A vehicle is also incorrectly registered if any of the particulars on the register in respect of the vehicle are incorrect.

385. It is already an offence under the 1994 Act for the keeper of a vehicle to fail to correct these details on the register. At present, however, a person found driving such a vehicle escapes penalty if he cannot be proved to be the keeper.

386. It is a defence under subsection (3) of new section 43C for the user to show that there was no reasonable opportunity for the name and address of the keeper to be supplied for registration or that there was no reasonable opportunity to correct incorrect particulars on the register. It is a defence under subsection (4)(a) of new section 43C for the user to show that he had reasonable grounds for believing, or that it was reasonable for him to expect, that the name and address of the keeper or the particulars were correctly recorded. Subsection (4)(b) of new section 43C allows further defences to be provided by regulation.

387. A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1000). Subsection (2) of the section amends Schedule 3 to the Road Traffic Offenders Act 1988 so as to make an offence under new section 43C of the 1994 Act a fixed penalty offence.

**Section 151: Power of constables etc. to require production of registration documents in respect of a vehicle**

388. This section inserts a new section 28A into the Vehicle Excise and Registration Act 1994. It provides constables and persons authorised by the Secretary of State for the purposes of this section with a power to require a person using a vehicle to produce the registration document issued in respect of that vehicle on demand. An authorised person exercising this power must produce evidence of his authority to exercise the power if requested to do so. A person who does not produce the document required will be committing an offence, unless one of three conditions applies. The first is if within 7 days or as soon as reasonably practicable the person produces the document required in person at a police station or vehicle testing station nominated by him at the time of the request. The second condition is that the vehicle is subject to a lease or hire agreement, that the vehicle is not, and is not required to be, registered in the name of the lessee or hirer under that agreement, that the person

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produces appropriate evidence of the agreement within seven days or as soon as reasonably practicable at a police station or vehicle testing station nominated by him and the person has reasonable grounds for believing or it is reasonable for him to expect that the person from whom the vehicle has been leased or hired is able to produce or require the production of the registration document. The third condition is that any exception to the offence provided in regulations made under new section 28A is met.

389. A person who is guilty of an offence under new section 28A is liable on summary conviction to a fine not exceeding level 2 on the standard scale (currently £500).

### **Section 152: Power to seize etc. vehicles driven without licence or insurance**

390. This section inserts new sections 165A and 165B into the Road Traffic Act 1988 (“the 1988 Act”). It gives the police a specific power to seize immediately vehicles which are detected being used by uninsured drivers or drivers who do not have a valid licence, and for the vehicle to be removed, released or disposed of in accordance with regulations made by the Secretary of State. Those regulations are likely to require payment of prescribed charges, and the production of a valid insurance certificate or licence, in connection with the release of a vehicle.

391. Subsection (1) of new section 165A sets out that the new powers provided by subsection (5) can be exercised only when one of the conditions set out in subsections (2) to (4) is met. The conditions in subsections (2) and (3) are that a constable in uniform has required a person to produce his licence and counterpart or evidence of insurance, the person has not done so and the constable has reasonable grounds to believe that a vehicle is or had been driven by a person not appropriately insured against third party risk or without a valid licence. The condition in subsection (4) is that a constable in uniform has required a vehicle to stop, but it has not stopped or stopped long enough for appropriate enquiries and the constable has reasonable grounds for believing that the vehicle is being driven without appropriate insurance or a valid licence. Subsections (2) to (4) refer to the constable using the powers he already has under section 163 of the 1988 Act (to stop a vehicle), under section 164 of the 1988 Act (to require production of licence and counterpart) and under section 165 of the 1988 Act (to require the production of insurance documents). Under subsection (5) of new section 165A the officer would have the power to seize and remove the vehicle, a power to enter premises (other than a private dwelling house) on which he has reasonable grounds for believing the vehicle to be in order to effect the seizure and a power to use reasonable force, if necessary for these purposes.

392. New section 165B allows the Secretary of State to make regulations that set the procedures and arrangements for removal, retention, release and disposal of vehicles, including prescribed charges and periods, and arrangements for notifying the

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registered keeper, owner or driver. The seizure power in new section 165A will not come into effect until regulations under new section 165B are made.

393. The provision required by subsection (3) of new section 165B excuses from any payment a registered keeper or owner who could demonstrate that he was not driving the vehicle at the time, that the seized vehicle had been used without his knowledge and consent and that he could not reasonably have prevented it from being driven.

**Section 153: Disclosure of information about insurance status of vehicles**

394. This section will enable the police to have access to insurance industry data relating to vehicles whose use is no longer insured. The police will be able to link the processed data to Automated Number-Plate Reader (ANPR) units to assist them in detecting people driving without insurance.

