

# **VIOLENT CRIME REDUCTION ACT 2006**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1: Alcohol-related violence and disorder**

##### ***Chapter 1: Drinking banning orders***

##### ***Section 1: Drinking banning orders***

72. This section provides for a new civil order, a drinking banning order (DBO), which is designed to protect persons and their property from criminal or disorderly conduct by an individual while he is under the influence of alcohol.
73. *Subsection (1)* explains that a DBO would prohibit the individual subject to the order from doing the things described in the order. *Subsection (2)* explains that a DBO may impose any prohibition on the individual that would protect others from his criminal or disorderly conduct while under the influence of alcohol. *Subsection (3)* provides that the prohibitions in the order must include whatever the court thinks necessary with regard to the subject's entering premises that sell alcohol, and club premises that can supply alcohol to members or guests.
74. *Subsection (4)* contains safeguards to ensure that the court may not impose a prohibition on the subject that prevents him from having access to a place where he lives, works or studies, or receives medical treatment, or any place he is required to attend as a result of a court order or an enactment.
75. *Subsection (5)* sets out that expressions used in *subsection (3)* have the same meaning as in the Licensing Act 2003.

##### ***Section 2: Duration of drinking banning orders***

76. This section provides for the duration of a DBO and enables this to be reduced if an individual satisfactorily completes an approved course specified in the order to address their alcohol misuse behaviour.
77. *Subsection (1)* provides that the term of a DBO, known as "the specified period", is to be between a minimum 2 months and a maximum two years. *Subsection (2)* enables different prohibitions within a DBO to take effect for different periods but in each case the "prohibition period" must be within the overall maximum and minimum specified period.
78. *Subsection (3)* provides that the terms of a DBO or the prohibitions in an order **may** cease to apply before the end of the specified period or the prohibition period if an individual successfully completes an approved course that is specified in the order.
79. *Subsection (4)* explains that under subsection (3) a time must be fixed by the court when an order, or prohibition contained in the order, would cease to have effect upon satisfactory completion by the individual of a course. It will be for the court to decide

what the appropriate length of the reduction of the order, or prohibitions therein, might be on satisfactory completion of a course.

80. But *Subsection (5)* provides that the reduction cannot be any more than half of the specified period or the prohibition period.
81. *Subsection (6)* provides that the court may only propose to an individual that they attend a specified approved course if the court is satisfied that a place is available for the individual and that the subject has voluntarily agreed to the inclusion of the provision in the order.
82. *Subsection (7)* provides that before the court makes provision about attending a course in the order the individual has to be informed in ordinary language (in writing or by other means) about the effect that including the provision in the order would have, what in general terms, attendance on the course will involve if the individual voluntarily agrees to undertake the course, any fees that would need to be paid by the individual for undertaking the course, and when the fees would need to be paid by the individual.
83. *Subsection (8)* requires that if the court decides it is not going to include provision in an order for an individual to attend an approved course then it must give its reasons for not doing so in open court.
84. *Subsection (9)* allows the Secretary of State to make regulations to modify the minimum duration of an order or prohibition where a course has been completed satisfactorily.

### ***Section 3: Orders on an application to magistrates' court***

85. *Subsection (1)* enables relevant authorities, defined in section 14 as the chief officer of a police force for a police area, the Chief Constable of the British Transport Police Force and a local authority, to apply to the magistrates' court for the imposition of a DBO on an individual aged at least 16. *Subsections (2) and (5)* provide that a DBO can be made against an individual if he has engaged in criminal or disorderly conduct while under the influence of alcohol and such an order is necessary to protect other persons from further conduct by him of that kind. The criminal or disorderly conduct must have taken place after this section has been brought into force.
86. *Subsections (3) and (4)* provide that the application for a DBO has to be made by complaint and can only be made after the applicant has consulted the "appropriate persons" specified in section 14(1).
87. *Subsection (6)* provides that nothing in the section affects the operation of section 127 of the Magistrates' Courts Act 1980. Consequently, some conduct within the six-month period preceding the application is necessary to obtain an order.

### ***Section 4: Orders in county court proceedings***

88. *Subsection (1)* enables relevant authorities (defined in section 14) to apply to the county courts in certain circumstances for a DBO against an individual. *Subsection (2)* allows a relevant authority to apply for an order in the county courts if that authority is already party to the proceedings and believes that it would be reasonable to apply for a DBO against an individual who is also already party to the proceedings. If the relevant authority is not party to such proceedings, *subsection (3)* allows it to apply to the court to be joined to such proceedings in order to apply for a DBO. A relevant authority which is already party to proceedings can also make an application for an individual to be joined to the proceedings where it believes that the individual has engaged in criminal or disorderly conduct whilst under the influence of alcohol, and where that conduct is material in relation to the proceedings in question. The relevant authority may then apply for a DBO if that individual is so joined.
89. *Subsection (6)* provides that before making such an application, the relevant authority must consult the appropriate persons as defined in section 14.

90. *Subsection (7)* provides that if it is proved that the conditions set out in section 3(2) have been met – that the individual has engaged in criminal or disorderly conduct while under the influence of alcohol and that a DBO is necessary to protect relevant persons from further such conduct by the individual – and that his criminal or disorderly conduct while under the influence of alcohol is material in relation to the proceedings, the court may make a DBO against him.

#### ***Section 5: Variation or discharge of orders under section 3 or 4***

91. *Subsection (1)* provides for the variation and discharge of DBOs made in the magistrates' court on complaint and in county court proceedings. *Subsection (2)* provides that an application to the court for variation or discharge of a DBO may be made by the person subject to the order or the relevant authority on whose application the order was made. *Subsection (3)* provides that an order made by a magistrates' court under section 3 can be varied or discharged by a relevant local court as defined in section 14.
92. *Subsections (4) and (5)* provide that an application to vary or discharge a DBO has to be made by complaint and that the order may not be varied so as to extend the specified period for which it has effect to more than two years. *Subsection (6)* provides that the order may not be discharged before the end of the period which is half the duration of the specified period, unless consent is given by the relevant authority.

#### ***Section 6: Orders on conviction in criminal proceedings***

93. *Subsections (1), (2) and (3)* provide that the court may make a DBO against an offender following criminal proceedings, where that offender is aged at least 16, was under the influence of alcohol when committing the offence and the court decides that the conditions set out in section 3(2) are satisfied. The court must at least consider whether those conditions are so satisfied. *Subsection (4)* requires that if the court decides that the conditions are satisfied but it decides not to make a DBO, it must give the reasons for not doing so in open court. *Subsection (5)* requires the court to state in open court if it decides that the conditions in section 3(2) are not satisfied, and give its reasons.

#### ***Section 7: Supplementary provision about orders on conviction***

94. *Subsection (1)* provides that on deciding whether to make a DBO following a conviction in criminal proceedings the court may consider evidence led by the prosecution and evidence led by the defence. *Subsection (2)* provides that it is immaterial whether the evidence would have been admissible in the proceedings in which the offender was convicted.
95. *Subsection (3)* provides that a DBO made following a conviction must not be made except in addition to a sentence or in addition to an order discharging the offender conditionally.
96. *Subsection (4)* provides that the court may adjourn any proceedings in relation to a DBO made following a conviction after sentencing the offender. *Subsection (5)* provides that if the offender does not appear for any adjourned proceedings, the court may further adjourn the proceedings or may issue a warrant for his arrest. *Subsection (6)* provides that the court may not issue a warrant for the offender's arrest unless it is satisfied that he has had adequate notice of the time and place of the adjourned proceedings.
97. *Subsection (7)* provides that a DBO made following conviction in criminal proceedings takes effect on the day on which it is made or, if the person is in legal custody at that time, on the day on which the offender is released from that custody.
98. *Subsection (8)* notes that *subsection (9)* applies in respect of a DBO made on conviction in criminal proceedings against a young person. *Subsection (9)* provides that in proceedings brought against a young person (16 to 18 year old) a court will not be

bound by section 49 of the Children and Young Persons Act 1933 and so will not have automatically to impose reporting restrictions. However, it states that the court will retain discretion to apply reporting restrictions under section 39 of that Act.

99. *Subsection (10)* amends the Prosecution of Offences Act 1985 to include in the functions of the Director of Public Prosecutions the ability to apply for a DBO.

### ***Section 8: Variation or discharge of orders under section 6***

100. *Subsection (1)* provides for the variation or discharge of a DBO made following a conviction. The subject of the DBO, the Director of Public Prosecutions or a relevant authority may apply for variation or discharge.
101. *Subsection (2)* provides that if the subject makes an application for variation or discharge he must send notice of his application to the Director of Public Prosecutions. *Subsection (3)* obliges the Director of Public Prosecutions or relevant authority to send notice of an application to vary or discharge to the subject of the DBO. *Subsection (4)* provides that a DBO made on conviction in criminal proceedings in the magistrates' court can be varied or discharged by a relevant local court as defined in Section 14.
102. *Subsection (5)* prevents a DBO made under section 6 from being varied to extend the specified period to over 2 years. *Subsection (6)* provides that the order may not be discharged before the end of the period which is half the duration of the specified period of the DBO, or without the consent of the Director of Public Prosecutions, if earlier.
103. *Subsection (7)* amends the Prosecution of Offences Act 1985 to include in the functions of the Director of Public Prosecutions the ability to apply for variation or discharge of DBOs made under section 6 and to appear on such applications by a subject of a DBO.

