These notes refer to the Crime and Security Act 2010 (c.17) which received Royal Assent on 8 April 2010

CRIME AND SECURITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Police powers: stop and search

Section 1: Records of searches

22. Section 1 amends section 3 of the Police and Criminal Evidence Act 1984 ("PACE") which specifies the information which constables must record when they stop and search a person.

23. *Subsection (3)* provides that, where a person is arrested as a result of a stop and search and taken to a police station, the constable who carried out the search must ensure that the search record forms part of the person's custody record (rather than completing a separate form). In all other cases the constable must make the record of the search at the time it takes place or as soon as practicable after completion of the search.

24. *Subsection (4)* removes the requirement for constables to record the person's name (or a note otherwise describing the person) and description of any vehicle searched.

25. *Subsection (5)* further reduces the recording requirements for a stop and search. The previous section 3 of PACE and Code of Practice A required ten items of information to be recorded, including whether anything was found and whether any injury or damage was caused. These are reduced to the following seven items of information:

- Date;
- Time;
- Place;
- Ethnicity;
- Object of search;
- Grounds for search;
- Identity of the officer carrying out the stop and search.

26. *Subsection (6)* provides that the requirement to state a person's ethnic origins is a requirement in the first place to record the person's self-defined ethnicity. However, if a constable thinks that this is different from their own assessment then they will also record their own assessment.

27. *Subsections (2), (7)* and *(8)* amend section 3 of PACE to take account of the fact that the person who makes the record in the custody record may not be the constable who carried out the search.

28. *Subsection (9)* reduces the time within which a person can request a copy of the search record from 12 months to 3 months after the date of the search.

Taking of fingerprints and samples: England and Wales

Section 2: Powers to take material in relation to offences

29. *Subsections (1)* and *(5)* amend sections 61 and 63 of PACE to enable biometric data (fingerprints and non-intimate samples respectively) to be taken from people who have been arrested for a recordable offence, either if they have been released on bail before their biometric data have been taken or if their biometric data have been taken and subsequently have proved inadequate for analysis and/or loading onto the national fingerprint or DNA database. For the purposes of section 2, it does not matter when the arrest took place, so the police may take biometric data from a person who was arrested before the section comes into force.

30. "Recordable offence" is defined in sections 118 and 27 of PACE. In practice, all offences which are punishable with imprisonment are recordable offences, as are around 60 other more minor offences which are specified in regulations made under section 27.

31. *Subsection (2)* amends section 61 of PACE to enable fingerprints to be taken from people who are not detained at a police station but who have been charged with a recordable offence, where either their fingerprints have not been taken in the course of the investigation or their fingerprints have been taken and subsequently have proved inadequate for analysis and/or loading onto the national database. Currently, PACE allows the taking of the fingerprints of a person who has been charged, but only if the person is detained at a police station. Again, it does not matter whether the person was charged before the commencement of the section.

32. *Subsection (3)* re-enacts, with some modifications, the existing power in section 61 of PACE to take fingerprints from people who have been convicted, cautioned, warned or reprimanded for a recordable offence (before or after commencement). The re-enactment contains limitations on the exercise of the power. In future, fingerprints may only be taken under this power with the authorisation of an officer of at least the rank of inspector who must be satisfied that taking the fingerprints is necessary to assist in the prevention or detection of crime. The person must not have had their fingerprints taken since the conviction, caution, warning or reprimand or, if they have, the fingerprints must have proved inadequate for analysis and/or loading onto the national database.

33. *Subsection (4)* secures that any power to take fingerprints without consent under section 61 of PACE may be exercised by any constable, whether the person is in police detention or not.

34. *Subsection (6)* extends the power in PACE to take non-intimate samples from persons who have been charged. The power is extended so as to enable the police to take a non-intimate sample from a person who has been charged with a recordable offence in circumstances where the person has had a sample taken previously, from which a DNA profile has been created, but the sample has since been destroyed and the person now claims that the DNA profile did not come from his sample. As explained below, the provisions of the Act will oblige the police to destroy all DNA samples within six months of their being taken.

35. *Subsection (7)* re-enacts the existing power to take non-intimate samples after conviction. But it also now includes a power to take non-intimate samples following a caution, reprimand or warning (which is already possible in the case of fingerprints). This modified power is subject to the same limitations as are provided for in relation to the taking of fingerprints after conviction (see the discussion of *subsection (3)* above).

36. The power may be exercised in relation to convictions, cautions, reprimands and warnings occurring before commencement. However, this is subject to the existing restriction in subsection (9A) of section 63, by virtue of which a non-intimate sample may not be taken from a person convicted prior to 10 April 1995 unless the person is one to whom section 1 of the Criminal Evidence (Amendment) Act 1997 applies: that is,

that the offence was one specified in Schedule 1 to the Criminal Evidence (Amendment) Act 1997 (primarily sexual and violent offences) and the person is in prison or detained under the Mental Health Act 1983 at the time the sample is to be taken. The Act also secures that a non-intimate sample may not be taken from a person *cautioned* before that date (see *subsection (8)*).

37. *Subsection (9)* amends section 1 of the Criminal Evidence (Amendment) Act 1997, which is referred to in section 63(9A) of PACE (described above). The amendment to the 1997 Act made by *subsection (9)* means that a sample may be taken from a person convicted before 10 April 1995 of an offence in Schedule 1 to that Act even if he is no longer in prison or detained.

38. *Subsection (10)* amends section 2 of the Criminal Evidence (Amendment) Act 1997. The effect of this amendment is that a non-intimate sample may be taken from a person who has at any time been detained following acquittal for an offence on grounds of grounds of insanity or was found unfit to plead. Currently, the person must be detained at the time the sample is to be taken.

Section 3: Powers to take material in relation to offences outside England and Wales

39. *Subsections (1)* and *(4)* enable the police to take fingerprints and non-intimate samples from a person convicted of a qualifying offence (see section 7) outside England and Wales, whether the conviction occurred before or after the coming into force of these provisions. The person must not have had their fingerprints or sample (as the case may be) taken previously under the respective powers or, if such data have been taken previously, it must have proved inadequate for analysis and/or loading onto the national database. The taking of the fingerprints or non-intimate sample must be authorised by an officer of at least the rank of inspector who must be satisfied that taking the sample is necessary to assist in the prevention or detection of crime.

40. *Subsection (2)* provides the police with the power to take an intimate sample from a person convicted of a qualifying offence outside England and Wales where two or more non-intimate samples have been taken under the powers provided in *subsection (4)* but have proved insufficient and that person consents. The taking of the sample must be authorised by an officer of at least the rank of inspector who must be satisfied that taking the sample is necessary to assist in the prevention or detection of crime.

Section 4: Information to be given on taking of material

41. Section 4 re-enacts the provisions in PACE relating to the information given to those from whom biometric data are taken without consent, with modifications, and applies these provisions to the new powers to take biometric data. In relation to fingerprints and non-intimate samples, the result is that a person must be informed of the reason for taking the biometric data, the power being used, and the fact that authorisation has been given (where authorisation is necessary). A police officer (or designated detention officer) must also inform the person that his data will be subject to a speculative search (in other words that the reference samples will be compared with those already on the existing databases). Those matters must then be recorded as soon as practicable after the data has been taken. Similar information and recording requirements apply in relation to the taking of intimate samples as well as a requirement to record the fact that the person gave their consent to the intimate sample being taken. In relation to the taking of intimate and non-intimate samples prior to conviction, the existing requirement to specify the nature of the offence in which it is suspected that the person has been involved is preserved.

Section 5: Speculative searches

42. Section 5 adds to the existing provisions in PACE that permit the speculative searching of biometric data so that such searches can be carried out in relation to samples and fingerprints taken using the new powers in this Act.

Section 6: Power to require attendance at police station

43. Section 6 inserts a new Schedule 2A into PACE which sets out the powers to require attendance at a police station in respect of both the existing and new powers to take biometric data. For each power in PACE to take biometric data from those no longer in police detention (whether existing or which is being inserted by these provisions), there is a power to require a person to attend a police station for the purpose of taking those data, and for a constable to arrest a person who does not comply with a requirement to attend.

44. The Schedule puts some time limits on the power to require attendance. In cases where fingerprints or samples of a person arrested or charged are being taken because the previous ones were inadequate in some way, the power must be exercised within six months of the day on which the relevant police officer learnt of the inadequacy. There are also time limits where the fingerprints or samples are to be taken under new section 61(5B) (fingerprints from person charged), section 61(6) (fingerprints from person convicted), new section 63(3A) (non-intimate sample from person charged) and new section 63(3B) (non-intimate sample from person convicted) of PACE. But the time limits do not apply in cases where a person has been convicted of a qualifying offence or, in the case of non-intimate samples, where the person is convicted of an offence prior to 10 April 1995 and he is a person to whom section 1 of the Criminal Evidence (Amendment) Act 1997 applies (see above). In these cases the power to compel attendance may be exercised at any time.