**Section 154: Power to require specimens of breath at roadside or at hospital etc.**

395. This section amends sections 6D (Arrest), 7 (Provision of specimens for analysis), 8 (Choice of specimens of breath), 9 (Protection for hospital patients) and 10 (Detention of persons affected by alcohol or a drug) of the Road Traffic Act 1988. The amendments will permit police to carry out an evidential breath test not only at a police station, but also at a hospital, or at or near a place (such as the roadside) where a preliminary breath test has been administered. The results of the evidential breath test will be admissible as evidence in court. Under the current law an evidential breath test may only be administered at a police station.

396. The preliminary test will continue to be available under section 6A (Power to administer preliminary tests) for the police to screen suspects. The option of taking a person to a police station for an evidential test remains.

397. In the event of a positive result or a refusal, or if the police officer believes the equipment not to be working properly, the person may be arrested and taken to a police station. If a person is unable to provide breath he may be required to provide a specimen of blood or urine, which must be taken at a police station. If the breath reading is no more than 50 microgrammes of alcohol per 100 millilitres of breath, the person who provided it may ask for it to be replaced by a specimen of blood or urine which must be taken at a police station.

398. Although the police may complete the evidential breath testing procedure satisfactorily at the roadside they may need in some circumstances to arrest the person and detain him at a police station until he is fit to drive. The section amends section 10 of the Road Traffic Act 1988 so as to provide that a person may be detained at a police station if a constable has reasonable grounds for believing that, were that



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person then driving or attempting to drive a mechanically propelled vehicle on a road, he would commit an offence under section 4 or 5 of that Act.

**Section 155: Payments by Secretary of State to police authorities in relation to the prevention, detection and enforcement of certain traffic offences**

399. Section 155 allows the Secretary of State to make payments to police authorities in respect of the whole or any part of their expenditure on the prevention and detection of the motoring offences specified in *subsection (3)* and on enforcement action relating to such offences. This will, with the agreement of the Treasury, enable money from fixed penalties for such offences to be recycled to fund such future prevention, detection and enforcement activities. In practice this will enable resources to be directed towards the deployment of police intercept teams using automatic number plate recognition technology.

400. *Subsection (4)* contains a power for the Secretary of State to amend the list of specified offences by order (subject to the negative resolution procedure).

**Section 156: Payments by Scottish Ministers to police authorities etc. in relation to the prevention, detection and enforcement of certain traffic offences**

401. Section 156 allows the Scottish Ministers to make payments to police authorities or joint police boards in respect of the whole or any part of their expenditure on the prevention and detection of the motoring offences specified in *subsection (3)* and on enforcement action relating to such offences. This will, with the agreement of the Treasury, enable money from fixed penalties for such offences to be recycled to fund such future prevention, detection and enforcement activities. In practice this will enable resources to be directed towards the deployment of police intercept teams using automatic number plate recognition technology.

402. *Subsection (4)* contains a power for the Scottish Ministers to amend the list of specified offences by order (subject to the negative resolution procedure).

**Section 157: Publication of local policing information**

403. This section inserts new section 8A into the Police Act 1996. It places a duty on police authorities to produce a summary of information on local policing matters, specifically for members of the public, as soon as possible after the end of each financial year (31<sup>st</sup> March).

404. *New section 8A(3)* permits the Secretary of State, by order (subject to the negative resolution procedure), to specify matters that must be included in this 'local policing summary'. Examples of the types of material that may be required to be included in the summary are:

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- a) crime statistics for the police area, including data showing the trend over time and comparisons with other forces or Basic Command Units, for:
  - i) all crime;
  - ii) volume crimes (vehicle crime, robbery, domestic burglary);
  - iii) violent crime; and
  - iv) sanction detections (i.e. crimes detected where there was a method of disposal which had consequences e.g. a warning, caution, reprimand as opposed to those detected and written off because for example the injured party no longer wished to press charges);
- b) any performance indicators, standards and targets specified or set in relation to policing in the local area for the financial year being reported upon;
- c) local and force level policing priorities;
- d) numbers of police officers, Community Support Officers and other police staff employed by the police authority in the local area;
- e) details of any assessments undertaken by Her Majesty's Inspectors of Constabulary in the local area;
- f) contact details for local police commanders;
- g) contact details for local police stations;
- h) information on the membership, role and priorities of the police authority;
- i) information on how the public can get involved in local community safety initiatives;
- j) local projects/ initiatives that are underway; and
- k) information on joining the police.

405. *New section 8A(4)* requires police authorities to publish and then make appropriate efforts to distribute the 'local policing summary' to all households in its police area.

406. *New section 8A(5)* requires police authorities to have regard to any guidance issued by the Secretary of State on the form and content of the local policing summary.

407. *New section 8A(6)* requires the Secretary of State, prior to making an order under *new section 8A(2)* or issuing guidance, to consult with appropriate stakeholders – including police authority and chief officer representative bodies (namely, the Association of Police Authorities and the Association of Chief Police Officers).

