

POLICE AND JUSTICE ACT 2006

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 1: Police Reform

Section 1 and Schedule 1: the National Policing Improvement Agency

18. *Subsection (1)* of section 1 establishes the National Policing Improvement Agency (the Agency) as a body corporate. The Agency will be an executive Non-Departmental Public Body .
19. *Subsection (2)* abolishes Centrex and PITO.
20. *Subsection (3)* introduces *Schedule 1*, which makes further provision about the Agency and sets out details of its constitution, objects and powers.

Paragraph 1: The Agency's Objects

21. The Agency's objects are: to identify, develop and promulgate good policy practice (this would be issued in the form of either non-statutory guidance by the Agency, or Codes of Practice made under section 39 of the Police Act 1996, or as regulations made under section 53A of the 1996 Act); to provide expert operational advice and assistance to "listed police forces" (as defined by paragraph 3 - essentially police forces in England and Wales and other law enforcement agencies operating throughout the United Kingdom); to identify and assess opportunities for and threats to police forces in England and Wales (this might include opportunities presented by new detection methods and threats posed by new crime patterns); share policing issues with international partners; and to provide support to "listed police forces" in connection with the provision of IT, procurement and training services (such services might be provided directly by the Agency or by other providers under contract to the Agency).

Paragraph 2: The Agency's principal power

22. This paragraph enables the Agency to achieve the objects set out in paragraph 1 by giving it the power to do anything it considers appropriate to attain those objects. *Sub-paragraph (2)(a)* makes it clear that the Agency may support police forces by carrying on activities itself (e.g. operating the Police National Computer following the abolition of PITO, providing training or undertaking procurement work) as well as by assisting police forces in their carrying-on of activities. *Sub-paragraphs (2)(b) and (3)* enable the Agency to accept gifts or loans, where it decides to do so in connection with the discharge of its objects. *Sub-paragraph (4)* precludes the Agency from borrowing money or other property without the consent of the Secretary of State.
23. *Sub-paragraph (5)* requires the Agency to obtain agreement from a Scottish, Northern Ireland or off-shore policing body (collectively termed "restrictedly listed police

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forces”), or the body’s chief officer or the authority that maintains the body, before providing advice, assistance or support to or for the body.

Paragraph 3: Meaning of “listed police force” and “restrictedly listed police force” in paragraphs 1 and 2

24. This paragraph defines the terms “listed police force” and “restrictedly listed police force” used in paragraphs 1 and 2. In effect it sets out the Agency’s client list. *Sub-paragraph (4)* enables the Secretary of State to add to the client list by order (subject to the negative resolution procedure).

Paragraph 4: Consultation – exercise of the powers in relation to Scotland and Northern Ireland

25. This paragraph provides for the Agency to consult the Scottish Police Services Authority and persons representing the interests of chief constables in Scotland in so far as the Agency’s activities would or might relate to Scottish police forces. The Agency must also consult the Secretary of State for Northern Ireland so far as the Agency’s activities would or might relate to the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve.

Paragraph 5: Annual Plans

26. This paragraph requires the Agency to produce an annual plan before the beginning of each financial year published as the Agency sees fit. The plan must include:
- any priorities that the Agency has determined for the year;
 - any strategic priorities determined by the Secretary of State;
 - any performance targets established by the Agency; and
 - a statement of financial resources that will be available to the Agency over the course of that year.
27. Any priorities set by the Agency must be consistent with the strategic priorities determined by the Secretary of State under paragraph 6.
28. *Sub-paragraph (6)* places a duty on the Agency to send a copy of the plan to specified persons and to such other persons as it thinks fit.
29. Before issuing the plan the Agency must consult the Secretary of State, the APA and ACPO and such other persons as it thinks fit.

Paragraph 6: Strategic Priorities

30. This paragraph gives the Secretary of State a power to determine strategic priorities for the Agency. These strategic priorities are to be determined following consultation with the Agency, the APA and ACPO. The Scottish Ministers are to be consulted where activities of the Agency would or might relate to policing in Scotland.

Paragraph 7: Chairman and other members

31. This paragraph determines the membership of the Agency. It is to consist of a chairman, chief executive, and ordinary members to be appointed by the Secretary of State. The Secretary of State may determine the number of ordinary members. Before appointing the chairman, the Secretary of State must consult with the APA and the ACPO. At least one representative of each of these groups will also be appointed as a member of the board, as well as least one member of the Civil Service. The maximum term of appointment for the chairman and ordinary members is to be 5 years.