45. Paragraph 6 of new Schedule 2A to be inserted into PACE provides that where a person's fingerprints have been taken under section 61 of PACE on two occasions in relation to any offence, he may not be required to attend a police station to have his fingerprints taken again under that section in relation to that offence without the authorisation of an officer of at least the rank of inspector. Paragraph 14 imposes the same requirement for non-intimate samples taken under section 63 of PACE.

46. Paragraph 15 of new Schedule 2A stipulates that where authorisation is required for the taking of fingerprints or a sample this must be obtained before a person is required to attend the police station.

47. Paragraph 16 of new Schedule 2A makes provision regarding the time a person shall be given to attend a police station and the ability of a person to vary the date or time of attendance.

Section 7: Qualifying offence

48. Section 7 defines the "qualifying offences" referred to in other provisions dealing with biometric material. These offences are serious violent, sexual or terrorist offences, and also include the offences of aiding, abetting, conspiring etc the commission of such offences. The list of qualifying offences may be amended by order, using the affirmative resolution procedure (see *subsections (3) and (4)*).

Taking of fingerprints and samples: Northern Ireland

49. Sections 8 to 13 make provision for Northern Ireland equivalent to that made for England and Wales by sections 2 to 7.

Retention, destruction and use of fingerprints and samples etc

Section 14: Material subject to the Police and Criminal Evidence Act 1984

50. Section 14 substitutes a new section 64 into PACE and inserts fourteen new sections immediately after it. Section 64 (destruction of fingerprints and samples) currently sets out the purposes for which fingerprints, impressions of footwear and samples may be retained but permits them to be retained after they have fulfilled the purposes for which they were taken without reference to a retention period. The effect of section 14 is to establish a framework for the retention and destruction of such material, following the decision of the European Court of Human Rights in *S and Marper v United Kingdom* [2008] ECHR 1581. The new provisions require the destruction of DNA samples once they have been profiled and loaded satisfactorily onto the national database. In any event, all samples (whether biological DNA material or other samples, such as dental or skin impressions) are required to be destroyed within six months of their being taken (see new section 64ZA(2)).

51. The retention periods for the various categories of data depend on a number of factors including the age of the individual concerned, the seriousness of the offence or alleged offence, whether the individual has been convicted, and if so whether it is a first conviction. The different categories can be summarised as follows:

- Adults - convicted: indefinite retention of fingerprints, impressions of footwear and DNA profile (see substituted section 64(2));
- Adults - arrested but unconvicted: retention of fingerprints, impressions of footwear and DNA profile for 6 years (see new section 64ZD);
- Under 18 year olds - convicted of serious offence or more than one minor offence: indefinite retention of fingerprints, impressions of footwear and DNA profile (see substituted section 64(2));
- Under 18 year olds - convicted of single minor offence: retention of fingerprints, impressions of footwear and DNA profile for 5 years (see new section 64ZH);
- 16 and 17 year olds - arrested for but unconvicted of serious offence: retention of fingerprints, impressions of footwear and DNA profile for 6 years (see new section 64ZG);
- All other under 18 year olds - arrested but unconvicted: retention of fingerprints, impressions of footwear and DNA profile for 3 years (see new sections 64ZE and 64ZF);
- Persons subject to a control order: retention of fingerprints and DNA profile for 2 years after the control order ceases to have effect (see new section 64ZC);
- All DNA samples: retained until profile loaded onto database, but no more than 6 months (see new section 64ZA).

52. For the purposes of these provisions, the concept of "qualifying offence" is used to distinguish between serious and minor offences. Qualifying offence is defined in section 7.

53. The substitution of new section 64 also has the effect of removing the existing right of a person to witness the destruction of their fingerprints or impressions of footwear as, with the increasing use of technology, there are often no physical prints to destroy. However, a person still has the right to request a certificate from the police confirming that their data have been destroyed (see new section 64ZM).

54. The section also contains provision in new section 64ZB for material which has been given voluntarily to be destroyed as soon as it has fulfilled the purpose for which it

was taken, unless the individual is subsequently convicted, has previous convictions or consents to its retention.

55. In addition, where fingerprints or DNA profiles would otherwise need to be destroyed because of the expiry of a time limit set out in the above sections, new section 64ZK enables a responsible chief officer of police to determine that, for reasons of national security, those fingerprints or DNA profiles may be retained for up to two further years on that basis. It is open to the responsible chief officer to make further determinations to retain material where the necessity continues to exist.

Section 15: Material subject to the Police and Criminal Evidence (Northern Ireland) Order 1989

56. Section 15 makes provision for Northern Ireland equivalent to that made for England and Wales by section 14.

Section 16: Material subject to the Criminal Procedure (Scotland) Act 1995

57. Section 16 makes provision for Scotland for the retention and use of relevant physical data or samples (including a DNA profile derived from a DNA sample) taken under section 18(2), (6) or (6A) of the Criminal Procedure (Scotland) Act 1995 (prints, samples etc. in criminal investigations).

58. It provides that, where relevant physical data or samples would otherwise need to be destroyed by virtue of the 1995 Act, a responsible chief constable of police may determine that, for reasons of national security, those fingerprints or DNA profiles may be retained for up to two further years on that basis. It is open to chief constables to make further determinations to retain material where the necessity continues to exist.

Section 17: Material subject to the Terrorism Act 2000

59. Paragraph 14 of Schedule 8 to the Terrorism Act 2000 currently provides for the retention of fingerprints and samples (and DNA profiles derived from samples) taken from persons detained under section 41 of or Schedule 7 to the Terrorism Act 2000 (that is persons arrested as a suspected terrorist or persons detained under the ports and borders provisions in Schedule 7). Paragraph 14 of Schedule 8 to the 2000 Act sets out the purposes for which these fingerprints, samples and profiles may be used while they are retained, but permits retention without reference to a retention period.

60. Section 17 substitutes for paragraph 14 new paragraphs 14 to 14I, making provision for a destruction and retention regime broadly equivalent to that in the amendments to PACE. New paragraph 14A makes provision for the destruction of samples, which must be destroyed within 6 months of being taken, or in the case of a DNA sample, as soon as a profile has been derived from it. Paragraphs 14B to 14E provide for retention periods broadly equivalent to those provided in PACE as amended by section 14. The time limits for retention depend on the age of the person, whether the person has previous convictions and whether the person is detained under section 41 (arrest on suspicion of terrorism) or under Schedule 7 (detention at ports and borders). But where the person is convicted of a recordable offence in England and Wales or Northern Ireland or an offence punishable by imprisonment in Scotland (or where the person already has such a conviction in England and Wales or Northern Ireland, other than a conviction for a minor offence committed when they were under 18), the material need not be destroyed.

61. As in relation to the PACE provisions, where fingerprints or DNA profiles would otherwise need to be destroyed because of the expiry of a time limit set out in the new provisions, if a chief officer of police (or chief constable in Northern Ireland) determines that it is necessary to retain that material for the purposes of national security, those fingerprints or DNA profiles may be further retained for up to two years (new paragraph 14G). It is open to that chief officer to make further determinations to retain the material, which have effect for a maximum of two years.

62. Paragraph 14I largely replicates the existing provision in paragraph 14 (as prospectively amended by section 16 of the Counter-Terrorism Act 2008) in relation to the use to which retained material may be put: it may be used in the interests of national security, in a terrorist investigation, for the investigation of crime or for identification-related purposes (s*ub-paragraphs (1) and (4)*). *Sub-paragraph (2)* replicates the existing provision in paragraph 14 about the material against which fingerprints and samples taken under the Terrorism Act 2000 may be checked. *Sub-paragraph (3)* is new, and provides that, once the new requirement to destroy material applies, the material cannot be used in evidence against the person to whom it relates or for the purposes of the investigation of any offence.

Section 18: Material subject to the Terrorism Act 2000 (Scotland)

63. Section 18 provides for a new regime for the retention, destruction and use of biometric material taken in Scotland under paragraph 20 of Schedule 8 to the Terrorism Act 2000. Paragraph 20 of Schedule 8 currently provides for the retention of biometric material, including fingerprints, DNA samples and DNA profiles taken from persons detained under section 41 of or Schedule 7 to the Terrorism Act 2000 in Scotland. It sets out the purposes for which this material may be used while they are retained, but permits retention without reference to a retention period. Section 18 amends paragraph 20 of Schedule 8 to the Terrorism Act 2000 by substituting for sub-paragraph (3) new sub-paragraphs (3) to (3C) and repealing sub-paragraph (4). It also provides for new paragraphs 20A to 20I, which makes provision for Scotland broadly equivalent to that made for England and Wales and Northern Ireland by section 17.

64. The time limits for retention depend on the age of the person, whether the person has previous convictions and whether the person is detained under section 41 (arrest on suspicion of terrorism) or under Schedule 7 (detention at ports and borders). Where a person is convicted of a recordable offence in England and Wales and Northern Ireland or an offence punishable by imprisonment in Scotland (or where the person already has such a conviction, other than a conviction for a minor offence committed when they were under 18), the material need not be destroyed.