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**Section 158: Responsibilities in relation to the health and safety etc. of police**

408. This section, which came into force on Royal Assent, amends the Health and Safety at Work etc. Act 1974 ('the 1974 Act') so that any prosecution of a chief officer of police for an offence under that Act is ordinarily brought against the office of chief constable rather than against the individual incumbent. This would bring the position of a chief officer into line with that of police authorities which are liable as bodies corporate for breaches of health and safety legislation in respect of police staff (who are employees of police authorities).

409. *Subsection (1)* inserts new subsections (2A) to (2F) into section 51A of the 1974 Act (which applies Part 1 of that Act to the police). New *section 51A(2A)* provides that a chief officer shall be treated as a corporation sole for the purpose of the application of Part 1 of the 1974 Act to the police. Accordingly, any prosecution under the Act would be pursued against the office of chief constable rather than against the office holder for the time being. However, the chief officer for the time being may also be prosecuted in a personal capacity if it can be shown that he personally consented to the commission of an offence or personally connived in its commission, or was personally negligent (new *section 51A(2B) and (2C)*).

410. New *section 51A(2D) and (2E)* makes it clear that in relation to contraventions of the 1974 Act, it is the corporation sole who is treated as the employer of officers rather than the chief officer in person who would otherwise be vicariously liable for unlawful conduct of officers under his direction and control. New *section 51A(2F)* adapts new *section 51A(2A) to (2C)* to Scotland which does not have the concept of a corporate sole.

411. *Subsection (4)* repeals provisions in the Police Reform Act 2002 relating to health and safety. These provisions have not been brought into force.

412. *Subsection (5)* backdates the effects of the amendments to the 1974 Act to 1<sup>st</sup> July 1998 for the purpose of any legal proceedings commenced on or after the commencement of this section which, by virtue of section 178, was the date this Act received Royal Assent (namely 7<sup>th</sup> April 2005). The effect of *subsection (6)* is that anything done by a chief officer before the commencement of this section shall be deemed to have been done by him in his capacity as a corporation sole for the purposes of any proceedings under the 1974 Act.

413. *Subsection (7)* provides that the individual liability conferred by new section 51A(2B) of the 1974 Act does not apply in respect of anything occurring before this Act received Royal Assent.

*These notes refer to the Serious Organised Crime and Police Act 2005 (c.15) which received Royal Assent on 7th April 2005*

**Section 159 and Schedule 11: Investigations: accelerated procedure in special cases**

414. Section 159 introduces Schedule 11, which makes amendments to Schedule 3 to the Police Reform Act 2002 to enable disciplinary proceedings to be brought earlier than currently possible where certain 'special' conditions are met. Those conditions are met where there is good evidence that the police officer has committed a criminal offence that would justify dismissal and the appropriate authority considers that it is in the public interest for the person to cease to be a member of a police force, or a special constable without delay.

415. Currently, the provisions in Schedule 3 to the 2002 Act prevent the bringing of criminal or disciplinary proceedings in relation to any matter which is the subject of an investigation until the investigation has been completed and a report has been submitted to the Independent Police Complaints Commission or to the appropriate authority. Furthermore, they prevent the bringing of disciplinary proceedings until any criminal proceedings have been brought to a conclusion.

416. Where the special conditions are met, the amendments made by Schedule 11 allow a report to be submitted before the investigation has been completed and for disciplinary proceedings to be brought earlier than would otherwise have been possible. The disciplinary proceedings may also be brought before any related criminal proceedings (the appropriate authority would consult the Director of Public Prosecutions before proceeding in this way). The Director of Public Prosecutions may request that the investigation be continued, notwithstanding the commencement of disciplinary proceedings.

**Section 160 and Schedule 12: Investigations: deaths and serious injuries after contact with the police**

417. This section gives effect to Schedule 12 which amends Part 2 of the Police Reform Act 2002 to bring a new category of cases under the jurisdiction of the Independent Police Complaints Commission. The new category, 'death or serious injury matters', will cover cases where persons have died or been seriously injured following some form of direct or indirect contact with the police and there is reason to believe that the contact may have caused or contributed to the death or serious injury. They will be cases that do not involve a complaint or a conduct matter when first identified and categorised. Such cases may relate to the direction and control of a police force, which would normally be excluded by section 14 of the Act.

418. *Paragraph 12* of Schedule 12 amends Schedule 3 to the 2002 Act to ensure that this new category of cases is recorded and referred to Independent Police Complaints Commission for a determination regarding investigation under paragraph 15 of Schedule 3. On completion of the investigation, a final report into a death or serious injury matter will be submitted and the Independent Police Complaints

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Commission may make recommendations or give advice under section 10(1)(e) of the 2002 Act (*paragraph 24* of Schedule 12). Where the investigation reveals a conduct matter (a criminal or disciplinary offence), the matter will be treated as a conduct matter from that point forward under Schedule 3 to the 2002 Act. Thus, disciplinary proceedings may be brought.

### **Section 161: Abolition of Royal Parks Constabulary**

419. This section abolishes the Royal Parks Constabulary (RPC) and provides that RPC constables' appointments as constables will terminate on an appointed day. This does not affect their employment as Crown servants. The section also gives effect to Schedule 13.