Paragraphs 8 to 10: Tenure

32. A member of the Agency may resign at any time by giving written notice to the Secretary of State and will hold and vacate the office in accordance with the terms of their appointment. *Paragraph 10* allows the Secretary of State to remove a member from office if they have been absent from meetings of the Agency without the Agency's permission for a period in excess of 4 months, or if the member fails to comply with the terms of their appointment, or is unable or unfit to carry out their duties. Conviction for any offence in England and Wales or elsewhere, or bankruptcy, may also lead to removal.

Paragraph 11: Re-appointment

33. A person may be re-appointed as a member or chairman of the Agency.

Paragraph 12: Remuneration, pensions etc of appointed members

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

Paragraphs 13 to 16: Staff

35. The Home Secretary will appoint the Agency's chief executive after consultation with the chairman of the Agency. The consultation requirement does not apply to the appointment of the first chief executive.
36. *Paragraph 15* amends the Superannuation Act 1972 to allow staff of the Agency to be members of the Civil Service pension scheme. The Agency must pay the Minister for the Civil Service such sums as the Minister determines in respect of such pensions.
37. *Paragraph 16* allows the Minister for the Civil Service to permit a former member of staff of the Agency to continue to participate in the Civil Service pension scheme if, on ceasing to be a member of the Agency's staff, the person is appointed as a member of the Agency.

Paragraph 17: Status of staff members as constables

38. *Sub-paragraphs (1) and (2) of paragraph 17* together ensure that where a serving constable is appointed as a member of staff of the Agency (having been seconded from a police force) they will retain the office of constable for the duration of their employment with the Agency. Section 97(8) of the Police Act 1996 also produces the same effect for seconded constables as a result of the amendments made by *paragraph 72*.
39. *Sub-paragraph (3)* provides that where a person holds the office of constable immediately prior to his or her appointment as chief executive, he or she will hold the rank of Chief Constable.
40. *Sub-paragraph (4)* ensures that members of the Agency holding the office of constable fall under the direction and control of the chief executive of the Agency regardless of whether or not the chief executive is a constable.

Paragraph 18: Constables employed by the agency: conditions of service

41. This paragraph relates to the conditions of service of constables employed by the Agency. Under this paragraph any document issued by the Secretary of State in relation to the rules or principles of employed constables must be complied with by the Agency.
42. *Sub-paragraph (2)* sets out the areas in which the rules or principles may, in particular, apply. This includes matters such as the adoption of ranges of pay and allowances.
43. By virtue of *sub-paragraph (3)* the term "employed constable" means a person who is both a constable and an employee of the Agency.

Paragraph 19: Regulations for constables employed by the Agency

44. This paragraph confers on the Secretary of State a power to make provision, by regulations, about the government, administration and conditions of service of constables employed by the Agency or seconded to it.
45. *Sub-paragraph (2)* sets out the areas in which the Secretary of State may in particular make provisions through regulations.
46. *Sub-paragraph (3)* provides that regulations relating to matters of conduct or discipline may also authorise or require provision to be made by, or confer discretionary power on, the Agency, the Agency's chief executive or other persons, and may also authorise or require the delegation of functions conferred by or under the regulations.
47. *Sub-paragraph (4)* makes clear that any regulations affecting constables' pay and allowances can take effect retrospectively on a date specified within the regulations. Retrospective effect will not be possible, however, if there is a reduction in the pay and allowances specified in the regulations.

Paragraph 20: Liability for acts of police members of staff

48. This paragraph establishes the Agency's liability in respect of any unlawful conduct by constables seconded to the Agency.
49. *Sub-paragraph (2)* provides that the Agency will be a joint tortfeasor where such unlawful conduct by a seconded person is a tort (i.e. the Agency will be liable as if it had jointly with the seconded constable carried out the unlawful conduct).
50. *Sub-paragraph (3)* defines seconded constable for the purposes of paragraph 20.

Paragraph 21: Payment of amounts in connection with unlawful conduct of any staff

51. This paragraph confers on the Agency a power to make discretionary payments in respect of damages and costs arising out of unlawful conduct by a member of the Agency's staff.

Paragraph 22: Committees and sub-committees

52. This paragraph allows the Agency to delegate any of its functions to a committee or sub-committee of the Agency. A committee or sub-committee can include persons who are not members of the Agency; the Agency may determine and pay such remuneration and allowances as are appropriate to such persons in this category. The paragraph also makes it clear that functions may be delegated to members of staff.

Paragraphs 23 and 24: Procedure

53. **Paragraph 23** allows the Agency to determine its own procedures including numbers needed for a quorum (although meetings of the Agency's committees and sub-committees must include at least one person who is a member of the Agency or its staff.) **Paragraph 24** provides that decisions taken by the Agency are not invalidated simply because there are vacancies in the membership of the Agency or because members have been defectively appointed.

