These notes refer to the Policing and Crime Bill
as brought from the House of Commons on 20th May 2009 [HL Bill 48]

POLICING AND CRIME BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Policing and Crime Bill as brought from the House of Commons on 20th May 2009. They have been prepared by the Home Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND AND SUMMARY

3. The Bill seeks to place a duty on police authorities to have regard to the public's views on policing in their area and for this duty to be recognised in inspections of police authorities. The Bill also seeks to amend the law to give statutory status and greater independence to the Police Senior Appointments Panel to advise the Secretary of State as well as police authorities on matters relating to senior officer appointments and succession planning. It also includes measures related to collaborative working among police forces and police authorities and seeks to repeal unused or uncommenced legislation.

4. The Bill also contains measures aimed at protecting vulnerable groups by including provisions which intend to reduce the demand for prostitution and increase police powers to close premises associated with prostitution. The Bill also includes measures intended to widen the circumstances in which sex offender prevention orders and foreign travel orders can be applied for and allow the Criminal Records Bureau (CRB) to disclose 'right to work' checks to employers.

5. The Bill contains provisions intended to prevent low-level crime and disorder by introducing general licensing conditions relating to alcohol; amending police powers to deal with children drinking alcohol in public; introducing stricter provisions for people who sell alcohol to children; increasing the penalties for those who refuse to stop drinking in public when asked to by the police; providing for the mutual recognition of football banning orders

between Scotland, Northern Ireland and England and Wales. The Bill also introduces a specific injunction intended to reduce gang-related violence.

6. The provisions of the Bill would implement the main recommendations of the *Asset Recovery Action Plan* (2007) and seek to strengthen the arrangements for recovery of assets obtained through criminal means. The Bill seeks to improve the arrangements for judicial co-operation in relation to extradition and to streamline the process of extradition. It will also include measures aimed at strengthening customs powers at the border. In response to the European Court of Human Rights (ECHR) judgment in the case of *S and Marper v UK* [Application Nos. 30562/04 and 30566/04, 4th December 2008], the Bill also provides the Secretary of State with the power to make regulations relating in particular to the retention, use and destruction of DNA data and fingerprints. These regulations will need to be laid before and approved by Parliament following consultation with specified bodies and such other persons as the Secretary of State considers fit.

7. The Bill contains provisions which would implement the key recommendations of the *Independent Review of Airport Policing* by requiring the majority of airports to agree a local airport security plan with key stakeholders and allowing the police to recover policing costs.

8. Prior to the introduction of the Bill in the House of Commons, the Government undertook extensive consultation on possible measures for inclusion in the Bill; the consultation documents include *Youth Crime Action Plan; From the Neighbourhood to the National: Policing our Communities Together; Youth Alcohol Action Plan, Safe, Sensible, Social – Consultation on further action*. Measures are also included from the *Independent Review of Airport Policing* carried out by Stephen Boys Smith.

OVERVIEW

9. Part 1 (Police reform) contains provisions to place an additional duty on police authorities to have regard to the public's views on policing in their area and to require Her Majesty's Inspectorate of Constabulary (HMIC) to report on this as part of their inspections of police authorities. Part 1 also contains provisions relating to the appointment of senior officers and establishes the Police Senior Appointments Panel on a statutory footing. The Bill also contains provisions aimed at improving the co-operation of police forces and authorities at a regional and national level. These provisions were consulted on through the Policing Green Paper – *From the Neighbourhood to the National: Policing our Communities Together* published in July 2008.

10. Part 2 (Sexual offences and sex establishments) contains provisions aimed at reducing the demand for prostitution and shifting the focus of enforcement from those working as prostitutes to those that pay for sex. The provisions include the creation of a new offence of paying for sex with someone who has been subject to force, threats or deception and giving the courts the power to make premises closure orders where there is evidence of the premises

being used for activities relating to certain prostitution and pornography offences. Provisions are also included which create a new offence of soliciting. This replaces the existing offences of kerb-crawling and persistent soliciting for sex and offenders will be able to be prosecuted for these offences without the need to prove "persistence". These provisions will implement recommendations from *Tackling the Demand for Prostitution: A Review*. Measures also include the creation of orders requiring attendance at meetings, which can be used by courts as an alternative to a fine for those convicted of loitering and soliciting under section 1 of the Street Offences Act 1959.

11. In addition, Part 2 of the Bill also makes amendments to the civil orders that can be imposed on sex offenders. In particular, amendments will be made to foreign travel orders, which can be imposed to prevent convicted sex offenders from travelling abroad. The provisions extend the maximum duration of such an order from six months to five years, allows for the removal of passports from those who are banned from worldwide travel and extend the maximum age of a child that must be at risk from the offender before such an order can be made from 16 to 18. Part 2 also increases the maximum sentence on indictment for failure to comply with a notice relating to encrypted information in relation to 'a child indecency case' to five years imprisonment. Part 2 also seeks to amend how lap dancing is licensed so that it is treated in the same way as other sex establishments.

12. Part 3 (Alcohol misuse) contains provisions intended to reduce alcohol misuse by amending police powers to deal with young people drinking alcohol in public. Part 3 also introduces stricter provisions for people who sell alcohol to young people and raises the maximum penalty for those people who refuse to stop drinking in public when instructed to by the police. There are also provisions to allow the Secretary of State to create, through secondary legislation, general licensing conditions relating to alcohol. These provisions have been consulted on in the Government publications *Youth Alcohol Action Plan* and *Safe, Sensible, Social – Consultation on further action'.*

13. Part 4 (Injunctions: gang-related violence) contains provisions which will allow the police or a local authority to apply to a county court or High Court for an injunction against an individual for the purposes of preventing gang-related violence. It is anticipated that this injunction will serve the purpose of:

- Preventing acts of serious violence from occurring
- Breaking down gang culture and preventing younger gang members' behaviour from escalating
- Providing an opportunity for local agencies to engage with gang-members and develop effective strategies for them to exit the gang.

14. Part 5 (Proceeds of crime) contains provisions to give police, other law enforcement agencies, and prosecutors additional powers aimed at improving the recovery of criminal assets. These powers include the ability of law enforcement authorities to search a vehicle for cash that is suspected to have been obtained through, or intended for use in, unlawful conduct, and to obtain the forfeiture of detained cash without a magistrates' court order in uncontested cases. The Bill seeks to introduce new powers to allow for the search and seizure and retention of property that might be sold in satisfaction of a confiscation order. The limitation period for bringing proceedings for the civil recovery of property obtained through unlawful conduct is to be extended from 12 to 20 years.

15. Part 6 (Extradition) contains provisions to ensure that the UK is in a position to execute European Arrest Warrant (EAW) alerts transmitted via the second generation Schengen Information System (SIS II). These provisions will also enable a European Union Member State which has made a request for provisional arrest to apply for an extra 48 hours in which to formally issue an EAW. A provision will also allow preliminary and remand hearings conducted under the Extradition Act 2003 to take place by video link and without the consent of the person whose extradition is sought. The Bill also amends and clarifies a number of provisions within the Extradition Act 2003 on temporary surrender in relation to incoming and outgoing extradition requests.

16. Part 7 (Aviation security) contains provisions for a new process designed to enhance airport security planning by ensuring airports undertake an assessment of the threats to the airport and draw up a risk register. It also makes provision about the payment of the costs of policing at airports. These provisions implement the recommendations in the *Independent Review of Airport Policing* in 2006.

17. Part 8 (Chapter 1: safeguarding vulnerable groups and criminal records) contains provisions which seek to change the name of the Independent Barring Board to the Independent Safeguarding Authority (ISA) and enable volunteers who initially become registered with the ISA to be charged a fee when they move into paid activity. Provisions also make changes relating to the checking of school governors in particular.

18. Chapter 1 also includes provisions allowing the Criminal Records Bureau to supply criminal convictions certificates to employers and to include "right to work" information on standard and enhanced disclosures. Provisions also enable the Secretary of State to prescribe other methods of verification of identity for such certificates and determine the form, content and manner of application forms under Part V of the Police Act 1997 and the Safeguarding Vulnerable Groups Act 2006.

19. Provisions are also included in Part 8 (Chapter 2: other) which allow the Secretary of State to create regulations on the retention and destruction of samples taken from an individual in connection with the investigation of an offence.

20. Miscellaneous - Chapter 2 additionally contains provisions which make changes to powers of Revenue and Customs officers and UK Border Agency staff to open and examine international postal packets for the purpose of preventing smuggling. They will give wider powers to Revenue and Customs officers to question travellers and require the production of passports and travel documents for customs purposes. The changes will also confirm that criminal cash crossing frontiers is "goods" for customs purposes and prohibit the importation of false identity documents. There are also provisions to clarify the respective powers of the Scottish Executive and the UK Government to ban offensive weapons to ensure import controls are consistent across the UK.

21. Miscellaneous - Chapter 2 also includes provisions to ensure that those subject to football banning orders in England and Wales will also be banned from attending regulated football matches in Scotland and Northern Ireland.

22. Part 8 (Chapter 2: other) also contains a provision to place the Scottish Drugs Enforcement Agency on the same footing as police forces and the Serious Organised Crime Agency in terms of dealing with an armed threat and purchasing and storing CS sprays and firearms. Probation Authorities will also become a responsible authority on a Crime and Disorder Reduction Partnership (CDRP) in England and Community Safety Partnership (CSP) in Wales and "reduce re-offending" will become a statutory obligation of a CDRP/CSP. There are also several repeals of unused or uncommenced legislation.

TERRITORIAL EXTENT AND APPLICATION

23. *Clause 115* sets out the territorial extent of the Bill. This Bill extends to England and Wales. In addition some parts extend to Northern Ireland and Scotland. Any amendment, repeal or revocation made by this Act has the same extent as the provision amended, repealed or revoked unless otherwise specified in *clause 115* or *Schedule 8*.

Territorial Application: Wales

24. The Bill applies to Wales in the same way as to England; however the provision and Schedule on lap dancing (*clause 26* and S*chedule 3*) will be commenced by order of the Welsh Ministers as it is a devolved matter. These provisions on lap dancing also give powers to make secondary legislation on certain matters to the Welsh Ministers.

Territorial Application: Scotland

25. The Scottish Parliament's consent has been sought for the provisions in the Bill that trigger the Sewel Convention. These provisions relate to Football Banning Orders, Extradition, and Proceeds of Crime. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. If there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

Territorial Application: Northern Ireland

26. The Bill contains the following provisions that will apply to Northern Ireland. In accordance with *clause 115* where this Bill amends, repeals or revokes an Act which applies to Northern Ireland the provision will extend to Northern Ireland.

- Paying for sexual services of a prostitute subjected to force etc (*clause 14*)
- Amendments to the offence of kerb-crawling and persistent soliciting (*clause 19*)
- Closure orders (*clause 20* and *Schedule 2*)
- Orders imposed on sex offenders (*clauses 21-24*)
- The offence of persistently possessing alcohol in a public place (c*lause 30*)
- Provisions in Part 5 (Proceeds of crime) (*clauses 48, 51, 54, 57-62)*
- Part 6 (Extradition)
- Safeguarding vulnerable groups *(clauses 88-90)*
- The powers for the Secretary of State to prescribe the form, manner and contents of an application under Part V of the Police Act 1996 (c*lause 95*)
- Prohibition of importation of offensive weapons (*clause 103*)
- Provisions on enforcement of the Football Spectators Act 1989 and the Police, Public Order and Criminal Justice (Scotland) Act 2006 (c*lause 106(1), 106(3)-(5) and 107)*)

PART 1 – POLICE REFORM

Public accountability

Clause 1: Duty of police authorities in relation to public accountability

27. *Clause 1(1)* inserts into the Police Act 1996 a requirement for police authorities, when discharging any of their functions, to have regard to the views of the public concerning policing. This duty complements the duty of police authorities, under section 96 of the Police Act 1996, to obtain the views of the public concerning policing.

28. The functions of a police authority, under section 6 of the Police Act 1996 and under the Police Authorities (Particular Functions and Transitional Provisions) Order 2008 (S.I. 2008/82) are as follows: securing the maintenance of an efficient and effective police force; holding to account chief officers for the exercise of their functions; monitoring the

performance of their force in complying with the Human Rights Act 1998 and in carrying out the local policing plan; securing that arrangements are made for their force to co-operate with other forces in the interests of efficiency or effectiveness; and promoting equality and diversity in their force. This clause will require police authorities to have regard to the views of the public in the execution of all these functions.

29. *Clause 1(2)* has the effect that Her Majesty's Inspectorate of Constabulary has a power to carry out an inspection of, and report to the Secretary of State on, the new requirement imposed on police authorities by *clause 1(1)*. This power sits alongside their existing power to inspect and report on a police authority's performance of its functions.

Appointments of senior officers
Clause 2: Police Senior Appointments Panel

30. *Clause 2* inserts new sections 53B, 53C and 53D into the Police Act 1996. New section 53B establishes a statutory Police Senior Appointments Panel (the Panel). (There is presently a senior appointments panel which exists on a non-statutory basis with the primary role of advising the Secretary of State about the appointment of senior officers.)

31. The Panel will be constituted in accordance with arrangements made by the Secretary of State. Under these arrangements, the Panel will consist of a chair and members appointed by the Secretary of State as well as representative members nominated by the Secretary of State, the Association of Police Authorities and the Association of Chief Police Officers. These arrangements will also include provisions about the proceedings of the Panel and the issuing of annual (or other) reports.

32. The Secretary of State may make staff available to the Panel, pay fees to the independent members appointed by the Secretary of State and defray expenses incurred by the Panel.

33. New section 53C sets out the functions of the Panel. The Panel will advise the Secretary of State on any matter on which it is consulted by the Secretary of State in connection with senior officer appointments, on consents to deputy chief constables and assistant chief constables fulfilling the role of the chief constable for a period exceeding three months, and on consents for the second most senior officer in the City of London police to act as Commissioner for a particular period.

34. The Panel will advise the Secretary of State and police authorities about matters relating to succession planning. New section 53C(2) gives the Panel the function of advising about ways to increase the pool of potential candidates for senior officer appointments, and the training and development needs of such potential candidates.

35. The Secretary of State may refer a report made by Her Majesty's Inspectors of Constabulary to the Panel, and following such a referral the panel will provide advice to the

Secretary of State and police authorities on any matters it thinks appropriate in connection with the training and development needs of senior officers, and other matters relating to senior officers.

36. Under new section 53D, the Secretary of State has the power to confer additional functions on the Panel by order. Such an order may, in particular, confer advisory or other functions on the Panel in connection with the appointment of senior officers. Before making an order the Secretary of State must consult the Panel.

37. *Subsection (2)* amends section 54 of the Police Act 1996 by omitting subsection (3A). This omission removes the ability of the Secretary of State to delegate certain functions relating to senior officer appointments to the Chief Inspector of Constabulary.

38. *Subsection (3)* amends the Race Relations Act 1976 so that the Panel is listed in Schedule 1A to that Act as subject to the general statutory duty. Therefore, in exercising its functions, the Panel must have due regard to the need to eliminate unlawful racial discrimination, and to promote equality of opportunity and good relations between persons of different racial groups.

39. *Subsection (4)* amends the Freedom of Information Act 2000, so that the Panel is listed in Schedule 1 to that Act. The Panel will therefore be a "public authority" for the purposes of that Act.

Clause 3: Regulations about senior officers

40. *Clause 3* will enable regulations under section 50 of the Police Act 1996 to make provision for payments to be made to senior officers who cease to serve before the end of their fixed term appointment. It will also enable such regulations to make provision with respect to steps to be taken in connection with the appointment of senior officers in particular enabling the establishment of co-ordinated recruitment rounds for such officers.

Clause 4: Metropolitan police force appointments

41. Currently, appointments to the ranks of Assistant Commissioner, Deputy Assistant Commissioner and Commander in the Metropolitan police are made by the police authority and the Commissioner has no role in these appointments. *Clause 4* amends the relevant provisions of the Police Act 1996 to give the Commissioner a formal role in these appointments which mirrors that of the Chief Constable in the appointment of Deputy Chief Constable and Assistant Chief Constable in forces outside London. Before making such an appointment, the police authority will be required to consult the Commissioner.

Police co-operation

Clause 5: Police collaboration

42. *Clause 5* replaces section 23 of the Police Act 1996 with 10 new sections that provide for the creation of agreements between police forces and between police authorities to

collaborate. The new sections 23 to 23I confer power on chief officers and police authorities in England and Wales to enter into collaboration arrangements.

43. New section 23 allows agreements to be made between chief officers of police forces to carry out their functions through collaboration in the interests of the efficiency or effectiveness of policing, where prior approval has been given by the police authorities of the forces involved. Subsection (2) allows for a range of types of agreement about the delivery of policing services (for example, operational policing services) by one or more police forces to one or more police forces. Subsection (3) allows for provisions about certain police staff to be included in agreements and subsection (4) allows for agreements to include arrangements for the transfer of direction and control of police officers or police staff.

44. New section 23A allows collaboration agreements to be made between police authorities in the interests of the efficiency or effectiveness of policing, following consultation with the chief officers of their forces. Police authority collaboration agreements can include arrangements for one or more police authorities to provide support (examples of which are listed in subsection (3)) to one or more police authorities or police forces. Subsection (4) specifies that provisions concerning the discharge of functions of employees under the direction and control of a chief officer may be included in police authority agreements with the approval of that chief officer.

45. New section 23B allows collaboration agreements between police forces or between police authorities to include provisions about payments, which may, for example, include payments in relation to costs for support provided and any arrangements for liabilities or indemnities.

46. New section 23C provides that plans for collaboration agreements involving seven or more forces or authorities must first involve consultation with the Secretary of State; that agreements must be in writing; that they may include provisions which account for different cases or circumstances (for example, an agreement might specify that the transfer of direction and control may be dependent on the geographical location of particular operations); that new agreements may vary existing agreements; and that agreements may be terminated by an agreement between the parties to it.

47. New section 23D specifies that police authorities must establish accountability arrangements for collaborations involving their own police force, including consideration of co-operative arrangements (for example joint committees) with another authority whose force is involved in the collaboration. Subsection (2) stipulates that the police authorities should notify their chief officers of the proposed accountability arrangements.

48. New section 23E provides that the parties to a collaboration agreement must publish the agreement in full or else publish the fact that the agreement has been made and such details as they think appropriate. It also provides that chief officers must publish the accountability arrangements that will apply to police force collaborations.

49. New section 23F provides that the Secretary of State may issue guidance about collaboration agreements or related matters. This is expected to include guidance on best practice in accountability and governance structures in collaborations of different kinds.

50. New section 23G outlines the types of direction which the Secretary of State may give about collaboration agreements. These include directions to enter into, to consider entering into or not to enter into an agreement or directions about the terms of agreements. The directions may apply to particular agreements, types of agreements or all agreements.

51. New section 23H allows the Secretary of State to terminate existing agreements by notice to the parties.

52. New section 23I defines terms used in sections 23 to 23H. "Police force" is defined to include the British Transport Police and the Civil Nuclear Constabulary and "chief officer" and "police authority" are defined accordingly.

Clause 6: Authorisations to interfere with property etc

53. *Clause 6* amends section 93 of the Police Act 1997 (authorisations to interfere with property etc).

54. *Clause 6(2)* and *(4)* inserts new subsections (3)(za) and (3A) into section 93 of the Police Act 1997. They permit an authorising officer within section 93(5)(a)–(c) of Regulation of Investigatory Powers Act 2000 (RIPA) to grant an authorisation to interfere with property on an application made by a member of the officer's own police force ("the authorising force") or by a member of another police force ("a collaborative force"). Such authorisations may be granted to a member of another force if the chief officers of the forces in question are parties to an agreement under section 23(1) of the Police Act 1996 ("police force collaboration agreements") which provides for them.

55. *Clause 6(5)* amends section 93(6) of the Police Act 1997 so that an authorising officer from the authorising force may authorise property interference in the officer's own force area or that of a collaborative force subject to the terms of the relevant police force collaboration agreement.

Clause 7: Authorisations for obtaining and disclosing communications data

56. *Clause 7* amends Chapter II of Part 1 of the Regulation of Investigatory Powers Act 2000 ("RIPA") (acquisition and disclosure of communications data).

57. *Clause 7(2)* inserts new subsections (3A)–(3I) into section 22 of RIPA. They permit a person who is a designated person by reference to an office, rank or position with a police force ("the authorising force") to grant an authorisation for persons holding offices, ranks or positions with another police force ("a collaborative force") to obtain communications data under RIPA. Such authorisations can be granted if the chief officers of the authorising and

collaborative forces are parties to a police force collaboration agreement which provides for them. Police force collaboration agreements are agreements made under section 23(1) of the Police Act 1996, as regards police forces in England or Wales, or section 12(1) of the Police (Scotland) Act 1967, as regards police forces in Scotland.

58. *Clause 7(2)* inserts new subsections (3A)–(3F) into section 23 of RIPA. They permit a person holding an office, rank or position with a police force (the "notifying force") to issue a notice under section 22(4) of RIPA requiring the disclosure of communications data to a person holding an office, rank or position with another police force ("a collaborative force"). Such notices can be issued if the chief officers of both forces are parties to a police force collaboration agreement which provides for them. Police force collaboration agreements are agreements made under section 23(1) of the Police Act 1996, as regards police forces in England or Wales, or section 12(1) of the Police (Scotland) Act 1967, as regards police forces in Scotland.

59. New subsection (3D) provides that references in new subsections (3A)-(3C) to a police force are references to:

- any police force maintained under section 2 of the Police Act 1996;
- the metropolitan police force; and,
- the City of London police force.

60. New subsection (3H) provides that references in new subsections (3E) to (3)G) to a Scottish police force are references to a police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967.

Clause 8: Authorisations for surveillance etc

61. *Clause 8* amends section 33 of RIPA (rules for grant of authorisations).

62. *Clause 8(3)* inserts new subsections (1ZA) - (1ZG) into section 33 of RIPA. They permit a person who is a designated person for the purposes of section 28 (authorisation of directed surveillance) or section 29 (authorisation of covert human intelligence sources) of RIPA by reference to his or her office, rank or position with a police force ("the authorising force") to grant an authorisation under either of those sections on an application made by a member of another police force ("a collaborative force"). Such authorisations can be granted if the chief officers of the forces in question are parties to a police force collaboration agreement which provides for them. Police force collaboration agreements are agreements made under section 23(1) of the Police Act 1996, as regards police forces in England or Wales, or section 12(1) of the Police (Scotland) Act 1967, as regards police forces in Scotland.

63. *Clause 8(5)* inserts new subsections (3ZA) to (3ZG) into section 33 of RIPA. They permit a person who is a senior authorising officer by reference to a police force ("the surveillance authorising force") to grant an authorisation for the carrying out of intrusive surveillance on an application made by a member of another police force ("a collaborative force"). Such authorisations can be granted if the chief officers of the forces in questions are parties to a police force collaboration agreement which provides for them. New subsections (3ZA) to (3ZG) also permit authorisations for the carrying out of intrusive surveillance in respect of residential premises to be granted of residential premises in an area which is the area of operation of the collaborative force and is specified in relation to members of that force in the collaboration agreement.

64. *Clause 8(6)* inserts new subsections (5A) and (5B) into section 33. New subsection (5A) provides that references to a police force in new subsections (1ZA) to (1ZC) and (3ZA) to (3ZC) are references to:

- any police force maintained under section 2 of the Police Act 1996;
- the metropolitan police force; and,
- the City of London police force.

New subsection (5B) provides that references to a Scottish police force in new subsections (1ZD) to (1ZG) and (3ZD) to (3ZG) are references to a police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967.

Clause 9: Police officers engaged on service outside their force etc

65. Section 97 of the Police Act 1996 deals with relevant service, which is service outside an officer's force. For an officer to be on relevant service, he must be on service falling within section 97(1). To date, the approach to section 97 has been to amend it on a case by case basis to list the particular types of service that are to constitute relevant service. *Clause 9* amends the Police Act 1996 to provide for an order-making power to amend section 97 to add further types of service which would constitute relevant service.

66. This clause also amends the Police Pensions Act 1976 to include an order-making power to make the necessary related amendments to that Act. This is to ensure that when a police officer is on relevant service, he will remain within the scope of his police pension scheme.

67. Before making these orders, the Secretary of State is required to send a draft to the Police Advisory Board for England and Wales and to take into consideration any representations from that Board.

Clause 10: Police equipment

68. Section 53 of the Police Act 1996 allows the Secretary of State to make regulations as to standards of police equipment. Such regulations cannot be made unless the Secretary of State considers it necessary to do so for the purpose of promoting the efficiency and effectiveness generally of police forces (section 53(1B)). The amendments clarify that the definition of police equipment includes software and also enable the section to be used in respect of one or more forces (at the moment regulations only apply to all forces). Section 44 of the Railways and Transport Safety Act 2003 provides that the Secretary of State may make regulations under section 53 of the Police Act 1996 which have effect in relation to the British Transport Police (including in relation to Scotland). So the clause will also enable regulations to be made about software used by the British Transport Police in England and Wales and Scotland.

Clause 11: Police procedures and practices

69. Section 53A of the Police Act 1996 gives the Secretary of State the power to make regulations requiring all police forces in England and Wales to adopt particular procedures or practices. However, such regulations can be made only if Her Majesty's Chief Inspector of Constabulary is satisfied of various matters set out *subsection (7).* These matters are that the adoption of the procedure or practice in question is necessary in order to facilitate the carrying out by members of any two or more police forces in joint or coordinated operations; that the making of the regulations is necessary for securing the adoption of that practice and procedure and that securing the adoption of that procedure or practice is in the national interest. This clause amends section 53A so that such regulations need not apply in respect of all the police forces in England and Wales. It also amends the matters on which the Chief Inspector of Constabulary and the Secretary of State herself must be satisfied before any regulations are made under section 53A, by providing that regulations can be made if the procedure or practice in question is necessary in order to promote the efficiency and effectiveness of a police force. Section 45 of the Railways and Transport Safety Act 2003 specifies that this section applies to the British Transport Police.

Clause 12: Police facilities and services

70. Section 57(3) of the Police Act 1996 allows the Secretary of State to make regulations as to (common) specified facilities and services. Such regulations cannot be made unless the Secretary of State considers it necessary to do so for the purpose of promoting efficiency and effectiveness. *Clause 12* enables the section to be used in respect of one or more forces (currently regulations must apply to all forces). Regulations cannot be made without first the Secretary of State consulting representatives of Police Authorities and Chief Officers.

PART 2 – SEXUAL OFFENCES AND SEX ESTABLISHMENTS

Prostitution

Clause 13: Paying for sexual services of a prostitute subjected to force etc: England and Wales

71. This clause inserts a new section 53A into the Sexual Offences Act 2003, creating a strict liability offence. The offence is committed if someone pays or promises payment for the sexual services of a prostitute who has been subject to force, threats or deception of a kind likely to induce or encourage the provision of sexual services for which the payer has made or promised payment. The person responsible for the force, threats or deception must have been acting for or in the expectation of gain for himself or another person, other than the payer or the prostitute. The provisions make clear that for the purposes of this section 'force' includes coercion by threats or other psychological means including exploitation of vulnerability.

72. *Subsection (2)* of the new offence provides that it does not matter where in the world the sexual services are to be provided. It also explains that an offence is committed regardless of whether the person paying or promising payment for sexual services knows or ought to know or be aware that the prostitute has been subject to force, threats or deception. In other words the offence is one of strict liability and no mental element is required in respect of the offender's knowledge that the prostitute was forced, threatened or deceived.

73. *Subsection (3)* provides that the maximum penalty for this offence will be a fine not exceeding level 3 on the standard scale, currently £1000.

74. The definitions of "prostitute", "prostitution" and "payment" as used in this clause are those set out in section 51 of the Sexual Offences Act 2003.

Clause 14: Paying for sexual services of a prostitute subject to force etc: Northern Ireland

75. *Clause 14* amends the Sexual Offences (Northern Ireland) Order 2008 so as to create an offence in Northern Ireland which mirrors the offence created in England and Wales by *clause 13*.

Clause 15: Amendment to offence of loitering etc for the purposes of prostitution

76. This clause amends the offence of loitering or soliciting for the purposes of prostitution, as set out in section 1 of the Street Offences Act 1959 ("the 1959 Act"). The section currently makes it an offence for a "common prostitute" (whether male or female) to loiter or solicit in a street or public place for the purpose of prostitution.

77. *Subsection (2)* removes the term "common prostitute" from section 1 of the 1959 Act, but inserts the word "persistently". This means that the offence is committed only if the person acts persistently.

78. Persistent conduct is defined by the amendments made by *subsection (3)* as conduct which takes place on two or more occasions in any three month period.

79. The amendments made by *subsection (3)(b)* mean that this offence is committed only by those offering services as a prostitute, not by those receiving such services. (Those receiving services may however be committing offences under *clause 18* or *19* of the Bill.)

80. *Subsection (4)* repeals section 2 of the 1959 Act, which allows a person cautioned for an offence under section 1 of that Act to apply to a magistrates' court to have the caution removed from the police record.

81. *Subsection (5)* provides that in deciding whether a person's conduct is persistent any conduct that took place before the commencement of this section will be disregarded.

Clause 16: Orders requiring attendance at meetings and Schedule 1: Schedule to the Street Offences Act 1959

82. *Subsections (1)* and *(2)* amend section 1 of the Street Offences Act 1959 to introduce a new penalty for those convicted of loitering or soliciting for the purpose of prostitution, allowing the court to make an order instead of imposing a fine or any other penalty.

83. The order will require the offender to attend a series of three meetings with a named supervisor or another person directed by the supervisor. The purpose of the order is to assist the offender, through attendance at those meetings, to address the causes of their involvement in prostitution and to find ways of ending that involvement. The offender may be the subject of only one order at any time.

84. *Subsection (3)* inserts a new section 1A into the 1959 Act, and provides further details about the new order.

85. An order can only be made if a suitable person has agreed to act as 'supervisor'. A person is only suitable to act as a supervisor if that person appears to the court to have the appropriate qualifications or experience for helping the offender to make the best use of the meetings.

86. The order must specify the local justice area in which the offender resides or will reside while the order is in force. The order must also specify a date by which the three meetings must take place. This must be no later than six months from the date the order is made.

87. Specific details about the time, location and duration of the three meetings will not be included in the order. These will be at the discretion of the supervisor, who is responsible for making arrangements necessary to enable the three meetings to take place and notifying the court once the order has been complied with.