### **Schedule 13: Abolition of Royal Parks Constabulary: Supplementary**

420. Part 1 provides for the establishment of eligibility for transfer of park constables to the Metropolitan Police Authority (MPA) by regulation and a power to terminate Crown employment.

421. Part 1 also provides for the Secretary of State to make schemes to transfer constables, property, rights and liabilities from the RPC to the MPA. The Schedule sets out the provisions which a transfer scheme may include. In particular, it may provide for RPC constables who wish and are eligible to do so, to become attested as Metropolitan Police Service (MPS) constables. Alternatively, the scheme may provide for them to transfer to employment by the MPA as CSOs or police staff, if they are eligible and wish to do so. The scheme may provide for the continuity of employment of transferred constables and for periods of service as a RPC constable to count towards benefits available as an MPS constable which are dependent of length of service.

422. Part 2 makes amendments to primary legislation. Most amendments are consequential on the abolition of the RPC. However, paragraph 13 amends the Police Reform Act 2002, firstly so as to add breaches of park regulations to the list of "relevant offences" in relation to which CSOs have limited powers of detention as set out in paragraph 2 of Schedule 4 to that Act, and secondly in order to provide CSOs with power to take temporary possession of items which they suspect have been used in the commission of a park trading offence.

### **Section 162: Regulation of specified parks**

423. This section disapplies the Parks Regulation Act 1872 to parks specified in an order made by the Secretary of State. In practice this means the Royal Parks. The section preserves the power of the Secretary of State to make regulations in respect of the specified parks. *Subsection (3)* re-enacts in updated form the requirement in section 10 of the Parks Regulation Act 1872 in relation to the display of park regulations in the specified parks.

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### **Sections 163 to 168: Criminal record checks**

424. These sections make a number of amendments to Part 5 of the Police Act 1997 (“the 1997 Act”). They improve the effectiveness of the Disclosure service provided by the Criminal Records Bureau (CRB) (and its counterparts in Scotland – “Disclosure Scotland” – and Northern Ireland) which provides criminal record certificates and enhanced criminal record certificates (commonly known as ‘Standard Disclosures’ and ‘Enhanced Disclosures’ respectively) about convictions and related information. It provides these certificates in response to applications from persons seeking posts and positions within the scope of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 or in relation to Scotland the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003.

### **Section 163: Criminal record certificates**

425. This section replaces sections 113 and 115 of the 1997 Act which deal with criminal record certificates and enhanced criminal record certificates respectively. These new provisions, which insert new sections 113A – 113F into the 1997 Act, consolidate the existing provisions, which have been subject to a number of amendments under earlier legislation, and make some changes to existing arrangements.

426. New section 113A consolidates the provisions for criminal record certificates, and new section 113B for enhanced criminal record certificates. New section 113B also extends the range of police forces and other organisations from whom the CRB (and disclosure bodies in Scotland and Northern Ireland) can seek non-conviction information for the purposes of enhanced criminal record certificates to include bodies such as the British Transport Police and HM Revenue and Customs (new section 113B (10) and (11)). This is in response to part of recommendation 31 of the report of the Bichard Inquiry (see paragraph 61 above).

427. New section 113C consolidates the provisions for criminal record certificates relating to searches done when the applicant wants to work with children. It also gives the CRB access to additional lists maintained in Scotland and Northern Ireland which are comparable to the lists maintained in England and Wales of people who are unsuitable to work with children, and an order-making power to allow the Secretary of State to add more such lists in the future (new section 113C(3)). This gives effect to the remainder of recommendation 31 of the Bichard Inquiry report. (Disclosure Scotland would similarly have access to lists maintained in England and Wales and in Northern Ireland.) The section also brings a child’s prospective special guardian and other people living in the same household within the scope of the categories of people in relation to whom criminal or enhanced criminal record certificates can include information in relation to matters specified in new section 113C(1).

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428. New section 113D consolidates the provisions for criminal record certificates relating to searches done when the applicant wants to work with vulnerable adults. In a similar way to section 113C, it also gives the CRB access to additional lists maintained in Scotland and Northern Ireland comparable to the lists maintained in England and Wales of people who are unsuitable to work with vulnerable adults, and an order-making power to allow the Secretary of State to add more such lists in the future (subsection 113D(3)). Disclosure bodies in Scotland and Northern Ireland will also be given access to all specified vulnerable adults' lists.

429. New section 113E sets out the arrangements for the conduct of initial checks against lists of people unsuitable to work with children or vulnerable adults in exceptional circumstances, so that a person may be permitted to start work in advance of the CRB's certificate being issued. It also allows the CRB to make an additional charge for this additional service. The new arrangements will also apply to the disclosure bodies in Scotland and Northern Ireland. New section 113F contains supplementary provisions and is part of the consolidation of the previous provisions. It also contains references to relevant legislation from Scotland and Northern Ireland.

