*These notes refer to the Crime and Courts Act 2013 (c.22) which received Royal Assent on 25 April 2013*

# CRIME AND COURTS ACT 2013

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

### Part 1: The National Crime Agency

91. The territorial extent of the provisions in Part 1 are subject to Schedule 24 (The NCA: Northern Ireland).

### *Section 1: The National Crime Agency*

92. *Subsection (1)* establishes the National Crime Agency ("NCA") which will be made up of NCA officers. *Subsection (2)* provides for the NCA to be headed by a Director General who will also be an NCA officer. The NCA will be under the direction and control of the Director General who will be operationally independent of Ministers.

93. *Subsections (3) to (11)* provide for the functions of the NCA. These consist of the functions conferred by this section (*subsection (3)(a)*), the functions set out in the Proceeds of Crime Act 2002 (*subsection (3)(b)*) and other functions conferred by this Act and by other enactments (*subsection (3)(c)*). Those other functions will include, for example, being a protection provider for the purpose of the protection of witnesses and other persons under section 82 of the Serious Organised Crime and Police Act 2005.

94. The NCA's principal functions will be the crime reduction function (*subsection (4)*) and the criminal intelligence function (*subsection (5)*).

95. The crime reduction function relates to securing that efficient and effective activities to combat organised crime and serious crime are carried out (whether by the NCA, other law enforcement agencies, or other persons). *Subsections (6) to (10)* amplify the nature of this function and how it may, or may not, be discharged. In discharging this function, the NCA may itself undertake activities to combat serious crime and organised crime, including by preventing, detecting or investigating such crime, or otherwise. *Subsection (11)* explains the reference to 'activities to combat crime'. When discharging functions relating to organised or serious crime, the NCA may carry out activities in relation to any kind of crime (*paragraph 5* of Schedule 1). This reflects the role of the NCA in the reduction of crime in other ways (*subsection (11)(c)*) and mitigating the consequences of crime (*subsection (11)(d)*). This acknowledges that the investigation and prosecution of organised criminals is only one of the strategies that may be deployed to tackle organised criminality and that there are a range of disruption tactics that will need to be deployed by the NCA in order to reduce the harm and impact caused by organised criminal groups.

96. In addition to undertaking activities of its own, the NCA may discharge its crime-reduction function in other ways by: ensuring that other law enforcement agencies and others also carry out activities to combat serious and organised crime (*subsection (8)*); and by improving co-operation between law enforcement and other agencies to combat serious crime and organised crime and by improving co-ordination of their collective efforts to combat serious crime and organised crime (*subsection (9)*).

97. The role of the NCA in tackling serious crime and organised crime does not include the function of the NCA itself prosecuting offences or, in Scotland, the NCA itself instituting criminal proceedings (*subsection (10)*). In England and Wales the prosecutorial function will be undertaken by the Crown Prosecution Service and the Serious Fraud Office and in Northern Ireland the prosecutorial function will be undertaken by the Public Prosecution Service, whilst in Scotland responsibility for instituting criminal proceedings and prosecuting offences rests with the Crown Office and Procurator Fiscal Service.

98. *Subsection (12)* gives effect to Schedule 1.

### *Schedule 1: The NCA & NCA Officers*

99. *Paragraph 1* provides that the NCA will carry out its functions on behalf of the Crown. In form, the NCA will be a crown body without incorporation. The NCA will be classified as a Non-Ministerial Department.

100. *Paragraph 2* places a duty on the Director General to secure that NCA functions are discharged efficiently and effectively.

101. *Paragraph 3* identifies the financial year of the NCA and includes a transitional provision whereby the first financial year of the Agency begins on the day that the NCA is formally established (by virtue of the commencement of section 1) and ends on the following 31 March.

102. *Paragraph* 4 provides that the NCA will be able to charge for any service it provides to a person at their request.

103. *Paragraph 5*provides that for the purposes of the discharge of NCA functions which relate to organised or serious crime, the NCA may carry on activities in relation to any kind of crime (*sub-paragraph (1)*). This enables the NCA to tackle other crimes that are not serious and/or organised where the outcome will support the disruption or other mitigation of an organised crime group or another serious and/or organised crime. *Sub-paragraph (2)* provides that an NCA officer designated with operational powers is not prevented from exercising their powers in relation to a crime that is not serious or organised where they reasonably suspect that an offence is about to be or is being committed.

104. *Paragraph 6* preserves the role of the Lord Advocate in respect of the investigation and prosecution of crime in Scotland. The NCA may only carry out its activities in relation to an offence which it suspects has been committed (or is being committed) in Scotland, if it does so with the agreement of the Lord Advocate (*sub-paragraph (1)*). In carrying out such activities in Scotland an NCA officer must comply with any directions from the Lord Advocate or the procurator fiscal (*sub-paragraph (2)*). And if an NCA officer suspects an offence has been committed or is being committed in Scotland the NCA officer must notify the procurator fiscal as soon as is practicable (*sub-paragraph (3)*).

105. *Paragraph 7*provides for the selection and appointment of the Director General. The Director General is to be appointed by the Secretary of State (in practice, the Home Secretary) following consultation with Scottish Ministers and the Department of Justice in Northern Ireland. The terms and conditions of appointment are to be determined by the Secretary of State, save that *sub-paragraph (6)* provides for a maximum term of up to five years (there is no bar on re-appointment). The provisions in sections 10 to 14 of the Constitutional Reform and Governance Act 2010, which governs the appointment of civil servants, will not apply to this appointment (*sub-paragraph (7)*). Appointment will be on merit and the process will be conducted in accordance with the Code of Practice on Public Appointments as set out by the Commissioner for Public Appointments.

106. *Paragraph 8* provides that the Home Secretary may require the Director General to retire or resign in the interests of efficiency or effectiveness, or by reason of any misconduct. Before calling upon the Director General to retire or resign, the Home

Secretary must: write to the Director General setting out his or her reasons for so doing; give the Director General the opportunity to make written representations; and consider any such representations made by the Director General. The Home Secretary must also consult Scottish Ministers and the Department of Justice in Northern Ireland.

107. *Paragraph 9* provides that the Director General is responsible for the selection and appointment of other NCA officers and determining their terms and conditions (with the agreement of the Minister for Civil Service), in accordance with the Civil Service Management Code and any other Civil Service policy set by the Minister for the Civil Service.

108. *Paragraph 10*provides that the Director General may delegate his or her functions to a designated senior NCA officer. A designation may extend to one or more senior NCA officers. A senior officer means an NCA officer who is at, or above, a grade specified for this purpose by the Home Secretary in the framework document (which is dealt with in Part 1 of Schedule 2). The power to delegate is subject to any restriction or limitation on the exercise of the function, for example, the Director General's functions in respect of directed tasking under section 5.

109. *Paragraph 11* ensures that the role and responsibilities of the Director General will not be affected by a change in the individual holding the office of Director General. Additionally, it provides that any NCA officer may take up the role and/or responsibilities of any other NCA officer except the Director General.

110. *Paragraph 12* provides that where a person already holds an office with operational powers on becoming an NCA officer – such as the office of constable, officer of Revenue and Customs, or immigration officer – that office is suspended whilst that person remains an NCA officer. The office held is revived once the person ceases to be an NCA officer and returns to his or her previous service. These provisions cease to apply to a person who resigns from or ceases to hold their original office. The effect of the suspension provided for in paragraph 12 is that a person is not bound by their office whilst serving as an NCA officer. The only exception is the office of special constable or a constable in the Police Service of Northern Ireland ("PSNI") Reserve, which a person may continue to hold without suspension while serving as an NCA officer.

111. *Paragraph 13* provides for secondments/attachments to the NCA and establishes that individuals seconded into or attached to the NCA from other organisations will be NCA officers. It further provides that police officers on secondment or attachment to the NCA will be under the direction and control of the Director General. *Paragraph 14*makes equivalent provision for the secondment of NCA officers to UK police forces.