65. Where fingerprints or DNA profiles would otherwise need to be destroyed because of the expiry of a time limit set out in the new provisions, if a chief constable of police determines that it is necessary to retain that material for the purposes of national security, those fingerprints or DNA profiles may be further retained for up to two years (new paragraph 20G). It is open to a chief constable to make further determinations to retain the material, which have effect for a maximum of 2 years. Paragraph 20I covers the use to which retained material may be put: replicating those for England and Wales or Northern Ireland in section 17.

Section 19: Material subject to the International Criminal Court Act 2001

66. Fingerprints and samples may be taken from a person under Schedule 4 to the International Criminal Court Act 2001 if the International Criminal Court requests assistance in obtaining evidence of the identity of a person (who will usually be a person suspected of committing an "ICC crime" such as genocide or war crimes). Section 19 amends Schedule 4 to make provision about the retention and destruction of material taken under that Schedule, so that all material must be destroyed within six months of it being transferred to the International Criminal Court, or, if later, as soon as it has fulfilled the purposes for which it was taken.

Section 20: Material subject to the Counter-Terrorism Act 2008 (Scotland)

67. Section 11 of the Counter-Terrorism Act 2008 makes provision for the taking of fingerprints and non-intimate samples from persons subject to a control order in Scotland. The provisions contained in section 11 are similar to those in sections 61(6BA) and 63(3D) of PACE (inserted by section 10 of the 2008 Act), which relate

to controlled persons in England and Wales, and Articles 61(6BA) and 63(3C) of the Police and Criminal Evidence (Northern Ireland) Order 1989 ("PACE NI"), inserted by section 12 of the 2008 Act, which relate to controlled persons in Northern Ireland. These provisions are yet to be brought into force, pending their amendment in this Act to take account of the *S & Marper* judgment.

68. Section 20 of this Act amends section 11 of the 2008 Act and adds a new section 11A. These amendments make equivalent provision for the retention and use of fingerprints and non-intimate samples taken from controlled individuals in Scotland as section 14 does for England and Wales (amending PACE) and section 15 does for Northern Ireland (amending PACE NI).

69. The main area of difference between the provision for England, Wales and Northern Ireland and the provision for Scotland is that any samples that are retained in Scotland may be used only in the interests of national security or for the purposes of a terrorist investigation. This difference is necessary in order to avoid making provision in areas that are within devolved competence.

Section 21: Other material

70. Section 18 of the Counter-Terrorism Act 2008 (which, when the Crime and Security Act 2010 received Royal Assent, had not been brought into force) makes provision for the retention by law enforcement authorities in England and Wales and Northern Ireland of DNA samples and profiles and fingerprints obtained by or supplied to the authority in the way described in subsection (3) of that section (which includes covertly acquired material and material supplied by overseas authorities) and which is not held subject to "existing statutory restrictions" such as those set out in PACE or in Schedule 8 to the Terrorism Act 2000. This includes material which is on the police 'counter-terrorism database'. Section 18 sets out the purposes for which this material may be used while it is retained, but permits retention without reference to a retention period.

71. Section 21 amends section 18 of the 2008 Act to introduce the requirement to destroy any DNA sample referred to in section 18 as soon as a profile has been derived from it or, if sooner, within 6 months of the sample coming into the authority's possession (new subsection (3A) of section 18). New subsection (3B) provides that fingerprints or DNA profiles ("material") relating to an identifiable individual aged under 16 at the time they came into the authority's possession must be destroyed within 3 years. New subsection (3C) provides for destruction of such material relating to a person aged 16 or over within 6 years of that material coming into the authority's possession. In each case, where the person is convicted of a recordable offence in England and Wales or Northern Ireland (or where the person already has such a conviction, other than a conviction for a minor offence committed when they were under 18), the material need not be destroyed.

72. Where fingerprints or DNA profiles would otherwise need to be destroyed because of the expiry of a time limit set out in the new provisions, if the 'responsible officer' determines that it is necessary to retain that material for the purposes of national security, those fingerprints or DNA profiles may be further retained for up to two years (new subsections (3E) and (3F) of section 18). The responsible officer may make further determinations to retain the material, which again have effect for a maximum of 2 years. 'Responsible officer' is defined in new subsection (3G) as the chief officer of the police force or organisation which obtained or acquired the material.

73. New subsections (3H) and (3I) of section 18 replicate the provisions in PACE (as amended by this Act) about the destruction of copies of fingerprints and DNA profiles, and new subsection (3J) and substituted sections (4) and (4B) (inserted by *subsection (5)* of section 18) make provision about the uses to which the material may be put (which largely reproduces what is currently in section 18(2) and (4)).

74. *Subsection (8)* inserts a new section 18A into the Counter-Terrorism Act 2008 which provides definitions of terms used in section 18 (as amended by the Act).

Section 22: Destruction of material taken before commencement

75. Section 22 requires the Secretary of State to make a statutory instrument prescribing the manner, timing and other procedures in respect of destroying relevant biometric material already in existence at the point this legislation comes into force. This will enable the Secretary of State to ensure that the retention and destruction regime set out in this Act is applied to existing material, while recognising that this exercise may take some time to complete; there are some 850,000 profiles of unconvicted persons on the National DNA Database. The statutory instrument will be subject to the negative resolution procedure.

Section 23: National DNA Database Strategy Board

76. Section 23 provides for the Secretary of State to make arrangements for a National DNA Database Strategy Board. Such a Board already exists, and reports to the Home Secretary, providing strategic oversight of the application of powers under PACE for taking and using DNA. The principal members of the Board are the Association of Chief Police Officers, the Association of Police Authorities and the Home Office, but there is also an independent element to the Board from non-police bodies such as the Information Commissioner and the National DNA Database Ethics Group. This section puts the Board on a statutory footing and requires the Secretary of State to lay the Board's governance rules and annual reports before Parliament.

77. Section 23 also requires the Board to publish guidance to chief officers on the circumstances in which DNA samples and profiles should be removed immediately from the National DNA Database (*subsection (2)*). Chief officers will be required to act in accordance with the Board's guidance.

Domestic violence

Section 24: Power to issue a domestic violence protection notice

78. Section 24 creates a new power for a senior police officer to issue a Domestic Violence Protection Notice (DVPN). The purpose of a DVPN is to secure the immediate protection of a victim of domestic violence (V) from future violence or a threat of violence from a suspected perpetrator (P). A DVPN prohibits P from molesting V and, where they cohabit, may require P to leave those premises.

79. The issue of a DVPN triggers an application for a Domestic Violence Protection Order (DVPO). This is an order lasting between 14 and 28 days, which prohibits P from molesting V and may also make provision about access to shared accommodation by P and V. Sections 27 to 30 deal with DVPOs.

80. Section 24 sets out the conditions and considerations that must be met in order for the police to issue a DVPN.

81. *Subsection (1)* creates the power for a senior police officer, of rank of superintendent or higher (the "authorising officer"), to issue a DVPN.

82. *Subsection (2)* sets out the test for issuing a DVPN. A DVPN may be issued where the authorising officer has reasonable grounds for believing that, firstly, P has been violent or has threatened violence towards an associated person, V, and that, secondly, the issue of a notice is necessary in order to secure the protection of V from violence or the threat of violence. "Associated person" is defined in *subsection (9)* (see below).

83. *Subsections (3) and (4)* set out particular matters that the authorising officer must take into consideration before issuing a DVPN. The authorising officer must consider the welfare of any child whose interests the officer considers relevant. The authorising officer must take reasonable steps to find out the opinion of V as to whether the DVPN should be issued. Consideration must also be given to any representation P makes in relation to the issuing of the DVPN. Where the DVPN is to include conditions in relation

to the occupation of premises shared by P and V, reasonable steps must also be taken to find out the opinion of any other associated person who lives in the premises.

84. While the authorising officer must take reasonable steps to discover V's opinion, and must take this into consideration, the issue of the notice is not dependent upon V's consent, as the authorising officer may nevertheless have reason to believe that V requires protection from P. *Subsection (5)* specifies that an authorising officer may issue a DVPN, regardless of consent from V.

85. *Subsection (6)* ensures that a DVPN must contain provision to prohibit P from molesting V for the duration of the DVPN. As set out in *subsection (7)*, this may include molestation in general, particular acts of molestation, or both.

86. *Subsection (8)* specifies that where P and V share living premises, the DVPN may explicitly: prohibit P from evicting or excluding V from the premises; prohibit P from entering the premises; require P to leave the premises; or prohibit P from coming within a certain distance of the premises (as specified in the DVPN) for the duration of the DVPN. It does not matter for these purposes whether the premises are owned or rented in the name of P or V.

87. *Subsection (9)* specifies the definition of "associated person", for whom the DVPN would seek to provide protection. The definition is that given in section 62 of the Family Law Act 1996 and includes persons:

- who are, or have been, married to each other or civil partners of each other;
- who are cohabitants or former cohabitants;
- who live, or have lived, in the same household, otherwise than merely by reason of one of them being the other's employee, tenant, lodger or boarder;
- who are relatives;
- who have agreed to marry one another or to enter into a civil partnership agreement (whether or not that agreement has been terminated);
- who have or have had an intimate personal relationship with each other which is or was of significant duration.