430. *Subsection (4)* of section 163 enables the Secretary of State to make transitional arrangements for checks on persons seeking to become children's special guardians or about whom a court is considering whether to make a special guardianship order if the provisions of the Adoption and Children Act 2002, which establish such guardians, are brought into force before the new sections 113A to 113F of the 1997 Act.

#### **Section 164: Criminal records checks: verification of identity**

431. The section enables the CRB (and disclosure bodies in Scotland and Northern Ireland) to check passports and driving licences presented by applicants in order to verify their identity. It creates a statutory gateway to enable the disclosure bodies to access information held by the UK Passport Agency, the Driver and Vehicle Licensing Agency, Driver and Vehicle Licensing Northern Ireland and also the database of National Insurance numbers maintained by the Department for Work and Pensions. It gives effect to recommendation 23 of the report of the Bichard Inquiry.

#### **Section 165: Certain references to police forces**

432. This section contains amendments to sections 119, 120A and 124A of the Police Act 1997. *Subsection (1)(a)* amends subsection 119(3) to allow the Secretary of State to determine administratively the fees which are payable to police authorities for dealing with requests for information. Currently such fees are set by statutory instrument subject to the negative resolution procedure.

433. *Subsection (1)(b)* inserts new subsections 119(6) and (7). This amendment ensures that the definition of "police authority" for the purposes of section 119

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includes bodies such as the Northern Ireland Policing Board, and the other bodies included in new subsections 113B(10) and (11). *Subsections (2) and (3)* amend sections 120A and 124A of the Police Act 1997 in the same way. *Subsection (2)* also makes it clear that the amendments will be inserted into the different versions of section 120A of the 1997 Act that apply in England and Wales and in Scotland.

#### **Section 166: Further amendments to Police Act 1997 as it applies to Scotland**

434. This section contains amendments to sections 120A and 126 of the Police Act 1997 in relation Scotland. *Subsection (1)* amends subsection 120A(5) to allow the Scottish Ministers to determine administratively the fees which are payable to police authorities for dealing with requests for information.

435. *Subsection (2)* amends section 126 by inserting 2 new subsections. New subsection (3) provides for references to the Secretary of State in Part 5 to be construed as references to the Scottish Ministers in the application of the provisions to Scotland. New subsection (4) disapplies subsection (3) in relation to the references to the Secretary of State contained in section 118(2A)(c) (data held by the Secretary of State in connection with keeping records of national insurance numbers) and section 124A(1) and (2) which deal with the notification of decisions about registration by Scottish Ministers to the Secretary of State.

#### **Section 167: Part 5 of the Police Act 1997: Northern Ireland**

436. These amendments extend the provisions of Schedule 35 to the Criminal Justice Act 2003, which in turn amended Part 5 of the Police Act 1997, to Northern Ireland. The extension of these provisions to Northern Ireland will provide the new Criminal Records Disclosure body to be established there with the same powers and flexibility as the Criminal Records Bureau in England and Wales.

#### **Section 168: Part 5 of the Police Act 1997: Channel Islands and Isle of Man**

437. This section permits the extension of Part 5 of the Police Act 1997 to the Channel Islands and the Isle of Man by Order in Council.

#### **Section 169: Powers of Crown Court and Magistrates' Court to issue witness summons**

438. This section amends section 2(1) of the Criminal Procedure (Attendance of Witnesses) Act 1965, section 97 and 97A of the Magistrates Courts Act 1980, paragraph 4(1) of Schedule 3 to the Crime and Disorder Act 1998 and section 51A(1) of the Judicature (Northern Ireland) Act 1978. Under the law as it currently stands, the court must issue a summons if two conditions are met. First, if a person is likely to be able to give evidence likely to be material evidence, or produce any document or thing likely to be material evidence for the purpose of any criminal proceedings before the court. Second, if the person will not voluntarily attend as a witness or will not voluntarily produce the document or thing. This section alters this second



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condition so that the test for the issuing of a witness summons is instead that the court is satisfied that it is in the interests of justice to do so. This will allow a court to issue a witness summons in more situations and, specifically, earlier in the proceedings in order to pre-empt the likely non-attendance of a witness. It applies equally to both applications for a witness summons by the defence and the prosecution.

**Section 170: Powers of courts-martial etc. to issue warrants of arrest in respect of witnesses**

439. This section amends Section 25 of the Armed Forces Act 2001, which amended the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957, so that the same conditions apply to the issue of a witness summons in courts martial as to their issue in the criminal courts, as amended by section 169.

**Section 171: Private Security Industry Act 2001: Scottish extent**

440. This section gives effect to Schedule 15 which extends the provisions of the Private Security Industry Act (PSIA) 2001 to Scotland. It also adds the Security Industry Authority to the list of bodies in Schedule 2 to the Scottish Public Services Ombudsman Act 2002. This has the effect of enabling the Ombudsman to investigate complaints in relation to the devolved functions of the SIA.