112. *Paragraph 15* provides for the NCA to be able to draw on the expertise and contribution of volunteer officers. *Sub-paragraphs (1) to (3)* provide for the Director General to select such persons for appointment on an unpaid and part-time basis, and for them to be known as "NCA specials". The terms and conditions for the appointment are to be determined by the Director General. *Sub-paragraph (4)* provides that the unpaid nature of NCA specials does not prevent the reimbursement of expenses incurred; or the provision of subsistence, accommodation or training; or the payment of compensation for loss attributable to injury or death resulting from their activity as an NCA special. *Sub-paragraph (5)* provides that the Director General may designate an NCA special with the powers and privileges of a constable, but not the powers of a customs officer or immigration officer. *Sub-paragraph (6)* provides that an NCA special can only be designated with the powers and privileges of a constable in England and Wales and the adjacent United Kingdom waters, and not in Scotland, Northern Ireland or overseas. *Sub-paragraphs (7)* and *(8)* exclude NCA specials from some provisions applying to other NCA officers. *Sub-paragraphs* (*9*) and (*10*) also exclude NCA specials from the effects of sections 13 and 14 relating to restrictions on the right to strike in relation to NCA officers holding operational powers, and the setting of pay and allowances. *Sub-paragraph (11)* provides for the suspension of the powers of an NCA special whenever that person acts as special constable or a member of the PSNI Reserve. The effect of this

provision is to ensure a person is not able to use the powers of an NCA special when he or she acts as a special constable or a member of the PSNI Reserve. *Sub-paragraph (12)* provides that a person is not a civil servant by virtue of being an NCA special.

### *Section 2: Modification of NCA functions*

113. This section enables the Secretary of State, by order (subject to the super-affirmative procedure (*subsection (5)*) set out in Schedule 23), to make further provision about NCA counter-terrorism functions. By virtue of *subsection (1)(a)* the power may be used to add, remove or otherwise modify such functions. By virtue of *subsection (1)(b)* any order may contain other provisions in connection with, or consequential upon, the altering of NCA functions.

114. *Subsection (2)* provides that if an order is made under *subsection (1)* an NCA officer may only carry out activities in Northern Ireland in relation to the discharge of a function in relation to counter-terrorism with the prior agreement of the Chief Constable of the Police Service of Northern Ireland.

### *Section 3: Strategic priorities*

115. This section requires the Home Secretary to determine the strategic priorities for the NCA. Such priorities may, for example, include protecting the public against illegal drugs, human trafficking and cyber crime. These 'strategic priorities' are to be set in consultation with "the strategic partners" (who are defined in section 16), the Director General, and anyone else the Home Secretary considers appropriate.

### *Section 4: Operations*

116. This section enshrines the operational independence of the Director General and determines how this relates to the strategic direction set by the Home Secretary. The Home Secretary will set the strategic priorities of the NCA, and will issue a framework document for the NCA (see further below). As part of the annual plan, the Director General will explain how he or she intends that the strategic and operational priorities will be given effect to. It will be for the Director General to determine which operations to mount and how they will be conducted (*subsection (1)*). The Director General must have regard to the strategic priorities, annual plan and framework document in exercising his or her functions *(subsection (2)*).

117. *Subsections (3) to (9)* make provision in respect of the annual plan. They provide that at the beginning of each financial year, the Director General must publish an annual plan setting out how the Director General intends that NCA functions are to be exercised for that year. The plan must include any strategic and operational priorities (operational priorities must be consistent with the current strategic priorities), and explain how the Director General intends to deliver against both sets of priorities *(subsection (4)*). In developing the annual plan, the Director General must consult the "strategic partners" (defined in section 16(1)) and anyone else he or she considers appropriate (*subsection (6)*). The duty to consult and approve the plan with Scottish Ministers and the Department of Justice in Northern Ireland, as two of the strategic partners, only applies in so far as the plan relates to activities in Scotland and Northern Ireland respectively (*subsections (7) and (8)*). The Home Secretary must approve the annual plan before it is issued by the Director General (*subsection (8)*).

118. *Subsection (10)* gives effect to Schedule 2.

### *Schedule 2: The framework document & annual report*

119. Part 1 of Schedule 2 makes provision in respect of the NCA framework document. The framework document will in effect be a joint statement of how the Home Secretary and Director General propose to work together, and how they wish the NCA to operate.

120. *Paragraph* 1 provides that the framework document will set out the ways in which the NCA is to operate. In particular it will set out the ways in which NCA functions are to be exercised and the ways in which the NCA is to be administered, for example, the governance and accountability of the Agency including the respective roles of the Home Secretary and Director General; the arrangements in respect of financial and performance management; and the proactive disclosure of information.

121. *Paragraph 2* places a duty on the Secretary of State to issue the framework document and keep it under review and revise it as and when appropriate.

122. *Paragraph 3* provides that the Home Secretary must have regard to the framework document in exercising functions in relation to the NCA. Similarly section 3(2) provides that the Director General must have regard to the framework document when exercising his or her functions.

123. *Paragraph 4* requires that the Home Secretary must consult and obtain the approval of the Director General before issuing any framework document. *Paragraph 5* requires the Secretary of State to consult Scottish Ministers and the Department of Justice in Northern Ireland in preparing the first framework document or any subsequent revision which is, in the Home Secretary's view significant..

124. *Paragraph 6* requires the Secretary of State to lay the framework document (and any subsequent revisions) before Parliament and arrange for it to be published in the manner which the Home Secretary considers appropriate. The Scottish Ministers and the Department of Justice in Northern Ireland are required to lay a copy of the report before the Scottish Parliament and the Northern Ireland Assembly respectively.

125. Part 2 of Schedule 2 makes provision in respect of the NCA annual report.

126. *Paragraph 7* places a duty on the Director General to issue an annual report on the exercise of the NCA functions during that year which must include an assessment of the extent to which the annual plan has been carried out.

127. *Paragraph 8* requires the Director General to arrange publication of the annual report in a manner which he or she considers appropriate but the Director General must send a copy of it to the strategic partners and the Secretary of State. The Secretary of State, the Scottish Ministers and the Department of Justice in Northern Ireland are required to lay a copy of the report before Parliament, the Scottish Parliament and the Northern Ireland Assembly respectively.

### *Section 5: Relationships between NCA and other agencies: tasking etc*

128. *Subsections (1) to (4)* provide for 'voluntary' arrangements to perform a task. *Subsections (1) and (2)* enable the Director General to request a UK police force or a UK law enforcement agency to perform a task if the Director General considers that performance of the task would assist the NCA to exercise functions and explains how performance of the task would assist the exercise of functions.

129. Similar provisions are made for UK police forces and UK law enforcement agencies to request the NCA to perform a task (*subsections (3) and (4)*).

130. *Subsections (5) to (9)* provide for 'directed' arrangements to perform a task. In certain limited and specified circumstances (see below) the Director General may direct the chief officer of an England and Wales police force or the Chief Constable of the British Transport Police to perform a task specified in a direction where the performance of the task would assist the NCA to exercise functions; it is expedient for the directed person to perform that task; and voluntary arrangements cannot be made or made in time (*subsections (5) and (6)*). The directed person must comply with the direction (*subsection (7)*). Directions to the Chief Constable of the British Transport Police will require prior consent from the relevant Secretary of State (*subsection (9)*).

131. *Subsection (10)* gives effect to Schedule 3 (relationships between NCA and other agencies). *Subsection (11)* provides that the arrangements in respect of the apportionment of costs, as set out in Part 5 of Schedule 3, are to apply to these voluntary and directed tasking arrangements. *Subsection (12)* signposts the power in paragraph 33 of Schedule 3 which enables the Secretary of State to amend, by order (subject to the affirmative resolution procedure), the list of partners subject to directed tasking and the persons, if any, from whom the Director General of the NCA is required to seek consent before exercising the power of direction.

### *Schedule 3: Relationships between NCA and other agencies*

#### Part 1: Co-operation

132. *Paragraph 1* places a duty on NCA officers to co-operate with specified persons in order to assist them in their activities to combat crime. It also places a reciprocal duty on members of the armed forces, coastguard and those specified persons to co-operate with NCA officers in the discharge of NCA functions.

