

# **POLICE AND JUSTICE ACT 2006**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### *Commentary on Sections*

#### **Part 1: Police Reform**

#### *Section 1 and Schedule 1: the National Policing Improvement Agency*

18. *Subsection (1)* of section 1 establishes the National Policing Improvement Agency (the Agency) as a body corporate. The Agency will be an executive Non-Departmental Public Body .
19. *Subsection (2)* abolishes Centrex and PITO.
20. *Subsection (3)* introduces *Schedule 1*, which makes further provision about the Agency and sets out details of its constitution, objects and powers.

#### *Paragraph 1: The Agency's Objects*

21. The Agency's objects are: to identify, develop and promulgate good policy practice (this would be issued in the form of either non-statutory guidance by the Agency, or Codes of Practice made under section 39 of the Police Act 1996, or as regulations made under section 53A of the 1996 Act); to provide expert operational advice and assistance to "listed police forces" (as defined by paragraph 3 - essentially police forces in England and Wales and other law enforcement agencies operating throughout the United Kingdom); to identify and assess opportunities for and threats to police forces in England and Wales (this might include opportunities presented by new detection methods and threats posed by new crime patterns); share policing issues with international partners; and to provide support to "listed police forces" in connection with the provision of IT, procurement and training services (such services might be provided directly by the Agency or by other providers under contract to the Agency).

#### *Paragraph 2: The Agency's principal power*

22. This paragraph enables the Agency to achieve the objects set out in paragraph 1 by giving it the power to do anything it considers appropriate to attain those objects. *Sub-paragraph (2)(a)* makes it clear that the Agency may support police forces by carrying on activities itself (e.g. operating the Police National Computer following the abolition of PITO, providing training or undertaking procurement work) as well as by assisting police forces in their carrying-on of activities. *Sub-paragraphs (2)(b) and (3)* enable the Agency to accept gifts or loans, where it decides to do so in connection with the discharge of its objects. *Sub-paragraph (4)* precludes the Agency from borrowing money or other property without the consent of the Secretary of State.
23. *Sub-paragraph (5)* requires the Agency to obtain agreement from a Scottish, Northern Ireland or off-shore policing body (collectively termed "restrictedly listed police

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forces”), or the body’s chief officer or the authority that maintains the body, before providing advice, assistance or support to or for the body.

***Paragraph 3: Meaning of “listed police force” and “restrictedly listed police force” in paragraphs 1 and 2***

24. This paragraph defines the terms “listed police force” and “restrictedly listed police force” used in paragraphs 1 and 2. In effect it sets out the Agency’s client list. *Sub-paragraph (4)* enables the Secretary of State to add to the client list by order (subject to the negative resolution procedure).

***Paragraph 4: Consultation – exercise of the powers in relation to Scotland and Northern Ireland***

25. This paragraph provides for the Agency to consult the Scottish Police Services Authority and persons representing the interests of chief constables in Scotland in so far as the Agency’s activities would or might relate to Scottish police forces. The Agency must also consult the Secretary of State for Northern Ireland so far as the Agency’s activities would or might relate to the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve.

***Paragraph 5: Annual Plans***

26. This paragraph requires the Agency to produce an annual plan before the beginning of each financial year published as the Agency sees fit. The plan must include:
- any priorities that the Agency has determined for the year;
  - any strategic priorities determined by the Secretary of State;
  - any performance targets established by the Agency; and
  - a statement of financial resources that will be available to the Agency over the course of that year.
27. Any priorities set by the Agency must be consistent with the strategic priorities determined by the Secretary of State under paragraph 6.
28. *Sub-paragraph (6)* places a duty on the Agency to send a copy of the plan to specified persons and to such other persons as it thinks fit.
29. Before issuing the plan the Agency must consult the Secretary of State, the APA and ACPO and such other persons as it thinks fit.

***Paragraph 6: Strategic Priorities***

30. This paragraph gives the Secretary of State a power to determine strategic priorities for the Agency. These strategic priorities are to be determined following consultation with the Agency, the APA and ACPO. The Scottish Ministers are to be consulted where activities of the Agency would or might relate to policing in Scotland.

***Paragraph 7: Chairman and other members***

31. This paragraph determines the membership of the Agency. It is to consist of a chairman, chief executive, and ordinary members to be appointed by the Secretary of State. The Secretary of State may determine the number of ordinary members. Before appointing the chairman, the Secretary of State must consult with the APA and the ACPO. At least one representative of each of these groups will also be appointed as a member of the board, as well as least one member of the Civil Service. The maximum term of appointment for the chairman and ordinary members is to be 5 years.

***Paragraphs 8 to 10: Tenure***

32. A member of the Agency may resign at any time by giving written notice to the Secretary of State and will hold and vacate the office in accordance with the terms of their appointment. *Paragraph 10* allows the Secretary of State to remove a member from office if they have been absent from meetings of the Agency without the Agency's permission for a period in excess of 4 months, or if the member fails to comply with the terms of their appointment, or is unable or unfit to carry out their duties. Conviction for any offence in England and Wales or elsewhere, or bankruptcy, may also lead to removal.

***Paragraph 11: Re-appointment***

33. A person may be re-appointed as a member or chairman of the Agency.

***Paragraph 12: Remuneration, pensions etc of appointed members***

34. The Secretary of State may determine the remuneration, allowances, pension and, where necessary, compensation payable by the Agency to the chairman and ordinary members.

***Paragraphs 13 to 16: Staff***

35. The Home Secretary will appoint the Agency's chief executive after consultation with the chairman of the Agency. The consultation requirement does not apply to the appointment of the first chief executive.
36. *Paragraph 15* amends the Superannuation Act 1972 to allow staff of the Agency to be members of the Civil Service pension scheme. The Agency must pay the Minister for the Civil Service such sums as the Minister determines in respect of such pensions.
37. *Paragraph 16* allows the Minister for the Civil Service to permit a former member of staff of the Agency to continue to participate in the Civil Service pension scheme if, on ceasing to be a member of the Agency's staff, the person is appointed as a member of the Agency.

***Paragraph 17: Status of staff members as constables***

38. *Sub-paragraphs (1) and (2) of paragraph 17* together ensure that where a serving constable is appointed as a member of staff of the Agency (having been seconded from a police force) they will retain the office of constable for the duration of their employment with the Agency. Section 97(8) of the Police Act 1996 also produces the same effect for seconded constables as a result of the amendments made by *paragraph 72*.
39. *Sub-paragraph (3)* provides that where a person holds the office of constable immediately prior to his or her appointment as chief executive, he or she will hold the rank of Chief Constable.
40. *Sub-paragraph (4)* ensures that members of the Agency holding the office of constable fall under the direction and control of the chief executive of the Agency regardless of whether or not the chief executive is a constable.

***Paragraph 18: Constables employed by the agency: conditions of service***

41. This paragraph relates to the conditions of service of constables employed by the Agency. Under this paragraph any document issued by the Secretary of State in relation to the rules or principles of employed constables must be complied with by the Agency.
42. *Sub-paragraph (2)* sets out the areas in which the rules or principles may, in particular, apply. This includes matters such as the adoption of ranges of pay and allowances.
43. By virtue of *sub-paragraph (3)* the term "employed constable" means a person who is both a constable and an employee of the Agency.

***Paragraph 19: Regulations for constables employed by the Agency***

44. This paragraph confers on the Secretary of State a power to make provision, by regulations, about the government, administration and conditions of service of constables employed by the Agency or seconded to it.
45. *Sub-paragraph (2)* sets out the areas in which the Secretary of State may in particular make provisions through regulations.
46. *Sub-paragraph (3)* provides that regulations relating to matters of conduct or discipline may also authorise or require provision to be made by, or confer discretionary power on, the Agency, the Agency's chief executive or other persons, and may also authorise or require the delegation of functions conferred by or under the regulations.
47. *Sub-paragraph (4)* makes clear that any regulations affecting constables' pay and allowances can take effect retrospectively on a date specified within the regulations. Retrospective effect will not be possible, however, if there is a reduction in the pay and allowances specified in the regulations.