Paragraphs 25 and 26: Application of seal and proof of documents

54. These paragraphs create a presumption that any document signed on behalf of the Agency is valid and will be received in evidence.

Paragraph 27: Status

55. This paragraph specifies that the Agency is not a Crown body.

Paragraph 28: Annual reports

56. This paragraph requires the Agency to publish an annual report at the end of each financial year. The report must include an assessment of the extent to which the Agency has carried out the annual plan for that year.
57. *Sub-paragraph (4)* places a duty on the Agency to ensure that a copy of the report is sent to specified persons. It is open to the Agency also to send copies to such other persons as it thinks fit. The Secretary of State must lay a copy of the report before Parliament.

Paragraph 29: Reports to Secretary of State

58. This paragraph allows the Secretary of State to require the Agency to submit to him a report on any of its activities. The Secretary of State may determine whether these reports are to be published (*sub-paragraph (3)*). Where a report is published, it may be published with any material excised (*sub-paragraph (4)*) where the material relates to national security interests, or could prejudice the prevention or detection of crime, or could jeopardise the safety of any person.

Paragraphs 30 to 32: Inspection and post-inspection direction

59. *Paragraph 30* allows the Secretary of State to require Her Majesty's Inspector of Constabulary to inspect and report on the Agency's efficiency and effectiveness. *Paragraph 31* places a duty on the Secretary of State to make the report of an inspection public, subject to national security and other sensitivity considerations. *Sub-paragraph (3)* of paragraph 31 requires the Secretary of State to send a copy of the inspection report to the Agency and he can direct the Agency to take such measures as are necessary to remedy inefficiency or ineffectiveness.
60. *Sub-paragraph (3)* of paragraph 30 erroneously refers to a provision that was removed from the Bill during its passage through Parliament. It is not capable of having any operative effect, and will not be brought into force.

Paragraph 33: Payments by Secretary of State to the Agency

61. This paragraph makes provision for the Secretary of State to make grants to the Agency.

Paragraph 34: Charges by the Agency and other receipts

62. The purpose of this paragraph is to authorise the Agency to charge for any goods or services that it provides. Except when the Secretary of State otherwise directs, any income received by the Agency (other than grant income) must be paid over to the Secretary of State. These funds in turn must be paid into the Consolidated Fund (see section 50(2)).

Paragraph 35: Payments by Agency to police authorities

63. This paragraph allows the Agency to make payments to a police authority in England and Wales and to a police authority or joint police board in Scotland, and to the Scottish Police Services Authority, for any purpose it considers related to the objects of the Agency.

Paragraph 36: Accounts

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

Paragraphs 38 to 42: Property rights and liabilities

65. These paragraphs allow for a scheme to provide for the transfer to the Agency or the Secretary of State of property, rights and liabilities of Centrex or PITO.

Paragraph 43: Effect of transfer of employees

66. This paragraph applies if a scheme under *paragraph 38* provides for the transfer of rights and liabilities under an employee's contract of employment. Its effect is that those rights and liabilities are transferred to the Agency, unless the employee objects to this.

Paragraph 44: Staff on secondment

67. This paragraph allows a scheme under paragraph 38 to make provision for a secondment to Centrex or PITO to continue for the remainder of its duration as a secondment to the Agency, subject to the right of a secondee to object.

Paragraph 45: Deciding matters under a scheme

68. This paragraph allows the Secretary of State, or any person he nominates, to adjudicate on any matters requiring decision under a scheme under paragraph 38. It also makes provision for the payment of a nominated person's fees and expenses.

Paragraph 46: Supplementary provision

69. This paragraph provides for schemes made under paragraph 38 to contain supplementary, incidental, transitional or consequential provision.

Paragraph 47: Interpretation

70. *Paragraph 47* sets out definitions of expressions used in the Schedule.

Paragraph 48: Power to modify objects, functions and structure of the Agency

71. This paragraph provides a power, exercisable by order (subject to the negative resolution procedure), to make provision changing the objects, functions, name, structure, accountability and management practices of the Agency. If the provision in question would be within the legislative competence of the Scottish Parliament, the order must be made by the Scottish Ministers with the consent of the Secretary of State. Otherwise, it must be made by the Secretary of State. If an order made by the Secretary of State under paragraph 48 would affect a police force or body in Scotland, or the rights and powers of the Scottish Ministers, the consent of the Scottish Ministers is needed.

Paragraphs 49 to 92: Consequential amendments

72. These paragraphs make amendments to other legislation in consequence of the creation of the Agency and the abolition of Centrex and PITO.
73. *Paragraphs 80 to 89* amend the Police Reform Act 2002 in order to extend to the Agency the arrangements therein for the investigation of complaints and conduct matters. Such arrangements include oversight by the IPCC.