133. *Paragraph 2* enables the NCA to enter into co-operation arrangements with other persons for the purposes of discharging any of its functions, such as Police Collaboration Agreements under the Police Act 1996

#### Part 2: Exchange of information

134. *Paragraph 3* creates a duty on chief officers of UK police forces (as defined in section 16(1)) to keep the NCA informed about certain information and when requested to disclose that information to the NCA. *Sub-paragraph (1)* creates a duty on police forces to inform the Director General of the NCA about any information held by them which is considered by the chief officer to be relevant to the exercise by the NCA of any of its core functions (namely, the crime-reduction function, the criminal intelligence function or functions under the Proceeds of Crime Act 2002). This duty applies to chief officers of police forces in England and Wales, Northern Ireland and Scotland, the British Transport Police, Ministry of Defence Police and Civil Nuclear Constabulary. *Sub-paragraph (2)* creates a duty on the chief officer to then disclose that information to the NCA if the Director General makes a request for it. *Sub-paragraph (3)* provides that paragraph 3(1) does not require a chief officer to keep the Director General informed of information that appears to the chief officer to be information obtained from the NCA.

135. *Paragraph 4* imposes a duty on the Director General of the NCA to keep chief officers of UK police forces (as defined in section 16(1)) informed about certain information and is reciprocal in nature to the duty in paragraph 3(1). *Sub-paragraph (1)* creates a duty on the Director General to notify chief officers of any information that the NCA possesses which is considered by the Director General to be relevant to the exercise of a function of the chief officer or any other member of that police force. This duty applies to the Director General in respect of chief officers of police forces in England and Wales, Northern Ireland and Scotland, the British Transport Police, Ministry of Defence Police and Civil Nuclear Constabulary. *Sub-paragraph (2)* provides that the duty imposed by paragraph 4(1) does not require the Director General to keep the chief officer informed of information which appears to the Director General to be information obtained from chief officer or any other member of that police force.

136. *Paragraphs 5 to 7* make like provision to that in paragraphs 3 and 4 in respect of other specified bodies, (as defined in paragraph 7) namely the Serious Fraud Office, Border Force and the Director of Border Revenue. By virtue of *paragraph 34*the Secretary of State may by order (subject to the affirmative procedure) amend paragraph 7 so as to add further persons to the list of Government bodies who will be subject to the duty to keep the NCA informed of information.

## Part 3: Assistance within the UK

137. *Paragraph 8* allows for the Director General of the NCA to provide assistance (in the form of officers and other such support) to operate under the direction and control of a UK police force, a UK law enforcement agency, an Island police force or an Island law enforcement agency if they make a specified request for assistance. If a request is made the Director General of the NCA may provide such assistance as the Director General of the NCA considers appropriate.

138. *Paragraph 9* enables a UK police force or a UK law enforcement agency to provide assistance (whether in the form of officers to operate under the direction and control of the NCA or other support) if the Director General of the NCA makes a request for assistance. The person providing the assistance may provide such assistance as they consider appropriate.

139. *Paragraph 10*enables the Home Secretary to direct the Director General of the NCA to provide specified assistance to an England and Wales police force and other listed persons if it appears to the Home Secretary that it is appropriate for directed assistance to be given by the Director General of the NCA.

140. *Paragraph 11* enables the Director General of the NCA to direct a listed person in sub-paragraph (1) to provide specified assistance to the NCA. Such directions may only be given if the Director General of the NCA considers it appropriate for the NCA to receive directed assistance and is subject to the prior consent of the relevant minister as specified in *paragraph 11(3)*.

141. *Paragraphs 12 and 13* concern directed assistance to and from the NCA in relation to Scotland. These enable Scottish Ministers to direct the Director General of the NCA to provide specified assistance to the Police Service of Scotland if Scottish Ministers consider it appropriate for the Police Service of Scotland to receive directed assistance from the NCA and the Home Secretary consents. Scottish Ministers will also have the power to direct the Police Service of Scotland to provide specified assistance to the NCA if Scottish Ministers consider it appropriate for the NCA to receive directed assistance from the Police Service of Scotland.

142. *Paragraphs 14 and 15* make corresponding provision in relation to Northern Ireland. This enables the Department of Justice in Northern Ireland to direct the Director General of the NCA to provide specified assistance to the Police Service of Northern Ireland, if the Department of Justice in Northern Ireland considers it appropriate for the Police Service of Northern Ireland to receive such directed assistance and the Home Secretary consents. It also provides the Department of Justice in Northern Ireland with the power to direct the Police Service of Northern Ireland to provide specified assistance to the NCA, subject to the Department of Justice in Northern Ireland considering it appropriate for the NCA to receive such directed assistance and subject to consultation with the Northern Ireland Policing Board and other persons that the Department of Justice in Northern Ireland considers appropriate to consult.

143. *Paragraph 16* provides that directed assistance powers can only be used where there is a special need for assistance and where it is expedient for the directed party to provide it. It must also be the case that voluntary arrangements cannot be made, or cannot be made in time.

144. *Paragraph 17* describes the form that assistance may take, including (but not limited to) the loan of persons or equipment.

145. *Paragraph 18* provides that individuals who are provided under the assistance provisions will fall under the direction and control of the assisted person.

## Part 4: Use of police facilities etc by NCA

146. It is not expected that the NCA will maintain its own custody facilities. Accordingly Part 4 of Schedule 3 enables the NCA to use premises, equipment, facilities or services of police forces, and immigration and customs facilities in accordance with an agreement made between the NCA and such bodies.

147. *Paragraph 19* provides for voluntary arrangements to be made between the Director General and police and crime commissioners, or the chief constable of police forces listed in Schedule 1 to the Police Act 1996 (police forces in England and Wales outside London), for the NCA to make use of their police facilities.

148. *Paragraph 20* enables the Director General to make voluntary arrangements for the NCA to use the facilities made available by the Metropolitan Police Force.

149. *Paragraph 21* enables the Director General to make voluntary arrangements for the NCA to use the facilities made available by the City of London Police Force.

150. *Paragraph 22* enables the Director General to make voluntary arrangements for the NCA to use immigration or customs facilities.

151. *Paragraph 23* provides that the Secretary of State may direct a police force in England & Wales to make arrangements for the use of facilities under *paragraph 19*, *20 or 21* of this Schedule, in the absence of satisfactory voluntary arrangement made under those paragraphs.

152. *Paragraph 24*enables the Director General of the NCA to make voluntary arrangements for the NCA to use facilities made available to the Police Service of Northern Ireland. In the absence of a satisfactory voluntary arrangement, under *paragraph 24*, *paragraph 25* enables the Department of Justice in Northern Ireland, with the consent of the Secretary of State, to direct the Director General and the Northern Ireland Policing Board to make arrangements for the NCA to use the facilities made available by the Police Service of Northern Ireland.

153. *Paragraph 26* provides that facility-sharing arrangements must specify or describe the facilities that are the subject of such arrangements (*sub-paragraph (1)*), and may be varied or terminated by the parties (*sub-paragraph (2)*) unless it was made in compliance with a direction, in which case consent must be obtained from the person who gave the direction (*sub-paragraph (3)*).

154. *Paragraph 27*provides that before a person ('D') gives a direction under this Part of the Schedule to a person ('P'), D must notify P of the proposal, and consider representations from P.

155. *Paragraph 28* provides that facilities means premises, equipment and other material, facilities and services.

## Part 5: Payment for tasks, assistance or facilities

156. *Paragraphs 29 to 31* make provision for the NCA, police fundholding bodies and law enforcement agencies to pay for tasks, assistance or facilities. However, the parties involved may decide that there should be no such charging.

157. *Paragraph 32* defines the 'appropriate amount' that should be paid as an amount agreed by both parties or, in the absence of such agreement, an amount determined by the Secretary of State. If responsibility for either of the parties is devolved, the Secretary of State must consult with the appropriate devolved administration.

## Part 6: General

158. *Paragraph 33* provides an order-making power (subject to the affirmative resolution procedure) by which the Secretary of State may amend the list of partners subject

to directed tasking and assistance arrangements (at section 5 or *paragraph 11* of Schedule 3). The Secretary of State may, in particular, add or remove persons (who were added). But none of the following may be added: the Commissioners for Her Majesty's Revenue and Customs, the Chief Constable for the Police Service of Scotland, any person operating only in Scotland, the Chief Constable of the Police Service of Northern Ireland, and any person operating only in Northern Ireland. The Secretary of State may also amend the requirements for the Director General to seek prior consent from agencies or bodies before issuing directions. Before using this power, the Secretary of State must consult the affected person.