***Paragraph 20: Liability for acts of police members of staff***

48. This paragraph establishes the Agency's liability in respect of any unlawful conduct by constables seconded to the Agency.
49. *Sub-paragraph (2)* provides that the Agency will be a joint tortfeasor where such unlawful conduct by a seconded person is a tort (i.e. the Agency will be liable as if it had jointly with the seconded constable carried out the unlawful conduct).
50. *Sub-paragraph (3)* defines seconded constable for the purposes of paragraph 20.

***Paragraph 21: Payment of amounts in connection with unlawful conduct of any staff***

51. This paragraph confers on the Agency a power to make discretionary payments in respect of damages and costs arising out of unlawful conduct by a member of the Agency's staff.

***Paragraph 22: Committees and sub-committees***

52. This paragraph allows the Agency to delegate any of its functions to a committee or sub-committee of the Agency. A committee or sub-committee can include persons who are not members of the Agency; the Agency may determine and pay such remuneration and allowances as are appropriate to such persons in this category. The paragraph also makes it clear that functions may be delegated to members of staff.

***Paragraphs 23 and 24: Procedure***

53. **Paragraph 23** allows the Agency to determine its own procedures including numbers needed for a quorum (although meetings of the Agency's committees and sub-committees must include at least one person who is a member of the Agency or its staff.) **Paragraph 24** provides that decisions taken by the Agency are not invalidated simply because there are vacancies in the membership of the Agency or because members have been defectively appointed.

***Paragraphs 25 and 26: Application of seal and proof of documents***

54. These paragraphs create a presumption that any document signed on behalf of the Agency is valid and will be received in evidence.

***Paragraph 27: Status***

55. This paragraph specifies that the Agency is not a Crown body.

***Paragraph 28: Annual reports***

56. This paragraph requires the Agency to publish an annual report at the end of each financial year. The report must include an assessment of the extent to which the Agency has carried out the annual plan for that year.
57. *Sub-paragraph (4)* places a duty on the Agency to ensure that a copy of the report is sent to specified persons. It is open to the Agency also to send copies to such other persons as it thinks fit. The Secretary of State must lay a copy of the report before Parliament.

***Paragraph 29: Reports to Secretary of State***

58. This paragraph allows the Secretary of State to require the Agency to submit to him a report on any of its activities. The Secretary of State may determine whether these reports are to be published (*sub-paragraph (3)*). Where a report is published, it may be published with any material excised (*sub-paragraph (4)*) where the material relates to national security interests, or could prejudice the prevention or detection of crime, or could jeopardise the safety of any person.

***Paragraphs 30 to 32: Inspection and post-inspection direction***

59. *Paragraph 30* allows the Secretary of State to require Her Majesty's Inspector of Constabulary to inspect and report on the Agency's efficiency and effectiveness. *Paragraph 31* places a duty on the Secretary of State to make the report of an inspection public, subject to national security and other sensitivity considerations. *Sub-paragraph (3)* of paragraph 31 requires the Secretary of State to send a copy of the inspection report to the Agency and he can direct the Agency to take such measures as are necessary to remedy inefficiency or ineffectiveness.
60. *Sub-paragraph (3)* of paragraph 30 erroneously refers to a provision that was removed from the Bill during its passage through Parliament. It is not capable of having any operative effect, and will not be brought into force.

***Paragraph 33: Payments by Secretary of State to the Agency***

61. This paragraph makes provision for the Secretary of State to make grants to the Agency.

***Paragraph 34: Charges by the Agency and other receipts***

62. The purpose of this paragraph is to authorise the Agency to charge for any goods or services that it provides. Except when the Secretary of State otherwise directs, any income received by the Agency (other than grant income) must be paid over to the Secretary of State. These funds in turn must be paid into the Consolidated Fund (see section 50(2)).

***Paragraph 35: Payments by Agency to police authorities***

63. This paragraph allows the Agency to make payments to a police authority in England and Wales and to a police authority or joint police board in Scotland, and to the Scottish Police Services Authority, for any purpose it considers related to the objects of the Agency.

***Paragraph 36: Accounts***

64. This paragraph imposes duties on the Agency governing the keeping of proper accounts and records in relation to those accounts, the preparation of a statement of those accounts for each financial year, and the sending of copies of that statement to the Secretary of State and the Comptroller and Auditor General. The Comptroller and Auditor General is required to examine, certify and report on the Agency's statement of accounts. The report is laid before Parliament.

***Paragraphs 38 to 42: Property rights and liabilities***

65. These paragraphs allow for a scheme to provide for the transfer to the Agency or the Secretary of State of property, rights and liabilities of Centrex or PITO.

***Paragraph 43: Effect of transfer of employees***

66. This paragraph applies if a scheme under *paragraph 38* provides for the transfer of rights and liabilities under an employee's contract of employment. Its effect is that those rights and liabilities are transferred to the Agency, unless the employee objects to this.

***Paragraph 44: Staff on secondment***

67. This paragraph allows a scheme under paragraph 38 to make provision for a secondment to Centrex or PITO to continue for the remainder of its duration as a secondment to the Agency, subject to the right of a secondee to object.

***Paragraph 45: Deciding matters under a scheme***

68. This paragraph allows the Secretary of State, or any person he nominates, to adjudicate on any matters requiring decision under a scheme under paragraph 38. It also makes provision for the payment of a nominated person's fees and expenses.

***Paragraph 46: Supplementary provision***

69. This paragraph provides for schemes made under paragraph 38 to contain supplementary, incidental, transitional or consequential provision.

***Paragraph 47: Interpretation***

70. *Paragraph 47* sets out definitions of expressions used in the Schedule.

***Paragraph 48: Power to modify objects, functions and structure of the Agency***

71. This paragraph provides a power, exercisable by order (subject to the negative resolution procedure), to make provision changing the objects, functions, name, structure, accountability and management practices of the Agency. If the provision in question would be within the legislative competence of the Scottish Parliament, the order must be made by the Scottish Ministers with the consent of the Secretary of State. Otherwise, it must be made by the Secretary of State. If an order made by the Secretary of State under paragraph 48 would affect a police force or body in Scotland, or the rights and powers of the Scottish Ministers, the consent of the Scottish Ministers is needed.

***Paragraphs 49 to 92: Consequential amendments***

72. These paragraphs make amendments to other legislation in consequence of the creation of the Agency and the abolition of Centrex and PITO.
73. *Paragraphs 80 to 89* amend the Police Reform Act 2002 in order to extend to the Agency the arrangements therein for the investigation of complaints and conduct matters. Such arrangements include oversight by the IPCC.

***New Section 16A of Police Reform Act 2002: the Agency and the IPCC***

74. New section 16A of the 2002 Act (inserted by *paragraph 85*) places a duty on the Agency and its chief executive to comply with the requirements of an investigation by the IPCC and its staff. It also provides for the Agency to provide staff to the IPCC for the purposes of an investigation.

## **New Section 26B of Police Reform Act 2002: National Policing Improvement Agency**

75. New section 26B of the 2002 Act (inserted by *paragraph 87*) places a duty on the IPCC and the Agency to enter into an agreement as to how the IPCC will operate in relation to the Agency's staff and the procedures that will be put into practice. No change may be made to this agreement without the Secretary of State's agreement, and it may not be terminated unless another agreement has been made to replace it. The IPCC will not have any jurisdiction over matters relating to the direction and control of the Agency. The IPCC's authority under this new section only relates to the Agency's activities in England and Wales.