88. *Subsection (4)* introduces *Schedule 1* to the Bill which inserts a new Schedule into the 1959 Act. This new Schedule makes further provision about the new order, including the consequences of breach, and the mechanism for amending an order.

89. *Paragraph 1* of the new Schedule to the 1959 Act defines 'the offender' and 'the supervisor' for the purposes of the Schedule and provides that a failure to attend any meeting at the time and place identified by the supervisor constitutes failure by the offender to comply with the order.

90. *Paragraph 2* of the new Schedule states what will happen when it appears to the supervisor that the offender has breached the order. *Sub-paragraph (1)* requires the supervisor to notify a justice of the peace if the supervisor is of the opinion that the offender has failed to comply with the order without reasonable excuse. If it appears to the justice of the peace that the offender has failed to comply with the order, he may issue a summons, under *sub-paragraph (2)*, requiring the offender to appear at a specified time at the appropriate court.

91. *Paragraph 3* of the new Schedule deals with instances where the offender fails to appear in answer to a court summons issued under *paragraph 2*. In such cases, the magistrates' court may issue a warrant for the arrest of the offender, requiring the offender to be brought before the appropriate court.

92. *Paragraph 4* of the new Schedule sets out the powers of a magistrates' court when an offender appears or is brought before it following a summons or warrant issued under *paragraph 2* or *3*, and it is proved to the court's satisfaction that the offender has failed to comply with the order without a reasonable excuse. In such cases, the court must revoke the order, if it is still in force, and may deal with the offender for the original offence, taking into account the extent to which the offender complied with the order. The court has the power to impose any penalty that would have been available to it if the offender had just been convicted by the court of the original offence. This includes making another order under new section 1(2A) of the 1959 Act. Breach of an order is not in itself a criminal offence.

93. Under *paragraph 4(4)* a person sentenced under *paragraph 4* may appeal against the sentence to the Crown Court.

94. The procedure to be followed to change the supervisor specified in the order is set out in *paragraphs 5* and *6* of the new Schedule. It is only possible for the supervisor to be changed if the current supervisor is unable to continue acting in that capacity.

95. The current supervisor, the offender, or a police officer may apply to the appropriate court to specify a different supervisor in the order. If the court is satisfied that the supervisor is unable to continue in his or her role, it must either amend the order to include a different supervisor, or, if no other supervisor is available, revoke the order. Any new supervisor must be a suitable person as defined in the new section 1A of the 1959 Act.

96. *Paragraph 6* of the new Schedule provides that if the court revokes the order (because no other supervisor is available) it can deal with the offender for the original offence, imposing any penalty which would have been available to it if the offender had just been convicted by the court of that offence. It cannot, however, impose another order under new section 1(2A) of the 1959 Act and it must take into account the extent to which the offender complied with the original order.

97. *Paragraph 7* of the new Schedule deals with a change of local justice area specified in the order. Both the offender and the supervisor are able to apply for the specified local justice area to be changed to the area in which the offender resides or will reside. The court must make the change following an application from the supervisor and may do so following an application from the offender.

98. *Paragraph 8* of the new Schedule provides that if a court proposes to change the supervisor (or revoke the order) following an application under *paragraph 5* made by a person other than the offender, it must summon the offender to appear. If the offender fails to attend in answer to the summons, the court may issue a warrant for the offender's arrest.

99. *Paragraph 9* of the new Schedule provides for the detention of an offender when arrested under a warrant issued under the Schedule (for example, following a breach of an order and subsequent failure to answer a summons) if the offender cannot be brought immediately before the court named in the warrant.

100. In such cases, the offender must be brought before any youth court (if the offender is under 18) or any magistrates' court (if the offender is 18 or over) as soon as practicable following arrest.

101. If under 18, the offender must be detained in a place of safety within the meaning of the Children and Young Persons Act 1933. Section 107 of that Act defines "place of safety" as: a community home provided by a local authority or a controlled community home, any police station, or any hospital, surgery, or any other suitable place, the occupier of which is willing temporarily to receive a child or young person.

102. *Paragraph 10* of the new Schedule specifies the procedure to be followed if the offender is brought before a court other than that named in the warrant. The alternative court is able either to order the release of the offender or to remand him to appear at a later date before the appropriate court so named. Section 128 of the Magistrates' Court Act 1980 will apply with minor amendments. This section deals with the powers of magistrates' courts to remand in custody or on bail.

103. An offender committed to custody under *paragraph 10* will be committed to prison, unless he or she is aged under 18 at the time of committal, in which case he or she will be committed to accommodation provided by or on behalf of a local authority.

104. *Paragraph 11* of the new Schedule states the procedure for adjourning a hearing relating to an offender held by either a youth court or other magistrates' court under the Schedule.

105. *Paragraph 12* of the new Schedule deals with the process of notifying the offender, the supervisor and the relevant court(s), following any change to the terms of the order.

Clause 17: Rehabilitation of offenders: orders under section 1(2A) of the Street Offences Act 1959

106. This clause deals with rehabilitation periods for those given orders under the new section 1(2A) of the 1959 Act.

107. *Subsection (2)* amends section 5 of the Rehabilitation of Offenders Act 1974 ("the 1974 Act") to apply a specific rehabilitation period for those sentenced to an order under section 1(2A) following conviction for loitering or soliciting. The rehabilitation period is six months from the date of conviction.

108. *Subsection (3)* inserts a new subsection (3A) into section 6 of the 1974 Act. This provides for a case in which an offender is dealt with again for the offence for which the order was made, the rehabilitation period for the original sentence has ended and the rehabilitation period for the new sentence ends later than that for the original order. The effect is that the offender is not treated as a rehabilitated person under the 1974 Act until the longer rehabilitation period has expired.

Clause 18: Soliciting: England and Wales

109. This clause creates a new single offence of soliciting to be inserted in to the Sexual Offences Act 2003 and replaces both sections 1 and 2 of the Sexual Offences Act 1985. These two sections currently cover the offences of kerb-crawling in a street or public place (section 1) and persistent soliciting in a street or public place (section 2) for the purposes of prostitution. Both activities require an element of persistency in relation to the person kerb-crawling or soliciting in order for an offence to have been committed or, in the case of kerb-crawling, for the soliciting to be shown to be likely to cause nuisance or annoyance to the person solicited or others in the neighbourhood.

110. *Subsection (1)* states that it is an offence for a person in a street or public place to solicit another person for the purpose of obtaining another person's sexual services as a prostitute. *Subsection (2)* makes it clear that a person in a street or public place includes a person in a vehicle in a street or public place. The new clause removes the need for persistency making kerb-crawling or soliciting punishable on the first occasion. In the case of kerb-crawling it also removes any requirement for the soliciting to be shown to cause nuisance or annoyance to others. *Subsection (3)* provides that the maximum penalty for this offence will be a fine not exceeding level three on the standard scale, currently £1000.

Clause 19: Soliciting: Northern Ireland

111. *Clause 19* amends the Sexual Offences (Northern Ireland) Order 2008 so as to create an offence in Northern Ireland which mirrors the offence created in England and Wales by *clause 18.*

Closure orders: sexual offences

Clause 20 and Schedule 2: Closure orders

112. *Clause 20* and *Schedule 2* insert a new Part into the Sexual Offences Act 2003 granting the courts the power to close, on a temporary basis, premises being used for activities related to certain sexual offences. Service of a closure notice by the police will prevent anyone from entering or remaining on the premises, unless they regularly reside in or own the premises, until a magistrates' court decides whether to make a closure order. If the court is satisfied the relevant conditions are met, the court can make a closure order for a period of up to three months. An application can be made for the closure order to be extended but the total period for which a closure order has effect may not exceed six months. For the purposes of the new Part, it does not matter if the offence or offences were committed before, on or after the date that this clause comes into force.

113. The provisions are very similar to those in Part 1 of the Anti-Social Behaviour Act 2003, which relate to closure orders in respect of premises where Class A drugs are used unlawfully and section 118 of, and Schedule 20 to, the Criminal Justice and Immigration Act 2008, which relate to closure orders in respect of premises associated with persistent disorder or nuisance.

114. *Schedule 2* inserts new Part 2A into the Sexual Offences Act 2003; sections 136A-136R. New section 136A stipulates what offences under the Sexual Offences Act 2003 are included in the meaning of specified prostitution offences (subsection (2)) and specified pornography offences (subsection (3)).

115. Subsections (4) and (5) state at what point premises are being used for activities relating to specified prostitution and pornography offences.

116. Subsection (6) states that references in the new Part to offences under the Sexual Offences Act 2003 includes references to corresponding offences under the Army Act 1955, the Air Force Act 1955, the Naval Discipline Act 1957, and the Armed Forces Act 2006.

Closure Notices

117. New section 136B stipulates who can authorise the issue of a closure notice and on what grounds the issuing of a closure notice can be authorised.

118. Subsection (1) states that a member of a police force not below the rank of police superintendent can authorise the issue of a closure notice if three conditions are met.

119. Subsections (2) to (5) state that the first condition is that the member of the police force must have reasonable grounds to believe that during the relevant period the premises were used for activities relating to one or more of the specified prostitution offences and/or specified pornography offences. The relevant period is three months ending with the day on which the officer is considering whether to authorise the issue of the notice. This condition will not be met if only one person obtains all of the sexual services in question.

120. Subsection (6) provides that the second condition is that the officer has reasonable grounds for believing that the making of a closure order is necessary to prevent the premises being used for activities related to one or more specified prostitution or pornography offences.

121. Subsection (7) states that the third condition is that the local authority has been consulted and that reasonable steps have been taken to establish the identity of any person who resides on the premises or who has control or responsibility or an interest in the premises.

122. Subsection (8) ensures that an officer may authorise the issue of a closure notice for premises where he believes that a closure order is necessary to prevent activities relating to an offence from taking place, regardless of whether the officer believes the offence has been or will be committed.

123. Subsection (9) provides that the authorisation for the issue of a closure notice may be given orally or in writing, but should be confirmed in writing if given orally.

124. Subsection (10) provides that a closure notice can be authorised whether or not a person has been convicted of a prostitution or pornography offence that the authorising officer believes has been committed.

125. Subsection (11) enables the Secretary of State by regulations to exempt premises or descriptions of premises from the application of this clause.

126. New section 136C specifies the required contents of a closure notice and how it should be served.

127. Subsection (1) stipulates what information the closure notice must contain. Subsections (2) to (5) state the requirements in relation to service of the notice. A constable must serve the notice by attaching a copy to at least one prominent place on the premises, fixing it to each normal means of access to the premises and so far as is reasonably practicable giving it to people identified as residing in or having control or responsibility for or an interest in the property. A constable must also serve the notice on any person who occupies any other part of the building in which the premises are located if their access will be impeded by a closure order unless it is not reasonably practicable to do so.

128. Subsection (6) states that an officer may use reasonable force to enter premises if necessary in order to effect service of the notice in accordance with subsection (3)(a) to (c).

129. Subsections (7) and (8) provide that a closure notice has effect until an application for a closure order is determined by the court, save that if an application for a closure order is adjourned, the closure notice ceases to have effect unless the court makes an order extending it until the end of the period of adjournment.

130. New section 136D provides the power to make closure orders.

131. Under subsection (1), once a closure notice has been issued, a constable must apply to the magistrates' court for the making of a closure order.

132. Subsection (2) states that the effect of the closure order is to close the premises altogether, including to owners and residents, for up to three months. New section 136E(3) enables the court to include provisions in the order relating to access to any other part of the building in which the premises are situated.

133. Subsection (3) provides that the court must hear the application within 48 hours after the notice was served.

134. Subsections (4) to (10) stipulates the test which must be met before the court makes a closure order. As well as being satisfied that the premises has been used for activities relating to a specified prostitution and/or pornography offence(s) in the three months prior to the issue of the closure notice, the court must be satisfied that the making of the order is necessary to prevent the premises being used for activities relating to relevant offences in the future. Subsection 136D(6) excludes premises where only one person has obtained all the sexual services in question.

135. An order may be made whether or not a person has been convicted of any specified prostitution or pornography offence that the court is satisfied has been committed (subsection (11)).

136. New section 136E contains supplementary provisions relating to the making of closure orders.

137. Subsection (1) allows the court to adjourn the hearing for up to 14 days to allow the occupier or someone else with an interest in the property to show why an order should not be made, for example because the problems have ceased or the persons causing the problems have been evicted.

138. The court can order that the closure notice continues to have effect during this period (subsection (2)).

139. Subsection (4) means the closure order can be made in respect to the whole or any part of the premises for which the closure notice was issued.

Enforcement

140. New section 136F applies when a closure order is made.

141. Subsection (2) allows a constable or any other person authorised by the chief officer of police to enter the property and secure it against entry by any other person.

142. Subsection (3) requires a constable or authorised person to produce evidence proving their identity and authority if asked to do so by either the owner, occupier or person in charge of the premises.

143. Subsection (4) allows a constable or authorised person to enter the premises at any time to carry out essential maintenance or repairs. Subsection (5) provides a power to use reasonable force for these purposes and for entering and securing the premises under subsection (2).

144. New section 136G creates the offences of remaining in or entering property subject to a closure notice (subsection (1)) or order (subsection (2)) without reasonable excuse (subsection (3)) or of obstructing a constable or authorised person carrying out certain functions under this Part (subsection (4)).

145. Subsection (5) provides that the maximum penalty for these offences is a level five fine, currently £5000, imprisonment for 51 weeks or both. For offences committed before the commencement of section 281(5) of the Criminal Justice Act 2003, or in Northern Ireland, the penalty should be read as six months rather than 51 weeks imprisonment.

Extension and discharge of closure order

146. New section 136H allows the police to apply for an extension to a closure order.

147. Subsection (1) provides that an application for an extension may be made at any time before the end of the period for which the closure order is made.

148. Subsection (2) provides that such an application must be authorised by a superintendent (or police officer of higher rank) who can only authorise the application if two conditions are met (subsection (3)). These conditions are that the officer: has reasonable grounds for believing that the extension of the order is necessary for the purpose of preventing the premises being used for activities related to any of the specified prostitution or pornography offences (subsection (4)) and; is satisfied that the local authority has been consulted about the intention to make the application (subsection (5)).

149. Under subsection (6) if a complaint is made a justice of the peace may issue a summons requiring any person on whom the initial closure notice was served or any person who may have an interest but was not previously served with the closure order to appear before the magistrates' court.

150. Subsection (7) states the persons on whom a notice (stating the date, time and place of the hearing) must be served if a summons is issued.

151. New section 136I makes further provision regarding the extension of closure orders.

152. Subsection (2) provides that where an application is made by the police for an extension to a closure order, the court can grant an extension of no more than three months (subsection (3)) if it is satisfied that it is necessary to prevent the premises being used for activities related to any of the specified prostitution or pornography offences.

153. Subsection (4) provides that the total period for which a closure order has effect may not exceed six months. Therefore, if an initial closure order of three months is made, that order can be extended for a maximum of three more months.

154. Subsection (5) allows the court to include in the order such provision as it thinks appropriate relating to access to any other part of a building or other structure in which the premises are situated.

155. In new section 136J subsection (1) allows for a constable, the local authority, persons on whom the closure notice was served or any other person with an interest in the closed premises to apply by way of complaint for the order to be discharged at any time.

156. Subsection (2) provides for a court to issue a summons to require a constable to appear before the magistrates' court where the application to discharge the order was not made by the police.

157. Subsection (3) provides that a court may not discharge a closure order unless it is satisfied that the order is no longer necessary to prevent the premises being used for activities related to any of the specified prostitution or pornography offences.

158. Subsection (4) specifies who must be served with a notice (stating the date, place and time at which the complaint will be heard) where a summons is issued by the court.

Appeals

159. New section 136K allows for appeals to the Crown Court against a closure order being made or extended or against a refusal to make or discharge one.

160. Subsection (1) states who can appeal against the making, extension or refusal to discharge a closure order.

161. Subsection (2) states who can appeal against a decision not to make or extend an order or the discharge of a closure order.

162. Subsection (3) states that an appeal must be made before the end of the period of 21 days beginning with the day on which the order or decision is made.

Access to other premises

163. New section 136L allows a court to make an order concerning access to any part of a building or structure in which closed premises are situated, where the part itself is not affected by a closure order (subsection (1)).

164. Subsection (2) allows a person who occupies or has an interest in such a part to apply to the court for an order enabling him, for example, to retain access to it (particularly if the closure order had rendered access to his part of the building or structure more difficult or impossible). Subsection (3) sets out who must be served with notice of the hearing.

165. Under subsection (4) the court may make such order as it thinks appropriate in relation to access to any other part of the building or structure in which the closed premises are situated.

Reimbursement of costs

166. New section 136M allows the court to make an order that the owner of the premises must reimburse any costs incurred by the police or local authority in clearing, securing, repairing or maintaining the premises.

Exemption from liability for certain damages

167. New section 136N creates a partial exemption from liability in damages for the police or any authorised person carrying out their functions under these provisions. Under subsection (3) it does not extend to any acts in bad faith or acts which are in breach of the police's duty as a public authority to exercise their functions compatibly with the European Convention on Human Rights.

Compensation

168. New section 136O allows for compensation payments to be made by the court out of central funds where the court is satisfied that a person has suffered financial loss in consequence of a closure notice or order.

169. Subsections (2) to (4) set out the procedure for applying for compensation and imposes a time limit for the making of such an application.

170. Subsection (5) allows the court to order the payment of compensation where it is satisfied that:

- a person has suffered financial loss as a result of a closure notice being issued or a closure order having effect;
- the person is not associated with the use of the premises for activities related to specified pornography or prostitution offences;
- if he is the owner or occupier, that he took reasonable steps to prevent that use; and
- it is appropriate in all the circumstances to compensate the person for that loss.

171. In new section 136P, subsection (1) allows the Secretary of State to issue statutory guidance relating to the discharge of functions under Part 2A by the police or a person authorised by the chief officer of police.

172. Subsection (2) requires a person discharging a function to which this guidance relates to have regard to such guidance.

173. New section 136Q allows the Secretary of State to amend these provisions by order to allow persons other than police officers (for example local authorities) to issue closure notices.

174. New section 136R defines the terms used in the Schedule.

Orders imposed on sex offenders
Clause 21: Time limits
175. *Subsections (1)* and *(2)* amend the Sexual Offences Act 2003 to expressly disapply section 127 of the Magistrates' Courts Act 1980 in relation to applications for civil orders made under Part 2 of the Sexual Offences Act 2003. Consequently, the provision confirms that the requirement imposed by section 127, that some evidence provided in support of an application for an order must relate to conduct that has occurred within the six months prior to the application being made, does not apply to these civil orders.

176. *Subsection (3)* makes an equivalent amendment to exclude Article 78 of the Magistrates' Court (Northern Ireland) Order 1981 from applying to applications made for these civil orders in Northern Ireland.

Clause 22: Foreign travel orders: grounds
177. *Subsection (1)* amends any reference to children under 16 in sections 115 and 116 of the Sexual Offences Act 2003 to children under 18. The effect of this is that it raises the age of a child that must be at risk in order for a foreign travel order to be made. It also alters the

criteria determining which offenders qualify for a foreign travel order, to include those that have committed sexual offences against children under 18, not just offences against children under 16.

178. *Subsection (2)* provides that these amendments apply in relation to the making, variation, renewal or discharge of foreign travel orders after the commencement of this clause.

Clause 23: Foreign travel orders: duration

179. *Subsection (1)* amends the Sexual Offences Act 2003 to extend the maximum duration of a foreign travel order from six months to five years, in England and Wales, and Northern Ireland.

180. *Subsection (2)* provides that this amendment applies to the making, variation or renewal of a foreign travel order after this clause has been commenced.

Clause 24: Foreign travel orders: surrender of passports

181. *Subsection (2*) inserts a new section 117A into the Sexual Offences Act 2003 to require offenders who are subject to a foreign travel order that prohibits them from travelling anywhere in the world to surrender their passports at a police station specified in the order.

182. This new section also requires the police to return any passport as soon as reasonably practicable after the relevant Foreign Travel Order has ceased, unless that passport is a foreign passport or a passport issued by an international organisation and it has been returned by the police to the authorities outside the United Kingdom which issued the passport.

183. *Subsection (3)* amends section 122 of the Sexual Offences Act 2003 to create a new offence of failing to comply with a requirement to surrender a passport.

184. *Subsection (4)* provides that this amendment applies to the making, variation or renewal of a foreign travel order after this clause has been commenced.

Indecent photographs of children

Clause 25: Penalty for contravening notice relating to encrypted information

185. *Clause 25* amends section 53 of the Regulation of Investigatory Powers Act 2000 (RIPA) (failure to comply with notice relating to encrypted information). Section 53 RIPA makes it an offence to knowingly fail to comply with a notice given under section 49 RIPA. Such notices impose disclosure requirements in relation to protected information. Under section 53(5A) the maximum sentence for failing to comply with a section 49 notice is five years in a national security case or two years in any other case.

186. *Clause 25(2)* amends subsection (5A)(a) of section 53 of RIPA so that a maximum sentence of five years' imprisonment is available in relation to 'a child indecency case', as well as in relation to a national security case.

187. *Clause 25(3)* adds new subsections (6) and (7) to section 53 of RIPA. New subsection (6) says that a 'child indecency case' is one in which the grounds for issuing a notice relating to encrypted information were or included a belief that the notice was necessary for the purpose of preventing or detecting an offence under any of the provisions listed in subsection (7). New subsection (7) specifies five offences relating to showing, taking or possessing an indecent photograph of a child.

188. *Clause 25(4)* states that the amendments made by this clause apply in relation to cases in which the section 49 notice was given after the commencement of this clause.

189. *Schedule 7 paragraph 25* adds the offences in sections 53 and 54 RIPA (contravention of notice relating to encrypted information or tipping off in connection with such a notice) to Schedule 5 of the Sexual Offences Act 2003. This means that sexual offences prevention orders can be imposed on people convicted of these offences where a court is satisfied that it is necessary to make such an order for the purpose of protecting the public or any particular members of the public from serious sexual harm from the offender.

Sex establishments

Clause 26: Regulation of lap dancing and other sex encounter venues etc

190. This clause inserts a new category of "sex establishment" called a "sex encounter venue" into Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (the "1982 Act"). This will bring the licensing of lap dancing and pole dancing clubs and other similar venues under the regime set out in the 1982 Act, which is currently used to regulate establishments such as sex shops and sex cinemas.

191. The clause would insert a new paragraph 2A into Schedule 3 to the Local Government Act 1982.

192. Sub-paragraphs (1), (2) , (12) and (14) of the new paragraph define a "sex encounter venue" as a premises where certain entertainment is provided, or permitted to be provided, by or on behalf of the organiser in front of a live audience for the financial gain of the organiser or entertainer. The entertainment may take the form of a live performance or live display of nudity and must reasonably be assumed to have been provided solely or principally for the purpose of sexually stimulating any member of the audience. Sub-paragraph (14) states that an audience can consist of just one person.

193. Sub-paragraph (3) specifies that the following are not sex encounter venues for the purpose of the Schedule:

- sex shops and sex cinemas;
- any premises that at the time in question

  - has not provided relevant entertainment on more than 11 occasions within the previous 12 months
  - no such occasion has begun within the period of one month beginning with the end of any previous occasion
  - no such occasion has lasted for more than 24 hours
- other premises excluded by order of the Secretary of State, or in Wales the Welsh Minister. In addition, under sub-paragraph (6) they may also make an order excluding certain types of performances or displays of nudity.

194. Sub-paragraphs (4) and (5) state that the Secretary of State, or in Wales, the Welsh Minister may by order amend or repeal sub-paragraph (3)(b) which is the provision excluding premises which provide relevant entertainment infrequently (i.e. less than eleven times in 12 months etc). However, the power cannot be used to increase the number or length of occasions in any period that relevant entertainment can be provided, or provide for shorter intervals between such occasions, than this provision as originally enacted will allow. For example, the order making power could not be used to allow premises to provide relevant entertainment 20 times a year.

195. Sub-paragraphs (7) to (11) make provision relating to the exercise of the order making powers described in sub-paragraphs (3), (4) and (6). In particular, the power to make an order under sub-paragraphs (3) and (6) are subject to the negative resolution procedure, while the power to make an order under sub-paragraph (4) is subject to the affirmative resolution procedure.

196. Sub-paragraph (13) stipulates that it is the organiser that must apply for a licence under the 1982 Act as the "user" of the premises.

197. Sub-paragraph (14) provides various definitions including the meaning of "nudity" in the cases of men and women. The definition of "premises" expressly excludes private dwellings to which the public are not admitted. Sub-paragraph (14) also states that it does not matter whether the financial gain arises directly or indirectly from the performance or display or whether it is the person providing the entertainment who receives the benefit or some other person. Therefore, for example, it should not matter whether those admitted to the premises pay for admission to, or membership of, the club.

198. *Subsection (4)* amends paragraph 12(3)(c) of Schedule 3 to the 1982 Act, which deals with refusal of licences, to allow local authorities to set a limit on the number of sex establishments of a particular type in a locality, as well as the number of sex establishments generally, and to refuse a licence on the basis that the number of establishments in the locality is equal to or exceeds the number which the authority considers appropriate.

199. *Subsection (5)* amends paragraphs 13(2) and (3) of Schedule 3 to the 1982 Act which provides local authorities with the power to prescribe in regulations standard terms and

conditions for sex establishment licences. The amendments allow local authorities to impose different standard conditions on a sex encounter venue compared with other kinds of sex establishment, such as a sex shop. Copies of any regulations made by a local authority under paragraph 13 of Schedule 3 must be supplied by the local authority upon request and payment of a reasonable fee.

200. *Subsection (6)* ensures that the local authority will be able to charge a fee for applications to vary a licence granted under the 1982 Act. Indeed, a reasonable fee set by the local authority is also payable for the grant, renewal or transfer of a licence under the 1982 Act. *Subsection (7)* inserts a new paragraph after paragraph 25 of the 1982 Act that stipulates the procedure by which the police and local authority officers can, under the authority of a warrant, seize property from premises that can be forfeited following a conviction for an offence under paragraphs 20 (enforcement) or 23 (offences relating to persons under 18) of the 1982 Act. The provisions largely replicate those inserted by the Greater London Council (General Powers) Act 1986 but are necessary as that Act is of limited application. *Subsection (8)* similarly replicates an amendment made by the Greater London Council (General Powers) Act 1986.

Schedule 3: Lap dancing and other sex encounter venues etc: transitional provision

201. *Paragraph 1* deals with those local authorities that have not already resolved to adopt Schedule 3 of the 1982 Act and provides that the amendments made to the 1982 Act by *clause 26* will apply where such an authority resolves to adopt Schedule 3 on or after *clause 26* comes into force.

202. *Paragraph 2* deals with those local authorities that have already adopted Schedule 3 and any subsequent amendments made by local Acts. In these cases the amendments to Schedule 3 made by *clause 26* will not apply to a local authority area unless the relevant local authority resolves to adopt them.

203. *Paragraph 3* allows the appropriate national authority to make, by statutory instrument, appropriate saving, transitional or transitory provisions relating to the coming into force of Schedule 3 of the 1982 Act as amended by this Bill.

204. *Paragraph 4* defines the terms used in the Schedule.

PART 3 – ALCOHOL MISUSE

Clause 27: Increase in penalty for offence

205. *Clause 27* increases the maximum fine for consuming alcohol in a designated public place from level two (currently £500) to level four (currently £2,500).

Clause 28: Selling alcohol to children
206. *Clause 28* amends the offence of persistently selling alcohol to children so that the offence is committed if alcohol is sold to an individual under the age of 18 on two or more occasions within three months rather than on three or more occasions within three months.

Clause 29: Confiscating alcohol from young persons
207. *Clause 29* amends the Confiscation of Alcohol (Young Persons) Act 1997 Act so that police officers can confiscate sealed containers of alcohol from young persons in public places without needing to prove that they were consuming alcohol or that they intended to consume alcohol in a public place. This amendment also allows the police to return, where appropriate, individuals that are reasonably suspected of being under 16 to their home or a place of safety.

Clause 30: Offence of persistently possessing alcohol in a public place
208. *Clause 30* introduces a new offence of persistently possessing alcohol in a public place. Young people under 18 can be prosecuted for this offence if they are caught with alcohol in a public place three or more times within a 12 month period. The maximum punishment for this is a level two fine (currently £500).

Clause 31: Directions to individuals who represent a risk to disorder
209. *Clause 31* amends section 27(1) of the Violent Crime Reduction Act 2006 so that police can issue Directions to Leave under this section to persons aged between 10 and 15 as well as to those aged 16 and over.

Clause 32 and Schedule 4: General licensing conditions relating to alcohol
210. *Clause 32* introduces *Schedule 4* which makes provision about general licensing conditions relating to alcohol.

211. *Schedule 4* amends the Licensing Act 2003 to create an enabling power that allows the Secretary of State to set out (in secondary legislation):

a) no more than nine mandatory licence conditions relating to the supply of alcohol for all new and existing premises licences and for all new and existing club premises certificates respectively (or for those premises licences or club premises certificates of a particular description);
b) a larger number of permitted conditions, which the licensing authority can, having consulted the responsible authorities and the holders of the relevant premises licences or club premises certificates, apply to two or more licenses or two or more certificates at a time.

212. All conditions must be in made in accordance with the four licensing objectives set out in the Licensing Act 2003. These are:

- the prevention of crime and disorder;
- public safety;
- the prevention of public nuisance; and
- the protection of children from harm.

213. *Paragraph 1* amends the Licensing Act 2003 so that where premises are licensed to sell alcohol, their licence is subject to the mandatory conditions specified in an order made by the Secretary of State.

214. *Paragraph 2* amends the Licensing Act 2003 to allow the Secretary of State, in secondary legislation, to specify up to nine mandatory licensing conditions that could apply to all current or future premises licences. Each mandatory condition takes precedence over any existing licensing conditions to the extent the mandatory conditions are identical or inconsistent and more onerous.

215. *Paragraph 3* amends the Licensing Act 2003 to allow licensing authorities to impose as appropriate any of the permitted general licensing conditions on licensed premises if there has been alcohol related nuisance or disorder on or near the premises which is likely to reoccur and it is appropriate to impose the conditions to mitigate or prevent such nuisance or disorder. Licensing authorities must consider the imposition of permitted conditions following a request from a responsible authority.

216. The list of permitted conditions which local authorities can impose, the procedure for imposing and advertising them, and the procedure for varying, reviewing and appealing against them, will be specified by the Secretary of State in secondary legislation and statutory guidance.