**Schedule 15: Private Security Industry Act 2001: Scottish extent**

441. Schedule 15 makes a number of amendments to the PSIA 2001 to extend its scope to include Scotland. These are mainly technical in nature. Where a section of the 2001 Act is not amended this is because it will apply in Scotland without modification.

442. *Paragraph 2(a)* amends section 2 of the PSIA 2001 which deals with directions by the Secretary of State. It places a duty on the Secretary of State to consult Scottish Ministers where any directions to the SIA relate either wholly or mainly to Scotland.

443. *Paragraph 2(b)* places a duty on the SIA to provide Scottish Ministers with such information relating to its activities in Scotland as is requested by them.

444. *Paragraph 3* inserts a new section 2A into the PSIA 2001. New section 2A provides that for certain purposes the SIA is to be treated as a cross-border public authority within the meaning of the Scotland Act 1998. These purposes are:

- (a) section 5(5B) of the Parliamentary Commissioner Act 1967 (restriction on investigatory powers of the Parliamentary Commissioner for Administration);

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- (b) section 23(2)(b) of the Scotland Act 1998 (powers of the Scottish Parliament to require persons outside Scotland to attend and give evidence or produce documents);
- (c) section 70(6) of the Scotland Act 1998 (accounts prepared by cross border authorities);
- (d) section 91(3)(d) of the Scotland Act 1998 (provision for investigation of certain complaints); and
- (e) section 7(5) of the Scottish Public Services Ombudsman Act 2002 (restriction on investigatory powers of ombudsman).

445. *Paragraph 4* adds a new subsection 3(3A) to the PSIA 2001 which gives the Scottish Ministers the power to designate activities under subsection 3(2) after consultation with the Secretary of State. *Paragraph 5* amends section 7 of the PSIA 2001 which deals with licensing criteria and directs that the SIA must publish details of the determining criteria and how that criteria should be determined. Section 7 requires that the Secretary of State must first approve any criteria or revised criteria in order for them to have effect. This amendment has the effect of requiring the Secretary of State to consult Scottish Ministers before giving such approval.

446. *Paragraph 6* amends section 11 of the PSIA 2001 which sets out the mechanisms for appeals against refusal of grant of a licence, conditions imposed on a licence issued under the Act or where a licence is modified or revoked. The amendments are technical and ensure that the appeals system works within the Scottish Justice system by providing for a first appeal to a Sheriff and a subsequent appeal to a Sheriff Principal.

447. *Paragraph 7* amends section 13 of the PSIA 2001 so that it does not have effect in Scotland. The section has the effect of allowing the Secretary of State, by order, to make provision for local authorities in England and Wales to carry out some or all of the functions of the SIA. The power has not been exercised.

448. *Paragraph 8* extends the provisions of section 15 of the PSIA 2001 to include Scotland. Section 15 imposes a duty on the SIA to maintain a scheme by which persons providing security industry services in England and Wales may receive approval of their services or part of them by the SIA.

449. Section 18 of the PSIA 2001 sets out the mechanisms for appeals against refusal of an application for approval under section 15, conditions imposed on an approval and the the modification or withdrawal of an approval. *Paragraph 9* ensures that the appeal mechanism works within the Scottish justice system.

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450. *Paragraph 10* amends section 23 of the PSIA 2001 so that the partners of a Scottish partnership may be prosecuted for an offence under the Act as well as the partnership itself.

451. Section 24 of the PSIA 2001 requires the Secretary of State to consult the Security Industry Authority before making any orders or regulations. *Paragraph 11* makes the following amendments to that section:

- 1(a): Allows Scottish Ministers to make regulations in respect of Schedule 2 paragraph 8(3)(d);
- 1(b): Allows Scottish Ministers to make orders and regulations under the Act by statutory instrument;
- 1(c): Exempts the need for an order made by Scottish Ministers to be laid before the Westminster Parliament;
- 1(d): Requires an order or regulations made by Scottish Ministers to be laid before the Scottish Parliament subject to negative resolution procedure; and
- 1(e): Requires the Secretary of State to consult Scottish Ministers before making regulations or an order except where the regulations or order relates to vehicle immobilisation, which does not apply in Scotland.

11(f): allows any order or regulations made under the Act by the Scottish Ministers to contain any such incidental, supplemental, consequential and transitional provisions as they see fit.

452. *Paragraph 12* adds a new section 26(2A) which gives the Scottish Ministers powers to commence the provisions of the Private Security Industry Act 2001 after consultation with the Secretary of State. It also amends section 26(4) and extends the provisions of the PSIA 2001 to Scotland.

453. *Paragraph 13* amends Schedule 1 to the PSIA 2001. Schedule 1 contains detailed provisions about the constitution of the Security Industry Authority, including membership, financial matters and production of an annual report. This paragraph:

- Requires the Secretary of State to consult Scottish Ministers prior to appointing or removing the Chairman of the Authority;
- Requires the Secretary of State to consult Scottish Ministers before approving the appointment of a Chief Executive;
- Allows Scottish Ministers to make payments to the SIA from the Scottish Consolidated Fund in respect of its Scottish operations;
- Requires the SIA to send a copy of its statement of accounts to the Scottish Ministers and for the Scottish Ministers to present those accounts to the Scottish Parliament;

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- Requires the SIA to send its annual report to the Scottish Ministers and for the Scottish Ministers to lay a copy of this report before the Scottish Parliament.