## ***Section 2 and Schedule 2: Amendments to the Police Act 1996***

76. This Section gives effect to *Schedule 2* which makes amendments to the Police Act 1996 (the "1996 Act").

### ***Paragraphs 1 to 6: Membership etc of police authorities***

77. *Paragraphs 1* to *6* amend the 1996 Act so as to provide that the detailed provision for the composition of police authorities, the appointment process for non-councillor members and the remuneration of members are to be as set out in regulations rather than, as now, on the face of the 1996 Act. *Paragraph 2* of *Schedule 2* substitutes a new *Schedule 2* into the 1996 Act: this contains the regulation-making power in respect of police authorities outside London. The new *Schedule 2* requires the regulations to specify that councillor members of a police authority are to be appointed by the council from which they are drawn; that the other members are to be appointed by the existing membership of the police authority from amongst a short-list recommended as suitable for appointment by a selection panel; that at least one lay justice is to be included amongst these non-councillor members; and that the chairman and vice-chairman or vice-chairmen of a police authority are to be appointed by the authority. A new *Schedule 2A*, inserted by *paragraph 4*, makes parallel provision for the Metropolitan Police Authority. The provision required to be made by regulations under the new *Schedule 2A* is broadly similar to that which *Schedule 2* requires. The main difference is that the chairman of the Metropolitan Police Authority will be either the Mayor of London or a person appointed by the Mayor. The Mayor will also appoint the vice-chairman, or vice-chairmen, of the Metropolitan Police Authority. The regulations made under *Schedule 2* and *Schedule 2A* will be subject to the negative resolution procedure.

### ***Paragraphs 7 and 8: Functions of police authorities***

78. Under section 6(1) of the 1996 Act, a police authority's primary function is to 'secure the maintenance of an efficient and effective police force for its area'. New section 6(1) (b) of the 1996 Act, inserted by *paragraph 7*, provides that it shall also be a duty of a police authority to hold the chief officer of the force to account for the exercise of his functions and those of the police officers and police staff under his direction and control. A similar duty is already placed on the Northern Ireland Policing Board in relation to the Police Service of Northern Ireland (see section 3(3)(a) of the Police (Northern Ireland) Act 2000).
79. *Paragraph 8* inserts new section 6ZA into the 1996 Act. This new section confers a power on the Secretary of State to confer additional functions on a police authority by order. Such functions may include, but are not limited to, a requirement:
- to monitor the performance of the police force for its area in complying with the duties imposed under the Human Rights Act 1998 or other enactments and the carrying out of any plan issued under new section 6ZB of the 1996 Act inserted by *paragraph 9*;

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- to secure that arrangements are put in place by the force to co-operate with other forces (for example, to tackle cross-border organised crime);
  - to promote diversity within the force and the authority.
80. The Secretary of State must consult with the APA and ACPO and such other persons as he thinks fit before making any order under new section 6ZA. The order is to be subject to the negative resolution procedure.

***Paragraphs 9 to 13: Police authorities: objectives, plans and reports***

81. *Paragraph 9* inserts new sections 6ZB and 6ZC into the 1996 Act.
82. New section 6ZB provides for each police authority to issue, before the beginning of each financial year, a policing plan. The plan will include a statement of the objectives determined by the authority for the year in which the plan is issued, and the proposed arrangements for policing the area during the following three years. New section 6ZB confers power on the Secretary of State to make regulations supplementing the provision made by the section: this power may be exercised so as to stipulate other matters to be included in policing plans, and will be subject to the negative resolution procedure.
83. New section 6ZC contains an order-making power under which the Secretary of State may require police authorities to issue reports concerning the policing of their areas. The exercise of the order-making power is subject to the negative resolution procedure.
84. The Secretary of State must consult with the APA and the ACPO and such other persons as he thinks fit before making any order under new section 6ZB or 6ZC
85. New sections 6ZB and 6ZC replace existing provisions in the 1996 Act which require police authorities to prepare a three-year strategy plan (section 6A); set local policing objectives (section 7); issue a local policing plan (section 8); and issue an annual report (section 9).

***Paragraphs 14 and 15: Appointment of deputy chief constables etc***

86. *Paragraph 14* makes new provision in relation to the appointment of deputy chief constables. It enables police authorities to appoint more than one deputy chief constable. The approval of the Secretary of State must be sought before a police authority can increase the number of deputy chief constables. Otherwise, the process for appointments for deputy chief constables is unchanged.
87. *Paragraph 15* makes new provision in relation to the power of deputy chief constables to exercise the functions of the chief constable in his absence. It requires that, where a force has more than one deputy chief constable, the chief constable must designate the deputy chief constables in order of seniority for the purposes of the exercise of the chief constable's powers and duties. This designation is solely for the purpose of this provision and has no other implications regarding the seniority of the deputy chief constables.

***Paragraphs 16 and 17: Civilian employees of police authorities***

88. Section 15 of the 1996 Act enables a police authority to employ civilian staff to assist its police force or to enable the police authority to discharge its functions. The effect of section 15(2) and (3) of the 1996 Act as it stands is that people so employed are to be under the direction and control of the chief officer of the force concerned, unless the chief officer and the police authority agree otherwise or, in the absence of such an agreement, the Secretary of State determines that a person so employed by the authority need not be under the direction and control of the chief officer.

89. *Paragraph 16* amends section 15 of the 1996 Act. The effect of the amendment is that those persons who are employed by the police authority solely to assist its police force must be under the direction and control of the chief officer of that force: there is no provision for the authority and the chief officer to agree, or the Secretary of State to determine, otherwise. However persons who are employed by the police authority to enable it to discharge its functions need not be under the direction and control of the chief officer.
90. Section 24 of the 1996 Act enables the chief officer of any police force to provide constables or other assistance to another police force to meet any special demand on that other force's resources. Section 24(3) provides that where a constable is provided to another force under section 24, he is under the direction and control of the chief officer of that other force. *Paragraph 17* inserts a new section 24(3A) into the 1996 Act. The effect of this new subsection is that if police staff employed under section 15 of the 1996 Act to assist a police force are provided to another force under section 24, they are to be under the direction and control of the chief officer of that other force.

***Paragraphs 18 to 20: Clerks to police authorities renamed chief executives***

91. *Paragraph 18* amends section 16 of the 1996 Act to provide for the "clerk" of a police authority to be restyled its "chief executive". *Paragraphs 19* and *20* contain consequential amendments and transitional provision.

***Paragraphs 21 to 23: Jurisdiction of special constables***

92. *Paragraph 21* amends section 30 of the 1996 Act by substituting the existing subsection (2). The effect of the substituted section 30(2) is to permit special constables to use their constabulary powers in forces throughout England and Wales. At the moment they have the powers and privileges of a constable only in the force area for which they are appointed and any other contiguous police area. This change means that subsections (3) and (4) of section 30 are no longer needed, so these are omitted by sub-paragraph (3).
93. These amendments will bring special constables in line with regular officers. For instance, a special constable will be able to act as a prisoner escort when prisoners are being collected from another force, and to make an off-duty arrest in another force area.
94. *Paragraph 22* amends section 24(3) of the 1996 Act so as to provide that, where a constable from the Metropolitan Police Service is provided to another police force under section 24, that constable will be under the direction and control of the chief officer of that other police force.
95. *Paragraph 23* amends section 27(2) of the 1996 Act to provide for an exception to the general position whereby special constables appointed for a police area are under the direction and control of the chief officer of the force for that area. The exception applies where special constables are provided to another force under section 24, in which case the special constables will for that time be under the direction and control of the chief officer of that other force.
96. The amendment also has the effect of clarifying that the reference to a constable in section 24(3) includes a reference to a special constable.

***Paragraphs 24 to 26: Secretary of State's strategic functions in relation to police authorities***

97. *Paragraph 24* repeals sections 36A (under which the Secretary of State is under a duty to issue an annual National Policing Plan) and 37 (under which he may determine objectives for police authorities by order) of the 1996 Act.
98. *Paragraph 25* inserts a new section 37A into the 1996 Act. Subsection (1) of the new section gives the Secretary of State the power to determine the strategic priorities for

police authorities. Subsection (2) sets out that the APA and ACPO must be consulted before the Secretary of State can determine the strategic priorities. Subsection (3) makes provision for the Secretary of State to publish the priorities in an appropriate manner. Subsection (4) provides that the strategic priorities will apply to the police authorities established by section 3 of the 1996 Act and the Metropolitan Police Authority.

99. *Paragraph 26* makes consequential amendments to section 38 of the 1996 Act, under which the Secretary of State may direct police authorities to establish levels of performance in relation to the strategic priorities set under the new section 37A.