New Section 16A of Police Reform Act 2002: the Agency and the IPCC

74. New section 16A of the 2002 Act (inserted by *paragraph 85*) places a duty on the Agency and its chief executive to comply with the requirements of an investigation by the IPCC and its staff. It also provides for the Agency to provide staff to the IPCC for the purposes of an investigation.

New Section 26B of Police Reform Act 2002: National Policing Improvement Agency

75. New section 26B of the 2002 Act (inserted by *paragraph 87*) places a duty on the IPCC and the Agency to enter into an agreement as to how the IPCC will operate in relation to the Agency's staff and the procedures that will be put into practice. No change may be made to this agreement without the Secretary of State's agreement, and it may not be terminated unless another agreement has been made to replace it. The IPCC will not have any jurisdiction over matters relating to the direction and control of the Agency. The IPCC's authority under this new section only relates to the Agency's activities in England and Wales.

Section 2 and Schedule 2: Amendments to the Police Act 1996

76. This Section gives effect to *Schedule 2* which makes amendments to the Police Act 1996 (the "1996 Act").

Paragraphs 1 to 6: Membership etc of police authorities

77. *Paragraphs 1* to *6* amend the 1996 Act so as to provide that the detailed provision for the composition of police authorities, the appointment process for non-councillor members and the remuneration of members are to be as set out in regulations rather than, as now, on the face of the 1996 Act. *Paragraph 2* of *Schedule 2* substitutes a new *Schedule 2* into the 1996 Act: this contains the regulation-making power in respect of police authorities outside London. The new *Schedule 2* requires the regulations to specify that councillor members of a police authority are to be appointed by the council from which they are drawn; that the other members are to be appointed by the existing membership of the police authority from amongst a short-list recommended as suitable for appointment by a selection panel; that at least one lay justice is to be included amongst these non-councillor members; and that the chairman and vice-chairman or vice-chairmen of a police authority are to be appointed by the authority. A new *Schedule 2A*, inserted by *paragraph 4*, makes parallel provision for the Metropolitan Police Authority. The provision required to be made by regulations under the new *Schedule 2A* is broadly similar to that which *Schedule 2* requires. The main difference is that the chairman of the Metropolitan Police Authority will be either the Mayor of London or a person appointed by the Mayor. The Mayor will also appoint the vice-chairman, or vice-chairmen, of the Metropolitan Police Authority. The regulations made under *Schedule 2* and *Schedule 2A* will be subject to the negative resolution procedure.

Paragraphs 7 and 8: Functions of police authorities

78. Under section 6(1) of the 1996 Act, a police authority's primary function is to 'secure the maintenance of an efficient and effective police force for its area'. New section 6(1) (b) of the 1996 Act, inserted by *paragraph 7*, provides that it shall also be a duty of a police authority to hold the chief officer of the force to account for the exercise of his functions and those of the police officers and police staff under his direction and control. A similar duty is already placed on the Northern Ireland Policing Board in relation to the Police Service of Northern Ireland (see section 3(3)(a) of the Police (Northern Ireland) Act 2000).
79. *Paragraph 8* inserts new section 6ZA into the 1996 Act. This new section confers a power on the Secretary of State to confer additional functions on a police authority by order. Such functions may include, but are not limited to, a requirement:
- to monitor the performance of the police force for its area in complying with the duties imposed under the Human Rights Act 1998 or other enactments and the carrying out of any plan issued under new section 6ZB of the 1996 Act inserted by *paragraph 9*;

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- to secure that arrangements are put in place by the force to co-operate with other forces (for example, to tackle cross-border organised crime);
 - to promote diversity within the force and the authority.
80. The Secretary of State must consult with the APA and ACPO and such other persons as he thinks fit before making any order under new section 6ZA. The order is to be subject to the negative resolution procedure.

Paragraphs 9 to 13: Police authorities: objectives, plans and reports

81. *Paragraph 9* inserts new sections 6ZB and 6ZC into the 1996 Act.
82. New section 6ZB provides for each police authority to issue, before the beginning of each financial year, a policing plan. The plan will include a statement of the objectives determined by the authority for the year in which the plan is issued, and the proposed arrangements for policing the area during the following three years. New section 6ZB confers power on the Secretary of State to make regulations supplementing the provision made by the section: this power may be exercised so as to stipulate other matters to be included in policing plans, and will be subject to the negative resolution procedure.
83. New section 6ZC contains an order-making power under which the Secretary of State may require police authorities to issue reports concerning the policing of their areas. The exercise of the order-making power is subject to the negative resolution procedure.
84. The Secretary of State must consult with the APA and the ACPO and such other persons as he thinks fit before making any order under new section 6ZB or 6ZC
85. New sections 6ZB and 6ZC replace existing provisions in the 1996 Act which require police authorities to prepare a three-year strategy plan (section 6A); set local policing objectives (section 7); issue a local policing plan (section 8); and issue an annual report (section 9).