454. *Paragraph 14* amends Schedule 2 to the 2001 Act. Schedule 2 describes the activities that are subject to control under the Act. Part 1 relates to the controlled activities of security operatives. Part 2 provides for additional controls in relation to door supervisors and, in England and Wales only, wheel clampers. The amendments to the Schedule are as follows:

- 14(a): Paragraph 3 of Schedule 2 relates to the immobilisation of vehicles by wheel clampers and relates to England and Wales only as they may not operate in Scotland. Therefore, this amendment has the effect of restricting this paragraph to England and Wales only.
- 14(b): Paragraph 4(1) of Schedule 2 defines the activities covered as surveillance, inquiries or investigations carried out for the purpose of obtaining information about a person or about a person's activities or whereabouts. It also excludes certain activities and this amendment creates an additional exclusion relating to Scotland. A new sub paragraph (4A) is inserted after paragraph 4(4) which excludes the provisions of paragraph 4 from applying to the activities of anyone who is an advocate or solicitor in Scotland in the provision of legal services by him, his firm or a body corporate of which he is a director or member or by which he is employed.
- 14(c): This paragraph introduces regulation by the SIA of precognition officers other than those acting on behalf of the Crown or a person who is an advocate or solicitor in Scotland. This is achieved by the addition of a new paragraph 4A in Part 1 of Schedule 2. This will apply only in Scotland as precognition officers do not exist in England and Wales.
- 14(d): Amendments to paragraph 8(2) extend the definition of licensed premises for the purposes of additional controls to include those which are applicable in Scotland. This covers the following Scottish licensed premises:
  - Public Houses;
  - Hotels;
  - Dance halls under an entertainments licence;
  - Premises to which an occasional licence applies;
  - Premises for which an occasional permission applies;
  - Premises licensed under the Civic Government (Scotland) Act;
- 14(e): this paragraph specifies that precognition agents are the third group subject to additional controls. This is to ensure that all precognition agents who work for defence agents are regulated regardless of their employment status.

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## **Part 6: Final provisions**

### **Section 172: Orders and regulations**

455. This section sets out the parliamentary procedure, if any, that applies in respect of the various order and regulation-making powers in the Act. All such powers exercisable by the Secretary of State are subject to the negative resolution procedure save for those specified in *subsection (4)* (where no parliamentary procedure applies) and *subsection (5)* (where the affirmative procedure applies). *Subsection (2)* specifies that any delegated power exercisable by the Secretary of State includes the power to make different provision for different cases or different purposes or areas.. This subsection also enables orders and regulations to make incidental, supplementary, consequential, transitory, transitional or saving provisions. Orders or regulations made by the Scottish Ministers under the Act attract the same, or similar, provisions (see *subsections (1), (2) and (6) to (8)*).

### **Section 173: Supplementary, incidental, consequential etc. provision**

456. This section enables the Secretary of State to make supplementary, incidental or consequential provision. An order made under this power will be subject to negative resolution procedure, unless primary legislation is being amended in which case it is subject to the affirmative resolution procedure. In the circumstances set out in *subsection (5)* a similar power is exercisable by the Scottish Ministers.

457. This section is different from the power provided in section 172(2) in that it is exercisable independently of the commencement power in section 178 and creates in effect a free-standing power to make consequential provisions at any time, including a power to amend primary and secondary legislation. It is considered necessary, particularly in respect of the SOCA and arrest provisions, to pick up any consequential amendments not identified before the Act's introduction or during its passage.

### **Section 174: Minor and consequential amendments, repeals and revocations**

458. This section gives effect to Schedules 16 and 17 which make minor and consequential amendments and set out legislation to be repealed by this Act.

### **Section 175: Penalties for offences: transitional modification for England and Wales**

459. The penalties for various new offences set out in the Act have been drafted in such a way as to reflect the new sentencing framework provided for in the Criminal Justice Act 2003. This section substitutes lower maximum penalties that would apply for specified offences until such time as the relevant provisions of the 2003 Act come into force.

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**Section 176: Expenses**

460. This section authorises additional expenditure incurred by the Secretary of State as a result of the provisions of the Act and increases in expenditure under existing Acts.