### ***Section 9: Interim orders***

104. This section enables the court to make an interim order when an application is made for a DBO under section 3 or 4 or where the court is considering making a DBO on criminal conviction under section 6. *Subsection (2)* provides that the court can make an interim order if it thinks it is just to do so.
105. Where an application has been made for a DBO under section 3 or 4, *subsections (3) and (4)* enable an application for an interim order to be made without notice being given to the potential subject, and heard in the absence of that individual when the permission of the court (in the case of proceedings before the county court) or permission of the proper officer as defined in section 14 (in the case of proceedings before a magistrates' court) has been given.
106. *Subsection (5)* specifies that permission for the making of an application for an interim order without notice and for hearing the application in the individual's absence may only be given where the court or proper officer is satisfied it is necessary for the application to be made without the individual concerned receiving notice and that it is not necessary for it to be heard in his presence.
107. *Subsection (6)(a)* enables an interim order to contain any provision that could be in a full DBO. *Subsection (6)(b)* limits its duration, unless renewed, to the time specified in the order, which may not exceed 4 weeks.
108. *Subsection (7)(a)* provides that an interim order may be renewed once or more but not for longer than 4 weeks from the time it would otherwise have expired. *Subsection (7)(b)* provides it must in any event cease to have effect on the court's decision on whether or not to make a DBO.
109. *Subsections (8) and (9)* provide for applications for variation or discharge of an interim order that are made on application to the magistrates' court, in county court proceedings and on conviction in criminal proceedings. However, the provisions that prevent a full

DBO from being extended beyond 2 years do not apply as interim orders are subject to a shorter renewable 4 week limit.

### **Section 10: Appeals**

- 110. *Subsection (1)* provides the route through which appeals against the making of a DBO in the magistrates' courts can be made to the Crown Court.
- 111. *Subsection (2)* provides that on an appeal the Crown Court may make such orders as may be necessary and may also make such incidental or consequential orders as appear to it to be just. *Subsection (3)* provides that an order of the Crown Court made on an appeal shall be treated for the purposes of the provisions relating to variation and discharge of orders (sections 5 and 8) as an order of the magistrates' court from which the appeal was brought.

### **Section 11: Breach of drinking banning orders**

- 112. *Subsection (1)* provides that a breach of a DBO without reasonable excuse is an offence. *Subsection (2)* provides that someone found guilty on summary conviction is liable to a fine not exceeding level 4 (currently £2,500). *Subsection (3)* provides that a conditional discharge cannot be made in relation to the breach of a DBO.
- 113. *Subsection (4)* enables a local authority to bring proceedings for breach of a DBO, and *subsection (5)* gives the Secretary of State the power to provide by order (subject to the negative resolution procedure) that further specified persons may bring proceedings for breach of a DBO.
- 114. *Subsection (6)* provides that in proceedings for breach of a DBO, a copy of the DBO or interim order, certified as such by the proper officer, is admissible as evidence of its having been made and of its contents to the same extent as oral evidence of those things is admissible in those proceedings.
- 115. *Subsection (7)* provides that when proceedings for a breach of a DBO are brought in a youth court, a person authorised by a relevant authority is entitled to be present. *Subsection (8)* provides that in relation to proceedings brought against a young person for a breach of a DBO, a court will not be bound by automatic reporting restrictions as set out in section 49 of the Children and Young Persons Act 1933. However, the court will retain discretion to apply restrictions under section 45 of the Youth Justice and Criminal Evidence Act 1999.
- 116. *Subsection (9)* provides that if the court does exercise its power to give a direction imposing prohibitions on reporting information on identification of witnesses, complainants or defendants under the age of 18, then it must give its reasons for doing so.

### **Section 12: Approved courses**

- 117. This section sets out the basis for operating and running approved courses to address an individual's alcohol misuse behaviour.
- 118. *Subsection (1)* provides that applications can be made to the Secretary of State to run such a course and a decision would then be taken as to whether the course should be approved or not. Under *subsection (2)* when considering and deciding on the suitability of a proposed course the Secretary of State must consider the nature of the course as well as whether the person providing it is an appropriate person to do so and would run and administer the courses efficiently and effectively. In reaching that decision the Secretary of State may seek the views of other persons that have been appointed to consider such applications.
- 119. *Subsection (3)* allows for a course to be approved subject to specific conditions. *Subsection 4* states that where a course is approved it may remain so for a period



specified by the Secretary of State which must not exceed 7 years. *Subsection (4)(b)* allows for approval of a course to be withdrawn by the Secretary of State at any time.

120. *Subsection (5)* allows the Secretary of State to make regulations on the approval of courses that may include provision about making applications for course approval; payment of fees of the amounts prescribed in respect of applications for approval, the giving of approval or both; the maximum fees that an individual may pay for course and when fees have to be paid; the monitoring of courses and of persons providing the courses; details about the withdrawal of approvals; and making information available about courses and about those persons providing courses on payment of a fee or otherwise.
121. *Subsection (6)* allows the Secretary of State to issue guidance about the conduct of approved courses and requires him to have regard to this guidance in exercising his duties under subsections (1) to (5). *Subsection (7)* provides for the courts to also have regard to such guidance when considering what, for the purposes of section 13 (Certificates of completion of approved courses) constitutes reasonable instructions or reasonable requirements by a person providing an approved course.

### ***Section 13: Certificates of completion of approved courses***

122. This section makes provision about the certificates to be issued on completion of approved courses by individuals subject to a DBO.
123. *Subsection (1)* provides that an individual will only be regarded as having satisfactorily completed an approved course where he has been given a certificate to that effect by the course provider and the certificate has been received by the proper officer of the court that made the DBO.
124. *Subsection (2)* allows the Secretary of State to prescribe in regulations the form of the certificate and what it should contain. *Subsection (3)* provides that a course provider must give a certificate unless the individual who is subject to a DBO and is undertaking an approved course fails to pay the fees for the course, fails to attend the course in line with the reasonable instructions of the course provider or fails to comply with any other reasonable requirement of the course provider.
125. *Subsection (4)* provides that if the course provider decides not to issue a certificate then they must give the individual written notice of that decision and the reasons for not doing so. *Subsection (5)* provides that the course provider must provide a certificate of successful completion of an approved course by the individual, or a notice stating it is not going to provide a certificate, before the end of 14 days beginning with the day on which any request to do so is made by the individual. *Subsection (6)* provides that where an individual is given a notice refusing a certificate or has not received either a certificate or a notice within 14 days of their request then they can apply to the court which made the DBO, or if that court is not the Crown Court or a relevant local court, to a relevant local court for a declaration that the course provider has failed to meet its obligation under *subsection (3)*. Under *subsection (7)* if this is found to be the case the individual will be treated as having satisfactorily completed the approved course at the time the declaration is given for the purposes of reducing the length of the DBO.
126. *Subsection (8)* allows the Secretary of State to make regulations about the form of the notices (*under subsection (4)*) that are given to individuals who fail to satisfactorily undertake a course, the manner in which such a notice is given and when such a notice is given and considered to be effective.

### ***Section 14: Interpretation of Chapter 1***

127. This section sets out definitions for the purposes of sections 1 to 13. By virtue of the definition of “local authority” in *subsection (1)*, both district councils and county councils in two-tier local government areas can apply for a DBO.

128. *Subsection (2)* explains that protecting persons from criminal or disorderly conduct includes references to protecting their property from unlawful loss or damage. A DBO could therefore be made where such an order is necessary to protect property.
129. *Subsection (3)* provides a power to add a “relevant authority” by order at a later date for the purposes of applying for a DBO.
130. *Subsections (4) to (7)* make provision about the powers in Chapter 1 to make orders or regulations.

## **Chapter 2: Alcohol disorder zones**

### **Section 15: Power to impose charges on licence holders etc. in zones**

131. This section gives local authorities a new power to impose charges on the holders of premises licences which authorise the use of premises for the sale by way of retail of alcohol and the holders of club premises certificates which permit the club to supply alcohol to members or guests. *Subsection (1)* enables the Secretary of State to make regulations setting out the detail of these charges which will be payable monthly.
132. *Subsection (2)* provides that the regulations may require the local authority to use the revenue from these charges for the purposes specified in the regulations. The charges are likely to cover the costs of initiatives to tackle the problem of alcohol-related crime and disorder over and above the normal level of public services. The costs will cover additional enforcement activity by the police and local authority affecting all premises liable to pay the charge within the zone.
133. *Subsection (3)* requires the Secretary of State to set the charging rate at a level which he considers appropriate to cover the purposes specified in the regulations under *subsection (2)*, and the administration costs of running the scheme.
134. *Subsection (4)* enables the Secretary of State to set different charging rates in the regulations. There may be different rates for different types of local authority area (e.g. a large urban centre as compared to a rural area with one small market town), different types of alcohol disorder zones (e.g. the number of premises within the boundaries of the zone) and different premise types (e.g. those which close before a certain time at night). The rates may be set out in the regulations, or the regulations may simply prescribe the mechanisms for working out the different rates.
135. *Subsection (5)* enables the regulations to authorise or require a local authority to grant discounts from the charges. This provision will provide for the granting of discounts once the industry code of practice is launched, is well established and premises have signed up to implement it. Regulations must provide for certain premises to be exempt from the charges. These exemptions are specified in *subsection (6)*, and are limited to premises where the following two conditions are both satisfied:
- a. the premises are not principally used for the sale or supply of alcohol; and
  - b. the availability of alcohol is not the main reason or one of the main reasons why people visit the premises (either generally or at particular times of the day or week).
136. The purpose of *subsection (6)* is to ensure that licensed premises such as restaurants, hotels, cinemas and gyms, whose primary purpose and/or basis of patronage is not the sale or supply of alcohol do not have to pay the charge.
137. *Subsection (7)* ensures that discounts or exemptions can be limited to premises complying with conditions which are set out in the regulations or specified by the local authority in accordance with the regulations.
138. *Subsection (8)* enables the regulations to make provision about payment, collection and enforcement of the charges, determination of liability to pay the charges and appeals.

139. *Subsection (9)* enables the regulations to include a provision for interest to be charged on charges where payment is overdue, and for the suspension of the premises licence or club premises certificate if the charge is not paid.
140. *Subsection (10)* explains that the reference to the administration costs in *subsection (3)* is a reference to the cost of arrangements for imposing, collecting and recovering the charges.