Paragraphs 14 and 15: Appointment of deputy chief constables etc

86. *Paragraph 14* makes new provision in relation to the appointment of deputy chief constables. It enables police authorities to appoint more than one deputy chief constable. The approval of the Secretary of State must be sought before a police authority can increase the number of deputy chief constables. Otherwise, the process for appointments for deputy chief constables is unchanged.
87. *Paragraph 15* makes new provision in relation to the power of deputy chief constables to exercise the functions of the chief constable in his absence. It requires that, where a force has more than one deputy chief constable, the chief constable must designate the deputy chief constables in order of seniority for the purposes of the exercise of the chief constable's powers and duties. This designation is solely for the purpose of this provision and has no other implications regarding the seniority of the deputy chief constables.

Paragraphs 16 and 17: Civilian employees of police authorities

88. Section 15 of the 1996 Act enables a police authority to employ civilian staff to assist its police force or to enable the police authority to discharge its functions. The effect of section 15(2) and (3) of the 1996 Act as it stands is that people so employed are to be under the direction and control of the chief officer of the force concerned, unless the chief officer and the police authority agree otherwise or, in the absence of such an agreement, the Secretary of State determines that a person so employed by the authority need not be under the direction and control of the chief officer.

89. *Paragraph 16* amends section 15 of the 1996 Act. The effect of the amendment is that those persons who are employed by the police authority solely to assist its police force must be under the direction and control of the chief officer of that force: there is no provision for the authority and the chief officer to agree, or the Secretary of State to determine, otherwise. However persons who are employed by the police authority to enable it to discharge its functions need not be under the direction and control of the chief officer.
90. Section 24 of the 1996 Act enables the chief officer of any police force to provide constables or other assistance to another police force to meet any special demand on that other force's resources. Section 24(3) provides that where a constable is provided to another force under section 24, he is under the direction and control of the chief officer of that other force. *Paragraph 17* inserts a new section 24(3A) into the 1996 Act. The effect of this new subsection is that if police staff employed under section 15 of the 1996 Act to assist a police force are provided to another force under section 24, they are to be under the direction and control of the chief officer of that other force.

Paragraphs 18 to 20: Clerks to police authorities renamed chief executives

91. *Paragraph 18* amends section 16 of the 1996 Act to provide for the "clerk" of a police authority to be restyled its "chief executive". *Paragraphs 19* and *20* contain consequential amendments and transitional provision.

Paragraphs 21 to 23: Jurisdiction of special constables

92. *Paragraph 21* amends section 30 of the 1996 Act by substituting the existing subsection (2). The effect of the substituted section 30(2) is to permit special constables to use their constabulary powers in forces throughout England and Wales. At the moment they have the powers and privileges of a constable only in the force area for which they are appointed and any other contiguous police area. This change means that subsections (3) and (4) of section 30 are no longer needed, so these are omitted by sub-paragraph (3).
93. These amendments will bring special constables in line with regular officers. For instance, a special constable will be able to act as a prisoner escort when prisoners are being collected from another force, and to make an off-duty arrest in another force area.
94. *Paragraph 22* amends section 24(3) of the 1996 Act so as to provide that, where a constable from the Metropolitan Police Service is provided to another police force under section 24, that constable will be under the direction and control of the chief officer of that other police force.
95. *Paragraph 23* amends section 27(2) of the 1996 Act to provide for an exception to the general position whereby special constables appointed for a police area are under the direction and control of the chief officer of the force for that area. The exception applies where special constables are provided to another force under section 24, in which case the special constables will for that time be under the direction and control of the chief officer of that other force.
96. The amendment also has the effect of clarifying that the reference to a constable in section 24(3) includes a reference to a special constable.

Paragraphs 24 to 26: Secretary of State's strategic functions in relation to police authorities

97. *Paragraph 24* repeals sections 36A (under which the Secretary of State is under a duty to issue an annual National Policing Plan) and 37 (under which he may determine objectives for police authorities by order) of the 1996 Act.
98. *Paragraph 25* inserts a new section 37A into the 1996 Act. Subsection (1) of the new section gives the Secretary of State the power to determine the strategic priorities for

police authorities. Subsection (2) sets out that the APA and ACPO must be consulted before the Secretary of State can determine the strategic priorities. Subsection (3) makes provision for the Secretary of State to publish the priorities in an appropriate manner. Subsection (4) provides that the strategic priorities will apply to the police authorities established by section 3 of the 1996 Act and the Metropolitan Police Authority.