***Paragraphs 27 to 29: Power to give directions to police authority or chief officer of police***

100. *Paragraphs 27 to 29* insert new sections 40, 40A and 40B into the 1996 Act, replacing the intervention powers in sections 40, 41A and 41B which were introduced by the Police Reform Act 2002 and which made provision for the making of directions where the whole or any part of a police force is considered to be under-performing or at risk of under-performing. The new sections widen the sources of information which the Secretary of State can draw upon in deciding whether to exercise these powers and bring under-performance by police authorities within the scope of these powers. The amended powers place a duty upon the Secretary of State to consult Her Majesty's Inspectorate of Constabulary on the grounds for intervention and a duty to publish the Inspectorate's response.

**New section 40 of the Police Act 1996: Power to give directions in relation to police force**

101. Subsections (1) and (2) of new section 40 (inserted by paragraph 27) provide that where the Secretary of State is satisfied that a police force is failing to discharge any of its functions effectively, whether generally or in particular respects, or where he is of the view that a force will fail unless remedial measures are taken, he may direct the police authority to take specified measures to remedy that failure, or prevent that failure, as the case may be.
102. These subsections widen the sources of information which the Secretary of State can draw upon in deciding whether to exercise these powers. These wider sources of information could include the findings of a public inquiry into a force or the national performance assessments of police forces which are now produced. Previously, the only source of information which could be considered was a report from Her Majesty's Inspectorate of Constabulary.
103. Subsection (3) of new section 40 provides that the Secretary of State may, when directing specified measures under subsection (1) or (2), specify the submission to him of an action plan setting out the measures to be taken to remedy the failure or to prevent the failure (as the case may be). This short subsection replaces the longer and more protracted existing sections 41A and 41B of the 1996 Act which are repealed by *paragraph 29*. Experience since the 2002 Act has shown that in most cases where serious under-performance has arisen, there have been opportunities for improvements, and non-statutory plans intended to address under-performance have already been drawn up. However, this measure could be specified as part of the direction if no action plan existed.
104. Subsection (4) of new section 40 is intended to ensure that the power to give directions is only used as a last resort. A duty is placed on the Secretary of State to provide the police authority with the evidence that the force or part of the force is failing, and afford them the opportunity to make representations and any such proposals for the taking of remedial measures that would make the giving of the direction unnecessary. The Secretary of State will be under a duty to consider any such representations and any such proposals.

105. Subsection (5) of new section 40 provides that if the Secretary of State is satisfied that the police authority has already been made aware of the matters which give rise to the need for a direction to be given, had sufficient information to identify the remedial measures to address this without the need for a direction, and had a reasonable opportunity to take such measures, then the obligation on the Secretary of State to give the police authority further opportunities to deal with the issues at hand and to make representations on them (in subsection (4)) shall not apply.
106. Subsection (6) of new section 40 provides that the Secretary of State must, before directing specified measures under subsection (1) or (2), make Her Majesty's Chief Inspector of Constabulary aware of the matters which give rise to the need for the direction and provide Her Majesty's Chief Inspector of Constabulary with an opportunity to make written observations which will be published in such a manner that the Secretary of State feels appropriate.
107. Subsection (7) of new section 40 requires a police authority given a direction under section 40 to comply with it.

#### **New section 40A of the Police Act 1996: Power to give directions in relation to police authority**

108. New section 40A of the 1996 Act is in similar terms to new section 40.
109. Subsections (1) and (2) of new section 40A provide the same intervention trigger as that for directions in relation to police forces. Where the Secretary of State is satisfied that a police authority is failing to discharge any of its functions effectively, whether generally or in particular respects, or where he is of the view that a police authority will so fail unless remedial measures are taken, he may direct the police authority to take specified measures to remedy that failure or to prevent that failure, as the case may be.
110. Subsection (3) provides that directions to police authorities may specify the submission to the Secretary of State of an action plan setting out the measures which are intended to remedy the failure in question or (as the case may be) prevent such a failure occurring.
111. Subsections (4) and (5) of new section 40A provide the same opportunity for police authorities to be given the relevant information and make representations and remedial measures as are set out for police forces in new section 40(4) and (5).
112. Subsection (6) of new section 40A provides that the Secretary of State must, before directing specified measures under subsection (1) or (2), make Her Majesty's Chief Inspector of Constabulary aware of the matters which give rise to the need for the direction and provide Her Majesty's Chief Inspector of Constabulary with an opportunity to make written observations which will be published in such a manner that the Secretary of State feels appropriate.
113. Subsection (7) of new section 40A requires that a police authority that is given a direction under this section shall comply with it.
114. Subsection (8) of new section 40A confirms that the Secretary of State may exercise his powers under both new section 40 and new section 40A in respect of the same or different matters and at the same time or at different times.

#### **New Section 40B of the 1996 Act: Procedure for directions under section 40 or 40A**

115. New section 40B reproduces much of existing section 41B of the 1996 Act, which is repealed by [paragraph 29](#). It provides the Secretary of State with a power to make further provision in regulations as to the procedure to be followed where a proposal is made for the giving of a direction under new section 40A or 40B in relation to a police force or police authority.

116. Subsection (2) of new section 40B provides that before making any regulations, the Secretary of State shall consult with the APA, ACPO and any such other persons as he thinks fit. Such regulations may make different provision for different cases and circumstances (subsection (3) of new section 40B). Regulations made under this section are subject to the affirmative resolution procedure (subsection (4) of new section 40B).
117. Subsection (5) of new section 40B requires the Secretary of State to notify a chief officer of police of a direction issued to the police authority which has responsibility for his force.
118. Subsections (6) and (7) of new section 40B provide that the Secretary of State must lay a copy of the direction, in relation to a force or police authority, and a report about it before Parliament. The report may relate to more than one direction.
119. *Paragraph 28* amends section 41 of the 1996 Act to ensure that the power the Secretary of State has under that section to include in a direction to a police authority that its budget requirement for any financial year is not to be less than a specified amount covers a direction under new section 40A as well as under the substituted section 40.

***Paragraph 30: Arrangements for obtaining the views of the community on policing***

120. *Paragraph 30* amends section 96 of the 1996 Act which places a duty on police authorities to make arrangements for obtaining the views of the community on policing the force area and the cooperation of the community in preventing crime. *Sub-paragraph (2)* amends section 96(1)(b) of the 1996 Act to extend the duty on police authorities to cover the making of arrangements for seeking the cooperation of the community in preventing anti-social behaviour (in addition to the prevention of crime). *Sub-paragraph (4)* substitutes subsections (6) to (10) of section 96. The new subsections enable the Secretary of State to make regulations (subject to the negative procedure) supplementing the general duty on police authorities imposed by section 96(1). The Secretary of State must consult with the APA and the ACPO before making any order under new section 96.

***Section 3: Delegation of police authority functions***

121. Part 6 of the Local Government Act 1972 enables a police authority to provide for its functions to be discharged by a committee, a sub-committee or an officer of the authority. However, a police authority may not arrange for its functions to be discharged by a committee or officer in respect of only part of its area.
122. *Section 3* confers additional flexibility on police authorities to delegate their functions, in particular, by providing for a power to delegate to an area committee or to an individual member of the authority. By virtue of section 101(6) of the Local Government Act 1972 police authorities will be barred from delegating their precepting function in this manner. The section also enables such area committees to include people other than members of the police authority on them.
123. The provision also enables the Secretary of State to impose limitations on the kinds of functions that police authorities can delegate by area, on the make-up of area committees, and in respect of the officers and members of authorities to whom delegation can be made.

***Section 4: Police authorities as best value authorities***

124. *Section 4* amends section 1 of the Local Government Act 1999 to limit the extent to which the best value provisions of that Act apply to police authorities. Section 4 removes from police authorities the requirement to conduct best value reviews and publish best value performance plans. The overarching best value duty, to make arrangements to secure continuous improvement in the way in which functions are

exercised, having regard to a combination of economy, efficiency and effectiveness, will continue to apply.