217. *Paragraphs 4, 5* and *6* are equivalent to *paragraphs 1, 2* and *3* respectively, except that they relate to club premises certificates rather than to premises licences (the list of conditions in respect of club premises certificates could be different to that for premises licences). These certificates relate to members' clubs rather than nightclubs.

218. These powers will extend to England and Wales.

219. There are further minor and consequential amendments to the Licensing Act 2003 set out in *Schedule 7*.

PART 4 – INJUNCTIONS: GANG-RELATED VIOLENCE

Power to grant injunctions

Clause 33 Injunctions to prevent gang-related violence

220. This clause sets out the conditions that must be met in order for a court to have the power to grant an injunction under this Part. It also sets out the purposes of the injunction.

221. *Subsection (2)* provides that before granting an injunction the court must first be satisfied to the civil standard of proof that the respondent has engaged in, encouraged or assisted gang-related violence.

222. *Subsection (3)* requires the court to think it necessary for an injunction to be granted to prevent the respondent from engaging in, encouraging or assisting gang-related violence and/or to protect the respondent from gang-related violence. Either or both of these conditions must be met in addition to the condition set out in *subsection (2)* before an injunction can be granted.

223. *Subsection (4)* sets out that the injunction may include any prohibitions or requirements that the court sees fit but that any prohibition or requirement should have as its purpose preventing the respondent from engaging in, assisting or encouraging gang-related violence, and/or protecting the respondent from such violence.

224. *Subsection (5)* defines *g*ang-related violence.

Contents of injunctions

Clause 34: Contents of injunctions

225. This clause serves the purpose of listing possible effects that prohibitions or requirements could have on the respondent.

226. *Subsection (2)* lists possible effects of prohibitions, including an exclusion zone *(2)(a)*, non-association with other individuals *(2)(b)*, preventing being in charge of certain animals *(2)(c)*, preventing wearing of specific clothing *(2)(d)* or preventing using the internet to facilitate or encourage violence *(2)(e)*.

227. *Subsection (3)* lists possible effects of requirements, including notification of a change of address *(3)(a)*, a curfew *(2)(b)*, presenting oneself as required *(2)(c)* and participation in certain activities *(2)(d)*.

228. *Subsection (4)* provides that a requirement which has the effect of a curfew as in *subsection (3)(b)* may not last for more than eight hours in any day.

229. *Subsection (5)* provides that prohibitions or requirements should avoid conflict with the religious beliefs of the respondent and their work or educational commitments.

230. *Subsection (6)* makes it clear that the list of prohibitive or restrictive effects contained within *subsections (2)* and *(3)* is non-exhaustive.

Clause 35: Contents of injunctions: supplemental
231. This clause makes additional provisions in respect of an injunction that is granted under *clause 33*.

232. *Subsection (2)* requires the court to specify whether each prohibition or requirement contained within the injunction is to last until a further order of the court, or until the end of a specified period.

233. *Subsection (3)* enables the court to set a review hearing which the applicant and respondent must attend. The purpose of the review hearing is set out in *subsection (4)*, namely to consider whether the injunction should be varied or discharged.

234. *Subsection (5)* creates a power for the court to attach a power of arrest to any prohibition in the injunction, or any requirement, other than a requirement for the respondent to participate in specified activities. The court may choose to attach the power of arrest to none, some or all of the prohibitions or requirements of an injunction.

Applications
Clause 36: Applications for injunctions under section 33
235. *Subsection (1)* provides that applications can be made by the police, including the British Transport Police, or a local authority. Local authority is defined in *subsection (2).*

Clause 37: Consultation by applicants for injunctions
236. This clause creates a requirement for the applicant authority to consult with any local authority, any chief officer of police and any other body or individual that the applicant thinks it appropriate to consult.

Clause 38: Applications without notice
237. This clause allows the applicant to make an application for an injunction without giving notice to the respondent.

238. The applicant is not required to comply with the consultation requirement in *clause 37* before making such an application.

239. However, s*ubsection (5)* requires the applicant to have met the consultation requirement of *clause 37* before the first full hearing, of which the respondent will have been notified.

Interim injunctions

Clause 39: Interim injunctions: adjournment of on notice hearing

240. This clause deals with the powers of the court to grant an interim injunction where the court adjourns a hearing of which notice has been given to the respondent.

241. It allows the court to grant an interim injunction if it is just and convenient to do so. The court is not required to be satisfied of the conditions set out in *clause 33(2)* and *(3)*.

242. *Subsection (3)* provides that prohibitions or requirements made in an interim injunction made under this clause must be time limited.

243. *Subsection (4)* provides that an interim injunction granted as the result of an adjournment of an on notice hearing may include any provision, other than those set out in *subsection (3)*, that the court has the power to grant under *clause 33* including attaching a power of arrest.

Clause 40: Interim injunctions: adjournment of without notice hearing

244. This clause deals with the court's powers to grant an injunction where it adjourns the hearing of an application which has been made without notice. This would usually occur where a without notice hearing has been sought to prevent imminent violence. An adjournment may be necessary to enable further information to be gathered ahead of a full hearing and will be necessary to enable the respondent to attend a full hearing. This clause ensures that the court can only grant an interim injunction in this situation when the court considers it necessary to do so.

245. *Subsection (3)(a)* states that an interim without notice injunction must not contain a prohibition or requirement which would be in force until further order of the court.

246. *Subsection (3)(b)* sets out that an interim without notice injunction must not have the effect of requiring the respondent to participate in particular activities.

247. *Subsection (4)* sets out that an interim without notice injunction may include any provision, other than those set out in *subsection (3)*, that the court has the power to grant under *clause 33*, including attaching a power of arrest.

Variation and discharge

Clause 41: Variation or discharge of injunctions

248. This clause sets out how an injunction can be varied or discharged.

249. *Subsection (1)* states that the court can vary or discharge an injunction if a review hearing is held or if an application to vary or discharge is made.

250. *Subsection (2)* sets out who is able to make an application to vary or discharge an injunction: the applicant and the respondent.

251. *Subsection (3)* provides that where the applicant applies to vary or discharge the application, they must notify the agencies they consulted under *clause 37* when they first sought the injunction.

Arrest and remand

Clause 42: Arrest without warrant

252. This clause provides that if a power of arrest has been attached to any of the prohibitions or requirements contained in an injunction then a police officer may arrest without warrant a respondent who is reasonably suspected to be in breach of that provision.

253. *Subsection (3)* requires the officer to inform the original injunction applicant of the arrest.

254. A person who is arrested under this section must be brought before a relevant judge within 24 hours of being arrested. If the matter is not dealt with then the court is permitted to remand the person.

255. *Subsection (7)* defines a "relevant judge".

Clause 43: Issue of warrant of arrest

256. This clause allows a court to grant a warrant for arrest if it believes that the respondent is in breach of any provision of the injunction. The warrant must be applied for by the original injunction applicant.

257. The court has the power of remand if the matter is not disposed of.

Clause 44: Remand for medical examination and report

258. If a person has been arrested, with or without a warrant, this clause allows a court to remand a person for the purpose of medical examination and report if they have reason to consider that such a report will be required.

259. *Subsection (3)* sets out that where that remand is in custody, the adjournment must not be for more than three weeks at a time.

260. *Subsection (4)* provides that where such remand is on bail, the adjournment must not be for more than four weeks at a time.

261. *Subsection (5)* gives the court the power to make an order under section 35 of the Mental Health Act 1983 ("MHA") if it suspects that the arrested individual is suffering from a mental disorder. Section 35 of the MHA enables a court to remand an individual to a hospital

specified by the court for a report on his mental condition. The court can exercise this power either on the written or oral evidence of a registered medical practitioner, or if the court is of the opinion that it is impracticable for a report on his mental condition to be made if he or she were remanded on bail.

Clause 45: Further provision about remands and Schedule 5: Injunctions: powers to remand

262. *Clause 45* introduces *Schedule 5* to the Bill, which makes further provision about the powers to remand under *clauses 41* and *42* of Part 4.

263. *Paragraph 2* provides that the court may either remand the individual in custody or on bail. If the remand is on bail, this paragraph ensures that the court can take a recognizance from the individual or fix the amount of a recognizance to be taken subsequently.

264. *Paragraph 4* sets out that the maximum time for a remand in custody is eight clear days, unless both the individual and the applicant consent.

265. *Paragraph 5* provides that the court may further remand an individual in his absence, if the individual does not appear in court due to accident or illness and that the court may, for an individual remanded on bail, enlarge the individual's recognizance.

266. *Paragraph 6* enables the court to postpone the taking of a recognizance for it to be taken in accordance with the rules of court.

267. *Paragraph 7* ensures that the court may impose conditions on an individual remanded on bail.

Miscellaneous

Clause 46: Guidance

268. This clause requires the Secretary of State to issue and publish guidance in relation to injunctions under Part 4. Such guidance may be revised, but any revisions must also be published. The Secretary of State is obliged to lay any guidance issued or revised under this clause before Parliament.

269. *Subsection (4)* requires all applicant authorities to have regard to published guidance.

Clause 47: Supplemental

270. *Clause 47* enables rules of court (civil procedure rules which are made by statutory instrument) to provide that powers conferred on county courts are exercisable by judges of the county court and district judges. The clause also stipulates that the rules of court may allow for appeals to be made without giving notice of the appeal to the respondent.

Clause 48: Interpretation
271. This clause defines certain terms used within this Part.

272. *Subsection (2)* sets out that where the term injunction is used in Part 4, it includes an interim injunction.

PART 5 – PROCEEDS OF CRIME

Confiscation
Clause 49: Recovery of expenses etc:
273. Sections 48 and 50 of the Proceeds of Crime Act 2002 (POCA) provide for the appointment of management and enforcement receivers respectively. Management receivers manage property which is subject to a restraint order; enforcement receivers dispose of property to satisfy a confiscation order. Under section 55 of POCA, the remuneration and expenses of management and enforcement receivers, who are appointed by the courts in England and Wales, are payable from sums recovered in satisfaction of a confiscation order. Previously receivers from the Crown Prosecution Service and Revenue and Customs Prosecutions Office were excluded from benefiting from these provisions by virtue of section 55(7) of POCA. *Clause 49* amends section 55 and enables members of staff of these organisations, along with accredited financial investigators and members of staff of other departments and public bodies specified in new *subsection (8)*, to deduct their expenses from recovered sums when they are appointed as receivers. They may not deduct their remuneration costs, as these are already met from public funds.

274. Sections 196 and 198 of POCA make provision for the appointment of management and enforcement receivers in Northern Ireland. *Clause 49* amends section 203 of POCA to make similar provision for Northern Ireland as regards recovery of expenses as the amendments to section 55 do for England and Wales.

275. New section 55(10) provides that an accredited financial investigator under these provisions means one who falls within a description specified in an order made by the Secretary of State under section 453 of POCA.

Clause 50: Power to retain seized property: England and Wales
276. Under POCA, a restraint order has the effect of freezing property that may be liable to confiscation following the trial and the making of a confiscation order. A confiscation order is a court order requiring a convicted defendant to pay an amount equal to the financial benefit of what they have obtained from their crimes. A restraint order provides that specified persons are prohibited from dealing with or disposing of specified property, but without this amendment, it does not provide for a general power to retain property.

277. *Clause 50* amends the restraint order provisions of POCA to provide that an appropriate officer (as defined in new section 41A(3)) can continue to retain property that has

been or may be seized under a specified seizure power if that property is also subject to a restraint order. Property which was seized, for example, as evidence, and which is subject to a restraint order may therefore continue to be retained even when the evidential purpose for retention no longer exists.

278. The specified seizure powers are those contained in Parts 2 and 3 of the Police and Criminal Evidence Act 1984 (PACE), and certain POCA powers. By way of example, one of the most commonly used general powers of seizure for police constables in this context is section 19 of PACE. By virtue of an order under section 114(2) of that Act this power also applies to officers of HM Revenue and Customs. It allows for seizure of property which the officer has reasonable grounds for believing has been obtained in consequence of the commission of an offence or is evidence in relation to an offence under investigation.

279. Once property has been seized under section 19 of PACE it may be retained under section 22 of PACE for "so long as is necessary in all the circumstances". Such property should be returned to its owner once it is no longer required for the purposes set out in section 22, which include for use as evidence. Property which is retained under section 22 for use as evidence at a criminal trial or for forensic examination or criminal investigation should also be returned where a photograph or copy of the seized property would be sufficient for those purposes. Without this amendment, there would be no specific power to continue to retain property that could be required to satisfy a confiscation order following conviction.

280. The new section 41A of POCA, to be inserted by *clause 50* also provides for the authorisation to retain property which was seized under two POCA seizure powers. These are section 47C (seizure to prevent property being made unavailable to satisfy a confiscation order, inserted by new *clause 53*), and section 352 (search and seizure warrants) of POCA. The authorisation may also extend to property which is produced in compliance with a production order under section 345 of POCA.

281. The Secretary of State may by order amend the list of relevant seizure powers.

282. If a restraint order is discharged or varied so that property is no longer detained, the relevant law enforcement agency or prosecutor can appeal that decision. New section 44A provides for the continued detention of property while an appeal under sections 43 or 44 of POCA is pending or remains possible.

Clause 51: Power to retain seized property: Scotland

283. *Clause 51* provides comparable provisions for Scotland to those set out in *clause 50* for England and Wales. The definition of "appropriate officer" is different, as is the definition of "relevant seizure power".

Clause 52: Power to retain seized property: Northern Ireland

284. *Clause 52* provides comparable provisions for Northern Ireland to those set out in c*lause 50* for England and Wales. The definition of "relevant seizure power" is slightly different.

Clause 53: Search and seizure of property: England and Wales

285. *Clause 53* inserts new sections 47A to 47S into POCA. These new sections provide for search and seizure powers in England and Wales to prevent the dissipation of personal property that may be used to satisfy a confiscation order. The property may be seized in anticipation of a confiscation order being made. The seizure power is subject to judicial oversight. If a confiscation order is made, the property may be sold in order to satisfy the order. (*See clause 56).*

286. New section 47A of POCA sets out who may exercise the powers. These are an officer of Revenue and Customs, a constable and an accredited financial investigator. An accredited financial investigator is an investigator who has been trained and accredited under section 3 of POCA, and an order made under section 453 of POCA may specify the type of accredited financial investigators who can exercise these powers.

287. There are a number of pre-conditions for the exercise of these powers. These are set out in section 47B and cover the situation in which an individual is arrested or proceedings are begun against him for an indictable offence, and there is reasonable cause to believe that he has benefited from the offence. They also cover the situation where an application in respect of further confiscation proceedings has been made or is to be made.

288. The property may be seized if there are reasonable grounds to suspect that it may otherwise be made unavailable for satisfying a confiscation order or that the value of the property may be diminished. The seizure power applies to 'realisable property'. The definition of this term is found in section 83 of POCA and covers any free property held by the defendant or by the recipient of a tainted gift. ('Free property' is property not subject to the forfeiture, deprivation and other orders specified in section 82 of POCA and 'tainted gift' is defined in section 77 of POCA). Section 47C(2) however provides that cash and exempt property may not be seized. Section 47C(4) defines exempt property and includes items necessary for the defendant's personal use in his business or employment, and clothing, bedding, furniture, household equipment and other property necessary for satisfying the basic domestic needs of the defendant and his family. Cash may not be seized under this power because there is already a separate regime for the seizure of cash in Chapter 3 of Part 5 of POCA.

289. New sections 47D to 47I provide the search powers necessary to support the power to seize property and set out safeguards.

290. The search power for premises will only be exercisable on private premises where the officer has lawful authority to be present. This could be, for example, when a constable is

exercising his powers of entry under the Police and Criminal Evidence Act 1984 or when an officer of Revenue and Customs is exercising such powers under the Customs and Excise Management Act 1979. An officer could also be lawfully present on private premises if he is there at the invitation of the owner. The officer may carry out a search of the premises if he has reasonable grounds for suspecting that property may be found there which the officer intends to seize under section 47C. This means that the officer would have to have reasonable grounds for suspecting that the property may otherwise not be available for satisfying a confiscation order or that the value of the property may be diminished.

291. By virtue of new section 47E, the search powers include the power to search a person. However, this power does not extend to requiring a person to undergo a strip search (*subsection (5)*). The officer may carry out a search of a person if he has reasonable grounds for suspecting that the person is carrying property that may be seized under section 47C.

292. New section 47F provides the power to search vehicles. The provision does not contain a power of entry; rather it allows the officer to require the person who it appears to him is in control of the vehicle to permit entry to and a search of the vehicle. This power applies, in brief, where the vehicle is in a public place or within the environs of a dwelling other than the dwelling of the person or of another person who permits the vehicle to be there. Failure to permit a search may amount to an offence of obstruction. The officer may carry out a search of a vehicle if he has reasonable grounds for suspecting that the vehicle contains property that may be seized under section 47C. New section 47F(5) provides that the vehicle may be detained for so long as is necessary for the officer to exercise the search power.

293. Each of the search powers in new sections 47D to 47F and the seizure power in new section 47C may only be exercised with the 'appropriate approval' described in new section 47G unless, in the circumstances, it is not practicable to obtain such approval in advance. New sections 47G to 47I make provision in relation to this appropriate approval. Appropriate approval is the prior approval of a justice of the peace or, if that is not practicable, that of a senior officer (as defined in new section 47G(3)). If judicial approval is not obtained prior to a search and no property is seized, or any seized property is not detained for more than 48 hours, the investigator concerned must prepare a written report and submit it to an independent person appointed by the Secretary of State (the "appointed person"). The report must detail why the investigator considered that he had the power to carry out the search and why it was not practicable to obtain judicial approval of the search. In all cases if the property is retained for more than 48 hours, it will be subject to judicial oversight.

294. Section 47I provides that the appointed person to whom the reports are submitted is under an obligation to submit an annual report to the Secretary of State drawing general conclusions about the matters reported to him and making any appropriate recommendations. This report will be laid before Parliament and be published.

295. Section 47J provides for the initial detention of seized property for 48 hours (not including weekends, Christmas Day, Good Friday or bank holidays).

296. Section 47K provides for the further detention of the property pending the making of a restraint order which authorises the detention or pending the exhaustion of any related avenue of appeal. Section 47L provides for the subsequent detention of seized property in cases where the property is already subject to a restraint order but the restraint order does not include provision authorising detention of the property. In these cases, new section 47L allows the property to be detained if an application is made for the variation of the restraint order to include such provision within 48 hours of seizure (or such longer period as may be authorised under new section 47M). Applications to vary restraint orders are made to the Crown Court.

297. If the seized property is not subject to a restraint order, and no application has been made for a restraint order authorising its detention, section 47M provides that a magistrates' court may by order authorise the further detention of the property. The magistrates' court may make such an order if satisfied of the matters listed in *subsection (2)*. Section 47N allows the law enforcement agency, or any person affected by the order (including any third party claiming to have an interest in the property) to apply to the magistrates' court for the discharge or variation of the detention order. Section 47O provides a right of appeal to the Crown Court to the law enforcement agency against a decision of the magistrates' court not to make a detention order. It also provides a right of appeal to that agency or any person affected by the order against the decision of the magistrates' court on an application to vary or discharge a detention order.

298. In cases where the property is subject to a restraint order any person affected by the continued detention may apply for a variation or discharge of the order under section 42(3) of POCA. An appeal may be made against the decision of the Crown Court to the Court of Appeal under section 43.

299. Section 47P provides for the continued detention of property while an appeal by the law enforcement agency under section 47O is pending or remains possible.

300. Section 47Q provides that hearsay evidence is admissible in proceedings relating to the detention of property before a magistrates' court. Section 46 of POCA already provides for hearsay evidence to be admissible in restraint proceedings.

301. Section 47R imposes an obligation on an appropriate officer to release detained property if he is satisfied that the conditions for the seizure no longer apply. Property can be seized if, for example, an individual has been arrested or proceedings have begun against him and there is reasonable cause to believe that he has benefited from the offence. In every case, the officer must also have reasonable grounds to suspect that the property may be made unavailable for satisfying a confiscation order or that the value of that property may be diminished. If these conditions cease to be met at any time during the detention of the property, the property must be released unless there is another power (perhaps under other legislation) authorising its continued detention.

302. Section 47S requires the Secretary of State to publish a Code of Practice setting out how the powers are to be exercised.

Clause 54: Search and seizure of property: Scotland

303. *Clause 54* provides comparable provisions for Scotland to those set out in c*lause 53* for England and Wales. The persons who may exercise the powers are an officer of Revenue and Customs and a constable. In place of a Code of Practice, section 127R provides that the Lord Advocate may issue guidance on the exercise of the powers.

Clause 55: Search and seizure of property: Northern Ireland

304. *Clause 55* provides comparable provisions for Northern Ireland to those set out in *clause 53* for England and Wales.

Clause 56: Power to sell seized personal property: England and Wales

305. *Clause 56* inserts new sections 67A to 67D of POCA. New section 67A provides that property that has been seized in England and Wales by an appropriate officer under a relevant seizure power, or which has been produced to such an officer in compliance with a production order under section 345 of POCA, may be sold to meet a confiscation order in certain circumstances. The definition of an appropriate officer is set out in new section 41A(3) (as inserted by *clause 50* of the Bill). The definition of a relevant seizure power is set out in new section 41A(4). The magistrates' court may authorise an appropriate officer to sell the seized property to satisfy a confiscation order, if the seized property belongs to a person against whom a confiscation order has been made, the time to pay that order has expired and it remains unpaid, and provided that an enforcement receiver has not been appointed in relation to the property.

306. The new section 67A uses the terminology "personal property" rather than "property" as used elsewhere in related provisions. The reference to "personal property" excludes cash that has been seized under section 19 of PACE (see new section 41A(4)(d) of POCA as inserted by *clause 50*). Cash seized under section 19 of PACE can be dealt with under section 67 of POCA.

307. New section 67B enables the appropriate officer to claim the costs of storing and selling the property from the sums paid in satisfaction of a confiscation order. The amount to be paid in relation to these costs will be determined by the magistrates' court.

308. New section 67C introduces a right of appeal to the Crown Court against a magistrates' court's order authorising the sale of the property. The right of appeal is available to third parties affected by the order but not to the person against whom the confiscation order is made. There is also a right of appeal for an appropriate officer to appeal against a magistrates' court's decision not to authorise the sale of the property. In addition the officer may appeal against a decision by the magistrates' court not to award costs or against the amount of costs awarded under new section 67B.

309. New section 67D specifies how sums from the sale of the property authorised under new section 66A are to be disposed of by the appropriate officer. Firstly, they must meet the expenses of an insolvency practitioner in any parallel insolvency proceedings that are payable under section 432 of POCA. They must then be used to meet any payments directed by the court and the remainder must be remitted to the designated officer of the magistrates' court responsible for enforcing the confiscation order. Where the confiscation order has been fully paid and the officer has any sums remaining, new section 67D(3) requires him or her to distribute that money as directed by the court.

310. *Clause 56(4)* amends section 55(4) of POCA to provide for the payment to an appropriate officer of the costs of storage and sale, as directed by the court under new section 67B, to be paid from sums received by the designated officer on account of the amount payable under a confiscation order.

Clause 57: Power to sell seized personal property: Scotland

311. *Clause 57* provides comparable provisions for Scotland to those set out in c*lause 56* for England and Wales.

Clause 58: Power to sell seized personal property: Northern Ireland

312. *Clause 58* provides comparable provisions for Northern Ireland to those set out in c*lause 56* for England and Wales.

Clause 59: Payment of compensation

313. Section 72 of POCA provides for compensation to be paid to a person whose property has been affected by the enforcement of confiscation legislation. Compensation is only payable where an investigation is started but proceedings are never brought, or the defendant is not convicted of an offence, or the conviction is quashed, or the defendant is pardoned. In all cases there must have been a serious default on the part of one or more of the enforcement authorities specified in section 72(9) for compensation to be payable. *Clause 59* amends sections 72(9) of POCA, and the corresponding provisions for Scotland and Northern Ireland: sections 139(9), and 220(9) of POCA to add SOCA to the list of enforcement authorities that are liable to pay compensation. It also amends section 72(9) and 220(9) to add to the list certain bodies that have accredited financial investigators on their staff.

Civil recovery

Clause 60: Limitation

314. *Clause 60* provides for the limitation period for actions for the civil recovery of property obtained through unlawful conduct under Chapter 2 of Part 5 of POCA to be extended from 12 years to 20 years by amendment of section 27A(2) of the Limitation Act 1980 which applies in England and Wales. The new limitation period will apply to causes of action which accrued before the commencement of this section, but not if those causes of action were time-barred by the previous 12 year limitation period.

315. *Clause 60* makes equivalent provision to the legislation applicable to Scotland and Northern Ireland.

Clause 61: Power to search vehicles

316. Chapter 3 of Part 5 of the Proceeds of Crime Act 2002 (POCA) is concerned with the recovery of cash in summary proceedings. Section 294 of POCA enables a customs officer, a constable or an accredited financial investigator to seize cash if he has reasonable grounds for suspecting that the cash is recoverable property (property obtained through unlawful conduct) or intended for use in unlawful conduct. The cash must not be less than the "minimum amount" which is defined at section 303. It is currently set at £1000 (see The Proceeds of Crime Act 2002 (Recovery of Cash in Summary Proceedings: Minimum Amount) Order 2006 (SI 2006 No. 1699)).

317. In order to support the powers to seize cash, section 289 of POCA provides a power to search persons and premises for cash. The power to search premises is only exercisable where the officer has lawful authority to be present under other legislation or is present with the occupier's or owner's permission. In respect of a constable, he could be exercising his powers of entry under the Police and Criminal Evidence Act 1984. Section 289 of POCA does not include a power to forcibly enter premises or to demand entry from the owner or occupier.

318. The definition of "premises" for this search power includes "vehicle" – see section 316 of POCA read with section 23 of the Police and Criminal Evidence Act 1984. An officer therefore has no power to force entry into a vehicle. *Clause 61* inserts provisions into section 289 of POCA so that an officer can require the search of a vehicle if he has reasonable grounds for suspecting there is cash in the vehicle which is recoverable property or intended for use in unlawful conduct and that it is not less than the minimum amount. The power to search can only be exercised where there is an identifiable person in control of the vehicle and that person (the suspect) is in or in the vicinity of the vehicle.

319. The new provision does not contain a power to force entry into a vehicle; rather, new section 289(1D) provides that the officer can require the person accompanying the vehicle to permit entry and allow a search of that vehicle.

320. New subsection (1C) provides that the power is not exercisable where the vehicle is on certain categories of private property.

Clause 62: Detention of Seized Cash

321. Once cash has been seized under section 294 of POCA, it may be detained initially for a period of 48 hours (section 295(1)). A magistrate (or a sheriff in Scotland) may make an order for continued detention of the cash if satisfied that there are reasonable grounds for the officer's suspicion and that the continued detention is justified for the purposes of investigating its origin or intended use. The magistrate may also make an order for continued detention if consideration is being given to bringing criminal proceedings, or if such proceedings have been commenced and not concluded. Section 295(2)(a) of POCA originally

provided that the magistrate could order the detention of seized cash for a three month period. *Clause 62* amends this by providing that the period of detention may be extended for six months. The maximum period during which seized cash may be detained remains at two years from the date of the first order.

Clause 63: Forfeiture of detained cash

322. POCA gives powers to the police, officers of HM Revenue and Customs and certain accredited financial investigators to seize and detain cash derived from or intended for use in unlawful conduct and to secure its forfeiture by order of the magistrates' court, or sheriff in Scotland. *Clause 47* introduces new provisions to enable law enforcement to forfeit detained cash without a court order in uncontested cases.

323. *Clause 63* inserts new sections 297A -297G into POCA. Where a cash detention order has been made under section 295(2) of POCA, new section 297A(2) provides for a senior officer to give a forfeiture notice to any person.

324. *Subsection (3)* provides that the Secretary of State must make regulations about how a notice is to be given. *Subsections (6)* and *(7)* provide a definition of a senior officer. *Subsection (8)* provides that the notice for these purposes is to be referred to as a forfeiture notice.

325. New section 297B deals with the content of a forfeiture notice. *Subsection (1)* sets out what must be contained in a forfeiture notice. It also requires the notice to specify a period for objecting and an address for objections.

326. *Subsection (2)* provides that the period for lodging an objection to the proposed forfeiture must be at least 30 days from the date after the notice was given.

327. New section 297C sets out the effect of giving a forfeiture notice. Once a notice is given *subsection (2)* provides for the cash to be detained until it is forfeited under the section, or the notice lapses, or the cash is released. The notice lapses if an objection is made within the period for objecting. If no objection is made within that period, and the notice has not lapsed, the cash is forfeited, without the need for any additional court process.

328. New section 297D makes provision for the further detention or the release of cash following the lapse of a forfeiture notice.

329. Under section 297E, a person aggrieved by a forfeiture under this procedure has the right to apply to the magistrates' court to set aside the forfeiture of the cash or any part of it. Such an application must be made within 30 days of the day on which the period for objecting ended, although an out of time application may be given permission by the court in exceptional circumstances.

Detained cash investigations
Clause 64: Transfer of jurisdiction to Crown Court
330. Sections 75 to 77 of, and Schedule 10 to, the Serious Crime Act 2007 enabled the production order and search and seizure warrant provisions in Part 8 of POCA to be used for investigating the provenance or intended destination of cash seized under Chapter 3 of Part 5 of POCA (which provides for the recovery of cash in summary proceedings). The amendments created a new type of investigation, namely a detained cash investigation. This was additional to the other types of investigation under POCA, namely a confiscation investigation, civil recovery investigation and money laundering investigation. Detained cash investigation powers assist in the preparation of a case for forfeiting the cash before the magistrates' court in England and Wales and Northern Ireland or the Sheriff in Scotland.

331. Applications for a production order and a search and seizure warrant for a detained cash investigation in England, Wales and Northern Ireland are made to a judge of the High Court (section 343 of POCA, as amended by paragraph 3 of Schedule 10 to the Serious Crime Act).

332. *Clause 64* transfers the jurisdiction for applications relating to detained cash investigations from a judge of the High Court to a judge entitled to exercise the jurisdiction of the Crown Court in England and Wales, which includes Circuit judges, Recorders and High Court judges in their Crown Court capacity. In Northern Ireland a Crown Court judge will hear such applications. The jurisdiction will remain with the sheriff in Scotland.