### **Section 16: Designation of alcohol disorder zones**

141. *Subsection (1)* gives local authorities the power to designate a locality within their area as an alcohol disorder zone if the conditions specified in paragraphs (a) to (d) are satisfied.
142. *Subsections (2) and (3)* state that a local authority intending to designate an area as an alcohol disorder zone must publish a notice setting out their proposals and invite representations within 28 days about the proposal and about what might be included in an action plan to tackle the problem.
143. Following receipt of representations, *subsection (4)* requires the local authority and the local chief officer of police to publish an action plan which sets out the steps that would make the designation unnecessary. The action plan must also be sent to those who would be liable to pay the charge if the area was to be designated. The content of the plan will vary between different areas but must include details of proposed action by the local authority and the police. As an example, the proposed alcohol disorder zone may be in an area where there is a need to raise operating standards in pubs and clubs within the zone. In this case, the action plan might contain, for example, a requirement for pubs and clubs to display information about their proof of age policy. In a different scenario, the proposed alcohol disorder zone might be in an area where the pubs and clubs are quite well run, but there is a public space problem – for example, there is a lack of late-night transport, and the taxi rank is poorly lit and the scene of a lot of trouble. Here the action plan might require premises to fund extra transport provision, and provide door staff for an extra hour after closing time to monitor the taxi rank.
144. *Subsection (5)* envisages that the action plan may include setting up a scheme for payments to be made by premises in the area to the local authority. *Subsection (6)* states that the action plan must also include proposals by the local authority and the local chief officer of police for what actions they will take if the plan is implemented. *Subsection (7)* provides that the authority to make regulations under section 15(2) setting out the purposes for which the compulsory charge may be used also applies to sums received under the action plan.
145. *Subsection (8)* allows the local authority to designate the alcohol disorder zone if, and only if:
- a. 8 weeks have passed, beginning with the day after the action plan has been published, and the local authority does not consider that the trade have made substantial progress towards implementing the plan; or
  - b. the local authority is satisfied that the plan will not be implemented, that the actions are no longer being taken or that the arrangements made under the plan are no longer in place. This may be before or after the end of the 8 week period.

### **Section 17: Procedure for designation of zones**

146. *Section 17* provides further details of the procedure for the designation of zones. The procedure may be supplemented by regulations made by statutory instrument. *Subsections (4) and (5)* provide for the review of zones every three months. A designation of a locality as an alcohol disorder zone can be revoked by the local authority at any time.



***Section 18: Functions of local chief officer of police***

- 147. *Subsection (1)* imposes a duty on the local authority to consider proposing the designation of an alcohol disorder zone if the local chief officer of police suggests that they do so.
- 148. If in such a case the local authority decides against proposing the designation of a zone, *subsection (2)* requires them to give notice of their decision, setting out the reasons, to the local chief officer of police, to the Secretary of State and to the local police authority.
- 149. *Subsection (3)* requires a local authority proposing to designate a locality as an alcohol disorder zone without an application from the chief officer of police to consult the chief officer before publishing notice of their proposal.
- 150. *Subsection (4)* requires local authorities to obtain the consent of the chief officer of police before designating an alcohol disorder zone or revoking it.
- 151. If the chief officer of police does not give this consent, then *subsection (5)* requires him to give notice of his decision and the reasons for it to the Secretary of State and to the local police authority.

***Section 19: Guidance about the designation of zones***

- 152. *Section 19* requires the Secretary of State to issue guidance about the exercise of powers in relation to alcohol disorder zones. The guidance must set out alternative steps which should be considered before an area is designated as an alcohol disorder zone. Before issuing or revising guidance the Secretary of State must consult those persons set out in *subsection (3)*.

***Section 20: Supplemental provisions for Chapter 2***

- 153. *Section 20* sets out definitions for the terms used in sections 12 to 16 and makes provisions about the powers to make orders and regulations under these sections.

***Chapter 3: Other provisions***

***Section 21: Power of police to require review of premises licence***

- 154. *Section 21* inserts new sections 53A, 53B and 53C in to the Licensing Act 2003. The aim of this provision is to supplement the existing provisions in that Act which provide for conditions to be attached to licences.
- 155. Section 53A(1) enables a chief officer to apply for an expedited review of a premises licence where a senior police officer (of or above the rank of superintendent) certifies, to the relevant licensing authority, that he considers a licensed premises to be associated with serious crime and/or disorder.
- 156. Section 53A(2) requires the licensing authority, (i) within 48 hours of receipt of the certificate to consider whether it is necessary to take any of the interim steps set out at section 53B(3) pending a determination of a review of the premises licence; and (ii) within 28 days after receipt of the application, to review the premises licence and reach a determination.
- 157. Section 53A(3) provides that the Secretary of State must by regulations prescribe the procedure by which the licensing authority should conduct the review.
- 158. Section 53A(4) defines a senior police officer as being of or above the rank of superintendent. It also defines serious crime by reference to section 81 of the Regulation of Investigatory Powers Act 2000: broadly those crimes for which a sentence of imprisonment of at least three years could be imposed and offences involving violence.

*These notes refer to the Violent Crime Reduction Act 2006  
(c.38) which received Royal Assent on 8 November 2006*

159. Section 53A(5) provides that weekends and public holidays are not counted when calculating the 48 hours mentioned above.
160. Section 53B deals with the taking of interim steps by the relevant licensing authority pending determination of the review.
161. Section 53B(2) enables the relevant licensing authority to take any of the interim steps set out at subsection (3) without the licence holder having an opportunity to make representations. Section 53B(3) lists the interim steps that the relevant licensing authority must consider taking which are (a) modification of the conditions of the premises licence; (b) exclusion of the sale of alcohol by retail from the scope of the licence; (c) the removal of the designated premises supervisor from the licence; (d) the suspension of the licence. Section 53B(4) provides that the conditions of a premises licence are modified when any of them are altered or omitted or any new condition is added. A licensing authority can take one or more of the interim steps pending the review of the premises licence.
162. Section 53B(5) provides that any decision by the licensing authority to take an interim step(s) will take effect either immediately or at a later time specified by the authority. Notice of the decision must be given to the holder of the premises licence and the police.
163. Section 53B(6) provides that if the licence holder makes representations, that are not withdrawn, the licensing authority must within 48 hours of receiving them (not counting weekends and other public holidays) hold a hearing to consider them. Advance notice of the hearing must be given to the holder of the premises licence and the police.
164. Section 53B(8) requires the licensing authority to consider at the hearing whether the interim steps are necessary and to decide whether they should be withdrawn or modified. Section 53B(9) requires the licensing authority to have regard at any hearing to the senior police officer's certificate, any representations made by the police and any relevant representations made by the holder of the premises licence.
165. Section 53C deals with the procedure for conducting the determination of an application for a review made under section 53A.
166. By virtue of this section, the licensing authority must hold a hearing to consider and determine any application for review and any relevant representations made in respect of it. In order for representations to be 'relevant' they must have been made by the holder of the premises licence, an interested party or a responsible authority (see the definitions in section 13 of the Licensing Act 2003) and they must relate to the licensing objectives. If the representations are made by an interested party there is a further requirement that the licensing authority does not consider them to be frivolous or vexatious. If it does, the authority is to explain its decision to the person who made the representations. The section provides that as a result of this review the authority must, if it considers it necessary for the promotion of the licensing objectives, either modify the conditions of the licence, exclude a licensable activity which the premises licence covers, remove the designated supervisor, suspend the licence for a period not exceeding 3 months or revoke the licence. If the licensing authority does not consider any of the steps to be necessary for the promotion of the licensing objectives, it will leave the licence untouched.
167. Section 53C(10) requires the licensing authority to notify the outcome of a review and its reasons for so deciding to the licence holder, the police and any person who has made relevant representations. Section 53C(11) provides that the determination of an application for review will not take effect until any appeal has been disposed of, or if there is no appeal at the end of the period within which an appeal may be brought.

***Section 22: provisions supplemental to s. 21***

168. **Section 22** makes a number of consequential amendments to the Licensing Act 2003.

169. *Subsection (2)* prevents functions relating to the taking of interim steps pending a review under section 53C, or the determination itself, being sub-delegated to officers of a licensing authority.
170. *Subsection (3)* provides that appeals against a determination made following an application for a review under section 53A can be made by the same persons and in the same manner as in reviews under section 51 of the Licensing Act 2003.

***Section 23: Offence of persistently selling of alcohol to children***

171. *Subsection (1)* amends the Licensing Act 2003 by inserting new sections 147A and 147B.
172. Section 147A(1) creates a new offence which is committed if on three or more different occasions in a period of three consecutive months alcohol is unlawfully sold on the same premises to a person aged under 18. The subsection also provides that the offence is only committed if at the time of each sale, the premises were licensed by a premises licence issued under the Licensing Act 2003 or the premises were being used for a permitted temporary activity under the authority of a temporary event notice given under that Act. The subsection provides that the new offence is committed by the “responsible person”, who is the licence holder or premises user or (if there is more than one), every person who is one of the licence holders or premises users at the time of each unlawful sale.
173. Section 147A(2) provides that for the purposes of the offence alcohol has been sold unlawfully to a person under 18 if the person making the sale believed the individual to be under 18 or did not have reasonable grounds for believing him to be 18 or over. Section 147(3) provides that a person has reasonable grounds for so believing only if he asked the individual for evidence of his age and the evidence produced would have convinced a reasonable person; or no person could reasonably have suspected that the person was less than 18 years of age.
174. Section 147A(5) provides that the minor to whom the sales have been made may be the same individual on each of the three or more occasions, but need not be.
175. Section 147A(6) provides that the same sale may not be counted in respect of different offences for the purpose of enabling the same person to be convicted on more than one occasion of the offence in subsection (1). The same sale may also not be counted in respect of different offences for the purpose of enabling the same person to be convicted of the offence in subsection (1) and offences under sections 146 (sale of alcohol to children) or 147 (allowing the sale of alcohol to children) of the Licensing Act 2003.
176. Section 147A(7) provides that in determining whether an offence under subsection (1) has been committed the following shall be admissible evidence:
- convictions for offences under section 146 of the Licensing Act 2003 (sale of alcohol to children);
  - cautions given in respect of such offences under Part 5 of the Police Act 1997; or
  - the payment of a fixed penalty under Part 1 of the Criminal Justice and Police Act 2001 in respect of an unlawful sale to a person under 18.
177. Section 147A(8) provides that a person guilty of the offence in subsection 147A(1) shall be liable on summary conviction to a fine not exceeding £10,000.
178. Section 147A(9) provides that the Secretary of State may by order amend subsection (8) in order to increase the maximum fine.
179. Section 147B(1) provides that on the conviction of a premises licence holder for an offence under section 147A, the court may make an order suspending the premises licence for up to 3 months insofar as it authorises sales of alcohol. This means that other licensable activities carried on at the premises, such as the provision of live

music, would be unaffected. It also means that although any sales of alcohol by retail within the period of the suspension would be unlawful, sales of other goods would be unaffected. For example, it could be made unlawful for a supermarket to sell alcohol by retail for the period of the suspension but it could continue to sell other products such as vegetables.