159. *Paragraph 35*places a duty on a person given a direction to comply with it (*sub-paragraph (1)*) and limits the extent of a direction by ensuring that it must not relate to any prosecution function (*sub-paragraph(2)*).

### *Section 6: Duty to publish information*

160. *Subsection (1)* places a duty on the Director General to publish information about the exercise of the NCA's functions and other matters relating to the NCA. *Subsections (2)* and *(3)* specify that in carrying out this duty, the Director General must comply with any requirements set out in the Framework Document.

161. *Subsection (4)* provides the duty to publish information is subject to Schedule 7. This imposes limits on the information that can be published. For example, information obtained from HM Revenue and Customs can only be published with the consent of the Commissioners for Revenue and Customs.

### *Section 7: Information gateways*

162. Section 7 is a broad information gateway. *Subsection (1)* authorises any person to disclose information to the NCA if the disclosure is made for the purposes of the exercise of any NCA function.

163. The only exception to the general power in *subsection (1)* is set out in *subsection (2)* which provides *subsection (1)* does not authorise a person serving in the Security Service, Secret Intelligence Service or GCHQ to disclose information to the NCA so any disclosure of information by such a person to the NCA would be made in accordance with the relevant intelligence service arrangements as defined in *subsection (10)*.

164. *Subsection (3)* provides information obtained by the NCA in connection with the exercise of any NCA function may be used by the NCA in connection with the exercise of any other NCA function. For example, information obtained in the course of gathering criminal intelligence may be used in connection with NCA's crime reduction function.

165. *Subsection (4)* provides that the NCA may disclose information in connection with the exercise of any NCA function if the disclosure is for any "permitted purpose". The term "permitted purpose" is defined in section 16(1). This would apply in situations where, for example, the NCA has received information on suspected criminal activity (such as a 'Suspicious Activity Report' – which help banks and financial institutions protect themselves and their reputation from criminals and help law enforcement to track down and arrest them) and has decided to share this information with an organisation or person outside the NCA (such as a financial institution) for the purpose of preventing or detecting crime.

166. *Subsection (5)* makes it clear that *subsection (4)* only authorises an NCA officer to disclose information obtained under Part 6 of the POCA for the purpose of: the exercise of the functions of the Lord Advocate under Part 3 of the POCA (Scottish confiscation); the exercise of functions by Scottish Ministers under or in relation to Part 5 of the POCA (civil recovery to the proceeds of crime etc).

167. *Subsection (6)* provides that an NCA officer may not disclose information obtained by the NCA under Part 6 of the POCA (revenue functions) under *subsection (4).* An NCA officer may only disclose information obtained under Part 6 of the POCA in accordance with the provisions set out in *subsection (7).*

168. *Subsection (7)* provides that an NCA officer may disclose information obtained under Part 6 of the POCA if the disclosure is to the Commissioners for Revenue and Customs; to the Lord Advocate for the purpose of specified functions; to any person for the purpose of civil proceedings which relate to a matter in respect of which the NCA has functions; or to any person in compliance with an order of a court or tribunal.

169. *Subsection (8)* provides that a disclosure of information in accordance with Part 1 of the Act does not breach any obligation of confidence owed by the person making the disclosure or any other restriction on the disclosure of information however imposed (including any statutory restrictions other than those set out in Schedule 7 to the Act). In practice, this provision allows the police, law enforcement agencies, banks and other financial institutions to share information with the NCA and vice versa about organised crime activity, which could involve the disclosure of personal banking records.

### *Section 8: Other functions etc*

170. *Subsections (1) and (2)* add the NCA to the list of bodies subject to the duty in sections 11 (which relates to England) and 28 (which relates to Wales) of the Children Act 2004. Sections 11 and 28 of the Children Act impose a duty on specified agencies to make arrangements to ensure that their functions are discharged having regard to the need to safeguard and promote the welfare of children. The aim of this duty is to:

- ensure that agencies give appropriate priority to their responsibilities towards the children in their care or with whom they come into contact; and
- encourage agencies to share early concerns about safety and welfare of children and to ensure preventative action before a crisis develops.

171. This duty will be particularly relevant to the work of the NCA in tackling child sex abuse and the human trafficking of children.

172. *Subsections (3) and (4)* provide a general power to the NCA to assist governments or other bodies exercising functions of a public nature outside the British Islands.

173. *Subsection (6)* gives effect to Schedule 4 (NCA General).

### *Schedule 4: NCA: general*

174. *Paragraph 1* allows the Secretary of State to make regulations (subject to the negative resolution procedure) governing the equipment used by the NCA. *Sub-paragraph (2)* enables regulations to be made, for example, in relation to the use of specified equipment. The use of equipment may also be prohibited under the regulations. The NCA is required to comply with any conditions specified in the regulations on the use of equipment. Before making such regulations under *paragraph 1*, the Secretary of State must first consult the Director General of the NCA and any other persons considered appropriate (*sub-paragraph (3)*).

175. Equipment under paragraph 1 includes vehicles, headgear and protective and other clothing (*sub-paragraph (4)*).

176. *Paragraph 2*establishes the NCA's liability in respect of unlawful conduct of any persons acting under the auspices of the NCA in the same way that an employer is liable for the unlawful conduct of employees in the course of their employment.

177. *Sub-paragraphs (2) to (4)* set out the circumstances under which the NCA will be liable for the unlawful actions of persons carrying out functions in relation to the NCA. *Sub-paragraph (2)* sets out the NCA's liability in relation to constables or other persons

carrying out functions whilst seconded to the NCA or when providing assistance to the NCA under Part 3 of Schedule 3. *Sub-paragraph (3)* covers the NCA's liability in relation to the conduct of a person other than an NCA officer who is a member of an NCA-led international joint investigation team, when that person is carrying out functions as a member of that team. *Sub-paragraph (4)* covers the unlawful conduct of a person carrying out surveillance under section 76A of the Regulation of Investigatory Powers Act 2000.

178. *Sub-paragraph (5)* provides that the NCA will be a joint tortfeasor when the unlawful conduct is a tort.

179. *Sub-paragraph (6)* provides that where the Secretary of State receives reimbursement through an international agreement for any sums of money paid by the NCA by virtue of *paragraph 2*, the Secretary of State must pay the sum to the NCA by way of reimbursement.

180. *Paragraph 3*sets out various summary offences relating to obstructing or assaulting members of an international joint investigation team led by the NCA, in accordance with obligations under international agreements to which the United Kingdom is a party.

181. *Sub-paragraph (1)* makes it an offence to assault a member of an international joint investigation team led by the NCA and who is carrying out functions as a member of that team and s*ub-paragraph (3)* makes it an offence to resist or wilfully obstruct a member of that team in similar circumstances. S*ub-paragraphs (2)* and *(4)* provide for the penalties for the two offences.

182. *Paragraph 4* is concerned with certain provisions of sex, disability, race and employment discrimination legislation in Northern Ireland and the operation of those provisions in relation to persons seconded to the NCA. S*ub-paragraph (1)* provides that a person seconded to the NCA is to be treated as an employee of the NCA for the purposes of the provisions listed under s*ub-paragraph (2)*. S*ub-paragraph (3)* provides that for the purposes of s*ubparagraph (4)* the NCA is to be treated as the employer of persons seconded to the NCA.

### *Section 9: Director General: customs powers of Commissioners & operational powers*

183. This section provides the Director General with the same powers as the Commissioners of HM Revenue and Customs have in relation to any customs matter (*subsection (1)*) and also provides for the Secretary of State to be able to designate the Director General to hold operational powers (*subsection (2)*) (these include the powers and privileges of a constable, the powers of an officer of Revenue and Customs and the powers of an immigration officer). *Subsection (5)* provides the mechanism by which the Director General is to be designated (with more detail set out in Part 2 of Schedule 5). *Subsection (6)* provides that the Secretary of State may only exercise the powers of designation if certain conditions are met, that is, where he or she is required to do so under *subsection (5)* or where he or she is required or otherwise authorised to do so by regulations under paragraph 5 of Schedule 5. *Subsection (3)* provides that the Home Secretary may modify or withdraw a designation provided under *subsection (2).*

184. *Subsection (4)* gives effect to Schedule 5 (police, customs and immigration powers).

