

COPYRIGHT, ETC. AND TRADE MARKS (OFFENCES AND ENFORCEMENT) ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1

6. This section raises the maximum penalty for conviction on indictment for the offences referred to in sections 107(4), 198(5) and 297A(2) in Parts I, II and VII of the Copyright, Designs and Patents Act 1988, relating to those making for sale or hire or dealing in material infringing copyright, illicit recordings infringing performers' rights and unauthorised decoders for conditional access services respectively. The new maximum penalty is an unlimited fine and/or up to 10 years in prison to reflect the seriousness of these crimes and to bring the penalties into line with the existing ones for similar trade marks offences. The changes made by the Act are to increase the maximum prison term from 2 years to 10. In addition, and for the same reason of consistency, this section also adds the option of six months in prison to the penalty for summary conviction in section 297A(2).

Sections 2 and 6

7. **Section 2** applies the existing provisions in section 109 of Part I of the Copyright, Designs and Patents Act 1988 allowing the police to obtain search warrants to all the offences in section 107(1) and (2), including those only triable in the magistrates' courts. The equivalent provision in section 200 of Part II of the 1988 Act is applied to all the offences in section 198(1) by this section. Equivalent search warrant provisions are introduced by section 2 for the offences in section 297A of Part VII of the 1988 Act.
8. These provisions are in addition to any powers available to the police as a result of the Police and Criminal Evidence Act 1984 (PACE), but should ensure that there are no impediments to a full investigation of offending behaviour in the areas indicated which could still remain if PACE alone were to apply. The existing search warrant provisions in sections 109 and 200 allow a justice of the peace (or in Scotland, a sheriff or justice of the peace) to grant a warrant where information/evidence on oath leaves him satisfied that there are reasonable grounds for believing that an offence has been or is about to be committed and there is evidence of this on the premises.
9. Powers of seizure of evidence that an offence has been or is about to be committed that are already provided in section 109(4) where a warrant obtained under that section is executed are also introduced by section 2 into section 200 and the new search warrant provision relating to the offences in section 297A.
10. **Section 6** introduces search warrant and seizure provisions corresponding to those that are introduced or amended by section 2 for Parts I, II and VII of the Copyright, Designs and Patents Act 1988 for the offences in section 92 of the Trade Marks Act 1994 relating to counterfeit goods and articles for making them. This section also extends to the Isle of Man, since the Trade Marks Act 1994 also does.

Sections 3, 4 and 5

11. **Section 3** reproduces in Part I of the Copyright, Designs and Patents Act 1988 provisions corresponding to those in sections 97 and 98 of the Trade Marks Act 1994, allowing forfeiture of infringing goods. Thus, section 3 provides forfeiture provisions for goods infringing copyright, ie infringing copies, and articles specifically designed or adapted for making such copies. Section 97 relates to forfeiture in England, Wales and Northern Ireland and section 98 is a modified version relating to forfeiture in Scotland.
12. The existing forfeiture provisions in trade marks law apply in England, Wales and Northern Ireland where items have come into the possession of a person in connection with the investigation or prosecution of one of the offences, or a related offence under the Trade Descriptions Act 1968, or any offence involving dishonesty or deception. They allow a court to order forfeiture of infringing goods both where a person has been prosecuted for an offence and where there is no prosecution, although in both cases the court must be satisfied that an offence has been committed in relation to the goods. In Scotland, the forfeiture provisions apply where a person has been convicted of one of these offences or on application by the procurator-fiscal. The court can order destruction of goods or release to another person with conditions. Broadly similar provision is introduced by section 3 into Part I of the 1988 Act.
13. **Section 4** introduces forfeiture provisions, very similar to those in section 3, into Part II of the Copyright, Designs and Patents Act in respect of goods that infringe rights in performances, ie illicit recordings.
14. **Section 5** introduces forfeiture provisions, very similar to those in section 3, into Part VII of the Copyright, Designs and Patents Act in respect of devices that permit fraudulent reception of conditional access transmissions, ie unauthorised decoders used to access transmissions such as satellite television without payment.