180. Section 147B(2) provides that where more than one person is liable for an offence under section 147A, no more than one order suspending the premises licence may be made in relation to the premises in question in respect of convictions by reference to those sales.
181. Section 147B(3) provides that subject to subsections (4) and (5), an order so made by a court would come into force at the time specified by the court making the order. Subsection (4) provides that where a magistrates' court has made such an order it may suspend the order pending an appeal. Subsection (5) provides that where an appeal has been made to the Crown Court or to the Court of Appeal (including an application for leave to appeal to the Court of Appeal) against his sentence or conviction, the Courts may suspend the order made. In addition, where an offender appeals or applies for leave to appeal to the House of Lords or the High Court, the Court of Appeal may suspend the order.
182. *Subsection (2)* amends the Licensing Act 2003 by providing that the licensing authority may not institute prosecutions for the offence in new section 147A, and that the weights and measures authority may institute prosecutions for the offence. This is because the licensing authority should not have predetermined any related matters should it be required to consider an application for a review of premises licences on grounds relating to the commission of such offences.
183. *Subsection (3)* amends section 197 of the Licensing Act 2003 by providing that any order made by the Secretary of State under section 147A(9) of that Act to increase the maximum fine on conviction for the offence under section 147 of that Act would be subject to affirmative resolution procedures, except where any increase relates solely to changes in the value of money.
184. *Subsection (4)* provides that for the purposes of an offence under section 147A of the Licensing Act, no account must be taken of a sale of alcohol that took place before the commencement of section 23 of the Violent Crime Reduction Act 2006.

#### ***Section 24: Closure notices for persistently selling alcohol to children***

185. *Subsection (1)* amends the Licensing Act 2003 by inserting new sections 169A and 169B.
186. New section 169A(1) provides that a relevant officer may give a closure notice applying to any premises if there is evidence that a person ("the offender") has committed an offence under section 147A in relation to those premises; the relevant officer considers that the evidence is such that, if the offender were prosecuted for the offence, there would be a realistic prospect of conviction; and that the offender is still, at the time the notice is given, the holder, or one of the holders, of the premises licence in respect of those premises. New section 169A(11) defines a "relevant officer" as a police officer of the rank of superintendent or above; or an inspector of weights and measures appointed under section 72(1) of the Weights and Measures Act 1985.
187. New section 169A(2) defines a "closure notice" for the purposes of section 169A. It is a notice that proposes a prohibition on sales of alcohol at the premises in question for a period not exceeding 48 hours; and offers the opportunity to discharge all criminal liability in respect of the alleged offence under section 147A by the acceptance of the prohibition proposed in the notice.
188. New section 169A(3) provides that a closure notice must:
  - be in a form prescribed by the Secretary of State in regulations;

- specify the premises to which it applies;
  - give particulars of the alleged offence;
  - specify the length of the period during which sales of alcohol would be prohibited;
  - specify when that period would begin;
  - explain the effect of the proposed prohibition and the consequences under the Licensing Act 2003 (including maximum penalties) of a sale on the premises during the period for which it is in force;
  - explain the right of every person who was one of the holders of the premises licence at the time of the alleged offence to be tried for that offence; and
  - explain how that right may be exercised and how the proposed prohibition may be accepted.
189. New section 169A(4) provides that the period of the prohibition on sales of alcohol must not exceed 48 hours. It also provides that the time specified as the time from which the period of the prohibition would begin must not be less than 14 days after the date on which the closure notice was served.
190. New section 169A(5) provides that the notice must explain how the right to be tried for the alleged offence under section 147A may be exercised and how the proposed prohibition may be accepted. The closure notice must:
- provide a means of identifying a police officer or trading standards officer to whom notice exercising the option accepting the prohibition may be given;
  - set out particulars of where and how that notice may be given;
  - require the notice to be given within 14 days after the date on which the closure notice was served; and
  - explain the right to be tried for the alleged offence will be taken to have been exercised unless every person who was a holder of the premises licence at the time the notice was given accepts the proposed prohibition.
191. New section 169A(6) disapplies section 184 of the Licensing Act 2003 (giving of notices) to the arrangements for giving closure notices; and provides that a closure notice must be served on the premises to which it applies.
192. New section 169A(7) provides that a closure notice may be served only at a time when it appears to a constable or trading standards officer that licensable activities are being carried on there, for example, when the premises are open for sales of alcohol. It also provides that a closure notice may only be given by being handed by a constable or trading standards officer to a person on the premises who appears to the constable or trading standards officer to have control of or responsibility for the premises.
193. New section 169A(8) provides that a copy of every closure notice given must be sent to the holder of the premises licence for the relevant premises at whatever address for that person is given on the premises licence itself.
194. New section 169A(9) provides that a closure notice must not be given more than 3 months after the time of the last of the three unlawful sales described in section 147A(1).
195. New section 169A(10) provides that no more than one closure notice may be given in respect of offences relating to the same sales; and that a closure notice may not be given in respect of an offence in respect of which a prosecution has already been brought.
196. New section 169B, to be inserted into the Licensing Act 2003, applies where a closure notice is given under section 169A in respect of an alleged offence under section 147A.



New section 169B(2) provides that no proceedings may be brought for an alleged offence at any time before the time when the prohibition proposed by the closure notice would take effect.

197. New section 169B(3) provides that if before that time every holder of the premises licence has agreed to accept the proposed prohibition in the manner specified in the notice then:
- the prohibition takes effect at the time specified in the closure notice at the premises in question; and
  - no proceedings may be subsequently brought for the alleged offence against the holders of the premises licence or any related offence. New section 169B(5) provides that any related offence would include any offences under sections 146 and 147 of the Licensing Act 2003 to which the alleged offence under section 147A relates.
198. New section 169B(4) provides that where the prohibition takes effect, the premises licence is suspended for the period specified in the closure notice insofar as it authorises the sale by retail of alcohol. This means that any sales of alcohol which took place during the period when the premises licence was temporarily suspended would be unauthorised under the terms of the Licensing Act 2003. Under section 136 of the Licensing Act 2003 a person commits an offence if he carries on or attempts to carry on any licensable activity on or from any premises otherwise than under or in accordance with an authorisation; or he knowingly allows a licensable activity to be so carried on. A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £20,000, or to both.
199. New section 169B(6) provides that the operation of section 169B is not affected by any contravention of new section 169A(8), which is the requirement to send a copy of every closure notice to the holder of the premises licence for the premises in question.
200. *Sub-sections (2) and (3)* of section 24 amend section 170 of the Licensing Act 2003 by extending the exemption for the police from liabilities for damages to their functions in respect of closure notices and by providing a similar exemption for trading standards officers. *Subsection (4)* also amends section 170 of the 2003 Act to extend the exemption to the actions of community support officers in serving closure notices.
201. *Subsection (5)* amends section 171(5) of the Licensing Act 2003 (interpretation of Part 8) by providing definitions of “trading standards officer” and “weights and measures authority” and “closure notice”. “Closure notice” is defined by reference to section 169A. A trading standards officer is defined as a person authorised by a local weights and measures authority to act in the area where the premises in question are situated in relation to proposed prohibitions contained in closure notices. “Weights and measures authority” is given the same meaning as is given to it by section 69 of the Weights and Measures Act 1985.
202. *Subsection (6)* amends Part 1 of Schedule 4 to the Police Reform Act 2002 (powers of community support officers). It provides that a community support officer shall have the capacity of a constable to serve a closure notice.

### ***Section 25: Mandatory premises licence conditions: door supervision***

203. Section 21 of the Licensing Act 2003 imposes mandatory conditions on premises licenses in certain circumstances.
204. As unamended section 21 provides that where the premises licence is to include a condition that one or more individuals must be present at the premises at particular times to carry out a “security activity” the premises licence must include a condition that the individuals carrying out that activity must be authorised to do so by a licence from the Security Industry Authority (SIA) under the Private Security Industry Act

2001. “Security activity” in this context means an activity to which paragraph 2(1)(a) of Schedule 2 to the 2001 Act applies (manned guarding activities).

205. The amendment to section 21 will ensure that the requirement for SIA authorisation in the mandatory condition will only apply in cases where the individuals in question are required to have a licence under the 2001 Act. So if, for example, individuals are exempted under section 4 of the 2001 Act the mandatory condition will not apply so as to require them to be SIA-licensed. This will ensure that the scope of the requirement for SIA licensing for door supervision under mandatory conditions in the Licensing Act 2003 is not greater than the scope of the requirement under the original SIA legislation (the 2001 Act).

