These notes refer to the Criminal Justice and Police Act 2001 (c.16) which received Royal Assent on 11th May 2001

CRIMINAL JUSTICE AND POLICE ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Provisions for Combatting Crime and Disorder.

Chapter 1: On the spot penalties for disorderly behaviour (Sections 1 to 11)

5. The Government issued a consultation paper on 26 September 2000 entitled "Reducing Public Disorder, the Role of Fixed Penalty Notices" (This was published by Home Office Communication Directorate and is available on the Home Office website at http://www.homeoffice.gov.uk.). The paper sought views on proposals to introduce penalty notices as a simple and swift way of addressing a range of low-level anti-social offending associated with disorderly conduct.

6. Whilst the conduct in question is already criminal, the need to focus police and court resources elsewhere means that much minor offending of this kind escapes sanction or consequence under current arrangements. In the light of the responses to the consultation paper the Government has introduced the provisions set out in sections 1 to 11. These provisions seek to provide a further means for the police to deal with low level, but disruptive, criminal behaviour.

7. They allow the police to issue penalty notices on the spot or at a police station for a range of disorder offences. These notices may be issued where there is reason to believe an offence has been committed, and where a penalty notice appears to be an appropriate response. The scheme is a discretionary one. Where a police officer believes that an offence is of such a nature that it should be dealt with by the courts, all the usual powers will be available to him to arrest and charge the alleged offender.

8. A penalty notice is notice of the opportunity to discharge any liability to conviction of the offence by payment of a fixed penalty. There is thus no criminal conviction or admission of guilt associated with payment of the penalty, though the alleged offender has the right to opt for trial by a court, and risk conviction, if he so chooses. Failure to pay the penalty or opt for trial may lead to the imposition of a fine equivalent to one and a half times the amount of the penalty on the defaulter.

9. The provisions are intended to be simple and straightforward and allow a considerable discretion to the police in their application. Guidance on the exercise of this discretion will be provided, and will be developed in partnership with the police.

Sections 1 to 6

10. These sections explain how the penalty notice system works, and set out the disorder offences for which they may be issued. They make clear that a penalty notice may be issued by a constable in uniform "on the spot" or may be issued at a police station.

Section 1: Offences leading to penalties on the spot

11. This lists in tabular form the disorder offences for which penalty notices may be issued. *Subsections (2)* and *(3)* and *(4)* provide powers for the Secretary of State to amend by order, subject to affirmative resolution, the list of offences for which a penalty notice may be given and to make any necessary consequential changes.

Section 2: Penalty notices

12. *Subsection (1)* has the effect of applying the scheme to adults (i.e.18 and over) only.

13. *Subsection (4)* explains that a penalty notice offers the recipient an opportunity to discharge all liability to conviction of the offence by paying the penalty.

Section 3: Amount of penalty and form of penalty notice

14. *Subsections (1)* and *(2)* allow the Secretary of State to specify the level of the penalty for each offence up to a maximum of ¼ of the maximum fine for the offence.

15. *Subsections (3)* and *(4)* list the information that must be included on a penalty notice and provides a power for the Secretary of State to specify the form of the notice.

Section 4: Effect of penalty notice

16. Explains that the recipient of a penalty notice may ask for the case to be tried by a court. Also, if he neither makes such a request nor pays the penalty within the prescribed period, a fine equal to one and a half times the amount of the penalty may be registered against him.

Section 5: General restriction on proceedings

17. This section prevents proceedings being brought for an offence for which a penalty notice has been issued for a period of 21 days unless within that period the recipient asks for a trial. It provides that where payment of the penalty is made no proceedings may be brought.

Section 6: Secretary of State's guidance

18. This section allows the Secretary of State to issue guidance about the operation of the scheme. The power to issue guidance is intended to allow the Secretary of State to ensure that police officers are aware of the factors they need to take into account in exercising the wide discretion inherent in this scheme. It may also be used to encourage good practices in the general operation of the scheme.

Section 7: Payment of penalty

19. This section sets out the ways in which a penalty may be properly paid.

Sections 8 and 9: Registration certificates and Registration of sums payable in default

20. These sections regulate the procedures that are to be followed in order to register an unpaid penalty as a fine, where the recipient has not requested a trial. They provide that a registration certificate may be sent to the justices' chief executive for the area where the defaulter lives, giving adequate details of the offence, offender and sum outstanding. The justices' chief executive will then give written notice of the fine registration to the defaulter. The sections further provide for the transfer of such cases, if necessary, between petty sessions areas. Section 9(5) provides that a fine so registered will then be regarded for the purposes of other legislation as a fine imposed by a court.

Section 10: Enforcement

21. This section sets out the powers of a magistrates' court to set aside a registered fine arising from an unpaid penalty and to adjourn default proceedings for up to 28 days for investigation if the identity of the offender is in question. It provides for a court to set aside a fine in the interests of justice, for example, if the person against whom the fine is registered appears not to be the person to whom the penalty notice was given. The magistrates' court must, if it sets aside a fine under this section, give direction as to how the case is to be dealt with. It provides for a situation in which a person receiving a fine registration notice wishes to challenge it on the ground that they had requested a trial, but that the request had not been acted upon.

Chapter 2: Provisions for combatting alcohol-related disorder (Sections 12 to 32)

Alcohol consumption in designated public places

22. Much disorder and public nuisance is associated with the public consumption of alcohol. The Act gives local authorities the power to designate public areas in which it will become an offence to drink alcohol after being required by a police officer not to do so. The police will have the power to require the surrender of alcohol and containers in these circumstances, and those who fail to comply with either requirement will be liable to arrest. Only those public areas where disorder or public nuisance is associated with public drinking will be designated. Where areas are designated the provisions will replace public drinking byelaws that many local authorities have adopted for this purpose. This will create more uniform and comprehensive powers.

Closure of licensed premises

23. The police have powers under the Licensing Act 1964 ("the 1964 Act") to enter licensed premises to deal with criminal activity taking place, including breaches of licensing law and the terms and conditions of the justices' licence. They also have powers under common law to enter and quell disorder. In addition, under section 188 of the 1964 Act, they have powers, where any riot and tumult is happening or expected to happen in any county or borough, to seek a warrant from magistrates closing specified licensed premises for such time as the magistrates may decide. This latter power is generally regarded as applying to instances of widespread breakdowns in law and order, and not localised instances of disorder on licensed premises. Furthermore, having entered and quelled any disorder or disturbance, the police have no powers to close the premises to prevent a recurrence of the problems or to protect the general public. At present, they would have to rely on the voluntary co-operation of the licensee.

24. Subsequently, they would have to pursue the revocation of the justices' licence in respect of the premises involved through normal procedures under the 1964 Act. The Act provides the police with powers to move swiftly to protect the public, by closing licensed premises down immediately for up to 24 hours where disorder or disturbance is taking place. At the earliest opportunity, any closure order must be considered by magistrates to determine whether the premises will remain closed or not, pending a reconsideration of the premises' licence at the next licensing sessions. The Act also provides to the police an immunity from liability for damages in certain types of cases when they exercise their power to close licensed premises.

Closure of unlicensed premises

25. Under section 160 of the Licensing Act 1964, it is an offence to use unlicensed premises for the sale of alcohol, and alcohol on such premises may be confiscated. However, the profits of unlicensed drinking establishments are such that the owners of these premises can often absorb the costs of police raids on them, the seizure of alcohol and the prosecution of staff working in such premises. In practice therefore the premises often re-open quickly having been re-stocked and re-staffed. Such premises are regarded by

the police as magnets for criminals who prey on unsuspecting customers, often tourists. The Act provides the police and local authorities with powers to obtain court orders to close down such premises. This would prevent owners from quickly re-stocking and re-opening the premises. The provisions are modelled on provisions contained in the City of Westminster Act 1996 which allows the police and the local authority to close down unlicensed sex establishments.

Placing a positive duty on licensees and the staff of licensed premises not to sell alcohol unless they are reasonably sure of the age of the purchaser

26. Section 169A(2) of the 1964 Act provides a defence to the offence of selling alcohol to a person under eighteen in licensed premises if the defendant had no reason to suspect that the purchaser was under eighteen. In practice it is difficult to secure a conviction where a child looks over the age of eighteen. However, voluntary "proof of age" cards are now widely available, as are other means of establishing age and identity. The Act amends the defence which can be mounted in any prosecution for offences under section 169A of the 1964 Act by requiring a defendant to take all reasonable steps to establish the age of the purchaser.

Test purchasing

27. Sections 169A-169H of the Licensing Act 1964 make it an offence for a child under eighteen years to buy or attempt to buy alcohol in licensed premises, and for any person to send a child to purchase alcohol in licensed premises. In practice, this raises serious doubts over the lawfulness of any operation run by the police or local authority officials (i.e. inspectors of weights and measures) to send a child to purchase alcohol in licensed premises to establish if the business is abiding by the prohibition on sales to minors. The Act provides defences to the existing offences for any police officer, inspector of weights and measures or child engaged in such operations. It therefore places "test purchasing" on a statutory footing.

Offences of permitting drunkenness and disorder in licensed premises and selling to drunken people

28. Section 172 of the Licensing Act 1964 makes it an offence for a licensee to permit drunkenness or disorder on licensed premises or to sell alcohol to a drunken person. These offences are limited to the licensee alone, and do not extend to staff employed on licensed premises or his agents. Current business practice can mean that the manager of licensed premises may not necessarily be the licensee, and some people working in licensed premises may not technically be employees, for example, relatives helping a licensee. Accordingly, some people working in licensed premises may be able to sell alcohol to drunken people or permit drunkenness and disorder, without committing an offence. The Act inserts new provisions into the 1964 Act to extend the existing offences to any person working in licensed premises who has the capacity to prevent the drunkenness or permit the sale.

Section 12: Alcohol consumption in designated public places

29. Section 12 is intended to reduce the incidence of disorder and public nuisance arising from alcohol consumption in public places. By virtue of section 13, local authorities will be able to designate areas in which it will become an offence for any person to drink alcohol after being required by a police officer not to do so. The police will also have the power to confiscate and dispose of any alcohol and containers in the person's possession. It will be an arrestable offence to fail, without a reasonable excuse, to comply with the police officer's request.

Section 13: Designated public places

30. Local authorities will be able to designate areas, for this purpose, in which there are problems arising from public drinking. Regulations concerning the procedures for local

authorities to follow in order to designate a public place will be set out in a statutory instrument.

Section 14: Places which are not designated public places

31. The restriction on public drinking will not apply to any premises or area covered by a licence allowing the consumption of alcohol, for example, the premises of licensed houses, clubs or restaurants.

Section 15: Effect of sections 12 to 14 on byelaws

32. Many local authorities have byelaws in place to restrict public drinking and to allow for confiscation of alcohol. These will cease to have effect when the area is designated for the purposes of the Act and the provisions in this Act will then replace the byelaws. Any local authority byelaws which remain in force once these provisions come into effect, and which apply to areas which could be designated for this purpose, will lapse after 5 years.

Section 16: Interpretation of sections 13 to 15

33. This provides definitions of the terms used in this part of the Act, including the meaning of the term "local authority" for this purpose.

Section 17: Closure of certain licensed premises due to disorder or disturbance

34. Section 17 amends the Licensing Act 1964 ("the 1964 Act") by inserting new sections 179A, 179B, 179C, 179D, 179E, 179F, 179G, 179H, 179I, 179J and 179K into that Act.

35. New section 179A(1)(a)-(c) describes the circumstances in which a senior police officer may make a closure order in relation to relevant licensed premises. "Relevant licensed premises" does not include non-profit making registered clubs like the Royal British Legion or a working men's club unless they hold a justices' on-licence. For the purpose of these provisions a "senior police officer" includes any police officer of inspector rank or above. The provisions do not require the senior police officer to be present at the scene, and he may act on the basis of reports made to him by other officers present to form the reasonable belief required to make a closure order. To make a closure order, the senior police officer must reasonably believe that there is likely to be disorder in, or in the vicinity of and related to, the premises in question, and that closure is necessary in the interests of public safety, including customers; or that there is disorder already taking place in, or in the vicinity of and related to, the premises, and closure is necessary in the interests of public safety; or that he reasonably believes that a disturbance is being caused by excessive noise emitted from the premises, and that closure is necessary to prevent the disturbance. This means, for example, disturbance to local residents living in the neighbourhood of the premises concerned.

36. New section 179A(2) defines the term "closure order" and specifies that the period for which the order may be in force may not exceed 24 hours.

37. New section 179A(3) requires the senior police officer, in deciding whether to make a closure order, to take account of any conduct of the licence holder or manager of the premises in relation to the disorder and disturbance. For example, where a licensee or manager of the premises has acted promptly and correctly in attempting to maintain order and the police have been appropriately involved, it would be open to the senior police officer not to penalise them by making a closure order.

38. New section 179A(4)(a)-(d) specifies the details and information a closure order must include. The order must specify the premises to be closed, the period of closure up to 24 hours, the grounds on which the order is being made, for example, disorder or excessive noise, and explain the effect of new sections 179B-179E of the 1964 Act.

39. New section 179A(5)(a)-(b) provides that an order shall come into force when the closure order is given by a constable to either the licensee or a manager of the premises. It is necessary to cover managers because, under licensing law, licensees are not required to be present at all times on the premises for which they hold the license.

40. New section 179A(6) creates a new offence of permitting relevant licensed premises to be open in contravention of a closure order or any extension of it. The offence may be committed by any person and on summary conviction an offender will be liable to a fine not exceeding £20,000 or to imprisonment for up to three months or to both.

41. New section 179K(2) makes clear that the premises will be deemed to be open if any person other than the licensee's family or a manager's family enters the premises and purchases or is supplied with any item of food or drink which is usually sold there.

42. New section 179B(1) places a duty on the responsible senior police officer to apply to the relevant justices to consider a closure order as soon as practicable after it comes into force. This should be read in conjunction with new section 179F(1) which requires the responsible senior police officer in question to also notify the clerk to the licensing justices that a closure order is in force if the application is made at this first hearing stage to ordinary justices who are not licensing justices.

43. New section 179B(2) places a duty on the relevant justices to consider whether to exercise their power under the next subsection after the police have notified them of the closure order. Subsection (3)(a)-(c) provides a discretion for the relevant justices to revoke the order if it is still in force and/or to order that the premises remain closed or be closed until the next licensing sessions and/or to make any order they see fit in relation to the premises. The latter option empowers them to allow premises to re-open but subject to certain new terms and conditions which they saw fit to impose.

44. New section 179B(4)(a)-(b) requires the relevant justices, when deciding whether the premises should be allowed to re-open or should remain closed, to consider whether closure of the premises is necessary in the interests of public safety to prevent disorder or is necessary to prevent disturbance. Subsection (5) creates a new offence, which may be committed by any person who permits the premises to be open in contravention of an order made by the relevant justices for the closure of the premises, and provides for an offender on summary conviction to be liable to a fine not exceeding £20,000 or for up to three months imprisonment or to both.

45. New section 179B(6) creates a further offence, which may be committed by any person who fails to comply with or does an act in contravention of any order made by the relevant justices in relation to the premises in these proceedings, and provides for an offender on summary conviction to be liable to a fine not exceeding level 5 (£5,000) or for up to three months imprisonment or to both.

46. New section 179B(7) defines what is meant in the provisions by "relevant justices". This means the licensing justices or, if they are not available, any justices of the peace acting for the petty sessions area in which the premises are situated. This is to ensure that proceedings may be taken forward as soon as possible.

47. New section 179C(1)(a)-(b) provides that the responsible senior police officer concerned may extend the order for up to 24 hours in certain circumstances. This would apply if the officer reasonably believes that the relevant justices are unable to consider the closure order before it expires, and the conditions under subsection (2) are satisfied. Subsection (2)(a)-(b) provides that the conditions to be considered by the police officer are that the closure of the premises is necessary in the interests of public safety to prevent disorder or is necessary to prevent disturbance. Such extensions could be made on an indefinite number of occasions.

48. New sections 179C(3)-(4) provides that the extension of the closure order could only come into force if a constable gives notice of the extension to the licensee or the manager of the premises before the end of the previous closure period.

49. New section 179D(1)(a)-(b) provides a discretion for the responsible senior police officer to cancel his closure order at any time after he has made it. This must be done before it has been considered by the relevant justices at the first hearing stage under section 179B. New section 179D(2)(a)-(b) requires the responsible senior police officer to cancel the order if he does not reasonably believe that closure of the premises is necessary in the interests of public safety to prevent disorder or is necessary to prevent disturbance. Accordingly, the order must be cancelled if the threat of disorder or disturbance has ended. New section 179D(3)(a)-(b) requires the responsible senior police officer to give notice to either the licensee or to a manager of the premises when he decides to cancel the closure order.

50. New subsection 179E(1) requires licensing justices, at the next licensing sessions, to consider whether to exercise their powers under subsection (2) for any closure orders which are brought to their attention under section 179B. Subsection (2)(a)-(b), read in conjunction with subsection (3), gives licensing justices the discretion to revoke the licence on any ground on which they might refuse to renew a justices' licence of that type or to attach to the licence any new conditions that they think fit. Subsection (4)(a)-(b) prevents the justices considering revocation of the licence, or attaching any conditions to the licence, in these circumstances unless they have given notice to the licence holder, at least seven days in advance of the proceedings, in general terms, of the grounds on which it is proposed the licence should be revoked, or of the new conditions. Subsection (5) provides that where licensing justices have decided whether to exercise their power under subsection (2), they may make any order they see fit in relation to any decision made during the first stage hearing under section 179B.

51. New section 179E(6)(a)-(b) provides that where a decision has been made to revoke the justices' licence under subsection (2), the decision shall have no effect until the expiry of the time permitted for appealing against the decision; or if an appeal is made until the appeal is disposed of. Subsection (7)(a)-(b) provides that where the relevant justices have decided to keep the premises closed at the first hearing stage under section 179B until a decision is taken on whether to revoke the licence at the second hearing stage under subsection (2), the premises shall, subject to section 179G(5), continue to remain closed until the outcome of any appeal against that decision is known, but the licence shall otherwise remain in force. This is to ensure that premises presenting a continuing threat of disorder or disturbance cannot use the appeal arrangements as a means of opening for commercial trade. Subsection (8) creates a new offence of permitting premises to be open in contravention of subsection (7), the penalty for which on summary conviction is a fine not exceeding £20,000, or imprisonment for up to three months, or both. Subsection (9) provides that where licensing justices have decided to attach conditions to the licence under subsection (2), they may suspend those conditions until any appeal against their decision is concluded.