### *Section 10: Operational powers of other NCA officers*

185. This section provides the Director General with the ability to designate other NCA officers with operational powers. These include the powers and privileges of a constable, the powers of an officer of Revenue and Customs, or the powers of an immigration officer (*subsection (1)*).

186. The Director General may only designate an NCA officer with operational powers if the Director General is satisfied that the NCA officer is capable of exercising those powers,

has received adequate training and is otherwise a suitable person to exercise them (*subsection (2)*). The Director General is able to modify or withdraw a designation given under *subsection (1)* by giving notice to the NCA officer concerned (*subsection (3)*).

### *Schedule 5: Police, customs and immigration powers*

#### Part 1: Director General: Commissioners' powers exercisable under section 9(1)

187. *Paragraph 1*sets out a further limitation on the Commissioner powers exercisable by the Director General. Section 9 sets out that the powers of the Commissioners are exercisable only in relation to any customs matter. *Paragraph 1* provides that if a power of the Commissioners is exercisable in relation to both a customs matter and any other matter the power is exercisable by the Director General only in relation to a customs matter (as defined in section 9).

188. *Paragraph 2* applies to an enactment if it provides for the issuing of warrants which authorise the Commissioners to exercise any power in relation to a customs matter. The paragraph provides that for the purpose of enabling the Director General to exercise that power in relation to a customs matter the enactment has effect as if the Director General were one of the Commissioners.

189. *Paragraph 3* provides that the Director General cannot exercise the power of the Commissioners to consent to a disclosure of HMRC information under paragraph 2(1) of Schedule 7 or the power of the Commissioners to consent to a further disclosure of HMRC information under *paragraph 2(2)* of Schedule 7.

#### Part 2: Director General: designation under section 9

190. *Paragraph 4* provides that the Secretary of State must appoint an advisory panel to make recommendations as to the operational powers that the Director General should have (*sub-paragraph (1)*). The panel must be appointed whenever there is an appointment of a Director General, and at any other time that the Secretary of State considers is appropriate. *Sub-paragraph (2)* provides that the requirement to establish an advisory panel is subject to any regulations under paragraph 5. *Sub-paragraph (3)* sets out the membership of the panel which must consist of a person to chair the panel (who must not be a serving civil servant) and other members expert in the training of NCA officers and the respective operational powers – police powers, customs powers and immigration powers. The panel may only consider whether the Director General has received adequate training in respect of the operational powers. The requirements as to capability and suitability for the Director General to exercise operational powers will be addressed as part of the selection and appointment process (*paragraph 7(2)* of Schedule 1). The chair must consider the information given by the expert members in order to decide whether the Director General has received adequate training in order to exercise the operational powers in question and produce a report with recommendations as to the operational powers the Director General should have (*sub-paragraph (5)*).

191. *Paragraph 5* provides that the Secretary of State may make regulations to set out the circumstances in which the Director General may be designated with operational powers other than on the recommendation of the advisory panel. Regulations may provide that the Secretary of State must designate the Director General with operational powers if specified conditions are met (*sub-paragraph (2)*). *Sub-paragraph (3)* provides that the conditions may relate to the training received by a person in one or more of the operational powers before their appointment as Director General.

#### Part 3: Further provision about designations under sections 9 or 10

192. *Paragraph 6* provides that a designation of an officer as having operational powers may be subject to limitations specified in the designation. This may include limitations on which operational powers the designated officer has or limitations on the purposes for which an NCA officer may exercise operational powers.

193. *Paragraph 7* provides that the designation of an officer as having operational powers does not have any limitation of time unless the designation specifies a period for which it is to have effect. Any designation, however, remains subject to any subsequent modification or withdrawal and only has effect while a person remains an NCA officer.

194. *Paragraph 8* provides that the Director General or other NCA officer may be designated with operational powers whether or not that person already has, or previously had, any such powers. *Sub-paragraph (3)* provides that if a person is both an NCA officer designated with operational powers and a special constable or a member of the PSNI Reserve none of the powers that a person has as an NCA officer are exercisable at any time when the person is exercising any power or privilege of a special constable or a constable of the PSNI Reserve.

195. *Paragraph 9* provides that an NCA officer must produce evidence of his or her designation if they exercise or purport to exercise any operational power in relation to another person and the other person requests the officer to produce such evidence (*sub-paragraph (1)*). This paragraph does not specify the form which such evidence should take. A failure to produce evidence of designation does not make the exercise of the power invalid (*sub-paragraph (2)*).

## Part 4: Designations: powers and privileges of constables

196. *Paragraph 10* provides that where the Director General is designated with police powers and privileges, the Director General has in England and Wales and adjacent UK waters all the powers and privileges of an English and Welsh constable and outside the UK and UK waters, all the powers and privileges of a constable that are exercisable overseas. The exercise of police powers is subject to any limitations in the designation.

197. *Paragraph 11* further provides that where an NCA officer (other than the Director General) is designated with police powers and privileges, the NCA officer has: in England and Wales and adjacent UK waters, all the powers and privileges of an English and Welsh constable; in Scotland and the adjacent UK waters, all the powers and privileges of a Scottish constable; in Northern Ireland and the adjacent UK waters, all the powers and privileges of a Northern Ireland constable; and outside the UK and UK waters, all the powers and privileges of a constable that are exercisable overseas (*sub-paragraph (1)*). The exercise of police powers is subject to any limitations in the designation. Furthermore, the exercise of the powers and privileges of a constable in Scotland and Northern Ireland are subject to further requirements by virtue of *sub-paragraphs (3) and (6).*

198. *Paragraph 11*further provides that the powers and privileges of a Scottish constable are exercisable by an NCA officer if a Scottish general authorisation is in force between the Scottish Ministers and the Director General (*sub-paragraph (4)*). *Sub-paragraph (5)* provides that the powers and privileges of a Scottish constable are exercisable by an NCA officer if a Scottish operational authorisation (that is an agreement between the Director General and an officer of the Police Service of Scotland not below the rank of Assistant Chief Constable) is in force in relation to a particular operation. *Sub-paragraph (7)* provides that the powers and privileges of a Northern Ireland constable are exercisable by an NCA officer only if a Northern Ireland general authorisation is in force between the Department of Justice in Northern Ireland and the Director General. *Sub-paragraph (8)* provides that the powers and privileges of a Northern Ireland constable are exercisable by an NCA officer if a Northern Ireland operational authorisation (that is an agreement between the Director General and an officer of the Police Service of Northern Ireland not below the rank of Assistant Chief Constable) is in force in relation to a particular operation. A Northern Ireland operational authorisation must conform with a Northern Ireland general authorisation.

199. *Paragraph 12* provides that the exercise of the powers of a constable by the Director General or other designated NCA officer is subject to the same territorial restrictions as a constable exercising those powers. *Paragraph 13* applies to an enactment if it

provides for the issuing of warrants which authorise a constable to exercise any power or privilege of a constable. The paragraph further provides that for the purpose of enabling a designated officer to exercise his or her powers or privileges the enactment has effect as if the designated officer were a constable.

200. *Paragraph 14* provides that when exercising direction and control of the NCA in relation to the exercise by NCA officers of the powers and privileges of a Scottish constable, the Director General must comply with instructions given by the Lord Advocate or procurator fiscal in relation to the investigation of offences.

201. *Paragraph 15*provides that those NCA officers designated with policing powers and privileges will not be regarded as being in police service for the purposes of certain specified employment legislation.

## Part 5: Designations: powers of officers of Revenue and Customs

202. *Paragraphs 16 to 18*provide that an NCA officer (*paragraph 16*) who has been designated with customs powers has the same powers as an officer of Revenue and Customs in relation to any customs matter. The definition of a 'customs matter' is set out in Section 9 and excludes the matters to which section 7 (former Inland Revenue matters) of the Commissioner for Revenue and Customs Act 2005 applies and taxes and duties. Therefore the exercise of customs powers by the Director General of the NCA and designated NCA officers is in relation to non-revenue matters. In both cases the exercise of customs powers in relation to non-revenue matters is subject to any limitations in the designation. Where a customs power is exercisable in relation to both a customs matter and any other matter, the power is only exercisable by an NCA officer in relation to the customs matter (*paragraph 17*).