### ***Section 26: Designated public places***

206. This section amends section 14 of the Criminal Justice and Police Act 2001 regarding places which cannot be designated public places. Designated public places are places where a restriction on public drinking can be applied by means of a designated public place order, or DPPO.
207. *Subsection (2)(a) and (b)* amends section 14(1) to ensure that premises that have a premises licence or club premises certificate as defined under the Licensing Act 2003 for the sale or supply of alcohol cannot be designated by a DPPO. This continues the existing position that licensed premises should not be subject to DPPOs, as they are already subject to the requirements of the licensing regime in the 2003 Act.
208. *Subsection (3)* inserts new subsections (1A), (1B) and (1C) into section 14 which deal with the special case of premises for which local authorities are responsible. The amendments will ensure that where a local authority holds a premises licence, or premises for which there is a premises licence are occupied or managed by or on behalf of the Authority. A DPPO will only be excluded from applying to those premises at times when alcohol is actually being sold or supplied and for another 30 minutes thereafter. *Subsection (2)(c)* replaces the previous 20 minutes’ grace or wind-down period for all licensed premises with the slightly longer period of 30 minutes. Henceforth, the wind-down period will be the same for all premises, regardless of whether they are occupied or managed by a local authority: an existing DPPO will become operative once this period has elapsed.

### ***Section 27: Directions to individuals who represent a risk of disorder***

209. This section provides the police with a power to issue a direction to an individual to leave a locality to minimise the risk of alcohol related crime or disorder arising and/or taking place.
210. *Subsection (1)* provides a constable in uniform with a new power to issue a direction to leave a locality to an individual aged at least 16 who is in a public place. The direction will prohibit their return to the locality for up to 48 hours. *Subsection (2)* sets out the test which must be satisfied for a direction to be given. A direction can only be given if the presence of an individual in the relevant locality is likely, in all the circumstances, to cause or contribute to the occurrence of alcohol-related crime or disorder in that locality, or to a repetition or continuance thereof of such crime or disorder. The constable also has to be satisfied that such a direction is necessary for the purpose of removing or reducing the likelihood of there being such crime or disorder in that locality during the period for which the direction has effect, or of there being a repetition or continuance in that locality during that period of such crime or disorder.
211. *Subsection (3)* specifies matters relating to the form and content of a direction. A direction must be given in writing and may take effect either immediately or at a later time specified by the constable, for example if an immediate departure from the locality is for some reason not practicable. The direction must clearly identify the locality to which it relates and the period for which the individual is prohibited from returning. A

constable can impose requirements as to how the individual leaves the locality and the route that must be taken. A direction can be varied or withdrawn by any constable but the period for which the direction applies may not be extended beyond 48 hours.

- 212. *Subsection (4)* contains safeguards to ensure that a direction may not be given where it prevents an individual from having access to a place where he resides; where he needs to attend for employment purposes; education; medical treatment; or as a result of an enactment or court order.
- 213. *Subsection (5)* requires a constable giving a direction to make a record of the key components of the direction.
- 214. *Subsection (6)* provides that an individual who fails to comply with a direction will be guilty of an offence and would be liable on summary conviction to a fine not exceeding level 4 on the standard scale (currently £2,500).
- 215. *Subsection (7)* amends section 64A of the Police and Criminal Evidence Act 1984 to allow the police to photograph the subject of a direction, with or without his consent, elsewhere than at a police station.
- 216. *Subsection (8)* sets out the definition of a public place for the purposes of the direction to leave the locality.

## **Part 2: Weapons etc.**

### ***Section 28: Using someone to mind a weapon***

- 217. *Subsection (1)* provides that it is an offence for a person to use someone else to hide or carry a dangerous weapon so as to make the weapon available to the first person for an unlawful purpose. *Subsection (2)* sets out non-exhaustive circumstances in which a weapon is to be regarded as being available for an unlawful purpose. The offence could catch a situation where the first person would be committing an offence if he took possession of the weapon from the person minding it, and would also cover a case where the first person was intending to commit an offence with the weapon in the future. *Subsection (3)* defines “dangerous weapon” for the purposes of this offence as meaning, broadly speaking, a firearm, knife or other specified offensive weapon. *Subsection (4)* provides that in Scotland the section will not apply in relation to knives or offensive weapons, as this issue is devolved.

### ***Section 29: Penalties etc. for offence under s.28***

- 218. This section sets out the penalties for this offence, determined according to the type of dangerous weapon involved and in line with penalties for possession of the particular weapon. In some circumstances the offence will attract a minimum sentence. The section sets out where the penalties applicable vary between England and Wales and Scotland. *Subsection (11)* requires the courts to take the ages of the offender and the person used to hide or carry the weapon into account when considering sentencing. If the offender is 18 or over and the person used is under 18, this must be regarded as an aggravating factor increasing the seriousness of the offence. *Subsection (12)* requires the court to state that the person’s age is an aggravating factor. *Subsections (13)* and *(14)* ensure that in a situation where the offender turns 16 during the period when the weapon is being held by someone else, he is liable to be given the stiffer penalties which are faced by a person of that age who is convicted of the offence. These provisions also provide that if either person turns 18 during the period that the weapon is being held, the offence is still liable to be treated as aggravated if at some point in that period the offender was 18 or over and the other person was under 18.

***Section 30: Minimum sentences for certain firearms offences***

219. This section amends the minimum sentence provisions in section 51A of the Firearms Act 1968, which currently apply only to the simple offence of possession of a prohibited weapon. The minimum sentence, other than in exceptional circumstances, is five years' imprisonment for persons aged 18 or over (or 21 or over in Scotland) and three years' imprisonment for a person aged between 16 and 18 (or 21 in Scotland). This section extends these provisions to other serious offences involving the possession of prohibited weapons, to ensure that offenders do not escape the minimum sentence where they are not also charged with the simple possession offence. The additional offences all appear in the 1968 Act and are the offences under:
- Section 16 (possession of firearm with intent to injure)
  - Section 16A (possession of firearm with intent to cause fear of violence)
  - Section 17 (use of firearm to resist arrest)
  - Section 18 (carrying firearm with criminal intent)
  - Section 19 (carrying a firearm in a public place), and
  - Section 20(1) (trespassing in a building with firearm).
220. The minimum sentence will apply in the case of the above offences only where a prohibited weapon is involved.

***Section 31: Prohibition on sale or transfer of air weapons except by registered dealers***

221. This section makes it an offence to sell air weapons by way of trade or business without being registered as a firearms dealer. *Subsection (1)* adds the sale and transfer of air weapons to section 3(1) of the Firearms Act 1968, which sets out the activities for which registration as a dealer is required. *Subsection (2)* amends section 40(2) of the 1968 Act to require dealers to keep a register of transactions involving air weapons. *Subsection (3)* makes a consequential amendment to the definition of "firearms dealer" in the 1968 Act.

***Section 32: Sales of air weapons by way of trade or business to be face to face***

222. This section makes it an offence to sell air weapons by way of trade or business other than face to face. *Subsection (1)* applies the offence to sales by way of trade or business to an individual in Great Britain who is not a registered firearms dealer. *Subsection (2)* makes it an offence to transfer possession of an air weapon to the buyer otherwise than when both the buyer and either the seller or his representative are present in person. *Subsection (3)* defines a "representative" as someone employed by the seller, or another registered firearms dealer (or his employee) authorised to act on the seller's behalf. This allows an air weapon to be sent from one registered firearms dealer to another to make the final transfer in person to the buyer. This enables someone to buy an air weapon from a dealer in a distant part of the country without one or other party to the transaction having to make a long journey, while still preserving the safeguards of a face-to-face handover.
223. *Subsection (4)* makes the offence a summary offence with a maximum penalty of 51 weeks imprisonment or a £5,000 fine, or both. *Subsection (5)* sets the maximum term of imprisonment to 6 months but this will increase to 51 weeks in England and Wales after the commencement of the sentencing provisions in section 281(5) of the Criminal Justice Act 2003.

***Section 33: Age limits for purchase etc. of air weapons***

224. This section increases from 17 to 18 the minimum age for acquiring or possessing an air weapon. This will have the effect that the age limit for the purchase of air weapons will be higher than for other firearms; however, purchasers of the latter will have to satisfy the police as to their suitability under the certification process in section 1 of the Firearms Act 1968. *Subsection (2)* increases the age limit for purchasing or hiring an air weapon. *Subsection (3)* increases the age limit for possessing ammunition for an air weapon. *Subsection (4)* increases the age limit for selling an air weapon and letting one on hire. *Subsection (5)* increases the age limit for making a gift of an air weapon or parting with the possession of one.

***Section 34: Firing an air weapon beyond premises***

225. One type of air weapon misuse involves the firing of an air weapon across the boundary of premises. Existing offences covering this type of misuse are linked to the use of air weapons by young people and consequently apply only to people under 17, not to adults. This section closes this loophole by making it an offence for a person of any age to fire an air weapon beyond the boundary of premises. A defence is provided to cover the situation where the person shooting has the consent of the occupier of the land over or into which he shoots.
226. *Subsection (2)* introduces the new offence by inserting a new section 21A into the Firearms Act 1968. *Subsection (3)* removes the existing offences relating to young people in section 23(1) and 23(4) of the 1968 Act while preserving the additional offence committed by a person supervising someone under the age of 18 who commits the offence of firing an air weapon beyond premises. *Subsection (3)* also introduces the defence described above to the supervision offence.