52. The term "next licensing sessions" as used in these provisions is defined in new section 179K. It means the first licensing sessions held not less than fourteen days after the day on which the closure order was considered by the relevant justices at the first hearing stage. This period is to ensure that the persons involved and their legal representatives should have sufficient time to prepare their case.

53. New section 179F(1)(a)-(c) provides that in cases where the police bring a closure order to the attention of ordinary justices of the peace who are not the licensing justices at the first hearing stage under section 179B, they must also notify the chief executive to the licensing justices as soon as is reasonably practicable of the details of the closure order. In practice, this should not cause any problems because the chief executive to the licensing justices is normally situated in the same local magistrates court building. Subsections (2) and (3) provide that the power conferred on licensing justices and ordinary justices of the peace at the first hearing stage under section 179B may be exercised by a single such justice. Subsection (4) provides that any evidence given at the two hearing stages under sections 179B and 179E shall be given on oath. Subsection

(5) provides that the Secretary of State may make additional regulations (if necessary) about the procedure for the two hearing stages under sections 179B and 179E.

54. New section 179G(1)-(3) provides details of the rights of appeal against any decisions made by the justices at the two hearing stages under sections 179B and 179E. The appeal would be to the Crown Court, and must be submitted within 21 days of the decision. Subsection (4) provides that in cases where the licence holder gives notice of appeal against a decision to revoke the licence made at the second hearing stage, the Crown Court has the discretion to order that the licence continues in force until the conclusion of the appeal even though it might otherwise have expired. Subsection (5) provides that in cases where the licence holder appeals against the decision to revoke the licence and the relevant premises remains closed by virtue of section 179E(7), the Crown Court has the discretion to order that the premises may re-open subject to any conditions it thinks fit. Subsections (6) to (8) provide that the normal rules on appeals under sections 21, 22 and 23 of the Act (the Licensing Act 1964) have been modified for the purpose of this measure.

55. New section 179H(1)-(4) provides powers to deal with persons who fail to leave licensed premises at the request of the licence holder or manager in cases where a closure order has been made or extended, or when the closure order has been confirmed by the justices at the first hearing stage under section 179B, or where the premises remain closed under section 179E(7). Any person who without reasonable excuse fails to comply with such a request commits an offence, the maximum penalty for which on summary conviction is a level 1 fine (£200). Subsections (3)-(4) also provide that a constable is required to help remove from the premises any such person at the request of the licence holder or manager, and the constable may use reasonable force when exercising this power.

56. New section 179I provides the police with an immunity from liability for damages in certain types of cases when they exercise their power to close licensed premises under these provisions.

57. Subsection (1) provides that a constable (which in practice means any police officer) should not be liable for any "relevant damages" claimed by another person which results from any action the constable takes or omits to take while performing his functions in making and executing a closure order in accordance with the provisions of sections 179A to 179H. The term "relevant damages" is defined in subsection (5) below.

58. Subsection (2) provides the same immunity from liability as in subsection (1) for chief officers of police. This relates to their vicarious responsibility for the actions of constables who are under their direction or control while the constables are exercising the power to make and execute a closure order.

59. Subsection (3) provides that the immunity from liability under this section does not apply if the act or omission of the constable is shown to have been in bad faith. It also provides that the immunity does not apply to an award of damages made where the act or omission of the constable is found to be unlawful under the provisions of section 6(1) of the Human Rights Act 1998. This refers to any act which is not compatible with any of the rights under the European Convention of Human Rights. Subsection (4) provides that the immunity from liability under this section does not affect any other exemption from liability for damages, for example under common law (e.g. case law). Subsection (5) defines the term "chief officer of police". It also defines the term "relevant damages" as damages awarded in judicial review cases, or in claims made under the civil law for negligence or for misfeasance in public office. The immunity under this section should not, for example, affect damages awarded for assault, unlawful arrest, racial discrimination or other similar illegal acts.

60. New section 179J(1) provides that where an offence of, for example, failing to comply with a closure order or any other court order under these provisions has been committed by a body corporate, a director, manager, secretary or other similar officer of the body

corporate may also be guilty of the offence. Both the individual officer and the body corporate may also be guilty of the offence. New section 179J(2) also provides that where the affairs of a body corporate are managed by its members, and there has been any act or default of the kind described in the preceding subsection by any member, the liability to prosecution and punishment will extend to that member as if he were a director of the body corporate.

61. New section 179K(1) defines several terms used in sections 179A to 179J. These include "chief officer of police", "closure order", "manager", "notice", "relevant justices", "relevant licensed premises", "responsible senior police officer" and "senior police officer". Subsection (2) provides that for the purposes of sections 179A to 179I, the relevant licensed premises are open if any person other than the licence holder or manager, or a member of their family, enters to buy or is supplied with any food or drink usually sold on those premises.

Section 18: Amendments consequential on section 17

62. This section provides for a number of consequential amendments to be made to other parts of the 1964 Licensing Act.

Section 19: Closure notices

63. Subsections (1)-(2) empower a constable or a local authority to serve a "closure notice" on any premises where they are satisfied that the premises are being, or within the last 24 hours have been, used for the sale of alcohol for consumption on or in the vicinity of the premises without a liquor licence in contravention of section 160 of the Licensing Act 1964.

64. Subsections (3)-(5) specify the people on whom a closure notice must or may be served. Subsection (3) provides that a notice must be served on a person who has control of, or responsibility for, the unlawful activities conducted on the premises. In many cases, it is impossible for the police or local authority to trace the owner of the premises involved. The intention is therefore to ensure that action could still be initiated despite the absence of the owner who, for example, might reside abroad. Subsection (4) also requires the police or the local authority to serve the notice on any occupier of any part of the premises whose access may be impeded if the part involved in the unlicensed sale of alcohol was to be closed. This is to ensure that any innocent person residing in the premises may be a party to any court proceedings under these provisions and have a right to challenge any action taken to close the premises. Subsection (5) provides that a closure notice can also be served on any other person having control of or an interest in the premises. This includes any owner, leaseholder or occupier of the premises.

65. Subsection (6)(a)-(c) requires that a closure notice must contain details of the circumstances in which the premises are said to have been used for the unlawful sale of alcohol; the powers of the police and local authority to seek a closure order from the courts in respect of the premises concerned; and the steps which may be taken to end or prevent a recurrence of the alleged illegal use of the premises (e.g. to close or to stop the sale of alcohol).

66. Subsections (7)-(9) empowers a constable or the local authority to withdraw a closure notice by serving another document to that effect on everyone who had previously been served with a closure notice. The police or local authority might be minded to use such a power where voluntary steps to end the unlawful sale of alcohol had been taken quickly before any further enforcement action was taken.

67. Subsection (10)(a)-(d) describes who should be regarded as being a person "having control of" or "responsibility for" the premises where the offence of selling alcohol without a liquor licence is occurring. This includes any person seeking to derive profit from or managing the activities; or any person employing people to manage such activities; or any person involved in any way in the conduct of the activities.

Section 20: Application for closure orders

68. Subsections (1)-(2) enable a constable or the local authority, between 7 days and six months after the service of a closure notice, to apply for a "closure order" from magistrates in respect of the premises specified in the notice.

69. Subsection (3)(a)-(b) prohibits the constable or local authority from applying for a closure order from the court where they are satisfied that there has been a cessation of the unlawful use of the premises and where they are satisfied that there is no reasonable likelihood that such unlawful use will take place in the premises in the future.

70. Subsection (4) provides that where an application has been made for a closure order, the magistrates have a discretion to issue a summons to all those on whom a closure notice had been served to attend court and answer the complaint.

71. Subsections (5) and (6) provides that when the court decides to issue a summons, they should send to all the relevant parties a notice in writing of the date, time and place of the hearing. Subsection (7) provides that the procedure for the court hearing should be in accordance with the relevant rules in the Magistrates' Courts Act 1980.

Section 21: Closure orders

72. Subsection (1)(a)–(b) provides that on hearing a complaint under section 22, the court may make an order on any terms it considers appropriate against any person on whom a closure notice had been served. However, before doing so, the court should be satisfied that the closure notice was properly served, and that unlawful use of the premises continues or that there is a reasonable likelihood that the premises will be so used in future.

73. Subsection (2)(a)-(c) provides that the magistrates may include in an order a requirement that the premises be closed immediately to the public and remain closed until a constable or the local authority issues a certificate that they are satisfied that the need for the closure order has ceased. The magistrates may also order that the use of the premises for the unlawful sale of alcohol must cease immediately. In addition, they may order any of the defendants to pay a sum, as determined by the court, into the court which will not be released back to the defendant(s) until the other requirements of the closure order have been met.

74. Subsection (3)(a)–(b) provides that where the court orders the closure of the premises, it may include such conditions as it thinks fit relating to the admission to the premises of individuals. These may, for example, include individuals required to do work to secure the premises or to deal with services or utilities connected there; persons with a legitimate interest in the property; or individuals who need to access another part of the premises for legitimate reasons.

75. Subsection (4) requires a constable or the local authority to fix a copy of the closure order to the premises in a conspicuous place as soon as possible after it is made. This is to ensure that any person going there to continue the unlawful use of the premises is aware of the consequences of their actions.

76. Subsection (5) requires the payments into court to be paid to the chief executive of the court.

Section 22: Termination of certain closure orders

77. Subsection (1) provides that where a closure order has been made, a constable or the local authority may issue a certificate to the effect that the need for the order has ceased. Subsections (2)-(3) provide that the closure order shall cease to have any effect, and that any sum paid into the court will be released, when the police or local authority issue a certificate under subsection (1). Subsection (4) provides that the court has the discretion to include in the closure order any appropriate terms to deal with cases where

the order comes to an end after the issue of a certificate. Subsections (5) and (6) provide that the police or the local authority should serve a copy of the certificate as soon as possible on the person against whom the order was made, on the chief executive of the relevant court and also on any other person who requests it. They should also affix a copy of the certificate in a conspicuous position on the relevant premises.

Section 23: Discharge of closure orders by the court

78. Subsections (1)–(4) provide that where a closure order has been made, any person having an interest in the premises can also make a complaint to the magistrates for an order that the closure order be discharged. This will enable disputes to be decided by the court where, for example, the police and local authority are not satisfied that they should issue a certificate under section 24 which would end the effect of the order. This provision also empowers the court to issue a summons requiring the police officer or local government official who served the closure notice, in respect of which the closure order was made, to attend court for the hearing of the discharge complaint. At the same time as issuing the summons, the court is also required to send a notice of the time, date and place of the hearing to any other person on whom the closure notice was served under section 21. The court may not make an order under this section discharging the closure order unless it is satisfied that the need for the closure order has ceased (i.e. if the premises involved will not be used for the unlawful sale of alcohol if re-opened). Subsection (5) provides that the hearing of the complaint under this section shall be in accordance with the relevant procedure under the Magistrates' Courts Act 1980.

Section 24: Appeals

79. Subsections (1)-(2) provide that an appeal against a closure order can be made to the Crown Court by any person upon whom a closure notice was served, or by any other person who has an interest in the premises but on whom the closure notice was not served. Subsection (1) also permits appeals to the Crown Court in relation to discharge orders. All appeals are required to be lodged within 21 days of the closure order or relevant decision being made. There are no restrictions on the grounds for which the appeal can be made.

80. Subsection (3) empowers the Crown Court on appeal to make any order it considers appropriate.

Section 25: Enforcement

81. Subsection (1)(a)-(b) empowers a constable, or any authorised person, to enter the premises at any reasonable time, and to do such things as are reasonably necessary to secure that the requirements of the closure order are met. This could include, for example, boarding up the premises to prevent unauthorised persons gaining access to breach the order. "Authorised persons" in this context may include workers tasked to board up such premises.

82. Subsections (2)-(3) require the constable or any authorised person to produce evidence of his authority to enter and also his identity before entering the premises, if asked to do so by the owner, or the occupier or the person in charge of the premises. An offence of intentionally obstructing a constable or an authorised person in the exercise of his powers under the Act is also created. The maximum penalty on summary conviction for this offence would be a fine not exceeding level 5 (£5,000) if committed against an authorised person, or if committed against a constable, imprisonment for up to one month or a fine of up to level 5 (£5,000) or both.

83. Subsection (4) creates a new offence of opening the premises, without reasonable excuse, in contravention of a closure order. The maximum penalty on summary conviction would be a fine not exceeding £20,000 or imprisonment for a term not exceeding three months or to both. Subsection (5) creates a further offence of failing to

comply with any other terms of the closure order, the maximum penalty for which is a fine not exceeding level 5 (£5,000) or imprisonment for up to three months or to both.

84. Subsection (6) defines an "authorised person" for the purposes of this section as a person authorised by the local authority in respect of premises situated in the area of the local authority.

Section 26: Offences by body corporate

85. Subsections (1)-(2) provide that where the offences mentioned in section 25 are committed by a body corporate, the directors, managers, secretaries or other officers of that body corporate (including, in certain cases, its members) will also be liable for prosecution if it is proved that they had given their consent to the offences or had connived in their commission or failed to prevent them by neglecting appropriate duties.

Section 27: Service of notices

86. Subsections (1)–(8) describe the procedures for serving notices and documents referred to in sections 19 to 25, including arrangements when the person is a body corporate, a partnership or a limited liability partnership and when either the address or the name of the person to be served cannot be ascertained.

Section 28: Sections 19-27: interpretation

87. Subsections (1)-(3) define certain terms used in the sections dealing with the closure of unlicensed premises. These include "closure notice", "closure order", "intoxicating liquor", "notice", "local authority", "premises", "sale", "unlicensed sale" and "a person having an interest in the premises".

Section 29: Confiscation of alcohol containers from young persons

88. Section 29 makes a minor amendment to the Confiscation of Alcohol (Young Persons) Act 1997 to ensure consistency between the powers of confiscation set out in this Act and those contained in the earlier Act.

Section 30: Sale of intoxicating liquor to a person under eighteen

89. Section 30 amends the defences available to persons charged with offences under section 169A of the Licensing Act 1964, involving the sale of alcohol to persons under eighteen years, by requiring the defendant to prove that he believed that the customer was not under eighteen and that either he took all reasonable steps to establish the customer's age or that nobody could reasonably have suspected from the customer's appearance that he was under eighteen. The defendant will be deemed to have taken "all reasonable steps" if he asked the customer for evidence of his age. However, if it is proved by the prosecution that the evidence of age was such that no reasonable person would have been convinced by it, the defence would fail. The intention is to ensure that licensees and their staff seek proof of age before making sales. For example, proof of age is available through a variety of voluntary proof of age cards, photo-driving licences and passports. Subsection (2) provides that this particular provision does not apply to any sale of alcohol made before the coming into force of this amendment.

Section 31: Enforcement of certain offences relating to underage drinking

90. Subsection (1) adds a new subsection (1A) to section 169C of the Licensing Act 1964. It provides a defence for a person under 18 (a minor) who is sent by a police officer or an inspector of weights and measures, acting in the course of their duty, to purchase or attempt to purchase alcohol from licensed premises, to the offence contained in section 169C(1). That section makes it an offence for any minor to buy or attempt to buy intoxicating liquor in licensed premises. The new subsection enables the officers to seek the assistance of persons under eighteen years to conduct test purchasing operations for

the purpose of establishing if licensees and other staff working in licensed premises are abiding by the prohibition on sales to minors contained in section 169A of the Licensing Act 1964.

91. Subsection (2) adds a new subsection (4) to section 169G of the 1964 Act. This provides a defence for the police and inspectors of weights and measures who are engaged in "test purchasing" operations to the offence set out in section 169G. That section makes it an offence knowingly to send a person under 18 to obtain alcohol sold in licensed premises. The defence only applies where a relevant officer is acting in the course of his duty.

92. Subsection (3) adds a new section 169I to the 1964 Act. This new section provides that every local weights and measures authority in England and Wales (which in practice means local councils) has a duty to enforce the offences contained in sections 169A and 169B of that Act (i.e. prohibition on sale of alcohol to minors on licensed premises). This also provides an express power to those authorities for using any person (including minors) to conduct test purchase operations.

Section 32: Drunkenness or disorder on licensed premises

93. Subsection (1) increases the maximum penalty for the offences under section 172 of the Licensing Act 1964 ("the 1964 Act") to a fine at level 3 (£1,000), to make this consistent with new section 172A. The previous penalty was a level 2 fine (£500).

94. Subsection (2) inserts a new section 172A into the 1964 Act which makes it an offence for anyone (described and defined as a "relevant person") who works in licensed premises to permit drunkenness or any violent, quarrelsome or riotous conduct to take place on the premises. If a relevant person is charged with permitting drunkenness, the onus is on the defendant to prove that he or she took all reasonable steps to prevent the drunkenness. It is also an offence for the relevant person to sell intoxicating liquor to a drunken person. "Relevant person" is defined as any person, other than the licence holder, who works in a capacity (whether paid or unpaid) which gives him or her the authority to prevent the relevant drunkenness or disorder, or the sale of the alcohol.

95. Currently, under section 172(1) and (3) of the 1964 Act, only the licensee can commit these offences, and he is liable for the actions of employees or other agents acting on his behalf. Permitting drunkenness does not necessarily involve a sale of alcohol to a person who is drunk. The current offence includes the act of allowing any drunken person to remain on licensed premises. The new section ensures that any manager or agent supervising licensed premises on behalf of a licensee, for example the licensee's spouse, cannot evade responsibility for the prevention of drunkenness and disorder, or the sale of alcohol to a drunkard, during the licensee's absence for any reason.

96. Subsections (3)-(6) amend section 174 of the 1964 Act by providing that not only the licensee but also a "relevant person" has the right to refuse to admit or to expel from the licensed premises any person who is drunken, violent, quarrelsome or disorderly. The use of this power will enable the "relevant person" to take action to prevent the commission of the offences under the new section 172A.

97. Subsection (7) provides that the amendment made to the penalty for the offences under section 172 of the 1964 Act should not apply to offences committed before the coming into force of this amendment.