99. *Paragraph 26* makes consequential amendments to section 38 of the 1996 Act, under which the Secretary of State may direct police authorities to establish levels of performance in relation to the strategic priorities set under the new section 37A.

Paragraphs 27 to 29: Power to give directions to police authority or chief officer of police

100. *Paragraphs 27 to 29* insert new sections 40, 40A and 40B into the 1996 Act, replacing the intervention powers in sections 40, 41A and 41B which were introduced by the Police Reform Act 2002 and which made provision for the making of directions where the whole or any part of a police force is considered to be under-performing or at risk of under-performing. The new sections widen the sources of information which the Secretary of State can draw upon in deciding whether to exercise these powers and bring under-performance by police authorities within the scope of these powers. The amended powers place a duty upon the Secretary of State to consult Her Majesty's Inspectorate of Constabulary on the grounds for intervention and a duty to publish the Inspectorate's response.

New section 40 of the Police Act 1996: Power to give directions in relation to police force

101. Subsections (1) and (2) of new section 40 (inserted by paragraph 27) provide that the where the Secretary of State is satisfied that a police force is failing to discharge any of its functions effectively, whether generally or in particular respects, or where he is of the view that a force will fail unless remedial measures are taken, he may direct the police authority to take specified measures to remedy that failure, or prevent that failure, as the case may be.
102. These subsections widen the sources of information which the Secretary of State can draw upon in deciding whether to exercise these powers. These wider sources of information could include the findings of a public inquiry into a force or the national performance assessments of police forces which are now produced. Previously, the only source of information which could be considered was a report from Her Majesty's Inspectorate of Constabulary.
103. Subsection (3) of new section 40 provides that the Secretary of State may, when directing specified measures under subsection (1) or (2), specify the submission to him of an action plan setting out the measures to be taken to remedy the failure or to prevent the failure (as the case may be). This short subsection replaces the longer and more protracted existing sections 41A and 41B of the 1996 Act which are repealed by *paragraph 29*. Experience since the 2002 Act has shown that in most cases where serious under-performance has arisen, there have been opportunities for improvements, and non-statutory plans intended to address under-performance have already been drawn up. However, this measure could be specified as part of the direction if no action plan existed.
104. Subsection (4) of new section 40 is intended to ensure that the power to give directions is only used as a last resort. A duty is placed on the Secretary of State to provide the police authority with the evidence that the force or part of the force is failing, and afford them the opportunity to make representations and any such proposals for the taking of remedial measures that would make the giving of the direction unnecessary. The Secretary of State will be under a duty to consider any such representations and any such proposals.

105. Subsection (5) of new section 40 provides that if the Secretary of State is satisfied that the police authority has already been made aware of the matters which give rise to the need for a direction to be given, had sufficient information to identify the remedial measures to address this without the need for a direction, and had a reasonable opportunity to take such measures, then the obligation on the Secretary of State to give the police authority further opportunities to deal with the issues at hand and to make representations on them (in subsection (4)) shall not apply.
106. Subsection (6) of new section 40 provides that the Secretary of State must, before directing specified measures under subsection (1) or (2), make Her Majesty's Chief Inspector of Constabulary aware of the matters which give rise to the need for the direction and provide Her Majesty's Chief Inspector of Constabulary with an opportunity to make written observations which will be published in such a manner that the Secretary of State feels appropriate.
107. Subsection (7) of new section 40 requires a police authority given a direction under section 40 to comply with it.

New section 40A of the Police Act 1996: Power to give directions in relation to police authority

108. New section 40A of the 1996 Act is in similar terms to new section 40.
109. Subsections (1) and (2) of new section 40A provide the same intervention trigger as that for directions in relation to police forces. Where the Secretary of State is satisfied that a police authority is failing to discharge any of its functions effectively, whether generally or in particular respects, or where he is of the view that a police authority will so fail unless remedial measures are taken, he may direct the police authority to take specified measures to remedy that failure or to prevent that failure, as the case may be.
110. Subsection (3) provides that directions to police authorities may specify the submission to the Secretary of State of an action plan setting out the measures which are intended to remedy the failure in question or (as the case may be) prevent such a failure occurring.
111. Subsections (4) and (5) of new section 40A provide the same opportunity for police authorities to be given the relevant information and make representations and remedial measures as are set out for police forces in new section 40(4) and (5).
112. Subsection (6) of new section 40A provides that the Secretary of State must, before directing specified measures under subsection (1) or (2), make Her Majesty's Chief Inspector of Constabulary aware of the matters which give rise to the need for the direction and provide Her Majesty's Chief Inspector of Constabulary with an opportunity to make written observations which will be published in such a manner that the Secretary of State feels appropriate.
113. Subsection (7) of new section 40A requires that a police authority that is given a direction under this section shall comply with it.
114. Subsection (8) of new section 40A confirms that the Secretary of State may exercise his powers under both new section 40 and new section 40A in respect of the same or different matters and at the same time or at different times.