***Section 35: Restriction on sale and purchase of primers***

227. This section restricts the purchase and sale of primers to persons who hold a relevant firearms certificate or who otherwise have lawful authority for having them. Primers are components of ammunition which contain a chemical compound that detonates on impact.
228. *Subsection (1)* applies the section to cap-type primers designed for use in metallic ammunition for a firearm. This will exclude primers for cartridge-type ammunition such as that used for shot guns. *Subsections (2)* and *(3)* make it an offence to sell a primer, or an empty cartridge case incorporating a primer, unless the purchaser:
- is a registered firearms dealer;
  - sells primers by way of trade or business;
  - produces a certificate authorising him to possess a firearm of a kind with which the primers being bought can be used;
  - produces a certificate authorising him to possess ammunition of a kind that can be used with such a firearm;
  - shows he is in the service of Her Majesty and is entitled to acquire a primer;
  - produces a certificate authorising another person to possess ammunition or such a firearm, together with that person's authority to purchase primers on his behalf;
  - shows he is entitled by an enactment (including one passed after this Act) or otherwise to possess such a firearm or ammunition without a certificate; or
  - falls within a category of person set out in regulations.



229. *Subsections (4) and (5)* make it an offence for a person to buy, or attempt to buy, primers or empty cartridge cases incorporating primers, unless he meets similar criteria.
230. *Subsection (6)* provides that a person in the service of Her Majesty is entitled to acquire primers if they are for the public service and he is duly authorised in writing, or if he holds a firearm certificate issued in accordance with section 54(2)(b) of the Firearms Act 1968 (i.e. a certificate issued free of charge to a person in the armed forces who is required to purchase a firearm for official duties).
231. *Subsection (7)* makes the offence a summary offence with a maximum penalty of 51 weeks imprisonment or a £5,000 fine, or both. *Subsection (8)* sets the maximum term of imprisonment to 6 months but this will increase to 51 weeks in England and Wales after the commencement of the sentencing provisions in section 281(5) of the Criminal Justice Act 2003.

### ***Section 36: Manufacture, import and sale of realistic imitation firearms***

232. This section makes it an offence to manufacture, import or sell a realistic imitation firearm. It includes a power to make regulations to provide for exceptions, exemptions and defences to the new offence. Realistic imitation firearms are defined by section 38.
233. *Subsection (1)* applies the offence to a person who:
- manufactures or sells a realistic imitation firearm;
  - modifies an imitation firearm to become a realistic imitation firearm; or
  - imports, or causes to be imported, an imitation firearm.
234. *Subsection (2)* applies defences in Section 37 to the offence. These defences allow for the continuing availability of realistic imitation firearms for certain specific legitimate purposes.
235. *Subsection (3)* allows the Secretary of State to make regulations to provide for exceptions and exemptions to the offence, and to provide for further defences in respect of the offence. *Subsection (4)* allows for exceptions, exemptions and defences to be based on the giving of approvals or consents, either for particular cases or for types of cases. *Subsection (5)* requires the regulations to be set out in a statutory instrument and to be subject to the negative resolution process in Parliament.
236. *Subsections (7) and (8)* provide HM Revenue & Customs with a power to seize items imported into Great Britain in contravention of this section.
237. *Subsection (9)* makes the offence a summary offence with a maximum penalty of 51 weeks imprisonment or a £5,000 fine, or both. *Subsection (10)* sets the maximum term of imprisonment to 6 months but this will increase to 51 weeks in England and Wales after the commencement of the sentencing provisions in section 281(5) of the Criminal Justice Act 2003.

### ***Section 37: Specific defences applying to the offence under s.36***

238. This section sets out defences to the offence under section 36. *Subsections (1) and (2)* makes it a defence to show that the sale etc of realistic imitation firearm was for the purposes of a museum or gallery; for theatre, film or television productions; for specified historical re-enactments; or for Crown service. *Subsection (3)* provides a defence for business to import realistic imitation firearms for the purposes of modifying them so that they cease to be realistic imitations. *Subsection (4)* provides that for a defence to be shown, a person must adduce sufficient evidence of it and the contrary must not be proved beyond reasonable doubt.
239. Under *subsection (2)* the Secretary of State will have the power to make regulations to specify which historical re-enactments will benefit from the defence in *subsection (1)*.

This enables the exception for historical re-enactments to be confined to bona fide organisations. The regulations will be subject to the negative resolution procedure.

240. *Subsection (7)* defines “historical re-enactment” as any presentation or other event held for the purpose of re-enacting an event from the past or of illustrating conduct from a particular time or period in the past. It also defines “museum or gallery” as including any institution, accessible by the public, which has as one of its purposes the preservation, display and interpretation of material of historical, artistic or scientific interest.

### ***Section 38: Meaning of “realistic imitation firearm”***

241. This section explains what is meant by the term “realistic imitation firearm”. The definition of “imitation firearm” for the purposes of this section is that used in the Firearms Act 1968, namely any thing which has the appearance of being a firearm whether or not it is capable of discharging any shot, bullet or other missile. *Subsection (1)* defines “realistic imitation firearm” as an imitation firearm which has an appearance that is so realistic as to make it indistinguishable, for all practical purposes, from a real firearm. It does not include a de-activated firearm or an antique imitation firearm. The effect of this exception for de-activated firearms is that it will still be possible to de-activate a firearm without committing the offence in section 36(1)(a) of manufacturing a realistic imitation firearm.
242. *Subsection (2)* provides that an imitation firearm is not to be regarded as distinguishable from a real one if it could only be distinguished by an expert, on close examination or as a result of an attempt to load or fire it. *Subsection (3)* provides that in determining whether an imitation is distinguishable from a real one, its size, shape and principal colour must be taken into account. An imitation is to be regarded as distinguishable if its size, shape or principal colour is unrealistic for a real firearm. In this connection, *subsections (4), (5) and (6)* provide a power for the Secretary of State to make regulations (subject to the negative resolution procedure) specifying dimensions and colours which would be regarded as unrealistic.
243. *Subsection (7)* defines “deactivated firearm” as being an imitation firearm that was a firearm but has been rendered incapable of firing. A “real firearm” is defined as a firearm of an actual make or model of modern firearm, or a firearm of a description that makes it look like it belongs to a category of firearms.
244. *Subsection (8)* defines “modern firearm” as any firearm other than one the appearance of which would tend to identify it as having a design and mechanism dating before 1870. *Subsection (9)* provides that the colour of an imitation or real firearm includes whether it is made of transparent material.
245. *Subsection (10)* has the effect that a firearm which has been marked and certified as deactivated in accordance with the Firearms (Amendment) Act 1988 will be presumed to be a deactivated firearm for the purposes of this section.

### ***Section 39: Specification for imitation firearms***

246. This section applies where imitation firearms are still permitted to be manufactured, imported or sold and requires them to be constructed in accordance with specifications laid down in regulations by the Secretary of State. The definition of ‘imitation firearm’ for the purpose of this section is the same as that for section 38.
247. *Subsection (1)* provides a power for the Secretary of State to make regulations specifying how imitation firearms must be constructed. For example this will enable the imposition of a requirement that all blank-firing imitations be constructed in such a way that it is impossible to attempt to convert them into firearms firing live ammunition.
248. *Subsection (2)* makes it an offence to manufacture or import an imitation firearm which does not conform to those specifications. It also makes it an offence to modify an

imitation firearm so that it ceases to conform to the specifications, or to modify a real firearm to create an imitation that does not conform to the specifications.

- 249. *Subsection (3)* makes the offences summary offences with a maximum penalty of 51 weeks imprisonment or a £5,000 fine, or both. *Subsection (4)* sets the maximum term of imprisonment to 6 months but this will increase to 51 weeks in England and Wales after commencement of the sentencing provisions in section 281(5) of the Criminal Justice Act 2003.
- 250. *Subsection (5)* allows the regulations to provide that an imitation firearm is to be presumed to conform with the specifications if it has been certified to this effect in accordance with arrangements set out in the regulations.
- 251. *Subsection (8)* requires the regulations to be set out in a statutory instrument and to be subject to the negative resolution process in Parliament.

#### ***Section 40: Supplying imitation firearms to minors***

- 252. This section makes it an offence to sell an imitation firearm to a person under the age of 18, or for a person under 18 to purchase one. The definition of “imitation firearm” for the purposes of this section is that used in the Firearms Act 1968, namely any thing which has the appearance of being a firearm whether or not it is capable of discharging any shot, bullet or other missile.
- 253. *Subsection (1)* inserts new section 24A into the Firearms Act 1968 which contains the new offences. In relation to the offence of selling an imitation firearm to someone under 18, it is a defence to show that the vendor believed that the purchaser was 18 or over and had reasonable grounds for that belief.
- 254. *Subsection (2)* makes the offences summary offences with a maximum penalty of 51 weeks imprisonment or a £5,000 fine, or both. *Subsection (3)* sets the maximum term of imprisonment to 6 months for offences committed before the commencement of the sentencing provisions in section 281(5) of the Criminal Justice Act 2003.

#### ***Section 41: Increase of maximum sentence for possessing an imitation firearm***

- 255. This section amends the Firearms Act 1968 to increase from 6 months to 12 months the maximum custodial sentence for the offence of carrying an imitation firearm in public without reasonable excuse.
- 256. *Subsection (1)* makes the offence triable either way and sets the maximum custodial sentence on indictment as 12 months. *Subsection (2)* clarifies that when section 282(3) of the Criminal Justice Act 2003 comes into force in England and Wales the maximum custodial sentence on summary conviction will increase from 6 months to 12 months.

#### ***Section 42: Increase of maximum sentence for offences of having knives etc.***

- 257. *Section 42* amends sections 139(6)(b) and 139A(5)(a)(ii) of the Criminal Justice Act 1988 so that the maximum term of imprisonment for the offences of having an article with a blade or point, in a public place, or of having such an article or another offensive weapon on school premises, is increased from 2 to 4 years.