Chapter 3: Other provisions for combatting crime

Travel restrictions on drug trafficking offenders

98. In April 1998, the Government published its 10-Year strategy for tackling drug misuse, "*Tackling Drugs to Build a Better Britain*" (This was published by Home Office Communication Directorate and is available on the Home Office website at http://

www.homeoffice.gov.uk.). One aim of the strategy is to reduce the availability of illegal drugs on the streets. The Act gives the courts the power to impose overseas travel banning orders on drug traffickers convicted of certain "trigger" offences, identified by virtue of a direct relationship with overseas travel and subject to a sentencing threshold of four years to distinguish serious cases. The courts are also given the power to confiscate the passports of British nationals for the period of the ban. These powers will contribute to the National Drugs Strategy by making it more difficult for convicted drug traffickers to travel overseas and thereby help to prevent and disrupt drug trafficking.

Use of controlled drugs on premises

99. Under section 8 of the Misuse of Drugs Act 1971, it is an offence for the occupier or a person concerned in the management of premises knowingly to permit controlled drugs to be *produced* or *supplied* on the premises. However, knowingly permitting the *consumption* of a controlled drug has only been an offence in respect of the smoking of cannabis or opium. This very much reflects the drug misuse patterns that prevailed at the time the Act was introduced.

100. Successive governments have undertaken to review section 8 of the 1971 Act to consider whether its scope should be extended to the use of *all* controlled drugs.

101. In the last two or three years, police enforcement success against *open* street dealing in drugs has led to greater use of "*closed*" drug markets such as crack houses. Such closed markets present particular challenges for the police, especially with regard to the gathering of evidence sufficient to sustain a prosecution.

102. The Government has considered measures which would best assist police enforcement and concluded that an amendment to extend section 8 to cover the unlawful use of *all* controlled drugs on premises is appropriate (for it is not just cocaine that is used on such premises).

Intimidating, harming and threatening witnesses etc

103. These sections aim to give protection to witnesses, or those who may be or have been witnesses, in court proceedings other than those for an offence. They cover witnesses in civil cases and other proceedings such as breaches of a community order. Protection from intimidation of witnesses in proceedings for an offence is covered by section 51 of the Criminal Justice and Public Order Act 1994.

Further provision about intimidation etc

Police Directions stopping the harassment etc of a person in his home

104. The Act provides an additional police power to direct persons to leave the vicinity of residential premises, if their presence or behaviour there is likely to cause harassment, alarm or distress. It is intended to deal with protests outside homes which may become intimidatory. It creates an offence of failing to comply with such a direction.

Malicious communications

105. These measures strengthen current provisions on malicious communications by ensuring all forms of communication are covered; amending the available defence; and increasing the penalty available to the courts.

Addresses of directors and secretaries of companies

106. Companies, both those incorporated here and those incorporated overseas with a place of business or branch in this country (oversea companies) are required to provide the Registrar of Companies (Companies House) with certain information about their directors and secretaries (and in the case of oversea companies having a branch here, their permanent representative). Companies incorporated here must do so on

incorporation; in every annual return; and when details of the directors etc change. Oversea companies must do so within one month of establishment here and when details of the directors etc change. This information includes the individuals' usual residential address. The same information has to be recorded in the company's own register of directors. Any changes in the details, including an address, have to be notified to the company and to Companies House within 14 days. The company's register must be open for inspection to any member without charge and to any other person on payment of a fee. Companies House is a public registry and anyone can search the information filed. The Act will allow certain directors, etc to be excluded from the provisions in the Companies Act which require their usual residential address to be available for public inspection, and for a service address to be substituted. There will still be an obligation to provide a home address to the company and for the latter to provide it to Companies House, but this information will be kept on a separate and secure register in both places. The home address will be available to public bodies which will be defined in the regulations.

Advertisements relating to prostitution

107. The Home Office issued a consultation document entitled '*New Measures to Control Prostitutes' Cards in Phone Boxes'* in May 1999 setting out a range of options to tackle the problem. The responses largely supported the need for legislation in this area but there was no consensus on the most effective measures to be put in place. In June 2000 Minister of State Charles Clarke announced that the Government would develop detailed proposals for a new offence following the consultation with the police, local authorities and telephone operators. Final proposals for a new criminal offence were announced in answer to a written parliamentary question in December 2000 (Hansard Col: 89W).

108. This form of advertising is not specifically prohibited by existing legislation and while prosecutions have been brought under a number of pieces of legislation (for example under the Criminal Damage Act 1971 and the Environmental Protection Act 1990) and civil action has been taken by local authorities, these powers have proved inadequate to tackle the problem.

Local child curfew schemes

109. The local child curfew scheme was introduced by section 14 of the Crime and Disorder Act 1998. This allows a local authority (after confirmation by the Secretary of State) to ban children under 10 from being in a particular public place during specified hours, (which must fall in the period 9pm and 6am) otherwise than under the control of a parent or responsible adult.

110. Any child found in breach of a curfew may be returned home, or to a place of safety if there are serious concerns about the child's safety in the family home. The local authority is required to investigate the circumstances of any breach.

111. The Act amends the legislation to give greater flexibility in the age range of the children who might be banned from various public places and also to allow the police to initiate schemes. The local authority will still retain power to initiate schemes if it so wishes.

Section 33: Power to make travel restriction orders

112. This section sets out the arrangements under which a court may impose a travel banning order on an individual convicted of a drug trafficking offence, as defined in section 34. The orders will be available to the courts as a sentencing option in respect of offences committed after the date that these measures come into force or, in the case of offences added by order under section 34(1)(c), committed after the coming into force of the relevant order. The court may also order the surrender of any UK passport held by the individual. This means a current passport issued by the government of the United Kingdom, the Channel Islands, the Isle of Man or a dependent territory. It is intended

that these new powers should apply to serious cases of drug trafficking and they are therefore only available where the court imposes a sentence of four years or more. The four-year sentencing threshold has been chosen in accordance with sentencing guidelines issued by the Court of Appeal. In such a case the court will be under a duty to consider the making of a travel restriction order. Where the court decides that a ban is not appropriate, it will be required to give reasons.

113. The period of the banning order will run from the point of the offender's long-term release from custody (e.g. on licence). It will not be triggered by periods on bail or temporary release. It will last for a minimum period of two years.

Section 34: Meaning of "drug trafficking offence"

114. Section 34 sets out the offences on conviction of which a travel restriction order may be made. For this purpose a "drug trafficking offence" includes the production and supply of controlled drugs; assisting in or inducing the commission of corresponding offences outside the United Kingdom; and offences of improper importation or exportation of controlled drugs. It also includes conspiracy, attempt and incitement to commit those offences. There is power to designate other offences under the Misuse of Drugs Act 1971 as drug trafficking offences for this purpose. This might be used for example if offending patterns and behaviour change and/or new offences are created. The power is exercisable by statutory instrument subject to the affirmative resolution procedure.

Section 35: Revocation and suspension of a travel restriction order

115. This sets out the revocation and temporary suspension procedures in respect of banning orders made under section 33 and the framework and the basis under which such applications will be considered. Sub-section (1) (a) provides for the revocation of banning orders where the court is satisfied that it is appropriate to do so in the light of the person's character, conduct since making the order and the offences of which he was convicted. An application for revocation can only be made after expiry of the minimum period in relation to the order as set out in subsection (7). Sub-section (1) (b) allows the court to suspend the prohibition at any time for a temporary period where there are exceptional compassionate circumstances (e.g. where a person needs to travel overseas for urgent medical treatment). The person concerned will be under a duty to be back in the United Kingdom when the period of the suspension ends and to surrender any UK passport which was returned to him as a result of the suspension.

Section 36: Offences of contravening orders

116. This section sets out the penalties for breach of any requirement of or under an order. Leaving the United Kingdom in breach of a prohibition or failing to return after a suspension is punishable on summary conviction by a maximum of 6 months' imprisonment, a fine up to the statutory maximum (currently £5000) or both. On conviction on indictment the maximum penalty is 5 years' imprisonment, an unlimited fine or both. Failure to comply with a direction to surrender a passport is punishable on summary conviction by a maximum of 6 months' imprisonment or a £5000 fine or both.

Section 37: Saving for powers to remove a person from the United Kingdom

117. This section ensures that a travel restriction order shall not prevent a person's removal from the United Kingdom where it is ordered by the Secretary of State or by the courts. There are a number of circumstances where this might apply: deportation and extradition are examples. These various statutory powers will be listed in a statutory instrument which will be subject to the negative resolution procedure. Normally, where a person is removed under this section, removal will be permanent and there is no need for the banning order to remain in force. The provision in sub-section (2) is to cover circumstances where, following an offender's temporary removal (e.g. to give evidence in criminal proceedings overseas), he or she is returned to the United Kingdom.

Section 38: Permitting use of controlled drugs on premises

118. This section strengthens police powers to prosecute occupiers or other persons concerned in the management of premises who knowingly permit the use of controlled drugs on their premises. Section 8(d) of the Misuse of Drugs Act 1971 makes such persons liable to prosecution if they knowingly permit the smoking of cannabis or opium on their premises. The new power extends this liability to the unlawful use of *all* controlled drugs.

Section 39: Intimidation of witnesses

119. This section and sections 40 and 41 create two new offences intended to increase protection for witnesses in all proceedings other than proceedings for a criminal offence. The new offences are similar to offences under section 51 of the Criminal Justice and Public Order Act 1994 which provide protection to witnesses in proceedings for a criminal offence.

120. *Subsection (1)* makes it an offence for a person to intimidate another person (the victim) where he knows or believes that the victim is or may be a witness in any relevant proceedings with the intention of perverting, obstructing, or interfering with the course of justice. The offence covers only those acts done after the commencement of relevant proceedings. Relevant proceedings and commencement of proceedings are defined in section 41.

121. *Subsection (2)* says that, for the purposes of subsection (1) it is immaterial:

- whether the act in question is carried out in the presence of the victim;
- whether it is done to the victim himself or a third party and;
- whether the obstruction, perversion or interference with the course of justice quoted above is the predominating intention of the person doing the act.

122. *Subsection (3)* creates a presumption that the defendant intended to pervert, obstruct or interfere with the course of justice if it is proved that he did an act which intentionally intimidated another person, and did the act knowing or believing that the person in question was or might be a witness in relevant proceedings. The defendant is entitled to call evidence to rebut the presumption and to do so he need only satisfy the court on the balance of probabilities that he did not have a motive.

123. Subsection (5) provides a wider definition of what constitutes a witness for the purposes of this section. A witness under this definition includes a person who provides or is able to provide information, a document or some other document which might be used in evidence in the proceedings or might:

- confirm other evidence which will or might be admitted in those proceedings;
- be referred to in the course of evidence given by another witness in those proceedings; or
- be the basis for cross examination during those proceedings.

It does not matter for these purposes whether the information document or other thing is itself admissible in evidence.

Section 40: Harming witnesses etc

124. *Subsection (1)* provides that a person commits an offence if, in the circumstances covered by *subsection (2)*, he does an act which harms and is intended to harm another person; or, if intending to cause another person to fear harm, he threatens to do an act which would harm the other person.

125. *Subsection (2)* describes the circumstances referred to in subsection (1) which must exist in order for the offence to be committed. The circumstances are that

- the person doing or threatening to do the act must do so knowing or believing that another person (regardless of whether they are the person against whom the harm is threatened) has been a witness in relevant proceedings (as defined in section 40); and
- he must do or threaten that act because of that knowledge or belief.

126. *Subsection (3)* creates a presumption that the defendant had the motive required under subsection (2)(b) where it is proved that after the commencement of proceedings and within one year of the commencement of those proceedings, he did, or threatened to do, an act which would harm another person and did so knowing or believing that either that person or someone else had been a witness in relevant proceedings. The defendant is entitled to call evidence to rebut the presumption and to do so he need only satisfy the court on the balance of probabilities that he did not have a motive.

127. Subsection (7) widens the definition of witness which applies to offences under this section. This wider definition is similar to that in subsection (5) of section 39 which applies to offences under that section.

Section 42: Police Directions stopping the harassment etc of a person in his home

128. This section provides a new power for a police officer to direct persons to leave the vicinity of premises used as a dwelling, or to follow such other directions as the officer may give, in order to prevent harassment, alarm or distress to persons in the dwelling. This applies where persons are present in the vicinity of premises used as a dwelling, where there are reasonable grounds to believe that the person or persons are there for the purpose of persuading or making representations to any individual that they should do something which they are entitled not to do (or not do something they are entitled to do), and that the presence or behaviour of those persons is likely to cause harassment, alarm or distress to persons living at the premises.

129. A police officer may give such directions as he considers necessary to prevent harassment, alarm or distress to persons in the dwelling, including directing persons to leave the vicinity of the dwelling, and may attach conditions to the location, distance and number of persons who may remain, such as are considered necessary for preventing harassment, alarm or distress to persons in the dwelling. This means that a peaceful protest could still take place away from the vicinity of the homes.

130. An offence is created of knowingly failing to comply with such directions or conditions as are given by the police officer. The penalty for this offence is, on summary conviction, imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale.

131. An exception is provided for conduct which is lawful under section 220 of the Trade Union and Labour Relations (Consolidation) Act 1992, that is peaceful picketing of a place of work in furtherance of a trade dispute.

132. The term "dwelling" has the same meaning as in the Public Order Act 1986, that is any structure or part of a structure occupied as a person's home or other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied.

Section 43: Malicious communications

133. *Subsection (1)* amends section 1(1) of the Malicious Communications Act 1988, which creates an offence of sending letters etc with intent to cause distress or anxiety, to make it clear that communications sent by electronic means are included in its scope.

134. *Subsection (2)* amends section 1(2), which provides for a defence of making a threat on the grounds of reasonableness, by replacing the current subjective test (i.e. that the accused believed his demand and the use of the threat to reinforce that demand to be reasonable), with an objective one (i.e. that the demand was made on reasonable grounds and that he or she honestly and reasonably believed that the threat was a proper means of reinforcing that demand). The defence still provides for "legitimate" actions, for example threatening court action in the case of debts.

135. *Subsection (3)* inserts section 1(2A) to provide that communications sent by electronic means include any oral or other communication by telephone or other means of telecommunication.

136. *Subsection (5)* amends section 1(5) to increase the maximum penalty from a level 4 fine to six months' imprisonment or a level 5 fine or both.

Section 44: Collective Harrassment

137. Section 44 amends the Protection from Harassment Act 1997 to make it clear that the legal sanctions that apply to a campaign of harassment by an individual against another also apply to a campaign of collective harassment by two or more people. It is an offence under section 2 of that Act to pursue a course of conduct against someone which amounts to harassment and which the person responsible knows or ought to have known amounts to harassment. It is an offence under section 4 to cause another to fear violence by a course of conduct on at least two occasions if the person responsible knows or ought to have known his conduct would cause that fear.

138. Subsection (1) amends section 7 of the 1997 Act, which provides for the interpretation of "conduct" and "course of conduct" in sections 1 to 5, by inserting a new subsection (3A). Paragraph (a) provides that conduct by one person shall be taken, at the time it occurs, also to be conduct by another if it is aided, abetted, counselled or procured by that other person.

139. Paragraph (b) provides that the knowledge and purpose of those who aid, abet, counsel or procure such conduct relate to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring. This enables knowledge and purpose to be viewed in relation to what was planned or should have been expected at the time of planning.

Section 45: Addresses of directors and secretaries of companies

140. This section will provide for the Companies Act 1985 to be amended by the insertion of new sections (ss723B - 723F).

141. *Section 723B* allows a present or prospective director or company secretary or permanent representative to apply to the Secretary of State for Trade and Industry for a Confidentiality Order, which will have the effect of disapplying the requirement that his usual residential address be available for inspection on the public record. The application must be accompanied by a service address which will appear on the public record in place of the residential address. The intention is to offer protection for those who may be at serious risk of violence or intimidation if their home address becomes public knowledge. The Secretary of State will determine whether the grounds for such an application have been met. The section enables further provision to be made about Confidentiality Orders including provision for the payment of fees on the making of an application to fund the cost of setting up and maintaining the system of Confidentiality Orders, the manner in which applications for such orders are to be made, including the information to be given by applicants and the procedure for determining how the decision on the application is to be reached, and provision for the period for which Confidentiality Orders are to remain in force and the grounds for revoking such orders.

142. *Section 723C* sets out the effect of a Confidentiality Order, which is to remove the right of public access to the usual residential address of the directors, etc concerned which is to be held as a confidential record by Companies House, and to require the company's Annual Return to show the service address rather than the usual home address of the director, etc. The section provides for Regulations to make provision for similar protection for usual residential addresses filed on the company's own register of directors. It also provides for Regulations to make provision for the inspection of the confidential records and about applications for access. The section also enables provision to be made as to the conditions governing the choice of service addresses. It is anticipated that certain public bodies such as law enforcement agencies will have automatic access rights to the private address under the regulations; the regulations may cover the means by which those not afforded automatic rights will be able to apply to be given access by the court.

143. *Section 723D*. This section provides for the construction of the terms used in sections 723B and 723C. Terms defined include "relevant company", "permanent representative of a company", "confidential records" and "confidentiality order". It also enables the court - which may, if the regulations provide, approve applications for access to the Confidential Record - to be identified in the regulations. The section also enables regulations to provide that documents delivered after the coming into force of a Confidentiality Order can be treated as having been delivered at the time when they were required by law to be delivered. This seeks to ensure that companies will not delay presenting information that they are required to do by law in order to take advantage of the possible granting of a Confidentiality Order. The section also makes clear that it is not necessary, in order to make an application for a Confidentiality Order for the company in which the applicant seeks to become a director, etc, to have been incorporated or established a branch at the time of the application.

144. *Section 723E(1)* enables regulations to be made providing for it to be an offence for a person to give false information knowingly or recklessly when applying for a Confidentiality Order or for providing confidential information in breach of regulations made under section 723C. Section 723E(2) sets out the penalties that might be imposed by regulations for breach of the offences described in subsection (1).

145. *Section 723F*. This section makes provision as to how the regulation making powers conferred by sections 723B to 723E are to be exercised. Any regulations made under those powers are to be subject to the affirmative procedure and cannot be made unless a draft of the instrument containing them has been laid before Parliament and approved by resolution of each House. The section also makes consequential amendments to sections 288 and 709 of the Companies Act 1985.

Section 46: Placing of advertisement relating to prostitution

146. *Subsection (1)* makes it an offence to place an advertisement relating to prostitution in or in the immediate vicinity of a public telephone box with the intention that it should come to the attention of others. Prostitution is a word widely used in existing legislation and it is well established that it covers all types of sexual services offered for reward.