125. *Subsection (1)* provides that a police authority is not a best value authority for the purpose of certain provisions in Part 1 of the 1999 Act. Those provisions are:
- section 5, under which a best value authority must conduct best value reviews of its functions;
  - section 6, under which a best value authority must prepare a best value performance plan for each financial year;
  - sections 7 to 9, which require best value performance plans to be audited and place a duty on the best value authority to publish the auditor's report; and
  - sections 13(5) and 15(2)(a) and (b), which will no longer be relevant once a police authority does not have to prepare a best value performance plan.
126. *Subsection (2)* clarifies that references in other Acts to best value authorities will, if the context allows, continue to include police authorities.

### ***Section 5 and Schedule 3: Power to merge schemes***

127. *Section 5* and *Schedule 3* provide the power to make provision replacing the pensions regulations made under the Police Pensions Act 1976 (which apply to police constables in England, Wales and Scotland), and under the Police (Northern Ireland) Act 1998 (which apply to constables in Northern Ireland), so as to establish a single, unified pension scheme for persons who became members of one of the original police schemes before 6 April 2006. The Finance Act 2004 limits the benefits which can be offered to persons who join a pension scheme after 6th April 2006. As a consequence any police officer who joined a police pension scheme before 6 April 2006 would, if transferring between the Police Service of Northern Ireland and a police force in Great Britain after that date, be obliged to move into a less advantageous scheme. This is a disincentive to such transfers. The purpose of having a unified pension scheme is to preserve the position as it was before the changes made by the Finance Act 2004.
128. The power to replace the existing regulations so as to create a unified scheme may not be exercised so as to place any person in a less beneficial position, as a member of the unified scheme, than he was in as a member of his previous police pension scheme (*paragraph 2(3)(b)*).
129. *Paragraph 3* of Schedule 3 provides that the Secretary of State, when making the pensions regulations, must consult with the Policing Board of Northern Ireland, and obtain the agreement of the Treasury. It also allows the regulations to have retroactive effect, so that they may be backdated to 1 April 2006.
130. *Paragraph 7* of Schedule 3 provides that, for the purposes of Part 4 of the Finance Act 2004, the new police pension scheme will be treated as a continuation of the original schemes and not a new scheme.

### ***Section 6 and Schedule 4: Statutory consultation requirements***

131. *Section 6* introduces *Schedule 4*. Schedule 4 amends provisions in existing legislation requiring consultation with persons representing the interests of police authorities or chief officers of police. The effect of the amendments is to require consultation with the APA or ACPO instead.
132. *Section 6* also provides a power for the Secretary of State to amend by order (subject to the negative procedure) these consultation requirements, should other bodies represent these interests in the future, or if the APA or ACPO were to change its name.

### ***Section 7: Standard powers and duties of community support officers***

133. This section amends the Police Reform Act 2002 (“the 2002 Act”) in relation to the powers that can be conferred on CSOs. *Subsection (1)* inserts new subsection (5A) into section 38 of the 2002 Act. The effect is that a person designated under section 38 as a CSO is to have the standard powers and duties of a CSO in addition to any additional powers conferred on him by his designation..
134. *Subsection (2)* inserts new section 38A into the 2002 Act. The new section enables the Secretary of State to make an order conferring certain powers and duties, set out in Part 1 of Schedule 4 to the 2002 Act, on all CSOs. It is these powers and duties that are to be known as the standard powers and duties of a CSO. An order under section 38A is to be subject to the affirmative resolution procedure.
135. New section 38A(3) sets out the consultation requirements which apply before the Secretary of State may make an order.
136. New section 38A(5) provides that a power or duty may be conferred on a CSO both by an order under section 38A and by a designation. This is to enable CSOs to rely on their individual designations if an order made under section 38A providing for standard powers and duties is varied or revoked. New section 38A(6) places a duty on a chief officer to ensure that if any additional powers or duties are imposed on CSOs under his control, they receive adequate training in the exercise of those powers or duties.

### ***Section 8: Community support officers: power to deal with truants***

137. This section inserts a new power into the list (set out in Schedule 4 to the 2002 Act) of powers that may be conferred on persons designated as CSOs. If designated with the power set out at new paragraph 4C, CSOs will have the power that constables already have under section 16 of the Crime and Disorder Act 1998 to deal with truants. This power would allow CSOs to remove young people of school age that they believe are absent from school without lawful authority from specified areas and to take them either to their school, or to a place which has been specified by the local authority.

### ***Section 9 and Schedule 5: Exercise of police powers by civilians***

138. This section introduces *Schedule 5* to the Act.
139. *Schedule 5* makes various consequential and minor amendments in provisions in the Police Reform Act 2002.
140. *Paragraph 2(3)* inserts a new subsection (5B) into section 38 of the 2002 Act so that when a chief constable first designates a person as a CSO, he is required to ensure that the person has received adequate training in the exercise of the standard powers that are in force at that time.
141. The effect of *paragraph 3* of the Schedule is to amend section 42 of the 2002 Act so that CSOs, when exercising powers or duties, must produce on demand evidence of their designation as a CSO and of any non-standard power which they exercise that has been conferred on them by their Chief Officer under section 38. Accordingly, CSOs will not have to carry with them details of all the standard powers which have been conferred upon them by an order under section 38A. The requirement to produce evidence of a designation could be satisfied by production of the designation itself, but could also be satisfied by something less, such as some form of document or card.

## **Part 2: Powers of police etc**

### ***Section 10 and Schedule 6: Police bail***

142. *Section 10* and *Schedule 6* amend the Police and Criminal Evidence Act 1984 (PACE). As PACE stands, a police officer may only attach conditions to bail if the person bailed

has been charged, or if his case has been referred to the CPS for a decision on whether or not to charge him. The effect of the amendments made by section 10 and Schedule 6 is that a police officer may attach conditions to bail granted at a police station before charge under section 37(2) and 37(7)(b) of PACE, and to bail granted elsewhere than at a police station (“street bail”) under section 30A.

143. **Section 10** and Schedule 6 will enable the officer granting bail to consider attaching conditions relevant and proportionate to the suspect and the offence. The conditions that can be imposed must be necessary to secure that the person surrenders to custody, that the person does not commit an offence while on bail, or that the person does not interfere with witnesses or otherwise obstruct the course of justice. Where the person is under the age of 17 conditions may also be applied for their welfare, or in their own interest. No recognizance, security or surety may be taken and no requirement to reside in a bail hostel may be imposed.
144. Where conditions are applied to street bail, the person who has been bailed subject to conditions will have the right to apply for variation of conditions to a custody officer and to a magistrates’ court. A record will be made of the exercise of the power and a copy provided to the person explaining their rights.
145. The proposed measures reflect bail provisions already available in relation to people at the charging stage of the process.

#### ***Section 11: Power to detain pending DPP’s decision about charging***

146. The amendment made by **section 11** to section 37 of PACE is designed to enable a custody officer to detain a person, under section 37, whilst consideration is being given by the Director of Public Prosecutions (in practice the relevant Crown Prosecution Service lawyer) on whether the person should be charged.
147. As it stands, section 37(1) of PACE provides that the custody officer at each police station where a person is detained must determine whether he has before him sufficient evidence to charge that person with the offence for which he was arrested, and may detain him at the police station for such period as is necessary to enable him to do so. Section 37(7) of PACE provides that when the custody officer has determined that he does have before him sufficient evidence to charge the person with the offence for which he was arrested, the person must be (a) released without charge and on bail for the purpose of enabling the Director of Public Prosecutions to make a decision on charge; (b) released without charge and on bail but not for that purpose; (c) released without charge and without bail; or (d) charged.
148. The effect of the amendment made by section 11 is that, where the custody officer has determined that he has before him sufficient evidence to charge a person, that person may be detained at a police station pending the prosecutor’s decision as to whether or not to bring a charge. It will be a matter for the custody officer to determine on an individual basis whether the person should be detained or granted bail whilst awaiting the outcome of the statutory charging process.

#### ***Section 12: Power to stop and search at aerodromes***

149. **Section 12** inserts new section 24B in Part 3 of the Aviation Security Act 1982 (policing of airports) following the recommendation made by the Rt. Hon. John Wheeler in his report on airport security (published by the Department for Transport, 2002). This enables a police constable to stop and search, without warrant, any person, vehicle or aircraft in any area of an aerodrome, whether designated or non-designated, for stolen or prohibited articles, where he has reasonable grounds to suspect that he will find such articles. Designation takes place under Part 3 of the Aviation Security Act 1982. If applied to an aerodrome, it allows police constables additional powers that are not available at non-designated aerodromes. The term aerodrome, as defined by

section 38(1) of the 1982 Act, is used rather than airport, as it has wider meaning and covers major airports as well as airfields used only by private flying clubs.