88. Under *subsections (10) and (11)*, where a DVPN is issued which prevents P from entering premises, and the authorising officer believes that P is subject to service law and the premises are service living accommodation, then the authorising officer must make reasonable efforts to inform P's commanding officer that the notice has been issued. "Service living accommodation" carries the same meaning as in section 96(1)(a) of the Armed Forces Act 2006, being a building or part of a building which is occupied for the purposes of Her Majesty's Armed Forces and is provided exclusively for use as living accommodation. Section 32 provides for the issuing of a DVPN in respect of such premises by the Ministry of Defence Police.

Section 25: Contents and service of a domestic violence protection notice

89. *Subsection (1)* sets out the details that must be specified in the DVPN, which include the grounds for issuing a DVPN; the fact that a power of arrest attaches to the DVPN; the fact that the police will make an application for a DVPO which will be heard in court within a 48 hour period; the fact that the DVPN will continue to be in effect until the DVPO application is determined; and the provisions that may be included in a subsequent DVPO.

90. *Subsection (2)* specifies the procedure for issuing a DVPN. A DVPN can only be served on P by a constable, and must be personally served and in writing.

91. *Subsection (3)* requires the constable serving the DVPN to ask P to supply an address in order to enable P to be given notice of the hearing for the DVPO.

Section 26: Breach of a domestic violence protection notice

92. Should P breach the conditions of the DVPN, then a constable may arrest P without warrant as set out in section 25(1)(b).

93. *Subsection (1)* requires that if P is arrested, P must be held in custody and brought before the magistrates' court that will hear the application for the DVPO. P must be brought before this court at the latest within a period of 24 hours beginning with the time of arrest. However, if the DVPO hearing has already been arranged to take place within that 24 hour period, then P is to be brought before the court for that hearing.

94. If P is brought before the court in advance of the DVPO hearing, then the court may remand P under *subsection (2)*.

95. If the court adjourns the DVPO hearing by virtue of section 27(8), the court may remand the person under *subsection (3)*.

96. In calculating when the period of 24 hours mentioned in *subsection (1)(a)* ends, Sundays, Christmas Day, Good Friday and all other bank holidays (in England and Wales, as per the Banking and Financial Dealings Act 1971) are to be disregarded (see *subsection (4)*).

Section 27: Application for a domestic violence protection order

97. *Subsections (1) and (2)* specify that once a DVPN has been issued, a police constable must apply to the magistrates' court for a DVPO.

98. *Subsection (3)* states that the magistrates court hearing must be no later than 48 hours after the time when the DVPN was served. Sundays, Christmas Day, Good Friday and all other bank holidays (in England and Wales, as per the Banking and Financial Dealings Act 1971) are to be excluded from this 48-hour period (see *subsection (4)*).

99. *Subsections (5) to (7)* cover the steps to be taken to give P notice of the DVPO hearing. Under *subsection (5)*, notice of the hearing must be given to P. If P gave an address for the purposes of service at the point of issue of the DVPN, then the notice is deemed given if it is left at that address. Where no address has been given by P, then under *subsection (7)* the court must be satisfied that reasonable efforts have been made to give P the notice of the hearing.

100. *Subsection (8)* provides that the magistrates' court may adjourn the hearing of an application for a DVPO. If the hearing is adjourned, under *subsection (9)* the DVPN continues in effect until the application is determined by the court.

101. *Subsection (10)* operates to prevent V being compelled, under section 97 of the Magistrates' Courts Act 1980, to attend the hearing of an application for a DVPO or to answer questions, unless V has given oral or written evidence at the hearing.

Section 28: Conditions for and contents of a domestic violence protection order

102. Section 28 details the two conditions that must be met for a DVPO to be made, as set out in *subsections (2) and (3)*.

103. The first condition is that the court must be satisfied on the balance of probabilities that P has been violent, or threatened violence, towards an associated person, V.

104. The second condition is that the court thinks the DVPO is necessary to secure the protection of V from violence, or the threat of violence, from P.

105. *Subsection (4)* specifies particular matters a court must consider prior to making a DVPO, where it is made aware of these matters. These are: the welfare of any child whose interests the court considers relevant to the DVPO: the opinion of V; and, where the DVPO is to include conditions in relation to the occupation of premises shared by P and V, the opinion of any other associated person who lives in the premises.

106. It is not necessary that V consent to the order. *Subsection (5)* specifies that a court may issue a DVPO regardless of whether or not V consents.

107. *Subsection (6)* provides that a DVPO must contain provision explicitly prohibiting P from molesting V for the duration of the DVPO. As set out in *subsection (7)*, this may include molestation in general, particular acts of molestation, or both.

108. *Subsection (8)* specifies that where P and V share living premises, the DVPO may explicitly: prohibit P from evicting or excluding V from the premises; prohibit P from entering the premises; require P to leave the premises; or prohibit P from coming within a certain distance of the premises (as specified in the DVPO) for the duration of the DVPO. This provision can be made irrespective of who owns the premises.

109. *Subsection (9)* attaches a power of arrest to the DVPO which can be exercised if a police constable has reasonable grounds for believing that P is in breach of the DVPO. In these circumstances, the constable may arrest P without warrant.

110. *Subsections (10) and (11)* specify the duration of the DVPO. A DVPO may be in force for a minimum of 14 days from the day on which it is made, to a maximum of 28 days from the day on which it is made. The DVPO must state the period for which it is to be in force.

Section 29: Breach of a domestic violence protection order

111. *Subsection (1)* requires that if P is arrested by virtue of section 28(9) (which provides that a DVPO must state that a person may be arrested on breach of a DVPO), P must be held in custody and brought before a magistrates' court within a period of 24 hours beginning with the time of arrest. *Subsection (2)* specifies that if the matter is not disposed of when P is brought before the court, the court may remand the person.

112. In calculating when the period of 24 hours mentioned in *subsection (1)* ends, Sundays, Christmas Day, Good Friday and all other bank holidays (in England and Wales, as per the Banking and Financial Dealings Act 1971) are to be disregarded (see *subsection (3)*).

Section 30: Further provision about remand

113. Section 30 makes further provision about remand of a person by a magistrates' court under section 26(2) or (3) or section 29(2).

114. *Subsection (2)* makes a minor modification to section 128 of the Magistrates' Courts Act (which makes provision about remand in custody or on bail) in its application to these provisions.

115. *Subsection (3)* gives the court the power to remand P for the purposes of allowing a medical report to be made, and *subsections (4) and (5)* provide that, in such a case, the adjournment may not be for more than three weeks at a time if P is remanded in custody and not for more than four weeks at a time if P is remanded on bail.

116. *Subsection (6)* gives the court the same power as it has in respect of an accused person to make an order under section 35 of the Mental Health Act 1983 if it suspects that P is suffering from a mental disorder. Section 35 of that Act enables a court to remand an individual to a hospital specified by the court for a report on his mental condition. Such a remand may not be for more than 28 days at a time or for more than 12 weeks in total.

117. Under *subsection (7)*, when remanding a person on bail, the court may impose requirements which appear to the court as necessary to ensure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

Section 31: Guidance

118. Section 31 provides that the Secretary of State may, after consultation with specified stakeholders, issue and publish guidance. *Subsection (2)* requires that when exercising functions to which the guidance relates, police officers must have regard to it.

Section 32: Ministry of Defence Police

119. Section 32 creates a new power for a senior officer in the Ministry of Defence Police to issue a DVPN under section 24 for the protection of an associated person, V, in relation to premises that are occupied for the purposes of the Armed Forces and are provided as living accommodation.

120. *Subsection (1)* creates the power for a senior officer in the Ministry of Defence Police, not below the rank of superintendent (the "authorising officer"), to issue a DVPN for the protection of V, but only if V or P lives in service living accommodation.

121. *Subsection (2)* specifies that where a member of the Ministry of Defence police issues a DVPN under *subsection (1)* the DVPN may, by virtue of section 24(8), also apply to any other premises in England or Wales lived in by P and V.

Section 33: Pilot schemes

122. Section 33 provides that the Secretary of State may make an order to allow any provision under sections 24 to 32 to come into force for a limited period of time. The purpose of such an order is to allow an assessment of the effectiveness of the provision in practice.

123. *Subsections (2) and (3)* provide that the Secretary of State may make different provision for different areas, and that more than one order may be issued under this section.

Gang-related violence

124. Injunctions to prevent gang-related violence were established in the Policing and Crime Act 2009 ("the 2009 Act"). Such an injunction may be granted where the court is satisfied that a person has engaged in, or has encouraged or assisted, gang-related violence, and where the court considers that it is necessary to grant the injunction for the purpose of preventing the person from continuing to engage in gang-related violence or for the purpose of protecting the person from such violence.

Section 34: Grant of injunction: minimum age

125. Section 34 amends section 34 of the 2009 Act so that injunctions may only be obtained against persons aged 14 or over.

