*These notes refer to the Police Reform Act 2002 (c.30) which received Royal Assent on 24 July 2002*

# POLICE REFORM ACT 2002

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## EXPLANATORY NOTES

### THE ACT

#### *Commentary on Sections*

#### Part 1: Powers of the Secretary of State

##### *Section 1: National Policing Plan*

27. This section inserts new section 36A into the 1996 Act. Section 36A requires the Secretary of State to prepare a National Policing Plan by 30 November each year, unless exceptional circumstances – like an autumn general election, or a major incident such as 11 September – prevent this. The Plan will set out the Government's strategic priorities for the police service over a three-year period. It will include the priorities and requirements which the police service is expected to consider when planning for the coming financial year – the deadline of 30 November for the production of the National Policing Plan is intended to facilitate this. The Plan must set out the Secretary of State's plans for: issuing Ministerial objectives (under section 37 of the 1996 Act) and the performance targets he intends to set in relation to such objectives (under section 38 of the 1996 Act); setting Best Value performance targets for police authorities (under section 4 of the Local Government Act 1999); making regulations under the 1996 Act as amended, section 97 of the Criminal Justice and Police Act 2001 (regulations as to police training and qualifications) and Part 2 of this Act (complaints and misconduct); issuing guidance under the 1996 Act or Part 2 of this Act; and issuing codes of practice under the 1996 Act and under section 45 of this Act (code of practice relating to chief officers' powers under Chapter 1 of Part 4). The Plan may also include such other information, plans and advice as the Secretary of State considers relevant. Before issuing the Plan, the Secretary of State must consult those whom he considers represent the interests of police authorities and chief officers of police. Where this formulation occurs in existing legislation, the Secretary of State currently consults the Association of Police Authorities (APA) and ACPO and/or the Chief Police Officers' Staff Association (CPOSA). The Secretary of State may also consult anyone else he chooses. The consultation process will be undertaken through a non-statutory National Policing Forum, on which both ACPO and the APA are represented, amongst others.

##### *Section 2: Codes of practice for chief officers*

28. Section 39A of the 1996 Act (which is inserted by this section) allows the Secretary of State to issue and as necessary revise codes of practice relating to the discharge by chief officers of police of any of their functions. Where the Secretary of State proposes to issue or revise a code of practice he is required to ask the Central Police Training and Development Authority (CPTDA) – an NDPB established under section 87 of the Criminal Justice and Police Act 2001 – to prepare a draft of the code or appropriate revision (*subsection (3)*). In preparing a draft the CPTDA must consult appropriate persons. This will include persons whom it considers represent the interests of police authorities and chief officers of police (*subsection (4)*). It is anticipated, in line with the practice of the Secretary of State where this formulation is used in existing legislation,

that the CPTDA will consult the APA, ACPO and/or CPOSA. The CPTDA may also consult anyone else it chooses. *Subsections (5)* and *(6)* require the Secretary of State, subject to a sensitivity test, to lay before Parliament all codes of practice issued under this section. The new section complements the existing section 39 of the 1996 Act, which contains a parallel power to issue codes of practice to police authorities.

### *Section 3: Powers to require inspection and report*

29. This section allows the Secretary of State to require an inspection by HMIC of a police force in England and Wales, NCIS or NCS (*subsection (1)*). The requirement may relate to their activities as a whole or only to a particular aspect. Such inspections would be separate from the routine inspections which HMIC carry out in accordance with their existing statutory duty, under section 54 of the 1996 Act, to inspect and report to the Secretary of State on the efficiency and effectiveness of all forces, NCIS and NCS. By virtue of the amendment made to section 55(1) of the 1996 Act, the report of an inspection carried out at the direction of the Secretary of State must be published by him. As a result of this provision, the existing section 40(1) of the 1996 Act is no longer required and is omitted as a result of section 4. *Subsection (2)* makes a parallel amendment to the equivalent Northern Ireland provision.

### *Section 4: Directions to police authorities*

30. This section substitutes a new section 40 of the 1996 Act for the existing one. Section 40 currently enables the Secretary of State to direct a police authority to take specific remedial action following an adverse inspection report by HMIC. New *section 40(1)* broadens the circumstances in which the direction making power may be exercised. First, as it stands the power is exercisable only in response to a specifically commissioned inspection by HMIC; in future the power will be exercisable after either a routine or a special inspection. Second, it is a necessary prerequisite of the existing power that HMIC concludes that the force as a whole is not efficient or effective. Under the new section the trigger will be that the force or a part of it is not efficient or effective either as a whole or in any aspect of its operations (or will become so unless remedial measures are taken).

31. New *section 40(2)* to *(9)* provide new safeguards against inappropriate use of the powers under this section. The Secretary of State can only specify remedial measures which address existing or approaching inefficiency or ineffectiveness in the whole or any part of the relevant force, as identified in HMIC's report. In addition, the Secretary of State must prepare and submit to Parliament reports on the use of his power under this section (new *section 40(3)* and *(4)*). The other subsections ensure that the power to give directions is only used as a last resort. New *section 40(5)* places a duty on the Secretary of State to put the evidence that a force or part of a force is failing to the chief officer and police authority and afford them the opportunity to make representations. He will be under a duty to have regard to such representations. New section 40(5) further requires the Secretary of State to afford the chief officer or police authority the opportunity to put in place their own remedial measures before they are directed to do so. The intention is that where such remedial measures fully address the area of concern there would be no need for the Secretary of State to issue a formal direction. New *section 40(6)* to *(9)* allow the Secretary of State to make by regulations further provision for the procedures to be followed. Before doing so, he must consult those whom he considers represent the interests of police authorities (currently the APA), those whom he considers represent the interests of chief officers of police (currently ACPO), and anyone else he sees fit. Regulations made under this section are subject to the affirmative resolution procedure.

### *Section 5: Directions as to action plans*

32. This section amends the 1996 Act by inserting new sections 41A and 41B into that Act. These new sections provide an alternative mechanism to the power to give directions in section 40 of the 1996 Act (as substituted by section 4 of this Act) for the Secretary of

State to intervene to require remedial measures to be taken to address poor performance in a force. The intervention power in new section 41A may be used instead of, or as well as, the power of direction in revised section 40.

33. *Section 41A(1)* to *(3)* empower the Secretary of State to require a police authority to submit an action plan setting out the remedial measures that the authority proposes to take to address those aspects of the force's performance which has been judged by HMIC to be inefficient or ineffective (or will become so unless such measures are taken). A police authority will have between four and twelve weeks to submit an action plan (*section 41A(10)*). Where so directed by the Secretary of State the police authority must, in turn, direct the chief officer to prepare a draft of the action plan (*section 41A(4)*). The police authority may submit the action plan to the Secretary of State with or without modifications, but where the authority proposes to make changes to the draft of the plan prepared by the chief officer it must first consult him about the proposed modifications (*section 41A(5)* and *(6)*). It is open to the Secretary of State to comment on the action plan submitted to him where he considers that the remedial measures contained therein are inadequate (*section 41A(7)*). The police authority must consider the Secretary of State's comments but it is a matter for them, in consultation with the chief officer, whether to amend the action plan (*section 41A(8)*).

34. An action plan must set out the steps the police authority proposes to take to address the matters identified in the adverse HMIC report. The direction may require the inclusion of performance targets and timescales for implementation. It may also require periodic progress reports to be sent to the Secretary of State (*section 41A(11)*). *Section 41A(12)* specifically limits the Secretary of State's and police authority's power of direction by providing that they cannot require action in relation to particular cases or individuals.

35. New *section 41B* sets out the same procedural safeguards in relation to the exercise by the Secretary of State of his powers to give directions as to action plans as are contained in revised section 40(3) to (9) regarding directions to police authorities (described in paragraph 31 above).

### *Section 6: Regulation of equipment*

36. This section amends section 53 of the 1996 Act, which regulates the standard of equipment used by police forces. It will allow the Secretary of State to make regulations, which may be used to ensure that all forces use only equipment that has been approved. 'Equipment' will include, for example, vehicles, IT systems, batons, incapacitant sprays, headgear or protective clothing.

37. The section replaces subsections (2) and (3) of section 53 of the 1996 Act with new *subsections (1A)* to *(2C)*. New *subsection (1A)*enables regulations to be made requiring all police forces to use specified equipment, or equipment, which is of a description specified, or type approved by the Secretary of State. The latter provision builds on existing provisions in road traffic legislation (for example, section 20 of the Road Traffic Offenders Act 1988 and section 11 of the Road Traffic Act 1988) to type approve speed cameras, breathalyser equipment and other equipment used to enforce road traffic laws. The type approval of equipment may be made subject to conditions as to its use. Regulations may also be made under *subsection (1A)* to require forces to keep available for use specified or type approved equipment. This may be relevant where one force is providing mutual aid to another and it is necessary that officers use the same or comparable equipment. The use of specified equipment or equipment of a specified description may also be prohibited under the regulation-making power. Before making any regulations under section 53 as amended, the Secretary of State must consult those whom he considers represent the interests of police authorities and chief officers of police. Where this formulation occurs in existing legislation, the Secretary of State currently consults the APA and ACPO and/or CPOSA. The Secretary of State may also consult anyone else he chooses (new *subsection (2)*). This replaces the requirement in existing subsections (2) and (3) to consult the Police Information Technology

Organisation in respect of any regulations relating to information technology. By virtue of new *subsection (2B)*, statutory instruments made under the amended section 53 are subject to the negative resolution procedure.

### *Section 7: Regulation of procedures and practices*

38. This section inserts new section 53A in the 1996 Act. It performs a similar function regarding procedures and practices as section 6 does regarding equipment. It is intended to focus on the adoption of common procedures and practices where these are necessary to facilitate joint or co-ordinated operations by two or more forces.

39. New *section 53A(1)* allows the Secretary of State to make regulations that will apply to procedures and practices in all police forces. These regulations can require all chief officers to adopt specific procedures or practices that relate to the way their police officers police the force area or in relation to the way they run their force. Before making any regulations the Secretary of State is required firstly to consult those whom he considers represent the interests of police authorities and chief officers of police. Where this formulation occurs in existing legislation, the Secretary of State currently consults the APA and ACPO and/or CPOSA (new *section 53A(3)*). At this point the APA and ACPO would be commenting on the principle of whether regulations should be made in respect of a given procedure or practice. He must then seek the advice of HM Chief Inspector of Constabulary and the Central Police Training and Development Authority (new *section 53A(2)*). Before giving its advice, the CPTDA must consult those whom it considers represent the interests of police authorities, those whom it considers represent the interests of chief officers of police, and anyone else it sees fit (new *section 53A(5)*). Such consultation would be in respect of the details of the proposed regulations. New sections *53A(6)* and *(7)* specify the circumstances in which the regulation-making power under this section can be used. The Secretary of State must have sought and considered advice from CPTDA; and HMIC and the Secretary of State must both be satisfied (a) that the adoption of the procedure or practice is necessary to facilitate joint or co-ordinated operations by police forces, (b) that regulations are necessary to ensure the procedure or practice is adopted and (c) that the adoption of the procedure or practice is in the national interest. The first regulations made under section 53A are subject to the affirmative resolution procedure; subsequent use of the regulation-making powers is subject to negative resolution procedure (*sections 53A(9)* and *(10)*). This is in line with the recommendation of the House of Lords Select Committee on Delegated Powers and Regulatory Reform (Twelfth Report 7 February 2002 (HL 73)).

### *Section 8 and Schedule 1: Equivalent provision for NCIS and NCS*

40. This section gives effect to Schedule 1 to the Act, which makes provision in relation to NCIS corresponding to that in sections 2, 4 and 5 and in relation to NCS to that in sections 2, 4, 5, 6 and 7.

## Part 2: Complaints and misconduct

### *Section 9: The Independent Police Complaints Commission*

41. This section provides for the creation of the Independent Police Complaints Commission, for appointment of its chairman and members, for its constitution, and for the abolition of the Police Complaints Authority.

42. *Subsection (3)* sets out a range of factors that disqualify someone from appointment as chairman or as a member of the Commission. These are designed to exclude those people whose impartiality may be in question.

43. *Subsection (6)* brings into effect Schedule 2, which sets out details of the constitution of the Commission.

## *Schedule 2: Independent Police Complaints Commission*

### *Paragraph 1: Chairman*

44. The terms of appointment for the office of chairman of the Commission extend the maximum term of appointment from the three years in the PCA to five years but continue to allow reappointment. This is intended to add to the independence of the IPCC from the Home Office. It will be possible to remove the chairman if any of the grounds in *sub-paragraph (5)* are met.

### *Paragraph 2: Ordinary Members of the Commission*

45. The terms of appointment of the other members of the Commission are set down here to secure that unsuitable persons are excluded and that a person may be removed from office in certain circumstances.

46. *Ordinary member* is defined in *sub-paragraph (8)* as 'a member of the Commission other than the chairman', and includes deputy chairmen.

### *Paragraph 6: Staff*

47. This paragraph enables the Commission to appoint its staff. Members and the Chairman are not staff; they are office-holders rather than employees of the Commission. Numbers of staff and their terms and conditions are subject to approval by the Secretary of State.

48. *Sub-paragraph (2)* enables the Commission to make arrangements to take secondments of officers from any police force in the UK.

49. *Sub-paragraph (4)* ensures that these seconded officers will be under the direction and control of the Commission during the period of their secondment.

## *Section 10: General functions of the Commission*

50. This section sets out the elements of the system for dealing with complaints and other conduct matters, the functions of the Commission in relation to those elements and the duties relating to the carrying out of its functions.

51. *Subsection (1)* sets out the functions of the Commission in regards to the elements of the system. Operation of the elements of the system will be undertaken, as set out in this Part, by the Commission, the authorities with responsibility for maintaining police forces and the police (including NCIS and NCS). However, it is intended that the Commission will be the guardian of the system and, therefore, it will be the function of the Commission to:

- secure effective and efficient arrangements for the operation of the elements in compliance with the provisions of this Part, and ensure that the parts of the arrangements which fall to the Commission are demonstrably independent;
- keep those arrangements under review, making recommendations and giving advice both on the modification of those arrangements and on police practice in relation to other matters seen by the Commission to be necessary or desirable; and
- establish and maintain public confidence in those arrangements.

52. *Subsection (1)(e)* extends the function of the Commission into making recommendations and giving advice on police practice in relation to any other matters which the Commission comes across as a result of carrying out its other functions, including its functions in relation to dealing with individual complaints.

53. *Subsection (1)(f)* allows for the extension of functions in relation to NCIS, NCS and other bodies of constables (such as the MDP and BTP) by regulations.

54. *Subsection (2)* sets out the elements of the system. They are:

- the handling of complaints against persons serving with the police;
- the handling of other conduct matters which may constitute a criminal offence or behaviour justifying disciplinary proceedings; and
- the manner in which such complaints or other conduct matters are investigated or otherwise dealt with.

55. *Subsection (3)* explains additional functions conferred on the Commission in respect of any arrangements made under regulations or under an agreement for dealing with complaints or conduct matters about members of NCIS and NCS or other bodies of constables; for example, the MDP or the BTP. The Commission will have any functions conferred on it in relation to contracted-out staff under section 39 of this Act. The Commission will also have any functions conferred upon it by regulations or by an order in relation to disciplinary or similar proceedings against any person serving with a police force, with NCIS or NCS or serving with another body of constables.

56. *Subsection (4)(b)* places a duty on the Commission to ensure that the system is conducive to the reporting of misconduct committed by those who come within its remit. Section 37 also makes provision for affording protection to police officers who report wrongdoing by other officers.

57. *Subsection (5)* provides for the Commission to enter into arrangements, assist and co-operate with inspectors of constabulary; there is an amendment to the 1996 Act (see *paragraph 15* of Schedule 7) to impose a corresponding requirement on inspectors of constabulary to co-operate with the Commission.

58. *Subsection (7)* enables the Commission to charge any person for anything it might do in regards to the function (set out in subsection (1)(e)) of making recommendations and giving advice both on the arrangements for the operation of the system and on police practice in relation to other matters. For example, the Commission may invite practitioners to thematic seminars and may charge a fee for this.

59. *Subsection (8)* excludes the Commission from having any role in relation to a complaint or conduct matter that has to do with the direction and control of a police force.

### *Section 11: Reports to the Secretary of State*

60. This section requires the Commission to submit to the Secretary of State an annual report on the carrying out of its functions. The section also empowers both the Secretary of State and the Commission so that:

- the Secretary of State may call for a report from the Commission on any matter relating to its functions;
- the Commission may produce a report on any matter which, because of its gravity or other exceptional circumstances, it considers ought to be drawn to the attention of the Secretary of State; and
- the Commission may produce a report at any time containing advice and recommendations on maintaining efficient and effective arrangements for the handling of complaints and conduct matters.

61. The Secretary of State is required to lay before Parliament the Commission's annual report but will have the discretion whether to so lay any other report from the Commission.

### *Section 12: Complaints, matters and persons to which Part 2 applies*

62. The intention is that any conduct of a person serving with the police which has an adverse effect on a member of the public or is sufficiently serious to bring the police into disrepute, whether the subject of a complaint or not, should be dealt with effectively and efficiently in order that public confidence in the police can be maintained. Therefore, this Part applies to any complaint or other conduct matter to do with a person serving with the police. This departs from the 1996 Act insofar as it gives equal prominence to the handling of non-complaint cases as it does to complaint cases. Definitions of terms used here are:

- A person *serving with the police* is described in *subsection (7)* as a member of a police force or a civilian employee of a police authority who is under the direction and control of a chief officer or a special constable who is under the direction and control of a chief officer. This provides a much wider coverage than the 1996 Act, which restricted complaints to regular police officers.
- A person *adversely affected* is described in section 29(5) as a person who has suffered any form of loss or damage, distress or inconvenience, if he is put in danger or if he is unduly put at risk of being adversely affected.
- *Subsection (2)* describes a *conduct matter* as any matter that is not the subject of a complaint but where a person serving with the police may have committed a criminal offence or behaved in a manner which may justify the bringing of disciplinary proceedings.

63. *Subsection (1)* defines a complaint to which this Part will apply as one that is made by a member of the public who is the victim of the alleged conduct or who claims to have been adversely affected by the conduct or who claims to have witnessed the conduct or is a person acting on behalf of any of these. This provision is qualified by:

- *Subsections (3) & (4)* for a person who claims to have been adversely affected by the conduct;
- *Subsection (5)* for a person who claims to have witnessed the conduct;
- *Subsection (6)* for a person acting on behalf of any of the above; and
- *Section 29(3)* and *29(4)*, which contain inclusions and exclusions to 'a member of the public'.

64. *Subsection (6)(a)* enables the Commission to widen access to the complaints system by approving specific organisations or types of individuals to act as 'gateways' into the system for prospective complainants. The intention here is to target appropriate organisations or appropriate types of individuals who have significant and regular contact with members of the public.

### *Section 13 and Schedule 3: Handling of complaints and conduct matters etc.*

### *Schedule 3Part 1: Handling of complaints*

### *Paragraph 2: Initial handling and recording of complaints*

65. This paragraph describes what happens when a complaint is made by anyone described in section 12 to the Commission, to a police authority or to a chief officer.

66. There is a general belief amongst practitioners that the recording of complaints is not a problem in itself and a change from the present provision is more likely to cause problems than to have benefits. Therefore, the responsibility for recording a complaint will remain with the police or police authority.

67. Where a complaint is made to the Commission, it will forward the complaint to the appropriate authority to be recorded, providing the complainant is content for it to do so, and it will notify the complainant that it has done so. If the complainant is not content, the Commission may bring it to the attention of the appropriate authority if it considers it is in the public interest to do so and the appropriate authority shall record it as a conduct matter under *paragraph 11*. In such a case, the Commission will notify the complainant.

68. On receipt of a complaint, if a chief officer or a police authority is satisfied that he or it is the appropriate authority, the complaint must be recorded. If not, the complaint must be passed to the appropriate authority to be recorded and the complainant notified accordingly.

69. *Sub-paragraph (7)* prevents a complaint from entering the system if it has been or is being dealt with satisfactorily by means of criminal or disciplinary proceedings. The reason for this is that in such a case, an investigation will have been carried out and there would be no need for a second investigation.

### *Paragraph 3: Failures to notify or record a complaint*

70. Under the provisions of the 1996 Act, failure or refusal to record a complaint was a major source of concern for complainants and for observers and there was no redress. The new system places a duty on a chief officer or a police authority, as the case may be, to advise the complainant of the reasons for not recording a complaint and of his right of appeal to the Commission against that decision.

### *Paragraph 4: Reference of complaints to the Commission*

71. One of the general functions of the Commission is to secure public confidence in the arrangements for handling complaints (and other conduct matters), as set out in section 10. In order to achieve this, there needs to be provision to enable complaints about serious misconduct or which attract high public interest or which involve exceptional circumstances to go to the Commission for determination as to how they should be handled.

72. This paragraph describes which complaints come to the Commission. Complaints will come to the Commission in one of four ways:

- *sub-paragraphs (1)(a)* and *(1)(b)* place a duty on the appropriate authority to refer a complaint because the alleged conduct has resulted in death or serious injury (i.e. as described in section 29(1): fracture, damage to an internal organ, a deep cut or laceration or any injury causing the impairment of any bodily function) or it falls into a category specified in regulations made by the Secretary of State – a list of specified categories will be set in regulations to ensure that all complaints of serious misconduct are brought to the attention of the Commission;

- *sub-paragraph (1)(c)* gives a power to the Commission to direct an appropriate authority to refer a complaint to it because it may have particular concerns about the conduct complained of;

- *sub-paragraph (2)* enables the appropriate authority to refer voluntarily any other complaint because there may be particular concerns about the gravity or exceptional circumstances of the conduct complained of (e.g. high incidence of a particular conduct attracting complaints or a particular local sensitivity); or

- where a chief officer is the appropriate authority, but is not required to refer a complaint to the Commission and does not do so, *sub-paragraph (3)* gives a power to his police authority to refer that complaint to the Commission if it has particular concerns about the gravity or exceptional circumstances of the conduct complained of.

73. *Sub-paragraph (5)* provides for all these powers of referral to be exercisable at any time and, where appropriate with the consent of the Commission, irrespective of whether a complaint is under investigation or has already been considered by the Commission. The purpose of this is to allow a late referral where concerns arise after an investigation has started.

### *Paragraph 5: Duties of the Commission on references under paragraph 4*

74. Where a complaint has been referred by an appropriate authority to the Commission under paragraph 4, the Commission will have a duty to determine whether or not that complaint is to be investigated. If it determines that it is not necessary for that complaint to be investigated, the Commission may refer it back for the appropriate authority to deal with under paragraph 6. In such a case, the Commission must notify the complainant and, providing there is no prejudice to any investigation, notify the person complained against.

### *Paragraph 6: Handling of complaints by the appropriate authority*

75. Under the provisions of the 1996 Act, about a third of all complaints are resolved locally. This process provides a speedy resolution as an alternative to full investigations in those cases of a less serious nature. There is a continuing need and substantial support for not only retention of this process but also for its extended use to enable more complaints to be resolved locally. Under the new system, it is intended to be more widely applied to include those complaints arising from minor acts of misconduct instead of resorting in such a case to a costly formal investigation. However, in order to avoid abuse of the process, the appropriate authority will be required to apply to the Commission for dispensation to deal with such a case by local resolution.

76. This paragraph deals with a complaint which has been recorded by the appropriate authority but not referred to the Commission (under paragraph 4) or it has been referred to the Commission but also referred back from the Commission (under paragraph 5).

77. *Sub-paragraph (2)* requires the appropriate authority to determine how such a complaint should be handled, either by local resolution or by investigation. Use of local resolution will need the consent of the complainant in every case and, before giving his consent, he must be informed of the procedural requirements and of his right of appeal under paragraph 9. *Sub-paragraph (7)* prevents the withdrawal of a consent once the local resolution process has begun.