150. New section 24B(4) enables a constable to seize items discovered during a search which he reasonably suspects to be stolen or prohibited articles.
151. New section 24B(5) defines a prohibited article as something made or adapted for use in the course of or in connection with criminal conduct, or an article intended for such use by the person having it with him or by some other person.
152. New section 24B(6) defines “criminal conduct” as conduct which constitutes an offence in the part of the UK in which the aerodrome is situated or conduct which would constitute an offence in that part of the UK if it occurred there.
153. New section 24B(9) prevents a constable from entering a dwelling during the exercise of the powers conferred by section 24B.
154. *Paragraph 8(4) of Schedule 14* repeals subsections (1), (4), and (5) of section 27 of the Aviation Security Act 1982. These are no longer necessary since the search powers in new section 24B are exercisable at both designated and non-designated airports.

### ***Section 13: Supply of information to police etc by Registrar General***

155. Prior to this legislation the Registrars General for England and Wales and for Northern Ireland did not have the legislative power to disclose death registration information, in a timely manner or on a bulk basis, to public and private sector organisations for the prevention, detection, investigation or prosecution of offences. This section changes that situation and confers a power that enables the Registrars General for England and Wales and for Northern Ireland to supply bulk information contained in any register of deaths to the police and other organisations in a timely manner for use in the prevention, detection, investigation or prosecution of offences. (It is envisaged that the power will be particularly useful in relation to offences involving identity fraud.) The power does not enable disclosure to be made for any other purpose. The section does not limit the other circumstances in which the Registrars General already supply death information. The supply of information may be subject to conditions imposed by the Registrars General and to the levy of a reasonable fee. (This section extends to Northern Ireland by virtue of section 54(3).)
156. *Subsection (1)* confers a power on the Registrar General for England and Wales and the Registrar General for Northern Ireland to supply death registration information for the purposes of the prevention, detection, investigation or prosecution of offences to:
  - (a) a police force in the United Kingdom,
  - (b) a special police force (as defined in *subsection (6)(a) to (d)*),
  - (c) the Serious Organised Crime Agency, or
  - (d) a person or body specified, or of a description specified, by order.
157. There is no restriction on who may be specified in such an order, except that the maker of the order would of course have to be satisfied that the disclosure to the person or body in question was capable of being made for the purposes outlined above.
158. *Subsection (2)* provides that the Registrar General for England and Wales, with the approval of the Chancellor of the Exchequer, may make an order under section 13(1)(d) in respect of England and Wales; and the Secretary of State, after consulting the Registrar General for Northern Ireland, may make an order under section 13(1)(d) in respect of Northern Ireland. The difference reflects the legal and historical position of the two Registrars General. The Registrar General for England and Wales has similar order-making powers in other Acts whereas the Registrar General for Northern Ireland has no such powers.

*These notes refer to the Police and Justice Act 2006  
(c.48) which received Royal Assent on 8 November 2006*

159. *Subsection (3)* provides that the Registrars General may charge a reasonable fee (which may vary depending on the amount of work involved) in respect of the cost of supplying the information.
160. *Subsection (4)* provides that the Registrars General may impose conditions in respect of the supply.
161. *Subsection (5)* preserves the existing legal arrangements for the supply of death registration information. Sometimes, the effect of legislation is to limit other legislation already in force. This subsection prevents that happening in this case.

#### ***Section 14: Information gathering powers: extension to domestic flights and voyages***

162. *Section 14* provides for section 32 of the Immigration, Asylum and Nationality Act 2006 (“the IAN Act”) (police powers to gather information relating to flights and voyages to or from the United Kingdom) to be amended to include:
  - ships or aircraft arriving, or expected to arrive, in the UK from elsewhere in the UK, and
  - ships or aircraft leaving or expected to leave, from any place in the UK for elsewhere in the UK.
163. This will enable a constable of at least the rank of superintendent to request passenger, crew or service information from the owner or agent of a ship or aircraft on air and sea journeys within the UK.
164. Section 32 of the IAN Act states that the passenger, crew and service information which may be collected under the section will be specified in secondary legislation. Secondary legislation may also specify the form and manner in which information is to be provided.
165. Section 32 of the IAN Act also requires passengers and crew members to provide the owner or agent of a ship or aircraft with any information that he requires for the purposes of complying with a requirement to provide information.
166. Requests have to be in writing, may apply generally or only to one or more specified ships or aircraft, in either case, throughout a specified period (not exceeding six months) and must state the information required and the date or time by which the information must be provided.
167. *Subsection (3)* amends section 32(5) (interpretation of that section) and section 33(5) (police powers to gather information about freight entering or leaving the United Kingdom: interpretation of section) of the IAN Act by inserting a definition of a ship. A ship is defined as including every description of vessel used in navigation and hovercraft. *Subsections (4)* and *(5)* amend section 36 (duty to share travel and freight information) and section 38 (disclosure of travel and freight information for security purposes) of the IAN Act by inserting the above definition of a ship.

#### ***Section 15: Accreditation of weights and measures inspectors***

168. *Subsection (1)* inserts a new section 41A into the Police Reform Act 2002. *Subsection (2)* inserts a new Schedule 5A into the 2002 Act, which is set out at Schedule 7 to the Act. The new section 41A provides for the accreditation of weights and measures inspectors, commonly known as Trading Standards Officers (TSOs), and provides for arrangements similar to those for community safety accreditation schemes as set out in section 41 of the Police Reform Act 2002. Accredited TSOs will be able to issue penalty notices for disorderly behaviour under Chapter 1 of Part 1 of the Criminal Justice and Police Act 2001. The offences for which penalty notices for disorder may be issued are listed in Annex B.

*These notes refer to the Police and Justice Act 2006  
(c.48) which received Royal Assent on 8 November 2006*

169. Subsection (1) of new section 41A enables chief officers of police to accredit TSOs. An accredited TSO will be able to exercise such powers as the chief officer specifies from the list of powers in new Schedule 5A to the Police Reform Act 2002.
170. Subsection (2) of new section 41A provides that the powers given by accreditation may only be exercised in the accrediting chief officer's police area.
171. Subsections (4) and (5) of the new section provide that chief officers may only accredit suitable and adequately trained TSOs, and that they may charge a fee for considering applications for accreditation and for the renewal of accreditation and for granting the accreditation itself. Under subsection (7), the accreditation may specify a period for which accreditation will apply.
172. Subsection (6) of new section 41A specifies that accreditation does not enable a TSO to exercise the powers granted by accreditation other than in the course of his duty as a TSO, and that the accrediting chief officer may specify other restrictions and conditions when accrediting TSOs. As accreditation only enables TSOs to exercise the powers in the course of their duties, it follows that accreditation will cease to have effect if the accredited person ceases to be a TSO, as provided for by subsection (8).
173. *Paragraph 40 of Schedule 14* amends the Police Reform Act 2002 to provide that persons accredited under new section 41A of that Act may not be appointed as the Chairman or a member of the IPCC. This brings them into line with people accredited under community safety schemes under section 41 of the 2002 Act.

***Schedule 7: Powers exercisable by accredited inspectors***

174. *Schedule 7* inserts a new Schedule 5A in the Police Reform Act 2002 which sets out the powers that chief officers may confer on the TSOs they accredit under new section 41A of the 2002 Act.
175. Paragraph 1 of Schedule 5A permits an accredited TSO, whose accreditation applies that paragraph to him, to issue fixed penalty notices in respect of offences of disorder specified in his accreditation. Paragraph 2 gives an accredited TSO, whose accreditation applies that paragraph to him, the power to require persons suspected of having committed a fixed penalty offence specified in his accreditation to provide their name and address. (Refusal to provide a name and address when required to do so by a TSO is an offence under paragraph 2(2).) Paragraph 3 confers on an accredited TSO, whose accreditation applies that paragraph to him, the power of a constable to take photographs, elsewhere than at a police station, of persons to whom he has issued penalty notices.