Section 35: Review on respondent to injunction becoming 18

126. Section 35 in the first place inserts a new subsection into section 36 of the 2009 Act.

127. Section 36 of the 2009 Act allows the court to review the terms of an injunction at any time, and requires the court to review an injunction after one year. The new subsection has the effect of requiring the court to review an injunction where it is granted in respect of a respondent under the age of 18 and remains effective after the respondent reaches 18.

128. Secondly, section 35 amends section 42 of the 2009 Act so as secure that it is not necessary for a review hearing to be held if the injunction is varied within the 4 weeks preceding the respondent's 18th birthday.

Section 36: Consultation of youth offending team

129. Section 36 amends section 38 of the 2009 Act to insert a new requirement for injunction applicants to consult the appropriate youth offending team before applying for an injunction in relation to a person under 18 years of age.

130. The youth offending team to be consulted is the one for the area in which it appears the proposed respondent resides.

Section 37: Application for variation or discharge of injunction

131. Section 37 amends section 42 of the 2009 Act by inserting a provision which prevents a further application to vary or discharge an injunction being made without the consent of the court if a previous application to vary or discharge has been dismissed. This amendment has effect for injunctions granted against adults and against 14-17 year olds.

Section 38: Powers of court to remand

132. This section amends Schedule 5 to the 2009 Act (power of remand) and prevents respondents aged under 18 from being remanded in custody by the courts. This means that they are only eligible for remand on bail.

Section 39: Powers of court on breach of injunction by respondent under 18

133. Section 39 inserts a new section 46A and a new Schedule 5A into the 2009 Act to enable the courts to make further orders when a person under the age of 18 breaches an injunction. Currently a breach of such an injunction would be dealt with as a contempt of court, but this is often not considered appropriate where the respondent is under 18. Therefore new Schedule 5A provides the court with two new powers for dealing with a breach of an injunction in respect of an individual aged under 18 at the time of breach. These are the power to make a supervision order and the power to make a detention order.

New Schedule 5A: Part 1

134. Paragraph 1 of new Schedule 5A sets out the circumstances in which the court may make a supervision order or detention order.

135. *Sub-paragraph (1)* states that the injunction must have been granted in respect of a person under 18 and that the court must be satisfied beyond reasonable doubt that the respondent is in breach of the injunction. Once the court is so satisfied, it has the power to make a supervision order (see Part 2 of the Schedule) or a detention order (see Part 3).

136. *Sub-paragraph (3)* states that these orders are available in addition to the court's other powers for dealing with a breach of the injunction. For persons under the age of 18, this means a fine could also be imposed as a penalty for contempt of court.

137. *Sub-paragraph (4)* requires that the youth offending team and any other person previously consulted in relation to the grant of the injunction (see section 36) must be again consulted by the applicant before a supervision order or detention order can be made.

138. *Sub-paragraph (5)* states that in considering whether to exercise its powers under this paragraph, the court must take into account a report which will be made by the youth offending team (the same team referred to in *sub-paragraph (4)*) for the purposes of assisting the court in its decision making.

139. *Sub-paragraph (6)* provides that a detention or supervision order cannot be made where an injunction was granted in respect of a person under the age of 18, but the respondent is aged 18 or over at the time when the court comes to deal with the respondent for breach of the injunction.

140. *Sub-paragraph (7)* states that a detention order cannot be made unless the court is of the view that the injunction breach is so severe or so extensive that no other power of the court is appropriate. This includes the court's powers to impose a fine for contempt of court.

141. *Sub-paragraph (8)* provides that where the court does decide, in accordance with *sub-paragraph (7)*, to make a detention order under *sub-paragraph (1)*, it must state in court the reasons why it is satisfied that no other power available to the court is appropriate.

New Schedule 5A: Part 2

142. Paragraph 2 of new Schedule 5A describes the contents of supervision orders and sets out the issues the court must consider in the making of a supervision order.

143. *Sub-paragraph (1)* provides that a supervision order can include supervision, activity, and/or curfew requirements.

144. *Sub-paragraphs (2) to (4)* require the court to give consideration to the practicality of the supervision order's components and to the impact it may have on the defaulter's family circumstances, religious beliefs, education or work and any other court order to which the defaulter may be subject.

145. *Sub-paragraphs (5) and (6)* require the supervision order to state a maximum period of time for which it can be in operation which must not exceed 6 months.

146. *Sub-paragraphs (7) and (8)* make provision for a youth offending team to be specified in the supervision order. This youth offending team will be responsible for administration of the supervision order.

147. Paragraph 3 of new Schedule 5A sets out what is meant by a supervision requirement. The defaulter may be required to attend appointments with the responsible officer (a position set out in paragraph 7) or another person instructed by the responsible officer.

148. Paragraph 4 makes provision about activity requirements. Activity requirements can require the defaulter to participate in non-residential activities or in a residential exercise. The defaulter must comply with instructions given by the responsible officer or the person in charge of any specified place or activities.

149. *Sub-paragraph (2)* provides that if an activity requirement is specified in the supervision order, it must be for between 12 and 24 days.

150. *Sub-paragraphs (8) and (9)* provide that a residential exercise (which will not constitute the totality of an activity requirement) may not be for a period of more than 7 days and cannot be given without the consent of the defaulter's parent or guardian.

151. *Sub-paragraph (12)* provides that the court cannot include an activity requirement within a supervision order unless it is satisfied that the youth offending team specified, or to be specified, in the order has been consulted. It must also be satisfied that it is feasible to secure compliance with the requirement, that the activities are available within the youth offending team area, and that any other persons needed for delivery of the requirement consent to the requirement's inclusion in the order.

152. The activity requirement may be amended by the court on application (see *sub-paragraphs (11) and (12)*).

153. Paragraph 5 makes provision for the making of curfew requirements. Curfew requirements may specify different places or periods for different days. A curfew may not be for less than two hours or more than eight hours in any day. The curfew requirement may be amended by the court on application (see *sub-paragraph (5)*).

154. Paragraph 6 makes provision for an electronic monitoring requirement which may be made as part of a curfew requirement. An electronic monitoring requirement may be

imposed for a period specified in the supervision order, or determined by the responsible officer in accordance with that order.

155. The court may amend the electronic monitoring requirement on application (see *sub-paragraph (7)*).

156. Paragraph 7 defines the "responsible officer" and the duties of that role.

157. *Sub-paragraph (1)* provides that in the case of a supervision order which only contains a curfew requirement with an electronic monitoring requirement, the responsible officer will be the person who is responsible for the electronic monitoring; this person will be specified in the supervision order.

158. In any other case, the responsible officer will be a member of the youth offending team specified in the order.

159. *Sub-paragraph (2)* states the two duties of the responsible officer, namely to make any arrangements necessary in connection with the requirements of the order, and to promote the defaulter's compliance with the order.

160. *Sub-paragraph (4)* provides that the defaulter must keep in touch with the responsible officer and notify the responsible officer of any change of address.

161. Paragraph 8 provides for the amendment of the period during which a supervision order operates.

162. Paragraph 9 sets out the court's powers where the defaulter changes their area of residence.

163. Paragraph 10 provides that either the injunction applicant or the defaulter may apply to the court to have the supervision order revoked or amended to remove a requirement from it. The court may grant the application if it is considered to be in the interests of justice, having had regard to the circumstances which have arisen since the order was made. These circumstances may include the conduct of the defaulter.

164. *Sub-paragraph (4)* provides that if an application to revoke, or remove part of, a suspension order is dismissed, no further such application may be made without the consent of the appropriate court.

165. Paragraph 11 states that when the responsible officer considers that the young person has complied with all the requirements of the supervision order, he must notify the injunction applicant.

166. Paragraph 12 makes provision about non-compliance with a supervision order.

167. *Sub-paragraphs (1) and (2)* place a requirement on the responsible officer to inform the injunction applicant when the young person does not comply with the conditions of the supervision order. Once the applicant authority has been informed they can apply to the appropriate court after consulting as specified in *sub-paragraph (3)*.

168. *Sub-paragraph (4)* states that once the court is satisfied beyond reasonable doubt that the defaulter has, without reasonable excuse, failed to comply with any requirement of the supervision order, it can either revoke the supervision order and grant a new one with different requirements or it can revoke the order and make a detention order.

169. *Sub-paragraph (5) and (6)* provide that where the person has breached a supervision order after the age of 18, then the court cannot revoke the supervision order and make a new one, nor can it revoke the supervision order and make a detention order. Instead it will treat the person as a person over the age of 18 who is in breach of their injunction. The consequence of this is that the person is liable to be sentenced for contempt of court as an adult; this currently carries a maximum penalty of an unlimited fine and/or two years' imprisonment (for those aged 21 and over) or two years' detention (for those aged between 18 and 20).