PART 6 – EXTRADITION

Alerts
Clause 65: Article 26 alerts
333. These provisions are designed to ensure that the UK is in a position to deal with alerts transmitted via the second generation Schengen Information System ("SIS II") which request the arrest of a person for extradition purposes.

334. SIS II is a computer database containing information relating to individuals, vehicles and lost and stolen objects. The intention is that the UK will begin sending and receiving data via SIS II from April 2010. This data will include the details of persons wanted for arrest for extradition purposes ("article 26 alerts") which will have been entered on SIS II following the issue of a European Arrest Warrant ("an EAW") in the relevant member state.

335. As the UK is not able to send and receive data via the existing Schengen Information System (SIS), before the UK is able to use SIS II the UK will be required to ensure that all current alerts relating to people wanted for arrest for extradition purposes which have been entered onto either SIS or SIS II by other member states have been validated. These provisions accordingly allow for the consideration and certification of article 26 alerts and extradition alerts transmitted under SIS ("article 95 alerts").

336. Section 204 of the Extradition Act 2003 (the 2003 Act) allowed Part 1 warrants transmitted to the UK by electronic means to be dealt with as if they were Part 1 warrants transmitted in hard copy. *Clause 65* amends section 204 of the 2003 Act so as to ensure that where an article 26 alert, together with an arrest warrant issued by a territory designated by order under Part 1 of the 2003 Act (a category 1 territory), is transmitted to a designated authority in an intelligible electronic form, that information (together with any other information accompanying it) falls to be considered by the designated authority in determining whether it amounts to a Part 1 warrant which may be certified under section 2 of the 2003 Act.

337. *Clause 65* also makes similar provision in relation to arrest warrants transmitted in an intelligible electronic form in cases where no article 26 alert has been issued. This is to ensure that any warrants sent outside of SIS II which are transmitted by electronic means will also fall to be considered for certification under section 2 of the 2003 Act.

Clause 66 – Article 95 Alerts

338. Section 212 of the Extradition Act 2003 allowed article 95 alerts issued before 1st January 2004 to be dealt with as if they were Part 1 warrants. *Clause 66* amends these provisions so that *all* article 95 alerts issued at the request of an authority of a category 1 territory fall to be regarded as arrest warrants issued by that authority. This will ensure that information contained in an article 95 alert (together with any information transmitted with it) will fall to be considered by the designated authority in determining whether it amounts to a Part 1 warrant which may be certified under section 2 of the Extradition Act 2003. This will allow the UK to meet its obligation to validate existing article 95 alerts prior to the UK beginning to send and receive data via SIS II.

Deferral of extradition

Clause 67: Deferral of extradition to category 1 territory and Clause 68: Deferral of extradition to category 2 territory

339. Sections 22 and 88 of the Extradition Act 2003 provide that where the appropriate judge is informed that a person whose extradition has been sought has been charged with an offence in the UK the judge must adjourn the extradition hearing until the domestic proceedings have been resolved. These powers only apply, however, after a person has been brought before the appropriate judge, but *before* the extradition hearing has begun. Section 22 covers proceedings under Part 1 of the Extradition Act 2003 and section 88 covers proceedings under Part 2 of the Extradition Act 2003.

340. *Clause 67* inserts section 8A into the Extradition Act 2003 and *clause 68* inserts section 76A into the Extradition Act 2003. These provisions require the appropriate judge to adjourn extradition proceedings on the basis of a domestic prosecution where the judge is informed of this fact after a person has been brought before him or her, but *before* the extradition hearing has begun. Section 8A covers proceedings under Part 1 of the Extradition Act 2003 and Section 76A covers proceedings under Part 2 of the Extradition Act 2003.

341. Sections 23 and 89 of the Extradition Act 2003 provide that where the appropriate judge is informed that the person in question is serving a sentence of imprisonment or another form of detention in the UK the judge may adjourn the extradition hearing until that sentence has been served. These powers only apply, however, once the extradition hearing has begun. Section 23 covers proceedings under Part 1 of the Extradition Act 2003 and section 89 covers proceedings under Part 2 of the Extradition Act 2003.

342. *Clause 67* inserts section 8B the Extradition Act 2003 and *clause 68* inserts section 76B into the Extradition Act 2003. These provisions allow the appropriate judge to adjourn extradition proceedings on the basis of a domestic sentence after a person has been brought before him or her, *before* the extradition hearing has begun. Section 8A covers proceedings under Part 1 of the Extradition Act 2003 and section 76A covers proceedings under Part 2 of the Extradition Act 2003.

Clause 69: Person charged with offence or serving sentence of imprisonment

343. There are occasions where a person's extradition is sought from the UK while that person is facing criminal proceedings or serving a custodial sentence in the UK. This clause amends various provisions of the Extradition Act 2003 so as to make it clear that where consideration of an extradition request is deferred in order to allow domestic proceedings to be concluded or a UK prison sentence to be served, consideration of the extradition request should recommence once the person is released from detention pursuant to any sentence imposed.

344. *Subsections (2)* and *(4)* amend sections 22(3) and 88(3) of the Extradition Act 2003 respectively. These amendments mean that where the appropriate judge adjourns an extradition hearing on the grounds that the subject of the extradition request has been charged with an offence in the UK, the extradition hearing will not resume until the person is released from detention pursuant to the sentence (whether on licence or otherwise). This is to avoid any suggestion that the provisions should be interpreted so that the extradition hearing will stand adjourned until any licence period has been completed.

345. *Subsections (3)* and *(5)* amend section 23 and 89 of the Extradition Act 2003 respectively so as to make it clear that where a judge adjourns an extradition hearing on the basis that the subject of the extradition request is serving a sentence of imprisonment in the UK, the extradition hearing will not be resumed until the person is released from detention pursuant to the sentence (whether on licence or otherwise).

346. *Subsection (6)* amends section 97(3) of the Extradition Act 2003 to make it clear that the Secretary of State should not make a decision on an extradition request under Part 2 of that Act until a person charged with an offence in the UK and subsequently sentenced to a term of imprisonment or another form of detention is released from detention pursuant to the sentence (whether on licence or otherwise).

347. *Subsection (7)* amends section 98 of the Extradition Act 2003 to make it clear that where the Secretary of State has decided to defer making a decision on extradition in a Part 2 case on the grounds that the person in question is in custody, this decision will stand deferred until the person in question is released from detention pursuant to a sentence (whether on licence or otherwise).

348. *Subsection (8)* amends section 102(3) of the Extradition Act 2003 so as to make it clear that where the Secretary of State has deferred making a decision on extradition under section 97(3) or 98(2) the "appropriate day" from which the time for making a decision on extradition is calculated is the day upon which the subject of the extradition request is released from detention pursuant to a sentence (whether on licence or otherwise).

349. *Subsection (9)* makes a minor amendment to section 197A of the Extradition Act 2003 to ensure that the language used there is consistent with the language used in the sections of the 2003 Act as amended by the other provisions of this section.

350. *Subsection (10)* inserts a subsection (6A) into section 216 of the Extradition Act 2003 to make it clear that reference in the Extradition Act 2003 to releasing a person from detention pursuant to a sentence does not include releasing a person temporarily on licence pursuant to an intermittent custody order.

Return to overseas territory

Clause 70: Return from category 1 territory

351. *Clause 70* inserts a new section 59 into the Extradition Act 2003. This section applies to cases where a person is serving a sentence of imprisonment in the UK, is then extradited to a category 1 territory under a European Arrest Warrant and then returns to the UK. The section sets out what happens when this person returns to the UK to serve the remainder of the UK sentence or otherwise returns to the UK. *Subsection (2)* provides that time spent outside the UK as a result of the extradition is not deducted from the UK sentence when the person returns. *Subsections (3)* and *(4)*, however, make it clear that time spent in custody abroad *should* be deducted from a UK sentence where the person was held in custody in connection with the extradition offence or any other offence in respect of which they could be dealt with as a result of the extradition request and that person was not convicted of the offence in question.

352. *Subsection (5)* provides that if the person extradited to a category 1 territory then returns to the UK and is not entitled to be released from detention pursuant to their UK sentence, then they are liable to be detained and should be treated as unlawfully at large if at large. *Subsection (6)* deals with cases where a person returning to the UK is entitled to be released from detention on licence. *Subsection (6)(a)* states that if a licence was in force at the time of extradition then the licence will be suspended during their absence from the UK but will have effect on return. Subsection (7) also provides that if no licence was imposed when the person was extradited, then the person in question may be detained in any place in which they could have been detained prior to extradition. Subsection (8) then provides that a

constable or immigration officer may take this person into custody for the purpose of conveying them to the place of detention referred to in subsection (7). Subsection (9) provides that where a person has been taken into custody and detained under these powers they must be released on license within five days of being taken into custody under this section. Subsection (10) provides that in calculating the period of five days, no account should be taken of weekends and other public holidays. *Subsection (11)* defines when a person is to be regarded as entitled to be released from detention. Subsection (12) makes it clear that the powers set out in subsection (8) are exercisable throughout the UK.

Clause 71: Return from category 2 country

353. *Clause 71* inserts a new section 132 into the Extradition Act 2003. This section applies to cases where a person serving a sentence of imprisonment in the UK, is then extradited to a territory designated by order under Part 2 of the 2003 Act (a category 2 territory) and subsequently returns to the UK. The section sets out what happens when this person returns to the UK to serve the remainder of the UK sentence or otherwise returns to the UK. *Subsection (2)* provides that time spent outside the UK as a result of the extradition is not deducted from the UK sentence when the person returns. *Subsections (3)* and *(4)*, however, make it clear that time spent in custody abroad *should* be deducted from a UK sentence where the person was held in custody in connection with the extradition offence or any other offence in respect of which they could be dealt with as a result of the extradition request and that person was not convicted of the offence in question.

354. *Subsection (5)* provides that if the person extradited to a category 2 territory then returns to the UK and is not entitled to be released from detention pursuant to their UK sentence, then they are liable to be detained and should be treated as unlawfully at large if at large. *Subsection (6)* deals with cases where a person returning to the UK is entitled to be released from detention on licence. *Subsection (6)(a)* provides that if a licence was in force at the time of extradition then the licence will be suspended during their absence from the UK but will have effect on return. *Subsection (7)* also provides that if no licence was imposed when the person was extradited, then the person in question may be detained in any place in which they could have been detained prior to extradition. *Subsection (8)* then provides that a constable or immigration officer may take this person into custody for the purpose of conveying them to the place of detention referred to in subsection (7). *Subsection (9)* provides that where a person has been taken into custody and detained under these powers they must be released on license within five days of being taken into custody under this section. *Subsection (10)* provides that in calculating the period of five days, no account should be taken of weekends and other public holidays. *Subsection (11)* defines when a person is to be regarded as entitled to be released from detention. *Subsection (12)* makes it clear that the powers set out in *subsection (8)* are exercisable throughout the UK.

Extradition to UK

Clause 72: Return to extraditing territory etc

355. Where a person whose extradition has been requested is being prosecuted or serving a sentence of imprisonment in a member state, article 24(2) of the European Arrest Warrant

Framework Decision 2002/584/JHA allows the requested member state to agree terms subject to which the person in question may be temporarily surrendered. Similarly, article 5(3) of the European Arrest Warrant Framework Decision allows member states in accusation cases to make surrender of a national or a resident conditional on the requested person being returned to their jurisdiction to serve any sentence imposed in the requesting state. Sections 143 and 144 of the Extradition Act 2003 provide a legislative basis on which the UK can comply with requests from other member states to make extradition subject to such conditions.

356. *Clause 72* repeals sections 143 and 144 of the Extradition Act 2003 and inserts new sections 153A, 153B and 153C. These provisions provide a regime within which the UK will be able to provide undertakings as to a person's treatment in the UK and eventual return to a requested territory. Unlike sections 143 and 144, the new provisions will facilitate the provisions of undertakings in relation to persons who have been extradited to the UK from *any* territory.

357. Section 153A(2) provides that where a person is serving a sentence of imprisonment or another form of detention in a territory, the Secretary of State may give an undertaking as to his treatment in the UK and his return to the requested territory.

358. Section 153A(3) provides that where a person is wanted in the UK for the purpose of prosecution, the Secretary of State may give an undertaking that the person will be kept in custody until the conclusion of the UK proceedings and that they will thereafter be returned to the requesting territory to serve the remainder of the foreign sentence. In contrast, where a person is wanted in the UK so that a sentence previously imposed may be enforced, section 153A(4) allows the Secretary of State to give an undertaking that the person in question will be returned to the requested territory once the person is entitled to be released from detention pursuant to the sentence imposed in the United Kingdom..

359. Where a person falls to be returned to a requested territory pursuant to an undertaking given under section 153A(2) section 153A(5) provides the authority for that person to be removed from prison and kept in custody while conveyed to the requested territory.

360. Section 153B governs the situation where a person is returned to a requested territory in compliance with an undertaking given under section 153A(2) but subsequently returns to the UK. By virtue of section 153B(2), any time spent outside the United Kingdom as a result of an undertaking given under section 153A(2) does not count as time served by the person as part of the sentence. In consequence section 153B(3) provides that where a person is not entitled to be released from detention pursuant to their sentence they may be detained and will be treated as unlawfully at large where at large. Section 153B(4)(a) provides that where someone is entitled to be released from detention on licence pursuant to their sentence any licence which was imposed prior to return to the requested territory will be suspended on their return to the requested territory, but will take effect once they come back to the UK. Section 153B(5) provides that where someone who is entitled to be released from detention on licence was not released on licence prior to their return to the requested territory, they can be detained

in any place in which they could have been detained before the time of their return to the requested territory. Section 153B(6) provides that a constable or immigration officer may take the person in to custody for the purpose of conveying them to the place of detention referred to in section 153B(5). Section 153B(7) provides that the person must be released on license within a five day period, starting from when the offender was taken in to custody under this section. Section 153B(8) makes it clear that in calculating the period of five days, no account should be taken of weekends and other public holidays as set out in section 59(10). Section 153B(9) makes it clear that the powers set out at section 153B(4B) are exercisable in any part of the UK.

361. Section 153C allows the Secretary of State to give an undertaking that someone who has been extradited to the UK will be returned to the requested territory to serve any sentence of imprisonment imposed in the UK. Section 153C(4) establishes that where such an undertaking has been given the person must be returned to the requested territory as soon as is reasonably practicable after the sentence has been imposed and once any other proceedings in respect of the offence have been concluded. Where a person is returned to serve a UK sentence overseas, section 153C(5) provides that the sentence for the offence is to be regarded as having been served. This is to ensure that someone does not remain liable to imprisonment pursuant to their UK sentence despite having served it overseas.

362. Section 153D(1) makes it clear that nothing in Section 153A or 153C require the return of a person where the Secretary of State is not satisfied that their return would be compatible with the Refugee Convention or the Human Rights Act 1998. Section 153D(2) provides that all references in section 153A and 153C to the Secretary of State should be read as references to Scottish Ministers where a Part 3 warrant has been issued by a sheriff.

Clause 73: Cases in which sentence treated as served

363. *Clause 73* amends two provisions of the Extradition Act 2003 to ensure consistency with sentencing legislation and to ensure that the protection afforded by section 152 of the Extradition Act 2003 applies where someone is extradited to the UK from a territory which is neither a category 1 or a category 2 territory.

364. *Subsection (2)* amends section 145(2) of the Extradition Act 2003 to make it clear that where, rather than extraditing someone to the UK to serve a sentence imposed, a Member State undertakes to require the person to serve the sentence in their territory, the UK custodial sentence falls to be treated as served. This ensures that a person does not remain liable to imprisonment in the UK where they have already served the sentence in question overseas.

365. *Subsection (3)* amends section 152 of the Extradition Act 2003. *Subsection (3)(a)* ensures that the protection afforded by section 152 applies where someone is extradited to the UK from a territory which is neither a category 1 nor a category 2 territory and *subsection (3)(b)* ensures that where a person is extradited back to the UK for one offence the sentence imposed in the UK for any other offence is to be treated as served.

Clause 74: Dealing with person for other offences

366. *Clause 74* replaces section 151 of the Extradition Act 2003 with a new section 151A. This section deals with situations where the UK would want to deal with an offence committed by a person previously extradited to the UK for the purposes of prosecution for a different offence. *Subsection (1)* of the new section 151A makes it clear that this protection applies to any territory which is not a category 1 territory or a country listed under section 150(1)(b) of the Extradition Act 2003. *Subsections (2), (3)* and *(4)* make it clear that the person may only be dealt with in the UK for an offence committed before their extradition if it is an offence falling within *subsection (3)* and meets either of the conditions set out in *subsection (4). Subsection (5)* defines what is meant by a person being dealt with for an offence in the UK.

Ancillary matters

Clause 75: Provisional arrest

367. *Clause 75* amends section 6 of the Extradition Act 2003 so as to exclude weekends and certain specified holidays from the calculation of the 48 hour period during which a person provisionally arrested under section 5 of the Extradition Act 2003 must be brought before, and relevant documents provided to, the appropriate judge. *Clause 75* also provides a mechanism by which the time limit for providing the relevant documents to the appropriate judge may be extended by up to 48 hours.

368. A power of provisional arrest is available under section 5 of the Extradition Act 2003 where a Part 1 warrant has not been received by a designated UK authority but a constable, a customs officer or a service policeman has reasonable grounds for believing that the warrant has been or will be issued by an authority in a category 1 territory.

369. Section 6(2) of the Extradition Act 2003 requires that someone who has been provisionally arrested must be brought before the appropriate judge within 48 hours of arrest. Section 6(2A) (as inserted by *clause 75*) requires a copy of the Part 1 warrant and the certificate issued under section 2 of the Extradition Act 2003 to be provided to the appropriate judge within 48 hours of arrest. *Clause 75*, however, amends section 6 of the Extradition Act 2003 so as to exclude the days listed in subsections (8A) and (8B) from the calculation of this 48 hour period. *Clause 75* also amends section 6 of the Extradition Act 2003 so as to enable the authority of the category 1 territory to apply to the appropriate judge for a further 48 hours within which to satisfy the requirements of section 6(2A). By virtue of subsections (3B) and (3C) the appropriate judge may grant such an extension where satisfied on the balance of probabilities that the requirements of section 6(2A) of the Extradition Act 2003 could not reasonably be complied with within the initial 48 hour period. Where the person who has been provisionally arrested has been brought before the appropriate judge in pursuance of section 6(2), but the relevant documents have not been provided in accordance with section 6(2A) subsection (5B) requires the appropriate judge to remand the person who has been provisionally arrested in custody or on bail.

Clause 76: Use of live link in extradition proceedings

370. This clause amends the Extradition Act 2003 by inserting new sections 206A and 206B. These sections make it possible for a judge to give a live link direction in extradition hearings other than the extradition hearing itself and other than any extradition proceedings which post date surrender. Section 206A(1) applies this section to all extradition related hearings in Parts 1 and 2 of the Extradition Act apart from the substantive extradition hearing and any hearings post dating surrender. A live link direction can be given in any case in which the appropriate judge is satisfied that the person in question is likely to be in custody at the time of the hearing and a live link direction can be made following an application by a party to the proceedings or on the appropriate judge's own motion. By virtue of s*ubsection (4)* a live link direction can be given for all future hearings to which the section applies. *Subsections (5)* and *(6)* make it clear that the judge may not give a live link direction if it is contrary to the interests of justice and that the person whose extradition is sought must be considered as present in the court if they attend via live link.

371. Section 206B(1) allows the judge to rescind a live link direction at any time before or during a hearing. Section 206B(2) prevents the judge giving or rescinding a live link direction if both parties have not been afforded the opportunity of making representations. Section 206B(3) provides that representations on the giving or rescinding of the live link direction can be made via live link. If the appropriate judge does not give a live link direction he must state in open court the reasons for not doing so and enter those reasons in the register of proceedings as set out in section 206B(4). Sections 206B(5), (6) and (7) state that when an application for a live link hearing is refused or rescinded by a judge, the person whose extradition is sought must be brought before an appropriate judge as soon as practicable after the refusal of that application.

372. Section 206C defines terms used in section 206A. *Subsections (2)* and *(3)* make sections 67 and 139 apply in determining the appropriate judge under Parts 1 and 2 of the Extradition Act 2003. *Subsection (4)* sets out the definition of what is meant by "affected by an extradition claim" for the purposes of this section. *Subsection (5)* sets out how references should be interpreted in England and Wales, Scotland and Northern Ireland. *Subsection (6)* sets out what is meant by "live link" for the purposes of this section.

PART 7 – AVIATION SECURITY

Clause 77: Security planning for airports

373. *Clause 77* deals with the establishment of Risk Advisory Groups (RAGs) and Security Executive Groups (SEGs) at aerodromes, the functions of these groups, and the dispute resolution procedures to be followed in the event of disagreement. It does so by inserting a new Part in the Aviation Security Act 1982. These notes provide a brief overview of the new Part and then consider the individual sections of the new Part in more detail.

374. Aerodromes that will automatically be subject to the new provisions will be those that are the subject of a direction or directions given by the Secretary of State to the manager of the aerodrome in accordance with sections 12,13 or 14 of the Aviation Security Act 1982 (c.36) (ASA). In practice, an aerodrome directed under these sections will be one meeting the qualifying criteria for inclusion in the UK's National Aviation Security Programme (NASP).

375. Under the new provisions, the manager of the aerodrome will be responsible for the establishment of a RAG. The RAG's membership will include, as a minimum, a person nominated by the aerodrome manager and a person nominated by the chief officer of police. The manager of the aerodrome also has power to appoint additional members. This power has been conferred in order to allow the manager to appoint such additional persons as he or she considers necessary to allow for the proper consideration of potential risks to the aerodrome. The RAG will then be required to produce a comprehensive risk report, which will include analysis of the potential risks to the aerodrome, and which will make recommendations regarding the actions necessary to successfully mitigate these risks.

376. The risk report produced by the RAG will be submitted to the SEG for their consideration. The SEG's membership will include, as a minimum, a representative of the aerodrome manager, representatives of the chief officer of police and the police authority for the relevant area and a representative of airlines operating at the airport. The manager of the aerodrome has power to appoint additional persons, representing the interests of different categories of security stakeholders, to the SEG.

377. The SEG will be required to consider the risk report produced by the RAG. They will then determine the security measures to be taken in respect of the airport, and will determine which security stakeholder should deliver each security measure. These decisions will form the content of the Aerodrome Security Plan (ASP), which will formally document the security measures to be taken at an airport, the security stakeholder or stakeholders responsible for their delivery, and the procedures to be used to monitor the implementation of these measures.

378. In the event that the members of the SEG are unable to agree on the terms of an ASP, they may, in certain circumstances, refer the disagreement to the Secretary of State as a dispute. The provisions empower the Secretary of State to make a determination in relation to any disagreement. Parties involved in a dispute will be required to abide by the terms of the Secretary of State's determination, although in certain circumstances the legislation does provide them with rights of appeal to the High Court.

379. The new sections inserted by *clause 77* will now be considered in more detail.

Section 24AA Aerodromes to which Part 2A applies

380. This section sets out which aerodromes will be subject to the new provisions.

Directed aerodromes
381. The new provisions will apply to an aerodrome at any time when a direction under section 12, 13, or 14 of the ASA to the manager of the aerodrome is in force. In practice, a directed aerodrome will be one that is subject to the NASP.

382. Sections 12, 13, 13A and 14 of the ASA provide the Secretary of State with powers to direct those security measures which must, as a minimum, be carried out at an aerodrome. Broadly, directions made under these sections are made for the purposes of mitigating threats to aviation from acts of violence. Parties generally directed under these sections include aerodrome managers, airline operators, cargo and catering companies. The police may not be directed. All directions issued under the ASA are brought together, with guidance, to form the NASP. The NASP is concerned with aviation generally and has a primary aim to 'safeguard passengers, crew, ground personnel and the general public against acts of unlawful interference perpetrated in flight or within the confines of an aerodrome'.

383. The number of UK aerodromes directed in accordance with these sections will vary in accordance with day to day operations, but presently this amounts to around 60 UK aerodromes.

Other aerodromes
384. *Subsection (1)(b)* allows the Secretary of State, by order, to bring additional aerodromes within the new provisions. This power is subject to negative resolution procedure. In practical terms, this power might be used in the event of intelligence suggesting that other, non-directed aerodromes might benefit from the security planning provisions contained in the Bill. Non directed aerodromes which could, for example, be made subject to the provisions might include those dealing solely with general aviation. In this context, 'general aviation' refers to a civil aircraft operation other than a military, scheduled or charter public transport service. Examples of general aviation would include private aircraft and microlights.

Meaning of aerodrome
385. Section 38(1) of the ASA defines the term 'aerodrome' for the purposes of the ASA. Any use of the word 'aerodrome' in the amendments to the ASA made by *clause 77* is therefore subject to the same definition. The effect of the definition contained at 38(1) is that 'aerodrome' means the following:

- the land, buildings and works comprised in an area of land or water that is designed, equipped, set apart or commonly used for affording facilities for the landing and departure, and/or vertical landing and departure, of aircraft; and

- any other land, building or works situated within the boundaries of an area designated in an order made by the Secretary of State as constituting the area of an aerodrome.

Section 24AB Risk advisory groups

386. *Section 24AB* creates a statutory requirement that qualifying aerodromes must establish RAGs and makes provision for their membership. There are currently in excess of 35 aerodromes presently operating groups on a voluntary basis that carry out risk assessment. These are commonly known as 'MATRA' groups and these resemble the proposed RAGs. As a minimum, a RAG's membership must include a person nominated by the aerodrome manager and a person nominated by the chief officer of police for the relevant area.

387. *Subsection (3)* provides the manager of the aerodrome with a power to appoint additional persons to the RAG as he or she sees fit. It is expected that the aerodrome manager will use this power to ensure that the Group's membership contains the necessary expertise to be able to properly advise on the threats to the aerodrome identified. Persons that may be appointed by the aerodrome manager could include, but need not be limited to, representatives of airlines, cargo and catering concerns with a presence at the airport.

388. The chief officer of police may use the power contained in *subsection (4)* to appoint a second representative to the RAG. The chief officer, could, for example, use this power to appoint a representative of Special Branch where Special Branch has a presence at the airport.

389. It is expected that the Commissioners for Her Majesty's Revenue and Customs (HMRC) will use the power contained in *subsection (5)* to appoint a representative to the RAG in circumstances where HMRC are carrying out border and frontier protection functions that will impact upon security planning considerations at the aerodrome in question.

390. *Subsection (6)* provides the Secretary of State with a power to appoint additional persons to the RAG as he or she sees fit. The expectation is that this power will be used by the Secretary of State to appoint such representatives of UKBA and SOCA to RAGs as may, from time to time, be necessary.

391. *Subsection (9)* also provides the Secretary of State with a power to appoint observers to the RAG. The observers would be able to witness the proceedings. In addition, as the RAG may decide its own procedure, it could permit the observers to take part in the discussions in order, for example, to provide expert advice.

Section 24AC Functions of risk advisory groups

392. This section creates a statutory requirement that the RAG produce a risk report for the aerodrome and sets out the nature of the information that the risk report must contain. *Subsection (4)* requires that the report be revised from time to time so that the assessments are kept up to date. This is to ensure that the risk register is kept in such a way as to ensure that it properly reflects the prevailing security position at an aerodrome.

393. *Subsection (1)* provides that qualifying aerodromes must prepare a risk report within two months of the day by which the RAG is required to be established. In the case of an

aerodrome which is "a directed aerodrome" when the new provisions are commenced, *section 24AL* requires that a RAG be established at the aerodrome within one month of commencement. The effect is therefore that a risk report must be produced for an aerodrome within three months of commencement.

Section 24AD Discharge of functions by risk advisory groups

394. This section sets out the nature of the information that RAGs must consider when making recommendations about risks to the aerodrome and appropriate mitigating action.

395. *Subsection (1)(a)* requires RAGs to have regard to any directions made under section 12,13, 13A or 14 of the ASA. This will require that the RAG, when exercising its functions, takes into account the various security activities that directed parties at the aerodrome are already required to deliver. The intention is that this requirement will reduce the risk of security action being duplicated at the airport.

396. While the RAG is required to take these directions into account while fulfilling its functions, it is not open to the RAG to consider the effectiveness of these directions or to make recommendations about whether or not directed actions should be taken, or should continue to be taken, in response to threats. The interpretation provisions of *section 24AT* specify that the meaning of the term 'security measure' does not include 'any measure specified in a direction under Part 2 [of the ASA]'. Express provision has been made to preclude the RAG from making recommendations about measures contained in directions because they are considered by the Secretary of State to represent the security actions which should, as a minimum, be carried out at any qualifying aerodrome. It is not the Government's intention that decisions as to the basic minimum level of security action necessary should be left to the local decision making process.

397. In practice, the 'national threat assessment' referred to in *subsection (1)(b)* and defined by *subsection (3)* could comprise any information issued by a Government department, office or agency concerning threats to the aviation industry and might include an amendment to threat levels.

398. The Secretary of State will be issuing guidance to support the functioning of RAGs. Guidance is likely to cover the following aspects of the group's operations:

- the role and objectives of multi-agency threat and risk analysis;
- group membership;
- the relationship between the RAG and the SEG. (The new sections *24AE – 24AJ* concern SEGs. Further information regarding the functions of SEGS is contained at paragraphs 376 to 378 of these notes);

- threat and risk assessment methodology; and
- risk assessment tools.
- Guidance may also contain model documents.

399. *Section 24AD(1)(c)* requires RAGs to have regard to this guidance.

Section 24AE Aerodrome security plans

400. This section creates a statutory requirement for qualifying aerodromes to create an ASP, and sets out the information that must be contained within that plan. This section also sets out the persons responsible for formulation of the ASP.

401. *Subsection (1)* requires that an ASP be in force at all times from nine months after the SEG is required to be established. In the case of an aerodrome which is "a directed aerodrome" when the new provisions are commenced section 24AL requires that a SEG to be established at the aerodrome within three months of commencement. The effect is therefore that an ASP must be in force at all times from 12 months of commencement.

402. *Subsection (2)* deals with the content of ASPs. "Security measures" does not include measures that are excluded by the definition of 'security measure' given by *section 24AT(1).*

403. *Subsection (3)* provides that the ASP may specify steps to be taken by any person responsible for delivery of any measure under the terms of the ASP for the purposes of monitoring delivery of the agreed actions. A monitoring arrangement might include, for example, a requirement that a relevant party report back to the SEG on progress towards delivery of a measure.