203. *Paragraph 18*provides that where an enactment enables a warrant to be issued which authorises an officer of Revenue and Customs to exercise any power in relation to a customs matter, a designated NCA officer is to be treated as if he or she were an officer of Revenue and Customs for the purposes of enabling NCA officers to exercise those powers.

## Part 6: Designations: powers of immigration officers

204. *Paragraph 19*enables any NCA officer, designated with the powers of an immigration officer, to exercise all the powers of an immigration officer. The exercise of immigration powers is subject to any limitations in the designation.

205. *Paragraph 20*provides that where an enactment enables a warrant to be issued which authorises an immigration officer to exercise any power of an immigration officer, an NCA officer designated with immigration powers is to be treated as an immigration officer for the purposes of enabling them to exercise those powers.

## Part 7: Offences relating to designations

206. *Paragraphs 21 to 23* set out various summary offences relating to obstructing, assaulting or impersonating designated officers. They parallel similar offences in relation to police officers, officers of Revenue and Customs and immigration officers in various enactments.

207. *Paragraph 21* makes it an offence to resist or wilfully obstruct a designated officer acting in the exercise of an operational power or to resist or wilfully obstruct a person assisting a designated officer in the exercise of such a power. *Paragraph 22* makes it an offence to assault a designated officer acting in the exercise of an operational power or to assault a person assisting a designated officer in the exercise of such a power. *Paragraph 23* makes it an offence, provided there is intent to deceive, to impersonate or pose as a designated officer. It is also an offence for a designated NCA officer to

make any statement or act in a way that falsely suggests that he or she has powers above and beyond those he or she in fact has.

208. *Sub-paragraph (2)* of each of *paragraphs 21 to 23* sets out the maximum penalties for the three offences in England and Wales, Scotland, and Northern Ireland respectively.

### Part 8: General

209. *Paragraph 25*provides that the Director General must pay all proceeds of forfeitures under the customs and excise Acts to the Commissioners for Revenue and Customs.

210. *Paragraph 26* provides that, where an enactment relates to a power or privilege of a constable, or a power of an officer of Revenue and Customs, the Commissioners for Her Majesty's Revenue and Customs or an immigration officer and the enactment refers to a constable, an officer of Revenue and Customs, the Commissioners for Her Majesty's Revenue and Customs or an immigration officer, those references should be read as being, or including a reference to, the Director General or other NCA officer as appropriate.

211. *Paragraph 27*confers an order-making power on the 'relevant national authority' (as defined in *paragraph 30*) to make such provision as considered appropriate in consequence of the Director General having the powers of the Commissioners under section 9 or designated offices having operational powers.

212. *Paragraph 28* confers an order-making power on the 'relevant national authority' to amend by order the functions of a person so that they can be exercised by that person in relation to the NCA, the Director General or NCA officers.

213. The order-making powers in *paragraphs 27 and 28* are subject to the affirmative resolution procedure where they amend primary legislation, but are otherwise subject to the negative resolution procedure.

214. *Paragraph 29* provides that before the Secretary of State exercises a power under *paragraph 27 or 28* in relation to enactments that confer any functions on the Commissioners for Her Majesty's Revenue and Customs or an officer of Revenue and Customs, the Commissioners for Her Majesty's Revenue and Customs must be consulted (*sub-paragraph (2)(a)*). Before the Secretary of State exercises the power in relation to an enactment which extends to Scotland or Northern Ireland, the Secretary of State must consult the Scottish Ministers or the Department of Justice in Northern Ireland respectively (*sub-paragraphs (2)(b)* and *(c)*).

215. *Paragraph 30* sets out and defines the various terms that have been used in this Schedule.

### *Section 11: Inspections and complaints*

216. *Subsection (1)* provides for inspection of the NCA by Her Majesty's Inspectors of Constabulary ("HMIC"). HMIC are appointed under section 54 of the Police Act 1996 for the purpose of independently inspecting and reporting on the efficiency and effectiveness of police forces in England and Wales.

217. *Subsection (2)* enables the Secretary of State to request an inspection by HMIC (under subsection (1)) HMIC will conduct inspections of the NCA on its own initiative).

218. *Subsection (3)* requires HMIC to report the outcome of their inspections of the NCA to the Secretary of State (in practice the Home Secretary).

219. *Subsection (4)* enables the Secretary of State to direct HMIC to carry out other duties relating to the efficiency and effectiveness of the NCA.

220. *Subsection (5)* provides that paragraphs 2 and 5 of Schedule 4A to the Police Act 1996 (which enable HMIC to draft inspection programmes and frameworks to be approved

by the Secretary of State) applies to inspection functions of HMIC in relation to the NCA.

221. *Subsection (6)* inserts a new section 26C into the Police Reform Act 2002. New section 26C(1) requires the Secretary of State to make regulations (subject to the negative resolution procedure) conferring functions on the Independent Police Complaints Commission ("IPCC") in relation to the exercise of functions by the Director General of the NCA and other NCA officers. Under new section 26C(2)(a) such regulations may apply, with or without modifications, the provisions of Part 2 of the Police Reform Act 2002 or of regulations made under it. Part 2 confers functions on the IPCC in respect of complaints about, or matters indicating misconduct or death or serious injury involving, persons serving with police forces in England and Wales; such functions include the examination of police forces' complaint handling procedures and undertaking, management or supervision of investigations into complaints or other matters. The purpose of these provisions is not simply to replicate Part 2 of the Police Reform Act 2002, because the arrangements will need to be tailored to the circumstances of the NCA, but they will ensure that the IPCC has oversight of the NCA in broadly the same way as it has in relation to the police. Under new section 26C(2)(b), such regulations may make provision for the NCA to make payments to the IPCC in respect of the exercise of its functions under the new section 26C.

222. New section 26C(3) confines the scope of the IPCC's oversight of the NCA to the exercise of its functions in, or in relation to, England and Wales. New section 26C(4) enables the IPCC and the Parliamentary Commissioner for Administration ("PCA") jointly to investigate a matter in relation to which both of them have functions (limited to matters in relation to which the NCA exercises certain asset recovery functions). New section 26C(5) enables an NCA officer to disclose information to the IPCC, or a person acting on its behalf, for the purposes of the IPCC exercising a function conferred under new section 26C. New section 26C(6) enables the IPCC and the PCA to disclose information to each other for the purposes of the exercise of any functions under new section 26C(4) or the Parliamentary Commissioner Act 1967. New section 26C(7) and (8) enable regulations to make further provision about the disclosure of information under new section 26C(5) and (6) or in relation to the onward disclosure of information by the IPCC of information provided to it by the NCA, and disapplies Schedule 7 to the Act (unless provision is made to the contrary).

223. *Subsection (7)* makes amendments to article 4(4) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 ("the 2007 Order") so as to provide that complaints relating to the acts or omissions of NCA officers exercising functions in Scotland are subject to the oversight of the Police Investigations and Review Commission as set out in an agreement between the Commission and the NCA; such an agreement has been made between the Commission and SOCA under article 4(4) of the 2007 Order.

224. *Subsection (8)* amends section 60ZA of the Police (Northern Ireland) Act 1998 so as to provide that complaints and conduct matters arising from NCA officers exercising functions in Northern Ireland are subject to oversight by the Office of the Police Ombudsman for Northern Ireland as set out in an agreement between the Police Ombudsman and the NCA (which has been made under that section), or as established by order made by the Secretary of State.

225. *Subsection (9)* gives effect to Schedule 6.

### *Schedule 6: Inspections and complaints*

226. *Paragraph 1* requires the Secretary of States to consult Scottish Ministers before requesting an HMIC inspection of NCA activities in Scotland. *Sub-paragraph (2)* provides that, in relation to any inspection wholly or partly in Scotland, HMIC may conduct the inspection jointly with the Scottish inspectors following consultation with the Scottish inspectors on whether a joint inspection is appropriate (*sub-paragraph (3)*).

227. *Paragraph 2* requires the Secretary of State to consult the Department of Justice in Northern Ireland before requesting an HMIC inspection of NCA activities in Northern Ireland.