170. Paragraph 13 makes provision for copies of orders to be provided to persons affected by them.

New Schedule 5A: Part 3

171. Paragraph 14 describes a detention order which may be made following breach of an injunction.

172. *Sub-paragraph (1)* states that the young person can be detained in youth detention accommodation determined by the Secretary of State. This may be a secure training centre, a young offender institution or local authority secure accommodation (see *sub-paragraph (3)*). Decisions as to which youth detention accommodation is appropriate in a particular case will be taken jointly by the Secretary of State and by the Youth Justice Board, based upon a range of considerations (see *sub-paragraph (4)*).

173. *Sub-paragraph (2)* states that the period of detention specified in a detention order cannot exceed three months.

174. Paragraph 15 provides for the revocation of a detention order.

175. *Sub-paragraph (1)* states that the injunction applicant or the young person subject to the order can apply to the appropriate court for revocation of the detention order.

176. *Sub-paragraphs (2) and (3)* allow a court to revoke a detention order if subsequent circumstances (including the young person's conduct) mean it is in the interests of justice to do so.

177. *Sub-paragraph (4)* prevents a further application to revoke a detention order being made without the consent of the court if a person's application to revoke has been dismissed.

178. *Sub-paragraph (5)* imposes consultation requirements.

179. The amendment made to the Crime and Disorder Act 1998 by *subsection (4)* confers an additional function on the Youth Justice Board, namely that of entering into agreements for the provision of accommodation referred to in paragraph 14(3) of the new Schedule 5A.

Anti-social behaviour orders

Section 40: Report on family circumstances

180. Anti-social behaviour orders (ASBOs) are designed to prevent individuals from engaging in specific anti-social acts. This section amends the Crime and Disorder Act 1998 ("the 1998 Act") under which ASBOs are made.

181. *Subsection (2)* inserts new subsection (1C) into section 1 of the 1998 Act. This requires anyone who makes an application for an ASBO to the magistrates' court under section 1 of the 1998 Act, in relation to a young person under the age of 16, to prepare a report on the young person's family circumstances in accordance with regulations made by the Secretary of State. It is intended that the regulations will specify certain topics or issues that the report should address, for example levels of family support for the young person.

182. *Subsections (3) and (4)* make consequential amendments as a result of new subsection (1C). This includes a requirement that the court must take into account this report when considering whether to make a parenting order under section 9 of the 1998 Act.

Section 41: Parenting orders on breach

183. Section 41 amends the 1998 Act in relation to parenting orders by strengthening the assumption that a parenting order will be made when a young person under the age of 16 is convicted of an offence of breaching an ASBO.

184. *Subsection (3)* inserts a new section 8A into the 1998 Act. New section 8A provides that when a young person under the age of 16 is convicted of an offence of breaching an ASBO, the court must make a parenting order unless there are exceptional circumstances.

185. Section 8A(3) provides that the parenting order must specify the requirements it considers would be desirable in the interests of preventing any repetition of the behaviour that led to the ASBO being made, or the commission of any further offence by the person convicted.

186. Section 8A(4) provides that if a court does not make a parenting order in reliance on the exceptional circumstances proviso, it must state in open court that it is of that opinion and what the exceptional circumstances are.

187. Section 8A(5) applies provisions of section 8 of the 1998 Act to parenting orders made under new section 8A. The provisions of section 8 which are applied are:

- Subsection (3) (court not to make parenting order unless arrangements available in local area);
- Subsection (4) (definition of parenting order);
- Subsection (5) (counselling or guidance programme not necessary if there has been a previous parenting order);
- Subsection (7A) (counselling or guidance programme may require parent to attend a residential course).

188. Section 8A(6) ensures that section 9(3) to section 9(7) of the 1998 Act also apply to parenting orders made under new section 8A. These sections:

- require the court to explain to the parent the effect of the order and the consequences of breaching it;
- specify that, as far as practical, the requirements in the order and directions given under it should not conflict with a parent's religious beliefs or interfere with a parent's work or education;
- enable the court to discharge or vary the order;
- make parents convicted of failing to comply with requirements in the parenting order or directions given under the parenting order liable to a fine.

Private security industry

Section 42: Extension of licensing scheme

189. Section 42 amends the Private Security Industry Act 2001 ("the 2001 Act").

190. The 2001 Act makes provision for the licensing of individuals carrying out security industry activities. The licensing is the responsibility of the Security Industry Authority ("the SIA"). It is an offence under the 2001 Act for an unlicensed *individual* to engage in any activity for which a licence is required, or to supply an unlicensed individual to engage in such activities. In the case of vehicle immobilisers it is an offence for an occupier of premises to permit an unlicensed individual to engage in vehicle immobilisation on the premises.

191. Section 42 provides for *businesses* to be licensed by the SIA. At the outset, businesses carrying out vehicle immobilisation activities will require a licence. The purpose is to regulate the activities of such businesses (and particularly, in relation to vehicle immobilisation, such matters as release fees and warning signs).

192. Section 42 inserts new sections 4A and 4B into the 2001 Act.

193. The new section 4A of the 2001 Act introduces a licence requirement in relation to businesses carrying vehicle immobilisation or restriction and removal of vehicles (see subsection (2)(a) and (b)). The Secretary of State may designate other security activities in the future which will require business licensing if they are activities listed in Schedule 2 to the 2001 Act (see subsection (2)(c)). New section 4A creates an offence of engaging in an activity licensable under the section without a licence (see subsection (1)).

194. Subsection (3) of new section 4A deals with the application of the section to Scotland and requires Scottish Ministers exercising functions of the Secretary of State under new section 4A to consult the Secretary of State.

195. Subsections (4) to (7) limit the business licence requirement to those responsible for control of, or decisions of, businesses carrying out the licensable activity. This includes sub-contractors, except where the sub-contractor is an individual. Individuals acting as sub-contractors or under the employment or direction of another would not require a business licence (but they would continue to require an individual's licence).

196. Subsection (8) provides penalties for the offences in new section 4A, of up to 12 months' imprisonment or a fine not exceeding the statutory maximum, or both, on summary conviction; and on indictment of imprisonment up to five years or an unlimited fine, or both.

197. New section 4B sets out exemptions to the requirement for businesses to be licensed under new section 4A. Subsections (1) and (2) enable the Secretary of State to prescribe in regulations the circumstances in which a person need not be licensed where suitable alternative arrangements apply.

198. *Subsection (3)* of section 42 amends section 6 of the 2001 Act (offence of using unlicensed wheel-clampers) to make it an offence for a land-owner to allow an unlicensed business to carry out wheel-clamping on his land. Section 6 of the 2001 Act provides the same penalties for offences under that section as those set out in new section 4A(8).

199. *Subsection (4)* amends section 9 of the 2001 Act, which makes provision about the conditions that may be included in a licence under the Act. The amendments will mean that the new business licences may include a condition that the licensee is a member of a body or scheme nominated by the SIA.

200. *Subsection (5)* amends section 19 of the 2001 Act, which sets out the powers of entry and inspection which enable the SIA to inspect premises and documents for the purposes of checking compliance with the Act. These amendments extend these powers to premises on which it appears that activities requiring a business licence are being carried out.

201. *Subsections (6)* and *(7)* insert a new subsection into section 23 of the 2001 Act to deal with the prosecution and punishment of offences committed by unincorporated associations. As explained above, new criminal offences are being created in respect of business licences, and it is anticipated that many licensees will be unincorporated associations.

202. *Subsection (8)* introduces Schedule 1 to the Act which makes amendments to the 2001 Act which are consequential upon new sections 4A and 4B. In particular, paragraph 15 of the Schedule inserts a new section 23A into the 2001 Act making procedural provision in relation to offences by unincorporated associations.

Section 43: Extension of approval scheme

203. Section 43 amends the 2001 Act to extend the SIA's Approved Contractor Scheme (to be known as the "Approval Scheme"), provided under section 15 of the 2001 Act, to enable in-house private security services to apply for approved status.

204. The SIA is required under section 14 of the 2001 Act to establish and maintain a register of approved providers of security industry services. The register has to contain particulars of every person who is approved under arrangements which the SIA has to make under section 15 of the 2001 Act. Section 15 provides that approvals must be subject to certain conditions.

205. The SIA carries out its obligations under sections 14 and 15 of the 2001 Act by way of its Approved Contractor Scheme. This is a voluntary scheme, which has been developed in consultation with representatives from the private security industry, under which security providers who satisfactorily meet the agreed standards can obtain approved status. Approved status carries benefits for those contractors who hold it. The amendments made to sections 14 and 15 by section 43 enable approved status to be available to businesses which have in-house security arrangements and wish, for example, to establish their quality. As the scheme will no longer apply only to contractors, it is to be renamed the 'Approval Scheme'.

Section 44: Charges for vehicle release: appeals

206. Section 44 amends the 2001 Act to provide an independent avenue of appeal for motorists in respect of release fees imposed by businesses carrying out wheel clamping and related activities. Under the amendments to the 2001 Act made by section 44 of the Act such businesses will be regulated and will require a licence, issued by the Security Industry Authority, in order to carry out these activities.