78. *Sub-paragraph (3)* describes a complaint as being suitable for local resolution if the conduct complained of, even if proved, would not lead to criminal or disciplinary proceedings or the Commission has approved the use of local resolution.

79. Extending the use of local resolution is provided for in *sub-paragraph (4)* which enables the Commission to approve the use of local resolution on application by the appropriate authority if it is satisfied:

- that the conduct, even if proved, would not justify the bringing of criminal proceedings and, in the case of any disciplinary proceedings, would lead only to minor punishments; e.g. written warning or less severe punishments (reprimand, caution, no action).
- that even if a complaint is thoroughly investigated, there is no prospect of obtaining the necessary evidence for a criminal conviction or a disciplinary conviction which would result in dismissal, requirement to resign or retire, a reduction in rank or a demotion or the imposition of a fine.

### *Paragraph 7: Dispensation by the Commission from requirements of Schedule*

80. As in the present system, there are some complaints where it is suitable for the appropriate authority to deal with them without investigating or using the

local resolution procedure; for example complaints which are repetitious, vexatious, incapable of being investigated or were made after an unreasonable delay.

81. This paragraph refers to regulations made by the Secretary of State that will cover:

- types of cases which the appropriate authority may apply to the Commission for it to take no action; and
- the way in which the Commission will deal with an application.

### *Paragraph 8: Local resolution of complaints*

82. This paragraph enables an appropriate authority to make arrangements for the local resolution of a complaint, and sets qualifications for a person who may be appointed to deal with it. *Sub-paragraph (2)* allows the Secretary of State to make provisions by regulations for different techniques to be used for the local resolution of a complaint, giving the person who is subject of a complaint the opportunity to comment and providing the complainant with a record of the outcome of the local resolution of a complaint.

83. *Sub-paragraph (3)* provides that a statement, specific to a complaint, made by any person for the purposes of the local resolution of that complaint shall not be admissible in any criminal, civil or disciplinary proceedings arising from the conduct complained about. The intention is to create a climate of conciliation in which the officer will have the opportunity to explain his behaviour, apologise to the complainant if appropriate and express an intent to avoid a recurrence. If such statements can be used against him, he may be reluctant to express them, thereby rendering ineffective the process of local resolution.

84. If, after attempting to resolve a complaint by local resolution, it becomes clear that it cannot be resolved in that way or that it is not appropriate, *sub-paragraph (4)* enables an appropriate authority to have that complaint investigated instead. In such a case or if the complaint is called in by the Commission under paragraph 4, *sub-paragraph (5)* allows local resolution to be discontinued. *Sub-paragraph (6)* disqualifies any person who participated in the local resolution of the complaint from appointment to investigate the complaint or from participating in its investigation. The reason for this is to avoid prejudice to the investigation, real or perceived.

### *Paragraph 9: Appeals relating to local resolution*

85. If the complainant is to consent to the use of local resolution, he must have confidence in the way the process will be applied. Therefore, before agreeing to the use of a local resolution, a complainant will be given a written account of how the process will operate and notice that he will have a right of appeal against what he may see as the improper conduct of a local resolution.

86. This paragraph deals with the duty of the Commission in the handling of an appeal:

- *sub-paragraph (3)* provides for the person complained against and the appropriate authority to be given an opportunity to make representations;
- *sub-paragraph (4)* requires the Commission to determine whether there has been any contravention of the procedural requirements;
- if it finds in favour of the complainant, *sub-paragraph (5)* requires the Commission to give directions to the appropriate authority on the future handling of the complaint and places a duty on the appropriate authority to comply with any direction; and
- *sub-paragraph (6)* provides if the Commission determines that the future handling of the complaint should be by investigation, then it shall also determine the type of investigation to apply as provided in paragraph 15.

## *Schedule 3Part 2: Handling of conduct matters*

### *Paragraph 10: Conduct matters arising in civil proceedings*

87. This paragraph applies where a chief officer or a police authority receives notification that civil proceedings are being brought or are likely to be brought by a member of the public and that those proceedings arise from what could be described as a conduct matter. The purpose of this is to ensure that any matter that would otherwise be dealt with as a complaint or a conduct matter is recorded and dealt with as though it was a complaint or a conduct matter. This provision will ensure that such matters are dealt with appropriately, particularly where civil proceedings are settled out of court.

88. On becoming aware of such a conduct matter, if a chief officer or a police authority is satisfied that he or it is the appropriate authority, that conduct matter must be recorded. If not, it must be passed to the appropriate authority to be recorded. Thus, unlike conduct matters in other cases, where the test in paragraph 11 must be satisfied for a conduct matter to be recorded, all conduct matters arising from civil proceedings will be recorded. The appropriate authority need not record the matter if it is satisfied that the matter has been or is being dealt with satisfactorily by means of criminal or disciplinary proceedings. The reason for this is that in such a case, an investigation will have been carried out and there would be no need for a second investigation.

### *Paragraph 11: Recording etc. of conduct matters in other cases*

89. A conduct matter is described in section 12(2) as a matter that has not been the subject of a complaint but is one which indicates that a person serving with the police may have committed a criminal offence or whose conduct may justify the bringing of disciplinary proceedings.

90. *Sub-paragraphs (1)* and *(2)* provide that where a conduct matter comes to the attention of the appropriate authority and it appears to have resulted in the death of or serious injury to any person, or had an adverse effect on a member of the public, or is of a description specified in regulations, it will have a duty to record the matter.

91. Where a conduct matter has been recorded, *sub-paragraph (3)* requires the appropriate authority to determine if it is to be referred, either compulsorily or voluntarily, to the Commission under paragraph 13. If the conduct matter is not referred to the Commission, the appropriate authority may deal with it at its own discretion.

92. *Sub-paragraph (4)* prevents a conduct matter from entering the system if it has been or is being dealt with satisfactorily by means of criminal or disciplinary proceedings.

### *Paragraph 13: Reference of conduct matters to the Commission*

93. The duties and powers related to the referral of a complaint to the Commission, as set out in paragraph 4 of this Schedule, are the same as those which relate to the referral of a conduct matter that is not the subject of a complaint.

94. One of the general functions of the Commission is to secure public confidence in the arrangements for handling conduct matters (and complaints), as set out in section 10. In order to achieve this, there needs to be provision to enable matters about serious conduct, or which attract high public interest, or which involve exceptional circumstances, to go to the Commission and for that independent Commission to determine how they should be handled.

95. This paragraph describes which conduct matters come forward to the Commission. Conduct matters will come forward to the Commission in one of four ways:

- *sub-paragraph (1)(a)* and *(b)* place a duty on the appropriate authority to refer a conduct matter if the alleged conduct has resulted in death or serious injury (i.e. as set out in section 29(1): fracture, damage to an internal organ, a deep cut or

laceration or any injury causing the impairment of any bodily function) or it falls into a category specified in regulations made by the Secretary of State – a list of specified categories will be set in regulations to ensure that all serious conduct matters are brought to the attention of the Commission;

- *sub-paragraph (1)(c)* gives a power to the Commission to direct an appropriate authority to refer a conduct matter to it because it may have particular concerns about that matter;
- *sub-paragraph (2)* enables the appropriate authority voluntarily to refer any other conduct matter because there may be particular concerns about the gravity or exceptional circumstances of that matter (e.g. high incidence of a particular conduct or a particular local sensitivity); or
- where a chief officer, who is the appropriate authority, is not required to refer a conduct matter to the Commission and does not do so, *sub-paragraph (3)* gives a power to his police authority to refer that conduct matter to the Commission if it has particular concerns about the gravity or exceptional circumstances of that matter.

96. Where there is an obligation to refer a conduct matter to the Commission, *sub-paragraph (4)* requires the referral to be made within a period set in regulations made by the Secretary of State.

97. *Sub-paragraph (5)* provides for all these powers of referral to be exercisable at any time and, where appropriate with the consent of the Commission, irrespective of whether a conduct matter is under investigation or has already been considered by the Commission. The purpose of this is to allow a late referral where concerns arise after an investigation has started.

98. *Sub-paragraph (6)* requires the appropriate authority to notify the person whose alleged conduct is the subject of the recordable conduct matter providing there is no prejudice to any investigation.

### *Paragraph 14: Duties of the Commission on references under paragraph 13*

99. Where a conduct matter has been referred by an appropriate authority to the Commission under paragraph 13, the Commission will have a duty to determine whether or not that conduct matter is to be investigated. If it determines that it is not necessary for that conduct matter to be investigated, the Commission may refer it back for the appropriate authority to deal with at its discretion and shall notify the person who committed the alleged conduct providing there is no prejudice to any investigation.

## *Schedule 3Part 3: Investigations and subsequent proceedings*

### *Paragraph 15: Power of the Commission to determine the form of investigation*

100. Under *sub-paragraphs (1)* to *(4)*, if a complaint or conduct matter has been referred to the Commission under the provisions in paragraphs 4 or 13 and the Commission has decided, under paragraphs 5 or 14, that the matter requires investigation, it will determine, according to the seriousness of the case and the public interest, the form the investigation should take. The Commission will have four options:

- a police investigation on behalf of the appropriate authority;
- a police investigation supervised by the Commission;
- a police investigation managed by the Commission; or
- an investigation by the Commission independent of the police.

101. Having made a determination on the form the investigation should take, *sub-paragraph (5)* allows the Commission to make a further determination at any time if

it believes another form of investigation is more appropriate. A further determination may be necessary if new information comes to light or circumstances change that will make another form of investigation more suitable. In such a case, under *sub-paragraph (6)*, the Commission must notify the appropriate authority and will be able to give directions to that authority as it sees fit to enable smooth transition from one method of investigation to another.

### *Paragraph 16: Investigation by the appropriate authority on its own behalf*

102. This provision for investigations by the appropriate authority on its own behalf replicates that contained in the 1996 Act and this paragraph applies where:

either

- a complaint is not suitable for local resolution under paragraph 6(2); and
- under paragraph 10(4)(b) and, if so determined, paragraph 11(3)(b), a conduct matter is not required to be referred, and the appropriate authority has determined that it is not appropriate to refer it, to the Commission; and
- no application has been made for dispensation under paragraph 7, or such an application has failed;

or

- the Commission has determined under paragraph 15(2) that a complaint or conduct matter should be investigated by the appropriate authority on its own behalf.

Such investigations will be carried out by a police officer either from the appropriate authority's force or from any other force.

### *Paragraph 17: Investigations supervised by the Commission*

103. This provision for investigations supervised by the Commission replicates that contained in the 1996 Act and will be used where an element of independence is required or is seen as being desirable.

104. Where the Commission has decided that a complaint or conduct matter should be investigated by the appropriate authority under the Commission's supervision, the appropriate authority will appoint a person serving with the police or with NCIS or NCS to investigate. In the case of a chief officer, that person must not be one under that chief officer's direction and control. In all other cases, the appropriate authority will be able to decide whether that person should be from the same or another force or from NCIS or NCS.

105. The Commission may wish to approve this person and it will be able to require another person to be appointed if it is not satisfied with a person who has been appointed or selected for appointment. In the case of the Commissioner or Deputy Commissioner of Police of the Metropolis, the Secretary of State will nominate a person for appointment.

106. Under *sub-paragraph (7)*, the Secretary of State will be able to lay down in regulations those things that the Commission will be able to require during an investigation of this kind. In a supervised investigation the Commission will have responsibility for the investigation and be able to impose certain requirements but will leave the day-to-day management of the investigation to the investigating officer.

### *Paragraph 18: Investigations managed by the Commission*

107. This is a new concept which is similar to the supervised investigation but will be used in more serious or more sensitive cases which require a greater degree of independence. This independence will come from the strategy and direction provided

in an investigation by the Commission and the managerial control it will exercise on a day-to-day basis. The Commission will be responsible for the investigation but the investigation itself will be carried out by the appointed investigating officer.

108. In a managed investigation the same provisions will apply as for a supervised investigation but the investigation will be under the direction and control of the Commission.

### *Paragraph 19: Investigations by the Commission itself*

109. An investigation by the Commission is a totally new concept which has come about mainly because of the recommendations of the Home Affairs Committee (report of 1997-98) (accessible via http://www.parliament.uk) and the Stephen Lawrence Inquiry (recommendation 58 of the Macpherson Report) (accessible via http://www.official-documents.co.uk). Both recommendations for independent investigations reflect the long-standing demands from all sectors of the community and from the police service itself. Independent investigations will be used on the most serious complaints or conduct matters and those of the highest public interest.

110. This paragraph will apply where the Commission has determined that it should itself carry out the investigation of a complaint or conduct matter. The Commission will designate a person from its own staff to take charge of the investigation so that it is clear who has responsibility for managing the day to day running of the investigation and for producing the report at the end. In the case of the Commissioner or Deputy Commissioner of Police of the Metropolis, the Secretary of State will nominate the person who is to be appointed in charge of the investigation.

111. In an investigation by the Commission, its investigators will have all the powers and privileges that would be available to the police in such an investigation. The powers and privileges, which will include all new future powers and privileges, will be exercisable throughout England and Wales.

### *Paragraph 20: Restrictions on proceedings pending the conclusion of an investigation*

112. Disciplinary proceedings (as defined in section 29(1)) will not be brought against a person serving with the police until the investigation report has been submitted to the Commission or the appropriate authority under paragraph 22. The same will apply to criminal proceedings unless the Director of Public Prosecutions believes that there are exceptional circumstances such as a person being a danger to the public or likelihood of committing further crimes, that make it undesirable to delay.

### *Paragraph 21: Power of Commission to discontinue and investigation*

113. There may be occasions after an investigation has commenced where it becomes clear that a complaint or other conduct matter is not worthy of investigation and it will be appropriate to bring it to an end. This paragraph enables the Commission to discontinue any of its own investigations or to make an order for the appropriate authority to discontinue any of its investigations, as may be set out in regulations. The Commission will be able to direct the appropriate authority in these circumstances on how best to bring closure to the matter, if necessary.

### *Paragraph 22: Final reports of investigations*

114. This paragraph places a duty on the person appointed to lead any investigation to submit a report at the end of the investigation and it sets out to whom this report should go:

- after a police investigation, to the appropriate authority;
- after a supervised investigation, to the Commission with a copy to the appropriate authority;

- after a managed investigation, to the Commission with a copy to the appropriate authority; and
- after an investigation by the Commission, to the Commission.

115. *Sub-paragraph (4)* makes it clear that the person submitting the report shall not be prevented by any obligation of secrecy imposed by any rule of law or anything else from including all matters in his report as he thinks fit. The purpose of this is to ensure that the quality of a report is not reduced as a result of the greater openness achieved by allowing disclosure of a report to the complainant and other interested persons, as provided in paragraphs 23(12) and 24(10) (an interested person is defined by section 21).

### *Paragraph 23: Action by the Commission in response to an investigation report*

116. Paragraph 23 is intended to achieve maximum openness with the complainant and other interested persons as defined by section 21 after a report on an investigation.

117. This paragraph sets out the procedures to be followed when a report on an investigation carried out or managed by the Commission is submitted to the Commission. The procedures cover the handling of possible criminal offences, proposals from the appropriate authority on disciplinary or other action and advising the complainant of the outcome of the investigation.

118. *Sub-paragraphs (2)* to *(5)* cover the handling of possible criminal offences. The Commission will have the responsibility for determining whether the report indicates that a criminal offence may have been committed and, if so, notifying the Director of Public Prosecutions, sending him a copy of the report and awaiting a response from him as to any action taken or not taken. The Commission will have responsibility for advising the appropriate authority of its determination. In the case of a complaint, the Commission will also be under a duty to advise the complainant and any other interested person as defined by section 21 of this Act of any referral to the Director of Public Prosecutions and the outcome of such a referral. The Commission must keep interested persons similarly informed in the case of a recordable conduct matter.

119. *Sub-paragraphs (6)* to *(8)* cover the handling of possible disciplinary or other action. If the Commission has determined that no criminal offence has been committed or that there had been but the Director of Public Prosecutions has decided not to bring criminal action or, if he has, the criminal action has been completed, the Commission will ask the appropriate authority to take a decision about what, if any, disciplinary or other action it proposes to bring. Disciplinary action refers to action that the appropriate authority may take under the existing formal discipline procedures which apply to regular police officers or under new discipline procedures for special constables or other procedures against support staff serving with the police. If the Commission is not satisfied with the proposed action by the appropriate authority, it can use the powers provided in paragraph 27 to recommend or, if necessary, direct another course of action.

120. *Sub-paragraphs (9)* to *(11)* cover information to be given to a complainant or an interested person as defined by section 21 on the outcome of an investigation. There will be a duty on the Commission to provide the information set out in *sub-paragraph (10)*.

121. For the purpose of providing information about the investigation, *sub-paragraph (12)* gives the Commission the power to provide the complainant and other interested persons as defined by section 21 with a copy of the investigation report subject to the sensitivity test provided under section 20(6) and (7). This test, set out in regulations made by the Secretary of State, will be able to exclude disclosure where it would adversely affect national security, prevention and detection of crime, prosecution or apprehension of offenders, or the public interest. It will be possible to remove any part of the report that does not pass the sensitivity test from the copy that is disclosed. As well as these matters, the test will ensure a fair balance between the need for openness

to the complainant and the need for respect for the privacy of other persons such as the person complained against.

### *Paragraph 24: Action by the appropriate authority in response to an investigation report*

122. This paragraph sets out the procedures (which are generally similar to those for the Commission) to be followed when a report on an investigation carried out by the appropriate authority on its own behalf or supervised by the Commission is submitted or copied to the appropriate authority. The procedures cover the handling of possible criminal offences, proposals from the appropriate authority on disciplinary or other action and advising the complainant of the outcome of the investigation.

123. *Sub-paragraphs (2)* to *(5)* cover the handling of possible criminal offences. The appropriate authority will have the responsibility for determining whether the report indicates that a criminal offence may have been committed and, if so, notifying the Director of Public Prosecutions, sending him a copy of the report and awaiting a response from him as to any action taken or not taken. In the case of a complaint, the appropriate authority will also be under a duty to advise the complainant and any other interested person as defined by section 21 of this Act of any referral to the Director of Public Prosecutions and the outcome of such a referral. The appropriate authority must keep interested persons similarly informed in the case of a recordable conduct matter.

124. *Sub-paragraph (6)* provides for the handling of disciplinary or other action. If the appropriate authority has determined that no criminal offence has been committed or that there had been but the Director of Public Prosecutions has decided not to bring criminal action or, if he has, the criminal action has been completed, the appropriate authority will decide what, if any, disciplinary or other action to bring. Disciplinary action refers to action that the appropriate authority may take under the existing formal discipline procedures which apply to regular police officers or under new discipline procedures for special constables or other procedures against support staff serving with the police.

125. In the case of a complaint, *sub-paragraphs (7)* to *(10)* cover information given to a complainant and interested persons as defined by section 21 on the outcome of an investigation. There will be a duty on the appropriate authority to advise the complainant and such interested persons of the findings of the report, whether the authority has determined the disciplinary or other action to bring and, if so, what that action is. The appropriate authority will also have a duty to advise the complainant and such interested persons of the complainant's right of appeal under paragraph 25. For the purpose of providing information about the investigation, the appropriate authority will have the power to provide the complainant and such interested persons with a copy of the investigation report subject to the sensitivity test provided under section 20(6) and (7). Application of this test will exclude disclosure where it would adversely affect national security, prevention and detection of crime, prosecution or apprehension of offenders; or the public interest. It will be possible to remove any part of the report that does not pass the sensitivity test from the copy that is disclosed.

### *Paragraph 25: Appeals to the Commission with respect to an investigation*

126. This paragraph applies where a complaint has been investigated by an appropriate authority on its own behalf under paragraph 16 or has been investigated under supervision under paragraph 17. The complainant will have been informed of his right to appeal under paragraph 24(8)(d).

127. The right of appeal for the complainant is a new provision and its purpose is to counter any failure, intentional or otherwise, in the discharge of the duty by the appropriate authority to achieve maximum openness with the complainant at the conclusion of an investigation. Its purpose is also to allow the complainant to challenge aspects of the investigation and any determination as a result of it.

128. *Sub-paragraph (2)* provides the grounds on which the complainant can appeal. The complainant will be able to appeal against the appropriate authority's proposed action following the investigation, whether it is disciplinary action relating to a regular police officer or special constable or action with respect to a member of the force's support staff. The complainant will also be able to appeal against the findings of the investigation and if they feel they have not been provided with adequate information about the investigation or the action resulting from it.

129. Under *sub-paragraphs (3)* and *(4)*, the Commission may, following an appeal, require the appropriate authority to provide a memorandum with the relevant information on the case, including a copy of the investigation report, and the reasoning behind the decision over what action it proposed.

130. Under *sub-paragraphs (5)* to *(9)*, the Commission must determine whether the complainant has been provided with adequate information, whether the findings of the report need to be reconsidered and whether the proposed action is appropriate. Following its determination, the Commission may:

- direct the appropriate authority to disclose specific information except sensitive information which should be withheld under regulations made under section 20(6) and (7);
- direct that the complaint be re-investigated or review the findings without a further investigation; and
- may, under paragraph 27, make a recommendation and, if necessary, give a direction as to the proposed disciplinary action.

131. *Sub-paragraphs (10)* and *(11)* require the Commission to inform the appropriate authority, the complainant, interested persons as defined by section 21 and, providing it would not prejudice any review or re-investigation, the person complained against of any determination made or action taken under this section. *Sub-paragraph (12)* makes it a duty of the appropriate authority to comply with any direction.

132. *Sub-paragraph (13)* allows the Secretary of State to make provisions by regulations for the way in which and time within which appeals can be brought and procedures to follow by the Commission when dealing with an appeal.

### *Paragraph 26: Reviews and re-investigations following an appeal*

133. *Sub-paragraph (1)* establishes the options that the Commission has open to it following an appeal where it has decided, under paragraph 25(8)(a), that the matter does not require immediate re-investigation.

134. Where the Commission has decided that re-investigation is necessary, *sub-paragraphs (2)* to *(6)* deal with the re-investigation. The Commission will determine the form of investigation as under paragraph 15 and will notify its decision to the appropriate authority, the complainant, interested persons as defined by section 21 and, providing there is no prejudice to any re-investigation, the person complained against.

### *Paragraph 27: Duties with respect to disciplinary proceedings*

135. This paragraph applies once the Commission has been notified by the appropriate authority of its proposed action following a report of the investigation, either when required to following an investigation managed by the Commission under paragraph 23(6) or after an appeal following a supervised investigation or police investigation under paragraph 25(3).

136. Where the Commission feels the appropriate authority's proposed action is not appropriate, *sub-paragraphs (3)* and *(4)* give the Commission a power to recommend or, if necessary, to direct the appropriate authority to bring different action in relation

to the disciplinary proposals. *Sub-paragraph (8)* allows the Commission to change its mind on a direction given to the appropriate authority over the disciplinary proposal.

137. *Sub-paragraphs (2)* and *(7)* place a duty upon the appropriate authority to take any action that it has proposed or been directed to take by the Commission and to ensure that those proceedings are brought to a proper conclusion.

### *Paragraph 28: Information for complainant about disciplinary recommendations*

138. This paragraph applies where the Commission is considering an appeal by the complainant under paragraph 25 and following an investigation managed or carried out by the Commission and the appropriate authority has submitted a memorandum under paragraph 23(7).

139. Where the Commission is not content with the proposed disciplinary action and it has recommended alternative action, the appropriate authority must notify the Commission whether or not it has accepted the recommendation. If it has not, the Commission can direct the appropriate authority to take the alternative action. On conclusion of this process, the Commission is required to notify the complainant and interested persons as defined by section 21 of the outcome.

### *Section 14: Direction and control matters*

140. This section excludes from the provisions in Schedule 3 any part of a complaint that relates to the direction and control of a police force by its chief officer or a person deputised by him.

141. However, the public expects complaints about direction and control to be dealt with in a meaningful way. *Subsection (2)* enables the Secretary of State to issue guidance to chief officers and police authorities about the handling of such complaints, while *subsection (3)* requires chief officers and police authorities to have regard to the guidance when dealing with such a complaint.