147. *Subsections (2) and (3)* define an 'advertisement relating to prostitution' for the purposes of subsection (1). Under subsection (2) an advertisement will be considered an advertisement relating to prostitution if it is for the services of a male or female prostitute or if it indicates that such services are available at particular premises. Under subsection (3) an advertisement will be presumed to be an advertisement for prostitution where a reasonable person would consider it to be one. However the subsection also allows a person accused of this offence to produce evidence to rebut that presumption by showing that the advertisement was not in fact for prostitution.

148. *Subsection (5)* defines 'public telephone' and 'public place' for the purposes of this offence. A public telephone is any telephone in a public place that is made available for the use by the public or a section of the public and includes any structure such as

a box, shelter or hood which it is located in or attached to. A 'public place' is one to which the public have access or are permitted to have access, whether on payment or otherwise. So a telephone situated on privately owned land such as a railway station concourse or shopping centre would be covered by the definition of public telephone. However the definition of public place excludes places to which children under sixteen are not permitted to have access or places which are wholly or mainly residential. This means, for example, that a telephone situated in a nightclub to which only adults have access or a "halls of residence" would not be covered.

149. *Subsection (6)* amends the Police and Criminal Evidence Act 1984 to give the police the power to arrest people without a warrant in relation to this offence.

Section 47: Application of section 46 by order to public structures

150. Once section 46 is in force there is a risk that advertising will be displaced from telephones to other public structures such as bus shelters. Section 47 will help to tackle such displacement should it occur by providing a power to extend the offence created by section 46 to other public structures. An offence created by this section will attract the same penalties as an offence under section 46.

151. *Subsection (1)* provides that the Secretary of State may, by order, provide for the offence created by section 46 to apply equally to another specified kind of public structure.

152. *Subsection (2)* defines 'public structure' as any structure that is provided as an amenity for the use of the public or any section of the public and is located in a public place. 'Public place' has the same meaning as in section 46. An example of such a structure would be a bus shelter. The definition does not extend to street furniture such as lampposts or railings which are not 'used' by the public. Existing legislation outlawing fly posting would be expected to cover any displacement of this kind of advertising to these kinds of structures.

153. *Subsection (3)* provides that any offence created by an order under this section shall attract the same power of arrest as the offence in section 46.

Section 48: Extension of child curfews to older children

154. This increases the maximum age of local child curfew schemes from children aged under ten, to children aged up to 15.

Section 49: Power for police to make schemes

155. This gives the police the power to initiate a local child curfew scheme, and apply to the Secretary of State to set up the scheme. This is currently the preserve of local authorities. The local authorities' powers to make a scheme remain unchanged.

Part 2: Powers of seizure

156. The decision of the Divisional Court in R v Chesterfield Justices and Chief Constable of Derbyshire ex parte Bramley, which was given on 5th November 1999, brought into focus the difficulties faced by the police and other law enforcement agencies where material they are entitled to seize is contained within a larger collection of material some of which they might not be entitled to seize. The Bramley case made clear that the Police and Criminal Evidence Act 1984 does not entitle the police to seize material for the purposes of sifting it elsewhere.

157. The background to the judgement is that an application for judicial review was brought by Andrew Bramley, a car dealer, who challenged the seizure by Derbyshire Constabulary of documents, including correspondence with his solicitors, from his premises outside Sheffield. Before the hearing of the judicial review challenge, Derbyshire Constabulary conceded that the search warrant and seizure were unlawful and paid Mr Bramley £1,000 in damages. But, because of the importance of the issues

raised by the case and uncertainties in the law, the parties agreed that the Divisional Court should be asked to rule on the legal principles. Both the Attorney General and the Law Society intervened in the case and were represented at the hearing.

158. Lawyers for the police argued that provided the police reasonably believed the material they wished to seize was not legally privileged, they had the right to remove it to examine its contents elsewhere to determine what was and was not within the scope of the warrant. Rejecting this claim, Lord Justice Kennedy, who was sitting with Mr Justice Turner and Mr Justice Jowett, said common sense would suggest that a policeman executing a warrant should be able to do a preliminary sift of documents and then take all, or a large part of them, to sort out properly elsewhere. However, if a police officer seized items which were later found to be outside the scope of the warrant, the current provisions of PACE provided no defence to an action of trespass to goods based on unjustified seizure. In some cases the damages could be "significant". The Divisional Court suggested that this problem could only be overcome by the introduction of primary legislation.

159. Whilst Bramley concerned the police and PACE, the principle applies to the powers of seizure given to a range of law enforcement agencies. The difficulty facing the police and these other law enforcement agencies is that there are circumstances where it is not practicable to establish on the premises subject to the search, which material can be seized and which cannot. This may be because of the simple bulk of the material. It may be because relevant material is contained within the same document or set of documents as material which is protected from seizure. The most difficult circumstances relate to material held on computer media. It may be impossible to establish which material is relevant and seizable without processing the data forensically. That may involve removing the computer and/or imaging the entire contents of its hard disks and/or removing CD Roms or floppy disks.

Outline of proposals

160. The new sections do two separate things. First they deal with the problem identified by Bramley. They give the police and other law enforcement agencies, powers to remove material from premises so that they can examine it elsewhere, where it is not possible to examine it properly on the premises, due to constraints of time or technology. Second, they recognise the fact that with the advent of modern technology and the expansion in the use of computers, it is often important for investigators to be able to seize and forensically examine an entire disk or hard drive, in order to determine when individual documents have been created, amended and/or deleted. This inevitably means retaining all the material on the hard drive, including possibly legally privileged material. The new sections give the police and others the power to retain this inextricably linked material. The sections also provide for a number of safeguards to prevent abuse and to allow for a mechanism whereby an application can be made to a Judge for the return of material seized. In certain circumstances there will be an obligation on the police and others to secure the material in question pending the determination of such an application.

161. Because the Bramley principle applies equally to all powers of seizure given to the police and other law enforcement agencies the new powers are free standing powers which can only be exercised where a person could have exercised an existing power of seizure. Schedule 1 to the sections lists all these existing powers. There are over 70 of them and in addition to those used by the police they include powers available to the Serious Fraud Office, the Financial Services Authority, the Inland Revenue, Customs & Excise, the Department of Trade and Industry and the Office of Fair Trading. The underlying policy is that whilst the police and others can use the new powers to remove material to examine elsewhere they are only able to retain material which they have power to seize under their existing powers. The only exception to that is the new power to retain inextricably linked material

Section 50: Additional powers of seizure from premises

162. This section sets out the key additional powers required to deal with the problem identified in Bramley. *Subsection (1)* applies where a constable or other person exercising an existing power of search is unable to determine whether something may be or may contain something for which he is authorised to search, e.g. where there is a large bulk of material. *Subsection (2)* applies to the situation where the constable is unable to separate out the material he is able to seize from that which he is not e.g. where the material is on a computer. If it is not "reasonably practicable" to carry out the determination or separation required by subsections (1) and (2) the material can be seized to be examined elsewhere.

163. *Subsection (3)* defines "reasonably practicable" for the purpose of this section. The definition includes factors such as how long the determination or separation would take if carried out on the premises (e.g. where there was a large bulk of material) or whether carrying out the determination or separation on premises would prejudice the use of the material to be seized (e.g. where quickly printing off computer material rather than imaging a hard drive could lead to other relevant material on that computer being altered or damaged.) *Subsection (4)* excludes section 19(6) of PACE where material is seized under subsection (2). Section 19(6) (and its Northern Irish equivalent) prevent a constable seizing material he has reasonable grounds to believe is legally privileged. In other words *Subsection (4)* means that where the constable cannot separate out the item he is able to seize from an item which is legally privileged he is able to remove both from the premises, e.g. where they are both on a computer disc. *Subsection (5)* sets out the powers of seizure to which section 50 will apply. One of these powers is s.28(2)(b) of the Competition Act 1998. This gives a power to take copies but not to take originals of documents. *Subsection (6)* means that whilst section 50 applies to that power it only enables those exercising it to copy material in order to examine it elsewhere to determine or separate out what in fact they would be entitled to copy under s.28 itself. It does not give them the power to seize original documents.

164. Part I of Schedule 1 is a list of powers of seizure conferred by various legislation to which section 50 will apply.

Section 51: Additional powers of seizure from the person

165. This section gives additional powers of seizure from the person where there is an existing power to search that person. It is almost identical to section 50. It is necessary because, for example, individuals might have on them handheld computers or computer disks which might contain items of electronic data which the police would wish to seize. Alternatively, they could be carrying a suitcase containing a bulk of correspondence which could not be examined in the street.

166. Part 2 of Schedule 1 is a list of powers of seizure conferred by various legislation to which section 51 will apply.

Section 52: Notice of exercise of power under section 50 or 51

167. *Subsections (1)–(4)* deal with the requirement to give the occupier and/or some other person or persons from whom material has been seized under section 50 or 51 a notice specifying what has been seized and the grounds on which it has been seized, as well as information about the scope to apply to a judge for the return of seized material and about applying to attend any examination of the material seized. *Subsections (5)–(7)* gives the power to prescribe that notices may be given to other persons. For example, where the power under section 50 is exercised by the DTI in reliance on the s.447 of the Companies Act 1985 the DTI might wish to provide that notice is also served on the registered office of the company who appears to own the premises.

Section 53: Examination and return of property seized under s. 50 or 51

168. This section sets out how the examination of the property seized under sections 50 and 51 should take place and what can be retained. *Subsection (2)* deals with the examination and *subsection (3)* sets out what material does not need to be returned. The aim is to enable the police and others to retain whatever they could have seized had the examination taken place on the premises. *Subsections (3)* and *(5)* permit the retention of inextricably linked material. This is material which it is not reasonably practicable to be separated from material that can be seized without prejudicing the use of that seizable material. For example, it means the police or others may retain a whole computer hard drive which contains a certain document which is evidence of an offence if the rest of the hard drive is needed to prove when that document was created, amended or deleted. *Subsection (4)* refers to giving the occupier or some other person with an interest in the property an opportunity to be present at the examination.

Section 54: Obligation to return items subject to legal privilege

169. Legally privileged material is protected from seizure under PACE and other legislation. It includes communications between a professional legal adviser and his client in respect of legal advice or proceedings. However, it is possible to seize it under sections 50 and 51, and under PACE (if the constable making the seizure did not have grounds to believe it was legally privileged when he made the seizure). This section is designed to give specific protection to legally privileged material, to oblige the police and others to return such material if seized and, in conjunction with section 59, to give a judge the power to order its return.

170. *Subsection (1)* sets out the obligation to return and *subsections (2) and (3)* provide that legally privileged material can be retained if it is inextricably linked to other seizable material. The obligation to return legally privileged material and the right to apply to a Judge for its return applies not only where the powers in sections 50 and 51 are exercised but in most other circumstances where material is seized.

Section 55: Obligation to return excluded and special procedure material

171. This section contains similar provisions to section 54 but relating to special procedure and excluded material as defined in PACE. Excluded material includes journalistic material and personal records which are held in confidence. Special procedure material includes confidential material created in the course of a business and journalistic material provided neither is excluded material. PACE gives special procedure material and excluded material a number of different protections and section 55 is similarly designed to give this type of material additional protection whenever it would have had such protection in the relevant underlying power of seizure listed in Schedule 1. Section 55 does not apply where the underlying power of seizure is found in legislation such as the Financial Services and Markets Act 2000 or the Criminal Justice Act 1987 as they do not give special protection to special procedure and excluded material. Some pieces of legislation only give protection to excluded material and not special procedure material. *Subsection (5)* ensures that where the powers in those pieces of legislation are being exercised, or where the powers in section 50 and 51 are being exercised in reliance on those powers, the protections given by this section only apply to excluded material. In legislation enacted prior to PACE protection is only given to special procedure material consisting of documents or records other than documents. For that legislation *subsection (6)* ensures that this section similarly only protects such material.

172. Part 3 of Schedule 1 is a list of powers of seizure conferred by various legislation to which section 55 will apply.

Section 56: Property seized by constables etc

173. This section is referred to in sections 53, 54 and 55 and sets out certain circumstances in which seized property may be retained. It mirrors the power given to a constable

under section 19 of PACE which arises independently of a power of search and gives a constable the power to seize evidence of an offence or property obtained in consequence of the commission of an offence if it is necessary to do so to stop it being lost or destroyed etc. Section 56 ensures that where a constable has been involved in the seizure of material under section 50 or 51 it is possible to retain evidence of any offence or property obtained in consequence of the commission of an offence if it is necessary to do so to stop it being lost or destroyed etc, even if this is not material which was being searched for.

Section 57: Retention of seized items

174. The provisions listed in *Subsection (1)* of this section set out when property obtained under these powers may be retained. *Subsections (2) and (3)* of this section prevent the retention of property which could not be retained under these provisions if it was seized under the new powers on reliance on one of those powers. Subsection (4) ensures that the listed provisions cannot justify the retention of anything which has to be returned under Part 2.

Section 58: Person to whom seized property is to be returned

175. This section sets out for the purposes of the Act to whom property which is obliged to be returned under Part 2 should be returned. This is normally the person from whom it is seized unless the police or others consider someone else has a better claim to it. *Subsections (4) and (5)* define the occupier of a premises as being the person from whom property is seized when it is seized from a premises.

Section 59: Application to appropriate judicial authority

176. This gives anyone with a relevant interest in the seized property the right to apply to the appropriate judicial authority (as defined in section 64) for its return. It is hoped this will provide a quick and easy mechanism for challenging both the use of the new powers and, in certain circumstances, the exercise of existing powers. *Subsection (3)* sets out the grounds on which an application for the return of the property can be made. On such an application the Court can order the return of material or, amongst other things, order that it be examined, for example, by an independent third party. *Subsections (5)(b), (6)* and *(7)* enable the police or other body in possession of the property to make an application to keep any material which they would otherwise be obliged to return if it would immediately become appropriate to issue a warrant enabling them to seize that material or to demand its production in the circumstances set out in *subsection (7)(b)*. This means, for example, that the police will not have to return material which might be of value to them and then have to immediately obtain a warrant to seize it back. *Subsection (8)* means that the Court can also authorise the retention of not just what the police or others could seize under a warrant but also any material which is inextricably linked to it.

Section 60: Cases where duty to secure arises

177. In certain circumstances an application under section 59 will mean that the police or others will have to secure the material seized pending the hearing of that application. This section sets out the circumstances in which a duty to secure material seized arises. Whilst it can only arise following the seizure of material under section 50 or 51, there is no duty to secure simply where it is alleged that the police or others have possession of irrelevant material. Indeed the whole point of the new powers is that the police can seize a bulk of material in order to separate out the relevant from the irrelevant. The circumstances where the duty to secure arises are where an application under section 59 is made and at least one of the conditions set out in *subsections (2) and (3)* is satisfied. In particular the duty to secure will arise whenever it is claimed that the material seized includes legally privileged material which should be returned. This means that the person from whom the material is seized can, by making such an application,

prevent the police or others looking at any material seized under sections 50 or 51 pending the hearing before the judge. This gives further protection to legally privileged material. Similar protection is given to special procedure material and excluded material where the legislation containing the underlying power of seizure itself protects those categories of material.

Section 61: Duty to secure

178. This section sets out the duty to secure which arises by virtue of section 60. The duty ensures that the person who has possession of the seized property does not, for example, examine or copy it other than with consent of the applicant or in accordance with the directions of the Court. *Subsection (3)* provides that the duty to secure does not prevent the giving of a notice under section 49 of the Regulation of Investigatory Powers Act 2000 requiring the disclosure of material protected by encryption.

Section 62: Use of inextricably linked property

179. This section provides that inextricably linked property should not be examined or copied or used for any purpose other than for facilitating the use in any investigation or proceedings of property to which it is inextricably linked. For example, the Serious Fraud Office may have seized a computer hard drive under section 50 because it contains an undated document they consider is evidence in a fraud prosecution. By virtue of section 53(3)(c) they may retain the whole hard drive if it is required to prove the date the document was created or amended. Section 62 ensures that whilst there will be other material on the hard drive, that material and the drive itself can only be used to facilitate the use in proceedings of the undated document. *Subsections (6), (7) and (8)* define for the purposes of the section what property is inextricably linked.

Section 63: Copies

180. This section provides that almost all of Part 2 shall apply to copies as it does to originals. Accordingly the powers in sections 50 and 51 and the protections in sections 54, 55 and 59 apply to copies of material taken under the powers listed in Schedule 1. The powers listed in *subsection (3*) are powers given to the police and others to obtain production of hard copies of material stored in electronic form. *Subsection (1)(c)* provides that the protections in Part 2 apply to material obtained under those powers too.

Section 64: Meaning of "appropriate judicial authority"

181. This section provides a definition for "appropriate judicial authority" to whom applications under section 59 can be made. In most cases it will be a Judge of the Crown Court, but where the power being challenged is the Companies Act 1985 or the Competition Act 1998, or section 50 or 51 exercised in reliance on those powers, the "appropriate judicial authority" is the High Court.

Section 65: Meaning of "legal privilege"

182. This secton provides a definition of "legal privilege" for Part 2 which is based, in part, on the meaning of "legal privilege" in the relevant power listed in Schedule 1 so that the meaning varies slightly according to which of those powers is being exercised.

Section 66: Interpretation of Part 2

183. *Subsections (2) and (3*) provide a definition of something for which a person making the seizure had power to search which is used, for example, to determine what can be retained under section 53. *Subsection (4)* provides that the powers to inspect listed are treated as powers of search for the purposes of Part 2. *Subsection (5)* provides that the powers to take possession listed are treated as powers to seize for the purposes of Part 2.

Section 67: Application to customs officers

184. This section provides that Part 2 applies to customs officers.

Section 68: Application to Scotland

185. This section provides that the powers in Schedule 1 shall not have effect as including powers exercised by constables in Scotland. Accordingly, other than when exercising the powers set out in the enactments listed in *subsection (2)*, constables in Scotland will not be able to exercise the powers in sections 50 and 51. The enactments set out in subsection (2) are all ones where constables exercise powers on behalf of other bodies such as the Financial Services Authority.

Section 69: Application to powers designated by order

186. This sections provides a power enabling the Secretary of State to add additional powers of seizure to Schedule 1 and to make appropriate consequential amendments to Part 2 and the enactment so added.

Section 70:Consequential applications and amendments of enactments

187. This section introduces Schedule 2.

Schedule 2: Provisions supplementary to Part 2

Part I: Modifications of enactments

188. *Paragraphs 1 to 10* ensure that the various provisions relevant to testing, access, compensation and forfeiture in relation to items seized under specified legislation will also apply where material is seized under section 50 and the search giving rise to the use of the new powers was under that specified legislation.