228. *Paragraph 3* places a duty on the Secretary of State to arrange for every HMIC report to be published. However, *sub-paragraph (2)* provides that parts of an HMIC report may be excluded from publication if the Secretary of State believes that publication would be against the interests of national security, impede the prevention or detection of crime, or jeopardise the safety of any person. Reports must be sent to the NCA and the appropriate Devolved Administration, should the inspection have been carried out in Scotland or Northern Ireland (*sub-paragraph (3)*).

229. *Paragraph 4* places a duty on the Director General of the NCA to comment on each HMIC report, to publish those comments and to send a copy to the Secretary of State and to the Devolved Administrations where they have an interest.

230. *Paragraph 5* requires the Director General of the NCA to disclose information and documents to HMIC or Scottish inspectors as specified in any notification given by them for the purposes of their exercise of inspection functions in relation to the NCA. *Sub-paragraph (4)* enables an NCA officer to disclose information to HMIC or Scottish inspectors for the purposes of their exercise of inspection functions in relation to the NCA. *Sub-paragraphs (5) and (6)* enable the Secretary of State to make regulations to make further provision about the disclosure of information under *paragraph 5*, or in relation to the onward disclosure of information by HMIC or Scottish inspectors of information provided to them by the NCA, and disapplies Schedule 7 (unless provision is made to the contrary).

231. *Paragraph 6*requires the Director General to give HMIC or Scottish inspectors access to NCA premises and other things on such premises for the purposes of their exercise of inspection functions in relation to the NCA.

232. *Paragraph 7*contains definitions of various expressions used in Schedule 6.

233. *Paragraphs 8 to 17* make consequential amendments to the Police Reform Act 2002, arising from the abolition of the NPIA and SOCA, and the conferral of functions on the IPCC in respect of its oversight of the NCA by virtue of section 10(6).

234. *Paragraph 18* makes consequential amendments to articles 2 and 4 of the Police, Public Order and Criminal Justice (Scotland) Act (Consequential Provisions and Modifications) Order 2007 ("the 2007 Order") arising from the provisions in section 11(7) in relation to the oversight of the NCA by the Police Complaints Commissioner for Scotland. *Sub-paragraph (4)* preserves the powers in the Scotland Act 1998, under which the 2007 Order was made, to amend or revoke the amendments made to the 2007 Order by section 11 and Schedule 6.

235. *Paragraph 19* makes a consequential amendment to section 61 of the Police (Northern Ireland) Act 1998, requiring the Office of the Police Ombudsman for Northern Ireland to send a copy of its annual report on the discharge of its functions to the NCA if the report concerns the NCA.

### *Section 12: Information: restrictions on disclosure etc*

236. *Subsection (1)* gives effect to Schedule 7 (Information: restrictions on disclosure), which provides for the restrictions on the disclosure of information.

237. *Subsection (2)* provides that Schedule 7 applies to disclosures of information made for the purposes of the NCA's criminal intelligence function. Information relevant to the NCA's criminal intelligence function will predominantly be that which contains information on known or suspected criminal activity (such as crime reports, surveillance logs, suspicious activity records, analytic research on known criminals or locations); or information that when combined with known or suspected criminal activity can lead to

the identification of further criminality, or opportunities to protect the public (such as company records, regulated sector memberships and transport manifests).

238. *Subsection (3)* provides that any duty to disclose information imposed on an NCA officer (including the duty on the Director General to keep the police and specified government bodies informed of information) and powers of an NCA officer to disclose information, will have effect subject to the restrictions on disclosure set out in Schedule 7. *Subsection (4)* provides that *subsections (2) and (3)* do not limit Schedule 7.

### *Schedule 7: Information: restrictions on disclosure*

239. This Schedule sets out the restrictions on the disclosure of information to and from the NCA. Part 1 sets out the statutory restrictions; Part 2 sets out the restrictions on disclosure of particular types of information; Part 3 sets out the restriction on further disclosure of information; Part 4 sets out the restrictions on published information; Part 5 sets out the wrongful disclosure offences; and Part 6 sets out the consent and interpretation provisions.

### Part 1: Statutory restrictions

240. *Paragraph 1* provides that nothing in Part 1 of the Act (including in particular section 6(1) and (7) will authorise or require the disclosure of information to or from the NCA which is in contravention of the Data Protection Act 1998 or of Part 1 of the Regulation of Investigatory Powers Act 2000 ("RIPA").

### Part 2: Restrictions on disclosures of particular types of information

241. *Paragraph 2* (HMRC and customs information). *Sub-paragraph (1)* provides that an NCA officer must not disclose HMRC information, personal customs information or personal customs revenue information unless consent is provided by the relevant authority. *Sub-paragraph (2)* provides that if an NCA officer has disclosed this information, a person must not further disclose it unless the relevant authority consents. *Sub-paragraph (3)* defines the terms "HMRC information", "personal customs information" and "relevant authority".

242. *Paragraph 3*(social security information). *Sub-paragraph (1)* provides that an NCA officer must not disclose social security information unless consent is provided by the relevant authority. *Sub-paragraph (2)* provides that if an NCA officer has disclosed this information to a person, that person must not further disclose it unless the relevant authority consents. *Sub-paragraph (3)* defines the terms "relevant authority" and "social security information".

243. *Paragraph 4* (intelligence service information). *Sub-paragraph (1)* provides that an NCA officer must not disclose intelligence service information unless consent is provided by the relevant authority. *Sub-paragraph (2)* provides that if an NCA officer has disclosed this information, a person must not further disclose it unless the relevant authority consents. *Sub-paragraph (3)* defines the terms "intelligence service" and "intelligence service information" and "relevant authority".

244. *Paragraph 5* (arrangements for publishing information) makes provision that the Director General must not disclose information under their duty to make arrangements for the publication of information set out in section 6 if this would breach a requirement imposed by the Framework Document.

### Part 3: Restrictions on further disclosures of information

245. *Paragraph 6* (onward disclosure restrictions) *Sub-paragraph (1)* provides that if an NCA officer has disclosed information to a person ("the original recipient"), that person must not further disclose the information unless it is for a purpose connected with any relevant function of the original recipient or otherwise for a permitted purpose (as

defined in section 16(1)). The Director General must also consent to the disclosure. *Sub-paragraph (2)* provides that the onward disclosure restrictions set out in *sub-paragraph (1)* will not apply if *paragraph 7 or 8* of the Schedule applies, or if the original recipient of the information was the Lord Advocate exercising functions under Part 3 of the POCA or Scottish Ministers exercising functions under or in relation to Part 5 of the POCA. *Sub-paragraph (3)* defines the term "relevant function" which is referred to in this paragraph.

246. *Paragraph 7* (onward disclosure by the Commissioners). *Sub-paragraph (1)* provides that this provision applies to information disclosed by an NCA officer under section 7(7) to the Commissioners. *Sub-paragraph (2)* provides that the information may be further disclosed by the Commissioners only if the disclosure is for a purpose connected with any relevant function of the Commissioners or otherwise for a permitted purpose (as defined in section 16(1)). *Sub-paragraph (3)* provides that the information may only be further disclosed by a person other than the commissioner if the disclosure is for a purpose connected with any relevant function of the Commissioners or otherwise for a permitted purpose, and if the Director General consents to the disclosure.

247. *Paragraph 8* covers restrictions on the further disclosure of information obtained by the NCA under Part 6 of the POCA, which may be disclosed by an NCA officer under section 7(7) of the Act.

### Part 4: Published information: no restrictions on further disclosure

248. *Paragraph 9* disapplies any restrictions on the further disclosure of information in Part 1 of the Act if the information was included in an NCA annual plan, framework document or annual report, or was otherwise published by the NCA in accordance with arrangements made under section 6.

### Part 5: Offences relating to wrongful disclosure of information

249. *Paragraph 10* covers the offence of wrongful disclosure of information. *Sub-paragraph (1)* provides that an NCA officer commits an offence by disclosing information in breach of a relevant duty. *Sub-paragraph (2)* provides that any person commits an offence if they disclose information that breached a relevant duty. *Sub-paragraph (3)* provides for the defence by a person charged with this offence that the disclosure was either lawful or that the information had already and lawfully been made available to the public. *Sub-paragraph (4)* covers the consent for a prosecution to be made in England and Wales and Northern Ireland. *Sub-paragraph (5)* provides that this offence does not prejudice the pursuit of any remedy or action taken in relation to a breach of a relevant duty. *Sub-paragraph (6)* states that a person guilty of the offence is liable on conviction on indictment to either a prison term not exceeding 2 years or a fine, or both. *Sub-paragraph (7)* provides that a person guilty of the offence is liable on summary conviction to either a prison term not exceeding 12 months in England and Wales and in Scotland, or 6 months on conviction in Northern Ireland, or a fine not exceeding the statutory maximum, or both. *Sub-paragraph (8)* provides that the maximum prison term in England and Wales is 6 months for an offence committed before the commencement of section 282 of the Criminal Justice Act 2003.