142. Under section 54(3) of the 1996 Act, the Secretary of State could refer direction and control matters to HM Inspectorate of Constabulary for investigation. This is only likely to happen with regard to particularly sensitive or high profile cases.

### *Section 15: General duties of police authorities, chief officers and inspectors*

143. *Subsections (1)* and *(2)* place a general duty on police authorities and chief officers to keep themselves informed of the manner in which complaints or other conduct matters are dealt with under this Part in the forces for which they have responsibility. These subsections also place a general duty on inspectors of constabulary to keep themselves informed of the manner in which complaints or other conduct matters are dealt with under this Part in any police force in relation to which they are carrying out any of their functions. The purpose of this duty as respects a police authority or a chief officer is to enable them to exercise the necessary management control to ensure their functions and duties under this Part are discharged in an effective and efficient way. The purpose of this duty as respects an inspector of constabulary is to enable him to take account of these matters during his inspection of a police force.

144. A chief officer or Director General of the National Criminal Intelligence Service or the National Crime Squad will have a duty under *subsection (3)* to provide a member of his force for appointment to investigate a complaint or other conduct matter (under paragraphs 16, 17 and 18 of Schedule 3) when asked to do so by any other chief officer or a police authority and under *subsection (5)* to provide additional assistance and co-operation that may be required by that person in the carrying out of that investigation. Alternatively, under *subsection (6)*, this additional assistance and co-operation may be required from a chief officer of a third force but only with the approval of the chief

officer or Director General who provided the person to investigate the complaint or other conduct matter.

145. *Subsection (4)* places a duty on every chief officer, the Directors General of the National Criminal Intelligence Service and of the National Crime Squad, and every police authority to provide the Commission with all the assistance it requires for an investigation it carries out under paragraph 19 of Schedule 3; for example, specialist skills or manpower for a specific task.

### *Section 16: Payment for assistance with investigations*

146. This section covers payment for the provision of a person provided by one force to another under section 15(3), for assistance provided by a force to the Commission under section 15(4) and for assistance by one force to another under section 15(5).

147. *Subsection (3)* provides that a police authority of a force requiring assistance shall pay the police authority of the force which provides that assistance a sum towards the cost of that assistance which:

- may be agreed between them; or
- in the absence of an agreement, in accordance with any arrangements either in existence or agreed by police authorities generally; or
- in the absence of such arrangements, as determined by the Secretary of State.

148. *Subsection (4)* provides that the Commission shall pay the police authority of a force which provides assistance when asked a sum towards the cost of that assistance which:

- may be agreed between the Commission and that police authority; or
- in the absence of an agreement, in accordance with any arrangements either in existence or agreed between the Commission and police authorities generally; or
- in the absence of such arrangements, as determined by the Secretary of State.

149. *Subsections (5)* and *(6)* provide that references within this section to police forces, police authorities and chief officers will include the National Criminal Intelligence Service and the National Crime Squad, their service authorities and their Directors General, respectively.

### *Section 17: Provision of information to the Commission*

150. The IPCC will be the guardian of the system and its general functions, as set out in section 10, include:

- securing the effective and efficient arrangements for the system and continuously reviewing the arrangements for the purpose of improving it;
- raising the public's awareness of the complaints system and establishing and maintaining public confidence in those arrangements; and
- demonstrating its independence from the police.

151. Therefore, the Commission must be able to gather information on all parts of the system. This section places a duty on police authorities and chief officers to provide the Commission with all information and documents in accordance with requirements as specified in regulations made by the Secretary of State.

152. There will also be a duty on police authorities and chief officers to provide the Commission with all other information and documents as required by the Commission for the purpose of carrying out its functions and they should, as far as it is practicable, do so in such form, manner and time as specified by the Commission.

### *Section 18: Inspections of police premises on behalf of the Commission*

153. This section places a duty on both the chief officer and the police authority for a police force to allow access as early as possible to its premises and to documents and other things on those premises to any person nominated by the Commission for the purpose of:

- any investigation to do with that force in which it is involved; or
- any examination by the Commission of the efficiency and effectiveness of the arrangements in that force for the handling of complaints and other conduct matters.

### *Section 19: Use of investigatory powers by or on behalf of the Commission*

154. This section enables the Secretary of State to make an order which would authorise the Commission to use specific surveillance powers and to conduct and use covert human intelligence sources for the purpose of carrying out any of its functions. Such an order will need the approval by resolution of each House. This power is required to ensure that the IPCC, when dealing with serious criminal offences alleged to have been committed by police officers, has similar powers to those given to the police under the Regulation of Investigatory Powers Act 2000.

### *Section 20: Duty to keep the complainant informed*

155. One of the key features of the new system is greater openness with the complainant and there will be much wider powers and duties to achieve maximum openness both during and after an investigation.

156. *Subsection (1)* places a duty on the Commission, with respect to an investigation it has undertaken or has managed, and *subsection (2)* places a duty on an appropriate authority, with regard to a police investigation or a supervised investigation, to keep the complainant informed in as full a manner as possible of the matters listed in *subsection (4)*. In addition to this duty on the Commission, *subsection (3)* places a further duty on the Commission to give the appropriate authority directions to enable it to comply with its duty to keep the complainant informed.

157. *Subsection (5)* enables the Secretary of State to provide by regulation how the complainant should be kept informed and the exceptions to this duty, but the exceptions will apply only to information that could bring harm as described in *subsections (6)* and *(7)* to, for example, national security, individuals, or future police operations.

158. *Subsection (9)* requires the person appointed to carry out an investigation to keep the Commission or appropriate authority, as appropriate, informed on such matters to enable it to perform its duties under this section.

### *Section 21: Duty to provide information for other persons*

159. This section extends the principle of greater openness to complainants (which is provided for in section 20) to people who have a legitimate interest in being kept informed about the handling of a complaint or recordable conduct matter, so that these people can also be kept informed without having to make a complaint. *Subsections (6)* and *(7)* place a duty on the Commission and the police to keep all interested persons properly informed of the same matters (listed in *subsection (9)*) that complainants must be kept properly informed of under section 20.

160. *Subsections (1)* and *(2)* define a person with an interest in being kept properly informed about the handling of a complaint or recordable conduct matter (an ‘interested person’) as someone who appears to the Commission or the police to be a relative of a person who has died allegedly as a result of police conduct, a relative of someone who has been seriously injured and rendered incapable of making a complaint himself or herself allegedly as a result of police conduct, or someone who has himself or herself been

seriously injured allegedly as a result of police misconduct, and who has indicated that they consent to being kept informed. A 'relative' will be a person of a description prescribed in regulations made by the Secretary of State under *subsection (12)*.

161. *Subsection (3)* allows the Commission and the police also to treat as interested persons other people whom they consider have an interest in the handling of a complaint or recordable conduct matter and who have consented to being kept informed.

### *Section 22: Power of the Commission to issue guidance*

162. This section enables the Commission, with the approval of the Secretary of State, to issue guidance to police authorities, chief officers and others serving with the police. The guidance will be on the exercise or performance of the duties and powers placed on them for the handling of complaints, conduct matters or any other related matters. The purpose of such guidance will be to encourage good practice and achieve commonality in the use of the arrangements secured by the Commission for the effective and efficient arrangements for the handling of all such matters. Before issuing guidance under this section, the Commission must consult those whom it considers represent the interests of police authorities and chief officers of police. It is anticipated, in line with the practice of the Secretary of State where this formulation is used in existing legislation, that the Commission will consult the APA and ACPO and/or CPOSA. The Commission may also consult anyone else it chooses. Apart from guidance under section 14 in relation to complaints dealing with direction and control, the Secretary of State will no longer issue guidance in relation to complaints.

### *Section 26: Forces maintained otherwise than by police authorities*

163. *Subsection (1)* gives power to both the Commission and an authority, other than a police authority, which maintains a body of constables to enter into an agreement with each other to establish procedures similar to that provided for in this Part to deal with complaints and other conduct matters in relation to that body of constables.

164. *Subsection (2)* gives the Secretary of State power to provide by order for the establishment and maintenance of procedures to deal with complaints about the conduct of members of a body of constables, whether or not such procedures are already in place in relation to that body of constables under this section or any of its predecessors. Any existing procedures for the body of constables to which the order relates will be superseded by the procedures established under the order. *Subsection (3)* ensures that the Secretary of State will issue such regulations in respect of the British Transport Police and the Ministry of Defence Police. *Subsection (5)* ensures that the provision of section 36(1)(a) of this Act can also be applied to non-Home Office forces. *Subsection (7)* requires the Secretary of State to consult the Commission and the authority that maintains that body of constables before making the order. *Subsection (8)* limits the coverage of such procedures to England and Wales. If that body of constables' powers and responsibilities extends into Scotland and Northern Ireland, the authority for that body will need to make separate arrangements under existing provisions for Scotland and Northern Ireland.

### *Section 27: Conduct of the Commission's staff*

165. It is recognised that the general public expect that people serving with the police who are given powers, the use of which can have a significant impact on members of the public, should not abuse those powers and betray the trust and confidence placed in them. It is accepted generally that those who abuse those powers and betray that trust should be answerable and this Part provides a mechanism to deal with allegations of such abuse and betrayal. It follows that members of the Commission's staff who are given the same or similar powers as a person serving with the police should also be answerable for the abuse those powers.

166. To bring these staff under the procedures of this Part was not considered appropriate. Instead, this section requires the Secretary of State to make provisions by regulations for the handling of both allegations of misconduct made against members of the Commission's staff and cases in which there are indications of misconduct. The regulations may apply any provision under this Part, modified as necessary.

## Part 3: Removal, suspension and disciplining of police officers

### *Section 30: Resignation in the interests of efficiency and effectiveness*

167. At present, under the 1996 Act a chief officer can be called on to step down in the interests of efficiency and effectiveness of the force by retirement. At a time when chief officers may be well below normal retirement age, this section provides for the option of resignation as an alternative to retirement.

168. *Subsection (1)* applies these new arrangements to the Metropolitan Police.

169. *Subsection (2)* applies them to forces outside London.

### *Section 31: Procedural requirements for removal of senior officers*

170. This section adds procedural requirements for the exercise of the power of a police authority to remove a chief officer in the interests of efficiency or effectiveness. It requires that where a police authority exercises this power, it must give the officer concerned its reasons for removal in writing, afford him the opportunity to make representations in person at a hearing, and consider any representations made by or on behalf of the officer.

171. *Subsection (1)* applies these requirements to the Metropolitan Police Authority.

172. *Subsection (2)* applies them to police authorities outside London.

### *Section 32: Suspension of senior officers*

173. This section introduces a new power for police authorities, on their own initiative or when required to do so by the Secretary of State (for the latter of which, see also section 33), to suspend chief officers who are or may be called on to retire or resign in the interests of the efficiency and effectiveness of their force. As a safeguard against arbitrary or unfair use by the police authority, the approval of the Secretary of State is required.

174. *Subsection (1)* gives the suspension power to the Metropolitan Police Authority in respect of the Commissioner and Deputy Commissioner of Police of the Metropolis. It does this by inserting a new subsection (2A) in section 9E of the 1996 Act: that section contains the powers to call on the Commissioner or the Deputy Commissioner to retire.

175. *Subsection (2)* introduces the suspension power for police authorities outside London in respect of chief constables in their forces. In those cases, the subsection inserts a parallel new subsection (3A) in section 11 of the 1996 Act.

176. *Subsections (3), (4)* and *(5)* make equivalent provision for suspension of Assistant Commissioners, Deputy Assistant Commissioners and Commanders in the Metropolitan Police, and deputy chief constables and assistant chief constables for forces outside London, with the difference that the Secretary of State will not be able require the police authority to exercise its power to suspend these ranks.

### *Section 33: Removal of senior officers at the instance of the Secretary of State*

177. This section sets out revised powers for intervention by the Secretary of State. He will be able to require a police authority to call on the chief constable of a force outside London or the Commissioner or Deputy Commissioner of the Metropolitan Police to

retire or resign in the interests of efficiency or effectiveness. He will also be able to require suspension of officers in certain circumstances. The section introduces further safeguards regarding the use of the removal powers and also streamlines the process where the removal of a senior officer is initiated under these powers.

178. *Subsection (2)* contains the intervention powers. These are introduced by the insertion of a series of new subsections in section 42 of the 1996 Act. New *section 42(1)* allows the Secretary of State to require a police authority to call on a senior police officer to retire or resign in the interests of efficiency or effectiveness. New *section 42(1A)* allows the Secretary of State to require suspension of those officers in certain circumstances set out in new *section 42(1B)*. New *section 42(2)* introduces the further safeguards. It makes it a requirement for the Secretary of State to give an officer formal written notice of his intention to exercise the section 42(1) power to require the police authority concerned to take action against the officer, explaining the grounds for so doing. The purpose is to ensure that the officer is made directly aware of the Secretary of State's intention and the reasons behind it. This is in addition to the requirement for an officer to be able to make representations to the Secretary of State, which this subsection re-enacts. *Section 42(2B)* requires the Secretary of State to consider any representations made to him by the officer concerned. *Section 42(2A)* ensures that the relevant police authority is also kept informed of the Secretary of State's actions. If the Secretary of State intends to exercise his powers under this section, he will be required, as now, to appoint an inquiry to report to him on the proposal. The officer and police authority concerned are entitled to make representations to this inquiry – the officer being explicitly allowed to do so in person (revised section *42(3)*, and new sections *42(3A)* and *42(3B)*).

179. *Subsection (6)* effects the removal of unnecessary stages in two ways. Firstly, it removes the requirement for a police authority, which has been required by the Secretary of State under section 42 to take action against an officer, subsequently to seek the Secretary of State's approval – which would be axiomatic. Secondly, following exercise by the Secretary of State of his section 42 power, the subsequent consideration by him of representations by the officer concerned and the holding of an inquiry, there is currently a duplicating requirement for the police authority also to hear representations: this duplication is removed. Similarly, this subsection ensures that in these circumstances there is no duplication by the police authority of the new requirement for the Secretary of State to provide a written explanation of his grounds for calling upon the officer to retire or resign. The changes are made by the insertion of new subsection (4A) in section 42 of the 1996 Act.

### *Section 34: Regulations concerning procedure for removal of senior officers*

180. This section introduces (in a new section 42A of the 1996 Act) a regulation-making power in respect of procedural matters in the hearing of representations and other aspects of considering proceedings taken under the 1996 Act's powers to call on an officer to retire or resign in the interests of efficiency or effectiveness. Before making any regulations under this section, the Secretary of State must consult those whom he considers represent the interests of police authorities and chief officers of police. Where this formulation occurs in existing legislation, the Secretary of State currently consults the APA and ACPO and/or CPOSA. The Secretary of State may also consult anyone else he chooses. The regulations will be subject to the negative resolution procedure.

### *Section 35: Disciplinary proceedings for special constables*

181. This section enables the Secretary of State to make regulations under section 51 of the 1996 Act as to the handling of alleged misconduct of special constables. At present, there is no statutory mechanism for taking disciplinary action against special constables. This provision, which will include a code of conduct for special constables, will mean special constables will be on a similar footing to regular officers in regards to the handling of misconduct and disciplinary proceedings.

### *Section 36: Conduct of disciplinary proceedings*

182. As with the handling of complaints, the handling of disciplinary proceedings could make or break public confidence and trust in the police. This section deals with regulations that can be made by the Secretary of State under sections 50 and 51 of the 1996 Act. In addition to the existing powers to make regulations under these sections, this section allows regulations to cover the rights of the IPCC in regards to disciplinary proceedings and the right of specified persons to participate in or to be present at disciplinary proceedings, and to provide for inference to be drawn from a failure to mention a fact when questioned or charged in police disciplinary proceedings.

183. The complainant and the general public need to be assured that evidence in a disciplinary hearing will be presented fully and robustly. There is a possibility of this not happening, particularly when the IPCC does not accept the disciplinary proposals from an appropriate authority and directs it to vary the proposals in a specified way, as provided in paragraph 27 of Schedule 3. To avoid this, *subsection (1)(a)* of this section enables the creation of regulations to ensure that the IPCC will have the right to bring and conduct, or otherwise participate or intervene in, any disciplinary proceedings arising from a complaint or other conduct matter.

184. To ensure greater openness in the disciplinary process, *subsection (1)(b)* allows regulations to update procedures regarding persons able to participate in or attend disciplinary proceedings. The current intention is that up to three supporters of the complainant will be able to attend in all cases. The presiding officer of the hearing may allow more in special circumstances, and he will be expected to be even-handed in the treatment of the officer facing the charge. It would be possible for regulations to allow members of the general public to have access to disciplinary hearings in certain appropriate cases.

185. *Subsection (1)(c)* enables regulations to provide for inference to be drawn from a failure to mention a fact when questioned or charged in police disciplinary proceedings. This would bring the regulations on police conduct into line with those in criminal proceedings, where the change was made as a result of provision made under section 34 of the Criminal Justice and Public Order Act 1994.

### *Section 37: Protected disclosures by police officers*

186. This section, along with the consequential repeals in the Employment Rights Act 1996 and the Public Interest Disclosure Act 1998 in Schedule 8, affords protection to police officers who make protected disclosures. A ‘protected disclosure’ includes disclosures that a criminal offence has been committed, that a person has failed to comply with a legal obligation to which he or she is subject, or that there has been a miscarriage of justice. In the context of police conduct, protected disclosures would include disclosures that an officer had breached the Code of Conduct for police officers, which is the minimum standard of behaviour for police officers set out in secondary legislation. Thus, the purpose of these changes is to ensure that police officers will be able to report wrongdoing by other officers with the assurance of full protection if they are subsequently discriminated against or suffer detriment for doing so. In such circumstances, they will be able to make a claim to an Employment Tribunal.

187. Police officers, seconded police officers, cadets, special constables, officers in constabularies maintained otherwise than by a police authority, and police members of the National Criminal Intelligence Service and the National Crime Squad who report wrongdoing will have the same rights as other employees. And police officers will cease to be excluded from the provisions about protected disclosures in the Employment Rights Act 1996.

## Part 4: Police powers

### *Chapter 1: Exercise of police powers etc. by civilians*

#### *Section 38: Police powers for police authority employees*

188. This section enables chief officers of police to designate suitably skilled and trained civilians under their direction and control to exercise powers and undertake duties in carrying out specified functions. A chief officer can designate civilians to perform functions in four categories: community support officer; investigating officer; detention officer; and escort officer. The Director General of NCIS or NCS may designate support staff under his direction and control as investigating officers.

189. *Subsection (1)* enables the chief officer in charge of a force to designate any person under his operational control and employed by the relevant police authority as an officer of one or more of the descriptions specified in *subsection (2)*: community support officer; investigating officer; detention officer; and escort officer. *Subsection (3)* enables the Director General of NCIS or NCS to designate any person under his operational control and employed by the relevant Service Authority as an investigating officer. (*Paragraph 36(1)(b)* of Schedule 4 and *subsection (7)(e)* of section 108 ensure that this is limited to persons in England and Wales only. Although the jurisdiction of NCS only covers England and Wales, that of NCIS is UK-wide.) Under *subsection (5)*, chief officers and Directors General will be able to confer on such employees some of the powers and duties otherwise only available to police constables and others. *Subsection (6)* limits the powers that can be conferred on designated persons to the relevant Parts of Schedule 4 to the Act. *Subsection (7)* clarifies that a designation cannot authorise or require conduct beyond the specified functions and that a designation may contain restrictions and conditions. For example, the designation may specify that the powers can only be used in a particular geographical area or for a particular period.

190. *Subsection (4)* prevents a designation being granted unless the chief officer or Director General is satisfied that the person is suitable to carry out the relevant functions, capable of carrying them out, and has been adequately trained.

191. *Subsection (8)* provides that where a power allows for the use of reasonable force when it is exercised by a constable, a person exercising such a power under a designation shall have the same entitlement to use reasonable force; for example when carrying out a search.

192. *Subsection (9)* provides that where the designation includes the power to force entry to premises, this power will be limited to occasions when the designated person is under the direct supervision of a constable and is accompanied by them – the exception to this requirement is when the purpose of forcing entry is to save life or limb or to prevent serious damage to premises.

#### *Schedule 4: Police powers exercisable by police civilians*

193. This schedule links directly to the provisions in sections 38 and 39 of the Act, which deal with the exercise of police powers by police authority and Service Authority employees, and contracted-out staff. It sets out in detail the range of powers that can be conferred on designated civilians employed by a police authority or NCIS or NCS Service Authority and under the direction and control of the relevant chief officer or Director General. Parts 3 and 4 of this Schedule can also be conferred on contracted-out staff.

### Part 1: Community support officers

194. This Part includes a limited range of powers linked to dealing with community safety and misconduct in public places. It lists the powers that can be conferred on community support officers. These include the power to issue a range of fixed penalty notices relating to anti-social behaviour – for example in respect of litter. It also gives the power

to request a name and address from a person committing a fixed penalty offence or an offence that causes injury, alarm, distress or damage to another, and the power to detain, for a limited period awaiting the arrival of a constable, a person who fails to comply with the request to give their name and address. These powers will enable civilians performing patrolling functions to address many anti-social behaviour offences.

195. *Paragraph 1* enables a suitably designated person to exercise powers to issue fixed penalty notices. This includes issuing fixed penalty notices in respect of a range of anti-social behaviour and disorder offences under the Criminal Justice and Police Act 2001. These offences are: being drunk in a public highway, other public place or licensed premises (section 12 of the Licensing Act 1872); throwing fireworks in a thoroughfare (section 80 of the Explosives Act 1875); knowingly giving a false fire alarm to a fire brigade (section 31 of the Fire Service Act 1947); trespassing on a railway (section 55 of the British Transport Commission Act 1949); throwing stones etc. at trains or other things on railways (section 56 of the British Transport Commission Act 1949); buying or attempting to buy alcohol for consumption in a bar in licensed premises by a person under 18 (section 169C(3) of the Licensing Act 1964); disorderly behaviour while drunk in a public place (section 91 of the Criminal Justice Act 1967); wasting police time by giving false report (section 5(2) of the Criminal Law Act 1967); using public telecommunications system for sending message known to be false in order to cause annoyance (section 43(1)(b) of the Telecommunications Act 1984); behaviour likely to cause harassment, alarm or distress (section 5 of the Public Order Act 1986); and consumption of alcohol in designated public place (section 12 of Criminal Justice and Police Act 2001). Fixed penalty notices can also be issued for offences of cycling on a footway (section 54 of the Road Traffic Offenders Act 1988 in respect of section 72 of the Highway Act 1835); dog fouling (section 4 of the Dogs (Fouling of land) Act 1996) and litter (section 88 of the Environmental Protection Act 1990).

196. *Paragraph 2* sets out the power to detain. It provides that a designated community support officer can require the name and address of a person who he believes to have committed an offence to which the designated powers relate and in the police area to which the designation relates. If the other person fails to comply with the request to give his name and address or gives a name or address which the designated community support officer has reason to believe is false or inaccurate, the designated community support officer can require the other person to wait with him for up to 30 minutes, pending the arrival of constable. The other person may choose, if asked, to accompany the designated community support officer to a police station rather than wait. Any person who fails to comply with the request, by a designated officer, to give his name and address; or who makes off while subject to a requirement to wait for a limited period pending the arrival of a constable; or makes off while accompanying the designated officer to a police station having chosen to be escorted to a police station, will be guilty of an offence. The offence is punishable, on summary conviction, to a fine not exceeding level 3 on the standard scale (currently £1000). The powers in this paragraph can be used in relation to relevant fixed penalty offences or in respect of offences that appear to have caused alarm, injury or distress to any other person, or the loss of or damage to any other person's property. Conditions may be applied to the application of this paragraph by designation, such as limiting it to those offences witnessed by the community support officer or excluding particular offences or categories of offence.

