These notes refer to the Youth Justice and Criminal Evidence Act 1999 (c.23) which received Royal Assent on 27 July 1999

YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part II: Giving of evidence or information for purposes of criminal proceedings

Chapter VI: Restrictions on use of evidence

Section 58: Inferences from silence not permissible where no prior access to legal advice

196. This section amends the inferences from silence provisions in the Criminal Justice and Public Order Act 1994, to prohibit the drawing of inferences from silence when a suspect is questioned at a police station (or other authorised place of detention) while denied access to legal advice.

197. The effect of these provisions will be to bring the law into compliance with the judgment of the European Court of Human Rights in the case of John Murray v United Kingdom, which held that there was a breach of Article 6 of the European Convention on Human Rights as a result of denying the applicant access to legal advice in circumstances where inferences could be drawn from his silence during police questioning.

198. The provision inserted by *subsection* (5) empowers the Secretary of State to designate by regulation places of detention other than a police station. This is to take account of detention by other investigators such as HM Customs and Excise.

Section 59 and Schedule 3: Restrictions on use of answers etc. obtained under compulsion

199. Section 59 introduces Schedule 3 which amends various statutory provisions in the light of the judgment of the European Court of Human Rights in Saunders v United Kingdom. The court ruled that the admission in a criminal trial of statements given under section 434 of the Companies Act 1985 was in breach of Article 6 of the Convention because the statement in question was given under compulsion (i.e. there could have been a penalty for not giving it).

200. The amendments therefore restrict the use that can be made in criminal trials of evidence that has been obtained under compulsory powers. Several statutes that regulate commercial or financial activities do not only contain powers to compel answers: they also allow the answers to be used in evidence against the person giving them. The amendments qualify those provisions by restricting the use that the prosecution can make of the answers at trial to the following circumstances:

- where the defendant himself introduces them in evidence, or

- where the defendant is being prosecuted for his failure or refusal to answer a question, or his failure to disclose a material fact, or his having given an untruthful answer.

Section 60: Removal of restriction on use of evidence from computer records

201. This section repeals section 69 of the Police and Criminal Evidence Act 1984. For a document produced by a computer to be used as evidence in a criminal trial, section 69 required it to be accompanied by proof that the computer was operating properly and was not used improperly.

202. Following the repeal, the ordinary law on evidence will apply to computer evidence. In the absence of any evidence to the contrary, the courts will presume that the computer system was working properly. If there is evidence that it may not have been, the party seeking to introduce the evidence will need to prove that it was working.