404. *Subsection (4)* sets out the persons who may be tasked with the delivery of a measure under the terms of an ASP. The requirements of an ASP will vary significantly depending on local circumstances at each aerodrome, but persons and organisations required to deliver a measure included in the ASP could include the following:

- The manager of the aerodrome;
- The chief officer of police for the relevant area. Special Branch for the relevant area will also be under the control of the chief officer;
- The Serious Organised Crime Agency (SOCA);
- Airline Operators;
- Cargo companies;

- Catering companies;
- HMRC;
- The UK Border Agency (UKBA);
- Aerodrome retailers;
- NATS (air traffic control);
- General aviation;
- Car-parking interests.

405. The purpose of including a reference to the Secretary of State at *24AE(4)(h)* is to ensure that in practice UKBA may be required to deliver a security measure. UKBA is not a body corporate and has no legal identity. It has not therefore been possible to treat UKBA in the same manner, say, as HMRC, by simply referring to UKBA directly. Except in relation to UKBA, it is not expected that the Secretary of State will be tasked with the delivery of measures under the terms of an ASP.

406. *Subsection (5)* provides that a plan may specify that a security stakeholder make payments to another security stakeholder in connection with their delivery of an action specified in the plan. *Subsection (5)* does not include the chief officer of police as a party to whom payments may be made under the terms of an ASP. This is because *Schedule 6* makes provision for details of such payments to be included within the terms of a Police Services Agreement (PSA). A PSA is an agreement made between an aerodrome manager, the chief officer of police and a representative of the police authority for the relevant area. Further information relating to Police Services Agreements is contained at paragraphs 461 to 464 of these notes.

407. *Subsection (6)* provides that the plan may specify the accommodation or facilities that the aerodrome manager is responsible for providing to security stakeholders other than the police. In practice, it is likely that UKBA and other agencies will, if present at an aerodrome, require the use of accommodation or facilities in order to deliver measures assigned to them under the terms of an ASP.

408. *Subsection (7)* places persons who are responsible for the delivery of a measure in the plan under a statutory duty to undertake the measure. Similarly, it places persons who are required by the plan to take a monitoring step, or to make any payments or provide accommodation, under a statutory duty to do so. A description of the persons that could be placed under a statutory duty by virtue of this subsection is contained at paragraph 404 of these notes.

409. In the event of someone failing to comply with the duty contained in *subsection (7)* it would be open to the Secretary of State to instigate the dispute resolution process and make a determination. Further information relating to the dispute resolution proceedings contained within the Bill is contained at paragraphs 442-457 of these notes.

Section 24AF Aerodrome security plans: duration etc.
410. The practical effect of this section is that all ASPs, other than those considered to be the first ASP in operation at the aerodrome, must last for a minimum period of 12 months, running in accordance with the financial year. The number of financial years that the ASP covers is a matter for the discretion of the group. However, *section 24AH(1)(b)* places the SEG under a requirement to keep the contents of an ASP under review and to decide whether and how it should be varied.

411. Special provision is made for the first plan in operation at an airport. In the case of airports to which the new provisions apply on commencement, the requirement is that the ASP will come into force 12 months after the commencement of the provisions.

412. The discretionary power at *subsection (5)* will allow the Secretary of State to direct that an ASP is to come into force at an alternative date to those generally provided for by the section where a dispute between parties necessitates this.

Section 24AG Security executive groups
413. This section provides that qualifying aerodromes must establish a SEG and sets out the SEG's functions.

414. *Subsections (2), (3), (4), (5)* and *(6)* deal with the membership of the SEG. As a minimum, the Group must comprise a representative of the manager of the aerodrome, a representative of the chief officer of police and a representative of the police authority for the relevant area, and a representative of operators of aircraft taking off from, or landing at, that aerodrome.

415. *Subsection (2)(d)* and *(e)* permit HMRC and SOCA to appoint representatives to the SEG where the functions of these bodies impact upon security planning at the airport in question. In the case of HMRC, this activity will relate to their border and frontier protection functions, while in the case of SOCA, this activity will relate to the fulfilment of SOCA's statutory functions, namely:

- preventing and detecting serious organised crime and contributing to the reduction of such crime in other ways, and to the mitigation of its consequences; and

- gathering, storing, analysing and disseminating information relevant to the prevention, detection, investigation or prosecution of offences, or the reduction of crime in any other ways, or the mitigation of its consequences.

416. *Subsection (4*) permits the Secretary of State to appoint an official to the SEG who exercises functions relating to immigration. In practice, this power will be used to permit the appointment of an UKBA official to a SEG. In practice, it is expected that a representative of UKBA will be nominated only where UKBA has a presence at the aerodrome in question.

417. *Subsection (5)* provides the manager of an aerodrome and the Secretary of State with a power to nominate a representative to the SEG who appears to him to be best suited to act on behalf of a single security stakeholder falling within the categories listed in section 24AE(4)(c) to (e) (operators of aircraft, persons having access to carry on a business and occupiers of land forming part of an aerodrome). In practice, it is expected that the aerodrome manager will use this power, where he or she considers it appropriate, to appoint a representative of an organisation that may be required to deliver a measure under the ASP but who would not otherwise have a representative on the SEG. *Subsection (6)* provides the manager of an aerodrome and the Secretary of State with a similar power of appointment. Unlike the power contained in *subsection (5)*, this power can be used to appoint a person to represent the interests of a group of security stakeholders falling within any of the categories listed in section 24AE(4)(c) to (e). Interests that might require a representative appointed under this subsection could include, but are not limited to, cargo agents and retailers.

418. In practice, if an ASP at a larger aerodrome required an action to be taken by airline operators, it is conceivable that several hundred persons could qualify as relevant persons. This is why the provisions do not require all relevant persons to be present on the SEG.

419. The powers to appoint representative members to the SEG contained in *subsections (5)* and *(6)* is also available to the Secretary of State. In practice, the Secretary of State would be unlikely to use this power unless it appeared to him that there was a need for a representative member who would not otherwise be nominated to the SEG by the aerodrome manager.

420. *Subsection (8)* provides the Secretary of State with a power to appoint observers to the SEG. This power would, if deemed necessary, permit the attendance of Crown officials at SEG meetings. Persons nominated under this subsection would not have voting rights as they would not be full members of the SEG, only observers.

Section 24AH Functions of security executive groups

421. This section places the SEG under a statutory duty to decide an ASP, and keep it under review and vary it if necessary.

422. *Subsection (2)* and *(3)* require that the SEG unanimously agree to the terms of an ASP and to any variation of an ASP. In the event that unanimous agreement cannot be achieved, this would generally be because there was a dispute as defined in section *24AM(3)(a) or (b)*. It would therefore be possible for a member of the SEG to refer the matter to the Secretary of State in accordance with the procedure specified in *24AN*.

423. This provision contained at *subsection (4)* qualifies the requirement contained in subsections (2) and (3) for unanimous agreement. This provision might, for example, be used to allow an ASP to come into force where a SEG member is unreasonably failing to indicate whether he or she agrees or disagrees to the terms of an ASP so as to seek to delay the ASP from taking effect.

424. *Subsection (5)* permits the Secretary of State to require the airport manager to provide the Secretary of State with a copy of an ASP. The Secretary of State does not expect to routinely request copies of ASPs. In practice, the Secretary of State is most likely to use this power in the event of a specific concern relating to the efficacy of measures in place for the mitigation of threat.

Section 24AI Objections to proposals by security executive groups

425. This section permits security stakeholders not directly represented on the SEG to object to a requirement contained in the ASP that they carry out a security measure, take a monitoring step or make any payment. A security stakeholder who is not directly represented on the SEG may not object to a measure which does not require them to take a security measure, take a monitoring step, or make any payment.

426. *Subsection (2)* lists the persons who may use this objections procedure. The objections procedure may not be used by a person directly represented on the SEG. Members of the SEG will have the power to refer a matter to the Secretary of State as a dispute in accordance with the provisions contained in section 24AN.

427. Provision is made at *24AI(2)(d)* for the Secretary of State to make an objection unless the Secretary of State has already made a nomination under section *24AG(4)*. In practice, this means 'unless the Secretary of State has already appointed an official exercising functions relating to immigration'. This is most likely to be a UKBA official, although it need not be.

428. The objection right at 24AI(2)(d) has been included to allow for UKBA to object to a measure in circumstances where an ASP contains a measure for UKBA, but, due to the fact that no nomination to the SEG has been made, UKBA have been unable to object to that measure through its representative on the group. In practice, it is not expected that it should be necessary for the Secretary of State to object to a measure on UKBA's behalf as it is expected that, where appropriate, a nomination will have been made under section 24AG(4).

429. *Subsection (7)* requires that in the event of failure to agree whether the proposal that is the subject of the objection should be withdrawn or varied, the matter must be referred to the Secretary of State under section *24AN(1)* by the person attending the SEG on behalf of the aerodrome manager. Section 24AN(1) provides that where there is a dispute, a member of the SEG may refer the matter to the Secretary of State.

430. Under the terms of this section, it would be possible for the Secretary of State to make an objection on UKBA's behalf and subsequently act as the person determining the dispute. In practice, this is unlikely to happen: as indicated above, it should not, in normal circumstances, be necessary for the Secretary of State to object to a measure on UKBA's behalf. In any event, in practice, the Secretary of State exercising functions relating to immigration is unlikely to be the same Secretary of State that would determine an ASP dispute, as this will generally be the Secretary of State responsible for transport. In the unlikely event that the Secretary of State is required to determine a matter of dispute raised on behalf of UKBA, the Secretary of State's decision on the matter in dispute would be taken in their capacity as the person responsible for determining disputes rather than in any capacity connected with immigration functions and UKBA.

431. *Subsection (8)* has the effect that a measure which is required to be delivered by a relevant person who is not directly represented on the SEG may not be included in an ASP until 30 days have elapsed (from the point at which the person was notified of the measure). This is to ensure that the person has an opportunity to object before being required to do anything. Elements of the ASP that are required to be delivered solely by persons directly represented on the SEG may come into effect immediately.

Section 24AJ Discharge of functions by security executive groups

432. This section sets out the nature of the information that the members of the SEG must, as a minimum, have regard to in the exercise of their functions.

433. *Section 24AJ(1)(c)* requires that the SEG have regard to any national threat assessment. In practice, a national threat assessment could comprise any information issued by a Government department, office or agency concerning threat information. This might include an amendment to threat levels.

434. The Secretary of State will be issuing guidance to support the functioning of SEGs. Guidance is likely to cover the following aspects of the group's operations:

- The role of the SEG;
- Group membership;
- The relationship between the RAG and the SEG;
- Developing and agreeing an ASP;
- Monitoring delivery of security measures; and
- Reviewing and varying the Plan.

- Guidance may also contain model documents.

435. Section 24AJ(1)(d) requires SEGs to have regard to this guidance.

Section 24AK Aerodrome groups: supplemental
436. This section makes further provision regarding the operation and procedures of RAGs and SEGs.

437. In practice, it is likely that some smaller aerodromes may consider it appropriate for the same persons to staff both their RAG and SEG. Express permission for this is provided in *section 24AK(1).*

438. *Subsection (2)* provides for the revocation of nominations under section *24AB(2)(a) or 24AG(3).* The effect of this subsection is that where such a nomination is revoked under this section, an alternative nomination must be made.

439. *Subsection (3) provides* for the revocation of certain other nominations.

440. The effect of *subsection (3)* is that where such a nomination is revoked, no alternative nomination need be made.

Section 24AL Period for establishment of aerodrome groups
441. Section 24AL provides that qualifying aerodromes must have RAGs in place from one month after commencement of these provisions. In practice, many qualifying aerodromes already have groups dealing with risk assessment in place. This section also requires that qualifying aerodromes establish SEGs within three months of the commencement of *clause 77*. A definition of a qualifying aerodrome is contained in paragraphs 381 to 384 of these notes.

Section 24AM Meaning of dispute about security planning
442. This section defines dispute about security planning for the purposes of the Part. A dispute may be any of the following:

- A dispute about the contents of an ASP for the aerodrome; or

- A dispute about the implementation of an ASP.

443. Under the terms of this section, a disagreement between a person who is not required to do anything under an ASP and the members of the SEG would not qualify as a dispute. This restriction has been included to ensure that only those relevant persons directly affected by a security measure may access the dispute resolution proceedings since the Government wants to avoid unfounded or malicious references being made to the Secretary of State. This section also does not permit the referral of disputes about payments that the airport manager is

required to make in respect of any dedicated policing services provided at that aerodrome. This is because the ASP will not contain such details, as these will be contained in a PSA. The terms of an ASP will, however, indicate whether or not a dedicated policing presence is required at that aerodrome and this is an issue that it would be possible to take to dispute under the terms of this section.

444. The duty contained at *24AE(1)*, which is referred to in section 24AM(3)(a), is the requirement to ensure that an ASP is in place.

445. The duty contained at *24AE(7)*, referred to in section *24AM(4)*, is the duty imposed on a person to take a security measure to take a monitoring step or to make any payment or provide accommodation, in accordance with the terms of an ASP.

Section 24AN Power to refer dispute to Secretary of State

446. This section sets out who may refer a dispute to the Secretary of State.

447. Under the terms of this section, relevant persons not directly represented on the SEG may not refer a dispute to the Secretary of State. They may, however, make a request to a person nominated to the SEG to represent their interests to refer a dispute to the Secretary of State. In general terms, it would be a matter for the discretion of the member of the SEG in question as to whether they referred the matter or not. However, if the relevant person has used the objections procedure in relation to a measure and there has been no subsequent agreement amongst SEG members in relation to the matter, the representative of the aerodrome manager on the SEG must refer the matter to the Secretary of State.

Section 24AO Powers of Secretary of State in relation to disputes

448. This section provides the Secretary of State with a power to intervene in a dispute in order to seek to resolve it. The use of this power is at the Secretary of State's discretion. The intention is that, if such intervention is successful, a determination of the dispute under section *24AP* may not be necessary.

449. In practice, the power contained at *subsection (2)* could be used to compel parties in a dispute to take actions that the Secretary of State considers will assist them in resolving the dispute. Directions made under this section will primarily be used to ensure that participants in a dispute take all necessary actions such as completing the required security analysis, and attending meetings with supporting materials so that officials can facilitate agreement over the levels of security resources required at an airport. However, the nature of the provision means that the examples set out above are not exhaustive.

450. *Subsection (3)* provides the Secretary of State with a power to compel parties involved in a dispute to contribute to costs relating to the provision of services by a third party. In practical terms, it is expected that there may be circumstances in which the Secretary of State considers it appropriate to attribute costs to the disputing parties relating to services provided

by a third person for the purposes of resolving a dispute. In practice, persons who may be employed by the Secretary of State to facilitate in the resolution of a dispute could include legal professionals, Her Majesty's Inspectorate of Constabulary or independent security consultants. *Subsection (4)* also permits the Secretary of State to recover costs relating to officials' involvement in the determination of disputes. In practice, the Secretary of State might use this power to recover costs where he or she considers that it would be inappropriate for the full extent of costs relating to attempts to resolve the dispute to fall to the public purse.

Section 24AP Dispute resolution: procedure

451. This section sets out the general procedures that the Secretary of State must, as a minimum, follow when providing a determination in relation to a dispute.

452. *Subsection (3)* requires that the Secretary of State must have regard to any directions under sections 12, 13, 13A or 14 of the ASA (explanation as to the likely content of such directions is provided at paragraph 382 of these notes); the risk report for the aerodrome produced by the RAG; any national threat assessment (see paragraph 397 of these notes for further details) and any guidance given by the Secretary of State which is relevant to the group's functions (see paragraph 434 of these notes for a description of likely contents of guidance).

Section 24AQ Dispute resolution: powers

453. This section sets out the powers of the Secretary of State when determining the settlement of a dispute. The Secretary of State has powers in relation to determining both the contents of an ASP as well as its implementation.

454. *Subsection (4)* provides the Secretary of State with a power to apportion costs between persons responsible for security measures at the aerodrome. In practice, there may be circumstances where disagreement could arise between members of the SEG in relation to whether or not security stakeholders should make a financial contribution in respect of a security measure (disagreement might, for example, arise about who should pay for installation of a security system such as CCTV). Where appropriate, this power would permit the Secretary of State to determine that a security stakeholder should make a financial contribution to the project. Any such determination could be the subject of an appeal as provided for in *section 24AR*.

Section 24AR Dispute resolution: appeals and enforcement etc

455. This section provides any party affected by a declaration, determination or order of the Secretary of State with a right to appeal that decision to the High Court.

456. *Section 24AR(1)* permits a party in a dispute that has been the subject of a determination to appeal to the High Court against the determination. This appeal is not limited to judicial review of the Secretary of State's decision.

457. *Subsection (2)* provides that where the Secretary of State imposes a requirement in certain circumstances, or makes a declaration, determination or order then he or she can seek with the permission of the High Court to have any of these enforced as if they had been a High Court judgment in their own right. In practical terms, the High Court's permission for a determination to be treated as a judgment of the High Court would mean powers allowing for the enforcement of a determination would become available to the Secretary of State. For example, if a party refused to comply with the requirements of a determination (for example, by refusing to make a payment stipulated in the determination) the Secretary of State would be able to instigate proceedings for contempt of court.

Section 24AS Power to Modify etc.
458. The power to modify contained in *section 24AS* complements that set out in *section 24AA*. It is intended to be used in circumstances where intelligence suggests that it would be proportionate and reasonable in all the circumstances to make an aerodrome exempt from some, or all, of the security planning provisions contained in the amendments to Part 2A of the ASA. Any decision to use the power contained in this section would be based on all relevant considerations, including latest intelligence information and an assessment of local circumstances at the aerodrome in question.

Clause 78: Policing at airports and Schedule 6: Amendment of Part 3 of the Aviation Security Act 1982
459. Part 3 of the ASA presently deals with the policing of aerodromes that have been designated for policing purposes. The amendments made by the Bill make provision relating to the policing of all aerodromes to which the new Part 2A applies (other than those which have been excepted by order). An explanation of the aerodromes to which the new Part 2A applies is given at paragraphs 381 to 384. These notes provide a general overview of Part 3 as amended and then consider the individual amendments in more detail.

460. The number of UK aerodromes meeting these criteria will vary in accordance with day to day operations, but presently around 60 UK aerodromes would meet these qualifying criteria. Of these, nine are designated for policing purposes.

461. Under the existing terms of sections 25B(1) and (2) of the ASA, the effect of designating a UK aerodrome in accordance with section 25(1) of the ASA is that the manager of the aerodrome, the relevant police authority and the chief officer of police for the relevant area are required to enter into a police services agreement ("a PSA"). A PSA is an agreement which must stipulate:

- the level of policing to be provided for the aerodrome;

- the payments to be made by the manager of the aerodrome in connection with that policing and, if such payments are to be made, their amount, or the manner in which they are to be assessed;

- the accommodation and facilities (if any) that are to be provided by the manager in connection with that policing.

462. The ASA presently provides that, if the persons responsible for the development of a PSA are unable to reach agreement in relation to its terms, construction or operation the matter may be referred to an independent tribunal, which may make a determination on the matter.

463. The proposed amendments to Part 3 of the ASA will essentially remove the current system of designation. This system of designation will be replaced with a requirement that all qualifying aerodromes having an ASP which specifies that policing measures are required at the aerodrome must develop a PSA. This requirement is contained at *section 25B(1)* of the ASA, as amended by the Bill. It will continue to be the case that PSAs must specify the level of policing to be provided, must specify the amount of any payments to be made by the aerodrome manager, or the manner in which their amount is to be assessed, and the accommodation and facilities (if any) that are to be provided by the manager in connection with that policing.

464. The manager of the aerodrome, the police authority for the relevant area, and the chief officer of police for that area will continue to be the persons responsible for the development of PSAs in respect of the relevant aerodromes. In the event that they are unable to agree on the terms of the PSA, the matter may be referred to the Secretary of State to provide a determination on the terms of the PSA *(sections 29A to 29E)*. Aerodrome managers will not be required to pay for all police services provided at an aerodrome. Section *25E(2)(c)* provides that the persons determining the terms of a PSA must have due regard to the extent, if any, to which the costs incurred by the police authority in connection with the policing provided for the aerodrome are, or are likely to be, met by any person other than the manager of the aerodrome.

465. The nine aerodromes presently designated for policing purposes currently pay approximately £80m per annum in respect of policing services provided at these aerodromes. In the main, these nine aerodromes are some of the larger aerodromes in the UK, and all at present require a dedicated police presence. A dedicated police presence is not necessarily required at all UK aerodromes, and where such a presence is required, it is expected that the level of policing services provided at presently non-designated aerodromes will, on average, be lower than the average level of policing services provided at designated aerodromes. It may also be the case that following introduction of the Risk Assessment and Aerodrome Security Planning processes (described at paragraphs 375-378 of these notes), security stakeholders at aerodromes presently designated for the purposes of policing may find their analysis suggesting that the levels of policing services provided at the aerodrome should be varied. Further information relating to costs is contained in the Department for Transport's Impact Assessment which is available on the Departmental website.

466. *Clause 78* gives effect to provisions contained within *Schedule 6*. These amend provisions in Part 3 of the ASA.

Paragraphs 1-5 of Schedule 6: Amendment of Part 3 of the Aviation Security Act 1982
467. *Schedule 6* amends Part 3 of the ASA**.** The general effect of this change has already been described.

468. *Paragraph 2* of *Schedule 6* repeals section 25 of the ASA, which currently permits the Secretary of State to designate aerodromes.

469. *Paragraph 3* of *Schedule 6* repeals section 25A of the ASA. The practical effect of this will be to remove the requirement contained in this section that the manager of a designated aerodrome and the chief officer of police consult with security stakeholders in relation to a range of stipulated matters. These include: measures required to be taken to comply with, or take account of, security directions taken under sections 12,13, 13A and 14 of the ASA (see paragraph 382 of the explanatory notes for further information regarding these requirements); any national threat assessment; and guidance issued by the Secretary of State relating to the policing of the aerodrome; other measures to be taken in relation to policing of the aerodrome; the extent to which security measures are being undertaken by security stakeholders other than the police; and, the level of policing required at the aerodrome.

470. The requirement to consult on matters described at paragraph 469 of these notes is replaced by the requirement to conduct a multi agency risk assessment contained in section 24AC.

Section 25AA Meaning of relevant aerodrome
471. The aerodromes to which Part 2A applies will, as a minimum, be those meeting the criteria specified in paragraphs 381 of these notes.

Section 25B Police services agreements
472. This section sets out which aerodromes are required to have a PSA and what a PSA must contain.

473. The effect of section *25B(1)* is that aerodromes which have an ASP specifying policing measures must also have a PSA. There is a limited exception in *subsection (2).* There is no requirement for a PSA to be in force in the period of three months following agreement on the first ASP.

474. Aerodromes that have an ASP that does not specify policing measures are exempt from the requirement to have a PSA. Although the requirement for dedicated policing will be a matter for local determination, the Government expects that a significant number of those aerodromes eligible for inclusion in the UK NASP (presently around 60) may not require a dedicated police presence.

475. *Section 25B(3)* specifies the information which, as a minimum, a PSA must contain.

476. *Section 25B(5)* provides that an aerodrome manager must supply the Secretary of State with a copy of the PSA upon request by the Secretary of State. The Secretary of State will not routinely request copies of PSAs. In practice, the Secretary of State will use this in the event of a specific concern relating to the policing of an aerodrome or associated payments.

Section 25C Police services agreements: duration etc.

477. This section provides for PSAs to end on 31st March (the end of the financial year). It does not specify a maximum period for which a PSA may operate, so a PSA could cover more than one financial year. *Section 25D* does, however, require the manager of the aerodrome, the representative of the police authority for the relevant police area and the chief officer of police for that area to keep the PSA under review.

478. The section also deals with the date when PSAs must begin. There is a distinction between the first PSA and other PSAs. The first PSA must come into force on the day on which the requirement to have the PSA first applies. Subsequent PSAs must normally come into force on 1st April.

479. A requirement to have a PSA may cease to apply to an aerodrome because another ASP which does not contain policing measures comes into force. That ASP could then be varied to include policing measures. *Subsections (4)* and *(5)* make special provision for this case so as to ensure that the PSA runs from the date when the variation takes effect and the aerodrome is once again required to have a PSA.

480. The discretionary power at *subsection (6)* will allow the Secretary of State to direct that a PSA is to come into force at an alternative date to those provided for at *subsections (2) to (5)* where a dispute between parties necessitates this.

481. The practical effect of the amendment made by *paragraph 12(3)* of *Schedule 6* is that an aerodrome which ceases to be a relevant aerodrome for the purposes of Part 2A of the Bill but which then becomes a relevant aerodrome again is granted a three month 'grace period' between the point at which an ASP is agreed and the point when the requirement to have a PSA in force recommences.

Section 25D Review of police services agreements

482. This section provides the aerodrome manager, the representative of the chief officer of police and representative of the police authority for the relevant area with a power to vary the terms of a PSA. In practice, events which could trigger the variation of a PSA could include, for example, a sustained change in the national threat level or a change in the scale of operations at an aerodrome.

Section 25E Discharge of functions of relevant persons in relation to police services agreements

483. This section sets out those matters which must, as a minimum, be considered in the formulation of PSAs.

484. *Section 25E(2)(c)* requires the relevant persons to have due regard to the extent to which costs incurred by the police authority in connection with the policing of the aerodrome are likely to be defrayed from sources other than the aerodrome manager.

Paragraphs 6-9 of Schedule 6: Amendment of Part 3 of the Aviation Security Act 1982

485. Sections 26-29 of the ASA are amended by the provisions in paragraphs 6 to 9 of the Schedule.

486. Section 26(1) of the ASA currently provides that a relevant police constable is entitled to enter any part of a designated airport. Section 26(2A) sets out the matters which the chief officer of police must take into account when making arrangements for the policing of the airport. Section 26(2B) requires the manager of the aerodrome to make payments to the police authority in accordance with the terms of a PSA. Section 26(2C) provides that, in the event of there being no PSA in force, the aerodrome manager must make payments to the police authority in respect of costs reasonably incurred by the authority in connection with the policing provided for the aerodrome However, the aerodrome manager is not required to pay for policing services for which funding from alternative sources has been provided.

487. *Paragraph 6(1) to (4) of Schedule 6* amends those provisions so that they apply to all relevant aerodromes (as defined by the new section 25AA) and are consistent with the new arrangements for security planning at airports.

488. *Paragraph 6(6)* also inserts a new *section 26(2CA)*. This draws a distinction between the position of aerodromes that were designated immediately before the commencement of the new provisions and other aerodromes. In the absence of a police services agreement, aerodromes which were designated will continue to be required to make payments to reimburse the police authority for costs that have been reasonably incurred in connection with the policing provided at the aerodrome. For aerodromes that were not designated, the requirement to reimburse the police authority for any dedicated policing services provided at that aerodrome will not apply until 15 months after the commencement of the provisions (three months after the time when the aerodrome is required to have an ASP).

489. Sections 27, 28 and 29 of the ASA do not specifically relate to security planning at aerodromes but instead relate to prevention of theft, byelaws and the control of road traffic at designated airports. The amendments made by *paragraphs 7 to 9* ensure that these provisions will in future apply to all relevant aerodromes (as defined by the new section 25AA).

Paragraph 10: Dispute Resolution

490. *Paragraph 10* of *Schedule 6* provides for a new dispute resolution process consistent with that provided for under the aerodrome security planning provisions at sections 24AM to 24AR. In essence, this paragraph replaces sections 29A to 29D of the ASA to ensure that, where there is a dispute about PSAs, a determination will be provided by the Secretary of State, rather than by the panel of independent experts appointed by the Secretary of State.

Section 29A Power to refer disputes to Secretary of State

491. This section sets out the kinds of disputes to which the new dispute resolution procedure applies.

492. The requirement referred to in *section 29A(2)(a)* is the requirement to have a PSA in place where an ASP contains policing measures.

493. *Section 29A(2)(d)* refers to payments to be made, or accommodation and facilities to be provided, under *section 26(2C*). Section 26(2C) provides that, where no PSA is in force in relation to an aerodrome, the manager of the aerodrome shall: a) make to the police authority such payments as are necessary to reimburse the authority in respect of the costs reasonably incurred by it in connection with the policing of the aerodrome and b) secure that suitable accommodation and facilities are provided for use in connection with that policing.

Section 29B Powers of Secretary of State in relation to disputes

494. *Section 29B(2)* provides the Secretary of State with powers to compel parties to take such actions as he or she considers will assist in the resolution of a dispute. These powers provide the Secretary of State with a means of acting to resolve a dispute without providing a full determination as provided for under the terms of section 29C.

495. In practice, it is likely that the requirements imposed under section 29B(2) will primarily be used to ensure that participants in a dispute take action that might assist in the resolution of a dispute. These might include actions such as completing the required security analysis, and attending meetings with supporting materials so that officials can facilitate agreement over the levels of policing resources required at an airport. However, the nature of the provision means that the examples set out above are not exhaustive.

496. *Subsections (3) and (4)* provide the Secretary of State with a power to require parties involved in a dispute over a PSA to make payments in respect of costs incurred through use of the mechanism described in paragraphs 494 to 495 above. In practice, persons who might be employed by the Secretary of State to facilitate the resolution of a dispute in this regard might include legal professionals, or Her Majesty's Inspectorate of Constabulary. *Subsection (4)* also provides the Secretary of State with a power to recover costs incurred through officials' involvement in attempts to resolve a dispute. The Secretary of State might use such power to recover costs where he or she considered that it would be inappropriate for the full extent of costs relating to the determination of the dispute to fall to the public purse.

Section 29C Dispute resolution: procedure
497. This section sets out some procedures that the Secretary of State must always undertake when providing a determination in relation to a dispute. With the exception of the minimum requirements set out in this section, the Secretary of State is provided with broad powers to determine how a dispute should be determined.

498. *Subsection (3)* requires the Secretary of State to have regard to the matters mentioned in section 25E(2). These are:

- any ASP in force during the proposed period of the PSA;
- any information given by the security executive group to the aerodrome manager, the chief officer of police or the police authority which is relevant to the PSA;
- the extent, if any, to which the costs incurred by the police authority in connection with the policing provided for the aerodrome are, or are likely to be, met by any person other than the manager of the aerodrome, and
- any guidance given by the Secretary of State which is relevant to the discharge by the relevant persons of their functions in relation to PSAs.