197. Where *paragraph 3* is applied to a community support officer, it extends to him the powers of a constable under section 50 of this Act to require the name and address of a person who is, or is believed to have been, acting in an anti-social manner as defined in section 1 of the Crime and Disorder Act 1998, namely 'in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself'. The Community Support Officer is then given the same power of detention as is conferred by paragraph 2 in relation to a person who fails to comply with the requirement or appears to have given a false or inaccurate name or address.

198. *Paragraph 4* specifies the circumstances in which a designated community support officer may use reasonable force in the exercise of his powers to detain.

199. When *paragraph 5* is specified in a community support officer's designation, it extends to him the duty of a constable under section 12 of the Criminal Justice and Police Act 2001 to require an individual not to consume alcohol (or what he reasonably believes to be alcohol) in places designated by local authorities, and surrender alcohol in an unsealed container to the community support officer. The CSO may then dispose of the alcohol as he considers appropriate. Failure to comply with a community support officer's request is an offence punishable, on summary conviction, to a fine not exceeding level 2 on the standard scale (currently £500).

200. *Paragraph 6* confers similar powers on a community support officer to paragraph 5, but this time under the authority of section 1 of the Confiscation of Alcohol (Young Persons) Act 1997. A suitably designated CSO will be able to confiscate alcohol (or what he reasonably believes to be alcohol) in an unsealed container, from someone who is under 18 years of age or from someone who intends to supply it to someone who is under age of 18 for their consumption. The CSO may then be able to dispose of the alcohol as he considers appropriate. Failure to comply with a community support officer's request is an offence punishable, on summary conviction, to a fine not exceeding level 2 on the standard scale (currently £500).

201. When *paragraph 7* is specified in a community support officer's designation, it extends to him the power of a constable or a uniformed park-keeper under subsection (3) of section 7 of the Children and Young Persons Act 1933 to seize tobacco or cigarette papers from any person who appears to be under 16 years old whom he finds smoking in any street or public place. The CSO may then dispose of any seized material in such manner as the relevant police authority provides.

202. When *paragraph 8* is specified in a community support officer's designation, it extends to him the power of a constable under section 17 of the Police and Criminal Evidence Act 1984 (PACE) (entry for the purpose of saving life or limb or preventing serious damage to property). This would, for example, enable a community support officer to enter a property where neighbours suspected an elderly occupant had fallen and was unresponsive. Unlike the power to enter premises conferred in paragraph 9, this power does not require a community support officer to be accompanied by a constable.

203. Where *paragraph 9* is specified in a community support officer's designation, it extends to him the new powers of a constable under section 59 of this Act regarding vehicles used in a manner causing alarm, distress or annoyance. However, the new powers in so far as they include power to enter premises are only exercisable when in the company of and under the supervision of a constable.

204. Where specified in the designation of a community support officer, *paragraph 10* extends any powers conferred on designated persons for the removal of abandoned vehicles by regulations under section 99 of the Road Traffic Regulation Act 1984.

205. When *paragraphs 11* or *12*are specified in a community support officer's designation, they extend to him limited powers to stop vehicles and direct traffic. These powers would enable such community support officers to help agencies such as the Vehicle Inspectorate and local authorities to conduct roadworthiness and emissions tests and also to facilitate the escorting of abnormal loads.

206. *Paragraph 13* specifies powers that can be extended to a designated community support officer in respect of road checks. This includes the powers of a police officer to carry out an authorised road check under section 4 of PACE. This enables a road check (authorised by the rank of superintendent or above) to be established for the purposes of ascertaining whether a vehicle is carrying a person who committed an offence other than a road traffic offence or a [vehicle] excise offence; a person who is witness to such an offence; a person intending to commit such an offence; or a person who is unlawfully

at large. It also includes the powers of a constable conferred under section 163 of the Road Traffic Act 1984 to enable him to require a vehicle to stop for the purpose of a road check.

207. *Paragraphs 14* and *15*enable the extension of strictly limited powers of a constable under the Terrorism Act 2000. The purpose of extending such powers to designated community support officers is to enable them to provide valuable support to constables in times of terrorist threat and to give chief officers the discretion to deploy constables for duties that require their full expertise and powers in such times. If specified in a community support officer's designation, *paragraph 14* confers on him the powers of a constable under section 36 of the Terrorism Act 2000 to enforce a cordoned area, where the cordoned area has been established under the Terrorism Act. These powers enable a constable to prevent the cordon from being breached by giving orders (for example requiring a person to leave the cordoned area), making arrangements (for example for the removal of a vehicle) or imposing prohibitions or restrictions (for example to prevent or restrict access to the cordoned area). If specified in a community support officer's designation, *paragraph 15* confers on him the powers of a constable under sections 44(1)(a), 44(1)(d), 44(2)(b) and 45(2) of the Terrorism Act 2000 (powers of stop and search). These are the powers to stop and search vehicles; to search anything in or on a vehicle or carried by the driver or by any passenger in that vehicle; to search anything carried by a pedestrian; and to seize and retain any article discovered in the course of a search by him or a constable under these provisions. It does not extend the powers of a constable to search people – drivers, passenger or pedestrians. *Paragraph 15(2)* provides that these powers cannot be exercised by a designated community support officer except in the company of and under the supervision of a constable.

## Part 2: Investigating Officers

208. This Part includes a range of powers which would be needed to support the work of civilian investigating officers in specialist areas such as financial and Information Technology crime. They are mainly linked to entry, search and seizure. For example, powers to obtain and exercise search warrants, to seize evidence and to apply to a judge for access to confidential material. It also covers powers to enter and search premises following arrest. This set of powers is particularly relevant to the work of Scenes of Crime Officers, many of whom are already civilians. Investigating officers could also have a role in other aspects of the investigating process such as interviewing. This is recognised through other powers available in this Part: the power to arrest for further offences which may come to light during interview and the power to warn interviewees about the consequences of any failure to account for their presence at a particular place.

209. *Paragraph 16* enables a suitably designated person to apply for and be granted search warrants under PACE, to execute warrants and to seize and retain things for which a search has been authorised. It extends that power of seizure to computerised information. It provides that the standard safeguards covering the process of applying for a search warrant, the contents of the warrant and the way in which the warrant should be exercised are extended to warrants dealt with by designated persons. It imposes the same obligations on designated persons in relation to providing records of seizure, providing access to or copies of seized material and retaining seized material as apply to constables. It gives the same protection from seizure to legally privileged material in relation to seizures by designated persons as applies to seizures by constables.

210. *Paragraph 17* enables a suitably designated person to obtain access to confidential material under section 9 of PACE by making an application to a circuit judge under Schedule 1 to that statute. It extends standard PACE protections and obligations to material seized by or produced to a designated person under these provisions.

211. *Paragraph 18* enables a suitably designated person to use the powers under section 18 of PACE to enter and search any premises occupied or controlled by a person who is under arrest for an arrestable offence and to seize and retain items found on such a search.

The designated person may conduct such a search before the arrested person is taken to a police station and without obtaining the authority of an inspector if the presence of the arrested person is necessary for the effective investigation of the offence. Standard PACE protections and obligations are extended to material seized by a designated person under these provisions.

212. *Paragraph 19* enables a suitably designated person, when lawfully on any premises, to exercise the same general powers to seize things as are available to a constable under section 19 of PACE. The designated person may also make use of the power to require, in certain circumstances, the production of electronically stored material in a form in which it can be taken away. Once again, standard PACE protections and obligations are applied.

213. *Paragraph 20* enables a suitably designated person, instead of a constable, to act as the supervisor of any access to seized material to which a person is entitled, to supervise the taking of a photograph of seized material, or to photograph it himself.

214. *Paragraph 21* enables a suitably designated person to arrest a detained person for a further offence if it appears to him that the detained person would be liable to arrest for that further offence if released from his initial arrest. It also provides that the consequences of failure to account for objects or marks etc. will apply to such arrests.

215. *Paragraph 22* provides a power for the custody officer to transfer to a designated civilian investigating officer responsibility for a detained person. Section 39 of PACE places on custody officers the duty to ensure that all persons in police detention are treated in accordance with the Act and relevant codes of practice. Section 39(2) allows for this duty to cease if the custody officer transfers a person to the custody of a police officer investigating an offence or the custody of an officer who has charge of that person outside the police station. This paragraph modifies section 39(2) so that when a designated investigating officer is given custody of a detained person in the police station, the custody officer's responsibilities can similarly be transferred. Section 39(3) – the duty for the person investigating the offence, once the detained person is returned to the custody of the custody officer, to report back to the custody officer how the codes were complied with – is also applied to the investigating officer by this paragraph. A designated investigating officer using powers under this paragraph is regarded as having the detainee in his lawful custody, with a duty to prevent his escape and entitlement to use reasonable force.

216. *Paragraph 23* enables a suitably designated person to question an arrested person under sections 36 and 37 of the Criminal Justice and Public Order Act 1994 about facts which may be attributable to the person's participation in an offence. For example, that person's presence at a particular place at a relevant time or the presence of potentially incriminating objects, substances or marks. The designated person may also give the suspect the necessary warning about the capacity of a court to draw inferences from a failure to give a satisfactory account in response to questioning.

217. *Paragraph 24* enables a suitably designated person to use powers available to constables under Part 2 of the Criminal Justice and Police Act 2001 where those powers supplement powers conferred on designated persons under other paragraphs of Part 2 of the Schedule. In essence this means that where a designated person has been provided with a specific power of seizure and exercising it on premises is compromised by the sheer bulk or complexity of the material to be searched through, that material can be moved elsewhere for sifting, subject to a range of detailed safeguards.

## Part 3: Detention officers

218. This Part covers powers that would be exercised by detention officers at police stations. Many of them are connected to the handling of persons in custody – an area of work in which police support staff are increasingly involved – such as powers to search detained persons, to take fingerprints and certain samples without consent and to take

photographs. Providing police support staff with these and other powers will broaden the scope of the work they can undertake and ensure their work is underpinned by the law.

219. *Paragraph 25* enables a suitably designated detention officer to require certain defined categories of persons who have been convicted, cautioned, reprimanded or warned in relation to recordable offences to attend a police station to have their fingerprints taken. Recordable offences are set out in regulations made under section 27 of PACE: the National Police Records (Recordable Offences) Regulations 2000, which include offences carrying a sentence of imprisonment on conviction.

220. *Paragraph 26* enables a designated detention officer to carry out non-intimate searches of persons detained at police stations or elsewhere and to seize items found during such searches. Restrictions on the scope of searching and seizure and on the circumstances in which searches can be carried out are applied to designated persons in the same way as to constables.

221. *Paragraph 27* enables a designated detention officer to carry out searches and examinations in order to determine the identity of persons detained at police stations. Identifying marks found during such processes may be photographed. This makes subsection (6)(b) of section 54A of PACE (under which this power may be exercised by persons designated for the purpose by a chief officer of police) unnecessary. In consequence, section 54A(6) is amended by paragraph 9(2) of Schedule 7.

222. *Paragraph 28* enables a designated detention officer to carry out intimate searches in the same very limited circumstances that are applicable to constables. An intimate search is a search that consists of the physical examination of a person's body orifices other than the mouth.

223. *Paragraph 29* enables a designated detention officer to take fingerprints without consent in the same circumstances that a constable can. They can also discharge the duty to inform the person concerned that his fingerprints may be the subject of a speculative search against existing records.

224. *Paragraph 30* enables a designated detention officer to discharge the duty to inform a person from whom an intimate sample has been taken that the sample may be the subject of a speculative search against existing records.

225. *Paragraph 31* enables a designated detention officer to take non-intimate samples without consent and to inform the person from whom the sample is to be taken of any necessary authorisation by a senior officer and of the grounds for that authorisation. The designated person may also inform the person concerned that a non-intimate sample may be the subject of a speculative search against existing records.

226. *Paragraph 32* enables a designated detention officer to require certain defined categories of persons who have been charged with or convicted of recordable offences to attend a police station to have a sample taken.

227. *Paragraph 33* enables a designated detention officer to photograph detained persons in the same way that constables can. This makes subsection (3)(b) of section 64A of PACE (under which this power may be exercised by persons designated for the purpose by a chief officer of police) unnecessary. In consequence, section 64A(3) is amended by paragraph 9(5) of Schedule 7.

## Part 4: Escort Officers

228. This Part covers escort powers. It includes powers enabling civilians to transport arrested persons to police stations. It also allows civilians to escort detained persons from one police station to another or between police stations and other locations specified by the custody officer.

229. *Paragraph 34* enables a suitably designated person to carry out the duty of taking a person arrested by a constable to a police station as soon as practicable. That must be a designated station (i.e. a main station equipped for holding detainees) unless the person is working in an area not covered by such a station and it appears that it will not be necessary to hold the arrestee for more than six hours. The designated person may delay removal to a police station if the arrestee is required elsewhere for immediate investigative purposes. A designated person using powers under this paragraph is regarded as having the arrestee in lawful custody. He has a duty to prevent escape and is entitled to use reasonable force and to carry out non-intimate searches.

230. *Paragraph 35* enables a suitably designated person, with the authority of the custody officer, to escort detainees between police stations or between police stations and other specified locations. Once again, a designated person using powers under this paragraph is regarded as having the detainee in lawful custody. He has a duty to prevent escape and is entitled to use reasonable force and to carry out non-intimate searches. Where the custody officer transfers a detainee to a designated person under these provisions, the designated person becomes responsible for ensuring appropriate treatment for the detainee.

### *Section 39: Police powers for contracted-out staff*

231. A number of police forces already contract out aspects of their detention and escort services to the private sector, but employees of companies involved in that work have not had access to relevant police powers. This section allows for the powers in Parts 3 and 4 of Schedule 4 to be conferred by the chief officer of a force on employees of companies contracted to provide detention and escort services to that force.

232. *Subsection (1)* provides that the section only applies where the police authority has entered into a contract with a 'contractor' for the provision of services relating to the detention or escort of persons who have been arrested or are detained in custody.

233. *Subsection (2)* enables the chief officer in charge of a force to designate any person who is an employee of a contractor as either a detention officer or an escort officer or both.

234. Under *subsection (3)*, chief officers will be able to confer on such employees some of the powers and duties otherwise only available to police constables and others. *Subsection (6)* limits the powers that can be conferred on designated persons under this section to those in Part 3 (detention officers) and Part 4 (escort officers) of Schedule 4 to the Act. *Subsection (7)* clarifies that a designation cannot authorise or require conduct beyond the specified functions and that a designation may contain restrictions and conditions. For example, the designation may specify that the powers can only be used in a particular area or for a particular period.

235. *Subsections (4)* and *(5)* prevent a designation being granted unless the chief officer is satisfied that the person is suitable to carry out the relevant functions, capable of carrying them out and has been adequately trained and that the contractor is a fit and proper person to supervise the carrying out of the relevant functions.

236. *Subsection (8)* provides that where a power allows for the use of reasonable force when it is exercised by a police constable, a person exercising such a power under a designation shall have the same entitlement to use reasonable force as the constable; for example when carrying out a search.

237. *Subsection (9)* gives the Secretary of State the power to make regulations covering the handling of complaints or allegations of misconduct against designated persons when carrying out the relevant functions. *Subsection (10)* provides that regulations under subsection (9) may apply any provision of Part 2 of this Act in respect of complaints against police officers to complaints against persons designated under this section. The intention is to bring contracted-out persons within the remit of the Independent Police Complaints Commission. *Subsection (11)* requires the Secretary of State, before

making regulations under this section, to consult those whom he considers represent the interests of police authorities and chief officers of police. Where this formulation occurs in existing legislation, the Secretary of State currently consults the APA and ACPO and/or CPOSA. The Secretary of State must also consult the Independent Police Complaints Commission. He may in addition consult anyone else he chooses.

238. *Subsection (12)* enables the chief officer to determine a fixed period for the designation which must be specified in the designation. The designation may be renewed at any time, but it can be withdrawn or cease. *Subsection (13)* requires the designation to cease if the designated person stops being an employee of the contractor or if the contract between the police authority and the contractor is terminated or expires.

### *Section 40: Community safety accreditation schemes*

239. This section enables a chief officer of police to establish and maintain a scheme that accredits suitably skilled and trained non-police employees with powers to undertake specified functions in the support of the police. For example, a chief officer may accredit street wardens employed by the local authority with powers to address some anti-social behaviour offences.

240. *Subsections (1)* and *(2)* of this section enable the chief officer of a force to establish and maintain a community safety accreditation scheme in order that some of the powers normally available to police constables or others could be conferred on persons accredited under this scheme. *Subsection (3)* sets out the purposes of such a scheme. *Subsections (4)* and *(5)* list those whom chief officers must consult before establishing a community safety accreditation scheme in their police area. The Commissioner of the Metropolitan Police must consult the Metropolitan Police Authority, the Mayor of London, and every local authority any part of whose area lies within the police area. Every other chief officer must consult with the relevant police authority for that area and every local authority any part of whose area lies within the police area.

241. *Subsection (7)* requires that annual policing plans (prepared under section 8 of the 1996 Act) and drafts of such plans must detail the existence or otherwise of a community safety accreditation scheme in the area and any proposals to introduce such a scheme or modify an existing scheme. Annual plans should also detail the arrangements for powers to be extended to police support staff, and how the community safety accreditation scheme supplements this.

242. *Subsection (8)* ensures that a community safety accreditation scheme will require that arrangements be made with employers in the local police area. These arrangements will establish the supervision by these employers of those employees who have had conferred on them some of the powers normally available to a police constable or others.

### *Section 41: Accreditation under community safety accreditation schemes*

243. *Subsection (1)* specifies that this section applies only where a chief officer has made arrangements with an employer to carry out community safety functions as part of a community safety accreditation scheme. *Subsections (2)* and *(3)* of the section enable the chief officer to accredit any employee of an employer who has entered into arrangements for the purposes of a community safety accreditation scheme, on receipt of an application, with any of the powers listed in Schedule 5.

244. *Subsection (4)* lists preconditions for the accreditation of any person. The chief officer must be satisfied that the employer is suitable to supervise a person who has such an accreditation, and that the accredited person is suitable to exercise the specified powers and duties, is capable of carrying out the relevant functions and has been adequately trained.

245. *Subsection (5)* enables a chief officer to charge a fee he considers appropriate for consideration of an application for accreditation or the renewal of accreditation, and for the granting of an accreditation.

246. *Subsection (6)* clarifies that accreditation cannot authorise or require conduct beyond the specified functions and that a designation may contain restrictions and conditions. For example, the accreditation may limit the extension of powers to a particular geographical area such as a particular area that is known to suffer from anti-social behaviour.

247. *Subsection (7)* enables the chief officer to determine a fixed period for the accreditation, which must be specified in the accreditation. The accreditation may be renewed at any time. However, it can be withdrawn or cease. *Subsection (8)* requires the accreditation to cease if the accredited person stops working for the employer who made arrangements with the chief officer to provide community safety functions under a community safety accreditation scheme or if the arrangements come to an end.

### *Schedule 5: Powers exercisable by accredited persons*

248. This schedule details the powers that can be exercised by an accredited person if specified in his accreditation. The list of powers is more limited than those that can be conferred on community support officers under Part 1 of Schedule 4. Accredited persons can issue fixed penalty notices for offences of cycling on a footway (section 54 of the Road Traffic Offenders Act 1988 in respect of section 72 of the Highway Act 1835); dog fouling (section 4 of the Dogs (Fouling of Land) Act 1996) and litter (section 88 of the Environmental Protection Act 1990), but cannot issue fixed penalty notices under the Criminal Justice and Police Act 2001 (*paragraph 1*). Under *paragraphs 2* and*3*of Schedule 5, accredited persons can have conferred on them the power to require the name and address of a person acting in an anti-social manner, like community support officers under paragraphs 2 and 3 of Schedule 4. However, unlike community support officers, accredited persons cannot have conferred on them the power to detain an individual who does not comply with this request. Nor can accredited persons use reasonable force when exercising their powers (as community support officers can under paragraph 4 of Schedule 4). Under *paragraphs 4*, *5* and *6*, accredited persons can have conferred on them the same powers regarding alcohol consumption in designated places, confiscation of alcohol and confiscation of tobacco as community support officers under paragraphs 5, 6 and 7 of Schedule 4. Again as with community support officers, accredited persons can have conferred on them any powers conferred on designated persons for the removal of abandoned vehicles by regulations under section 99 of the Road Traffic Regulation Act 1984 (*paragraph 7*). Under *paragraphs 8* and *9*, accredited persons can also have conferred on them the same powers regarding stopping vehicles for testing, and the escorting of abnormal loads, as community support officers under paragraphs 11 and 12 of Schedule 4. However, accredited persons are not permitted to enter or search any premises for the purposes of saving life or limb or preventing serious damage to property (as suitably designated community support officers can under paragraph 8 of Schedule 4). Accredited persons do not have any of the powers to seize vehicles used to cause alarm etc. (paragraph 9 of Schedule 4). They do not have any of the powers to carry out road checks (paragraph 13 of Schedule 4). Nor do they have any powers under the Terrorism Act 2000 (paragraphs 14 and 15 of Schedule 4).

### *Section 42: Supplementary provisions relating to designations and accreditations*

249. *Subsection (1)* provides that where a designated or accredited person relies on any power or duty in dealings with a member of the public, he must show that person his designation or accreditation if asked to do so.

250. *Subsection (2)* provides that persons designated or accredited by a chief officer of police can only exercise powers if they are wearing a uniform endorsed by the chief officer and

identified or described in their designation or accreditation. Accredited persons must also wear a badge in a form to be decided by the Secretary of State.

251. *Subsections (3)* and *(4)* allow chief officers and Directors General respectively to modify or withdraw a designation or accreditation at any time.

252. *Subsections (5)* and *(6)* specify that if a chief officer modifies or withdraws the designation of a contracted-out individual or the accreditation of an individual, he must notify the relevant contractor or employer.

253. *Subsections (7)* to *(10)* provide that, for the purposes of determining liability for unlawful conduct, conduct in reliance on a designation or accreditation shall be taken as conduct in the course of employment by the designated or accredited person's employer – whether that be the police authority, Service Authority or some other entity. Following from that, the relevant employer is to be treated as a joint tortfeasor.

### *Section 43: Railway safety accreditation scheme*

254. This section allows the Secretary of State to make regulations to enable the chief constable of the BTP to establish and maintain a railway safety accreditation scheme. The scheme would be largely modelled on the community safety accreditation schemes of chief officers of Home Office police forces provided for in section 40, albeit that the railway safety accreditation scheme may differ where necessary to meet the specific needs of the railways. For example, it would allow the BTP's chief constable to accredit suitably trained security staff employed by train operating companies with powers to deal with certain anti-social activity on the railways.

255. *Subsection (2)* defines the railway safety accreditation scheme by reference to its geographical extent and the powers available to those accredited under that scheme. The scheme is limited to the railways jurisdiction of the BTP, whose jurisdiction is defined in section 53(3) of the British Transport Commission Act 1949 as 'in, on or in the vicinity of policed premises in England and Wales'. 'Policed premises' are in essence the areas of railway property that are policed by the BTP.

256. *Subsection (3)* allows the regulations permitting the setting up and maintenance of the railway safety accreditation scheme to define its purpose, the procedure to be followed when establishing the scheme and the matters that must be contained in that scheme.

257. *Subsection (4)* allows the regulations to make provision on who may be accredited under the railway safety accreditation scheme and the procedure and criteria used in their accreditation.

258. *Subsection (5)* allows the regulations to confer powers on a person accredited under the railway safety accreditation scheme. The effect of *subsection (6)* is that, with two exceptions, only the powers available to an accredited person under a community safety accreditation scheme, listed in Schedule 5 to this Act, may be conferred on a person accredited under the railway safety accreditation scheme. The two powers, listed in *subsection (7)*, that are not included in Schedule 5 but can be conferred on such accredited persons are the powers to issue 'on the spot' fixed penalty notices for the offences of trespassing on a railway and throwing stones at trains.