250. *Paragraph 11* provides that consent to a disclosure of information under any provision of Schedule 7 may be given in relation to a particular disclosure or disclosures made in circumstances specified or described in the consent.

251. *Paragraph 12* defines the terms "Commissioners" and "PCA 2002" used in this Schedule.

### *Section 13: NCA officers with operational powers: labour relations*

252. *Subsections (1) to (3)* prohibit any person (for example, a trade union) from calling a strike by NCA officers designated with operational powers, including the Director

General of the NCA, and provide that the Home Secretary may take civil action against any person who calls such a strike.

253. *Subsection (4)* allows the Home Secretary to seek an injunction restraining a threatened strike by NCA officers holding operational powers.

254. *Subsection (5)* provides that, notwithstanding *subsections (1) to (3)*, any trade union representing NCA officers can still be an independent trade union for the purposes of relevant employment legislation.

255. *Subsection (6)* makes it clear that relevant employment legislation cannot prevent the Home Secretary from enforcing the no-strike provisions.

256. *Subsection (7)* provides that the Home Secretary may suspend and subsequently reinstate the no-strike provisions by order (subject to the affirmative resolution procedure).

257. *Subsection (8)* defines terms used in section 13.

### *Section 14: NCA officers with operational powers: pay and allowances*

258. *Subsection (1)* enables the Home Secretary to make regulations (subject to the negative resolution procedure) providing for the establishment, maintenance and operation of procedures for determining the pay, allowances and other terms and conditions of NCA officers designated with operational powers including the Director General of the NCA.

259. *Subsection (2)* allows such regulations to provide for decisions on the pay, allowances and other terms and conditions of NCA officers designated with operational powers to be made by reference to, for example, non-binding recommendations from an independent pay review mechanism.

260. *Subsection (3)* defines terms used in section 14.

### *Section 15: Abolition of SOCA and NPIA*

261. *Subsections (1) and (2)* abolish the Serious Organised Crime Agency and the National Policing Improvement Agency respectively.

262. *Subsection (3)* gives effect to Schedule 8.

### *Schedule 8: Abolition of SOCA and NPIA*

#### Part 1: Transitional, transitory and saving provision

263. *Paragraph 1* provides for the Secretary of State to make, and lay before Parliament, staff or property transfer schemes.

264. *Paragraph 2* defines a staff transfer scheme as a scheme which provides for a designated member of staff of SOCA or the NPIA, a designated constable or member of civilian staff in an England and Wales police force (for example in the Metropolitan Police E-Crime Unit which will form part of the NCA as set out in the NCA Plan) and a designated member of personnel or staff in any other body (in connection with an order modifying the functions of the NCA) to become NCA officers, and employed in the civil service of the State. A staff transfer scheme may also provide for the transfer of NPIA staff to the Home Office.

265. *Paragraph 3*defines a property transfer scheme. A property scheme may provide for the transfer to the NCA (or, in the case of the NPIA, to the NCA or the Home Office) of designated property, rights or liabilities from SOCA, NPIA, the chief officer of, or the policing body for, an England & Wales police force or any other person. A property transfer scheme may also create rights or impose liabilities. Such a scheme may also

make provision to ensure that criminal liability for anything done by SOCA or the NPIA passes to the NCA or the Secretary of State as appropriate.

266. *Paragraph 4* provides a staff or property transfer scheme to make provision for any reference to a transferor in any document, instrument, contract or legal proceedings to have effect as, or as including a reference to the NCA.

267. *Paragraph 6* contains transitional provisions to ensure that the abolition of SOCA and the NPIA does not affect the validity of anything done by those organisations prior to abolition; this will ensure that, for example, the continued validity of surveillance authorisations granted by the Director General of SOCA cannot be challenged. *Paragraph 7* provides for the continued application, with necessary modifications, of certain subordinate legislation made under the Serious Organised Crime and Police Act 2005 where Part 1 of the Act includes equivalent delegated powers. The three orders that are preserved: modify certain enactments which confer powers on the police (as well as constables) and immigration officers to enable such powers to be exercised by designated members of the staff of SOCA; ensures that the United Kingdom can comply with the obligations under the Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters where a joint investigation team (involving SOCA officers) is operating in the UK for the purpose of conducting criminal investigations; and designates further functions (in addition to the functions listed in section 33 of the Serious Organised Crime and Police Act 2005 and in the Serious Organised Crime and Police Act 2005 (Disclosure of Information by SOCA) Order 2008) for the purposes of the exercise of which SOCA may disclose information.

268. *Paragraph 8* provides for the Secretary of State to pay such an amount (if any) as the Secretary of State thinks appropriate to a person who ceases to be a SOCA board member (that is, the Chair and the ordinary members) at the changeover.

269. *Paragraph 9* provides that the repealing of sections 7 and 20 of the Serious Organised Crime and Police Act 2005 (annual reports and accounts) will not affect the application of those sections after the changeover to times before the changeover.

270. *Paragraph 10*ensures that amendments to pension's legislation consequent upon the abolition of SOCA and the NPIA do not have the effect of extinguishing pension rights accrued before abolition.

271. *Paragraph 11*is required to ensure that transition arrangements are provided for Scottish Police Reform and the creation of the NCA. In particular, it provides a power to make any necessary provisions to ensure that the NCA provisions have full effect depending on the timing of the creation of the Police Service of Scotland and the creation of the NCA. In light of the formal establishment of the Police Service of Scotland on 1 April 2013, this provision is no longer necessary.

272. *Paragraph 12*is required to ensure transition arrangements are in place if the NCA is created prior to the planned merger of the offices of the Director of Revenue and Customs Prosecutions and the Director of Public Prosecutions.

273. *Paragraph 13* sets out and defines the various terms that have been used in Part 1 of this Schedule.

### Parts 2 to 4: Minor and consequential amendments and repeals

274. Parts 2 to 4 of the Schedule make other amendments to enactments, both primary and secondary, as a consequence of the abolition of SOCA and the NPIA.

275. *Paragraph 26* of the Schedule protects the pension arrangements for those officers of precursor agencies who are eligible for membership of the police pension scheme on moving into the NCA. It also provides for serving police officers (including members of the PSNI Reserve) to retain their eligibility for the police pension scheme on being

appointed as Director General of the NCA or on taking up key posts within the NCA designated by the Director General.

276. *Paragraph 89* adds the NCA to the list of organisations specified in section 23 of the Freedom of Information Act 2000. The effect of this amendment is to exempt from the Freedom of Information Act as a class all information held or supplied by the NCA.

277. *Paragraph 184*provides that references to the "Serious Organised Crime Agency", "SOCA", etc in the specified legislation will be substituted with a reference to the National Crime Agency and other equivalent related references.

278. *Paragraph 188*provides that SOCA related references in subordinate legislation may be read as the corresponding NCA reference listed in the table. This provision is without prejudice to the consequential order making power in section 58 of the Act.

### *Section 16: Interpretation of Part 1*

279. *Subsection (1)* defines various terms used in Part 1, including "chief officer", "functions", "NCA function", "law enforcement agency" and "permitted purpose". The definition of "strategic partners" refers to those other law enforcement agencies and other key bodies to which, for example, the Director General must send a copy of the NCA's Annual Report.

280. *Subsection (2)* clarifies that a reference to the powers and privileges of a constable is a reference to any powers and privileges of a constable. It also provides that references to the "Police Service of Northern Ireland" ("PSNI") are taken to include the PSNI Reserve.

281. *Subsection (3)* provides that any subsequent reference to the "functions" or "officers" of the National Crime Agency should be understood within the terms of Part 1 of the Act.

282. *Subsection (4)* identifies those terms which are defined elsewhere in Part 1 of the Act.