189. *Paragraph 11* provides certain statutory restrictions on the disclosure of information contained in legislation to which Part 2 applies also apply where that information is obtained through the exercise of the new seizure powers in Part 2 in reliance on any of those underlying pieces of legislation.

Part 2: Consequential amendments

190. This contains various consequential amendments to a range of relevant legislation. A number of them serve to amend PACE and other legislation to replace references to the words, "*contained in a computer*" with the words "*stored in any electronic form*". This provision is necessary to deal with developments in technology and the advent of handheld computers and other such devices. Further, the addition of the words *"or from which it can be readily be produced in visible and legible form"* to various pieces of legislation gives the police and others the power not only to obtain a printout of computer material but also obtain copies of it on disk.

Code of Practice and Crown Court Rules

191. Guidance on the powers in Part 2 and the procedures linked to their application will be included in an expanded version of the Code of Practice for Searching of Premises by Police Officers and the Seizure of Property found by Police Officers on Persons or Premises (Code B) issued under PACE. The procedure for applications to a Judge of the Crown Court will be set out in the Crown Court Rules.

Part 3: Police and Criminal Evidence and the Terrorism Act

Arrestable Offences

192. The Act amends section 24(2) of the Police and Criminal Evidence Act 1984 to include two new offences in the list of offences for which a power of summary arrest exists. At present, unless the general arrest conditions under section 25 of PACE apply, the police cannot take offenders into custody and question them. Questioning can only take place at the scene of the offence and the offenders may only be summoned to appear at a magistrates' court to answer the charge. The offences concerned are:

- kerb-crawling which is currently an offence under section 1 of the Sexual Offences Act 1985; and
- failure to stop after an accident where personal injury is caused. Section 170 of the Road Traffic Act 1988 places certain requirements on a driver involved in an accident within the categories specified to stop, report the accident and provide information or documents. It is an offence under section 170(4) to fail to comply with these requirements. Part 3 would not provide a power of arrest in the case of a damage only accident, although the general arrest conditions may apply in that case.

Importation of indecent or obscene material

193. The aim of this section of the Act is to make the customs offence of 'importing indecent and obscene material' a serious arrestable offence under Schedule 5 to the Police and Criminal Evidence Act 1984 and the Police and Criminal Evidence (Northern Ireland) Order 1989.

194. The effect of making this offence a serious arrestable offence will be to give customs officers greater powers in relation to their investigation of such offences. The proposal builds on the existing domestic legislation, as child pornography offences under section 1 of the Protection of Children Act 1978 are already listed in those Schedules as serious arrestable offences.

Detention and arrest

195. The Act adds new sections 40A and 45A to the Police and Criminal Evidence Act 1984 (PACE) to allow for the use, in certain circumstances, of telephone reviews of detention, video reviews of detention and video links for other custody decisions where the review officer is at different station from the person detained. Section 40 of PACE provides for reviews of the detention of persons detained in police custody in connection with the investigation of an offence. The first review must take place no later than six hours after the detention was first authorised. The second review must take place no later than nine hours after the first and subsequent reviews must be at intervals of no longer than nine hours. In relation to those who have been arrested and charged, the responsibility for carrying out the reviews lies with the custody officer (section 40 (1) (a)).

196. Section 36 (3) of PACE provides that no officer may be appointed a custody officer unless he is of at least the rank of sergeant. Subsection 4 provides that an officer of any rank may perform the functions of a custody officer at a designated police station if a custody officer is not readily available to perform them.

197. In relation to those who have been arrested but not yet charged, the responsibility to undertake the review lies with an officer of at least inspector rank not directly involved in the investigation (section 40 (1)(b)).

198. An attempt was made to introduce reviews of detention by video link in the area of Kent Constabulary within the existing law. However, in a judicial review in November 1999 (R v Chief Constable of Kent ex parte Kent Police Federation Joint Branch Board and Another [2000] 2 Cr.App.R. 196) the Lord Chief Justice held that section 40 of PACE did not permit review by video link and that the practice of section 40 telephone

reviews approved by note C:15C of the Codes of Practice to PACE was of dubious legality. The Lord Chief Justice held that it was implicit in Section 40 and explicit in section 37(5) read in accordance with section 40(8) that the detainee should be in the physical presence of the review officer.

199. The Act allows for pre-charge reviews under Section 40 (1)(b) to be carried out both by video link, where the review officer is at a different police station to the detained person, and by telephone, but only where it is impracticable to carry out the review in person or by video link within the required time-scale. It is not envisaged that the duties of the review officer should be performed by video link as a matter of course. It is envisaged that a review by telephone might be used, for example, where a review officer is unable to travel to the police station to carry out a review because the road is flooded. The Act also provides a regulation-making power to allow custody officers to make certain decisions about charging, detention and bail using video conferencing facilities where the custody officer is at a different police station to the detainee.

200. The Government proposes to pilot the use of video conferencing facilities for Section 40 reviews of detention and other custody decisions. The Act provides for regulations to be drawn up specifying which police stations are to be piloted and, if so required, which functions should be piloted. The option of remote decision making for detainees in non-designated stations will only be available where the necessary technology and administrative arrangements are in place. Even in areas within the pilot scheme, the option will remain for an officer at the non-designated station to carry out the custody officer functions as in existing law. In practice, the decision as to who should carry out the functions is likely to be taken in consultation with the custody officer at the nearest designated police station

Authorisation for delay in notifying arrest

201. The Act amends Section 56(2) (b) of PACE to provide for a reduction from superintendent to inspector of the rank of officer needed to authorise a delay in allowing an arrested person to notify someone of his arrest and detention.

Use of video links for proceedings for extending Terrorism Act detention

202. The Act amends paragraph 33 of Schedule 8 to the Terrorism Act 2000 to enable judicial extensions of detention proceedings to be conducted by video link. Part 3 of Schedule 8 to the Terrorism Act 2000 makes provision for extensions of detention of terrorist suspects to be considered and authorised by a judicial authority. At present, such extensions are considered by the Secretary of State. The judicial authority will hear applications by the police for extensions of detention beyond the 48 hour period during which the police can detain an individual arrested under section 41 of the Terrorism Act. The maximum time a person may be held on judicial authority is seven days from the time of arrest or of detention under Schedule 7 if the person was being examined under this power initially.

Visual recording of interviews

203. The Act will allow for the visual recording of interviews with suspects.

204. At present it is doubtful whether the law permits the video recording of the interview with a person suspected of a criminal offence to proceed where the suspect objects - unlike audio recording which can proceed even when the suspect objects. A number of police forces have been piloting video recording of interviews with the consent of the suspect. The Government proposes to evaluate the effectiveness of video taping in these pilot areas initially, but a change in law is necessary in order to proceed with the evaluation.

Codes of Practice

205. Codes of Practice are issued under PACE covering:

- stop and search,
- searching of premises and seizure of property,
- detention, treatment and questioning,
- identification procedures and
- tape recording of interviews with suspects.

206. At the moment, ***any*** changes to these Codes have to be subject to full public consultation and a process of debate in each House of Parliament.

207. The Act allows proposals for limited amendments to the Codes for trial purposes to be made subject to the negative resolution procedure. Such changes could be for fixed periods of up to two years and could relate to defined areas and classes of offences or offenders. Permanent amendments to the codes which would apply generally would still need to be made using the existing procedures and thus be subject to full consultation and the affirmative resolution procedure.

Fingerprints and DNA

208. The Act amends those parts of PACE dealing with the taking, storage and retrieval of fingerprints, footprints and DNA, to take account of developments in a number of new technologies. It also addresses the need to reflect new practices and procedures. It makes provision for electronic capture and storage of fingerprints, and type approval of the equipment used. It further provides for officers of the level of inspector or above to give authorisation to the taking of fingerprints and non-intimate samples without consent and for the taking of intimate samples with consent.

209. In July 1999 the Home Office published "Proposals for Revising Legislative Measures on Fingerprints, Footprints and DNA samples" (This was published by Home Office Communication Directorate and is available on the Home Office website at http://www.homeoffice.gov.uk.). This consultation document formed the basis for some of the measures included in this Act. The responses received represented a broad range of interests. The majority of the respondents welcomed the proposals which have now been taken forward in this Act.

210. An additional measure has been included to allow all fingerprints and DNA samples lawfully taken from suspects during the course of an investigation to be retained and used for the purposes of prevention and detection of crime and the prosecution of offences. This arises from the decisions of the Court of Appeal (Criminal Division) in R v Weir and R v B (Attorney General's reference No 3/199) May 2000. These raised the issue of whether the law relating to the retention and use of DNA samples on acquittal should be changed. In these two cases compelling DNA evidence that linked one suspect to a rape and the other to a murder could not be used and neither could be convicted. This was because at the time the matches were made both defendants had either been acquitted or a decision made not to proceed with the offences for which the DNA profiles were taken. Currently section 64 of PACE specifies that where a person is not prosecuted or is acquitted of the offence the sample must be destroyed and the information derived from it can not be used. The subsequent decision of the House of Lords overturned the ruling of the Court of Appeal. The House of Lords ruled that where a DNA sample fell to be destroyed but had not been, although section 64 of PACE prohibited its use in the investigation of any other offence, it did not make evidence obtained as a failure to comply with that prohibition inadmissible, but left it to the discretion of the trial judge. The Act removes the requirement of destruction and provides that fingerprints and samples lawfully taken on suspicion of involvement in an

offence or under the Terrorism Act can be used in the investigation of other offences. This new measure will bring the provisions of PACE for dealing with fingerprint and DNA evidence in line with other forms of evidence.

211. The Act also amends the Police and Criminal Evidence (NI) Order 1989 so that restrictions on the use and destruction of fingerprints and samples are consistent with the new provisions for England and Wales, as detailed above.

Authority for intimate searches

212. The Act amends section 55(1) and (5) of PACE to provide for a reduction from superintendent to inspector of the rank of officer who is required to authorise an intimate search or to authorise an intimate search to be carried out by someone other than a suitably qualified person.

Samples

213. Section 62(9) provides that intimate samples other than urine samples or dental impressions may only be taken by a registered medical practitioner and that a dental impression may only be taken by a registered dentist.

214. The Act amends that section so that registered nurses may also take samples which are currently required to be taken by a registered medical practitioner.

Power to apply 1984 Act Provisions

215. The Act fills a gap in the powers available to officers of the Secretary of State for Trade and Industry when investigating criminal offences. It amends the Police and Criminal Evidence Act to give the Secretary of State the power to make an order applying the provisions of Schedule 1 to that Act so far as they relate to "special procedure" (e.g. material subject to confidentiality such as bank accounts) material for the purposes of investigations of "serious arrestable offences" (e.g. offences carrying a sentence of five years imprisonment or more such, as theft) by officers of the Secretary of State for Trade and Industry. At present, such officers have no statutory powers when carrying out criminal investigations and so are unable to gain access to material held in confidence such as bank accounts.

Execution of process in other domestic jurisdictions

216. The Act fills a gap in the law relating to the execution in Scotland of search warrants issued or production orders made in England & Wales in respect of 'special procedure' and 'excluded' material as defined in the Police and Criminal Evidence Act 1984. It amends the Police and Criminal Evidence Act 1984 to apply section 4 of the Summary Jurisdiction (Process) Act 1881 to orders and warrants for special procedure and excluded material. The 1881 Act currently enables process issued by a court of summary jurisdiction in England & Wales to be endorsed for execution in Scotland and *vice versa*. However these arrangements do not apply to search warrants and production orders in respect of 'special procedure' material (e.g. bank details) or excluded material, since such warrants and orders can be issued and made only by a circuit judge, i.e. not by a court of summary jurisdiction. The Act makes comparable provision for Northern Ireland.

Section 71: Arrestable offences

217. This section adds the offences of kerb crawling and failure to stop and report an accident (in which personal injury is caused) to the list of offences in section 24 (2) of the Police and Criminal Evidence Act 1984 for which a power of summary arrest exists. Making these offences arrestable enables the police to take offenders into custody and question them rather than having to summons them to appear at a magistrates' court to answer the charge.

Section 72: Importation of indecent or obscene material

218. Section 170(2)(b) of the Customs and Excise Management Act 1979 makes it an offence knowingly to evade any prohibition or restriction for the time being in force. Section 42 of the Customs Consolidation Act 1876 prohibits the importation into the United Kingdom of indecent or obscene articles. Together these sections make it an offence to import or bring into the United Kingdom indecent or obscene articles. Existing legislation provides that this offence is one to which the summary arrest powers of the Police and Criminal Evidence Act 1989 and the Police and Criminal Evidence (Northern Ireland) Order 1989 apply. The effect of section 72 will be to make this offence a serious arrestable offence in England and Wales and Northern Ireland by adding it to the list of such offences set out in Schedule 5 to the Police and Criminal Evidence Act 1984 and the Police and Criminal Evidence (Northern Ireland) Order 1989.

219. Making this offence a serious arrestable offence will, whilst retaining the existing powers of summary arrest, allow an officer of Customs and Excise to exercise greater powers than would be available in relation to the investigation of an offence which was not a serious arrestable offence, in relation to the investigation of that offence. It will allow applications to be made for access to certain material and for warrants to enter and search premises during the course of an investigation. It will also give officers of Customs and Excise greater powers in relation to the detention of a person who has been arrested for this offence.

Section 73: Use of video and telephone links for decisions about detention

220. This section inserts a new section 40A into PACE which allows for an officer of at least the rank of inspector to conduct a review of detention before charge, by telephone. *Subsection (1)* of section 40A prescribes the situations in which a telephone review is to be used: where it is not reasonably practicable for the review officer to be present at the police station where the person is held and where the review is not one which is authorised by regulations in section 45A to be carried out using video conferencing facilities, or where in the circumstances it is not reasonably practicable to use such facilities. The effect of this is that telephone reviews will be used in very limited circumstances.

221. *Subsection (3)* of section 40A alters some of the obligations of the review officer where he is not in the same police station as the detainee. PACE contains several references to functions which imply that the review officer and detainee should be in the same police station. For example, section 37(4) and (5), (duty to make a written record and written record to be made in the presence of person arrested) and sections 40 (12) to (14) (opportunity to make representations orally or in writing). Where the review officer is not in the same police station as the detainee, the obligation is to cause another officer to make a written record in the presence of the detainee.

222. *Subsection (4)* of section 40A authorises the means by which representations are to be made to the review officer. Subsection (4) (a) allows for the use of email or fax where those facilities exist and (4)(b) for use of the telephone.

223. *Subsection (3)* of section 73 inserts a new section 45A after section 45 of PACE to enable the Secretary of State to make regulations to allow a police officer to perform certain functions where he is not present in the same police station as the arrested person but where he has access to the use of video conferencing facilities to communicate with persons in that station.

224. Section 30(2) of PACE sets out the normal rule that those arrested should be taken to a designated police station, that is one which is designated for the detention of arrested persons. Section 30(3) to (6) sets out the circumstances in which an arrested person may be taken to a non-designated police station for a maximum of six hours. For example, where it appears to a constable that he will be unable to take an arrested person to a

designated police station without the arrested person injuring himself, the constable or some other person. Section 36(7) sets out how the functions of the custody officer should be carried out at a non-designated police station. The Act provides that as an alternative to an officer at the non-designated police station having all the powers and duties of a custody officer, a custody officer at a designated police station should be able to carry out some of those functions by means of video conferencing facilities.

225. *Subsections (2)(a) and (b)* of new section 45A set out the functions as those of a custody officer under sections 37, 38 and 40 of PACE in relation to an arrested person who is taken to a non-designated police station; and the function of carrying out a pre charge review of detention under Section 40(1) (b) of PACE by an officer of at least the rank of inspector. *Subsections (3) and (8)* are regulation making powers enabling the regulations to specify how the facilities should be used and in which police stations. *Subsection (4)* provides that the regulations shall only authorise a custody officer at a designated police station to perform any of the functions in subsection (2) (a). *Subsections (5) to (7)* of section 45A make provision similar to *subsections (3)* and *(4)* of section 40A except that the oral representations may be made by video conferencing facilities.

Section 75: Video links for proceedings about Terrorism Act detention

226. This section amends paragraph 33 of Schedule 8 to the Terrorism Act to enable the judicial authority proceedings to be conducted by video links. This is in line with similar arrangements for immigration and bail hearings. The decision whether the hearing will be conducted by video link is at the discretion of the judicial authority who must first hear any representations the detainee wishes to make as to venue. The judicial authority must be satisfied that the detainee can see and hear proceedings and be seen and be heard. Section 75 applies to England, Wales and Northern Ireland only.

Section 76: Visual recording of interviews

227. By inserting a new section 60A to the Police and Criminal Evidence Act, this section will allow for the visual recording of interviews with suspects. The section allows the Secretary of State to issue a code of practice on video recording (similar to section 60 (1) (a) of PACE on tape recording) and enables the Secretary of State to make an order requiring that certain interviews, in certain police force areas be videoed in accordance with the code. The order will be subject to the negative resolution procedure.

Section 77: Codes of practice

228. This section allows proposals for limited modifications to the Codes of Practice under PACE for trial purposes to be made subject to the negative resolution procedure. Such modifications may have effect in relation to particular areas, offences or classes of offenders and may only have effect for a maximum of two years. Permanent amendments to the Codes of general application would still be subject to the existing requirements for public consultation and subject to the affirmative resolution procedure in parliament.

Section 78: Taking fingerprints

229. *Subsection (1)* allows the police to retake fingerprints where an individual has been convicted of a recordable offence when the initial set of prints they took were incomplete or of poor quality or there were errors in the data capture process. This will also apply to cautions for recordable offences and warnings or reprimands for recordable offences under section 65 of the Crime and Disorder Act 1998.

230. *Subsection (2)* allows officers of the rank of inspector or above to authorise the compulsory taking of fingerprints.

231. *Subsection (3)* allows the police to retake fingerprints where an individual has been charged with a recordable offence, when the initial set of prints they took were incomplete or of poor quality or there were errors in the data capture process.

232. *Subsections (4)* and *(5)* allow for the compulsory fingerprinting of a person who has been arrested, fingerprinted and bailed to reappear at a police station or a court, if at the time of answering bail there is dispute over the identity of the individual.

233. *Subsection (6)* allows for compulsory fingerprinting of those cautioned for recordable offences or warned or reprimanded for recordable offences under section 65 of the Crime and Disorder Act 1998. This will enable the details of these offences which are held in national police records to be supported by fingerprints.