259. *Subsection (8)* allows the regulations permitting the setting up and maintenance of the railway safety accreditation scheme to apply to a person accredited under that scheme any of the provisions of Chapter 1 that can be applied to a person accredited under a community safety accredited scheme. The community safety accreditation scheme provisions can be applied with modifications if necessary.

260. *Subsection (9)* lists those persons whom the Secretary of State must consult before making regulations under subsection (1). He must consult the chief constable of the BTP, and the British Transport Police Committee. He must consult those whom he considers represent the interests of police authorities and chief officers of police. Where

this formulation occurs in existing legislation, the Secretary of State currently consults the APA and ACPO and/or CPOSA. The Secretary of State must also consult the Mayor of London and those whom he considers represent the interests of local authorities. He may in addition consult anyone else he chooses.

### *Section 44: Removal of restriction on powers conferred on traffic wardens*

261. Under section 95 of the Road Traffic Regulation Act 1984 (RTRA 1984), traffic wardens are empowered to undertake functions prescribed by the Secretary of State. Section 96(1) of the RTRA 1984 provides that for the purposes of carrying out such functions, references in certain specified enactments to a constable shall include references to a traffic warden. Traffic wardens can then exercise the powers of a constable.

262. A limitation is, however, applied by section 96(3). This has the effect of providing that certain powers cannot be conferred on traffic wardens. One of these powers is the general power to stop vehicles conferred by section 163 of the Road Traffic Act 1988 (RTA 1988). At present, traffic wardens can stop vehicles only in a limited range of circumstances. This restricts the functions they can carry out. It means that generally police officers must be employed in undertakings where it may be necessary to stop vehicles, even though their other powers may not be required. *Subsection (3)* removes the reference in section 96(3) of the RTRA 1984 to section 163 of the RTA 1988. It thereby gives traffic wardens the same power to stop vehicles as that currently held by police officers. As traffic wardens already have a power to direct traffic they will therefore now be able to undertake escorting duties. *Subsection (2)* makes clear that the power to stop also includes a power to stop vehicles for tests of their roadworthiness and compliance with construction and use regulations.

### *Section 45: Code of practice relating to chief officers' powers under Chapter 1*

263. This section requires the Secretary of State to issue a code of practice about the exercise of the powers extended under Chapter 1 of Part 4. It provides that he may revise any part or all of the code of practice from time to time; and that chief officers and Directors General must have regard to this code in discharging any function to which the code applies. Before issuing or revising any such code, the Secretary of State must consult the Directors General of NCIS and NCS and the Service Authorities of those two organisations. He must also consult those whom he considers represent the interests of police authorities and chief officers of police. Where this formulation occurs in existing legislation, the Secretary of State currently consults the APA and ACPO and/or CPOSA. In addition, he must consult the Mayor of London, and those whom he considers represent the interests of local authorities. The Secretary of State may also consult anyone else he chooses. The Secretary of State must lay any codes or revisions of codes issued under this section before Parliament. The code will include such matters as appropriate combinations of powers that could be given to the various categories of civilian officers. It is likely to cover issues such as criteria for satisfaction of the tests in sections 38(4), 39(4) and (5), and 41(4) as to the suitability and capability of persons for particular functions and as to adequate standards of training. For example, it is proposed that criminal record checks should be carried out before a person is designated or accredited under the Act.

### *Section 46: Offences against designated and accredited persons etc.*

264. This section sets out various offences relating to assaulting, obstructing or impersonating designated or accredited persons. They parallel the provision for offences relating to assaulting, obstructing or impersonating police officers contained in sections 89 and 90 of the 1996 Act.

265. *Subsection (1)* makes it an offence to assault a designated or accredited person in the execution of his duty or to assault a person assisting a designated or accredited person

in the execution of his duty. The penalty is imprisonment not exceeding six months or a fine not exceeding level 5 on the standard scale (currently £5000) or both.

266. *Subsection (2)* makes it an offence to resist or wilfully obstruct a designated or accredited person in the execution of his duty or to resist or wilfully obstruct a person assisting a designated or accredited person in the execution of his duty. The penalty is imprisonment not exceeding one month or a fine not exceeding level 3 on the standard scale (currently £1000) or both.

267. *Subsection (3)* makes it an offence, provided there is intent to deceive, to impersonate or pose as a designated or accredited person. It is also an offence for an accredited or designated person to make any statement or act in a way that falsely suggests that he has powers above and beyond those he in fact has. The penalty is imprisonment not exceeding six months or a fine not exceeding level 5 on the standard scale (currently £5000) or both.

### *Section 47: Interpretation of Chapter 1*

268. This section defines certain terms used in Chapter 1 of Part 4. Amongst other things it provides that references to carrying on business include reference to carrying out statutory functions. This would include, for example, the functions of a local authority.

## Part 4Chapter 2: Provisions modifying and supplementing police powers

### *Section 48: Offences for which a person may be arrested without warrant*

269. This section amends section 24 of PACE for the purpose of including three further offences in the list of offences for which a power of summary arrest exists. It also provides for the complete list of arrestable offences previously in section 24(2) to be set out in a more accessible form in a new schedule. Under section 24 of PACE a constable may arrest without warrant anyone he has reasonable grounds to suspect has committed, is about to commit or is committing an arrestable offence. Section 24 sets out the definition of an arrestable offence as (a) any offence for which the sentence is fixed by law, (b) any offence for which a sentence of imprisonment of five years or more may be imposed and (c) any offence listed in subsection (2). If an offence is not listed as arrestable under section 24 of PACE, then unless general arrest conditions under section 25 of PACE apply, or there is a specific statutory power of arrest such as that attached to section 103(1)(b) of the Road Traffic Act 1988, the police are unable to take suspects into custody and question them. Questioning can only take place at the scene of the offence and a suspect may only be summonsed to appear at a magistrates' court to answer charges. Arrestable offences attract other investigative powers under PACE. For example under section 17(1)(b) of PACE a constable can enter and search any premises without a warrant for the purpose of arresting a person for an arrestable offence.

270. *Subsections (2)* and *(3)* have the effect of amending subsections 1(c) and (2) of section 24 of PACE to replace the list of arrestable offences in section 24(2) of PACE with a new Schedule 1A (see paragraph 274 below).

271. *Subsection (4)(a)* amends section 24(3)(a) of PACE to replace the reference to offences mentioned in section 24(2) of PACE with offences listed in Schedule 1A.

272. Section 24(3) of PACE provides that conspiring to commit, attempting to commit, inciting, aiding, abetting and counselling or procuring the commission of any offence under section 24(2) of PACE will constitute an arrestable offence without prejudice to section 2 of the Criminal Attempts Act 1981. However, where an offence is triable only summarily, it cannot be the object of a criminal attempt under section 1 of the Criminal Attempts Act 1981. Currently, section 24(3)(b) of PACE (attempts to commit such offences) specifically excludes an offence under section 12(1) of the Theft Act 1968 (taking a vehicle without consent). However this is now not the only summary only

offence listed in section 24(2). *Subsection (4)(b)* therefore amends section 24(3)(b) to make it clear that it only applies to offences that are triable either way or indictable only.

273. *Subsection (5)* inserts, after Schedule 1 to PACE, new Schedule 1A – set out in Schedule 6 to this Act.

### *Schedule 6: Specific offences which are arrestable offences*

274. This schedule inserts new *Schedule 1A* in the Police and Criminal Evidence Act 1984. Schedule 1A contains the list of arrestable offences to which section 24 (1)(c) applies. The list contains three new additions:

- Making off without payment which is an offence under section 3 of the Theft Act 1978 (*paragraph 7*);
- Driving while disqualified which is an offence under section 103(1)(b) of the Road Traffic Act 1988 (*paragraph 16*). This offence has a power of arrest, but it is restricted to situations where, effectively, a uniformed police officer physically sees a motorist driving a vehicle whom he reasonably suspects of being disqualified. The power of arrest is therefore being extended firstly so that it can be exercised by police officers not in uniform, and secondly so that it can be exercised after the event, in relation to any person who has driven a vehicle on the road while disqualified; and
- Assaulting a police officer in the execution of his duty or a person assisting such an officer which is an offence under section 89(1) of the 1996 Act (*paragraph 22*).

275. The creation of three new arrestable offences will not have effect in relation to offences committed before commencement of section 48.

### *Section 49: Power of arrest in relation to failure to stop a vehicle*

276. This section creates a statutory power of arrest for the offence under section 163 of the Road Traffic Act 1988 – failure to stop a vehicle when required to do so by a constable in uniform. But section 163 of the Road Traffic Act 1988 is not made an arrestable offence, as the power to enforce the offence is not intended to be exercisable by a constable out of uniform. The new power of arrest for failure to stop a vehicle will not have effect in relation to offences committed before commencement of the Act.

277. *Subsection (1)* inserts a new subsection (4) in section 163 of the Road Traffic Act 1988 to provide a constable in uniform with the power to arrest without warrant a person he has reasonable cause to suspect has committed an offence of failing to stop a vehicle when required to do so by a constable in uniform.

278. *Subsection (2)* provides a constable in uniform with the power to enter and search premises for the purpose of effecting an arrest under section 163 of the Road Traffic Act 1988. It does this by adding to section 17(1)(c) of PACE a new sub-paragraph (iiia) listing the offence under section 163 of the Road Traffic Act 1988 (failure to stop when requested to do so by a constable in uniform). A uniformed officer could rely on this power to arrest, at some later point, a suspect who has left the scene.

### *Section 50: Persons acting in an anti-social manner*

279. Section 1 of the Crime and Disorder Act 1998 permits certain 'relevant authorities' (as to which see sections 61 and 62 below) to apply for anti-social behaviour orders, which deal with persons acting in an anti-social manner. Acting in an anti-social manner is defined as a manner that causes or is likely to cause harassment, alarm or distress to one or more persons not of the same household. This section provides uniformed police officers with a power to combat such anti-social behaviour.

280. *Subsection (1)* of this section provides a uniformed constable with the power to require a name and address from a person he believes has been acting, or is acting, in an anti-social manner. *Subsection (2)* makes it an offence for a person to fail to give his name and address when so required, or to give a false or inaccurate name. The offence is punishable, on summary conviction, by a fine not exceeding level 3 on the standard scale (currently £1000).

### *Section 51: Independent custody visitors for places of detention*

281. Custody visiting to police stations provides a means by which volunteers from the community who are independent of the police and the criminal justice system can inspect and report on the way in which arrested persons are dealt with by the police and the conditions in which they are held. Although it remains a little known feature of the criminal justice system, it is thought to have a vital role as the only fully independent check on the extent to which the rights of those individuals detained at police stations are being respected.

282. Custody visiting takes place already, through the voluntary application by police authorities of Home Office guidance. This section places custody visiting on a statutory basis, which will immediately raise the profile of the whole system. Custody visiting schemes in each police authority area will be mandatory rather than an optional requirement. A supporting code of practice will provide for consistent standards across England and Wales.

283. *Subsection (1)* of this section provides that each police authority in England and Wales will set up, administer and review the arrangements for independent custody visiting within their area.

284. *Subsection (2)* provides that police authorities, when recruiting, shall ensure that any volunteer appointed to become a custody visitor must be independent of the police authority and the chief officer of the relevant police force. This will ensure that there is no conflict of interest. For example, serving police authority members, serving police officers and support staff and special constables will not be eligible to apply until after they have left or retired from their current duties.

285. *Subsection (3)* covers the general powers considered necessary for custody visitors to carry out their functions. For example, the custody visitor should have access to the custody suite where detainees are kept and the food preparation area if that is separate to the custody suite.

286. *Subsection (4)* enables the police to refuse a custody visit to a specific detainee in limited circumstances and with the authority of an officer of at least inspector rank. The grounds need to be grounds already specified in the arrangements regarding independent custody visiting made by the police authority, and procedures regarding denial of access must be followed. Under *subsection (5)* the grounds must also be amongst those set out in the Secretary of State's code of practice referred to in subsection (6). Such grounds may, for example, refer to a reasonable belief that a visit would have adverse consequences such as interference with evidence or other suspects being alerted.

287. *Subsection (6)* requires the Secretary of State to issue (and permits him from time to time to revise) a code of practice regulating independent custody visiting, to which police authorities and independent custody visitors must, under *subsection (9)*, have regard. This will help to ensure consistent standards across England and Wales. It also permits the Secretary of State to modify the code if necessary. *Subsection (7)* requires the Secretary of State, before issuing or revising a code of practice, to consult those whom he considers represent the interests of police authorities and chief officers of police. Where this formulation occurs in existing legislation, the Secretary of State currently consults the APA and ACPO and/or CPOSA. The Secretary of State may also consult anyone else he chooses. The Secretary of State must lay any codes or revisions of codes issued under this section before Parliament (*subsection (8)*).

### *Section 52: Detention review for detained persons who are asleep*

288. The section makes technical amendments to PACE to resolve a conflict between section 37(4) and (5) (duties of custody officer before charge) and section 40(12) (review of detention) of that Act, and a similar conflict between section 38(4) and (5) (duties of custody officer after charge) and section 40(12) (review of detention).

289. Section 40 of PACE sets out provisions for periodic reviews of detention of each person held in police custody in connection with the investigation of an offence. The officer who carries out a review is known as the 'review officer'. Section 40(12) of PACE allows a detainee who is asleep not to be woken to make representations about his continued detention and there is no requirement for the review officer to offer him the opportunity to make representations in such circumstances. But sections 37(1) to (6) (duties of custody officer before charge) which apply by virtue of section 40(8), and specifically sections 37(4) and (5), mean that the detainee must be present when the grounds for continued detention are recorded by the review officer who must at the same time inform him of those grounds. Section 37(6) sets out exceptions to cover situations where a person is: (a) incapable of understanding what is said to him; (b) violent or likely to become violent; or (c) in urgent need of medical attention. The same conflict is also present in sections 38(1) to (6) (duties of custody officer after charge) which apply by virtue of section 40(10). Sections 38(3) and (4) require the detainee to be present when the grounds for continued detention are recorded by the review officer who must at the same time inform him of those grounds. Section 38(5) sets out exceptions to cover situations where a person is: (a) incapable of understanding what is said to him; (b) violent or likely to become violent; or (c) in urgent need of medical attention.

290. The conflicts are resolved in this Act by amendments to PACE making an exception similar to those contained in sections 37(6) and 38(5) to cover a situation where a person is asleep at the time when review and representations should take place.

291. *Subsection (1)* of this section amends section 40(8) of PACE to make reference to a new *subsection (8A)* containing specific modifications. *Subsection (2)* inserts after 40(8) the new *subsection (8A)*. *Subsections (8A)(a)* and *(b)* replicate existing provisions. However, new *subsection (8A)(c)* inserts after section 37(6)(a) of PACE a new paragraph *(aa)* containing the word "asleep", thus adding situations in which the person whose detention is under review is asleep to the list of exceptions to the requirement for that person to be present when the written record as to reasons for his detention is made, and to have those reasons explained to him at that time.

292. *Subsection (3)(a)* simply amends section 40(10) to ensure that section 38(1) to (6B) of PACE and not just 38(1) to (6) will have effect where a person whose detention is under review has been charged before the review. *Subsection (3)(b)* of this section amends section 40(10) of PACE to make reference to a new *subsection (10A)* containing specific modifications. *Subsection (4)* inserts after section 40(10) the new *subsection (10A)*. *Subsection (10A)(a)* is a slight modification of existing provision: it provides for references to the person arrested or charged (rather than simply the person arrested) to be substituted by a reference to the person whose detention is under review. New *section (10A)(b)* inserts after section 38(5)(a) of PACE a new paragraph *(aa)* containing the word "asleep", thus adding situations in which the person whose detention is under review is asleep to the list of exceptions to the requirement for that person to be present when the written record as to reasons for his detention is made, and to have those reasons explained to him at that time.

### *Section 53: Persons suspected of offences connected with transport systems*

293. A second technical amendment to PACE addresses some loopholes in respect of Part II of the Transport and Works Act 1992 and sections 34 and 62 of PACE, which could cause problems with the processing of a drunken train or tram driver at the police station and potentially may impact on a subsequent prosecution.

294. Chapter 1 of Part II of the TWA 1992 deals with offences involving drink or drugs on particular transport systems. Section 29 gives the police power to require breath tests; section 30 gives the police powers of entry and arrest. The provisions are analogous to those that apply under road traffic legislation to driving with excess alcohol. In particular, the power to arrest without warrant contained in section 30(2) of the TWA 1992 uses identical wording to that in section 6(5) of the Road Traffic Act 1988:

"A constable may arrest a person without warrant if–

(a) as a result of a breath test… he has reasonable cause to suspect that the proportion of alcohol in that person's breath or blood exceeds the prescribed limit, or

(b) that person has failed to provide a specimen of breath when required to do so… and the constable has reasonable cause to suspect that he has alcohol in his body.

295. A person arrested under either section 30(2) of the TWA 1992 or section 6(5) of the RTA 1988 is not necessarily being arrested 'for an offence'. This is significant in respect of the provisions of PACE dealing with detention. For example, section 34(1) of PACE provides that 'a person arrested for an offence shall not be kept in police detention except in accordance with the provisions of this Part of this Act.'

296. Section 34(6) of PACE provides that a person arrested under section 6(5) of the RTA 1988 is to be treated under PACE as if he had been arrested for an offence. That ensures that all the normal PACE provisions in regard to treatment in custody apply. It also ensures that where a positive breath test is provided, the person can then be charged and detained or bailed under PACE.

297. There is no similar provision in relation to persons being breath tested under the TWA 1992. This has led to doubt as to whether there is power to charge a person under PACE and then use the relevant PACE powers to detain or bail him.

298. *Subsection (1)* of this section simply inserts into section 34(6) of PACE a reference to section 30(2) of the TWA 1992. This ensures that all the normal PACE provisions will apply to someone arrested under that Act too, either for failure to provide a specimen of breath when required to do so or where a constable has reasonable grounds to suspect that the proportion of alcohol in that person's breath or blood exceeds the prescribed limit.

299. Another anomaly applies in relation to blood or urine samples which may be required if a suspected offender refuses to supply a breath test. Blood and urine samples are intimate samples the taking of which, under section 62(1)(a) of PACE, must be authorised by an officer of at least superintendent rank (this will be lowered to officer of at least inspector rank on implementation of section 80(1) of the Criminal Justice and Police Act 2001) and with the consent of the suspect. Road traffic cases under sections 4 to 11 of the RTA 1988 are exempt from the normal requirement to obtain the authority of a superintendent to take an intimate sample from a person in custody by virtue of section 62(11) of PACE. However, this exemption does not currently apply under the TWA 1992. That would mean that if a blood or urine specimen were required from a suspected offender without prior authorisation by a superintendent, the sample could be treated as inadmissible. This could lead to the failure of attempts to prosecute successfully persons suspected of driving particular modes of transport while under the influence of alcohol or drugs.

300. *Subsection (2)* of this section therefore amends section 62(11) of PACE to include a reference to sections 26 to 38 of the TWA 1992 so that the taking of specimens under the 1992 Act is similarly unaffected by the PACE requirement to obtain the authorisation of an officer of at least superintendent rank.

### *Section 54: Persons authorised to take intimate samples from persons in police detention*

301. Section 62(9) of PACE 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.

302. *Subsection (1)* amends section 62(9) so that registered health care professionals may also take samples that currently must be taken by a registered medical practitioner.

303. *Subsections (2)* and *(3)* define the term 'registered health care professional'. A registered health care professional is a person (other than a medical practitioner) who is a registered nurse or a registered member of a health care profession which has been designated by the Secretary of State. The health care professions which may be designated are those professions specified in section 60(2) of the Health Act 1999, namely:

(a) the professions regulated by the Pharmacy Act 1954, the Medical Act 1983, the Dentists Act 1984, the Opticians Act 1989, the Osteopaths Act 1993 and the Chiropractors Act 1994,

(b) the professions regulated by the Nurses, Midwives and Health Visitors Act 1997,

(c) the professions regulated by the Professions Supplementary to Medicine Act 1960,

(d) any other profession regulated by an Order in Council under section 60 of the Health Act 1999.

### *Section 55: Extension of role of health care professionals*

304. When investigating whether a driver has committed a drink driving offence, a constable may, under section 7 of the Road Traffic Act 1988 (RTA 1988 1988), require the driver to provide a specimen of blood for testing in a laboratory. The offences in question are: causing death by careless driving when under the influence of drink or drugs (section 3A, RTA 1988); driving or being in charge of a vehicle when under the influence of drink or drugs (section 4, RTA 1988); and, driving or being in charge of a vehicle with alcohol concentration above the prescribed limit (section 5, RTA 1988). From the sample they can discover the level of alcohol present and whether the legal limit has been exceeded. This helps determine whether a charge should be brought and the nature of any such charge.

305. The current position is that intimate samples, such as specimens of blood, can be taken, for whatever purpose, with the driver's consent, and only by a medical practitioner. This position is established by section 62(9) of PACE and section 11(4) of the RTA 1988.

306. As regards section 62(9), a yet to be implemented amendment was made by section 80(2) of the Criminal Justice and Police Act 2001. This allows nurses to take such section 62(9) samples at police stations. (Section 54 of this Act further broadens the provision to allow all registered health care professionals to take such samples.) Section 80(2) of the Criminal Justice and Police Act 2001 did not however amend section 11(4) of the RTA 1988. As a result, in road traffic cases the specimen must still be taken by a medical practitioner.

307. The effect of this section is to enable, in routine cases, a registered health care professional instead of a medical practitioner to take the specimen required. The new provision aims to help prevent delays and removes the need to call on a medical practitioner unnecessarily.

308. *Subsection (1)* provides that it shall be the constable making the requirement who decides whether the specimen is taken by a registered health care professional or a medical practitioner. This is to avoid the possibility that a person might argue he would

consent to the taking of a specimen by a medical practitioner (who might not be readily available) but not by a registered health care professional.

309. Under the present section 7 there can be no requirement to provide a specimen where a medical practitioner is of the opinion that for medical reasons a specimen cannot or should not be taken. *Subsection (2)* provides that a registered health care professional's opinion should carry the same weight unless a medical practitioner is of the contrary opinion.

310. *Subsections (3)* and *(4)* define the term 'registered health care professional' (see paragraph 303 above).

311. *Subsection (5)* confirms that a specimen is properly taken only if the subject consents and the specimen is taken by a medical practitioner or, if at a police station, by either a medical practitioner or a registered health care professional.

### *Section 56: Specimens taken from persons incapable of consenting*

312. Under existing legislation (Road Traffic Act 1988, section 11(4)) a person must consent before a blood specimen can be taken. If he does not consent, the person taking the specimen could be committing an offence. To take a sample without consent could constitute an assault. It could also, in affecting the relationship between patient and doctor, amount to a breach of medical ethics. As a result, if a person cannot give consent, typically because he is unconscious following a road traffic accident, there can be no specimen. This can prevent an appropriate drink driving prosecution because evidence as to the amount of alcohol in the person's blood is not available.

313. This section enables a medical practitioner (but not a registered health care professional) to take a specimen without consent when, and only when, a person cannot give consent because of his condition following an accident. However, once the person's condition has improved, he will be asked if he consents to the analysis of the specimen. If he does not consent, he will be committing an offence, but the sample will not be analysed. The person taking the sample will be a police surgeon whenever possible, but never a person with direct medical responsibility for the patient. He will not to be obliged to take the specimen if it is against his own ethics or the medical well-being of the patient. Consequently, the changes enable a specimen to be taken from someone incapable of giving their consent, without the person taking it becoming potentially liable for assault and without putting a person unable to give consent at a disadvantage by comparison with one who can.

314. *Subsection (1)* inserts a new section 7A in the RTA 1988.

315. New *section 7A(1)* empowers a constable to request a medical practitioner to take a specimen without consent in appropriate cases. To exercise this power, a constable must, first, otherwise be entitled to require a specimen. It must then appear to him that the person concerned has been involved in an accident and that as a result of a medical condition he is unable to give valid consent. New *section 7A(3)* authorises, but does not require, the medical practitioner to act on this request, if he thinks fit. He can therefore refuse to do so. This recognises that some medical practitioners might have ethical objections to acting on a patient without consent other than where immediately necessary for the patient's medical well-being.