#### ***Section 43: Sale etc. of knives and other weapons***

- 258. *Subsection (2)* amends section 141A(1) of the Criminal Justice Act 1988 (prohibition of sale of knives etc. to persons under sixteen) to extend the offence of selling a knife or an article with a blade or point to a person under sixteen to persons under eighteen.
- 259. It is an offence to manufacture, sell, hire or offer for sale or hire, lend or give to another person an offensive weapon under section 141 of the 1988 Act. *Subsection (4)* amends that provision to introduce a defence for those who manufacture, sell, hire or offer for

sale or hire, lend or give offensive weapons if they are doing so for the purpose of theatrical performances and rehearsals, the production of films or the production of television programmes.

***Section 44: Sale etc. of crossbows***

260. This section amends the Crossbows Act 1987 to raise from seventeen to eighteen the age at which a person may be sold or hired a crossbow, and at which a person may buy, hire or possess (in the latter case without supervision by a person aged 21 or over) a crossbow.

***Section 45: Power of members of staff to search school pupils for weapons***

261. **Section 45** inserts new section 550AA into the Education Act 1996 and enables a head teacher or other member of staff in a school, with the authority of the head teacher, to search a pupil who they have reason to suspect is carrying a knife or other offensive weapon and to search his possessions.
262. Subsection (2) of that new section provides that the power is exercisable whenever the member of staff is in lawful control of the pupil, so as to include time when the pupil is not on school premises, for example on a school trip.
263. Subsection (3) of the new section sets out who may conduct a search.
264. Subsection (4) explains that a head teacher cannot require a person other than a member of the security staff to carry out a search under this section.
265. Subsection (5) provides that a person who carries out a search may not require the pupil to remove any clothing other than outer clothing, must be of the same sex as the pupil, and cannot search without the presence of another member of staff who is of the same sex as the pupil. Subsection (6) provides similarly that the pupils' possessions may not be searched except in the presence of the pupil and another member of staff.
266. Subsection (7) provides that the member of staff can seize and retain any articles found, but, under subsection (9), must deliver them to a police constable as soon as is reasonably practicable. Subsection (8) provides that the member of staff may use reasonable force if necessary in exercising a power under this section. Subsection (10) provides that the Police (Property) Act 1897 applies to property that comes into a police constable's possession under this section.

***Section 46: Power to search further education students for weapons***

267. **Section 46** inserts new section 85B into the Further and Higher Education Act 1992 to make provision for searching students of institutions in the further education sector equivalent to that in section 45 for school pupils. A search can only be carried out by the principal of the institution or by a member of staff authorised by the principal.

***Section 47: Power to search persons in attendance centres for weapons.***

268. **Section 47** makes provision for searching persons in attendance centres equivalent to that in section 45 for school pupils. A search can only be carried out by the officer in charge of the attendance centre or a person authorised by that officer and can only be carried out on the premises of the centre.

***Section 48: Amendment of police power to search schools etc for weapons***

269. **Section 48** amends section 139B of the Criminal Justice Act 1988 to reduce the threshold for a constable to exercise his or her powers of entry and search of a school and persons on school premises for weapons under that section from 'reasonable grounds for believing' to 'reasonable grounds for suspecting' to ensure both consistency with

the powers in sections 45 to 47 and that the police have the necessary powers to tackle weapons in schools.

***Section 49: Consequential amendments to minimum sentences***

270. **Section 49** introduces and gives effect to Schedule 1 which contains the consequential amendments on the provisions of this Part relating to minimum sentences.

***Section 50: Supplemental provisions for Part 2***

271. **Section 50** makes supplemental provisions for Part 2 of the Act, including providing Crown exemption from a number of the offences in Part 2.

***Section 51: Corresponding provision for Northern Ireland***

272. **Section 51** introduces Schedule 2 to the Act which makes provision for Northern Ireland corresponding to the provisions of Part 2 of the Act, with the exception of sections 31 to 35 and 42 and 45 to 47.

**Part 3: Miscellaneous**

***Section 52: Football-related disorder***

273. **Subsection (1)** repeals section 5(2) of the Football (Disorder) Act 2000. That provision places a time limit on the provisions relating to:
- football banning orders made on complaint (section 14B of the Football Spectators Act 1989), and
  - summary police powers given to constables during control periods relating to regulated football matches (section 21 of the same Act). These include the power to prevent any individual against whom there is evidence of previous involvement in football-related violence or disorder and who is felt to pose a continuing public order risk from travelling to a regulated match overseas.
274. **Subsection (2)** introduces Schedule 3, which contains amendments to the provisions of the Football Spectators Act 1989 relating to the administration of football banning orders.
275. **Part 1** of Schedule 3 amends the provisions of the Football Spectators Act 1989 (the "1989 Act") relating to football banning orders.
276. **Paragraph 2(1)** inserts new subsections (4BA) and (4BB) into section 14A of the 1989 Act. These enable the court to remand the offender when proceedings for an order under section 14A are adjourned, and to impose bail conditions preventing the individual from leaving England and Wales before his appearance before the court, and requiring him to surrender his passport. Paragraph 2(3) inserts new subsections (5) and (6) into section 14B of the 1989 Act which provide for the same in relation to an adjourned section 14B hearing.
277. **Paragraph 3(1)** inserts three new subsections into section 14A of the 1989 Act which allow the prosecution to appeal against a failure by the court to impose a banning order on an individual convicted of a relevant offence. Paragraph 3(2) inserts new subsection (1A) into section 14D, providing a right of appeal for the applicant against the dismissal by a magistrates' court of an application for a banning order under section 14B. The appeal lies to the Crown Court.
278. **Paragraph (4)** amends section 14B to extend the scope for chief officers of police to apply for a section 14B football banning order by removing the limitation as to area of residency of the subject. It also provides a power for the Director of Public Prosecutions to apply for a section 14B order.



- 279. *Paragraph (5)* amends section 14E of the 1989 Act and requires the subject of a football banning order to notify the enforcing authority of specified changes to his personal circumstances.
- 280. *Paragraph (6)* amends section 14F to extend the minimum and maximum periods of a football banning order made on complaint (section 14B) from between 2 and 3 years to between 3 and 5 years.
- 281. *Paragraph (7)* amends section 19 of the 1989 Act and requires the subject of a banning order to notify the enforcing authority and police of any temporary residence during a control period.
- 282. *Paragraph (8)* amends section 25 to provide that a notice or other document served on a subject of a banning order is deemed to be received by him unless proved otherwise.
- 283. *Paragraph (9)* amends the Schedule of offences that can be designated as football related for football banning order purposes to include the offence under section 4A of the Public Order Act 1986 (using threatening behaviour etc with intent to cause harassment, alarm or distress).
- 284. **Part 2** of Schedule 3 makes various amendments which are consequential on those made to the 1989 Act by Part 1.
- 285. *Subsection (3)* repeals sections 2 to 7 of the Football Spectators Act 1989 which though never brought into force, made provision for the introduction of a national membership scheme restricting attendance at regulated football matches.

***Section 53: Sale and disposal of tickets by unauthorised persons***

- 286. **Section 53** amends section 166 of the Criminal Justice and Public Order Act 1994 to update provisions on the sale and disposal of football match tickets by unauthorised persons to cover ticket touting on the internet and other practices associated with the unauthorised sale and distribution of tickets.
- 287. *Subsection (6)* inserts new section 166A into the Criminal Justice and Public Order Act 1994, which is designed to ensure that the offence in section 166 of that Act is compatible with Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 (the electronic commerce directive). New section 166A(1) ensures that the provisions in section 166 do not apply to internet service providers based outside the UK. Section 166A(2) makes it an offence for an internet service provider established in the UK to sell or otherwise dispose of tickets for designated football matches regardless of where the sale etc takes place. Section 166A(3) to (5) provides a defence (derived from the electronic commerce directive) in certain circumstances for internet service providers who essentially only transmit or store information.

***Section 54: Forfeiture and detention of vehicles etc.***

- 288. **Section 54** introduces Schedule 4 to the Act, which amends the Sexual Offences Act 2003 (“the 2003 Act”) by inserting new sections 60A, 60B and 60C. Section 60A enables the court, when a person is convicted on indictment of an offence under sections 57 to 59 of the 2003 Act (trafficking into, within and out of the UK for sexual exploitation), to order the forfeiture of a vehicle, ship or aircraft used or intended to be used in connection with the offence of which the person is convicted. *Subsection (2)* of section 60A lists the circumstances that would allow the forfeiture of a vehicle; *subsections (3) to (7)* do likewise for a ship or aircraft. *Subsection (8)* allows a person who claims to have an interest in a vehicle, ship or aircraft, and who makes an application to the court, to make representations on the question of forfeiture before the court may make an order for its forfeiture.
- 289. Section 60B enables a constable or immigration officer not below the rank of chief immigration officer to detain a vehicle, ship or aircraft of a person arrested for an

offence under sections 57 to 59 if it is one which the constable or officer concerned has reasonable grounds for believing could, on conviction of the arrested person for the offence for which he was arrested, be the subject of an order for forfeiture made under section 60A. *Subsection (1)* explains that detention is permitted until a decision is taken whether or not to charge the arrested person, until the arrested person is acquitted, the charge against him dismissed or the proceedings discontinued, or, where the person is subsequently convicted, until the court makes a decision on forfeiture.

- 290. *Subsection (3)* lists the circumstances in which a person other than the arrested person may apply to the court for the release of that vehicle, ship or aircraft. *Subsection (4)* provides that on such an application the court may release the vehicle, ship or aircraft subject to satisfactory security or surety and on condition that it is made available to the court if the arrested person is convicted and if an order under section 60A is made.
- 291. Section 60C provides definitions for some of the terms used in sections 60A and 60B.
- 292. The effect of paragraph 3 of Schedule 4, read with section 66(7), is that sections 60A to 60C of the 2003 Act extend to Northern Ireland. Sections 57 to 59 of that Act already extend to Northern Ireland.