Section 29D Dispute resolution: powers
499. This section sets out the powers and duties of the Secretary of State when determining a dispute. The Secretary of State has powers in relation to determining both the contents of a PSA as well as its implementation.

Section 29E Dispute resolution: appeals and enforcement etc.
500. This section provides any party to a dispute on which the Secretary of State has made a determination with a right to appeal that determination to the High Court.

501. *Subsection (2)* provides that where the Secretary of State imposes a requirement in certain circumstances, or makes a declaration, determination or order, then he or she can with the permission of the High Court seek to enforce it as if it had been a High Court judgment.

Paragraph 11 of Schedule 6: Supplementary Orders
502. Section 30 of the ASA provides the Secretary of State with a power to make orders in connection with an aerodrome becoming, or ceasing to be, a designated aerodrome. In practice, orders made under this section have principally been used to effect the transfer of private forces to local Home Office constabularies and to make associated arrangements. There will no longer be provision for the Secretary of State to designate an aerodrome and it is not considered necessary for section 30 to be retained. It is therefore repealed by *paragraph 11* of *Schedule 6*. A saving provision for orders made under this section is contained at *paragraph 14* of *Schedule 6*.

Paragraph 14 of Schedule 6: Transitional Provision

503. Under the existing terms of the ASA, there are presently nine aerodromes 'designated' for policing purposes. Aerodrome managers at these aerodromes are already required to pay for qualifying police services provided in respect of their aerodromes, and PSAs are therefore already in place. This paragraph ensures that the existing requirement for such airports to have PSAs will continue to apply until such time as the new requirement in section 25B(1) (as amended by the Bill) takes effect. This paragraph also ensures that any existing PSAs will cease to have effect immediately before the new requirement takes effect. In practical terms, this means that new PSAs will be introduced once the new ASPs are in place. Until such time as ASPs are agreed and new PSAs are required, the existing requirement for designated airports to have a PSA will continue to apply.

PART 8 – MISCELLANEOUS

Chapter 1 – Safeguarding Vulnerable Groups and Criminal Records

Renaming of Independent Barring Body

Clause 79: Renaming of Independent Barring Body

504. This clause amends provisions in the Safeguarding Vulnerable Groups Act 2006 ("SVGA") to change the name of the Independent Barring Board (IBB) to the Independent Safeguarding Authority (ISA). The IBB was established under section 1 of the SVGA as a body corporate to consider the suitability of persons seeking to work with children or vulnerable adults, and empowered to bar from such work those considered unsuitable. Bars are based on an assessment by the Board of any possible risk of harm posed to children or vulnerable adults by persons working, or seeking to work, with these groups in either a paid or voluntary capacity.

505. *Clause 79* amends sections of the SVGA where references to the IBB appear in that Act, in order to change the name of the Board by substituting the name Independent Safeguarding Authority. It similarly amends references to the abbreviations "IBB" with "ISA", and other enactments and documents in place prior to the passage of this Bill where references to the Independent Barring Board or "IBB" appear. The change applies to subordinate legislation as defined by the Interpretation Act 1978.

506. The change applies to England, Wales and Northern Ireland and to any enactments of the Scottish Parliament and Northern Ireland legislation.

Safeguarding vulnerable groups: England and Wales

Clause 80: Educational establishments: check on members of governing body

507. *Clause 80* amends provisions in the SVGA. Its objectives are:

a) to ensure that a person ("the appropriate officer") who is required under section 13 of the SGVA to make a check on a member of a governing body ("governor") of an educational establishment as defined in section 8(5) of the

Act, does not commit an offence if the governor fails to consent to the check or fails to provide the appropriate officer with any information necessary to make the check; and

b) to create a new criminal offence where a governor acts as a member of a governing body before consenting to the check or providing the appropriate officer with any information required to carry out the check.

508. The appropriate officer is required under section 13 of the SGVA to make the check within a prescribed period. To achieve the first objective above, *subsection (6)* of the clause provides that the prescribed period must not start before the governor consents to the appropriate officer making the check and provides any information required to make the check.

509. To achieve the second objective, *subsection (2)* of the clause provides that a governor commits an offence if he or she starts to act as a governor without first consenting to a check and providing the appropriate officer with any information required to make the check.

510. Provisions in *subsections (4)* and *(5)* of the clause mirror the provision at sections 13(3) and (4) of the Act. Section 13(3) of the SGVA ensures that the appropriate officer does not commit an offence if he or she does not make a check on a governor where the governor was appointed before the commencement of section 13; section 13(4) of the Act allows the Secretary of State by order to set a date when the exception in section 13(3) comes to an end (known as "sunsetting"). These provisions relate to the Government's announced policy of phasing in, over a few years, the Vetting and Barring Scheme's requirements to register with the Independent Safeguarding Authority referred to as the Independent Barring Board or IBB in the Act.

Clause 81: Monitoring application

511. *Clause 81* amends provisions in section 24 of the SVGA relating to an application to become subject to monitoring. The Act provides at section 24(1) that an individual must make a monitoring application in order to become subject to monitoring (in effect register with the Vetting and Barring Scheme established by the Act). Section 24(10) currently provides that the "form and manner" of an application will be prescribed in regulations.

512. The purpose of this amendment is to allow the Secretary of State to determine the form, manner and content of the application form. This will allow the Secretary of State to amend the application form without needing to make secondary legislation.

Clause 82: Monitoring: additional fees

513. This clause makes provision for the payment of a fee by persons who are subject to monitoring under the SVGA, and have benefited from a free application to the monitoring scheme as a volunteer, if they subsequently enter paid employment in activities regulated under the Act.

514. Fees for applications for monitoring under the SVGA will be prescribed under powers set out in section 24. The fees will be based on cost-recovery for the scheme. It is intended that no fee will be prescribed for persons joining the scheme as unpaid volunteers. This clause provides that a fee becomes payable when persons who have benefited from a free application (volunteers) undergo a change of circumstances which means that a fee would have been payable under section 24(1)(d) (persons in paid regulated activity). This removes a loophole which would enable persons to apply solely as volunteers and avoid any fee when moving into paid activities.

515. The clause provides a power to prescribe the change in circumstances (moving from unpaid to paid activity) and to set a fee for such persons. It also clarifies that an individual does not cease to be subject to monitoring under section 24, merely because the required fee has not been paid. However, *subsection (3)* inserts a specific power for the Secretary of State to refuse to provide information under section 30 unless the relevant fee under section 24A is paid.

Clause 83: Vetting Information

516. This clause amends section 30 of the SVGA.

517. The clause changes the requirements arising from the declaration to be made by persons eligible to receive vetting information under section 30. Section 30 requires the Secretary of State to provide vetting information to certain categories of persons entitled to know the status of an individual under the Vetting and Barring Scheme established by the Act. This is information which indicates whether the individual is registered with the scheme (or "subject to monitoring" under section 24 of the Act). The persons entitled to see such information are employers, personnel suppliers, local authorities and certain other bodies set out in Schedule 7 to the 2006 Act.

518. Section 30(2) of the 2006 Act currently requires a declaration to be made indicating within which of the "specified entries" in Schedule 7 of the Act the enquirer falls. The Government believes that this is no longer necessary. The amendment simplifies the declaration by removing the reference to a "specified entry" in Schedule 7, and substituting a requirement for the enquirer to indicate whether he is entitled to information relating to children, to vulnerable adults, or to both. The effect is to simplify the application procedure for those entitled to the information.

519. *Subsection (6)* of the clause relates specifically to members of the governing body of an educational institution. Currently section 30(5) aims to ensure that the appropriate officer can make an application under section 30 to receive vetting information in relation to any appointed governor without the need to obtain the consent of the governor. This provision will no longer be effective as, under *clause 80*, a governor must consent to a check being made under section 30 of the SVGA and must provide information enabling the appropriate officer to make such a check before the governor can legally act as a governor.

520. New section 24A (*clause 82*) provides that persons who had been entitled to a free application because they were unpaid volunteers should pay a prescribed fee upon taking part in paid activities. This clause amends the declaration by the person seeking the information under section 30 to require them to indicate whether the application relates to paid activities. This provision is intended to assist the enforcement of fees. The new requirement to indicate whether the application related to paid activities should flag up those individuals who are now seeking paid employment, having previously registered as a volunteer, and therefore alert the Secretary of State that a required fee is due. Should this fee not be paid, the Secretary of State can refuse to provide the information required.

521. *Subsection (6)* provides that paid activity means an activity that is carried out for financial gain and that the Secretary of State can clarify areas of doubt as to when an activity should, or should not, be treated as paid.

Clause 84 Notification of cessation of monitoring

522. *Clause 84* amends section 32 of the SVGA, changing the requirements arising from the declaration to be made by persons eligible to receive information about the cessation of monitoring under section 32. Section 32 requires the Secretary of State to establish a register of persons entitled to be notified when an individual ceases to be monitored in accordance with provisions in section 24 of the SVGA, that is, persons who are "registered" with the Vetting and Barring Scheme established by that Act.

523. The current provisions require the Secretary of State to provide such persons with information when an individual in whom they have registered an interest ceases to be monitored under the SVGA. Persons entitled to this information are those registered under section 32, who must also fall within the categories of person set out in Schedule 7. This includes employers, personnel suppliers, local authorities and certain other bodies set out in Schedule 7.

524. Section 32(3) currently requires a declaration to be made indicating within which of the "specified entries" in Schedule 7 the applicant for registration falls. Section 32(5) provides that the application and registration apply to those specified entries.

525. The effect of *subsections (1)* to *(4)* is that the relevant declaration need not specify which particular entry of the table in *Schedule* 7 the applicant falls within; all that is needed is for the declaration to state that the applicant falls within the table.

526. *Subsection (5)* relates specifically to members of the governing body of an educational institution. Currently section 32(8) aims to ensure that the appropriate officer can register in relation to any appointed governor without the need to obtain the consent of the governor. This provision will no longer be effective as under *clause 80* a governor must consent to a check under section 30 of the SVGA before he or she can legally act as a governor. Under section 32(9) of the SVGA, consent given for the purposes of section 30 has effect as consent

to an application by the appropriate officer to register in relation to the governor under section 32.

Clause 85: Notification of proposal to include person in barred list

527. *Clause 85* amends the SVGA by inserting an additional duty and conferring a further power on the ISA in circumstances where it proposes to bar an individual from working with children or vulnerable adults. In such circumstances, this clause requires the ISA to notify any person who is registered under section 32 of the SVGA with respect to the individual concerned that the ISA is proposing to bar him or her and to provide reasons why. *Clause 85* also empowers the ISA to notify any other person who is permitting the individual to engage in regulated or controlled activity of the proposal to bar and the reasons why. A further notification must confirm whether the individual has been barred or not. Once the ISA has decided that it proposes to bar someone, it must give him or her eight weeks to make any representations before it can make its final barring decision. If the person is working with children or vulnerable adults during this time, notification under this clause allows the employer to be aware of the potential risk so that it can consider whether it needs to take any action.

Clause 86: Provision of safeguarding information to the police

528. This clause inserts a new provision (section 50A) into the SVGA that empowers the ISA to provide information that it holds to the police in England and Wales for use by the police for any of the purposes specified in *subsection (1)*. This power provides an additional safeguard to that in *clause 85* in that it allows the ISA to provide information to the police in what are likely to be exceptional cases where the ISA has not reached a decision as to whether or not it proposes to bar a person but considers that an individual may pose a risk of harm to vulnerable groups. Another use for this power is to enable the ISA to inform the police if it thinks that someone it has barred poses a risk to children in their own household.

Clause 87: Barring process

529. *Clause 87* adjusts the procedure for automatic barring in England and Wales so that it is the ISA, rather than the Secretary of State, that must be satisfied that a person has met the prescribed criteria for automatic barring before the ISA is required to bar him or her. The clause also makes a consequential change to the duty on the Secretary of State to check records. The prescribed criteria that trigger an automatic bar consist of certain serious offences and in some of these cases the automatic bar is triggered only if certain specified circumstances arise, for example, the victim is a child. This means that the circumstances of an offence will sometimes need to be verified before it can be confirmed that any of the prescribed criteria are satisfied with respect to him or her.

Safeguarding vulnerable groups: Northern Ireland

Clause 88: Notification of proposal to include person in barred list: Northern Ireland

530. This clause makes equivalent provision in relation to Northern Ireland to that made in relation to England and Wales by *clause 85*.

Clause 89: Provision of safeguarding information to the police: Northern Ireland
531. This clause makes equivalent provision in relation to Northern Ireland to that made in relation to England and Wales by *clause 86*.

Clause 90: Barring process: Northern Ireland
532. This clause makes equivalent provision in relation to Northern Ireland to that made in relation to England and Wales by *clause 87*.

Criminal records etc
Clause 91: Criminal conviction certificates to be given to employers
533. Part V of the Police Act 1997 sets out the scheme under which the Secretary of State, under the form of the "Criminal Records Bureau" (the "CRB"), must issue criminal conviction certificates (also known as Basic Disclosures) and criminal record certificates (known as Standard and Enhanced Disclosures). Currently, section 112 only provides for Basic Disclosures to be sent to applicants. It is envisaged that when the Basic Disclosure service is introduced by the CRB the majority of applications will be made for the purposes of employment. This clause therefore provides for a copy of the Basic Disclosure to be sent to an employer where specifically requested.

Clause 92: Certificates of criminal records etc: right to work information
534. *Clause 92* inserts a new section 113CD into the 1997 Act to provide for "right to work" information to be recorded on Basic, Standard and Enhanced Disclosures where a request for such information is made. This follows a request from the Home Secretary in early 2008 to explore the possibility of incorporating "right to work" checks within the CRB service following concerns about the employment of illegal workers in sectors required to obtain a CRB disclosure. Currently, CRB certificates do not provide information pertaining to an individual's immigration status.

535. The amendments will enable an employer to be informed, should they so request, whether prospective or current employees have a "right to work" in the UK based on the UK Border Agency (UKBA) records. This will assist employers in avoiding the employment of illegal workers which under the current legislation makes an employer liable to pay a civil penalty of up to £10,000 per person if found to be employing someone illegally. This civil penalty regime was introduced in February 2008 and is set out under sections 15 and 22 of the Immigration, Asylum and Nationality Act 2006.

536. This will be an optional service offered by the CRB and there will remain other ways for employers to satisfy themselves of an individual's right to work status.

537. Where a request for a "right to work" check is made, the certificate will state whether the applicant has a right to work or not and any conditions attached to the relevant status will also be disclosed where appropriate. If an individual's right to work status cannot be determined from UKBA records, employers will be provided with further information on how to identify whether the individual has a right to work.

538. The intention is to charge a fee to recover the development and running costs of this service and this will be in addition to the fee paid for a Disclosure. Prior to any fee being introduced, a public consultation will be carried out.

Clause 93: Criminal conviction certificates: verification of identity

539. *Clause 93* will allow for other methods of identity verification to be prescribed under section 118 when making an application for a certificate. The taking of fingerprints is already provided for under section 118 and any method prescribed under this clause is likely to be less intrusive than requiring fingerprints. Such requirements may include requiring evidence of identity (such as a passport, driving licence and current utility bills etc).

Clause 94: Registered persons

540. *Clause 94* will enable the CRB, when checking the suitability of individuals to be registered to countersign and receive Standard and Enhanced Disclosures in respect of applicants, to be checked against the new barred lists established under the Safeguarding Vulnerable Groups Act 2006. Such individuals are known as "Registered Persons" under the Police Act 1997. Although the Safeguarding Vulnerable Groups Act 2006 enables suitability information to be disclosed to employers, it does not amend the definition of suitability information the CRB itself should have regard to when assessing whether an individual should be registered. This was an oversight as the current provision enables checks to be undertaken against the old barring lists for this purpose.

Clause 95: Criminal Records: applications

541. *Clause 95* makes amendments to Part V so that the Secretary of State may determine the "form, manner and contents" in which applications for such Disclosures are made.

542. Currently regulations are required for any change to such applications and this provision will enable the Secretary of State to determine administratively the way people apply, what applicants are required to disclose on the applications and how people sign and countersign them without having to make regulations each time. This will include providing for electronic or on-line applications.

543. A similar amendment is being made for "monitoring" applications made under the "Safeguarding Vulnerable Groups Act 2006" because when the new Vetting and Barring Scheme is live many Enhanced Disclosure applications will be made jointly with applications for monitoring and the initial application will be made via the CRB.

Chapter 2 – Other

Retention and destruction of samples etc

Clause 96: Retention and destruction of samples etc: England and Wales

544. This clause would insert new sections 64B and 64C into the Police and Criminal Evidence Act 1984 (PACE) to confer on the Secretary of State a power to make regulations as to the retention, use and destruction of the following material: photographs, fingerprints, footwear impressions, DNA samples and DNA profiles. The regulations would be able to

make different provision for different cases, and to make provision subject to exceptions. The regulations could modify provisions of primary or secondary legislation (including provisions to make codes of practice etc), and could make supplementary, incidental, consequential, transitional, transitory or saving provision. The regulations would provide a retention and governance structure in response to the judgment of the European Court of Human Rights in the case of *S. and Marper v the United Kingdom* on 4th December 2008. Before draft regulations can be laid before Parliament, they must be subject to consultation with stakeholders. That approach follows the procedure required under PACE in respect of the PACE Codes of Practice. The draft regulations laid before Parliament will be subject to the affirmative resolution procedure.

Clause 97: Retention and destruction of samples etc: service offences

545. This clause would amend section 113 of PACE to allow regulations, which will be equivalent to those provided for in *clause 96*, to be made in respect of material obtained by the Service police in each of the Armed Forces. Section 113 of PACE allows the Secretary of State to make provision equivalent to that made by any provision of Part 5 of that Act, subject to such modifications as the Secretary of State considers appropriate to apply those provisions to the Armed Forces. Part 5 of PACE is already applied to the Armed Forces by means of a statutory instrument made under section 113. Section 113 needs to be amended to allow regulations to be made for the Armed Forces which will be closely based on the regulations provided for in *clause 96*. Biometric data obtained by the Service police in each of the Armed Forces will therefore be treated in the same way as biometric data obtained by civilian police forces subject to the different circumstances in which the Service police conduct investigations.

Clause 98: Retention and destruction of samples etc: Northern Ireland

546. This clause makes provision for Northern Ireland equivalent to that made by *clause 96*. The negative resolution procedure is used because that is the procedure used for all Northern Ireland comparable provisions in this field.

Border controls

Clause 99: General information powers in relation to persons entering or leaving the UK

547. This clause will amend the Customs and Excise Management Act (CEMA) 1979 by inserting new section 157A to enable an officer of Revenue and Customs to require a person entering or leaving the UK to produce their passport or travel documents and answer questions about their journey. Referring to the subsections of the new section 157A**:**

- *Subsection (1)* empowers officers to require the production of a person's passport and travel documents and to ask questions about a person's journey.

- *Subsection (2)* defines "passport".

- *Subsection (3)* applies these powers at the final airport of destination in the UK for air transit passengers who first entered the UK at another airport.

- *Subsection (4)* defines a "transit air passenger".

548. *Subsection (2)* of this clause adds the new power to the list of powers contained in section 4(3) of the Finance (No. 2) Act 1992. This restricts the application of certain CEMA powers in relation to the movement of people or things between EU Member States.

Clause 100: Powers in relation to cash.
549. *Clause 100* deals with powers available to detect cash at the border. The aim of these clauses is the prevention of money laundering by means of movement of cash into and out of the UK.

550. *Subsection (1)* inserts new section 164A into the CEMA. The new section clarifies those CEMA powers available to officers at the border to ask questions about, and to search for, cash that is recoverable property or is intended by any person for use in unlawful conduct (as defined in subsections 289(6) and (7) of the Proceeds of Crime Act 2002). The new section also ensures compliance with the Cash Control Regulation on controls of cash entering or leaving the Community (Regulation (EC) No. 1889/2005 of the European Parliament and of the Council).

551. *Subsection (2)* amends section 4(2) of the Finance (No. 2) Act 1992 to make clear that the powers listed in section 4(3) of that Act apply to cash which is recoverable property or intended for use in unlawful conduct as well as to goods.

Clause 101: Lawful interception of postal items by Revenue and Customs
552. *Clause 101* clarifies the Regulation of Investigatory Powers Act (RIPA) 2000. The clause puts beyond doubt that the protection from interception afforded to postal communications in RIPA does not restrict Revenue and Customs powers to check international postal traffic for customs or excise purposes.

553. The clause inserts a new subsection (3A) into section 3 of RIPA. This makes it clear that checks on international postal traffic carried out under s159 CEMA (as applied to postal traffic by the Postal Services Act 2000) are lawful interceptions for the purpose of RIPA.

554. It also adds persons engaged by the Commissioners of HM Revenue and Customs to the list of persons in s17(3) of RIPA who may lawfully intercept communications and disclose the contents for the purpose of legal proceedings.

Clause 102: Prohibition on importation or exportation of false identity documents etc
555. *Clause 102* prohibits the importation and exportation of false identity documents.

556. *Subsection (1)* creates a prohibition on the importation and exportation of false identity documents. A prohibition on importation or exportation engages the existing powers in CEMA. This means that where the prohibited items are discovered they are liable to

forfeiture under section 49 CEMA and can be seized under section 139. Improper importation of a prohibited item is an offence under section 50 of CEMA and evading the prohibition is an offence under section 170 of CEMA.

557. *Subsection (2)* sets out which documents are caught by the prohibition.

558. *Subsection (3)* defines "document", "false" and "identity document". It relies on definitions in the Identity Cards Act 2006 and the Forgery and Counterfeiting Act 1981.

Clause 103: Prohibition on important of offensive weapons

559. Section 141 of the Criminal Justice Act 1988 contains a power to specify offensive weapons. Where a weapon is specified, it is an offence to sell, hire or manufacture that weapon under section 141(1). The importation of the weapon is also prohibited (under section 141(4)). Currently 18 items have been specified including knuckle dusters, butterfly knives and stealth knives.

560. There is a lack of clarity between the Scottish Executive and Whitehall departments on the competence of the Scottish Ministers to make an order under section 141 of the Criminal Justice Act 1988. It is the "import" aspect that has led to the lack of clarity, as import is a reserved matter.

561. *Clause 103* addresses this issue by separating out the importation consequences of specifying a weapon in an order under section 141 from the consequences that flow under section 141(1) – that is sale, hire etc. The clause replicates the regime existing under section 141 for the purposes of importation. New section 141ZB contains the new power to prohibit the importation of a weapon. New section 141ZC sets out the exceptions to a prohibition on importation, which mirror the existing defences to an offence under section 141(1). New section 141ZD makes provision about the burden of proof applying in respect of the exceptions.

562. *Clause 103* will mean that importation restrictions will be created by the Secretary of State on a UK wide basis. Scottish Ministers will be able to make an order under section 141 which makes it an offence to manufacture, sell or hire a weapon specified in the order, but no importation consequences would flow from the order.

563. *Subsections (2)* to *(4)* contain transitional provisions. These provisions will apply where a weapon has been imported in breach of a prohibition but it cannot be proven whether the prohibition is that imposed by section 141(4) (before it was repealed) or by *clause 103*. In such a case, then for the purposes of any criminal proceedings under the Customs and Excise Management Act 1979, it shall be conclusively presumed that the conduct took place after the commencement of *clause 103* and therefore that the relevant prohibition is that in *clause 103.* The purpose of this transitional provision is to ensure that a defendant is not able to escape

liability solely on the basis that it cannot be proven which importation prohibition has been breached.

Football spectators

Clause 104: Prohibiting attendance at matches in Scotland and Northern Ireland etc

564. *Subsection (1)* extends the definitions of "banning order", "external tournament" and "control period", so that those subject to English and Welsh orders will be banned from attending regulated football matches in Scotland and Northern Ireland. Reporting requirements, and related provisions, will only apply to "regulated football matches" involving Scottish and Northern Irish teams when they are played outside the UK.

565. A "regulated match" means any association football match prescribed by an order made by the Secretary of State in exercise of the powers conferred upon him by sections 14(2). When a court in England or Wales imposes a football banning order the subject is prevented from attending any regulated match in England and Wales, and from attending any regulated match outside England and Wales when given notice in writing by the English and Welsh enforcing authority under section 19(2B) of the 1989 Act. Prior to commencement the statutory instrument prescribing regulated matches would be amended to reflect the effect of *clause 103*.

Clause 105: Requirements to report at police stations

566. *Clause 105* provides that when an individual is directed to report to police by the court or by the enforcing authority the specified police station may be anywhere in the UK, and thus local to the individual's place of residence.

567. *Subsection (1)* provides that the police stations specified under any of the provisions listed in *subsection (2)* may be anywhere in the United Kingdom. The provisions are:

- Initial reporting at a police station as specified in an order imposed in England, Wales or Scotland.

- Reporting at a police station as required by a notice from the English and Welsh enforcing authority or the Scottish Football Banning Orders Authority in relation to regulated football matches outside the UK.

Clause 106: Enforcement of 1989 Act in Scotland and Northern Ireland

568. *Subsection (1)* provides that the following offences under the Football Spectators Act 1989 extend to Scotland and to Northern Ireland:

- failure to comply with a requirement imposed by a banning order or the requirements of a notice issued by the English and Welsh enforcing authority;

- failing, without reasonable excuse, to comply with a requirement imposed by police on a person reporting initially at a police station specified by the banning order;

- providing the English and Welsh enforcing authority or police with what is known to be false information in connection with an application to the authority for an exemption from their reporting instructions.

569. *Subsection (2)* provides a defence in Scotland of reasonable excuse for failing to comply with a requirement of a banning order or notice issued by the English and Welsh enforcing authority. The Football Spectators Act 1989 does not provide a statutory defence in England and Wales for failing to comply with a requirement of a banning order or notice issued by the English and Welsh enforcing authority. However section 68(2) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 provides a defence in Scotland of reasonable excuse for failing to comply with a requirement of a banning order or notice issued by the Scottish enforcing authority. For consistency in the treatment of breaches of banning order requirements within Scotland a statutory defence is provided.

570. *Subsections (3), (4) and (5)* set out the maximum penalties for the offences described in *subsection (1)*. A person guilty of an offence by virtue of subsection (1)(a) is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level five on the standard scale (currently £5,000) (or both). A person guilty of an offence by virtue of subsection (1)(b) is liable on summary conviction to a fine not exceeding level two on the standard scale (currently £500). A person guilty of an offence by virtue of subsection (1)(c) is liable on summary conviction to a fine not exceeding level three on the standard scale (currently £1,000).

Clause 107: Enforcement of 2006 Act in England and Wales and Northern Ireland
571. *Clause 107* extends to England, Wales and Northern Ireland, with appropriate sentencing provisions, the offences of failing to comply with the requirements of a Scottish banning order or a notice issued by the Scottish Football Banning Orders Authority and the offence of giving false information in connection with an application for an exemption.

572. *Subsection (2)* increases the maximum custodial penalty available for failing to comply in England, Wales and Northern Ireland with a requirement imposed by a Scottish banning order, or a notice pursuant to one issued by the Scottish Football Banning Orders Authority. That penalty, which is currently imposed under the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007, is increased from three months to six months (the maximum available in Scotland).

573. *Subsections (3) - (4)* set out the sentencing provisions for other offences under the Police, Public Order and Criminal Justice (Scotland) Act 2006 as they apply in England, Wales and Northern Ireland. A person guilty of an offence under section 68(1)(b) of the 2006 Act (failure to comply with requirement imposed by constable) is liable on summary conviction to a fine not exceeding level two on the standard scale (currently £500). A person

guilty of an offence by virtue of section 68(5) of the 2006 Act (knowingly or recklessly providing a false statement) is liable on summary conviction to a fine not exceeding level three on the standard scale (currently £1,000).

574. *Subsection (5)* revokes Articles 1(5) and 5 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 which created offences in England and Wales and Northern Ireland of breaching Scottish banning orders.

Clause 108: Relevant offences for the purposes of Part 2 of 1989 Act

575. *Clause 108* adds to the list of relevant offences for England and Wales failing to comply with a requirement made on initially reporting to the police in respect of an English and Welsh imposed order and knowingly making false statements in relation to an application for an exemption to the English and Welsh enforcing authority. The clause also includes those offences extended to England and Wales in respect of the Police, Public Order and Criminal Justice (Scotland) Act 2006 by virtue of *clause 107.*

576. The offences listed in Schedule 1 to the 1989 Act are offences in relation to which English and Welsh courts may seek football banning orders (or the extension of existing banning orders) on conviction.

Other

Clause 109: Strategies for crime reduction etc probation authorities

577. *Clause 109* provides for every provider of probation services in a particular area, whose arrangements under section 3 of the Offender Management Act 2007 provide for it to be a responsible authority, to be added to the list of "responsible authorities" which comprise the CDRP (Crime and Disorder Reduction Partnerships in England) or CSP (Community Safety Partnership in Wales) in that area. It also extends the remit of CDRPs/CSPs to explicitly include the reduction of re-offending.

578. *Subsection (2)* adds every provider of probation services in a local government area, whose arrangements under section 3 of the Offender Management Act 2007 provide for it to be a responsible authority, to the list of responsible authorities for that area. The responsible authorities must work together and with other local agencies and organisations to formulate and implement crime and disorder strategies and strategies for combating the misuse of drugs, alcohol and other substances in the area. Prior to this, local probation boards were not responsible authorities but were required to co-operate with those persons and bodies who were. The Offender Management Act 2007 gives the Secretary of State power to make arrangements with providers for the provision of probation services from the public (probation trusts), private or third sector or to provide the services himself. Those arrangements will state whether the provider will be a responsible authority or whether they will remain a co-operating body.

579. *Subsection (3)* section 5(1B)(b) of the Crime and Disorder Act 1998 currently limits the Secretary of State's power to merge by order two or more partnership areas in England to cases where he considers it would be in the interests of reducing crime and disorder or substance misuse. This subsection extends these criteria to include reducing re-offending.

580. *Subsection (4)* extends the existing duties of responsible authorities to formulate and implement a strategy to reduce re-offending in the area.

581. *Subsection (5)* provides that the appropriate national authority for making regulations relating to strategies for reducing re-offending is the Secretary of State and the Welsh Ministers acting jointly.

582. *Subsection (6)* amends section 17 of the Crime and Disorder Act 1998. Section 17 places a duty on certain defined authorities, such as local authorities, to exercise their functions with due regard to the likely effect on, and the need to do all that it reasonably can to prevent, crime and disorder and substance misuse. This subsection expands this duty to include reducing re-offending.