316. New *section 7A(2)* provides that a request under new section 7A(1) should not be made to a medical practitioner who is responsible for the subject's clinical care. This is to avoid undue pressure and a possible conflict of interests. The request should where possible be made to a police medical practitioner (defined in new *section 7A(7)*). This relieves pressure on other medical practitioners. The intention is to emphasise that the primary responsibility of the clinician remains the medical well-being of his patients.

317. New *section 7A(4)* provides that although a specimen has been taken it shall not be tested in a laboratory unless the subject, on regaining the ability to consent, has given

consent. This is to avoid such a person being placed at a disadvantage by comparison with someone who has refused to provide a specimen. Its effect is that in both cases there will be no laboratory test results. New*sections 7A(5)* and *(6)* parallel the existing provision that refusal to consent is an offence and that the subject must be warned of his consequent liability to prosecution.

318. *Subsection (2)* extends to someone asked to consent to laboratory testing of a specimen the same protection enjoyed by someone required to provide a specimen. This means that a blood specimen cannot be taken, and consent cannot be required, if the medical practitioner objects on medical grounds.

319. *Subsections (3), (4)* and *(5)* make failure to consent to laboratory testing subject to the same penalties as refusal to provide a specimen.

320. Section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 gives courts the power to deprive offenders of property used for the purpose of committing an offence. Section 143(6)(b) of that Act deals with the offence of refusing to supply a specimen in a drink driving case. It provides that the vehicle driven by the person refusing shall be regarded as used for the purpose of the offence. He is therefore liable to be deprived of the vehicle. *Subsection (6)* makes the same provision for cases where a person refuses to consent to analysis of a specimen taken without consent.

### *Section 57: Use of specimens taken from persons incapable of consenting*

321. *Subsections (1), (2)* and *(3)* relate to the use in court of specimens taken under section 7 of the RTA 1988, as amended by section 55, by a registered health care professional at a police station or under 7A of the RTA 1988, as inserted by section 56, by a medical practitioner without consent. Their effect is that such specimens shall be treated in the same way as a specimen taken with consent by a medical practitioner.

322. *Subsection (4)* provides that when a specimen is taken without consent it must be divided in two, with one part being provided to the subject if he so requests when he gives his permission for the laboratory test of the sample. This parallels the provision for samples taken with consent, and enables the subject to have an independent laboratory test undertaken if he wishes.

323. *Subsection (5)* adds the provisions of subsection (4) to the list of conditions that need to be complied with in order that evidence from blood specimens is admissible in court.

324. *Subsection (6)* allows a registered health care professional as well as a medical practitioner to certify that specimens were properly taken.

### *Section 58: Equivalent provision for offences connected with transport systems*

325. Chapter 1 of Part III of the Transport and Works Act 1992 creates offences similar to the drink driving offences of the Road Traffic Act 1988 in respect of those persons working on public transport systems such as railways. It also makes similar provision as to the taking of blood specimens. This section makes the same amendments to those provisions as are made to the Road Traffic Act provisions by sections 55-57.

### *Section 59: Vehicles used in a manner causing alarm, distress or annoyance*

326. This section gives the police new powers to deal with the anti-social use of motor vehicles on public roads or off-road. It includes (under *subsections (1)* and *(3)*) powers to stop and to seize and to remove motor vehicles where they are being driven off-road contrary to section 34 of the Road Traffic Act 1988 or on the public road or other public place without due care and attention or reasonable consideration for other road users, contrary to section 3 of the 1988 Act (as substituted by section 2 of the Road Traffic Act 1991). By virtue of *subsection (8)*, these new police powers will not be exercisable until regulations under section 60 of this Act are in force.

327. *Subsections (3)* and *(7)* provide that an officer may enter premises, other than a private dwelling house, for the purpose of exercising these powers.

328. Under *subsection (6)*, it is an offence for a person to fail to stop a vehicle when required to do so by a police officer acting in accordance with this section. The offence is punishable, on summary conviction, to a fine not exceeding level 3 on the standard scale (currently £1000).

329. *Subsection (4)* requires the officer to warn the person before seizing the vehicle, to enable its anti-social use to be stopped. By virtue of *subsection (5)*, the requirement to give prior warning does not apply where it is impracticable to do so or where a warning has previously been given.

### *Section 60: Retention of vehicles seized under section 59*

330. This section allows the Secretary of State to make regulations relating to the removal, retention, release or disposal of motor vehicles seized in accordance with section 59. The regulations will include, amongst other things, the procedures for notifying the owner of a vehicle that has been seized, and the circumstances in which the owner will be liable to meet the costs arising from the removal and retention of the vehicle.

### *Section 61: Anti-social behaviour orders*

331. Section 1 of the Crime and Disorder Act 1998 enables certain 'relevant authorities' – councils for local government areas and chief officers of police – to apply for ASBOs. Anti-social behaviour orders can be made in relation to persons of 10 years and over who have acted in an anti-social manner and where the order is necessary to protect the public from further anti-social acts. Section 1 defines an anti-social manner as that which 'caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household'. An ASBO prohibits the person under the order from doing anything described in the order.

332. In January 2002, the Home Office published *A review of anti-social behaviour orders* (Home Office Research Study 236). Some of the recommendations contained in that report are enacted in sections 61 to 66.

333. This section amends section 1 of the Crime and Disorder Act 1998.

334. *Subsection (2)* replaces subsection (1)(b). It enables the courts to protect people from acts of anti-social behaviour irrespective of the local government area in which the initial acts of anti-social behaviour were carried out.

335. *Subsection (3)* removes the existing definition of a 'relevant authority' ('the council for the local government area, or any chief officer of police any part of whose police area lies within that area'). It is replaced by new subsections (1A) and (1B), which are introduced by *subsection (4)*. Subsection (1A) defines the list of relevant authorities able to apply for orders. It adds the British Transport Police and registered social landlords to the list and continues the provision for a council for a local government area or chief officers of police to make applications. Subsection (1B) sets out the 'relevant persons' whom a 'relevant authority' may apply to protect. The British Transport Police may apply for ASBOs to protect people from anti-social behaviour on or in the vicinity of premises policed by them. Similarly, registered social landlords may apply for ASBOs to protect people from anti-social behaviour on or in the vicinity of premises owned by them. Local councils and chief officers of police may now apply to protect people within their area, whether or not the original anti-social behaviour took place in their area.

336. *Subsection (7)* replaces section 1(6) of the Crime and Disorder Act 1998. Subsection (6) currently restricts courts to making ASBOs for the protection of people in a single local government area or a single local government area and adjoining local government areas. Subsection (6) also currently states that adjoining local government areas must be consulted before they are specified in an application. As amended, it enables the

courts to make ASBOs for the protection of persons anywhere in England and Wales as necessary, and removes the need for consultation of adjoining areas.

337. *Subsection (8)* is a drafting amendment to make the meaning of subsection (10) clearer, and to ensure consistency with other legislation. It inserts into subsection (10) an explicit statement that contravening an order is an offence. The amendment does not make any substantive change.

### *Section 62: Power of Secretary of State to add relevant authorities*

338. This section inserts a new section 1A into the Crime and Disorder Act 1998. It gives the Secretary of State the power by order to enable non-Home Office police forces to apply for ASBOs (i.e. be added to the list of relevant authorities) and thereby removes the need for future primary legislation to achieve this. An order under new section 1A is subject to the negative resolution procedure.

### *Section 63: Orders in county court proceedings*

339. This section inserts new section 1B into the Crime and Disorder Act 1998. It enables relevant authorities to apply to the county court in certain circumstances for an order prohibiting anti-social behaviour.

340. New *section 1B(2)* allows a relevant authority to apply for an order in the county courts if that authority is already party to proceedings. If the relevant authority is not party to such proceedings, *section 1B(3)* allows it to apply to the court to be joined to such proceedings. In all cases, the person against whom the order is being sought must be party to the proceedings.

341. New *section 1B(4)* stipulates that the county court may make an order under new section 1B if it is proved that the conditions set out in section 1(1) of the Crime and Disorder Act 1998 as amended have been met. Those conditions are that the individual has acted in an anti-social manner, and that the order is necessary to protect relevant persons from further anti-social acts by him.

342. New *section 1B(5)* allows for the relevant authority or a person who is subject to an order made in the county court to apply to the court for the order to be varied or removed by the court, subject to *section 1B(6)*.

343. New *section 1B(7)* applies to section 1B subsections (5) to (7) and (10) to (12) of section 1 of the Crime and Disorder Act 1998, as amended. Subsection (5) specifies that when the court is determining whether a defendant has been acting in an anti-social manner, it must disregard any act that the defendant shows was reasonable in the circumstances. Subsection (6), as amended by section 61(7), enables courts to make ASBOs for the protection of persons anywhere in England and Wales. Subsection (7) states that an ASBO remains in place for the period it specifies, which must be for a minimum of two years, or until replaced by a further order. Subsection (10) provides that if a person does anything which he is prohibited to do by an ASBO, he is liable, on summary conviction, to imprisonment for a maximum of six months, or to the maximum statutory fine (currently £5000) or to both. If convicted on indictment, he is liable to imprisonment for a term not exceeding five years or to a fine, or to both. Subsection (11) specifies that a person cannot be given a conditional discharge as sentence for breach of an ASBO. Subsection (12) contains definitions of terms used in the section.

### *Section 64: Orders on conviction in criminal proceedings*

344. This section inserts new section 1C into the Crime and Disorder Act 1998. It enables the criminal courts to make an order prohibiting the defendant from doing anything described in the order where the defendant has been convicted of an offence committed after the coming into force of this section.

345. New *section 1C(2)* provides that an order may be made under this section if the court considers that the offender has acted since 1 April 1999 (the commencement date of section 1 of the 1998 Act) in an anti-social manner and that the order is necessary to protect persons anywhere in England and Wales from further anti-social acts by him. The court can make an order on its own initiative, whether or not an application has been for such an order (new *section 1C(3)*). An order under this section can only be made in addition to the sentence or a conditional discharge for the offence of which the person has been convicted (new *section 1C(4)*). It is a preventative order and is for the protection of others; it is not a penalty for the offence. If the offender is detained in custody for the criminal offence, new*section 1C(5)* allows for an order to be suspended until the offender is released from custody.

346. New *section 1C(6)* to *(8)* provide for applications for variation or discharge of the order. *Section 1C(6)* allows an offender subject to an order to apply to the court for the order to be varied or discharged. *Section 1C(7)* allows for an application to vary or discharge an order made in a magistrates' court to be made to any magistrates' court in the same petty sessions area as the court which made the order. Under *section 1C(8)*, an application to discharge an order cannot be made before the end of a two-year period after the order was made.

347. New *section 1C(9)* applies to section 1C subsections (7), (10) and (11) of section 1 of the Crime and Disorder Act 1998, as amended. Subsection (7) states that an order under section 1C remains in place for the period it specifies, which must be for a minimum of two years, or until replaced by a further order. Subsection (10) specifies that on breach of an order under section 1C, a person is liable, on summary conviction, to imprisonment for a maximum of six months, or to the maximum statutory fine (currently £5000) or to both. If convicted on indictment, he is liable to imprisonment for a term not exceeding five years or to a fine, or to both. Subsection (11) states that a conditional discharge cannot be made in respect of a breach of an order under this section.

### *Section 65: Interim orders*

348. This section inserts new section 1D into the Crime and Disorder Act 1998, enabling relevant authorities to apply for interim orders.

349. New *section 1D(1)* enables the magistrates' court and the county court to make an interim order under section 1 or new section 1B, before the full application process is complete, if the court considers it just to do so. (Interim orders are not available to the criminal courts because orders under section 1C will be only made in the criminal courts once the court case is complete and the offender has been convicted).

350. New *section 1D(3)* provides that an interim order can prohibit the defendant from doing anything described in the order. Under new *section 1D(4)*, it must be for a fixed period but can be varied, renewed or discharged. If still in force, it ceases to have effect when the main application is decided.

351. New *section 1D(5)* applies subsections (6), (8) and (10) to (12) of section 1 of the Crime and Disorder Act 1998 to this section. Subsection (6), as amended by section 61(7), enables courts to make orders for the protection of persons anywhere in England and Wales. Subsection (8) entitles the applicant or defendant to apply to the court which made the order to vary or discharge it. Subsection (10) provides that if a person does anything which he is prohibited to do by an order, he is liable, on summary conviction, to imprisonment for a maximum of six months, or to the maximum statutory fine (currently £5000) or to both. If convicted on indictment, he is liable to imprisonment for a term not exceeding five years or to a fine, or to both. Subsection (11) specifies that a person cannot be given a conditional discharge as sentence for breach of an order.

352. *Subsection (2)* applies the existing provision regarding the appeals process against ASBOs to interim orders under section 1D. Appeal is to the Crown Court.

### *Section 66: Consultation requirements*

353. This section inserts new section 1E into the Crime and Disorder Act 1998. It effectively replaces subsection (2) of section 1 of the 1998 Act, which is deleted by section 61(5) of this Act. A council of a local government area must consult the chief officer of police with jurisdiction in that area before applying for an ASBO, while a chief officer of police must consult the council of the local government area in which the person in relation to whom the order is to be made lives or appears to live. In addition, this section requires the British Transport Police and registered social landlords to consult the council of the local government area in which the person in relation to whom the application is to be made lives or appears to live, and the chief officer of police with jurisdiction in that area. The consultation requirements also apply to an application to a county court under new section 1B. (The obligation to consult authorities in adjoining local government areas has been removed by the new subsection (6) in section 1, inserted by section 61(7) of this Act).

### *Section 67: Sex offenders: England and Wales*

354. Sections 2 to 4 of the Crime and Disorder Act 1998 provide for sex offender orders in England and Wales. A sex offender order is a civil preventative order made by a magistrates' court on application by the police. If the police consider that a sex offender has acted in a way that gives reasonable cause to believe that an order is necessary to protect the public from serious harm by him, then they can apply for an order. The order may place a number of prohibitions as necessary to protect the public from serious harm by that person. For example, he might be prevented from entering children's playgrounds or visiting swimming pools. The breach of any of these prohibitions carries a maximum penalty of five years imprisonment.

355. In June 2002, the Home Office published *The police perspective on sex offender orders: a preliminary review of policy and practice* (Police Research Series Paper 155). Some of the recommendations contained in that report are enacted in sections 67 to 74.

356. This section amends section 2 of the Crime and Disorder Act 1998.

357. *Subsection (2)(a)* relates to the circumstances in which a police force may apply for an order. At present, the police can only apply for a sex offender order if the offender is already in their police area. This amendment allows police forces that know or believe that an offender is intending to come to their area to apply for an order in advance of him arriving. *Subsection (2)(b)* amplifies the definition of the public that may be protected by an order to be consistent with *subsection (4)*. Subsection (4) extends the persons for whose protection a sex offender order may be granted to persons throughout the United Kingdom. Currently orders may afford protection only to persons in England and Wales.

358. *Subsection (3)* means police forces will be able to make an application to any magistrates' court in their police area rather than only to a court in the area where the relevant trigger behaviour took place.

359. *Subsections (5)* and *(6)* amend existing legislation so that police forces will be able to vary or discharge orders at courts in their own police area, rather than being required to go back to the original court that made the order.

360. *Subsections (7)* and *(8)* make clear that only one order can be in force against a sex offender at any one time: if a court makes an order against an offender who is already subject to an order, the earlier order will be discharged.

361. *Subsection (9)* seeks to improve the drafting of the original legislation but effects no substantive change.

362. *Subsection (10)* provides for the changes in subsections (4) to (6) to apply to existing orders as well as ones made after the coming into force of this section. This means

that existing orders can be varied using the new variation provisions. As part of such variation, the prohibitions may be extended to protect the public throughout the whole of the United Kingdom.

### *Section 68: Interim orders for sex offenders: England and Wales*

363. *Subsection (1)* of this section introduces interim sex offender orders in England and Wales through a new section 2A in the Crime and Disorder Act. Interim sex offender orders in Northern Ireland are introduced in section 73. Interim sex offender orders in Scotland were provided for in the Crime and Disorder Act 1998 (section 20(4)(a)).

364. New *section 2A(1)* and *(2)* state that when an application for a sex offender order has not yet been determined, the police may apply for an interim order pending the outcome of the full application. Under new *section 2A(3)*, the court may then make an interim order if it considers it appropriate to do so.

365. New *section 2A(4)* provides for an interim order to have effect for the period specified in the order (i.e. it will have effect for a fixed period as specified in the order) and, if still in force, to cease to have effect on determination of the main application.

366. New *section 2A(5)* makes the offender subject to the notification requirements of the Sex Offenders Act 1997 for the duration of the order. Those requirements include notifying the police of one's name and address and any changes to them.

367. New *section 2A(6)* allows either the offender or the police to apply for an interim order to be varied or discharged by further order.

368. New *section 2A(7)* and *(8)* make the breach of an interim order an offence with a maximum penalty of five years imprisonment, as with the full order.

369. New *section 2A(9)* prevents the court from making a conditional discharge as sentence for the breach of an interim order, as with the full order.

370. *Subsection (2)* applies the existing sex offender order appeal procedure to interim orders. Appeal is to the Crown Court.

### *Section 69: Sex offender orders made in Scotland or Northern Ireland*

371. This section introduces a new section 2B to the Crime and Disorder Act 1998. It makes breach of a sex offender order or interim order made in Scotland (under section 20(4) of the Crime and Disorder Act) or Northern Ireland (under Article 6 or 6A of the Criminal Justice (Northern Ireland) Order 1998) an offence in England and Wales if the breach occurs in England or Wales. The effect of this section, when taken together with that of sections 71 and 74, is to make a sex offender order enforceable across the UK, whichever jurisdiction it was made in.

372. New *section 2B(2)* provides that if a person does anything which he is prohibited to do by an order, he is liable, on summary conviction, to imprisonment for a maximum of six months, or to the maximum statutory fine (currently £5000) or to both. If convicted on indictment, he is liable to imprisonment for a term not exceeding five years or to a fine, or to both. This is the same as for the breach of an order made by a court in English or Welsh.

373. New *section 2B(3)* prevents the court from giving a person a conditional discharge for the breach in England or Wales of a sex offender order, or interim order, made by a court in Scottish or Northern Ireland.

### *Section 70: Sex offenders: Scotland*

374. This section amends section 20 of the Crime and Disorder Act 1998, which provides for sex offender orders in Scotland. It makes changes to the process by which the police may apply for and seek to vary a sex offender order, and provides for the protections afforded

by an order to extend UK-wide, in a similar way to the changes made in section 67 with respect to England and Wales and section 72 with respect to Northern Ireland.

375. This section comes into force on the days that Scottish Ministers will specify by order (see section 108(5)).

### *Section 71: Sex offender orders made in England and Wales or Northern Ireland*

376. This section introduces a new section 21A to the Crime and Disorder Act 1998. It makes breach of a sex offender order or interim order made in England or Wales (under section 2 or 2A of the Crime and Disorder Act 1998) or Northern Ireland (under Article 6 or 6A of the Criminal Justice (Northern Ireland) Order 1998), an offence in Scotland if the breach occurs in Scotland. The effect of this section, when taken together with that of sections 69 and 74, is to make a sex offender order enforceable across the UK, whichever jurisdiction it was made in.

377. This section comes into force on the days that Scottish Ministers will specify by order (see section 108(5)).

### *Section 72: Sex offenders: Northern Ireland*

378. This section amends Article 6 of the Criminal Justice (Northern Ireland) 1998 Order, which provides for sex offender orders in Northern Ireland similar to those available in England and Wales. The amendments make changes to the process by which the police may apply for a sex offender order, and provide for the protections afforded by an order to extend UK-wide, in a similar way to the changes made in section 67 with respect to England and Wales and section 70 with respect to Scotland. The only difference is that no change is made to the court which may hear a variation application, as there was no limitation in the original 1998 Order.

### *Section 73: Interim orders for sex offenders: Northern Ireland*

379. This section introduces interim sex offender orders in Northern Ireland through a new Article 6A in the Criminal Justice (Northern Ireland) Order 1998. They mirror the provisions for interim sex offender orders in England and Wales in section 68. Interim sex offender orders in Scotland were provided for in the Crime and Disorder Act 1998 (section 20(4)(a)).

### *Section 74: Sex Offender Orders made in England and Wales or Scotland*

380. This section introduces a new Article 6B to the Criminal Justice (Northern Ireland) Order which makes breach of a sex offender order or interim order made in Scotland (under section 20 of the Crime and Disorder Act 1998) or England and Wales (under section 2 or 2A of the Crime and Disorder Act 1998), an offence in Northern Ireland if the breach occurs in Northern Ireland. The effect of this section, when taken together with that of sections 69 and 71, is to make a Sex Offender Order enforceable across the UK, whichever jurisdiction it was made in.

### *Section 75: Removal of truants to designated places*

381. The Crime and Disorder Act 1998 allows a police constable to remove a child or young person found by him in a public place if the constable believes that they are of school age and are absent from school without authority. The constable may remove the child to designated premises or return them to the school from which they are absent.

382. Before the power is exercised, three conditions must be met. First, the local authority must have designated premises to which children and young persons may be removed. Second, the chief officer of police for that area must have been informed about such premises. Third, a police officer of the rank of superintendent (or above) must have directed that the power to remove children and young persons may be exercised within

a specified area and for a specified period of time. At present BTP superintendents (and above) are not able to make such directions.

383. This section will allow a BTP officer of the rank of superintendent or above to direct specified areas within, or partly within, the BTP's railways jurisdiction and specified periods of time when the power to remove children or young persons may be exercised. The constable may remove the child to designated premises or return them to the school from which they are absent provided he reasonably believes they are of compulsory school age and are absent from school without lawful authority. Designated premises are those places nominated by the local authority as places where children can be removed by a constable using these powers.

### *Section 76: Amendments to Part 3 of the Road Traffic Offenders Act 1988*

384. The Road Traffic Offenders Act 1988 allows for certain motoring offences to be dealt with by issuing a fixed penalty notice. A variety of offences are covered by these provisions, including failure to comply with traffic signs, driving without a licence and not wearing a seatbelt. In these cases a fixed penalty notice may be issued to the offender allowing them to discharge their liability for the offence provided they pay the financial penalty stated.

385. Sections 75 and 76 of the Road Traffic Offenders Act 1988 (as amended by the Road Traffic Act 1991) concern the powers and procedures for issuing conditional offers. Conditional offers can be issued under the fixed penalty regime for offences where a constable has reason to believe that a fixed penalty offence has been committed and a fixed penalty notice has not been given. Typically conditional offers will be issued for offences detected by an enforcement camera. Section 87 requires the Secretary of State to issue guidance concerning the operation of Part III of the Road Traffic Offenders Act 1988 that includes the provisions for fixed penalty notices.

386. Section 54(9) of the 1988 Act allows a 'chief officer of police' to designate 'authorised persons' for his 'police area' to handle certain aspects of the fixed penalty notice process. This allows a chief officer of police, or someone else on his behalf, to authorise persons at police stations. Such authorised persons can, in certain circumstances, issue fixed penalty notices and receipts for driving licences surrendered to them. The authorised person's signature may also constitute evidence of service of certain statements.

387. These provisions in the Road Traffic Offenders Act 1988 contain the phrase 'chief officer of police' which, as defined by the 1996 Act, does not apply to the British Transport Police. It is the 'chief officer of police' who currently plays a key role in the fixed penalty regime. Thus the British Transport Police cannot issue conditional offers nor can the chief constable designate authorised persons to deal with certain aspects of the fixed penalty process.

388. The amendments proposed in this section will extend these provisions regarding authorised persons and conditional offers to the British Transport Police in England and Wales, so that the chief constable of the British Transport Police can designate authorised persons and conditional offers may be issued by him or on his behalf.