### ***Section 55: Continuity of sexual offences law***

- 293. *Section 55* provides that where a person is charged in respect of conduct that is an offence under the Sexual Offences Act 2003 and was an offence under one of the repealed offences listed in *subsection (2)*, and the only thing preventing the person being found guilty is that it cannot be proven beyond reasonable doubt whether the conduct took place before or after the commencement of the Sexual Offences Act 2003, then it shall be conclusively presumed for the purposes of determining the guilt of the defendant that the conduct took place at a time when the offence in respect of that conduct carried the lower penalty in terms of a custodial sentence which could be imposed on conviction of the defendant. If the penalties are the same, then it shall be conclusively presumed that the conduct took place after the commencement of the Sexual Offences Act 2003.
- 294. *Subsection (5)* extends the provision to inciting, conspiring and attempting to commit the specified offences.
- 295. *Subsection (6)* provides that section 55 applies to any proceedings, whenever commenced, other than where, before the commencement of section 55, the defendant has been convicted or acquitted of the offence under the Sexual Offences Act 2003 or the repealed offence.

### ***Section 56: Cross-border provisions relating to sexual offences***

- 296. The effect of *subsection (1)* of section 56 is that offenders convicted in Scotland of new offences under Scottish law introduced by the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 – new offences of meeting a child following certain preliminary contact (“grooming”); paying for the sexual services of a child; causing or inciting child prostitution or pornography, and arranging or facilitating child prostitution or pornography – and who subsequently become subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (the sex offenders register) in Scotland will also become subject to the notification requirements any time they are in any other part of the United Kingdom.
- 297. The Scottish Act also made it possible for courts in Scotland to make sexual offences prevention orders (SOPOs) when dealing with a qualifying offender who poses a risk of serious sexual harm (previously in Scotland such orders could only be made on application from the police), as well as introducing risk of sexual harm orders (RoSHOs). The Sexual Offences Act 2003 already introduced court-issued SOPOs and RoSHOs into the rest of the United Kingdom. *Subsection (2)* of section 56 ensures

that it is an offence in England and Wales and Northern Ireland to contravene a SOPO made under the Scottish Act. It ensures that persons subject to such SOPOs are also subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 when in any other part of the United Kingdom. *Subsection (3)* of section 56 ensures that contravention of a RoSHO made under the Scottish Act is an offence in England and Wales and Northern Ireland.

### ***Section 57: Amendment of s.82 of the Sexual Offences Act 2003***

298. *Section 57* covers persons aged 18 or over who are convicted of a serious sexual offence and, in the opinion of the court, remain a significant risk to members of the public of serious harm from future offences. Those who are punished by a sentence of imprisonment for public protection, as provided for by section 225 of the Criminal Justice Act 2003, will be required to notify the police of certain personal details for an indefinite period. The notification requirement will therefore apply for the rest of the offender's life.

### ***Section 58: Power of entry and search of relevant offender's home address***

299. *Section 58* amends the Sexual Offences Act 2003 by inserting new section 96B. Section 96B will enable a magistrate, on application from a senior police officer of the relevant force, to issue a warrant to allow a constable to enter and search the home of a relevant offender for the purposes of assessing the risks that the offender may pose to the community. A "relevant offender" is a person who for the time being is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (section 80(2) of that Act). A "senior police officer of the relevant force" is a constable of the rank of superintendent or above of the police force in whose area the premises are located (*subsection 10*). The warrant must be executed by a constable of the police force in whose area the premises are located.
300. *Subsection (2)* sets out the requirements that must be met before the warrant will be issued. These requirements set out that the address must be one that the offender has notified to the police as his home address or one in respect of which there is a reasonable belief that the offender can be regularly found there or resides there. The offender must not be in custody, detained in a hospital or outside the United Kingdom at the time. A constable must have tried on at least two previous occasions to gain entry to the premises for the purpose of conducting a risk assessment and been unable to gain entry for that purpose.
301. *Subsection (5)* requires that the warrant specifies each address to which it relates. *Subsection (6)* allows a constable to use reasonable force if it is necessary to do so to enter and search the premises. *Subsection (7)* states that the warrant can authorise as many visits as the magistrate considers to be necessary for the purposes of assessing the risks posed by the offender which, by virtue of *subsection (8)*, can be unlimited or limited to a maximum.

### ***Section 59: Limitation period for anti-social behaviour orders***

302. *Subsection (1)* amends section 1 of the Crime and Disorder Act 1998 to make provision in respect of the interplay between that provision and the Magistrates' Courts Act 1980 in respect of information laid or complaints made in magistrates' courts for Anti-social Behaviour Orders. It provides that nothing in section 1 of the Crime and Disorder Act 1998 affects the operation of section 127 of the Magistrates' Courts Act 1980. Consequently some conduct within the six-month period preceding the application is necessary to obtain an Anti-social Behaviour Order. *Subsection (2)* amends the Anti-Social Behaviour (Northern Ireland) Order 2004 to ensure this also applies to ASBOs being sought in Northern Ireland.

***Section 60: Parenting orders***

303. This section amends the Crime and Disorder Act 1998 (“the 1998 Act”) to take account of the Sexual Offences Act 2003. Currently section 8 of the 1998 Act provides for a court to make a parenting order in the same proceedings in which it makes a sex offender order in respect of a child or young person. The Sexual Offences Act 2003 repealed the sex offender order provisions and replaced them with sexual offences prevention orders (“SOPOs”). *Subsection (2)(a)* amends section 8 of the 1998 Act by replacing the reference to a sex offender order with a reference to a SOPO thus allowing courts to make a parenting order in the same proceedings in which it makes a SOPO against a child or young person provided it would be desirable in preventing a repetition of the kind of behaviour that led to the SOPO being made. *Subsection (2)(b)* defines a SOPO by reference to section 104 of the Sexual Offences Act 2003. *Subsection (3)* removes the redundant definition of a sex offender order from the 1998 Act. *Subsection (4)* provides that parenting orders will be available in proceedings in which a SOPO is made before as well as after this Act is passed.

***Section 61: Committal of young persons of unruly character***

304. This section amends section 23(1)(a) of the Children and Young Persons Act 1969 so that the references in it to committing for trial are expanded to include sending for trial. Although at present most cases involving juveniles that go to the Crown Court for trial are committed there, some are sent under section 51 of the Crime and Disorder Act 1998; and when section 41 of and Schedule 3 to the Criminal Justice Act 2003 are brought into effect, sending will become the only route.

***Section 62: Offering or agreeing to re-programme mobile telephone***

305. This section amends the Mobile Telephones (Re-programming) Act 2002 to add to the circumstances in which an offence can be committed under section 1 of that Act. Under that section it is an offence to change the unique International Mobile Equipment Identity (IMEI) number which identifies a mobile telephone handset. Under this section a person will commit an offence if he offers or agrees to change or interfere with an IMEI number or other unique device identifier, or if he offers or agrees to arrange for another person to do so. Commission of the offence is not dependent on re-programming actually taking place. The section also has the effect that it will be possible to bring criminal proceedings for the offence even if the identity of the person (if any) who actually carries out the re-programming is unknown.
306. The offence is triable either way. The offence is punishable on conviction on indictment by up to 5 years' imprisonment or a fine or both. The offence is punishable on summary conviction by up to 6 months' imprisonment or a fine not exceeding the statutory maximum (currently £5,000) or both.
307. It will not, however, be an offence for the manufacturer of a mobile telephone, or his authorised agent, to offer or agree to re-programme it, or to arrange for someone else to do so.

***Section 63: Removal of sports grounds etc from private security industry regulation***

308. **Section 63** amends section 4 of the Private Security Industry Act 2001 (exemptions from licensing requirements) to exempt certain persons from the licensing requirement under that Act.
309. The new subsection (6) exempts from the licensing requirement of the 2001 Act all in-house staff of a sports ground who carry out licensable conduct within the meaning of section 3 of that Act on any part of their home ground, if it is a premises covered by a safety certificate under either the Safety of Sports Grounds Act 1975 or the Fire Safety and Safety of Places of Sport Act 1987 and if the conduct is carried out in connection with the use of those premises for purposes for which that safety certificate

has effect. The new subsection (6A) also exempts from the licensing requirement under the 2001 Act in-house staff who accompany their club to other sports grounds where both the home ground and the sports ground being visited are covered by a safety certificate under the safety at sports grounds legislation and where the conduct is carried out in connection with the use of the host premises for purposes for which its safety certificate has effect.

- 310. The new subsection (7) defines the in-house staff covered by the section.
- 311. The new subsections (8) and (9) set out what is meant by the use of a ground or stand for purposes for which its safety certificate has effect. The exemption will cover activities specified in a general safety certificate or specified in respect of a specific occasion in a special safety certificate. The new subsection 4(10) makes interpretative provision.
- 312. **Section 63** covers all in-house staff working on the specified premises and exempts them from the licensing requirement in respect of all types of licensable conduct within the meaning of section 3 of the 2001 Act. This includes those who supervise contracted staff and those who are themselves provided by their employer to a third party. It does **not** cover contracted staff who undertake licensable conduct in premises covered by the safety at sports grounds legislation or in-house staff who undertake licensable activity in licensed premises that are not covered by the safety at sports grounds legislation. These people will still need to be licensed under the 2001 Act.

## **Part 4: General**

### **Section 64: Expenses**

- 314. 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 65: Repeals**

- 315. Repeals can be found in Schedule 5 of the Act.

### **Section 66: Short title, commencement and extent**

- 316. *Subsection (1)* sets out the short title of the Act. *Subsections (2)* and *(3)* provide for commencement. *Subsections (4)* to *(8)* set out the extent of the Act. Section 62 on mobile telephones extends to the United Kingdom. The provisions on using someone to mind a weapon (sections 28 and 29) and on firearms (sections 30 to 41 and 50) extend to Great Britain only. Section 44 and Schedule 1 extend to Northern Ireland only. The provisions relating to sexual offences (sections 54 to 58 and Schedule 4) extend to England and Wales and Northern Ireland only. The other provisions of the Act extend to England and Wales only.