Clause 110: Applications of aspects of UK law to SOCA employees working abroad

583. *Clause 110(a)* inserts into paragraph 20 of Schedule 1 to the Serious Organised Crime and Police Act 2005 new exceptions to the Serious Organised Crime Agency's status as a non-Crown body so that SOCA employees, in certain circumstances, will be deemed to be carrying out the work of the Crown.

584. *Clause 110(b)* sets out the three exceptions to the general rule that SOCA employees are not servants of the Crown by inserting three new sub-paragraphs into Schedule 1 to the Serious Organised Crime and Police Act 2005. These are:

- Sub-paragraph (2) SOCA employees who are working outside the United Kingdom will be treated as Crown servants for the purposes of section 31(1) of the Criminal Justice Act 1948 and will therefore be subject to prosecution and punishment for any indictable offence carried out whilst on duty abroad.

- Sub-paragraph (3) SOCA employees who are working outside the United Kingdom will be treated as Crown servants for the purposes of sections 26 to 28 of the Income Tax (Earnings and Pensions) Act 2003 and will consequently be liable to pay UK tax on their earnings.

- Sub-paragraph (4) SOCA employees who are working outside the United Kingdom will be deemed servants of the Crown for the purposes of section 299 of the Income Tax (Earnings and Pensions) Act 2003 and will therefore be entitled to the tax free allowances of a Crown servant intended to facilitate their operating in a foreign jurisdiction.

Clause 111: Partial exemption for SCDEA from Firearms Act 1968
585. *Clause 111* amends section 54 of the Firearms Act 1968 to bring members of the Scottish Crime and Drug Enforcement Agency (SCDEA) within the meaning of "persons in the service of Her Majesty" in that section. Certain provisions of the Firearms Act will therefore apply to members of the SCDEA (subject to modifications) in the same way as they apply to members of a police force and a member of staff of the Serious Organised Crime Agency.

PART 9 - GENERAL

Clause 112: Minor and consequential amendments and repeals and revocations
586. *Clause 112* confers a power on the Secretary of State by order to make supplementary, incidental or consequential provision for the purposes of the Bill. The power includes a power to amend or repeal any Act or subordinate legislation including the Bill (*subsection (5)*). The power also includes power to make transitional, transitory or saving provision. The affirmative resolution procedure will apply to any order which amends or repeals public general Acts save for those provisions inserted into a public general Act by a local Act or any other Act which is not a public general Act. The section also introduces *Schedule 7* (minor and consequential amendments) and *Schedule 8* (repeals).

Clause 113: Transitional, transitory and saving provision
587. *Clause 113* contains a power for the Secretary of State to make transitional, transitory or saving provision in connection with the coming into force of any provision of the Bill.

Clause 114: Financial provisions
588. *Clause 114* authorises, out of money provided by Parliament, any expenditure incurred by the Secretary of State under the Bill. It also authorises any additional expenditure incurred under any other Acts, where that additional expenditure results from the Bill.

Clause 115: Extent
589. *Clause 115* sets out the territorial extent of the Bill's provisions.

590. The provisions relating to the prohibition of importation of offensive weapons (*clause 103*) will apply throughout the UK.

591. The provisions relating to premise closure orders (*clause 20* and *Schedule 2*), orders imposed on sex offenders (*clauses 21* to *24*), the offence of persistently possessing alcohol (*clauses 30*), the powers for the Secretary of State to prescribe the form, manner and contents of an application under Part V of the Police Act 1997 (*clause 95*), and the provisions to enforce the Police, Public Order and Criminal Justice (Scotland) Act 2006 (*clause 107*) all apply to England, Wales and Northern Ireland.

592. The requirements to report to police stations (*clause 105(1) and (2)*) extend to Scotland only so far as they relate to the Police, Public Order and Criminal Justice (Scotland) Act 2006. The requirements to report to police stations in c*lause 106(2*) also relate to Scotland only. The remainder of *clause 106* extends to Scotland and Northern Ireland. The provisions relating to police pensions (*clause 10(2)),* the regulation of lap dancing *(clause 26 and Schedule 3),* injunctions on gang-related violence *(Part 4), clauses 91* to *93* and *clause 105(1)* and *(2),* so far as relating to the Football Spectators Act 1989, extend to England and Wales only.

593. All other amendments, repeals or revocations made by the Bill have the same extent as the provisions amended, repealed or revoked, unless otherwise specified in *Schedule 7* or *8*.

Clause 116: Commencement

594. *Clause 116* of the Bill provides for commencement. The renaming of the Independent Barring Board (*clause 79*) and the power for Customs officers to intercept postal items (*clause 101*) will come into force on Royal Assent. Additionally *clauses 112(3)-(9)* and *clauses 113* to *117* will come into force on Royal Assent.

595. *Clauses 99, 100* and *102* (provisions relating to Border Controls) will be brought into force by means of commencement orders made by the Treasury. Regulation of lap dancing and sex-encounter venues (*clause 26* and *Schedule 3*) and the relevant paragraph in *Schedule 7,* insofar as it relates to England will be brought into force by means of a commencement order made by the Secretary of State, and insofar as it relates to Wales by means of a commencement order made by Welsh Ministers. *Subsection (2)* of *clause 116* provides that the Secretary of State must obtain the consent of Scottish Ministers before commencing *clause 105* and *clause 106* by order.

596. Part 12 of *Schedule 7* and Part 12 of *Schedule 8* and *Schedule 3* will be commenced at the end of two months after the date of Royal Assent.

597. All the remaining provisions in the Bill will be brought into force by means of commencement orders made by the Secretary of State.

Clause 117: Short Title

598. *Clause 117* sets out the short title of the Bill as it may be used in subsequent citations.

FINANCIAL EFFECTS OF THE BILL

599. The total costs of the Bill to the public sector are estimated by the Home Office to be £5.7m/£24.5m/£24.3m in the financial years 2009-2010, 2010-2011 and 2011-2012 respectively. All the estimated costs, including consequential costs to other departments, will be subject to a number of variables, including take up and use of the provision; timing of

implementation; efficiency savings; and the behaviour of the criminal justice agencies and courts.

600. Based on the same assumptions the Home Office has identified that the Bill will result in some consequential financial costs for the Criminal Justice departments and their agencies. The Criminal Justice departments and agencies involved in are the Ministry of Justice, the Crown Prosecution Service, Her Majesty's Court Service (HMCS), Her Majesty's Prison Service (HMPS) and the National Offenders Management System. The consequential costs are currently estimated by the Home Office and affected departments at £1.2m/£20.2m/£20.3m for the financial years 2009-2010, 2010-2011 and 2011-2012 respectively.

601. These estimated costs, including consequential costs, will be met from within the existing Home Office and Criminal Justice Departments' Comprehensive Spending Review 2007 settlements, or existing Police Authority budgets. The Department also expects there will be potential efficiency and cost savings and benefits for the Home Office, the Police, and Local Authorities which have not been quantified.

602. The financial effects of the provisions not mentioned below are either cost neutral or minimal to the public sector. The main financial implications of the Bill for the public sector lie in the following areas:

Part 1 – Police Reform

603. The Police Senior Appointments Panel is expected by the Government to cost £0.3m/£0.5m/£0.5m for the years 2009-2010, 2010-2011 and 2011-2012 which will be met by the Home Office.

Part 2 – Sexual Offences and Sex Establishments

604. The Government expects that the provision of paying for sexual services of a prostitute subjected to force etc will cost £0.2m/£0.4m/£0.4m for the years 2009-2010, 2010-2011 and 2011-2012. Costs to HMCS (including legal aid) are expected to be £0.2m in 2009-10 rising to £0.3m per annum thereafter.

605. The amendments to the Sex Offences Act 1985 to remove "persistence", "causing annoyance" and "causing nuisance" from the offence of kerb crawling and "persistence" from soliciting another person for the purposes of prostitution is expected by the Government to cost £0.3m/£0.5m/£0.5m for the years 2009-2010, 2010-2011 and 2011-2012. The consequential costs will fall as follows:

- Crown Prosecution Service - £0.05m in 2009-10 and £0.1m year on year thereafter
- HMCS (including legal aid) - £0.2m in 2009-10 and £0.4m year on year thereafter.

606. The provisions that introduce a new rehabilitative penalty for prostitution as opposed to a fine are expected by the Government to cost £0.1m/£0.1m/£0.1m for the years 2009-2010, 2010-2011 and 2011-2012. This will be the cost to the HMCS including legal aid.

607. The Home Office expects the provision allowing for the closure of premises to cost £0.4m/£0.7m/£0.7m for the years 2009-2010, 2010-2011 and 2011-2012. This will fall to HMCS.

608. The provisions relating to increasing the maximum sentence on indictment for failure to comply with a notice relating to encrypted information in relation to 'a child indecency case' from two years to five years is expected by the Government to cost £0.05m/£0.1m/£0.1m for the years 2009-2010, 2010-2011 and 2011-2012. This cost will fall the HMPS.

Part 3 – Alcohol misuse

609. The Home Office expects that the provisions of persistently selling alcohol to children and persistently possessing alcohol will result in costs totalled at £1m per annum which fall to HMCS (including legal aid). These costs will be year on year from 2010-11.

Part 4 – Injunctions: gang-related violence

610. The Government expects that the provisions relating to injunctions issued to prevent gang-related violence to commence in 2010/11 and to result in costs of £0.2m per annum. The consequential costs are expected to fall as follows:

- HMCS (including legal aid costs) - £0.05m per annum
- HMPS - £0.05m per annum

Part 5 – Proceeds of crime

611. There are costs arising from 3 of the proceeds of crime provisions, (the power to retain and sell seized personal property, transferring applications for production orders and search and seizure warrants in detained cash investigation from the High Court to the Crown Court and applications to the magistrates' courts for a detention order following seizure of goods). The Government estimates the costs to be £1.0m in financial year 2009-2010, £2.0m in the financial year 2010-2011 and £2.1m in the financial year 2011-2012. Of these costs £0.1m/£0.2m/£0.3m will fall on HMCS in the respective years. Overall the Government expects these provisions to result in savings through increased asset recovery.

612. It is of note that law enforcement bodies will also be able to claim back reasonable costs from the final amount of money recovered from confiscation orders where these costs are associated with storing, insuring and selling the property seized. The amount will be decided by the magistrates' court.

Part 6 – Extradition

613. The Amendments to the Extradition Act are expected by the Government to result in a net cost across Government of £17.0m per annum. These costs can be broken down as follows:

- £8.3m – Serious Organised Crime Agency (SOCA)
- £4.3m - HMCS (including legal aid)
- £1.8m - Crown Prosecution Service
- £0.3m - Scottish Extradition
- £2.4m - Ministry of Justice

Part 7 – Aviation security

614. In 2007/08, the cost of providing a dedicated police presence at non-designated airports in the UK amounted to approximately £16.4m. It is estimated by the Government that from 2011 onwards, there will be a net transfer of costs from police authorities to the aviation sector of between £12-17m per annum (2008 prices) as a result of these provisions. Costs saving to police authorities are anticipated to start from 2011.

Part 8 – Miscellaneous

Criminal records etc

615. *Criminal conviction certificates to be given to employers* - costs of these provisions have been estimated by the Government at £0.5m per annum however this cost will be recovered through the charging of fees which is due to be consulted on.

616. *Certificates of criminal records etc: right to work information* - the initial set up costs for the "Right to Work" checks are £1.9m with year on year running costs for 2009-2010, 2010-2011 and 2011-2012 expected to be £465,000/£605,000/ £605,000. All of these costs will be recoverable through the charging of fees which is due to be consulted on.

Football spectators

617. The costs of the football spectator provisions are minimal and likely to result in savings.

Application of aspects of UK law to SOCA employees working abroad

618. Based on 2008/09 figures, the taxation of SOCA staff based overseas will lead to an additional £1.4m per annum (based on 2008-09 figures) being received by HMRC.

EFFECTS OF THE BILL ON PUBLIC SECTOR MANPOWER

619. The effects of the Bill on Public Sector Manpower are set out below. These costs are a subset of the identified costs in the financial effects of the Bill. For the majority of provisions the Government do not expect there to be an increase in manpower but for the new powers or responsibilities to be subsumed into every day business as determined by local priorities.

Part 1 – Police reform
Police Senior Appointments Panel
620. The Home Office will require an additional four staff which is expected to cost £0.2m per annum. These staff will support the panel. The independent chair and independent will receive allowances totalling approximately £0.1m per annum.

Part 6 - Extradition
621. In light of the expected increase in European Arrest Warrants, the following cost increases in staff budgets are expected for:

- HMCS - £0.5m
- Scottish Executive - £0.3m
- CPS - £1.75m

Part 7 – Aviation security
622. The cost to the public sector for the manpower associated with this provision is expected to be in the region of £1m per annum. This figure is however driven by the threat level and levels of dispute between parties, and is therefore only indicative. The resource costs to the public sector will start to accrue in 2009/10 with the requirement for most UK airports to carry out threat and risk assessment.

Part 8 – Miscellaneous
Certificates of criminal records etc: right to work information
623. This provision will result in the recruitment of an additional 17 staff (16 for UKBA and 1 in CRB). These staff costs are expected to total £0.4m and will be recovered as part of the fee charged by CRB.

REGULATORY IMPACT ASSESSMENT

624. The Better Regulation Executive guidance requires the Government to publish an Impact Assessment (IA) when it introduces any legislation likely to:

- Impose a cost on the private sector in any one year;
- Cost the public sector more than £5m; or
- Attract high levels of political or media interest.

625. IAs have been prepared in respect of 12 provisions in the Policing and Crime Bill. The individual Home Office and Ministry of Justice IAs are available on the Home Office website (http://www.homeoffice.gov.uk/documents/ia-police-crime-bill-08/) with the IA prepared the Department for Transport being available on its website (http://www.dft.gov.uk/consultations/closed/airportpolicing/revisedimpactassessmet.pdf). All IAs will be made available in the Vote Office. The remaining provisions in the Bill did not fulfil the criteria for requiring an IA.

626. The costs identified in IAs are economic rather than financial – the Financial Statement above provides the expected costs of the Policing and Crime Bill.

627. The Bill contains four provisions that will have an impact on business or the voluntary sector, namely:

- Lap dancing licensing
- General licensing conditions relating to alcohol
- Amendments to the Safeguarding Vulnerable Groups Act
- Aviation Security Provisions

628. The remaining provisions meet the Public Services Threshold Test (either on grounds of cost or potential political/media interest), namely:

- Introduction of the offence of persistently possessing alcohol in a public place
- Amendments to the Extradition Act
- Probation Authorities becoming a responsible authority on Crime and Disorder Reduction Partnerships/Community Safety Partnerships
- NPIA IT procurement/ collaboration
- Brothel Closure Orders
- New offence of paying for sex with a person controlled for gain

- Referral orders for soliciting

- Persistent kerb crawling

EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

629. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). The statement has to be made before Second Reading. The Rt Hon. Jacqui Smith MP, Secretary of State for the Home Department, has made the following statement:

> "In my view, the provisions of the Policing and Crime Bill are compatible with the Convention rights."

Part 1 – Police reform

630. *Clauses 6 to 8* amend the provisions governing the granting of authorisations by police forces under:

- Chapter II of Part I of the Regulation of Investigatory Powers Act 2000 ("RIPA") to obtain communications data;

- Part II of RIPA for the carrying out of directed or intrusive surveillance and the conduct or the use of a covert human intelligence source; and

- Part III of the Police Act 1997 ("the 1997 Act") to interfere with property or wireless telegraphy.

631. The purpose of the amendments is to address operational difficulties arising from the inability of an authorising officer with a police force to grant or give an authorisation except on an application made by a member of his police force and – in relation to intrusive surveillance of residential premises and interference with property or wireless telegraphy – within the area of operation of his force. The new provisions will remove these restrictions in order to permit police forces to "cross-authorise" if (but only if) the chief officers of the relevant forces are parties to a collaboration agreement under section 23(1) of the Police Act 1996 which expressly provides for cross-authorisations of the type sought by the applicant. The formal and durable nature of such collaboration agreements will ensure that the new cross-authorisation powers are founded on appropriate and detailed arrangements between the participating forces governing operational and accountability issues, and will ensure that officers seeking an authorisation do so within a structured authorisation process rather than being able simply to approach authorising officers in any force.

632. Any cross-authorisations granted under RIPA and the 1997 Act will be subject to all the existing safeguards considered necessary by Parliament to ensure that investigatory powers are exercised compatibly with the ECHR. In particular, the substantive protections of Article 8 will continue to be guaranteed by the express terms of RIPA and the 1997 Act which only permit the exercise of the relevant powers if the tests of necessity, proportionality and legitimate aim are satisfied. Independent oversight will continue to be provided by both the Commissioners and the Investigatory Powers Tribunal.

633. The Government therefore considers that the police authorisations provisions are compatible with the ECHR.

Part 2 – Sexual offences and sex establishments

Prostitution

634. *Clauses 13* and *14* create an offence of paying for the sexual services of a prostitute subjected to force, deception or threats by inserting a new section 53A into the Sexual Offences Act 2003. Subsection (2)(b) expressly provides for the offence to be committed regardless of whether the payer is, or ought to be, aware that the prostitute has been subject to such force, threats or deception. In this respect, the offence is one of strict liability. The House of Lords in R v G [2008] UKHL 37 made clear that Article 6 (right to a fair trial) is concerned with procedural protections rather than the substantive law and therefore the Article cannot be regarded as preventing the formulation of this offence as one of strict liability. The Court of Appeal came to the same conclusion in R v Danny Deyemi and Edwards [2007] EWCA Crim 2060. Similarly, Article 7 (legal certainty) is concerned with legal rather than factual certainty and therefore any difficulty that a payer may have in deciding whether a prostitute has been subjected to force, threats or deception does not render this offence incompatible with Article 7 as the offence itself is clearly expressed. The sex buyer knows that if he pays for sex with a person and it is later found that the person has been subject to force, deception or threats of a kind likely to induce the prostitute to provide those sexual services then he will have committed the proposed offence. The Government does not consider that Article 8 (right to family life) will be engaged as it has not been established that Article 8 includes a right to pay for sexual relations. Even if it does, the Government believes that any interference with this right can be justified under Article 8.2 as necessary for the protection of health or morals or the protection of the rights and freedoms of others.

Orders requiring attendance at meetings

635. *Clause*s *15* and *16* amend the offence of loitering and soliciting in the Street Offences Act 1959 to remove the term "common prostitute", add a requirement that a person has acted "persistently" and introduce a new rehabilitative penalty as an alternative to a fine. Where a person convicted of this offence is sentenced to the new rehabilitative order but fails to comply with it, the provisions allow the court to issue a summons requiring the offender to appear before the court. If the offender fails to answer the summons, the court can issue a warrant for the arrest of the offender. If this occurs the person once arrested must be brought before the court immediately or, if this is not possible, as soon as practicable thereafter. The Government acknowledges that the potential for an offender to be imprisoned following a

failure to comply with the court order engages Article 5 (right to liberty and security). However, such a deprivation of liberty would be in accordance with a procedure prescribed by law, and would arise from the non-compliance with the lawful order of a court.

Closure orders

636. *Clause 20* and *Schedule 2* make provision for the courts to make closure orders in relation to premises used for activities related to certain prostitution and pornography offences, preventing people from entering or remaining on the premises for up to three months. These provisions broadly follow existing provisions on "crack house" closure orders under Part 1 of the Anti-social Behaviour Act 2003, closure orders for premises associated with persistent disorder or nuisance under Part 1A of that Act and closure orders in an area experiencing disorder under Part 8 of the Licensing Act 2003, all of which the Government considered to be ECHR compliant.

637. The Government accepts that the provisions engage Article 8 (right to family life) and Article 1 of Protocol 1 (peaceful enjoyment of property) but it considers any interference with these rights caused by the police imposing a closure notice or the court imposing a closure order is justified since it would be prescribed by law and necessary and proportionate to prevent disorder and crime, to protect health and morals and to protect the rights and freedoms of others. Article 1 of Protocol 1 also recognises the public interest in dealing with possessions which are not being peacefully enjoyed. Without such powers, the police are unable to prevent premises which have been subject to a raid from reopening and operating again within a matter of hours. Both the police and the courts, as public bodies, are bound to act in compliance with the ECHR when exercising their powers under these provisions.

Orders imposed on sex offenders

638. *Clause 21* confirms that the requirement in section 127 of the Magistrates' Courts Act 1980 (that a magistrates' court shall not hear a complaint unless the complaint was made within six months from the time when the matter of complaint arose) does not apply to an application by the police for a civil order under Part 2 of the Sexual Offences Act 2003, primarily notification orders, foreign travel orders, sexual offences prevention orders and risk of sexual harm orders. *Clauses 22* to *24* make further amendments to foreign travel orders. These are orders that may be imposed by the court in certain circumstances to prevent a convicted sex offender from travelling to a particular country or to any country outside the United Kingdom. The clauses extend the maximum duration of foreign travel orders from six months to five years, require those made subject to a foreign travel order preventing them from any travel abroad to surrender their passport(s) and extend the age of a child that must be at risk from the offender before a foreign travel order can be made from 16 to 18

639. The civil orders that can be imposed under Part 2 of the Sexual Offences Act 2003 are preventative rather than punitive measures. Whilst these orders all have the potential to engage Article 8 (right to family life), the Government considers that the existing safeguards in Part 2 will continue to mean that such interference can be justified under Article 8.2 as

being in accordance with the law and necessary and proportionate for the prevention of crime and for the protection of the rights and freedoms of others.

640. The disapplication of section 127 of the Magistrates' Courts Act 1980 is expressed to apply even if the matter of complaint arose more than six months before the making of the complaint. As this provision only serves to clarify the current law, there is no issue of quasi-retrospection.

Lap dancing

641. *Clause 26* and *Schedule 3* essentially transfer lap dancing from regulation under the Licensing Act 2003 to regulation under the Local Government (Miscellaneous Provisions) Act 1982. Secondary legislation will make transitional provisions to ensure that a person who currently benefits from a licence under the Licensing Act 2003 which permits lap dancing will be given a reasonable period before he has to obtain a new licence under the Local Government (Miscellaneous Provisions) Act 1982 or to cease that activity. The Government considers that these provisions are considered compatible with the ECHR because although a licence can be a "possession" for the purposes of Article 1 of Protocol 1, that Article does not prevent a state from changing the licensing regime for those running lap dancing clubs in the general interest. The Government believes that existing appeal provisions in the Local Government (Miscellaneous Provisions) Act 1982, coupled with the right to challenge a decision by way of judicial review where such appeals are exhausted or barred, will satisfy the requirements of Article 6.

Part 3 – Alcohol misuse

642. *Clause 30* introduces a new offence of persistently possessing alcohol in a public place. This engages Article 8 of the ECHR, as it potentially interferes with the right to a private life. However, the Government considers that any interference with Article 8 is lawful for the following reasons. The offence may only be committed by those under 18 years of age; the offence is only committed if a young person is in possession of alcohol on three separate occasions in a 12 month period; the offence is only committed if the person has no reasonable excuse for any of the three relevant occasions. The aim of the provision is to prevent crime and disorder and the Government believes that it is necessary to achieve this aim. For all these reasons, the Government considers that the offence is necessary, justified and proportionate to its aim.

643. *Clause 31* makes an amendment to section 27(1) of the Violent Crime Reduction Act 2006, so that the police can issue directions to leave a public place under this section to a person aged between 10 and 15 as well as to persons aged 16 and over. The Government considers that this clause potentially raises issues under Articles 8 and 11, but that any such interference is justified given the existing safeguards in section 27(1). Under section 27(1), the requirement to leave a public place can be imposed only where the following test is met: first, the presence of the person in that locality is likely to cause or contribute to the occurrence of alcohol-related crime or disorder, and second, the giving of a direction must be necessary for the purpose of removing or reducing the likelihood of such crime or disorder.

Further, the direction must clearly identify the locality to which it relates and cannot prevent an individual from having access to a place where he resides, attending any place he is expected to attend for education or medical treatment, or attending a place in order to comply with any enactment or court order. For these reasons, the Government believes that this measure is proportionate and is compatible with Articles 8 and 11.

644. *Clause 32* states that *Schedule 4* shall have effect. *Schedule 4* provides a power for the Secretary of State make an order specifying conditions relating to the supply of alcohol that are applicable to all premises licences and club premises certificates or to those licences or certificates of a particular description. The Secretary of State can only impose such conditions as considered appropriate for the promotion of the four licensing objectives contained in the Licensing Act 2003. These objectives are the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. *Schedule 4* also allows licensing authorities to impose such conditions as are specified by order by the Secretary of State on two or more premises licences or club premises certificates. The licensing authority can only impose such conditions if there has been nuisance or disorder associated with the consumption of alcohol on or near the relevant premises, the nuisance or disorder is likely to be repeated, and it is appropriate to impose the conditions for the purposes of mitigating or preventing the nuisance or disorder.

645. It has been held in the case of *Tre Traktorer Aktiebolag v Sweden* [1989] that the economic benefit that derives from a licence to carry on a particular economic activity is a possession within the meaning of Article 1 of Protocol 1 to the ECHR although notably in the case of *Andrews v the United Kingdom* [1997] a claim for future loss of income caused by changes in the law was held to be outside the scope of this Article. Licences issued under the Licensing Act 2003 are already issued subject to conditions needed to promote the four licensing objectives of the Licensing Act 2003. That position is not changed by this new power. The conditions specified by an Order made under *Schedule 4* will only imposed where appropriate to promote these objectives. In any event, any interference under Article 1 of Protocol 1 can be justified since it is in the public interest to promote the four licensing objectives and the Government considers this provision is therefore proportionate to its aims.

Part 4 – Injunctions: gang-related violence

646. *Clause 33* sets out that a court may grant an injunction under this Part only once a two-stage test has been satisfied. *Clause 48* clarifies that the "court" in this Part means the High Court or a county court. The Government considers that Article 6 rights are fully respected by the civil court proceedings as they provide for a fair and public hearing by an independent court. *Clause 33* makes it clear that the standard of proof, in relation to the first stage of the test (whether the respondent has engaged in, encouraged or assisted gang-related violence) is the civil balance of probabilities. The Government considers that since the injunction is a civil order, granted in the civil courts, breach of which is a civil contempt of court, the only appropriate burden of proof to be applied is the civil burden of proof.

647. *Clauses 34* and *35* set out details of the contents, including the types of prohibitions and requirements, of the injunction. Any of the prohibitions and requirements has the potential to engage Articles 8, 10 and/or 11. All of these are qualified rights. The injunction is aimed at preventing gang-related violence which is a legitimate aim, namely the prevention of disorder and crime, in a democratic society. Since the court can only impose a prohibition or requirement that is necessary in order to prevent gang-related violence or to protect the person against whom the injunction is granted from gang-related violence, the Government is satisfied that any restriction will be proportionate and therefore compliant with Articles 8(2), 10(2) and 11(2). Further safeguards include that the court may set review hearings and that the respondent or the applicant can apply for the injunction to be varied or discharged (*clause 41)*. Decisions of the court can be appealed.

648. Express provision is made in *clause 34* that the injunction must avoid, as far as practicable, any conflict with the respondent's religious beliefs and/or any interference with the respondent's work or attendance at an education establishment. The Government considers that this is sufficient to ensure compatibility with Article 9 and Protocol 2, Article 2.

649. *Clauses 38*, *39* and *40* provide for applications to be made without notice and for interim injunctions to be granted, either when a hearing at which the respondent is present is adjourned, or where an application made without notice is successful.

650. An interim injunction may be granted when is appears "just and convenient" do to so, where an on notice hearing is adjourned. The "just and convenient" test is set out by the Supreme Court Act 1981 (section 37) in relation to any injunction and therefore the Government is retaining the test for these interim injunctions.

651. A court may only grant an interim injunction made on a without notice application when the court considers it necessary to do so. The Government has set this higher test in order to ensure that these without notice interim inunctions are used sparingly. The Court of Appeal has determined that Article 6 rights are not automatically engaged by without notice interim orders: *R(M) –v- Secretary of Sate for Constitutional Affairs [2004] EWCA Civ 312*.

652. *Clause 41* is a further safeguard for the respondent which ensures proportionality in relation to the granting of an injunction, the contents of an injunction and its duration – a court may vary or discharge the injunction either on application from either the applicant or the respondent, or at a review hearing, set by the court.

653. The Government is satisfied that these clauses are compliant with the ECHR.

654. *Clause 42* sets out that a constable may arrest someone who is reasonably suspected of being in breach of a provision in an injunction to which a power of arrest is attached. *Clause*

44 provides for the remand (either on bail or in custody) of an individual should the court consider that a medical report is required.

655. *Clause 45* inserts *Schedule 5* which allows the court to remand an individual on bail (including conditional bail) or in custody and sets out time limits for remands in custody. *Clauses 42, 43, 44, 45* and the new Schedule engage Article 5, however the Government is satisfied that these clauses provide for the lawful arrest and detention of a person for non-compliance with a lawful order of the court. The Government is therefore satisfied that these clauses are compatible with the ECHR.

Part 5 - Proceeds of crime

656. Under POCA, the amount by which a convicted criminal has benefited from his criminal conduct may be recovered by means of a confiscation order. *POCA also* provides that property and cash that represent the proceeds of crime may be recovered in civil proceedings. In either case, Article 1 of Protocol 1 is engaged, as a person has their use of property controlled, or there is an interference with their property. Such an interference may be justified if it satisfies three criteria. These are that it is in accordance with the law, carried out for the general interest, and the measure must be proportionate to the aim pursued. The fact that these amendments would be contained in legislation that sets out the detailed circumstances when they apply would meet the first criterion. All of the measures have as their aim the general interest in the prevention of crime and the recovery of the proceeds of crime, and as such satisfy the second criterion. The question of proportionality is examined in relation to each issue below. Article 8 may also be engaged in some circumstances, and any interference with a person's private and family life or home would need to be justified under Article 8(2) on the grounds that such a measure is proportionate for the purpose of the prevention of disorder or crime.