New Section 40B of the 1996 Act: Procedure for directions under section 40 or 40A

115. New section 40B reproduces much of existing section 41B of the 1996 Act, which is repealed by [paragraph 29](#). It provides the Secretary of State with a power to make further provision in regulations as to the procedure to be followed where a proposal is made for the giving of a direction under new section 40A or 40B in relation to a police force or police authority.

116. Subsection (2) of new section 40B provides that before making any regulations, the Secretary of State shall consult with the APA, ACPO and any such other persons as he thinks fit. Such regulations may make different provision for different cases and circumstances (subsection (3) of new section 40B). Regulations made under this section are subject to the affirmative resolution procedure (subsection (4) of new section 40B).
117. Subsection (5) of new section 40B requires the Secretary of State to notify a chief officer of police of a direction issued to the police authority which has responsibility for his force.
118. Subsections (6) and (7) of new section 40B provide that the Secretary of State must lay a copy of the direction, in relation to a force or police authority, and a report about it before Parliament. The report may relate to more than one direction.
119. *Paragraph 28* amends section 41 of the 1996 Act to ensure that the power the Secretary of State has under that section to include in a direction to a police authority that its budget requirement for any financial year is not to be less than a specified amount covers a direction under new section 40A as well as under the substituted section 40.

Paragraph 30: Arrangements for obtaining the views of the community on policing

120. *Paragraph 30* amends section 96 of the 1996 Act which places a duty on police authorities to make arrangements for obtaining the views of the community on policing the force area and the cooperation of the community in preventing crime. *Sub-paragraph (2)* amends section 96(1)(b) of the 1996 Act to extend the duty on police authorities to cover the making of arrangements for seeking the cooperation of the community in preventing anti-social behaviour (in addition to the prevention of crime). *Sub-paragraph (4)* substitutes subsections (6) to (10) of section 96. The new subsections enable the Secretary of State to make regulations (subject to the negative procedure) supplementing the general duty on police authorities imposed by section 96(1). The Secretary of State must consult with the APA and the ACPO before making any order under new section 96.

Section 3: Delegation of police authority functions

121. Part 6 of the Local Government Act 1972 enables a police authority to provide for its functions to be discharged by a committee, a sub-committee or an officer of the authority. However, a police authority may not arrange for its functions to be discharged by a committee or officer in respect of only part of its area.
122. *Section 3* confers additional flexibility on police authorities to delegate their functions, in particular, by providing for a power to delegate to an area committee or to an individual member of the authority. By virtue of section 101(6) of the Local Government Act 1972 police authorities will be barred from delegating their precepting function in this manner. The section also enables such area committees to include people other than members of the police authority on them.
123. The provision also enables the Secretary of State to impose limitations on the kinds of functions that police authorities can delegate by area, on the make-up of area committees, and in respect of the officers and members of authorities to whom delegation can be made.

Section 4: Police authorities as best value authorities

124. *Section 4* amends section 1 of the Local Government Act 1999 to limit the extent to which the best value provisions of that Act apply to police authorities. Section 4 removes from police authorities the requirement to conduct best value reviews and publish best value performance plans. The overarching best value duty, to make arrangements to secure continuous improvement in the way in which functions are

exercised, having regard to a combination of economy, efficiency and effectiveness, will continue to apply.

125. *Subsection (1)* provides that a police authority is not a best value authority for the purpose of certain provisions in Part 1 of the 1999 Act. Those provisions are:
- section 5, under which a best value authority must conduct best value reviews of its functions;
 - section 6, under which a best value authority must prepare a best value performance plan for each financial year;
 - sections 7 to 9, which require best value performance plans to be audited and place a duty on the best value authority to publish the auditor's report; and
 - sections 13(5) and 15(2)(a) and (b), which will no longer be relevant once a police authority does not have to prepare a best value performance plan.
126. *Subsection (2)* clarifies that references in other Acts to best value authorities will, if the context allows, continue to include police authorities.