234. *Subsection (7)* provides that where fingerprints are taken electronically, the device used must have type approval from the Secretary of State. This is to ensure that the device will produce images of the appropriate quality and integrity to be used for evidential purposes.

235. *Subsection (8)* extends the definition of fingerprints to include records of fingers, palms and other parts of the hand where there are characteristic skin patterns and makes it clear that a fingerprint does not have to be produced as a print but may be recorded by other means.

236. *Subsection (9)* repeals Section 39 of the Criminal Justice Act 1948. This was used to give proof of previous convictions but has largely fallen into disuse because it could only be used to prove identity if the individual concerned had received a custodial sentence and was fingerprinted during their term of imprisonment.

Section 80: Samples

237. *Subsection (1)* allows officers of the rank of inspector or above to authorise the taking of intimate samples and the compulsory taking of non-intimate samples

238. *Subsection (2)* provides that intimate samples which may at present only be taken by a registered medical practitioner (samples of blood, semen or other tissue fluid, pubic hair; or a swab taken from a body orifice other than the mouth) may also be taken by a registered nurse.

239. *Subsection (3)* permits the retaking of impressions if an impression previously taken as part of the investigation is insufficient or of inadequate quality to allow a match to be made.

240. *Subsection (4)*. As with fingerprints, when skin impressions of other parts of the body are taken electronically the device used must have type approval.

241. *Subsection (5)* makes it clear that the term “analysis” in relation to skin impressions includes comparison and matching. The existing definitions of “footprints or similar impressions” is replaced with a new definition of “skin impression” covering impressions made by any means of parts of the body other than the hand.

242. *Subsection (6)* sets out circumstances in which samples may be regarded as insufficient (and may therefore be retaken) including where scientific failure inhibits the production of a DNA profile or where the sample has been damaged or destroyed prior to analysis. This would give the police the ability to retake samples if for example the laboratory was damaged by fire or where other unforeseen circumstances prevented the production of a profile from the sample.

Section 81: Speculative searches

243. *Subsections (1) & (2)*. Police forces in the UK and Islands can cross search an individual’s fingerprints against those held by another UK or Island force and can check DNA profiles against the DNA database. This section extends the power to check

fingerprints and DNA samples and the profiles derived from them against records held by those listed in section 63A(1A) of the 1984 Act (for example foreign police forces, the Ministry of Defence and the Armed Forces police forces) on the same basis that already exists between UK and Island forces.

244. Subsection (2) also adds a new subsection (1C) to section 63A(1A). There are occasions when an individual, who is not a suspect, provides fingerprints or samples voluntarily for the purposes of elimination. An example of this is a DNA intelligence (or mass) screen. This subsection would enable the fingerprints or DNA profile derived from the sample to be entered onto the database for cross matching purposes if the individual concerned consents in writing.

Section 82: Restrictions on use and destruction of fingerprints and samples

245. *Subsection (2)* removes the obligation to destroy fingerprints and samples when the individual is cleared of the offence for which they were taken or a decision is made not to prosecute. The obligation to destroy is replaced by a rule to the effect that any fingerprints or samples retained can only be used for the purposes related to the prevention and detection of crime, the investigation of any offence or the conduct of any prosecution. The term "use" includes retaining fingerprints and information derived from samples on databases that will allow speculative searches. Thus if a match is established between an individual who has been cleared of an offence at a subsequent crime scene the police are able to use this information in the investigation of the crime.

246. *Subsection (3)* and *(4)* have the effect that if a person, who is not a suspect, provides a sample or fingerprints voluntarily e.g. for the purposes of elimination, there is no obligation for him to allow his samples or fingerprints to be retained or used other than for the purpose for which they were taken. He will be asked whether he wishes to consent to their retention and use. Where consent is not given the fingerprints or samples must be destroyed and the information derived from them can not be used in evidence against the person concerned or for the purposes of investigation of any offence.

247. *Subsection (5)* preserves the existing gateway in the Immigration and Asylum Act 1999 for disclosure of police information to the Secretary of State for Home Affairs, for use for immigration purposes.

248. *Subsection (6)* will allow all fingerprints samples that have already been taken on suspicion of involvement in a crime to be retained and used once the section is in force.

Section 83: Provision for Northern Ireland corresponding to s.82

249. This section amends the Police and Criminal Evidence (NI) Order 1989 so that the restrictions on the use and destruction of fingerprints and samples correspond to the new provisions for England and Wales contained in section 82.

Section 84: Amendment of Terrorism Act 2000 equivalent to s.82

250. This section makes consequential amendments to the Terrorism Act 2000. It modifies the restriction on the use of fingerprints and samples taken under the provisions of the Act in England and Wales and Northern Ireland to allow their use additionally for the purposes set out in section 82 (the prevention and detection of any crime, the investigation of any offence or the conduct of any prosecution).

Section 85: Power to apply 1984 Act provisions

251. This section amends the Police and Criminal Evidence Act 1984 to enable the Secretary of State by order to apply the "special procedure" material provisions of Schedule 1 to the 1984 Act for the purposes of certain investigations as they apply for the purposes of investigations of offences conducted by police officers. *Subsection (2)* limits the investigations to which the provisions will apply to investigations of serious arrestable

offences conducted by an officer of the Department of the Secretary of State for Trade and Industry (or another person authorised to act on his behalf). *Subsection (3)* provides that the provision applies to the investigation of offences committed before the coming into force of the order or the section and *subsection (4)* provides that any order made under *subsection (1)* shall be subject to the negative resolution procedure.

Section 86: Process for obtaining excluded and special procedure material

252. This section amends the Police and Criminal Evidence Act 1984 to apply section 4 of the Summary Jurisdiction (Process) Act 1881 to orders and warrants for special procedure and excluded material. The 1881 Act currently enables process issued by a court of summary jurisdiction in England & Wales to be endorsed for execution in Scotland and vice versa. However these arrangements do not apply to search warrants and production orders in respect of 'special procedure' material (e.g. bank details) or excluded material, since such warrants and orders can be issued and made only by a circuit judge, who does not constitute a court of summary jurisdiction. Comparable provision is made in relation to Northern Ireland.

Part 4: Police Training

253. Police training in England and Wales has been the subject of an unprecedented level of scrutiny recently. A number of reports have made recommendations about the way police training is organised.

254. These include two reports by the Police Federation "Project Forward (May 1998) and "Police Training – What Next?" (July 1999), the recommendations of the report of the enquiry into the death of Stephen Lawrence (February 1999), the first ever thematic inspection of training by HMIC (April 1999), a report by the Home Affairs Committee (June 1999), and a report from Sir William Stubbs (July 1999) on the organisation and the funding of police training.

255. In November 1999 the Government published a consultation document on police training. It outlined a range of proposals to raise standards in police training and ensure relevant training for staff throughout their career. The Government received 80 responses to the paper. These represented the broad range of interests in this field including all the key national organisations such as the staff associations, the Association of Police Authorities (APA) and the Association of Chief Police Officers (ACPO), 7 police authorities, and 24 individual forces, as well as other organisations and individuals with a relevant interest.

256. Virtually all those who responded welcomed the fact that training, which was seen as key to what the police service does and can achieve, was being examined and debated. The majority of responses broadly welcomed the proposals.

257. In May 2000 the Government published "Police Training: The Way Forward" (This was published by Home Office Communication Directorate and is available on the Home Office website at http://www.home.office.gov.uk.). This outlined its intentions in light of the comments received during the consultation period, and in the light of a cost-benefit analysis conducted to examine the cost and efficiency savings that could be made through more effective collaboration between forces. "Police Training: The Way Forward" forms the basis for the measures in Part 4 of this Act. Key stakeholders were consulted about the sections in draft.

258. Part 4 creates a new Central Police Training and Development Authority as a Non-Departmental Public Body (NDPB). The Authority will build on the services currently provided by National Police Training, which was established by the Home Office in 1993 with a remit to design, deliver and accredit training programmes for core policing operations. As an NDPB, the new Authority will have greater independence from the Home Office. The Act allows the Secretary of State, in consultation with stakeholders, to establish a mandatory core curriculum and a qualifications framework for police.

It also strengthens the powers of the Secretary of State to require improvements in the quality of police training following and inspection undertaken by Her Majesty's Inspectorate of Constabulary (HMIC).

259. There are a number of other measures to improve police training which do not require primary legislation, on which work on implementation has already begun. A new HMIC inspector of training was appointed in the Summer 2000. Other proposed measures are set out below.

- A re-organised Police Training Council to provide the Home Secretary with strategic advice on training.
- An employer led Police National Training Organisation to promote skills and competencies within the sector.
- A national review team, managed by the APA and the ACPO, to identify opportunities to promote collaboration at a national, regional and local level.
- Improved use of information and communication technology and distance learning.
- Greater community involvement and co-operation in police training.
- The implementation of annual human resource plans for forces by Statutory Guidance to be issued under Best Value legislation.

Sections 87 to 96: The Central Police Training and Development Authority

260. Establish the Central Police Training and Development Authority as an NDPB and set out its functions and operational requirements. They give effect to Schedule 3 which contains detailed provisions about the Authority. They also set out the powers of the Secretary of State in relation to the Authority. These cover the power to set objectives (section 89), to set performance targets (section 91) and to require an inspection by HMIC and make directions as a result (section 93).

Section 87: Establishment of the Authority

261. Creates the Central Police Training and Development Authority as a corporate body.

Schedule 3:The Central Police Training and Development Authority

Paragraph 1: Constitution of the Authority

262. This provides for members of the Authority (including the chairman) to be appointed by the Secretary of State. Before appointing a chairman the Secretary of State must consult those persons who he considers to represent the interests of police authorities and the chief officers of police. In practice that is likely to mean that he will consult APA and ACPO. It provides for a minimum of 11 members, of whom 6 are independent members, 2 represent the interests of chief police officers, 2 represent the interests of police authorities, and one is a Crown servant.

Paragraphs 2 and 3: Disqualification

263. These set out a range of factors which would disqualify someone from appointment to the Authority. They are designed to ensure that Membership of the Authority is of a minimum age of 21 and does not include unsuitable persons.

Paragraphs 4 to 7: Tenure of office

264. Set out the arrangement for tenure of office as a member of the Authority. They set out the maximum term (5 years) for which a post can be held. They deal with resignation of members, and outline the circumstances in which a person may be removed from office.

Paragraph 8: Eligibility for re-appointment

265. Makes provision for a member to be re-appointed.

Paragraph 9: Remuneration, pensions etc. of members

266. Allows the Authority to pay remuneration, allowances and severance payments to members and to pay pensions and gratuities to members and former members. The amounts of all such payments are to be determined by the Secretary of State.

Paragraph 10: Members of staff of the Authority

267. Creates the position of chief executive, to be appointed by the Authority, with the consent of the Secretary of State. It also provides for the appointment of other staff by the Authority. Their numbers, and terms and conditions of appointment, are subject to the approval of the Secretary of State.

Paragraphs 11 and 12: Staff remuneration and pensions

268. Make provision for the payment of remuneration and allowances to members of the Authority's staff and for the payment of pensions and gratuities to members and former members of the Authority's staff.

Paragraph 13: Status of chief executive and staff members as constables

269. Provides that any individual who on appointment holds the office of constable shall hold the rank of chief constable if appointed as chief executive. It also ensures that any constable appointed to the staff continues to hold this office on appointment to the Authority.

Paragraph 14: Liability for acts of police members of staff

270. Establishes the Authority's liability in circumstances where there is a civil wrong committed by a seconded member of staff who is not an employee, for which damages can be claimed.

Paragraph 15: Committees

271. Allows the Authority to conduct its business through committees and sub-committees. People who are not members of the Authority may be appointed to such committees or sub-committees. Sub-paragraph (4) allows the Authority to pay remuneration and allowances to these individuals.

Paragraph 16: Delegation to committees

272. Allows the Authority to delegate its functions to committees, and in turn for the committees to delegate to sub-committees.

Paragraphs 17 to 19: Proceedings

273. Allow the Authority to determine its own procedures including for a quorum but sets a minimum requirement. They ensure that decisions taken by the Authority remain valid, even when there are vacancies in the membership of the Authority or when members have subsequently been disqualified.

Paragraphs 20 and 21: Application of seal and evidence

274. Set out the requirements for authenticating the Authority's seal and for accepting documents in evidence.

Paragraph 22: Status

275. This specifies that the Authority is not a Crown body.

Paragraph 23 to 26: Money

276. These paragraphs provide for the Authority to be funded through grant in aid and enable it to charge for its services. Paragraph 25 allows the Authority to accept gifts and loans. *Sub-paragraph (3)* of paragraph 25 specifies that any borrowing by the Authority is subject to the consent of the Secretary of State. Paragraph 26 requires the Authority to keep proper accounts and makes the accounts subject to audit by the Comptroller and Auditor General.

Section 85: Functions of the Authority

277. *Subsections (1) and (2)* set out the core functions of the Authority. This encompasses the provision of training and the giving of advice and consultancy on training and other matters related to policing. It is intended that the Authority will serve as a centre of excellence for police training and development, promoting the value of police training and working to enhance the efficiency and effectiveness of forces in England and Wales.

278. *Subsection (2)(c)* requires the Authority to promote the understanding of policing issues at an international level.

279. *Subsections (3) and (4)* require the Authority, in carrying out its functions, to have regard to:

- objectives set by the Secretary of State (under section 89),
- the objectives set within the Authority's annual plan (under section 90),
- any performance targets set, including any set in compliance with a direction given by the Secretary of State (under section 91), and
- the Authority's training and development plan (under section 92),

and to comply with:

- any direction of the Secretary of State requiring the Authority to establish performance targets (under section 91)
- any directions made by the Secretary of State in response to a report by HMIC (under section 93), and
- any other general or specific directions given to them by the Secretary of State.

280. *Subsections, (7)* and *(8)* define the bodies and individuals for whom the Authority is entitled to provide services, in addition to those to whom it provide services by virtue of its primary functions.

281. *Subsection (10)* defines those to whom the Authority is required to provide training, advice and consultancy services as police officers, special constables and police civilian staff in England and Wales.

Section 89: Setting of objectives by the Secretary of State

282. Gives the Secretary of State the power to determine objectives for the Authority and modify the objectives he has set. It sets out the bodies which he is required to consult in that process.

Section 90: The Authority's annual objectives

283. Requires the Authority to set objectives for each financial year, and sets out the bodies it is required to consult in that process.

Section 91: The Setting of performance targets

284. Allows the Secretary of State to require the Authority to establish performance targets for any objectives he has set under section 90.

Section 92: Training and development plans.

285. Requires the Authority to prepare an annual training and development plan which sets out how the Authority will meet its objectives. It lists the contents of such a plan, and the bodies to which it should be distributed.

Section 93: Inspections of the Authority

286. Allows the Secretary of State to require an inspection by HMIC and to make directions in respect of the efficiency and effectiveness of the Authority as a result.

Section 94: Power to require reports from the Authority

287. Allows the Secretary of State to require a report from the Authority on any relevant issue.

Section 95: Annual reports

288. Requires the Authority to submit an annual report at the end of the financial year to the Secretary of State to detail how it has carried out its functions in the preceding year. *Subsection (2)* provides that this should include an assessment of the success of the training and development plan. The Secretary of State is required to lay a copy of the annual report before Parliament.

Section 96: Secretary of State's duty to promote efficiency etc of Authority

289. Requires the Secretary of State to exercise his powers in a manner that promotes the efficiency and effectiveness of the Authority.

Sections 97 to 99: Other provisions about training

290. These sections cover a variety of matters relating to police training that are largely not directly associated with the new Authority.

Section 97: Regulations for police forces

291. This section allows the Secretary of State to make regulations in respect of training and qualifications. This will allow the implementation and evaluation of a mandatory core curriculum and a mandatory qualifications framework for particular tasks and roles. *Subsection (4)* sets out the bodies whom the Secretary of State is required to consult before making any regulations under this section. Regulations under this section are subject to the negative resolution procedure *(subsection (5))*.

Section 98: Directions after inspection identifies training needs

292. This strengthens existing provision (where the Secretary of State can intervene after a special report by the HMIC that he has asked to be carried out) to allow the Secretary of State to make directions following a routine inspection report. These directions must relate to recommendations by HMIC in respect of the provision of training or the provision of opportunities for professional development.

Section 99: Joint provision of training

293. This amends section 23(6) of the Police Act 1996 to enable the Secretary of State to direct chief constables and police authorities to enter into agreements to collaborate on training.

Sections 100-101: Orders and regulations and interpretations of terms

294. These establish that any power of the Secretary of State to make orders or regulations under part 4 should be exercisable by statutory instrument; allows for him to make different provision for different cases; and provide an interpretation of terms used in part 4.

Section 102 and Schedule 4: Consequential amendments relating to police training

295. Schedule 4, which is given effect by section 102 makes amendments to legislation that are consequential on the creation of the Authority.

Paragraph 1: The Public Records Act 1958

296. Includes the Central Police Training and Development Authority within the list of bodies subject to the Public Records Act.

Paragraph 2: The Parliamentary Commissioner Act 1967

297. Includes the Central Police Training and Development Authority within the jurisdiction of the Parliamentary Commissioner for Administration.

Paragraph 3: The Superannuation Act 1972

298. Inserts the Central Police Training and Development Authority within the list of bodies to whose employees a scheme under the Superannuation Act may apply.

Paragraph 4: The House of Commons Disqualification Act 1975

299. Prevents members of the Authority from being members of Parliament.

Paragraph 5: The Northern Ireland Assembly Disqualification Act 1975

300. Prevents members of the Authority from being members of the Northern Ireland Assembly.

Paragraph 6: Amendments of Police Pensions Act 1976

301. Amends the Police Pensions Act 1976 to include service by police officers with the Central Police Training and Development Authority within the types of service which are pensionable under the provisions of the Act.

Paragraph 7: The Police Act 1966

302. *Sub-paragraph (1)* amends the Police Act 1996 to make the Authority subject to inspection by the Inspectors of Constabulary. *Sub-paragraph (2)* amends the Act to allow the Secretary of State to publish any report by the Inspectorate, allowing him to make omissions from the report if it would be against the interests of national security or might jeopardise the safety of any person. *Sub-paragraph (3)* provides that temporary service by police officers seconded to the Authority is to be treated as relevant service, that is service by police officers outside their force.

Paragraph 8: The Freedom of Information Act 2000

303. Includes the Authority within the list of public authorities subject to the provisions of the Freedom of Information Act 2000.