207. Section 44 inserts new section 22A into the 2001 Act. Subsection (1) of section 22A requires the Secretary of State to make regulations for the purpose set out in subsection (2), namely for a person who would otherwise be entitled to remove a vehicle which has been immobilised or towed away, to appeal against the fee charged for release of the vehicle.

208. Subsections (3) and (4) provide for grounds of appeal to be specified in regulations. Subsections (5) and (6) provide for the regulations to specify the individual or body which would consider the appeal (whether that is one established under the regulations or an existing one). Subsection (7) sets out a number of areas of the appeal system for which the regulations may provide, including procedural matters, appeal fees, payments which the parties to an appeal may be required to make, payment of costs, enforcement of appeal decisions, and an offence of making false representations which concern a material particular.

209. There is power for regulations to make provision as to costs of adjudications in two different ways. Subsection (7)(f) enables payment of one party's costs in relation to the adjudication by the other and of the costs of the adjudication.

210. There is also a specific power in subsection (7)(g) to require respondents to pay a charge, when an appeal against them is successful, in respect of the costs of adjudications generally.

211. Subsection (8) enables the regulations to authorise the adjudicator or tribunal to require the payments provided for by subsection (7)(e), (f) and (g) to be made as part of the adjudication.

Prison security

Section 45: Offences relating to electronic communications devices in prison

212. *Paragraph (c)* amends section 40D of the Prison Act 1952 to create a new offence of possession, without authorisation, of a device capable of transmitting or receiving images, sounds or information by electronic communications in a prison. This includes mobile telephones as well as other devices which are capable of accessing the internet or are otherwise capable of sending or receiving data. The new offence will also extend to the possession of any component part or article designed or adapted for use with such a device, such as a SIM card or a charger for a mobile telephone.

213. Section 45 also makes a minor amendment to section 40D(1) of the Prison Act 1952, to align it more closely with the new offence described above (see *paragraph (a)* of the section). Under section 40D(1) (before amendment by this Act) it is an offence for a person to transmit, by electronic communications, "any image or any sound" from inside a prison for simultaneous reception outside a prison. The amendment extends this offence to the transmission of images, sounds or information. This amendment means that section 40D(3)(b), under which it is an offence to transmit a restricted document from inside a prison, is no longer necessary, and that provision is repealed by *paragraph (b).*

Air weapons

Section 46: Offence of allowing minors access to air weapons

214. Section 46 inserts a new section 24ZA into the Firearms Act 1968 ("the 1968 Act") which makes it an offence for a person in possession of an air weapon to fail to take reasonable precautions to prevent it coming into the hands of a person under 18. The offence does not apply where the person under 18 is permitted by the 1968 Act to have the weapon with him, and these circumstances are set out in section 23 of the 1968 Act. For this new offence, it is a defence to show that the person charged believed that the other person was 18 or over and had reasonable grounds for that belief. For a defendant to show these matters, the defendant must adduce sufficient evidence of them and the contrary must not be proved beyond reasonable doubt.

215. *Subsection (3)* adds the new offence to the list in section 57(3) of the Firearms Act 1968 which sets out various offences which relate specifically to air weapons.

216. *Subsection (4)* makes the offence punishable on summary conviction only with a maximum penalty of a fine at level 3 on the standard scale (currently £1,000).

217. *Subsection (5)* amends paragraphs 7 and 8 of Part 2 of Schedule 6 to the 1968 Act, so that these provisions apply in respect of the new offence. Under paragraph 7, the court can order the forfeiture or disposal of the air weapon in respect of which the offence was committed. Under paragraph 8, the court can order the forfeiture or disposal of any firearm found in the possession of the person convicted.

Compensation of victims of overseas terrorism

Section 47: Introductory

218. Section 47 confers power on the Secretary of State (in practice the Secretary of State for Justice) to make arrangements for payments to be made to, or in respect of, persons injured (including those fatally injured) as a result of a designated terrorist act (*subsection (1)*). The procedure governing the designation of an act is set out in *subsection (2)*. The Secretary of State (in practice the Secretary of State for Foreign and Commonwealth Affairs) may designate an act for the purpose of this section if: it took place outside the United Kingdom; it occurred on or after 18 January 2010 (the date proposals to establish such a scheme were announced (Official Report, House

of Commons, col. 25-26)); in the view of the Secretary of State the act constituted terrorism (within the meaning of section 1 of the Terrorism Act 2000); and, having regard to all the circumstances, the Secretary of State considers that it would be appropriate to designate it. Those circumstances may include whether the Secretary of State has advised against travel to the country, or part of the country, where an attack occurred.

Section 48: Compensation scheme

219. Section 48 provides that the arrangements that may be made by the Secretary of State under section 47 may include the making of a scheme – to be known as the Victims of Overseas Terrorism Compensation Scheme (*subsection (2)*). The Scheme may set out the circumstances in which payments may or may not be made and the categories of person to whom payments may be made (*subsection (1)*).

220. *Subsection (4)* introduces Schedule 2 to the Act which makes consequential amendments to other enactments.

221. Paragraph 1 of Schedule 2 amends the Parliamentary Commissioner Act 1967 so as to bring the administration of the Victims of Overseas Terrorism Compensation Scheme within the remit of the Parliamentary Ombudsman.

222. Paragraphs 2, 3 and 4 amend the Inheritance Tax Act 1984, the Income Tax (Trading and Other Income) Act 2005 and the Finance Act 2005 respectively to provide that the tax treatment of any awards under the Victims of Overseas Terrorism Compensation Scheme is in line with awards made under the Criminal Injuries Compensation Scheme.

223. Paragraph 5 amendments the Tribunals, Courts and Enforcement Act 2007 to provide that any decision of the First-tier Tribunal in respect of an appeal by an applicant against a review decision made under the Victims of Overseas Terrorism Compensation Scheme is not available for appeal to the Upper Tribunal (this mirrors the position in respect of appeals made under the Criminal Injuries Compensation Scheme). The decisions of the First-tier Tribunal are, however, subject to judicial review.

Section 49: Eligibility and applications

224. Section 49 makes provision about the eligibility criteria to be included in the Scheme (*subsection (1)*). Eligibility to make an application may be determined by reference to the applicant's nationality (or that of the injured person, if different); by reference to the applicant's place of residence; by reference to the applicant's length of residence in that place; by reference to any other factor the Secretary of State considers appropriate; or by any combination of such factors. It is proposed that eligibility for compensation under the Victims of Overseas Terrorism Compensation Scheme should extend to British victims and nationals of the European Union and European Economic Area with a sufficient connection to the United Kingdom.

225. The Scheme may also require that an application must be made within a specified period (*subsection (2)(b)*) and in a specified manner or form (*subsection (2)(c)*).

Section 50: Payments

226. Section 50 sets out the kind of provision that may be included in the Scheme for determining the amount of compensation payable to victims. Compensation payments may be calculated by reference to any one or more of the following factors (amongst other things): the nature of the injury (or injuries) sustained, loss of earnings or expenses incurred. This enables the adoption of a tariff-based approach, based on that set out in the Criminal Injuries Compensation Scheme.

227. *Subsection (2)* enables the Scheme to set out the circumstances in which compensation payments may be withheld or reduced. This would enable account to be taken of

compensation payments available from other sources or payments arising from an insurance policy in respect of the same injury.

228. The Scheme may also make provision for compensation to be repayable in specified circumstances (*subsection (2)(b)*), for example, where subsequent to the payment of compensation under the Scheme, the victim receives compensation in respect of the same terrorist act from another source. Where a compensation payment which is due to be repaid in accordance with the Scheme is not repaid it may be recovered as a debt (*subsection (3)*).

229. The Scheme may provide for payments to be made subject to conditions (*subsection (2)(c)*); these might include a requirement that, in the case of a victim under 18 years, the compensation payments are held in trust until the victim reaches adulthood.

230. The Scheme may also provide that compensation payments do not exceed a specified maximum amount (*subsection (2)(d)*). The existing domestic Criminal Injuries Compensation Scheme allows for a maximum payment of £500,000.

231. *Subsections (5)* and *(6)* protect awards paid under the Scheme by ensuring that any legal charge or assignment attached to such awards is void and by preventing the monies passing to creditors following the bankruptcy of the recipient of an award.

Section 51: Claims officers etc

232. Section 51 provides that the Scheme may include provision for applications to be determined and compensation payments made by claims officers appointed by the Secretary of State. Such claims officers will, in practice, be staff of the Criminal Injuries Compensation Authority. Although the Authority is part of the Ministry of Justice, decisions taken by claims officers for the purposes of the scheme are not to be regarded as being taken by, or on behalf of, the Secretary of State (see *subsection (3)*).

Section 52: Reviews and appeals

233. Section 52 provides that the Scheme must include provision for the decisions taken by claims officers in accordance with the Scheme to be subject to review. Such reviews will be conducted by a member of staff (that is, another claims officer) of the Criminal Injuries Compensation Authority who was not a party to the original decision under review (*subsection (2)*). *Subsection (3)* provides that the Scheme must also include provision for applicants to appeal decisions taken on review to the First-tier Tribunal. Such provision for reviews and appeals in the Criminal Injuries Compensation Scheme 2008 is contained in paragraphs 58 to 65 of that Scheme.