### *Section 77: Application of the Police (Property) Act 1897 to NCS*

389. This section amends the Police (Property) Act 1897 to provide that the Act applies to the National Crime Squad. This was recommended by the Home Affairs Committee in May 2002 (*Second Report from the Home Affairs Committee Session 2001-02: Police Reform Bill* (HC 612 [Incorporating HC 601]) – accessible via http://www.parliament.uk). The 1897 Act enables police forces to dispose of property that comes into their possession during the course of an investigation.

390. *Subsection (1)* introduces a new section 2A to the 1897 Act. This provides that the Act applies to property that has come into the possession of the National Crime Squad in the same way as it does to property that has come into the possession of a police force. It provides that a member of NCS may make an application to the court for an order to be made requiring the property to be returned to its owner or disposed of in some other way. The Secretary of State may make regulations about the disposal of property remaining in the possession of the National Crime Squad to cover circumstances in which ownership of the property cannot be determined and the court has made no order relating to its disposal. The Service Authority for the NCS will determine whether property should be retained for use by the Squad, rather than be sold, in the same way as a police authority makes that decision in relation to property in the possession of a police force.

391. *Subsection (2)* is a drafting change to reflect the fact that the Act has been repealed in relation to Northern Ireland.

## Part 5: The Ministry of Defence Police

### *Section 78: Ministry of Defence Police serving with other forces*

392. This section inserts a new section 2B in the Ministry of Defence Police Act 1987, the main legislation governing the MDP. The new section 2B deals with the position where MDP officers serve with other forces under arrangements such as secondment. It provides that, while serving with another force, they come under the direction and control of the chief officer of the force with which they are serving and have the full powers of a constable of that force (i.e. without the jurisdictional limits that apply to MDP officers).

### *Section 79: Disciplinary matters*

393. This section adds new provisions to the Ministry of Defence Police Act 1987 ("the MDP Act") concerning the disciplinary procedures for the MDP. The intention is to enable those procedures to be aligned as closely as possible with those of Home Office police forces. At present, the MDP Act (in section 1(4)) gives the Secretary of State for Defence the power to dismiss a member of the MDP. He has no power to transfer to an outside body the function of deciding the imposition of penalties. In Home Office forces, on the other hand, a key element of the process of disciplinary cases, and of review and appeal, is that officers or other persons from outside the force concerned may take such decisions.

394. *Subsection (1)* inserts a new section 3A in the MDP Act, creating a power for the Secretary of State for Defence to make regulations establishing disciplinary procedures for the MDP. It specifies that the regulations may provide for decisions on these matters to be taken or reviewed by persons other than the Secretary of State or the chief constable or persons acting on their behalf, and for the appointment of such persons. This is to allow disciplinary decisions to be made by persons outside the Ministry of Defence and the MDP. The Act does not prescribe what the procedures should be, so that they can be altered by statutory instrument as the need arises. The intention is to adopt procedures aligned with those of the Home Office forces, and then to keep track of changes in these procedures. Regulations under this section will be made by statutory instrument subject to the negative resolution procedure.

395. *Subsection (2)* inserts a new section 4A in the MDP Act, providing members of the MDP who have been subject to disciplinary proceedings and awarded one of the punishments listed in new *section 4A(1)* with the right of appeal to a tribunal. This right may not be exercised if the officer has the prior right (as is the case with officers who are not senior officers) to seek review, unless and until the review confirms a punishment of dismissal, requirement to resign or reduction in rank. The new section empowers the Secretary of State to make by order provision for the composition and procedures of the appeals tribunal corresponding to the relevant enactments for Home Office police

forces (subject to modifications). New *section 4A(5)* enables the appeals tribunal to substitute a less severe punishment than that originally awarded.

396. *Subsection (3)* enables the powers of the Ministry of Defence Police Committee (which are at present only advisory) to be extended, so that it may be appointed to take certain decisions in the disciplinary process.

### *Section 80: Functions of inspectors of constabulary*

397. This section inserts new sections 4B and 4C in the MDP Act. The new section 4B puts inspections of the MDP by Her Majesty's Inspectors of Constabulary on a statutory basis. At present the MDP are inspected by HMIC on a non-statutory basis by invitation. The new section 4C provides for publication of the Inspectors' reports on the MDP.

### *Section 81: Exemptions from firearms legislation*

398. This section amends the firearms legislation applicable in Great Britain and Northern Ireland respectively, so as to enable potential recruits to the MDP to use firearms without a certificate while they are being trained or assessed under MDP supervision. As part of their assessment process, potential recruits take a firearms aptitude test. This involves 'possession' (in the sense used in the firearms legislation) of a firearm, which is generally unlawful without a firearms certificate.

## Part 6: Miscellaneous

### *Section 82: Nationality requirements*

399. Section 3 of the Act of Settlement 1700 provides that 'no person born out of the kingdoms of England, Scotland or Ireland or the dominions thereunto belonging… shall… enjoy any office or place of trust either civill [sic] or military.' Section 6 of the Aliens (Restriction) Amendment Act 1919 provides that no alien shall be appointed to any office or place in the Civil Service of the State, though there are various exceptions to these provisions. The prohibitions do not apply to Commonwealth citizens or to citizens of the Irish Republic by virtue of the British Nationality Act 1981, while the Aliens' Employment Act 1955 as amended by the European Communities (Employment in the Civil Service) Order 1991 (SI 1991/1221) disapplies the prohibitions to various groups, such as British protected persons. Nonetheless, currently – and in consequence of the above – employment as a member of a police force of England and Wales, Scotland, Northern Ireland, NCIS, NCS, BTP, the United Kingdom Atomic Energy Authority Constabulary (UKAEAC), the Royal Parks Constabulary, or the Special Constabulary, is restricted to British citizens, citizens of the Irish Republic and Commonwealth citizens. If an applicant is a citizen of the Irish Republic or a Commonwealth citizen other residential and ancestry conditions must be satisfied.

400. *Subsection (1)* of this section provides that the prohibition on the employment of persons born out of the UK and the prohibition arising from nationality do not apply to employment in the police services of England and Wales, Scotland, Northern Ireland (including the Reserve Police Service of Northern Ireland), NCIS, NCS, BTP, UKAEAC, the Royal Parks Constabulary, and the Special Constabulary. Any person, regardless of birth or nationality, may be attested and may hold office as a constable.

401. *Subsections (2)* and *(3)* provide that the capability of holding office as a constable or special constable or for membership of any force or constabulary or for appointment to particular ranks, offices or positions will be subject to any regulations as to qualifications for appointment; or (in respect of members of NCIS and NCS) to terms and conditions of service; or (in relation to BTP, UKAEAC and Royal Parks Constabulary) to any other arrangements for appointment.

402. *Subsection (4)* states that these regulations, terms and conditions or arrangements for appointment may include, amongst other things, the setting of standards for competence in written and spoken English, qualification as to residence in the UK, and the ability to reserve certain posts which may be of a particularly sensitive nature for UK nationals or EEA nationals. Regulations covering competence in written and spoken English and immigration status must be made in relation to police forces in England and Wales and Scotland, the Police Service of Northern Ireland, NCIS and NCS.

403. All new constables in England and Wales will still be obliged to take the oath of office as amended by section 83 of this Act.

### *Section 83: Attestation of constables*

404. Every police officer and every special constable is required, on appointment, to be attested by making a declaration in a prescribed form before a justice of the peace in the force area concerned. The Police Advisory Board for England and Wales, on which all the main police organisations are represented, advised the Home Secretary in December 2000 that the wording of the attestation should be changed to make it clear that police officers had a duty to uphold the rights of and protect everyone living or staying in the country, not just Her Majesty's subjects. The Home Secretary has accepted the advice of the Police Advisory Board.

405. The prescribed form of wording is currently set out in Schedule 4 to the 1996 Act. This section inserts a new form of words for the attestation into Schedule 4 to the 1996 Act. The existing and revised declarations are set out below with the words to be omitted or added shown in italics in each case.

406. Existing form of declaration:

I, ... ... ... of ... ... ... do solemnly and sincerely declare and affirm that I will well and truly serve *Our Sovereign Lady* the Queen in the office of constable, *without favour or affection, malice or ill will*; and that I will to the best of my power cause the peace to be kept and preserved, and prevent all offences against *the persons and properties of Her Majesty's subjects*; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law.

407. Revised form of declaration:

I, ... ... ... of ... ... ... do solemnly and sincerely declare and affirm that I will well and truly serve the Queen in the office of constable, *with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all people*; and that I will, to the best of my power, cause the peace to be kept and preserved and prevent all offences against *people and property*; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law.

408. When the new attestation comes into effect, an order will be made under the Welsh Language Act to enable Welsh-speaking officers to make the attestation in Welsh.

### *Section 84: Delegation of functions in relation to senior appointments*

409. The Secretary of State has a statutory responsibility to approve every appointment made by a police authority of officers from the rank of assistant chief constable upwards, together with the equivalent ranks in the Metropolitan Police, by virtue of sections 9F, 9FA, 9G, 11, 11A and 12 of 1996 Act. Section 12A of the 1996 Act also requires the Secretary of State to approve an officer acting as a chief constable for more than 3 months. In both cases, his approval power has always being exercised on the basis of professional advice.

410. New arrangements for considering the approval of these posts were set up in spring 2001. These arrangements were designed to make the approval process

more transparent. A Senior Appointments Panel, chaired by HM Chief Inspector of Constabulary (HMCIC), which includes representatives from the Association of Police Authorities, the Association of Chief Police Officers and the Home Office, together with an independent member, now looks at all cases.

411. As part of the new arrangements, it was decided that the Panel should be able to exercise the Secretary of State's power of approval in routine cases. A change to the primary legislation is needed to allow this to happen. This section introduces provision allowing the Secretary of State to delegate his approval. Since the Panel is not a statutory body, the approval powers are being delegated to HMCIC. In practice, HMCIC will act in agreement with the Panel.

412. The section similarly confers powers to delegate powers of approval of an officer acting as a chief constable for more than 3 months to HMCIC.

### *Section 85: Director General of NCIS*

413. This section amends section 6 of the Police Act 1997 to broaden the eligibility for appointment as Director General of the National Criminal Intelligence Service. Currently the post is open only to chief constables; the Commissioner of the City of London Police; the Commissioner, Deputy Commissioner, Assistant Commissioners and Deputy Assistant Commissioners of the Metropolitan Police; or officers eligible to be appointed to these ranks. The Director General holds the rank of chief constable. The intention is that any person with relevant experience and expertise should be eligible to apply.

414. NCIS is a multi-agency organisation employing civilians and police officers. The Director General's job is not comparable to that of a chief constable in so far as the exercise of police powers is concerned. NCIS's focus is on intelligence, not operational work, and police officers are not the only individuals with the skills and expertise necessary to head the organisation.

415. The section provides that if a police officer is appointed as Director General, he will (as now) hold the rank of chief constable. A civilian so appointed will not have that rank, but will have the necessary powers to carry out his functions through existing legislative provision. The authority the Director General has is drawn from his position as Director General, rather than by virtue of being a Chief Constable. For example, the Director General is specifically mentioned in the Regulation of Investigatory Powers Act 2000, and in the Police Act 1997 relating to mutual aid and temporary service.

416. *Subsection (2)* provides that a panel of the Service Authority shall draw up a shortlist of candidates for approval by the Secretary of State. The current wording restricts the list of candidates to those "eligible for appointment".

417. *Subsection (3)* deletes section 6(3) of the 1997 Act. That subsection lists the police officers eligible to apply to be Director General.

418. *Subsection (4)* adds a new subsection (5A), which provides that the Director General shall not be attested as a constable if he was not a serving officer before his appointment, or is already attested as a constable.

419. *Subsection (5)* provides that sections 6(6) and 6(7) of the 1997 Act will not apply if the Director General is not a police officer. These subsections confer on the Director General the powers of a constable and the rank of chief constable.

420. *Subsection (6)* adds two new subsections to section 6 of the 1997 Act, defining terms used in that section.

### *Section 86: Police members of NCIS*

421. With the exception of senior officers, the Police Act 1997 only allows police officers to be seconded to NCIS, rather than working there permanently. Furthermore, it restricts secondments to NCIS to officers from the forty-three forces of England and Wales, forces in Scotland and the Police Service of Northern Ireland.

422. This section amends section 9 of the Police Act 1997 to provide, for the first time, that NCIS may recruit police officers of any rank directly from police forces, rather than rely solely on secondments. NCIS will advertise for officers in the same way as territorial forces. The intention is that only serving police officers may apply, but from a wide range of forces. In addition to the forces from which NCIS will be able to second, NCIS will be able to recruit officers from the BTP and from the Channel Islands and Isle of Man. The recruitment pool (but not the secondment pool) for NCIS and NCS will be identical.

423. *Subsection (2)* provides that, subject to new subsection (3), police officers of any rank may be appointed as police members of NCIS, in addition to being engaged there on temporary service.

424. *Subsection (3)* replaces the existing subsection (3) to provide that police officers may be recruited from: any force maintained under section 2 of the 1996 Act; the Metropolitan Police; the City of London Police; police forces in Scotland; the Police Service of Northern Ireland; the National Crime Squad; the Ministry of Defence Police; the British Transport Police; and the police forces of Jersey, Guernsey and the Isle of Man. It also provides that officers on temporary service may be recruited on a permanent basis.

425. *Subsection (4)* amends subsection (9) to provide that the appointment of police officers at the rank of assistant chief constable may not be delegated to the Director General from the Service Authority.

426. *Subsection (5)* adds a new subsection (9A), which defines ‘temporary service’. The effect of this provision is to define the pool of officers who may be recruited by NCIS in reliance on section 9(3)(k) of the 1997 Act.

### *Section 87: Police members of NCS*

427. With the exception of senior officers, the Police Act 1997 only allows police officers to be seconded to NCS, rather than working there permanently. Furthermore, it restricts secondments to NCS to officers from the forty-three forces of England and Wales. This is more limited than the provisions in the 1997 Act relating to NCIS, and reflects the fact that the NCS operates only in England and Wales.

428. This section amends section 55 of the 1997 Act to provide, for the first time, that NCS may recruit police officers of any rank directly from police forces, rather than rely solely on secondments. NCIS will advertise for officers in the same way as territorial forces. The intention is that only serving police officers may apply, but from a wide range of forces. In addition to the forces from which NCS will be able to second, NCS will be able to recruit officers from Scotland, Northern Ireland, the BTP and from the Channel Islands and Isle of Man. The recruitment pool (but not the secondment pool) for NCIS and NCS will be identical.

429. *Subsection (2)* provides that, subject to new subsection (3) police officers of any rank may be appointed as police members of NCS, in addition to being engaged there on temporary service.

430. *Subsection (3)* replaces the existing subsection (3) to provide that police officers may be recruited from: any force maintained under section 2 of the 1996 Act; the Metropolitan Police; the City of London Police; police forces in Scotland; the Police Service of Northern Ireland; the National Criminal Intelligence Service; the Ministry of Defence Police; the British Transport Police; and the police forces of Jersey, Guernsey and the

Isle of Man. It also provides that officers on temporary service in the NCS may be recruited on a permanent basis.

431. *Subsection (4)* amends subsection (9) to provide that the appointment of police officers at the rank of assistant chief constable may not be delegated to the Director General from the Service Authority.

432. *Subsection (5)* adds a new subsection (9A), which defines 'temporary service'. The effect of this provision is to define the pool of officers who may be recruited by NCS in reliance on section 55(3(k) of the 1997 Act.

### *Sections 88 and 89: Regulations for NCIS and NCS*

433. Sections 88 and 89 introduce powers to make regulations in respect of NCIS and NCS similar to that contained in section 50 of the 1996 Act. This brings NCIS and NCS into line with police forces as regards the framework that applies to the employment of police officers. The need for such regulation-making powers is consequential on the introduction of direct recruitment provided for in sections 86 and 87. As a result of direct recruitment, the organisations will, for example, require a formal rank structure and promotion system. That has not been necessary in relation to officers on secondment, who bring their rank and conditions of service with them.

434. *Subsection (1)* of each section inserts into the Police Act 1997 a new section (sections 34A and 79A respectively). The regulations may cover such issues as pay and allowances, rank structure and promotion. In the case of NCIS, which has UK-wide jurisdiction, the Secretary of State is required to consult the Scottish Ministers before making regulations under this section. That is not a requirement for NCS, because NCS operates in England and Wales only.

435. *Subsection (2)* of each section amends, respectively, sections 37 and 81 of the Police Act 1997 to make similar provision for NCIS and NCS as section 36 does for the conduct of disciplinary proceedings against members of Home Office forces. This will enable regulations to be made for NCIS and NCS covering the rights of the IPCC in regards to disciplinary proceedings; the right of specified persons to participate in or to be present at disciplinary proceedings; the representation of persons subject to disciplinary proceedings; and to provide for inference to be drawn from a failure to mention a fact when questioned or charged in disciplinary proceedings. New subsection (2A) (c) does not appear in section 36 because section 84 of the 1996 Act already covers the representation of persons in police forces subject to disciplinary proceedings in sufficient detail. New subsection (2B) restricts application of these provisions to NCIS to England and Wales, since that is the jurisdiction of the IPCC.

436. *Subsection (3)* of each section introduces provisions that mirror section 85(1) of the 1996 Act, bringing NCIS and NCS into line with Home Office forces, where officers below the rank of chief superintendent can be reduced in rank as part of the disciplinary process.

### *Sections 90 and 91: Supplementary provisions about police membership of NCIS and NCS*

437. The supplementary provisions contained in these sections provide that officers recruited to NCIS and NCS will be covered by the police representative institutions identified in the 1996 Act. Officers in NCIS and NCS will be eligible to be represented by the Police Federation. The Police Negotiating Board will represent their interests and the Secretary of State will be required to consult the Police Negotiating Board before making regulations under new section 34A or 79A. Similarly, the Police Advisory Board will have the duty of advising on general matters relating to officers recruited by either organisation and the Secretary of State will be required to consult the Police Advisory Board before making regulations in relation to such officers. *Subsections (6)* and *(7)* in each section makes it clear that the provisions in the Police Act 1997 relating

to retirement of police members of NCIS and NCS in the interests of efficiency or effectiveness refer only to police officers of Assistant Chief Constable rank and above. The provisions do not apply to senior civilian members of the two organisations, who are covered by their terms and conditions of service.

### *Section 92: Police authorities to produce three-year strategy plans*

438. This section amends the 1996 Act, requiring police authorities to produce, every three years, a plan that sets out the strategic direction and focus for the force area. The purpose of the plan is to focus on the medium to longer term direction of the force, which is often not possible in the annual plans that they already produce. It should be developed in consultation with the community and should highlight future developments required for the effective policing of the force area, taking into account local circumstances and proposed national initiatives.

439. *Subsection (1)* inserts a new section 6A in the 1996 Act. New *section 6A(1)* requires the production of a new three-year strategy plan by police authorities.

440. New *section 6A(2)* says that the first draft of the strategy plan is to be prepared for the police authority by the chief officer of the force area.

441. New *section 6A(5)* refers to the new annual National Policing Plan, which is introduced by section 1 of this Act. It requires a police authority or chief officer, in issuing, preparing or modifying the strategy plan, to have regard to the National Policing Plan currently in force. Consequently, and also in view of the possibility of local changes, new *section 6A(4)* makes provision for the police authority to amend the strategy plan during its three year span.

442. In turn, the three-year strategy plan will inform the subordinate plans already required of police authorities. New *section 6A(13)* ensures that this is the case for the best value plan required under section 6 of the Local Government Act 1999. Similarly, *subsection (2)* ensures that this is the case for the local policing plan required under section 8 of the 1996 Act. *Subsection (3)* requires that the police authority's annual report, provided for under section 9 of the 1996 Act, assesses the extent to which the strategy plan has been implemented.

443. New *section 6A(3)* requires the chief officer to have regard to the views of the public in the force area before he submits the first draft of the strategy plan. These are to be obtained in accordance with the procedures already in place under section 96 of the 1996 Act, which requires police authorities to make arrangements for, amongst other things, obtaining the views of the people in the force area about matters concerning the policing of the area.

444. New *section 6A(6)* says that the Secretary of State must issue (and can revise) guidance on the form and content of the strategy plans, to which police authorities and chief officers must have regard. Before issuing or revising such guidance, the Secretary of State must consult those whom he considers represent the interests of police authorities and chief officers of police. Where this formulation occurs in existing legislation, the Secretary of State currently consults the APA and ACPO and/or CPOSA. The Secretary of State may also consult anyone else he chooses (new *section 6A(7)*).

445. Before the plan, or any amendment to it, is finalised, the police authority is required to submit it to the Secretary of State (new *section 6A(8)*). If the Secretary of State concludes that the proposed plan, or any modification to it, is inconsistent with the National Policing Plan, he must inform the police authority of his conclusions, having first consulted the relevant authority and chief officer and persons whom he considers represent the interests of police authorities and chief officers of police as a whole (new *sections 6A(10)* and *(11)*). New *section 6A(9)* provides that plans should be published and a copy sent to the Secretary of State.

446. New *section 6A(12)* ensures that the police authority consults with the chief officer before altering a three-year strategy plan in any way.

447. New *section 6A(14)* provides that the procedure for submitting plans and the start date of the first set of strategy plans will be set out by regulations made by statutory instrument. The period to be covered by the first strategy plan may be less than three years to enable the planning periods for police authority plans to be aligned with those for Crime and Disorder Reduction Partnerships.

### *Section 93: Quorum for the Service Authorities under the 1997 Act*

448. This section replaces the quorum for the NCIS and NCS Service Authorities as set out in paragraph 4(1) of Schedule 2A to the Police Act 1997 (Schedule 2A was introduced by Schedule 6 to the Criminal Justice and Police Act 2001). The quorum provisions of the 2001 Act have not been brought into effect.

449. The quorum introduced in the 2001 Act replaced a simple quorum of one quarter of the membership. This was contained in Schedule 1 to the Police Act 1997 (Provisions in relation to the NCIS Service Authority) Order 1998 (SI 1998/63), which introduced provisions analogous to those applying to police authorities. That was repealed as a consequence of the repeal of section 44 of the 1997 Act.

450. The quorum currently in the 2001 Act requires the attendance of at least one ACPO member and at least one APA member, as well as an independent member appointed by the Secretary of State. The problem is that there is only one ACPO member and one APA member on the new NCIS Service Authority. If either one were absent, the effectiveness of the Service Authority would be seriously impeded, as it would not be able to conduct any formal business. The effect on the NCS Service Authority is less serious, because it has two ACPO and two APA members.

451. The quorum introduced in this Act will require a minimum of four members to be present (of a membership of 11). Of the four, at least one must be, under new *paragraph (1A)(a)*, a person appointed by the Secretary of State (an independent member) and at least two others must be, under new *paragraph (1A)(b)*, core members, but not Crown Servants appointed under paragraph 6 or 6A of Schedule 1 to the 1997 Act by the Secretary of State or a customs officer. The common core membership of the two service authorities is eight strong and comprises: 3 or 4 independent members (including the Chairman) appointed by the Secretary of State, 1 or 2 (depending on the number of independent members) Crown Servants appointed by the Secretary of State, 1 chief police officer, 1 member of a police authority, and 1 customs officer.

452. Paragraph 4(1) of Schedule 2A to the Police Act 1997 was not brought into effect with other provisions introduced by Schedule 6 to the Criminal Justice and Police Act 2001. Consequently there has been no statutory quorum for the Service Authorities since April 2002, when the new Authorities started work, but appropriate interim measures were introduced in the standing orders of the Service Authorities to cover the period up until the provisions contained in this section are brought into effect.