Section 103: Transitional arrangements relating to Authority's establishment etc

304. *Subsection (1)* enables the Secretary of State by order to make transitional provisions in connection with the commencement of Part 4.*Subsection (2)* enables the Secretary

of State to make orders concerning the transfer of property and staff in connection with the establishment of the Authority. *Subsection (3)* enables transitional provisions orders and transfer orders to make provision for matters to be determined outside the orders and to provide for the payment of fees to people nominated to make such determinations. Orders under this section are subject to the negative resolution procedure *(subsection (4))*.

Part 5: Police Organisation

Police Authorities etc

305. This Act introduces changes to some of the provisions currently governing police authorities, the National Crime Squad (NCS) and the National Criminal Intelligence Service (NCIS). Most police authorities already appoint vice-chairmen, but this Act will make the appointment statutory. It removes the maximum age limit for membership of police authorities, independent member selection panels and NCS/NCIS, bringing them into line with the Metropolitan Police Authority. It clarifies the question of political balance on police authorities. The Act also enables police authorities, and the service authorities for NCS/NCIS, to devise their own schemes for payment of allowances, where previously they were bound by a centrally regulated scheme.

Constitution of the Service Authorities, Financial Provisions, and Directors General for NCIS and NCS

306. The National Crime Squad and the National Criminal Intelligence Service were established by the Police Act 1997. This part of the Act makes changes to the constitution of the Service Authorities that maintain the NCS and the NCIS, alters the financial arrangements for those Authorities and makes further provision relating to the Director General of NCS and NCIS.

307. The main source of funding for both Service Authorities is levies issued, under the Police Act 1997, to police authorities in England and Wales. (The NCIS Service Authority, as a UK-wide body, also receives separately negotiated contributions from Scotland and Northern Ireland.) The Act replaces the provision for levies with provision for annual grants, to be made to the Service Authorities by the Secretary of State.

308. Currently, the Audit Commission audits the accounts as is the case for police authorities. This Act changes the auditing arrangements to provide for the National Audit Office to take on this role.

309. As a result of the change in funding arrangements, this part of the Act also disapplies a wide range of local government enactments that apply to the NCS Service Authority. Provision equivalent to that made by these local government enactments applies to the NCIS Service Authority by virtue of orders under section 44 of the Police Act 1997. Section 44 is also being repealed by the Act and, accordingly, the orders under that section will cease to have effect.

310. With the abolition of levies on police authorities, provision is made to reduce the number of members of the Service Authorities who are appointed to those Authorities by virtue of their membership of police authorities. At the same time, the restriction that police authority members must be local authority members is removed by the Act and a wider range of police authority members will now be eligible for appointment as service authority members. In addition, the membership of the NCIS Service Authority is being widened to encompass the Security Service and the core membership of the Service Authorities is being widened to encompass HMCE so that the NCS Service Authority will include HMCE.

311. At present, Directors General for NCIS and NCS are appointed (and removed) by the Service Authorities with the approval of the Secretary of State. The Act provides for their appointment (and removal) by the Secretary of State. This is because under the

new funding arrangements the Permanent Secretary of the Home Office will become the Departmental Accounting Officer (DAO) for NCIS and the NCS, and the Director General of each service will be that service's Accounting Officer (AO). The DAO is responsible for providing funds to both services and for ensuring that the financial and management controls applied by the services conform with the propriety and good financial management requirements applied by the department. The DAO is also accountable to Parliament for those funds. The Accounting Officer (AO) for NCIS and NCS is responsible for the overall organisation, management and staffing of the services and for ensuring that there is a high standard of financial management as a whole. The AO is responsible to Parliament for the resources under his control. By providing for the Secretary of State to make the appointments, the Act enables him to ensure that each person appointed is competent to fulfil the role of Accounting Officer.

Police Ranks

312. Following a recommendation of the Sheehy inquiry ("The Inquiry into Police Responsibilities and Rewards" published in 1993 (ISBN: 0101228023)) the ranks of deputy chief constable (and the equivalent rank of deputy assistant commissioner in the Metropolitan Police) and chief superintendent were abolished with effect from 1 April 1995. The Home Secretary announced in an answer to a written Parliamentary question on 2 March 1999 that he would reintroduce them at the earliest legislative opportunity.

313. The abolition of the rank of deputy chief constable has given rise to concerns about the selection procedures for assistant chief constable (designate) and the arrangements for the direction and control of a police force. Under the present arrangements an assistant chief constable (designate), has responsibility for managing the police force in the absence of the chief constable. He or she is selected from among the serving assistant chief constables in the force by the chief constable. This procedure differs from other appointments to senior positions which are made by the police authority following the post being advertised and an open selection procedure. Selection by Chief Constable alone may provide an unintended obstacle to the career development of assistant chief constables. The rank of deputy assistant commissioner in the Metropolitan Police which is deemed equivalent to deputy chief constable is also re-introduced in the Act.

314. The arrangements for the direction and control of a force are being improved by providing that in the absence of both the chief constable and deputy chief constable the police authority would be able to temporarily designate one of the assistant chief constables to direct and control the force in their absence.

315. The abolition of the rank of chief superintendent has led to inconsistencies and confusion with many police forces still using the term chief superintendent. It is now considered that there are advantages in having two superintendent ranks in terms of both command structures and personal positions.

Pensions for members of NCIS and NCS

316. The Act regularises the pension position of senior staff of ACPO rank given fixed term appointments to the two service authorities for the National Crime Squad (NCS) and the National Criminal Intelligence Service (NCIS), set up in April 1998 by the Police Act 1997.

317. When the 1997 Act was being considered by Parliament it was decided that the two new organisations should not adopt the Police Pension Scheme (which covers police officers working for forces in England, Wales and Scotland) or the RUC scheme for their senior staff. This decision reflected the fact that NCIS in particular would be a United Kingdom wide police organisation. The intention was that NCIS and NCS would have parallel pension schemes open to all permanent police members, set up under administrative arrangements approved by the Inland Revenue. These would provide the same benefits available under the main police pension arrangements.

318. It subsequently became clear that the "by analogy" pension schemes that had been envisaged for NCS and NCIS permanent staff could not be approved. In order to ensure that senior officers accepting fixed term appointments with NCS and NCIS are not disadvantaged special arrangements were put in place. These are complicated to administer and suitable only as a temporary measure.

319. In the Act the Police Pensions Act 1976 is being amended to bring the senior officers within the NCS and the NCIS from UK forces fully within the existing Police Pension Scheme. These officers are of chief constable or assistant chief constable rank.

320. The pension position of other police officers working for the authorities is not affected. Those officers work on secondment from their home force and have always remained a part of the Police Pension Scheme or RUC pension scheme.

Pensions for ACPO staff

321. The secretariat of the Association of Chief Police Officers (ACPO) is funded mainly by a Home Office grant provided under section 57(1) of the Police Act 1996. Section 57(1) enables the Secretary of State to make contributions to the provision or maintenance of organisations that promote the efficiency or effectiveness of the police. Members of the secretariat – 17 staff in total - are civilian employees. Initially the posts were filled by members of the civil staff of the Metropolitan Police service on secondment. Those concerned were therefore members of the Metropolitan Civil Staff Superannuation Scheme (the MCSSS), a scheme by analogy to the Principal Civil Service Pension Scheme (PSCPS) established under section 15 of the Superannuation (Miscellaneous Provisions) Act 1967. That scheme was for members of the civil staff of the Metropolitan Police and for other staff for historical reasons paid by the Receiver for the metropolitan police.

322. For the last decade the members of the secretariat have been employees of ACPO rather than members of the civil staff of the Metropolitan Police service. It is therefore unsatisfactory for them to remain as members of the MCSSS. In the longer term it is, in any event, proposed to wind up the MCSSS in the light of the organisational changes made in the Greater London Authority Act 1999. As the terms of the MCSSS are the same as those for the PCSPS a switch to membership of the PCSPS will not result in any change to the pension entitlement of the staff concerned.

323. In the Act, provision is made for members of the ACPO secretariat who are members of the MCSSS (whether as current employees or as previous employees with an entitlement to a deferred MCSSS pension) to transfer to the PCSPS.

Section 104: Vice-chairmen

324. *Subsections (1) and (2)* amend Schedules 2 and 2A of the Police Act 1996, to allow for the appointment of police authority vice-chairmen. Police authorities and the Service Authorities for NCS and NCIS currently have a statutory chairman but not a statutory vice-chairman. In practice, most police authorities appoint a non-statutory vice-chairman and in some of the larger authorities (e.g. the Metropolitan Police Authority) more than one. This section gives police authority vice-chairmen official recognition on a statutory footing roughly in line with that relating to local authorities, as determined by section 5 of the Local Government Act 1972. Police authorities will not be required to appoint a vice-chairman, but will be given the discretion to appoint one or more as appropriate.

325. *Subsection (3)* amends Schedule 2 of the Police Act 1997, to allow for the appointment of a vice-chairman to the Service Authorities of both NCIS and NCS. The appointee must be a core member (for a definition of "core members" please see paragraph 335 of these notes) of the NCIS/NCS Service Authorities and the appointment must be made by the Secretary of State after consultation with Scottish Ministers. There will be no requirement to appoint a vice-chairman.

326. *Subsections (4) to (9)* make consequential amendments to existing legislation (the Police Act 1996, the Police Act 1997, the Local Government Act 1972) relating to the functions and duties of chairmen by adding references to "vice-chairmen". This will allow a vice-chairman formally to deputise for the chairman and receive additional allowances in respect of extra work carried out.

Section 105: Political balance on police authorities

327. *Subsection (1)* amends Schedule 2 of the Police Act 1996, which requires the balance of the parties on the relevant council or councils to be reflected, so far as practicable, in appointments to the police authority. A High Court judgement has determined that 'parties' must be taken to refer to political parties, thereby excluding councillors who are not members of a political party from being taken into account in allocating places on the authority. This section will ensure that appointments reflect the composition of the entire membership of the council or councils concerned. It requires the council (or joint committee) to ensure (so far as practicable) that the proportion of members from any political party appointed to the police authority is the same as the proportion of those members on the council (or relevant councils taken as a whole). Any other places on the police authority must then be allocated to councillors who are not members of political parties. For example, if party A and party B each hold a third of the seats on the relevant council or councils taken as a whole, and the remaining third are held by councillors who are not members of a political party, party A and party B would each be allocated a third of the relevant places on the police authority. The remaining places must be allocated among the other councillors. Neither party A nor party B could be given extra places, as this would exceed their proportion.

328. *Subsection (2)* amends Schedule 2A of the 1996 Act, to apply the same provision to members of the London Assembly appointed to the Metropolitan Police Authority by the Mayor.

Section 106: Removal of age qualification for membership

329. This removes the maximum age limit of 70 for members of police authorities outside London, selection panels for independent member appointments, and the Service Authorities for NCS/NCIS. This section brings them into line with the Metropolitan Police Authority, which (as established under the Greater London Authority Act 1999), has no maximum age limit for members.

Section 107: Payment of allowances to authority members etc

330. *Subsection (1)* amends existing legislation (the Police Act 1996 and the Police Act 1997) to enable police authorities and the Service Authorities for NCS/NCIS to determine members allowances payments for themselves, where previously they were determined by the Secretary of State. The Secretary of State will retain the power to determine payment of expenses and to give guidance on allowances of which the authorities would be required to take account.

331. *Subsections (2) and (3)* relate to police authorities outside London and to the Metropolitan Police Authority respectively. By inserting additional provisions into Schedules 2 and 2A of the Police Act 1996, the sections provide certain rules which all police authorities must follow when devising and implementing their allowances schemes. These rules provide that: any allowances scheme must be published annually, and each time it is revised; payments may differ depending on the role or type of member; authorities may pay expenses and allowances to non-police authority members of standards committees appointed under section 53(4)(b) of the Local Government Act 2000; authorities should have regard to any guidance which the Secretary of State may issue; and the Secretary of State maintains a reserve power to limit by regulations the allowances paid. The section relating to the Metropolitan Police Authority has an additional provision determining that members who are also salaried members of the

Greater London Assembly shall not receive allowances payments under the scheme set up by the authority.

332. *Subsection (4)* amends the Police Act 1997 by introducing provision for the Service Authorities of NCIS and NCS to make varying payments by way of allowances to its chairman, vice-chairman and other members. Only police authority and independent members can receive these allowances which must fall within the limitations imposed by the Secretary of State by regulations. Also, such allowances can only be paid in accordance with arrangements published by the Service Authorities within the previous twelve months. Any revision of such arrangements can only be made with due regard to any guidance issued by the Secretary of State and can only come into effect by publication.

Section 108: Number and appointment of the members

333. *Subsections (1) and (2)* amend sections 1 and 47 of the Police Act 1997 respectively, reducing the membership of the Service Authority for NCIS from nineteen to eleven and the Service Authority for NCS from seventeen to eleven. The provision made by sections 1(2) and 47(2) of that Act enabling the Secretary of State, by order, to increase the membership of the Service Authorities is retained.

334. *Subsection (3)* introduces Schedule 5 which makes amendments to Schedule 1 to the Police Act 1997. Schedule 1 makes provision about the appointment of members of the Service Authorities.

Schedule 5: The Service Authorities for NCIS and NCS

335. This Schedule amends Schedule 1 to the Police Act 1997. Part 1 of Schedule 1 makes provision for the two Service Authorities to have a common core membership ("the core members"). Part 2 makes provision for additional members of the NCIS Service Authority and Part 3 makes provision for additional members of the NCS Service Authority.

Paragraph 2

336. Paragraph 2 reduces the number of core members of the Service Authorities from ten to eight.

Paragraph 3

337. Because of the removal of the link to police authority budgets through the levy, the provision restricting police authority membership on the service Authorities to local authority members of police authorities is removed. Paragraph 3 also changes the number of core members that the Secretary of State appoints under paragraph 2 of Schedule 1 from three only to three or four.

Paragraph 4

338. Paragraph 4 reduces the number of core members appointed by chief officers of police forces in England and Wales and the Assistant Commissioners of the Metropolitan Police from among their number from two to one.

Paragraph 5

339. Paragraph 5 reduces the number of core members appointed by members of police authorities in England and Wales from among their number from four to one. This paragraph also removes the requirement that those members must be police authority members who are also members of a local authority or London Assembly members of the Metropolitan Police Authority.

Paragraph 6

340. Under paragraph 6 of Schedule 1 to the 1997 Act, the Secretary of State currently appoints one Crown servant to be a core member of the Service Authorities. Paragraph 6 of Schedule 5 to the Act provides that the number of core members appointed by the Secretary of State who are Crown servants will be two, if three are appointed under the provisions of paragraph 3, or one, if four are appointed under those provisions.

Paragraph 7

341. Paragraph 7 inserts a new provision which specifies that the Commissioners of Customs and Excise must appoint one customs officer to be a core member of the Service Authorities.

Paragraph 8

342. Paragraph 8 substitutes new paragraphs 7, 7A and 7B for paragraph 7 of Part 2 of Schedule 1, of the Police Act 1997. The new paragraphs make provision about the appointment of members of the NCIS Service Authority additional to the core members, where no order has been made under section 1(2) increasing the membership of the Authority. Instead of nine additional members, the Act provides for three.

343. Currently the nine additional members are –

(a) a Chief Constable in Scotland;

(b) a Deputy Chief Constable in the Royal Ulster Constabulary;

(c) two local authority members of police authorities in England and Wales;

(d) one member of a police authority in Scotland;

(e) one member of the Police Authority for Northern Ireland;

(f) two Crown servants;

(g) one customs officer;

Under the new paragraphs 7, 7A and 7B the three additional members are-

(a) one who is either a Chief Constable in Scotland, a member of a police authority in Scotland or a Crown servant, as decided by the Secretary of State after consultation with the Scottish Ministers;

(b) one who is either a member of the Royal Ulster Constabulary/Police Service in Northern Ireland (of at least the rank of Deputy Chief Constable) or a member of the Police Authority for Northern Ireland/Northern Ireland Policing Board or a Crown servant, as decided by the Secretary of State;

(c) one who is a member of the Security Service.

Paragraph 9

344. Paragraph 9 amends the provision made by Part 2 of Schedule 1 to the 1997 Act for additional members of the NCIS Service Authority where an order has been made under section 1(3) of that Act increasing the membership. The amended paragraph 8 of Schedule 1 enables the Secretary of State to prescribe who, from the list in the amended paragraph 8, is to be responsible for appointing the additional members.

Paragraph 10

345. Paragraph 10 amends the provision for members of the NCS Service Authority additional to the core membership. Instead of seven additional members there will now

be three. Under the Police Act 1997 the seven are made up of one police officer and six local authority members of police authorities in England and Wales. This paragraph provides for the three additional members of the NCS Service Authority to be made up of one chief officer, one police authority member and one member not including Chief Constables, police authorities and Crown servants but appointed by the Secretary of State.

Paragraph 11

346. Paragraph 11 amends the provision made by Part 3 of Schedule 1 to the 1997 Act for additional members of the NCS Service Authority where an order has been made under section 47(3) of that Act increasing the membership. The amended paragraph 10 of Schedule 1 enables the Secretary of State to prescribe who, from the list in the amended paragraph 10, is to be responsible for appointing the additional members.

Paragraphs 12-14

347. Paragraphs 12-14 remove the requirements concerning local authority members of police authorities in paragraphs 12 and 13 of Part 4 of Schedule 1 and the definition of such members in paragraph 14.

Section 109: Transitional provision relating to section 108 etc

348. *Subsection (1)* enables the order bringing into force section 108 and Schedule 5 to include transitional provisions.

349. *Subsection (2)*. The transitional provision in the order may include provision for the current members of the Service Authorities to be deemed to have resigned and have satisfied all the criteria of resignation, and for co-opted members to cease to be such members, immediately before the coming into force of provisions setting up the newly constituted Service Authorities. They may also provide for decisions about appointments to the newly constituted Service Authorities to be taken before the provisions relating to resignations take effect. This can mean that at the time when the current members are deemed to have resigned from the current Service Authorities the newly designated members are duly appointed to the new Service Authorities thus ensuring continuity of service. This provision also enables the "new" Service Authority to exercise certain functions (e.g. preparing a budget statement in relation to the next financial year) while the "old" Service Authority continues to exercise functions in relation to the current financial year.