Confiscation

657. The new powers of search and seizure, detention and sale to be introduced by the Bill are to assist in the enforcement of confiscation orders. *Clauses 50* to *52* provide the Crown Court with the power to make provision in a restraint order, authorising the detention of property subject to that restraint order, where that property has been seized under certain powers. The restraint order may authorise the retention of the seized property for the duration of the restraint order. The property could then be sold to satisfy a confiscation order (see below). A restraint order may be made whilst a criminal investigation or criminal proceedings are ongoing, or whilst reconsideration of a confiscation order is ongoing, provided that certain tests are met. Any party affected by a restraint order may challenge it and on such an application, the Crown Court may vary or discharge it. Any affected party may therefore apply for a variation of the restraint order to remove the provision authorising detention of the property. When considering a restraint order, the Crown Court will take account of the estimated amount of the person's benefit from their criminal conduct and estimated value of the person's realisable property, to ensure that only property up to or less than the value of the person's benefit is restrained. The Government considers that these safeguards ensure that this

power constitutes a proportionate interference with property in terms of Article 1 of Protocol 1.

658. *Clauses 53* to *55* provide new powers to search for and seize personal property to prevent it being made unavailable to satisfy a confiscation order. The new power will be available once a person has been arrested, criminal proceedings begun against them, or where an application for reconsideration of confiscation proceedings has been made or is to be made. The search and seizure powers require, if practicable, prior authorisation either by a magistrates' court or, failing that, by a senior officer's authorisation. Additional safeguards are provided in relation to the exercise of the search and seizure powers if prior judicial approval is not obtained. In all cases, an application for a court order will be required for the continued detention of the property beyond 48 hours. Any person affected by the order may apply to the court for its variation or discharge. The seizure power does not extend to 'exempt property', which includes items necessary for the defendant in their employment or business, and such clothing, bedding, furniture and household equipment as are necessary for satisfying the basic domestic needs of the defendant and the defendant's family. A Code of Practice will be drafted to cover the exercise of these powers, to ensure that they are exercised proportionately. There is also provision obliging an appropriate officer who detains seized property under the new powers of detention to release that property if the conditions for detention cease to be satisfied. The Government considers that these safeguards ensure that the powers will be exercised proportionately.

659. *Clauses 56* to *58* provide a power for property held by law enforcement following its seizure to be sold in order to satisfy a confiscation order. This would only apply if the time to pay under the confiscation order had already come due, and it would require a magistrates' court order to authorise the sale of the property. It would avoid the need for an enforcement receiver to be appointed. There will be a right for third parties to apply to set aside the court's order, and in this way equivalent safeguards will be in place to those available when an enforcement receiver sells property in order to satisfy a confiscation order. The Government considers that any interference with property is proportionate in terms of Article 1 of Protocol 1.

Civil Recovery

660. *Clause 60* extends the limitation period for civil recovery under POCA from 12 years to 20 years. This will apply only to causes of action accrued within the preceding 12 years (i.e. relating to property acquired by unlawful activity within the past 12 years), in order to be in line with the existing degree of retrospectivity under POCA. It is considered that this amendment is proportionate in terms of Article 1 of Protocol 1. As the scheme is a civil recovery scheme, Article 7 has no application.

661. *Clause 61* creates a new power to search vehicles as part of the cash recovery scheme. This is an addition to the existing powers of search of premises and search of a person, and the Government considers that the vehicle search power is a proportionate interference with Article 8, justified in the interests of the prevention of crime.

662. *Clause 62* extends the period during which seized cash may be detained before a further court order is required from three months to six months. This is to enable further investigations to be carried out to establish whether the cash can be forfeited under the summary recovery provisions (in Chapter 3 of Part 5 of POCA). Safeguards apply during the time that cash is detained: the person from whom the cash was seized, or a third party claiming that the cash belongs to him or her, may apply to the magistrates' court for the release of all or part of the cash. In addition, compensation is payable in certain circumstances if the cash is not ultimately forfeited, and cash may not be forfeited below the minimum amount (currently £1,000), to ensure that the powers are proportionate in terms of tackling relatively more serious crime. In view of these safeguards, the Government considers that the amendment is proportionate in terms of Article 1 of Protocol 1.

663. *Clause 63* introduces a new scheme for the administrative forfeiture of cash under Chapter 3 of Part 5 of POCA (the civil recovery of cash in summary proceedings). Currently cash is forfeited pursuant to a magistrates' court order. The new scheme provides that in uncontested cases the cash may be forfeited by a senior officer's forfeiture notice. As soon as any person with an interest in the cash objects, the administrative forfeiture notice lapses. Additional safeguards are provided, including a subsequent right to apply to the court to set aside the forfeiture, and provision for an out-of-time application in exceptional circumstances. Furthermore, the administrative forfeiture notice cannot be made unless the cash was initially detained pursuant to a magistrates' court order. The Government considers that the scheme is a proportionate interference with property, in terms of Article 1 of Protocol 1, and is a fair procedure in terms of Article 6.1 (the determination of a civil right), given all of the safeguards in place.

Part 6 - Extradition

Return to overseas territory

664. *Clause 70* (return from category 1 territory) substitutes a new section 59 into the Extradition Act 2003 (the 2003 Act) which specifies what is to happen to a person's UK sentence where that person returns to the UK having been extradited to a requesting territory while serving the UK sentence. Where on return to the UK the person in question is not entitled to be released from detention pursuant to the UK sentence, new section 59(5) provides that the person is liable to be detained and if at large is to be treated as unlawfully at large.

665. As new section 59(5) allows a person to be detained pursuant to their UK sentence, it is likely that Article 5 of the ECHR will be engaged. However, as the person in question would be being detained pursuant to a sentence imposed following conviction it is the Government's view that detention under new section 59(5) would fall squarely within the terms of Article 5(1)(a). As the person would be being detained pursuant to their UK sentence they would have the same right to be informed of the reasons for their detention and the same avenues for challenging the legality of their detention as any other UK prisoner. For these reasons the Government is satisfied that new section 59(5) is compatible with Article 5.

666. New sections 59(6)-(12) provide that where a person comes back to the UK having been extradited to a foreign territory while serving a UK sentence and that person is entitled to be released from detention on licence, they can be taken into custody by a constable or an immigration officer for the purpose of being conveyed to a place where they could have been detained pursuant to their sentence prior to extradition, in order to then be released on licence. Section 59(9) stipulates that where a person is taken into custody pursuant to these powers they must be released on licence within five working days.

667. The Government's view is that detention for the purpose of imposing a licence is likely to engage Article 5, but that as detention under the powers in sections 59(6)-(12) would be for the purpose of imposing a licence in order to allow for release under a UK sentence, it would be pursuant to a lawful procedure and for a purpose covered by Article 5(1)(a) ("the lawful detention of a person after conviction by a competent court"). In light of the terms of section 59(9) it is clear that a person detained under these powers could only be kept in custody for a maximum of five working days; were they to be detained beyond this time limit they could bring a legal challenge to detention. For these reasons the Government is satisfied that detention under the powers in new sections 59(6)-(12) is compatible with Article 5.

668. *Clause 71* (return from category 2 territory) substitutes a new section 132 into the 2003 Act. New section 132(5) is identical in its practical effect to new section 59(5). The Government therefore takes the view that Article 5 of the ECHR is engaged, but that (for the reasons set out above) the provision is compatible with that Article.

669. New sections 132(6)-(12) are identical in their practical effect to new sections 59(6)-(12). The Government accordingly takes the view that, while Article 5 of the ECHR is likely to be engaged, for the reasons set out above the provisions are compatible with that Article.

Extradition to UK

670. *Clause 72* makes provision as to returns to extraditing territory etc.

671. Section 143 of the 2003 Act currently provides a mechanism under which a person serving a sentence in an EU member state can be extradited to the UK subject to the provision of an undertaking by the Secretary of State that the person will be returned to the Member State in order to serve the remainder of their foreign sentence. Similarly, where a person is extradited to the UK subject to the condition that they are returned to that Member State to serve any sentence *imposed in the UK*, section 144 of the 2003 Act provides for the return of that person and the remittal of their UK sentence. *Clause 72* extends the existing powers available under sections 143 and 144 so as to cover *all territories* from which a person is extradited to the UK. The provisions the clause would insert into the 2003 Act also allow the UK to seek a cross undertaking that the territory to which the person is to be returned will then return the person to the UK to serve the remainder of their UK sentence. The provisions also set out how a person's UK sentence falls to be enforced on their return to the jurisdiction.

672. New section 153A(3)(a) of the 2003 Act, which is inserted by *clause 72*, allows the Secretary of State to give an undertaking that a person who is serving a sentence of imprisonment in a foreign territory and is extradited to the UK for the purpose of criminal proceedings will be kept in custody for the duration of those proceedings. On the basis that a person can be detained pursuant to an undertaking given under new section 153A(3)(a) the Government is of the view that the provision would engage Article 5 of the ECHR. Article 5(1) guarantees that no one shall be deprived of his liberty save in the circumstances provided for in Article 5(1)(a)-(f) and in accordance with a procedure prescribed by law. Where a person has been extradited to the UK for the purpose of criminal proceedings and subject to an undertaking that they will be returned to the extraditing territory at the conclusion of those proceedings it is the Government's view that detention can be justified under Article 5(1)(a) ("the lawful detention of a person after conviction by a competent court"), under Article 5(1)(c) ("the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence") and under Article 5(1)(f) ("the lawful arrest or detention…of a person against whom action is being taken with a view to…extradition"). As the person would be detained for the purpose of criminal proceedings in the UK they would also be entitled to be informed of the reasons for their detention in the same way as anyone else who is detained for the purpose of trial and would be able to apply for bail (albeit that when an undertaking has been given that the person has been kept in custody, section 154 of the 2003 Act provides that bail may only be granted in exceptional circumstances). A refusal of bail could be appealed to the Crown Court and any decision of the Crown Court could then be challenged in proceedings before the High Court. For all of these reasons the Government is satisfied that new section 153A(3)(a) is compatible with Article 5. It is also to be noted that section 143(3)(a) of the 2003 Act, which is cast in almost identical terms, was the subject of section 19(1)(a) statement of compatibility when the 2003 Act was passed.

673. New section 153A(3)(b) enables the Secretary of State to give an undertaking that a person will be returned to the extraditing territory to serve the remainder of their foreign sentence at the conclusion of the UK proceedings. In view of the fact that new section 153A(3)(b) provides for the return of a person to another jurisdiction, the Government's view is that all of the Articles of the ECHR are potentially engaged by this provision. As in context of the immigration and extradition, there is an argument that by undertaking to return a person to another territory the Secretary of State must ensure that the treatment the person faces in that territory does not breach the terms of the ECHR. It is for this reason that new section 153A(2) of the 2003 Act would provide the Secretary of State with a discretion as to whether or not to give an undertaking as to return to the extraditing territory. In exercising this discretion the Secretary of State would be required to act in accordance with section 6 of the Human Rights Act 1998 and could only therefore provide an undertaking where satisfied that compliance with that undertaking would not give rise to a breach of the ECHR. Any decision to provide an undertaking could be challenged by judicial review. Section 153D also provides that nothing in section 153A should be read as requiring the return of a person to a territory in a case where the Secretary of State is not satisfied that return is compatible with the ECHR. For these reasons the Government's view is that the provision of a temporary surrender

undertaking would be compatible with the terms of the ECHR. In reaching this conclusion the Government has noted that sections 143 and 144 of the 2003 Act, which allow for similar undertakings to be given as to return to the extraditing state at the conclusion of UK proceedings, were the subject of a section 19(1)(a) statement of compatibility.

674. Where an undertaking has been given under new section 153A(2), new section 153A(5) provides authority for a constable to remove the person in question from a prison or any other place of detention and to keep that person in custody until they are conveyed to the extraditing territory.

675. On the basis that a person can be detained pursuant to the powers exercisable under section 153A(2) the Government believes that the provision would engage Article 5 of the ECHR. Where a person has been extradited to the UK for the purpose of criminal proceedings and subject to an undertaking that they will be returned to the extraditing territory at the conclusion of those proceedings it is the Government's view that detention can be justified under Article 5(1)(a) ("the lawful detention of a person after conviction by a competent court"), under Article 5(1)(c) ('the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence') and under Article 5(1)(f) ('the lawful arrest or detention…of a person against whom action is being taken with a view to…extradition'). A person would in practice only be kept in custody under section 153A(5) for the time taken to convey them to the airport where they would then be collected by agents of the extraditing state, but if they wish to challenge detention during this period they could do so by bringing an application for habeas corpus. For these reasons the Government is satisfied that new section 153A(5) is compatible with Article 5. In reaching this conclusion the Government noted that the all but identical terms of existing section 197(6) of the 2003 Act were the subject of a section 19(1)(a) statement when that Act was passed.

676. New section 153B(3) provides that where a person comes back to the UK after having been returned to a foreign territory pursuant to an undertaking given under new section 153B(2) and is not entitled to be released from detention pursuant to their UK sentence they are liable to be detained and if at large will be treated as unlawfully at large.

677. On the basis that new section 153B(3) allows for a person to be detained the Government's position is that Article 5 of the ECHR would be engaged. However, as they would be being detained pursuant to a sentence imposed following conviction the Government believes that detention under new section 153B(3) would fall squarely within the terms of Article 5(1)(a). As the person would be being detained pursuant to their UK sentence they would have the same right to be informed of the reasons for their detention and the same avenues for challenging the legality of their detention as any other UK prisoner. For these reasons it is the Government's view that new section 153B(3) is compatible with Article 5.

678. New sections 153B(4)-(10) allow a person who comes back to the UK after having been returned to the extraditing territory to serve the remainder of their foreign sentence, to be

taken into custody by a constable or an immigration officer and to be conveyed to a place where they could have been detained pursuant to their UK sentence prior to extradition for the purpose of then being released on licence. Section 153B(7) stipulates that where a person is taken into custody under these powers they must be released on licence within five working days.

679. On the basis that a person can be detained pursuant to the powers contained in sections 153B(4)-(10) the Government accepts that the provision would engage Article 5 of the ECHR. The Government's view is that as detention pursuant to the powers contained in sections 153B(4)-(10) would be for the purpose of imposing a licence in order to allow for release under a UK sentence, it would be pursuant to a lawful procedure and for a purpose covered by Article 5(1)(a) ("the lawful detention of a person after conviction by a competent court"). In light of the terms of section 153B(7) it is clear that a person detained under these powers could only be kept in custody for a maximum of five working days; were they to be detained beyond this time limit they could bring a legal challenge to detention. For these reasons the Government is satisfied that new sections 153B(4)-(10) are compatible with Article 5.

680. New section 153C(3) allows the Secretary of State to give an undertaking that a person will be returned to the extraditing territory to serve any sentence of imprisonment imposed in the UK. As with new section 153A(3)(b) the Government believes that this duty to return a person to an extraditing state could potentially engage any article or the ECHR, but, as with section 153A(3)(b), the Government's view is that the fact that the Secretary of State has a discretion as to whether to give such an undertaking means that an undertaking could only be given where the Secretary of State was satisfied that compliance with it would be compatible with the ECHR. Section 153D also provides that no duty to return arises under section 153C where the Secretary of State is not satisfied that return would be compatible with the ECHR or the Refugee Convention. Again it is to be noted that section 144(2) of the 2003 Act which is of substantially the same effect was the subject of a section 19(1)(a) statement.

681. New section 153C(9) confers on a constable the same powers to remove a person from prison pursuant to an undertaking and to keep them in custody until conveyed to the extraditing territory as were dealt with in relation to new section 153A(5). Accordingly the Government is of the view that the same issues arises in relation to Article 5, but that (for the same reasons as are set out above) the provisions are compatible with the ECHR. It is noted in reaching this conclusion that the near identical terms of existing section 197(6) of the 2003 Act were the subject of a section 19(1)(a) statement when that Act was passed.

Ancillary matters

682. *Clause 75* makes provision about provisional arrests. Section 6(2) of the 2003 Act provides that where someone is arrested following receipt of a provisional request for extradition, that person must be brought before the appropriate judge (as defined in section 67 of the 2003 Act) within 48 hours. Section 6(2A) (as inserted by *clause 75*) requires that a

copy of the full request for extradition (a Part 1 warrant) and the certificate issued under section 2 of the 2003 Act must be provided to the appropriate judge within 48 hours. *Clause 75* provides a mechanism by which the 48 hour period for providing the documents to the appropriate judge as required by section 6(2A) can be extended by a further 48 hours where the appropriate judge, to whom the application is made, is satisfied that the conditions in section 6(2A) of the 2003 Act could not reasonably be complied with within the initial 48 hour period.

683. In view of the fact that *clause 75* allows for the detention of an individual, the Government's view is that Article 5 of the ECHR will plainly be engaged. Where someone is detained following receipt of a provisional request for extradition detention will be in accordance with the procedure prescribed by section 6 and *clause 75* and will be for "the lawful arrest or detention…of a person against whom action is being taken with a view to…extradition" as provided for in Article 5(1)(f). A person arrested and detained in these circumstances will also be informed of the reasons for their detention in open court and will be able to apply for bail if the time period for complying with section 6(2A) is extended. For these reasons the Government is satisfied that detention under *clause 75* would be compliant with Article 5.

684. *Clause 76* provides for the use of live links in certain hearings under the Extradition Act 2003. While the Government accepts that the use of live links in domestic criminal proceedings would potentially engage Article 6 of the ECHR, Article 6 does not apply to extradition proceedings. The use of live links in certain hearings under the Extradition Act 2003 therefore raises no issue under the ECHR.

Part 7 Aviation Security

685. Part 7 makes new provision for the establishment of aerodrome security plans. These plans are drawn up by a security executive group (the group). The plan can require certain stakeholders, i.e. an aerodrome manager, an airline operator or an air cargo agent operating at an aerodrome to make payments to other members of the group if costs are incurred by them regarding the implementation of identified security measures that are set out in the plan and approved by the group.

686. In this respect it could be argued that this involves depriving someone of their possessions in that they must expend money to meet the costs of implementing some or all of the above measures. However the Government believes that such a deprivation operates directly in the public interest by helping to ensure the safety of the travelling public using UK airports. The Government is of the view therefore that the provision is proportionate in that there is a fair and reasonable relationship between the requirement to potentially pay for implementing safety measures at airports and ensuring the safety of the travelling public which is sought to be protected by such payments.

687. Moreover although compensation in cases of deprivation should normally be provided for, the requirement to make payments for identified security measures will be in the interests

of the persons subject to this part of the Bill and not just passengers. Moreover the context of any perceived interference with the property rights of any person subject to this part of the Bill involves the operation of a business for profit that, because of its nature, requires stringent measures to be taken to secure public safety.

688. Part 7 of the Bill also provides for the Secretary of State to act as the final arbiter of disputes arising under this Part of the Bill. For example, if it is proposed that a security stakeholder not directly represented on the security executive group should be required to make a payment, the stakeholder must be given the opportunity to object. If the objection cannot be resolved by agreement, the matter must be referred to the Secretary of State for consideration and determination.

689. Article 6 of the ECHR guarantees the right of access to a court in the determination of an individual's civil right or obligations. The group potentially may make a decision that could be deemed to be determinative of the relevant stakeholder's rights as regards what it is required to do. If a relevant stakeholder objects and remains unsatisfied with the decision of the Secretary of State then it remains open to the stakeholder to challenge the decision by way of an appeal to the High Court which is a court with full jurisdiction for the purposes of Article 6.

Part 8 - Miscellaneous

Criminal records etc

690. The following clauses all potentially engage Article 8 rights:

- *clause 81* (determining applications under section 24 of the Safeguarding Vulnerable Groups Act 2006 ("SVGA")),
- *clause 83* (required information in the declaration under section 30 SVGA),
- *clause 85* (notification of proposal to include person in barred list) and the corresponding provisions in the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 ("2007 Order"),
- *clause 86* (provision of information to the police) and the corresponding provisions in the 2007 Order,
- *clause 91* (sending a copy of basic certificates under Part V to any specified employer)
- *clause 92* (including right to work information on certificates issues under Part V of the Police Act 1997)
- *clause 93* (prescription of other verification of applicant's identity)

- *clause 94* (information to which the Secretary of Sate should have regard when checking the suitability of persons applying to become registered persons)

- *clause 95* (determining applications under Part V).

691. All these clauses involve the requirement either to provide personal information to the Secretary of State or for the Secretary of State to provide personal information to a third party, thereby potentially impacting on rights under Article 8 of the ECHR. These clauses only apply to those who request to become subject to monitoring under the Safeguarding Vulnerable Groups Act 2006 or request a certificate under Part V of the Police Act 1997. The Government considers that any potential interference is a proportionate response in pursuance of the legitimate aim of preventing crime and protecting the public (in particular, vulnerable groups).

Retention and destruction of samples etc

692. Clauses 96 to 98 amend the Police and Criminal Evidence Act 1984 and the Police and Criminal Evidence (Northern Ireland) Order 1998, creating enabling powers to make regulations as to the retention, use and destruction of fingerprints, DNA samples and profiles and other material. The power is included in response to the judgment of the European Courts of Human Rights in the case of *S and Marper v the United Kingdom* on 4th December 2008. [Application Nos. 30562/04 and 30566/04, 4th December 2008]. The Court held that the blanket and indiscriminate power to retention biometric data from people who had not been convicted of an offence failed to strike a fair balance between the competing public and private interests, and accordingly there was a violation of Article 8 of the ECHR in that case. The new enabling powers will enable the Government to create a statutory framework setting out limits on the maximum retention periods of such data according to factors such as the age of the person, the seriousness of the offence for which he was arrested and the nature of the data

Border controls

693. *Clause 99* introduces a new section into the Customs and Excise Management Act 1979 ("CEMA") to enable an officer of Revenue and Customs to require a person entering or leaving the UK to produce their passport or travel documents and answer questions about their journey. The purpose of this new power is to supplement existing CEMA powers in relation to persons arriving in or departing from the UK that, broadly speaking, are limited to baggage examination and questioning about goods imported or to be exported by passengers.

694. Article 6 of the ECHR is likely to be engaged by this provision but in the Government's view will not be infringed by the use of these powers as they will not be used to gain evidence for prosecution purposes. Where, following these routine examinations and/or questions, evidence to suggest the commission of an offence is encountered, the usual Police and Criminal Evidence Act 1984 procedures and safeguards, beginning with the administering of a caution, will come into operation. Although this provision imposes a requirement on a passenger to answer questions the Government considers it does not infringe

the privilege against self incrimination (which is part of the rights contained in Article 6) as the requirement to answer questions is very limited and only relates to a person's journey. Further, the requirement is imposed for the legitimate aim of ensuring customs controls are adhered to and that duty is paid and it is proportionate to achieving that aim. The European Court of Human Rights in the cases of *Weh v Austria* 40 E.H.R.R. 37 and *O'Halloran v Francis* (judgment 29 June 2007) recognised the fact that obligations to provide information to the authorities is a common feature of Contracting States' legal orders and information requirements similar to this provision were found to be compatible with Article 6. This information requirement is based on the existing similar provision relating to baggage in section 78 of the CEMA.

695. Equally, the Government considers that although Article 8 may be engaged by this provision it will not be infringed as the purpose of the power is proportionate and in accordance with the law.

696. The effect of *clause 100* is to define these powers which may be used to detect cash at the frontier. The current detection powers in CEMA tend to refer to "goods". *Clause 100* expressly provides that these same powers can be used in respect of cash, in particular cash which has been obtained through unlawful conduct or is intended by any person for use in unlawful conduct, or where it is being imported into or exported from the EU in contravention of Regulation (EC) No1889/2005 of 26th October 2005 on controls of cash entering or leaving the Community.

697. The powers in question include powers to board and search a ship, aircraft or vessel, or to open containers. To the extent that these powers could engage Article 8 of the ECHR, the Government considers that any interference with that right would fall within the derogation in Article 8(2), being necessary for the prevention of crime.

698. The powers engaged by this clause also include a search of a person. Such a search will engage Article 3 ECHR where it is carried out without due respect for human dignity, or may amount to an interference under Article 8(1). In the latter case the search will be justified under Article 8(2) where it is necessary in order to achieve a legitimate aim and where carried out in accordance with the law. The power to search a person for cash is subject to the same procedural safeguards as the existing power to search for goods under section 164 of the CEMA. In the case of a rub-down search, a person may require to be taken before a superior of the officer concerned, or in the case of a strip or intimate search, before a justice of the peace or a superior of the officer concerned. The justice of the peace or the superior must consider the grounds for suspicion and direct whether the suspect is to submit to the search. As with the existing power to search a person for goods, it is the exercise of the power that will determine whether the relevant convention right is breached and not the power itself.

699. These provisions do not create new powers of seizure or forfeiture of cash, but rather they clarify which powers can be used to detect such cash. To the extent that the operation of these powers will result in an increased seizure of cash, Article 1 of Protocol 1 could be

engaged, but the Government considers that the seizure of recoverable property, or the detection of undeclared EC cash, is justifiable under that Article in the public interest.

700. *Clause 102* will create a prohibition on the importation or exportation of false identity documents. Where such documents are discovered they may be seized under the current provisions in CEMA. To the extent that such forfeiture will constitute a deprivation of property within the scope of the first limb of Article 1 of Protocol 1, the Government considers that it would be justified as in the public interest. Article 6 issues may arise in the event of a prosecution but in such a case it will be necessary for a full criminal investigation to be carried out under the rules of the Police and Criminal Evidence Act 1984, with the corresponding safeguards. To the extent that Article 8 rights are engaged, the Government considers that the new provisions are proportionate and necessary in the interests of national security, for the prevention of disorder or crime and for the protection of the rights and freedoms of others.

701. *Clause 103* contains provision about the importation of offensive weapons. There are related consequential amendments in Part 10 of Schedule 7.

702. Section 141 of the Criminal Justice Act 1988 contains a power to make an order directing that that section applies to any weapon described in the order. Where a weapon is described in such an order, it is an offence to manufacture, sell, hire etc the weapon (under section 141(1)). The importation of that weapon is also prohibited (under section 141(4)). If the weapon is imported in breach of the prohibition, then an offence under section 50(2) or (3) of CEMA may be committed (improper importation).

703. There is a lack of clarity over whether Scottish Ministers have competence to make an order under section 141. This is because such an order operates to prohibit the importation of weapons and the importation of goods is reserved under section C5 of Part II of Schedule 5 to the Scotland Act 1998.

704. The amendments in Part 10 of *Schedule 7* to the Bill remove the provisions on importation from section 141 of the Criminal Justice Act 1988. Therefore, when an order is made under section 141 following these amendments, the only consequences that will flow are those under section 141(1); there will be no importation consequences arising. *Clause 103* creates a new power to prohibit the importation of offensive weapons. This will be exercisable by the Secretary of State and would extend to the United Kingdom. The Government intends to exercise the power to prohibit the importation of the same weapons as are currently specified under section 141. There would however be no time gap between the repeal of the importation prohibition in section 141(4) and the coming into effect of *clause 104* and the first order made under that clause.

705. *Clause 103(2)* to *(4)* contains transitional provisions. These will apply where a weapon has been imported in breach of a prohibition but it cannot be proven whether the prohibition is that imposed by section 141(4) (before it was repealed) or by *clause 103*. In

such a case, it shall be conclusively presumed that the conduct took place after the commencement of *clause 103* and therefore that the relevant prohibition is that in *clause 103*. The purpose of this transitional provision is to ensure that a defendant is not able to escape liability solely on the basis that it cannot be proven which importation prohibition has been breached.

706. This presumption can never operate to a defendant's disadvantage and indeed in one respect, it will operate in his or her favour. This is because prior to *clause 103* coming into force, certain defences (i.e. those which apply where the importation is for the purposes of theatre/film/television under section 141(11A) and (11B)) do not apply in Scotland. When the clause comes into force, importation for these purposes will be permitted as exceptions to the prohibition on importation. Therefore, where the transitional provision applies, the defendant will in all cases be able to rely on the exceptions for theatre/film/television, even where the importation was into Scotland and may have been in breach of section 141(4).

707. The Government has considered whether this transitional provision would engage Article 6 or 7 of the ECHR. The Government considers that the clause is compatible with Article 6. This is because the defendant would always know the nature and cause of the accusation against him. In relation to Article 7, there will always be a prohibition on importation in place, and importation in breach of this prohibition can always be an offence under CEMA. There is no change to the constituent elements of the offence and the defendant will always be able to foresee that importation is prohibited with potential criminal consequences under CEMA. The Government therefore considers that the provision is compatible with Article 7.

708. An exercise of the power under *clause 104* is likely to amount to a control of use. The Government considers that this provision is compatible with Article 1 of Protocol 1 because it will be exercised by the Secretary of State who, under section 6 of the Human Rights Act 1998, is a public authority and will therefore be required to exercise the power in a way compatible with the ECHR.

Football spectators

709. *Clauses 105* to *109* harmonise football banning orders, extending relevant definitions, offences and police stations to the whole of the United Kingdom. Football banning orders imposed in one area (e.g. Scotland) will be enforceable in all parts of the United Kingdom. Football banning orders (under the Football Spectators Act 1989) have been held to be compatible with the ECHR by the Court of Appeal in *Gough and Smith v Chief Constable of Derbyshire* [2002] EWCA Civ 351.

COMMENCEMENT DATE

710. By virtue of *clause 116* the following clauses will come into force on Royal Assent:

- *clause 79* (renaming of the Independent Barring Board)

- *clause 101* (lawful interception of postal items by Revenue and Customs)

- *section 112(3) – (9)* (minor and consequential amendments and repeals and revocations)

- *clauses 113 - 117* (clauses on transition, financial, extent and commencement arrangements for the Bill and the short title of the Bill)

711. *Clauses 99, 100 and 102* (the provisions relating to Border Controls) will be brought into force by means of commencement orders made by the Treasury.

712. *Clause 26* (regulation of lap-dancing and sex-encounter venues), *Schedule 3* and the relevant paragraph in *Schedule 7*, insofar as it relates to England will be brought into force by means of commencement orders made by the Secretary of State, and insofar as it relates to Wales by means of commencement orders made by Welsh Ministers.

713. Part 12 of *Schedule 7*, Part 12 of *Schedule 8* and their related parts will be commenced at the end of two months after the date of Royal Assent. These provisions relate to redundant provisions.

714. All the remaining provisions in the Bill will be brought into force by means of commencement orders made by the Secretary of State. The Secretary of State must obtain consent from the Scottish Minister before bringing into force *clause 105* or *106.*

POLICING AND CRIME BILL

EXPLANATORY NOTES

These notes refer to the Policing and Crime Bill as brought from the House of Commons on 20th May 2009 [HL Bill 48]

Ordered to be Printed, 20th May 2009

LONDON: THE STATIONERY OFFICE

Printed in the United Kingdom by
The Stationery Office Limited

£x.00

HL Bill 48—EN 54/4