**Section 177: Interpretation**

461. This section defines ‘SOCA’ and ‘enactment’ for the purposes of the Act.

**Section 178: Commencement**

462. This section provides for commencement (*subsections (1) to (8)*). *Subsection (9)* enables provisions of the Act to be piloted, for example in specified police force areas, before being rolled out country wide *Subsection (10)* confers on the Secretary of State a free standing order-making power (that is, separate from the power to make commencement orders) to make transitional or saving provisions connected with the coming into force of any provision in the Act. The order-making power is not subject to any parliamentary procedure. *Subsection (11)* confers a similar power on the Scottish Ministers

**Section 179: Short title and extent**

463. *Subsection (1)* sets out the short title of the Act. *Subsections (2) to (10)* set out extent of the Act. The SOCA provisions (Part 1 of the Act) and provisions on financial reporting orders (Chapter 3 of Part 2), witness protection (Chapter 4 of Part 2), international obligations (Chapter 5 of Part 2) and Proceeds of Crime (Chapter 6 of Part 2) will apply throughout the UK. Chapter 1 of Part 2 (investigatory powers of the DPP) will extend to England, Wales and Scotland. The Queen’s Evidence provisions in Chapter 2 of Part 2 will extend to England, Wales and Northern Ireland. The provisions of the Act amending existing legislation will, with some exceptions, have the same extent as the relevant legislation (*subsection (7)*).

**COMMENCEMENT**

464. Section 178 of the Bill provides for commencement. The following provisions came into force on Royal Assent (ie on 7<sup>th</sup> April 2005):

- section 117(7) (which deals with the use of databases to identify a deceased person);
- section 167 (which extends certain amendments to Northern Ireland);
- section 158 and Part 1 of Schedule 17 (which relate to chief officers’ responsibilities for health and safety); and
- Part 6 (final provisions), apart from sections 174 and 175.

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465. Section 163(4) (which relates to checks on special guardians) will come into force 3 months after Royal Assent. The remaining provisions of the Act will be brought into force by means of commencement orders made by the Secretary of State or, in appropriate cases, Scottish Ministers.

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## HANSARD REFERENCES

466. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

<b>Stage</b>	<b>Date</b>	<b>Hansard reference</b>
<b>House of Commons</b>		
Introduction	24 November 2004	Vol. 428 Col. 101
Second Reading	7 December 2004	Vol. 428 Cols. 1044-1140
Committee	11 January 2005 13 January 2005 18 January 2005 20 January 2005	Hansard Standing Committee D
Report and Third Reading	7 February 2005	Vol. 430 Cols. 1201-1318
Commons consideration of Lords amendments	7 April 2005	Vol. 432 Cols. 1582-1600
<b>House of Lords</b>		
Introduction	8 February 2005	Vol. 669 Col. 664
Second Reading	14 March 2005	Vol. 670 Cols. 1077-1198
Committee	5 April 2005	Vol. 671 Cols. 595-713
Report and Third Reading	6 April 2005	Vol. 671 Cols. 752-786

Royal Assent – 7 April 2005

House of Commons Hansard Vol. 432 Col. 1641  
House of Lords Hansard Vol. 671 Col. 949



*These notes refer to the Serious Organised Crime and Police Act 2005 (c.15) which received Royal Assent on 7th April 2005*

## **GLOSSARY**

<b>ABBREVIATION</b>	<b>EXPLANATION</b>
ANPR	Automatic Number Plate Recognition
ARA	Assets Recovery Agency
ASBOs	Anti-social Behaviour Orders
CEHR	Commission for Equality and Human Rights (proposed by the CEHR Bill 2004)
CJS	Criminal Justice System
CPS	Crown Prosecution Service
CRB	Criminal Records Bureau
CRE	Commission for Racial Equality
CSOs	Community Support Officers
DCMS	Department of Culture Media and Sport
DPP	Director of Public Prosecutions
DVLA	Driver and Vehicle Licensing Agency
ECHR	European Convention on Human Rights
EU	European Union
FPNs	Fixed Penalty Notices
HMIC	Her Majesty's Inspector of Constabularies

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HMCE	Her Majesty's Customs and Excise
HMRC	Her Majesty's Revenue and Customs
INDIS	Immigration and Nationality Directorate Intelligence Service
IPCC	Independent Police Complaints Commission
MPA	Metropolitan Police Authority
MPS	Metropolitan Police Service
NAFIS	National Automated Fingerprint Identification System
NCS	National Crime Squad
NCIS	National Criminal Intelligence Service
NOMS	National Offender Management Service
PACE	Police and Criminal Evidence Act 1984
PITO	Police Information Technology Organisation
PCSPS	Principal Civil Service Pension Scheme
POCA	Proceeds of Crime Act 2002
POVA	Protection of Vulnerable Adults
PNDs	Penalty Notices for Disorder
PSNI	Police Service of Northern Ireland
PSIA	Private Security Industry Act 2001

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RCPO	Revenue and Customs Prosecution Office (proposed in the Commissioners for Revenue and Customs Bill)
RIPA	Regulation of Investigatory Powers Act
RPC	Royal Parks Constabulary
SDEA	Scottish Drug Enforcement Agency
SFO	Serious Fraud Office
SIA	Security Industry Authority
SOCA	Serious Organised Crime Agency
SOCAP Bill	Serious Organised Crime and Police Bill
UKPA	United Kingdom Passport Agency
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNTOC	UN Convention Against Transnational Organised Crime

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