350. *Subsection (4)* ensures that, until such time as the new Northern Ireland Police Board (established under the Police (Northern Ireland) Act 2000) is established, the reference in the new paragraph 7B of Schedule 1 to the Police Act 1997 (inserted by Schedule 5 to the Act) to that Board is read as a reference to the existing Police Authority for Northern Ireland. No equivalent provision is needed in the Act in relation to references to the Police Service of Northern Ireland, because the Police (Northern Ireland) Act 2000 itself makes the necessary transitional provision in this regard to ensure that references to this service are read as references to the Royal Ulster Constabulary for as long as necessary.

Section 110: Preparation of budget statement by NCIS Service Authority

351. This section inserts a new section 16A into the Police Act 1997. The new section requires the NCIS Service Authority to prepare a budget statement for each financial year. The statement is to include a statement of how much is required by the Authority by way of grant under section 17 (as substituted by section 111 of the Act). The Authority is currently obliged under article 4 of the NCIS Service Authority (Levying Order) 1997 (S.I. 1997/2284) to submit a levy proposal to the Secretary of State detailing its expenditure, income, financial reserves and current and proposed borrowing. The new budget statement will replace this levy proposal.

Section 111: Funding of NCIS Service Authority

352. Section 17 of the Police Act 1997 currently authorises the NCIS Service Authority to issue levies to police authorities in England and Wales. Sections 17 and 17A are substituted for the existing section 17. The new section 17 makes provision for the Secretary of State to make grants to the Service Authority for every financial year. The amount of grant is determined by the Secretary of State and can be varied by him by subsequent determination. If the Service Authority does not submit a budget statement to the Secretary of State, according to the criteria in section 16A, or any details requested under section 17A(1), the Secretary of State is not obliged to make a grant under section 17(1) but may still make a grant for that year. The Secretary of State can attach conditions to the payment of any grant, such as specifying how the payment or any part of it can be used and requiring repayment in specified circumstances.

353. The new section 17A enables the Secretary of State to require the Service Authority to provide him with further information to assist him in determining the level of the grant to be paid under the new section 17. It also requires the Secretary of State to prepare a report setting out the details of any grant paid and the factors involved in arriving at his decision. The report is sent to the NCIS Service Authority and laid before the House of Commons. The new section 17A also makes provision for grants to be paid in instalments and for repayment of any amount overpaid.

Section 112: Duty of NCIS Service Authority to prepare accounts

354. This section amends the Police Act 1997 by inserting provisions 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. It will be the statutory duty of the Comptroller and Auditor General to examine and certify the NCIS statement of accounts and issue a report to be laid before Parliament together with the statement.

Section 113: Preparation of budget statement by NCS Service Authority

355. This section makes provision in respect of the NCS Service Authority equivalent to that made by section 110 of the Act for the NCIS Service Authority. Section 113 inserts a new section 61A into the Police Act 1997. The new section requires the NCS Service Authority to prepare a budget statement for each financial year. The statement is to include a statement of how much is required by the Authority by way of grant under section 62 (as substituted by section 114 of the Act). The Authority is currently obliged, under article 4 of the NCS Service Authority (Levying Order) 1997 (S.I.1997/2283), to submit a levy proposal to the Secretary of State detailing its expenditure, income, financial reserves and current and proposed borrowing. The new budget statement will replace the levy proposal.

Section 114: Funding of NCS Service Authority

356. Section 62 of the Police Act 1997 currently authorises the NCS Service Authority to issue levies to police authorities in England and Wales. Sections 62 and 62A are substituted for the existing section 62. The new section 62 makes provision for the Secretary of State to make grants to the Service Authority for every financial year. The amount of the grant is determined by the Secretary of State and can be varied by him by subsequent determination. If the Service Authority does not submit a budget statement to the Secretary of State, according to the criteria in section 61A, or any details requested under section 62A(1), the Secretary of State is not obliged to make a grant under section 62(1) but may still make a grant for that year. The Secretary of State can attach conditions to the payment of any grant, such as specifying how the payment or any part of it can be used and requiring repayment in specified circumstances.

357. The new section 62A enables the Secretary of State to require the Service Authority to provide him with further information to assist him in determining the level of the grant to be paid under the new section 62. It also requires the Secretary of State to prepare a report setting out the details of any grant paid and the factors involved in arriving at his decision. The report is sent to the NCS Service Authority and laid before the House of Commons. The new section 62A also makes provision for grants to be paid in instalments and for repayment of any amount overpaid.

Section 115: Duty of NCS Service Authority to prepare accounts

358. Similar to section 112, this section amends the Police Act 1997 by inserting provisions 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. It will be the statutory duty of the Comptroller and Auditor General to examine and certify the NCS statement of accounts and issue a report to be laid before Parliament together with the statement.

Section 116 and 119: Appointment of NCIS and NCS Director General

359. Sections 6 and 52 of the Police Act 1997 require the NCIS and NCS Service Authorities to appoint a Director General of NCIS and NCS respectively. In each case, the Director General is chosen by a panel of members of the Authority from a list of candidates prepared by that panel and approved by the Secretary of State. These sections amend the Act so that the Secretary of State appoints future Directors General to NCIS and NCS on such terms and conditions as he considers appropriate and the Authorities are required to pay remuneration determined by the Secretary of State. The statutory obligation to prepare a list of eligible candidates will remain with a panel of the relevant Service Authority and further amendments about the constitution of the panel of members responsible for preparing that list are made by *subsection (6)* and Schedule 6. The Secretary of State will then decide whether or not to approve the list. If it is approved, the intention is that the panel will then interview the candidates. The panel may make recommendations to the Secretary of State. The Secretary of State is obliged, before making an appointment, to have regard to any recommendations made to him (and, in the case of NCIS, to consult with the Scottish Ministers).

Sections 117 and 120: Removal of NCIS and NCS members (other than the Directors General)

360. Sections 7 and 53 of the Police Act 1997 enable the NCIS and NCS Service Authorities, respectively to remove their Director General. Sections 9(10) and 55(10) of that Act apply sections 7 and 53, to give the Service Authorities equivalent powers in relation to other members of the NCIS/NCS (except those appointed by the Directors General under section 9(8) or 55(8)). Sections 7 and 53 are repealed by the Act and replaced with the provision made by sections 118 and 121. Accordingly, sections 9(10) and 55(10) can no longer operate by reference to those sections. Sections 117 and 120 insert two new sections into the 1997 Act (sections 9A and 55A) to make provision equivalent to that previously made by sections 9(10) and 55(10). Sections 9(10) and 55(10) are consequently repealed by the Act.

Sections 118 and 121: Removal of NCIS and NCS Directors General etc

361. As mentioned in paragraph 360, the Act repeals sections 7 and 53 of the Police Act 1997. Sections 118 and 121 amend sections 29 and 74 of that Act so as to enable the Secretary of State to call upon the Director General of NCIS or NCS to retire in the interests of the efficiency or effectiveness.

362. Before exercising his powers under those sections, the Secretary of State must give the Director General an opportunity to make representations. In the case of the Director

General of NCIS, he must also consult the Scottish Ministers. Before exercising his powers under this section, the Secretary of State must appoint a person or persons to hold an enquiry and report to him.

Sections 122-125: Police ranks

363. Sections 122, 123, and 125 amend the Police Act 1996 to reintroduce the ranks of deputy assistant commissioner in the Metropolitan Police, deputy chief constable and chief superintendent and make consequential amendments. Section 124 inserts a new section 12A in the 1996 Act which enables the deputy chief constable of a police force to carry out the functions of the chief constable in the absence or incapacity of the chief constable, during a vacancy in that office, or at any other time with the chief constable's consent.

Section 126: Pensions for members of NCIS and NCS

364. This section amends the Police Pension Act 1976 to enable senior officers with fixed term appointment to NCIS and NCS to be included within the Police Pension Scheme.

Section 127: Pensions for ACPO staff

365. This section adds the staff of the Association of Chief Police Officers – both current staff and deferred pensioners – to those who may be members of the Principal Civil Service Pension Scheme established under section 1 of the Superannuation Act 1972.

Section 128: Amendments relating to NCIS and NCS

366. *Subsection (1)* introduces Schedule 6, which makes minor and consequential amendments relating to Part 5 of the Act. *Subsection (2)* makes transitional provision in respect of the Police Authority for Northern Ireland of the kind mentioned in paragraph 350 of these notes.

Schedule 6: Minor and Consequential Amendments relating to NCIS and NCS

367. This Schedule makes minor and consequential amendments to the Police Act 1997, local government enactments applying to the NCS Service Authority and various other enactments.

Paragraphs 2 to 11

368. Paragraphs 2 to 20 amend the Police Act 1997 in consequence of the new arrangements concerning the constitution and funding of the Service Authorities.

Paragraph 21

369. Paragraph 21 inserts a new Schedule 2A to the Police Act 1997 which makes further provision about the Service Authorities. Provision is now required because the local government enactments do not apply to the NCS Service Authority and the equivalent orders will no longer apply to the NCIS Service Authority. Provision is as follows:-

Paragraph 1 gives the Authorities certain powers which, in the case of the power to acquire and dispose of property or borrow money, are subject to obtaining the consent of the Secretary of State.

Paragraph 2 provides that the Secretary of State's approval is required prior to the appointment to committees of persons who are not members of the Service Authorities and further allows him to set the amount of remuneration and allowances to be paid to such members of committees.

Paragraph 3 provides the NCIS and NCS Service Authorities with the statutory power to regulate their own procedures subject to the provisions set out in this Schedule.

Paragraph 4 requires the quorum for Service Authority meetings to include a minimum of three core members from independent, chief officer of police and police authority representatives and in the case of committee or sub-committee meetings, one member or employee of the Service Authority.

Paragraph 5 concerns the delegation of powers and provides for the discharge of any of the functions of an Authority to be carried out by a committee or sub-committee, or by an officer of the Service Authority. Further delegation to a sub-committee or officer is permitted unless otherwise directed. The Authority or committee will not be prevented from exercising any of its functions after making such arrangements.

Paragraph 6 specifies that either Service Authority can discharge any of its functions jointly with the other Service Authority or with one or more police authorities and allows for the provision of those functions by a joint committee or officer of one authority. Similar to paragraph 6, the carrying out of functions can be delegated to a sub-committee unless otherwise directed.

Paragraph 7 defines the discharge of Service Authority functions for the purposes of paragraphs 6 and 7 to include doing anything to facilitate, or which is incidental, to the discharge of those functions.

Paragraph 8 defines an officer of the NCIS or NCS Service Authority as the Director General, his deputy and any employee of the Authority. Provision is made for the Director General of NCIS or NCS or his deputy to delegate any of the functions of the Authorities to another member of NCIS or NCS.

370. **Part 2**: **Paragraphs 13-45** of this Schedule make amendments to a number of local government enactments by removing references to the NCS Service Authority.

371. **Part 3: Paragraphs 61 and 62**of this Schedule amend section 1(1) of the House of Commons Disqualification Act 1975 and prevent members of the NCIS and NCS Service Authorities from being members of Parliament and the Northern Ireland Assembly.

372. **Paragraph 77** of this Schedule amends section 62 of the Police Act 1996 (Police Negotiating Board) in consequence of the new arrangements for appointment of the Director General.

Part 6: Miscellaneous and supplemental

Juvenile secure remands and electronic monitoring

373. Section 23 of the Children and Young Persons Act 1969 as modified by the Crime and Disorder Act 1998 currently provides that courts may remand all 12-14 year olds, 15 and 16 year old girls and some vulnerable 15 and 16 year old boys to local authority secure accommodation if certain criteria are satisfied. Other 15 and 16 year old boys requiring custodial remand are held in prison service accommodation. The court has to be satisfied that the young person is charged with or convicted of a violent or sexual offence or an offence punishable in the case of an adult with 14 years or more imprisonment ***or*** has a recent history of absconding while remanded to local authority accommodation and is charged with or had been convicted of an imprisonable offence while so remanded. In addition, in either case, the court must also be of the opinion that only a secure remand is adequate to protect the public from serious harm from the alleged offender. The provisions currently exclude those offenders who commit while on bail strings of medium level offences such as theft, criminal damage and assault.

374. The new provisions strengthen the courts' powers by extending the current criteria for court-ordered secure remands in section 23 of the Children and Young Persons Act 1969. This will cover alleged offenders who have a recent history of being charged with or committing imprisonable offences while on bail or on remand to local authority

accommodation and are also deemed to be at risk of committing further imprisonable offences.

375. The sections also offer to the courts the option of using electronic monitoring for juveniles on bail or on non-secure remand to local authority accommodation who would otherwise have been remanded into secure accommodation. In addition, they will allow local authority secure remandees to be placed in secure training centres.

Registration for criminal records purposes

376. These amendments are concerned with additional provisions in relation to persons applying for registration with the Criminal Records Bureau under Part 5 of the Police Act 1997.

Section 129: Requirement to give reasons for granting or continuing bail.

377. This section amends section 5 of the Bail Act 1976, which makes certain procedural provisions relating to bail decisions. At present, courts are required to give reasons when refusing bail but not, save in the most serious cases (e.g. murder and rape), to give reasons for granting it. The section adds a requirement that, wherever a magistrates' court or the Crown Court grants bail to a person to whom section 4 of the Bail Act 1976 applies, the court must give reasons for its decision in any case where the prosecutor makes representations against the granting of bail on any conditions. It also requires the court to give the prosecutor, on request, a copy of the note of the reasons for its decision.

Section 130: Remands and committals to secure accommodation etc

378. There are two versions of section 23 of the 1969 Act as amended by the Crime and Disorder Act 1998. The principal version deals with all juveniles aged 12-14 and also 15 and 16 year old girls. The modified version (which was introduced by section 98 of the 1998 Act) deals just with 15 and 16 year old boys.

379. *Subsections (2) –(4)* amend the principal version of section 23 of the 1969 Act. This will enable courts, in addition to their current powers, to remand into custody any juvenile aged 12-14 years and any 15-16 year old girl, who is charged with or who has been convicted of one or more imprisonable offences which would amount, in the court's opinion, to a recent history of repeatedly committing imprisonable offences while remanded on bail or to local authority accommodation.

380. The provision repeats the existing condition that the court must also be satisfied that only a secure remand-rather than bail or remand to non-secure accommodation-will protect the public from serious harm from him or her. It also adds an alternative condition that the court be satisfied that only a secure remand would be adequate to prevent the commission of further imprisonable offences by the young person.

381. It also requires the court to consider all the possible options before making any decision as to whether to remand the young person to secure accommodation. These options include unconditional bail, bail with conditions and supervised bail.

382. *Subsections (5)- (7)* amend the modified version of section 23 of the 1969 Act which applies to 15 and 16 year old boys in exactly the same way.

Section 131: Monitoring of compliance with bail conditions

383. *Subsection (1)* adds a new subsection (6ZAA) to section 3 of the Bail Act 1976. This gives the court the power to impose electronic monitoring on 12-16 year olds to ensure compliance with bail conditions.

384. *Subsection (2)* adds a new section (3AA) to the 1976 Act. Subsections (2) – (5) of section 3AA set out the conditions which must be satisfied before a court can order electronic monitoring. These are that:

- the alleged offender would otherwise be eligible for remand with a security requirement.
- the Secretary of State must have notified the court that appropriate arrangements for electronic monitoring are available.
- the local youth offending team must have advised the court that electronic monitoring is suitable in the particular case.

385. Subsections (6-10) of new section 3AA deal with the arrangements for electronic monitoring and the associated powers of the Secretary of State. They give the Secretary of State the power to make an order designating certain individuals as responsible officers for the supervision of electronic monitoring. They also require the court to appoint a responsible officer in each case where it orders electronic monitoring. In addition, they allow the Secretary of State to make rules regulating electronic monitoring and the functions of responsible officers.

386. *Subsection (4*) of section 131 provides that electronic monitoring is only available to the courts. It is not available in cases of police bail.

Section 132: Monitoring of compliance with conditions of non-secure remand

387. This section deals with the electronic monitoring of 12-16 year olds who are remanded to local authority accommodation. The provisions are exactly the same as those in section 131 for the electronic monitoring of juveniles on bail.

Section 133: Arrangements for detention in secure training centres

388. This section allows local authorities to arrange for 12-16 year olds who are remanded by the courts to local authority secure accommodation under section 23 of the 1969 Act to be placed in secure training centres at the request of the local authority with the consent of the Secretary of State. It also provides that any payments made by the local authority for this purpose are lawful.

Section 134: Registration for criminal records purposes

389. Under Part 5 of the Police Act 1997, persons will be able to apply for a certificate, at one of three levels. Certificates will show information held about the applicant on police records and also, in the case of persons working with young people under the age of 18, or with vulnerable adults, information from lists held by the Department of Health and the Department for Education and Employment of people considered unsuitable to work with children or vulnerable adults. Applications for the two higher levels of certificates will need to be countersigned by a person who is registered for that purpose. This section makes additional provision with regard to people applying for such registration.

390. *Subsection (1)* introduces a new section 120A into the Police Act 1997.

- Section 120A(1) empowers the Secretary of State (in practice, the Criminal Records Bureau acting on behalf of the Secretary of State) to refuse to register a person if it is considered that registration is likely to result in information becoming available to someone who is considered unsuitable to have access.
- Section 120A(2) further empowers the Secretary of State to remove from the register a person whose registration is likely to make it possible for information to become available to someone who is considered unsuitable, or where that person's registration has resulted in information becoming known to someone unsuitable.
- Section 120A(3) provides that, in reaching a decision to refuse registration, or to remove someone from the register, the Secretary of State may have regard to pertinent information, including information from the lists held by the Department

of Health and the Department for Education and Employment, or information supplied by the police.

- Section 120A(4) imposes a duty on the police to respond as soon as practicable to a request for information.

391. *Subsection (2)* makes three changes to section 119 of the 1997 Act:

- By paragraph (a), there is a new requirement in section 119(1) of the Act for the police to make information available from police records in relation to registration matters.
- By paragraph (b), a new subsection (1A) to section 119 requires information to be made available from lists held by the Department of Health and the Department for Education and Employment.
- Paragraph (c) extends the current requirement in section 119(3) for payment to be made to the police for information provided, to registration matters.

392. *Subsection (3)* makes the duty to include persons in the register, under section 120(2) of the 1997 Act, subject to the new section 120A.

393. *Subsection (4)* amends section 120(3) of the 1997 Act so that regulations about the maintenance of the register may also provide for

- the nomination of persons authorised to act on behalf of a body in countersigning applications (paragraph (aa)); and
- refusal to accept, or to continue to accept, the nomination of such a person (paragraph (ab)).