### *Section 94: Expenses of members of police authorities etc.*

453. Paragraph 25 of Schedule 2 to the 1996 Act provided that a police authority may pay its members such expenses and allowances as the Secretary of State may determine. This provision was amended by section 107 of the Criminal Justice and Police Act 2001 to remove the Secretary of State's automatic prescription as to schemes for paying allowances. Police authorities are now free to determine their own schemes of allowances for their chairmen, vice chairmen and other members. The amended provision, however, requires police authorities when making or revising arrangements for the payment of allowances to have regard to any guidance from the Secretary of State. It also gives the Secretary of State a reserve power to limit by regulation the allowances paid. Separate provisions were made for the Metropolitan Police Authority

and for all other police authorities outside London. This is because members of the Metropolitan Police Authority who are members of the Greater London Assembly are salaried and as such may not be paid allowances in performance of their duties on the police authority. The position as regards to expenses remained unchanged by the Criminal Justice and Police Act 2001.

454. This section aims to remove this distinction and bring the provisions relating to expenses into line with those on allowances. The exception is that while Greater London Assembly members of the Metropolitan Police Authority may not be paid allowances, they may receive reimbursement of expenses.

455. *Subsections (1)* and *(2)* amend paragraph 25A of Schedule 2 to the 1996 Act and paragraph 20A of Schedule 2A to the 1996 Act to add the reimbursement of expenses to existing provision on the payment of allowances to members of police authorities outside London and to members of the Metropolitan Police Authority.

456. *Subsection (3)* amends sub-paragraph (6) of paragraph 20A of Schedule 2A to the 1996 Act to make it clear that the reference in that sub-paragraph disallowing payment to any member of the Metropolitan Police Authority who is also a member of the London Assembly refers only to allowances and not to expenses.

457. *Subsections (4)(a)* and *(b)* repeal the remaining provisions in the 1996 Act whereby police authorities outside London and the Metropolitan Police Authority may only make reimbursement of expenses as the Secretary of State may determine.

### *Section 95: Duties under the Health and Safety at Work etc. Act 1974*

458. This section amends health and safety legislation so that police authorities are deemed to be the employers of police officers for the purposes of that legislation. The legislation previously provided for this role to be undertaken by chief officers of police.

459. *Subsections (1)* to *(3)* amend health and safety and related legislation so that police authorities are deemed to be employers for the purposes of health and safety legislation; equivalent changes are made for the National Criminal Intelligence Service, the National Crime Squad, and other bodies of constables.

460. *Subsection (4)* makes it clear that in relation to contraventions of the Health and Safety at Work etc. Act 1974, it is the police authority who is treated as the employer of officers rather than the chief officer who would otherwise be vicariously liable for unlawful conduct of officers under his direction and control. Subsection (4) also introduces a regulation-making power to enable the position of chief officers in relation to health and safety decisions, and to police premises, to be clarified if this becomes necessary in the light of experience.

461. *Subsections (5)* and *(6)* make consequential amendments.

462. *Subsection (7)* repeals the provision under which police authorities may indemnify chief officers against damages etc. awarded against them as a result of health and safety proceedings brought against them as employers.

### *Section 96: President of ACPO*

463. The Association of Chief Police Officers of England, Wales and Northern Ireland represents chief officers of police above the rank of chief superintendent. The President of ACPO, elected by the membership, is drawn from among the ranks of the chief constables of England, Wales and Northern Ireland, the Commissioner, Deputy Commissioner and Assistant Commissioners of the Metropolitan Police Service (MPS) and the Commissioner of the City of London Police. (The Deputy Commissioner and Assistant Commissioners of the MPS are equivalent ranks to chief constable.) Currently, the President of ACPO serves for one year and remains in charge of his force during that time. From April 2003, the ACPO President will be elected for three

years and will either resign or retire from his force. This section makes provision for the President of ACPO to retain the office of constable and the rank of chief constable during his term of office.

### *Section 97: Crime and disorder reduction partnerships*

464. The Crime and Disorder Act 1998 provides a statutory framework for 'responsible authorities' – currently chief officers of police and local authorities, and commonly known as Crime and Disorder Reduction Partnerships (CDRPs) – to formulate and implement a strategy to reduce crime and disorder in their area. They must co-operate with a wide range of other local agencies, including probation, health, police authorities and the private and voluntary sector. There are 354 CDRPs in England and 22 in Wales.

465. Drug Action Teams (DATs) were set up in 1995 under the white paper *Tackling Drugs Together* (CM 2846) with responsibility for delivering the Government's anti-drugs programmes at a local level. Although not formally accountable for their overall performance (they do not have statutory status), DATs are financially accountable for the sums of money which come to them as pooled budgets. There are 149 DATs in England, aligned along local authority boundaries. They bring together senior representatives of all the local agencies involved in tackling the misuse of drugs, including the health authority, local authority, police, probation, social services, education and youth services, and the voluntary sector. In Wales, the relevant bodies are Drug and Alcohol Action Teams (DAATs) with responsibility for delivery of local strategies on substance misuse.

466. This section requires CDRPs also to formulate and implement a strategy for combating the misuse of drugs. This will raise local delivery of the National Drugs Strategy onto a statutory footing. In order to maintain the profile of treatment-related aspects of the Drugs Strategy and the contribution of health to the wider crime and disorder reduction agenda, Primary Care Trusts in England and health authorities in Wales will be deemed responsible authorities for development and delivery of the wider crime reduction agenda. This should also – particularly in conjunction with the other changes – provide greater scope to consider how best CDRPs and DATs can work together more effectively at the local level. The section also raises police authorities to the level of responsible authorities (currently, existing responsible authorities are required to co-operate with police authorities in formulating a crime and disorder reduction strategy, and vice versa, but police authorities are not responsible authorities). In addition, the section designates fire authorities as responsible authorities. The Act also proposes that partnership areas may merge in the interests of reducing crime and disorder or the misuse of drugs.

467. This section and section 98 apply slightly differently to Wales compared to England. This is because local government is a devolved matter, for which the National Assembly for Wales is responsible.

468. Moreover, in as far as this section and section 98 relate to local government areas in Wales, they come into force on the days that the National Assembly for Wales will specify by order made by statutory instrument (see section 108(4)).

469. *Subsection (1)* provides for amendments to the Crime and Disorder Act 1998, which establishes the requirement for responsible authorities – chief officers of police and local authorities – jointly to formulate and implement a crime and disorder reduction strategy for their area.

470. *Subsection (2)* adds police authorities and fire authorities to the list of responsible authorities required to formulate and implement a crime and disorder reduction strategy. It also provides that the relevant health organisation is added to that list. In England, this is every Primary Care Trust the whole or part of which lies within the local government area; in Wales, this is every health authority the whole or part of which lies within the local government area.

471. *Subsection (3)* provides that the Secretary of State may by order merge two or more partnership areas in England if he considers it would be in the interests of reducing crime and disorder or the misuse of drugs. Such an order may be at the joint request of the relevant responsible authorities or on the direction of the Secretary of State after consultation with the responsible authorities.

472. *Subsection (4)* amends the provisions in the 1998 Act for consultation with stakeholders who are not responsible authorities under that Act. The effect of *subsection (4)(a)* is to remove the obligation to consult the relevant police authority and health organisation, as under this Act these are now responsible authorities. *Subsection (4)(b)* adds that, in Wales, the National Assembly for Wales may specify by order other persons or bodies to be consulted.

473. *Subsection (5)* allows the National Assembly for Wales to specify by order other persons or bodies to be asked to participate in the exercise of functions by the responsible authorities. This is in addition to those whom the Secretary of State may specify by order under current legislation.

474. *Subsection (7)* maintains the requirement for the responsible authorities in England and Wales to produce a strategy for the reduction of crime and disorder in the area and provides a new requirement for those in England to produce a strategy for combating misuse of drugs and for those in Wales to produce a strategy combating substance misuse (reflecting the wider remit of DAATs in Wales than DATs in England).

475. *Subsection (8)* makes further provision for responsible authorities in Wales when formulating and implementing a strategy combating substance misuse: responsible authorities must also have regard to guidance issued by the National Assembly for Wales.

476. *Subsection (9)* makes similar provision for reviews by responsible authorities as *subsection (7)* does regarding the production of strategies by responsible authorities. It retains the existing requirement for responsible authorities in England and Wales to carry out a review of the levels of patterns of crime and disorder in the area, and provides a new requirement for those in England to carry out a review of the levels and patterns of the misuse of drugs in the area and for those in Wales to carry out a review of the levels and patterns of substance misuse in the area.

477. *Subsection (10)* provides for the responsible authorities to submit a review of implementation of their strategies within one month of the end of each reporting period – in England to the Secretary of State, and in Wales to the Secretary of State and to the National Assembly for Wales.

478. *Subsection (11)* provides that the reporting period for submission of a review on implementation of the strategy shall be on an annual basis.

479. *Subsection (12)* adds combined fire authorities to those authorities on which there is a duty to do all that they reasonably can do to prevent crime and disorder in their area in the exercise of their functions. This brings combined fire authorities into line with non-metropolitan local authorities exercising their function as fire authorities and metropolitan fire authorities who are presently tasked under section 17(2) of the Crime and Disorder Act 1998 with this duty.

480. *Subsection (13)* allows the National Assembly of Wales as well as the Secretary of State to exercise powers of Ministers by statutory instrument. It also stipulates that the new order-making powers for the Secretary of State (but not the National Assembly for Wales) proposed under this section will be subject to negative resolution procedure.

481. *Subsection (14)* addresses a different matter. It amends section 115(2) of the Crime and Disorder Act 1998 to permit any person (including a chief officer of police) to make disclosures, including personal information, to a parish council (sometimes known as

a town council) in England and a community council in Wales, where it is expedient for the purposes of that Act.

482. *Subsection (15)* makes transitional provision for England to ensure that the provisions of the Act apply to the period before Primary Care Trusts are established.

### *Section 98: Secretary of State's functions in relation to strategies*

483. This section inserts a new section 6A in the Crime and Disorder Act 1998, which requires the formulation and implementation of local strategies for the reduction of crime and disorder.

484. New *section 6A(1)* provides for the Secretary of State by order subject to the negative resolution procedure to require responsible authorities to make provision in their strategies for specified areas of crime or disorder. It also makes provision for the Secretary of State by order subject to the negative resolution procedure to require responsible authorities in England to ensure that any strategies combating the misuse of drugs encompass such other forms of substance misuse as the order specifies. This would enable bringing the remit of English responsible authorities into line with that of their Welsh counterparts.

485. New *section 6A(2)* requires that responsible authorities submit a copy of their strategies, and a copy of the documents required under section 6(5), to the Secretary of State. The documents referred to under section 6(5) must include a list of co-operating persons and bodies, the reviews discussed in section 97, a report based on the review, and the strategy – including objectives, lead groups pursuing those objectives, and performance targets. New *section 6A(3)* stipulates that responsible authorities must have regard to any guidance issued by the Secretary of State on the form and content for the publication of any document to be published under section 6(5). New *section 6A(4)* provides that any proposed changes by the responsible authorities to their strategies must also be sent to the Secretary of State.

486. New *section 6A(5)* states that all references to the Secretary of State in new *sections 6A(2)* to *6A(4)* refer, in relation to a local government area in Wales, to the National Assembly for Wales as well as the Secretary of State. Consequently, the power to issue guidance is only exercisable by the Secretary of State and the National Assembly for Wales acting jointly.

487. New *section 6A(6)* provides definitions of terms used in the section.

### *Section 99: Power to modify the functions and structure of PITO*

488. The Police Information Technology Organisation was established by Part IV of the Police Act 1997 (the 1997 Act) to carry out activities relating to information technology equipment and systems for the use of the police service. PITO acquired its statutory status on 1st April 1998. It is a body corporate and an executive NDPB. It operates within the provisions set out in the 1997 Act and any relevant subordinate legislation. The Home Office is the sponsor Department. Schedule 8 to the 1997 Act sets out the constitution of the PITO Board, conditions applying to Board membership, conditions applying to appointment of staff (regarding numbers, terms and conditions), membership and conduct of Committees, regulation of proceedings, evidence, money, requirements for an annual report and the status of the organisation with respect to the Crown.

489. As currently constituted, PITO has two broad statutory functions:

- to carry out activities relating to information technology (IT) equipment and systems for the use of the police service; and
- to provide the police with a procurement, contract management and advisory service covering both IT and non-IT related goods and services.

490. NDPB status, coupled with a tripartite governance involving ACPO, the APA and the Home Office, was adopted to enable partnership working and to better reflect policing IT requirements.

491. This section provides a broad enabling power which will allow amendment, by affirmative procedure secondary legislation, to Part IV (sections 109-111 and Schedule 8) of the 1997 Act, to enable changes in the functions, name, structure, accountability and management practices of PITO.

492. *Subsection (1)* sets out the scope of the amendments that can be made to the provisions governing PITO. *Subsection (1)(a)* ensures that the amendments can give PITO additional functions or amend existing functions. *Subsection (1)(b)* ensures that the amendments can impose duties on PITO in relation to how its functions are to be carried out. *Subsection (1)(c)* ensures that the amendments can modify the constitution of PITO (currently set out in Schedule 8 to the 1997 Act) and can also modify any provision in Schedule 8 to or sections 109-111 of the 1997 Act which relate to the management or control of PITO. *Subsection (1)(d)* ensures that the amendments can give the Secretary of State powers in relation to the functions, duties, constitution, management or control of PITO.

493. *Subsection (2)* clarifies the provisions that can be made under this section. Under *subsection (2)(a)*, the provisions can amend primary legislation in Part IV of the 1997 Act in such manner as the Secretary of State thinks fit (as long as the purpose of the amendment falls within one of the purposes set out in subsection (1)). The power also enables other statutes that refer to PITO, such as the 1996 Act, to be amended to ensure that their provision is consistent with any amendments made under this section to Part IV of the 1997 Act. Under *subsection (2)(b)*, the provisions, if they are intended to confer functions on PITO, can confer functions on any agencies, bodies, organisations and persons outside those connected with policing, but not outside the criminal justice system. Under *subsection (2)(c)*, the provisions can require any persons in relation to whom PITO has been given functions to consult with PITO and perform other tasks related to PITO as specified by the order. Under *subsection (2)(d)*, the provisions, as a consequence of any change to PITO's functions under subsection 1(a) can also change PITO's name. This is to ensure that if PITO's functions are changed, the name continues to accurately reflect the functions of the organisation. This provision does not mean that PITO can be abolished – the same legal entity would continue in operation, but under a different name. Under *subsection (2)(e)*, the provisions can impose obligations on PITO under subsection 1(b) in relation to PITO's planning process and in relation to any consultation that the Secretary of State may decide to require PITO to undertake. Under *subsection (2)(f)*, any provisions made under subsection (1) can also provide for the Secretary of State to make determinations, or give approval, or give an opinion from time to time, in relation to any matter. This is to ensure that requirements can be made under subsection (1) for PITO to seek approval or an opinion from the Secretary of State, or to comply with his determination on any given matter.

494. *Subsection (3)* ensures that the prison service and the probation service are included in the definition of 'criminal justice system' in subsection 2(b).

495. *Subsection (4)* places an obligation on the Secretary of State to consult with Scottish Ministers prior to making any order under this section.

496. *Subsection (5)* provides that any orders made under this section are subject to the affirmative resolution procedure.

### *Section 100: Metropolitan Police Authority Housing*

497. Paragraph 51 of Schedule 27 to the Greater London Authority Act 1999 (GLA Act) amended the Housing Act 1985 (the 1985 Act) by adding the Metropolitan Police Authority (MPA) to the definition of local authorities in section 4 of that Act. This meant that the MPA fulfilled the 'landlord conditions' for the purpose of creating

secure tenancies under the 1985 Act, leading to a number of police officers occupying properties owned by the MPA being able to exercise a right to buy their properties at a discount once the two year qualifying period elapsed – which happened on 3 July 2002.

498. The creation of the secure tenancies was unintended. The amendment removes the MPA from the secure tenancy regime, and makes various other provisions regarding affected tenants, not least because the amendment became law after the qualifying date for secure tenants to be able to exercise the right to buy at a discount had been reached.

499. In addition to the measures specified on the face of the Act, in March/April 2001 the Metropolitan Police Service came to an agreement with the Police Federation to extend the period officers could occupy MPA housing, if they had been secure tenants and they did not exercise their right to buy prior to the amendment being brought into effect, by 2 years (up to a maximum occupancy of 7 years).

500. Future tenancies granted by the MPA will be assured shorthold tenancies.

501. The effect of *subsection (1)* is to remove the Metropolitan Police Authority from the definition of local authorities contained in section 4 of the Housing Act 1985. This will result in the Metropolitan Police Authority no longer fulfilling the 'landlord conditions' for the purpose of creating secure tenancies under the 1985 Act. Secure tenancies already granted will cease to be secure and in particular tenants will no longer be able to exercise a right to buy.

502. *Subsection (2)* removes the Metropolitan Police Authority from the definition of local authority in Schedule 1 to the Housing Act 1988. This enables the Metropolitan Police Authority to grant assured shorthold tenancies consistent with its practice before amendment of the Housing Act 1985.

503. The effect of *subsection (3)(a)* is to allow any secure tenant who acquired the right to buy before the day on which the Act was passed and either served a notice claiming to exercise that right before the Act was passed, or served such a notice within 3 months of the Act being passed, to complete the purchase process within the framework of the Housing Act 1985.

504. *Subsection (3)(b)* will enable former secure tenants to count the period spent as a secure tenant towards the qualifying period for acquiring the right to buy (and the calculation for discount) if they move to another secure tenancy (though not one with the Metropolitan Police Authority).

505. *Subsection (4)* ensures that those tenancies not purchased within the provisions of subsection (3)(a) become assured shorthold tenancies.

506. This section – and the consequential repeals as a result of this section, listed in Schedule 8 – came into effect on Royal Assent (see section 108(3)).

### *Section 101: Provision of goods and services by police authorities*

507. The Local Authorities Goods and Services Act 1970 provides that a local authority may supply goods and services to any public body. Under section 18 of the 1996 Act, the provisions of the 1970 Act apply to any police authority established under section 3 of the 1996 Act, and, following amendment by the Greater London Authority Act 1999, to the Metropolitan Police Authority. The reference in the 1970 Act to "any public body" was widened in section 18 to read "any person".

508. Consequently, police authorities benefit by being able to supply, by agreement, goods and services to any person.

509. The Common Council of the City of London was not established as a police authority under section 3 of the Act and has therefore not been able to benefit in the same way as other authorities. The purpose of the amendment in this section is to bring the Common Council in line with other police authorities.

510. The provision amends section 18 of the 1996 Act.

511. New *subsection (1)(b)* will enable the Common Council of the City of London, in its capacity as Police Authority to the City of London Police, to be able to benefit, as other police authorities do, from the Local Authorities Goods and Services Act 1970.

### *Section 102: Liability for wrongful acts of constables etc.*

512. This section clarifies the liabilities of chief officers of police in the UK, the Home Secretary, the Directors General of NCIS and the NCS, the Secretary of State for Northern Ireland, the Police Ombudsman of Northern Ireland, the Central Police Training and Development Agency and the Police Information Technology Organisation by making them liable for any unlawful conduct of those whom they employ or whom act under their control.

513. *Subsection (1)* substitutes the words "any unlawful conduct of" for each reference to "torts committed by" in the sections and Schedules listed in *subsection (2)*. It also replaces "in respect of any such tort" with ", in the case of a tort," in those sections and Schedules. *Subsection (3)* makes similar provision covering the Police Information Technology Organisation. *Subsections (7)* and *(8)* make similar provision for Scotland.

514. *Subsection (4)* substitutes the words "any unlawful conduct of" for each reference to "a tort committed by" in the sections and Schedules listed in *subsection (5)*.

515. Section 42(6)(a) of the Police Act 1997 ensured that section 42(1), regarding the liability of the Director General of NCIS, applied to Scotland by making necessary modifications to that section. As a result of the changes in this section of this Act, separate provision regarding Scotland is no longer necessary (section 42(1) as amended will apply equally), so *subsection (6)* omits section 42(6)(a) of the 1997 Act accordingly.

516. In as far as this section amends the Police (Scotland) Act 1967, it comes into force on the days that Scottish Ministers will specify by order (see section 108(5)).

### *Section 103: Liability in respect of members of teams*

517. The purpose of this section is to provide a legal basis for civil liabilities arising from operations of joint investigation teams involving police officers from England, Wales, Scotland, Northern Ireland and law enforcement officers from abroad. The United Kingdom is obliged, if it agrees to the setting up of such teams through its participation in international agreements such as the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, to provide arrangements for the satisfaction of civil claims that may arise from actions of team members when they are not operating in their own country. These arrangements are intended to provide a firmer legal basis for the setting up of such teams which are important in strengthening police co-operation between participating countries by allowing for the speedier and more effective sharing of information and expertise across national boundaries in combating the common threat from serious and organised crime.

518. *Subsection (1)* inserts new subsections (6), (7) and (8) into section 88 of the 1996 Act to extend the liabilities of chief officers of police by providing that they shall be liable for any unlawful conduct of members of international joint investigation teams formed in accordance with the specified international agreements. The specified agreements may be added to by an order made by the Secretary of State, subject to the negative resolution procedure.

519. *Subsections (2)* , *(3)* , *(4)* and *(5)* similarly extend the liabilities of the Directors General of the National Criminal Intelligence Service and the National Crime Squad, Scottish chief constables and the chief constable of the Police Service of Northern Ireland respectively. *Subsection (2)* inserts new subsections (5A), (5B) and (5C) into section 42

of the Police Act 1997. *Subsection (3)* inserts new subsections (6), (7) and (8) into section 86 of the Police Act 1997. *Subsection (4)* inserts new subsections (5), (6) and (7) into section 39 of the Police (Scotland) Act 1967. *Subsection (5)* inserts new subsections (6), (7) and (8) into section 29 of the Police (Northern Ireland) Act 1998.

520. *Subsections (6)* and *(7)* oblige the Secretary of State to pass on any sums received by him by way of reimbursement to a police fund (etc.) which has paid out sums in settlement of a claim in respect of the conduct of a member of an international investigation team to that fund.

521. In as far as this section amends the Police (Scotland) Act 1967, it comes into force on the days that Scottish Ministers will specify by order (see section 108(5)).

### *Section 104: Assaults on members of teams*

522. The purpose of this section is to provide, in accordance with obligations under international agreements to which the United Kingdom is a party, that members of international joint investigation teams from abroad are treated in the same way as constables while in England, Wales, Scotland and Northern Ireland with respect to offences committed against them.

523. This section inserts new subsections into section 89 of the 1996 Act, section 41 of the Police (Scotland) Act 1967 and section 66 of the Police (Northern Ireland) Act 1998 to provide that just as it is already an offence to assault or obstruct a constable or a person assisting a constable in the execution of his duty, it shall also be an offence to assault or obstruct members of international joint investigation teams carrying out the team's functions. This would apply whether or not the team member from abroad was in the company of a constable.

524. In as far as this section amends the Police (Scotland) Act 1967, it comes into force on the days that Scottish Ministers will specify by order (see section 108(5)).

## Part 7: Supplemental

### *Section 108: Short title, commencement and extent*

525. This section gives the short title of the Act; it also provides for commencement. The provisions of the Act mostly extend to England and Wales. However, the provisions regarding the MDP contained in Part 5 of the Act, PITO, nationality requirements, and the reimbursement of police funds under section 103(6) extend to Scotland and Northern Ireland as well. (The reimbursement of police funds under section 103(7) applies to England and Wales, even though the purpose of the subsection is to allow Scottish funds to be reimbursed.) The provisions regarding NCIS also extend to Scotland and Northern Ireland, with the exception of those contained in Chapter 1 of Part 4 that allow NCIS to designate support staff as investigating officers. The provision regarding the President of ACPO extends to Northern Ireland but not Scotland. In addition, as a general rule, amendments and repeals to existing legislation made by this Act have the same extent as the existing legislation (*subsection (9)*). So, for example, section 72 (Sex offender orders: Northern Ireland) applies to Northern Ireland. The exceptions to this rule are set out in *subsection (10)*: the provisions of sections 44 and 76 and the additional arrestable offence of driving while disqualified under section 48 apply to England and Wales only. (Generally, the provisions relating to road traffic legislation apply to England, Wales and Scotland but not Northern Ireland.)