Section 5 and Schedule 3: Power to merge schemes

127. *Section 5* and *Schedule 3* provide the power to make provision replacing the pensions regulations made under the Police Pensions Act 1976 (which apply to police constables in England, Wales and Scotland), and under the Police (Northern Ireland) Act 1998 (which apply to constables in Northern Ireland), so as to establish a single, unified pension scheme for persons who became members of one of the original police schemes before 6 April 2006. The Finance Act 2004 limits the benefits which can be offered to persons who join a pension scheme after 6th April 2006. As a consequence any police officer who joined a police pension scheme before 6 April 2006 would, if transferring between the Police Service of Northern Ireland and a police force in Great Britain after that date, be obliged to move into a less advantageous scheme. This is a disincentive to such transfers. The purpose of having a unified pension scheme is to preserve the position as it was before the changes made by the Finance Act 2004.
128. The power to replace the existing regulations so as to create a unified scheme may not be exercised so as to place any person in a less beneficial position, as a member of the unified scheme, than he was in as a member of his previous police pension scheme (*paragraph 2(3)(b)*).
129. *Paragraph 3* of Schedule 3 provides that the Secretary of State, when making the pensions regulations, must consult with the Policing Board of Northern Ireland, and obtain the agreement of the Treasury. It also allows the regulations to have retroactive effect, so that they may be backdated to 1 April 2006.
130. *Paragraph 7* of Schedule 3 provides that, for the purposes of Part 4 of the Finance Act 2004, the new police pension scheme will be treated as a continuation of the original schemes and not a new scheme.

Section 6 and Schedule 4: Statutory consultation requirements

131. *Section 6* introduces *Schedule 4*. Schedule 4 amends provisions in existing legislation requiring consultation with persons representing the interests of police authorities or chief officers of police. The effect of the amendments is to require consultation with the APA or ACPO instead.
132. *Section 6* also provides a power for the Secretary of State to amend by order (subject to the negative procedure) these consultation requirements, should other bodies represent these interests in the future, or if the APA or ACPO were to change its name.

Section 7: Standard powers and duties of community support officers

133. This section amends the Police Reform Act 2002 (“the 2002 Act”) in relation to the powers that can be conferred on CSOs. *Subsection (1)* inserts new subsection (5A) into section 38 of the 2002 Act. The effect is that a person designated under section 38 as a CSO is to have the standard powers and duties of a CSO in addition to any additional powers conferred on him by his designation..
134. *Subsection (2)* inserts new section 38A into the 2002 Act. The new section enables the Secretary of State to make an order conferring certain powers and duties, set out in Part 1 of Schedule 4 to the 2002 Act, on all CSOs. It is these powers and duties that are to be known as the standard powers and duties of a CSO. An order under section 38A is to be subject to the affirmative resolution procedure.
135. New section 38A(3) sets out the consultation requirements which apply before the Secretary of State may make an order.
136. New section 38A(5) provides that a power or duty may be conferred on a CSO both by an order under section 38A and by a designation. This is to enable CSOs to rely on their individual designations if an order made under section 38A providing for standard powers and duties is varied or revoked. New section 38A(6) places a duty on a chief officer to ensure that if any additional powers or duties are imposed on CSOs under his control, they receive adequate training in the exercise of those powers or duties.

Section 8: Community support officers: power to deal with truants

137. This section inserts a new power into the list (set out in Schedule 4 to the 2002 Act) of powers that may be conferred on persons designated as CSOs. If designated with the power set out at new paragraph 4C, CSOs will have the power that constables already have under section 16 of the Crime and Disorder Act 1998 to deal with truants. This power would allow CSOs to remove young people of school age that they believe are absent from school without lawful authority from specified areas and to take them either to their school, or to a place which has been specified by the local authority.

Section 9 and Schedule 5: Exercise of police powers by civilians

138. This section introduces *Schedule 5* to the Act.
139. *Schedule 5* makes various consequential and minor amendments in provisions in the Police Reform Act 2002.
140. *Paragraph 2(3)* inserts a new subsection (5B) into section 38 of the 2002 Act so that when a chief constable first designates a person as a CSO, he is required to ensure that the person has received adequate training in the exercise of the standard powers that are in force at that time.
141. The effect of *paragraph 3* of the Schedule is to amend section 42 of the 2002 Act so that CSOs, when exercising powers or duties, must produce on demand evidence of their designation as a CSO and of any non-standard power which they exercise that has been conferred on them by their Chief Officer under section 38. Accordingly, CSOs will not have to carry with them details of all the standard powers which have been conferred upon them by an order under section 38A. The requirement to produce evidence of a designation could be satisfied by production of the designation itself, but could also be satisfied by something less, such as some form of document or card.