Section 53: Reports, accounts and financial records

234. Section 53 makes provision for an annual report to be made with respect to the operation of the Scheme (*subsection (1)*). In practice, the Secretary of State will direct the chief executive of the Criminal Injuries Compensation Authority to make such a report. The annual report must be laid before Parliament *(subsection (2)*). This section also provides for the Secretary of State to nominate a person (again, in practice, the chief executive of the Criminal Injuries Compensation Authority) to keep proper financial records and produce an annual statement of accounts which will be subject to audit by the Comptroller and Auditor General (*subsections (3) to (5)*).

Section 54: Parliamentary control

235. Section 54 makes provision for the Victims of Overseas Terrorism Compensation Scheme to be subject to Parliamentary scrutiny. The first such Scheme, and any wholly new Scheme made thereafter, will be subject to the affirmative resolution procedure (*subsections (1) and (2)*). The Parliamentary procedure applicable to any alterations to a Scheme will depend on the nature of the proposed changes to the Scheme. The

affirmative resolution procedure will apply where the proposed alterations relate to the eligibility criteria for applicants, the determination of awards, the circumstances in which payments may be withheld or reduced, any maximum limit on the level of payments, and the review or appeals procedure (*subsections (3) and (4)*). In all other cases the negative resolution procedure will apply (*subsections (5) to (7)*). These provisions are analogous to those applicable to the Criminal Injuries Compensation Scheme under the Criminal Injuries Compensation Act 1995.

Sale and supply of alcohol

Section 55: Power to restrict sale and supply of alcohol

236. Section 55 amends the Licensing Act 2003 ("the 2003 Act") by inserting five new sections (sections 172A to 172E) into Part 9 of that Act.

237. Subsection (1) of new section 172A empowers licensing authorities (mostly local authorities in whose area the premises at which the sale and supply of alcohol takes place) to make an order under this section if they consider it necessary for the promotion of the licensing objectives. The licensing objectives are set out in section 4(2) of the 2003 Act. They are: (a) the prevention of crime and disorder; (b) public safety; (c) the prevention of public nuisance; and (d) the protection of children from harm.

238. Subsection (2) of new section 172A provides that an order has the effect that any premises licence, club premises certificate or temporary event notice shall not have effect to the extent that it would authorise the sale or supply of alcohol between the hours of 3am and 6am. The order would, therefore, apply not only to pubs, bars and nightclubs but also to non-profit clubs such as sports, political and working men's clubs, supermarkets and convenience stores and temporary events such as those organised by charities and voluntary groups. Subsection (4) provides that an order may have effect every day or on particular days of the week or year, in relation to the whole or part of the licensing authority's area or for a limited or unlimited period. An order may therefore be made that only applies to Friday and Saturday nights. Or one may be made that has effect only for six months rather than an indefinite period.

239. New section 172B sets out procedural requirements. Subsection (1) provides that a licensing authority must advertise an order it proposes to make in a prescribed manner, and that a licensing authority must hold a hearing to consider any relevant representations (defined in subsection (2)) unless the authority and each person who made such representations agree that a hearing is unnecessary.

240. New section 172E provides for exceptions from the effect of an early morning alcohol restriction order in cases or circumstances prescribed by the Secretary of State in regulations (subsection (1)). These may be defined by reference to particular kinds of premises (such as hotels which sell alcohol to residential guests but not to the general public between 3am and 6am), or particular days (e.g. New Year's Day). Subsection (3) ensures that an order made under section 172A is subject to an order made under section 172 of the 2003 Act (unless the s172 order provides otherwise). Section 172 enables the Secretary of State, with the approval of both Houses of Parliament, to make a licensing hours order for a specified period to mark an occasion of exceptional international, national or local significance. An order under section 172 has the effect of relaxing the opening hours for premises licences and club premises certificates.

241. *Subsection (3)* of section 55 amends section 7(2) of the 2003 Act. Section 7(2) identifies the functions of a licensing authority which cannot be delegated to a licensing committee of the authority. So, for example, where a licensing authority is a district council, such functions must be exercised by the full council. This amendment adds the power to make, vary or revoke an order under section 172A as a function which cannot be so delegated.

Searches of controlled persons

Section 56: Persons subject to control order: powers of search and seizure

242. In July 2009, the Court of Appeal in the case of *Secretary of State for the Home Department v GG [2009] EWCA Civ 786* held that the Prevention of Terrorism Act 2005 as drafted is insufficient to authorise the imposition by a control order of an obligation to submit to a personal search. In November 2009, the High Court in the case of *BH v Secretary of State for the Home Department [2009] EWHC 2938 (Admin)* found that a requirement for a controlled person to submit to a personal search prior to being escorted by the police outside the controlled person's boundary as a condition of the temporary relaxation of the controlled individual's boundary, had no statutory authority and was unenforceable.

243. The Government's memorandum to the Home Affairs Committee on post-legislative scrutiny of the Prevention of Terrorism Act 2005 (Cm 7797), laid before Parliament on 1 February 2010, consequently signalled the Government's intention to legislate for powers to search controlled persons when Parliamentary time allowed. The independent reviewer of terrorism legislation, Lord Carlile of Berriew QC, recommended in his fifth annual report on the operation of the 2005 Act, also laid before Parliament on 1 February 2010, that 'A power of personal search of controlees by a constable should be added to the legislation as soon as possible.'

244. Section 56 amends the 2005 Act to insert new powers allowing a constable, for specified purposes, to conduct a search of a person subject to a control order and to seize and retain articles found.

245. *Subsection (1)* inserts new sections 7D and 7E into the 2005 Act. New section 7D provides the new powers of search and seizure.

246. New section 7D(1) states that a constable may search a controlled person in any location, and detain a person in order to search him. New section 7D(2) specifies the purposes for which a person may be searched. These are (a) in relation to police escorts of a controlled person, to check the controlled person is not carrying anything that could be used to threaten or harm anyone; and (b) in any case, to check whether the obligations imposed by the control order have been, are being or are about to be breached.

247. New section 7D(3) provides, for the avoidance of doubt, that the search power can be exercised at any time, including if the constable has entered the controlled person's premises under the entry and search powers contained in sections 7A to 7C of the 2005 Act, which were inserted into the 2005 Act by section 78 of the Counter-Terrorism Act 2008.

248. New section 7D(4) allows the constable to seize anything found during a search for the purposes specified in the subsection.

249. New Section 7D(5) confirms that a constable may use reasonable force in exercising these powers.

250. New section 7E deals with the retention and use of things seized under new section 7D.

251. New section 7E(1)(a) specifies that things seized may be subject to tests. There may be a requirement to test an item to check whether it breaches the control order – for example to check whether a mobile phone can connect to the internet. New section 7E(1)(b) confirms that things seized can be retained for as long as is necessary (this is in line with section 22(1) of PACE, which governs the retention of material seized by the police).

252. New section 7E(2) makes more specific provision relating to the retention of items seized. If the constable has reasonable grounds for believing that the thing seized is or contains evidence of an offence, it may be retained for use as evidence in a trial or for forensic examination or investigation. New section 7E(3) provides that such retention

is not allowed if a photograph or copy of the item would suffice. New section 7E(2) also specifies that if the constable believes that the seized item has been stolen, it may be retained in order to establish its lawful owner. The provisions in 7E(2) and 7E(3) are again in line with the general provisions on retention in section 22 of PACE.

253. New section 7E(4), again in line with PACE, confirms that the powers in this section do not affect a power of the court to make an order under section 1 of the Police (Property) Act 1897. Section 1 of the 1897 Act allows a court to make an order for the return of property that the police have seized to the person who the court thinks is the rightful owner of that property. The police or a claimant to the property can apply to the court for such an order.

254. *Subsection (2)* of section 56 amends section 1 of the 2005 Act. Section 1(4)(l) of the 2005 Act provides for the removal of items from a controlled person's premises. An item can be removed by the police to ensure the controlled individual complies with the terms of his control order – for example, if the terms of the control order prohibit the use of computers, computers on the premises could be removed. *Subsection (2)* provides powers of seizure and retention for use as evidence in a trial or for forensic examination of items that have been removed from a controlled person's premises under section 1(4)(l) of the 2005 Act if the police subsequently have reasonable grounds to believe is or contains evidence in relation to an offence. The provisions mirror new section 7E(2) and 7E(3).

255. *Subsection (3)* amends section 1(1)(e) of the Counter-Terrorism Act 2008. Part 1 of that Act introduces a power for the police to remove documents in the course of a terrorist-related search for the purpose of ascertaining whether they may be seized, and makes related provision. This power might be used, for example, to remove documents in a foreign language for translation. Section 1 of the 2008 Act lists the situations in which the power may be used – it already includes the powers of entry and search under sections 7A to 7C of the 2005 Act. *Subsection (3)* adds the new search power under section 7D to that list.