***Section 16: Power to apply accreditation provisions***

176. This section inserts a new section 41B into the Police Reform Act 2002. The new section provides a power for the Secretary of State to apply the provisions about accredited TSOs to persons of a descriptions specified by order. An order under new section 41B is subject to the affirmative resolution procedure.

***Section 17: Conditional cautions: types of cautions***

177. *Section 17* amends Part 3 of the Criminal Justice Act 2003, which provides for conditional cautions. These are cautions to which specified conditions are attached. A conditional caution may only be given if a prosecutor considers that there is sufficient evidence to prosecute the offender and if the offender admits the offence and agrees to a conditional caution being imposed. A conditional caution is an alternative to prosecution for low-level offending, but if the offender breaches the conditions he is liable to be prosecuted for the original offence.
178. The purpose of section 17 is to widen the scope of the conditions that can be attached to a conditional caution. Currently, section 22(3) of the 2003 Act provides that the

conditions which can be attached to a conditional caution must have the object of facilitating the rehabilitation of the offender or ensuring the offender makes reparation for the offence. *Subsection (2)* substitutes an expanded section 22(3) that provides that, in addition, a conditional caution may contain conditions which have the object of punishing the offender.

179. *Subsection (3)* inserts new subsections (3A), (3B) and (3C) in section 22 of the 2003 Act. New subsection (3A) provides that the conditions that may be included in a conditional caution may include the imposition of a financial penalty and/or a requirement for attendance at a specified place at a specified time (which might include completion of a specified activity). The provision for a financial condition is subject to new section 23A.
180. New subsection (3B) provides that where a condition involves an attendance requirement, the maximum number of hours is restricted to no more than 20 hours in total. This 20 hour limit does not apply to an attendance requirement imposed for the purpose of facilitating the offender's rehabilitation. This is to permit rehabilitative conditions involving, for example, drug or alcohol treatment programmes that may take longer than 20 hours in total. By virtue of new subsection (3C) this figure of 20 hours may be amended by order (subject to the affirmative resolution procedure).
181. *Subsection (4)* inserts a new section 23A into the 2003 Act. This new section makes provision in relation to a condition that the offender pay a financial penalty, called a "financial penalty condition". Subsection (1) of new section 23A specifies that a financial penalty condition may not be attached to a conditional caution given in respect of an offence unless the offence in question is one prescribed, or of a description prescribed, in an order made by the Secretary of State. Section 23A(2) requires that an order under section 23A(1) must also specify the maximum amount of the financial penalty that may be specified for each offence or description of offence. Subsection (3) of new section 23A provides that the maximum financial penalty prescribed for an offence must not exceed 25% of the maximum fine available for the offence in question on summary conviction in a Magistrates' Court (in the case of a level 5 fine (£5000) this would amount to £1250) or £250, whichever is the lower. Subsection (4) of the new section 23A provides that these limits may be amended by order (subject to the affirmative resolution procedure save where the £250 limit is being updated only to account for inflation in which case the negative procedure applies). Subsections (5), (6), (7), (8) and (9) of the new section 23A also specify the method of payment of any financial penalty condition imposed. The financial penalty condition is intended to be a requirement to pay money that is imposed for the purposes of punishing an offender. It does not alter the existing position in which an offender can be required to pay compensation to victims for the purpose of making reparation for the offence, or to pay a sum of money to a charity by way of indirect reparation to the community.

### ***Section 18: Arrest for failing to comply with conditional caution***

182. *Subsection (1)* inserts a new section 24A into Part 3 of the Criminal Justice Act 2003 to give a constable a power of arrest without warrant where an offender is suspected of having breached the conditions of a conditional caution without reasonable excuse, in order to enable a quicker, more effective means of facilitating prosecution for the original offence.
183. Where a person is arrested under new section 24A(1), it will be for a prosecutor to determine whether he has failed to comply with the conditions attached to his caution and, if so, whether there was a reasonable excuse for doing so. If the person has failed to comply without a reasonable excuse, he can then be charged with the original offence in respect of which the conditional caution was given (new section 24A(2)(a)). Where further investigations are necessary to establish the circumstances of the suspected non-compliance with conditions, the offender may be released without charge and on bail (new section 24A(2)(b)).

184. Alternatively, the offender can be released without charge and without bail and with or without any variations in the conditions attached to the caution (new section 24A(2)(c)). This course of action could result if the prosecutor determined that there was a reasonable excuse for the non-compliance or that there had been no actual non-compliance.
185. New section 24A(5)(a), read with new section 24A(6), provides that the offender may be kept in police detention in order to be dealt with under section 24A(2). For example, a person might be detained until a relevant prosecutor is available to make a charging decision, or where further investigations are necessary to establish if the person has failed to comply with the conditions attached to the caution.
186. By virtue of new section 24A(3) these procedures also apply where an offender returns to the police station having been bailed for investigation of suspected non-compliance with a condition and in certain other circumstances where the offender is detained by the police.
187. *Section 18* also inserts a new section 24B into Part 3 of the Criminal Justice Act 2003. This provides that certain provisions in PACE apply with the modifications identified to offenders arrested for suspected breach of a conditional caution as they do to offenders arrested in respect of an offence.

### **Part 3: Crime and anti-social behaviour**

#### ***Section 19: Local authority scrutiny of crime and disorder matters***

188. This section extends the remit of local authorities to scrutinise the functioning of the local Crime and Disorder Reduction Partnership (CDRP)/Community Safety Partnership (CSP).
189. *Subsection (1)* requires every local authority to have a crime and disorder committee with the power to review and scrutinise, and make reports or recommendations, regarding the functioning of the responsible authorities of the local CDRP/CSP, as defined under section 5 of the Crime and Disorder Act 1998.
190. *Subsection (2)* requires the committee to provide a copy of any report or recommendations they make by virtue of *subsection (1)(b)* to all the responsible authorities and co-operating bodies of the CDRP/CSP.
191. *Subsection (3)* puts ward councillors under a duty to respond to a “community call for action” from anybody living or working in the area which they represent, on a matter concerning crime and disorder (including anti-social behaviour and behaviour adversely affecting the environment) or substance abuse in that area. The ward councillor’s response must indicate what (if any) action he or she proposes to take to resolve the matter. The ward councillor may refer any such matter to the local authority’s crime and disorder committee for consideration. The ward councillor might be expected to do this when reasonable steps to resolve the problem through more informal means have been taken but have failed.
192. The obligation imposed by this section does not apply to a councillor who is a member of a county council for an area in which there are district councils. Nor do the obligations imposed by subsections (4) to (6) apply in relation to a county council for an area in which there are district councils.
193. *Subsection (4)* provides for the person raising the matter to refer it to the local authority executive for consideration, if the ward councillor does not take the matter forward.
194. *Subsection (5)* requires the council executive to consider any matter referred to them and to respond indicating what (if any) action they propose to take, and enables them to refer the matter to the crime and disorder committee.

195. *Subsection (6)* requires the committee to consider a crime and disorder matter referred to it by a ward councillor or the council executive, and enables the committee to make a report or recommendations on it to the local authority.
196. *Subsection (7)* requires the committee to send a copy of any report or recommendations made under *subsection (6)* to such of the responsible authorities and co-operating bodies of the CDRP/CSP as it considers appropriate.
197. *Subsection (8)* puts the responsible authorities and co-operating bodies which receive a copy of the report or recommendations under a duty to consider the report or recommendations and respond to the committee indicating what (if any) action they will take. It requires them to have regard to the report or recommendations.
198. *Subsection (9)* provides for the crime and disorder committee to be an overview and scrutiny committee for councils operating executive arrangements.
199. *Subsection (10)* gives effect to *Schedule 8*, which contains further provision about the crime and disorder committees of local authorities not operating executive arrangements, and in particular the City of London.
200. *Subsection (11)* contains further definitions of the terms used in the section.

***Schedule 8: Further provision about crime and disorder committees of certain local authorities***

201. This Schedule makes provision, corresponding to that made by section 21 of the Local Government Act 2000, about crime and disorder committees of local authorities not operating executive arrangements under Part 2 of the Local Government Act 2000.
202. *Paragraph 2* limits the functions of crime and disorder committees to those set out under section 19, or this Schedule. However, there is no requirement on a local authority to set up a separate committee. If there is one committee including crime and disorder in a range of functions, then this limitation operates on the committee in its capacity as a crime and disorder committee.
203. *Paragraph 3* enables the crime and disorder committee to set up one or more sub-committees and arrange for the discharge of any of its functions by any such sub-committee.
204. *Paragraph 4* enables any member of a crime and disorder committee or sub-committee to ensure that any relevant matter is put on the agenda and discussed at a meeting of the committee.
205. *Paragraph 5* allows crime and disorder committees or sub-committees to co-opt people who are not members of the authority. However, in general, such co-optees will not have voting rights.
206. *Paragraph 6* allows a crime and disorder committee to require officers and members of the local authority to appear before it. It is also allowed to invite any other person to appear before it.
207. *Paragraphs 7 to 9* set out how relevant legislation will apply to crime and disorder committees.
208. *Paragraphs 10 to 12* enable the Common Council of the City of London to use its existing committee structure, rather than to have to set up a bespoke crime and disorder committee. The Common Council of the City of London will therefore be able to act as both the local authority and the crime and disorder committee. The City of London currently operates a number of committees which scrutinise different aspects of community safety in the square mile in the same way as the crime and disorder committee will in under the new provisions. The Common Council will be able to

delegate the functions to several of its existing committees as it does at the present, rather than establishing a new committee.

***Section 20: Guidance and regulations regarding crime and disorder matters***

209. *Subsection (1)* gives the Secretary of State the power to issue guidance regarding the overview and scrutiny of CDRPs either to local authorities in England, to local councillors of those authorities or to their crime and disorder committees directly.
210. *Subsection (2)* gives a similar power to the National Assembly for Wales, exercisable after consultation with the Secretary of State, in relation to Wales.
211. *Subsection (3)* enables the Secretary of State to make regulations to supplement the provisions of section 19 in relation to local authorities in England. *Subsection (4)* enables the Secretary of State, after consultation with the National Assembly for Wales, to make similar provision in relation to local authorities in Wales.
212. *Subsection (5)* provides a non-exhaustive list of matters which might be dealt with in regulations. The regulations may include provisions in relation to co-option of members to the crime and disorder committee, the frequency with which the committee should scrutinise the functioning of the CDRP/CSP, what information can be sought by the committee, requiring representatives of co-operating bodies or responsible authorities to attend before the committee to answer questions, the period within which the council executive and/or councillor must respond to a matter referred to it by a complainant, the period within which the committee should consider a matter referred by the councillor or council executive, the period within which the responsible authorities and co-operating bodies should respond to a report or recommendations made by the committee, and how a person should refer a matter to a member of a local authority or its executive.
213. *Subsection (6)* allows the regulations to give co-opted members of crime and disorder committees voting rights on the committee.
214. *Subsection (7)* provides that the terms “local authority”, “crime and disorder committee”, “responsible authorities” and “co-operating persons and bodies” have the same meaning as in section 19.

***Section 21: Joint crime and disorder committees***

215. This section inserts two new subsections into section 5 of the Crime and Disorder Act 1998, to extend the order-making power to enable the Secretary of State to require councils to appoint a joint committee to carry out crime and disorder scrutiny functions. This will be used where CDRP mergers have taken place, so that responsible authorities and co-operating bodies are not required to answer to two or more separate crime and disorder committees.
216. New subsection (1C) also allows the order to apply any legislative provisions affecting single committees to a joint committee – either directly, or modified if necessary to reflect the different characteristics of a joint committee.
217. New subsection (1D) explains that “crime and disorder scrutiny functions” are those that would otherwise be exercisable by the crime and disorder committee of the council under section 19.

***Section 22: Amendments to the Crime and Disorder Act 1998***

218. This section gives effect to Schedule 9 which amends the Crime and Disorder Act 1998 in relation to crime and disorder strategies and other matters.

***Schedule 9: Amendments to the Crime and Disorder Act 1998***

219. Section 5 of the Crime and Disorder Act 1998 lists the "responsible authorities" that comprise CDRPs and CSPs as local authorities, chief police officers, police authorities, fire and rescue authorities and primary care trusts in England and health boards in Wales.
220. *Paragraph 2* amends section 5 of the 1998 Act by including new subsection (6) which enables the appropriate national authority to add to or otherwise change the list of responsible authorities and new subsection (7) which provides a definition for "appropriate national authority" – the Secretary of State in relation to English bodies and Welsh bodies whose functions are not devolved, the National Assembly for Wales in relation to bodies whose functions are wholly devolved and both acting jointly in other cases. The paragraph also makes consequential amendments to the section.
221. *Paragraph 3* replaces sections 6 and 6A (which provide for the formulation and implementation of crime and disorder reduction strategies) of the 1998 Act with a new section 6. The new section extends the scope of the strategies from the reduction of crime and disorder and the combating of the misuse of drugs to the reduction of crime and disorder (including in particular forms of crime and disorder that involve anti-social behaviour or other behaviour adversely affecting the local environment) and the combating of the misuse of drugs, alcohol and other substances. The new section also enables the appropriate national authority to make regulations making further provision in connection with the formulation, implementation and review of the strategies. These regulations will be known as national standards. This section also allows the appropriate national authority to issue guidance.
222. Section 17 of the 1998 Act currently states that defined bodies have a duty to do all that they reasonably can to prevent crime and disorder. *Paragraph 4* will amend the scope of duty so as to extend it to include the misuse of drugs, alcohol and other substances, anti-social behaviour and other behaviour adversely affecting the local environment. It also amends section 17 to enable the appropriate national authority to extend the duty to other persons or bodies as required. Appropriate national authority is given the same definition as in the amendments made by *paragraph 2*.
223. *Paragraph 5* amends section 115 of the 1998 Act (which enables information sharing between authorities for the purposes of crime reduction and community safety) and creates a new section 17A which places specified agencies in England and Wales under a duty to share depersonalised data that is already held in a depersonalised format for the purposes of reducing crime and disorder and is of a prescribed description as set out by the Secretary of State in regulations. The Secretary of State may also prescribe the intervals and the form that this data must be shared in. The definition of personal data is as set out in the Data Protection Act 1998.
224. *Paragraph 6* makes amendments to section 114 of the 1998 Act (orders and regulations) as a consequence of the other amendments made by this Schedule.
225. *Paragraph 7* extends the list of authorities to which the duty applies to the London Fire and Emergency Planning Authority, and all other fire and rescue authorities. It will also enable the appropriate national authority to extend the duty to other persons or bodies by means of secondary legislation.

***Section 23: Parenting contracts: local authorities and registered social landlords***

226. *Subsection (1)* of this section inserts two new sections (25A and 25B) in Part 3 of the Anti-social Behaviour Act 2003 so as to enable a local authority or a registered social landlord to enter into a parenting contract with a parent in respect of anti-social behaviour by his or her children. These provisions supplement the powers of schools and Local Education Authorities to enter into parenting contracts in cases of exclusion from school or truancy and youth offending teams to enter into parenting contracts in

respect of criminal conduct or anti-social behaviour contained in Part 3 of the Anti-Social Behaviour Act 2003.

**New section 25A: Parenting contracts in respect of anti-social behaviour: local authorities**

227. New section 25A(1) sets out the circumstances in which a local authority can enter into a parenting contract with a parent of a child or young person. These are where it has reason to believe that the child or the young person has engaged, or is likely to engage, in anti-social behaviour and where the child or the young person resides, or appears to reside, in the authority's area.
228. New section 25A(2) indicates that a parenting contract is a document containing a statement by the parent that he or she agrees to comply with any requirements specified in the contract, for any period so specified, and a statement by the local authority that it agrees to provide support to the parent to help him or her comply with the requirements of the contract. New section 25A(3) states that the contract may, in particular, include a requirement for the parent to attend a counselling or guidance programme.
229. New section 25A(4) states that the purpose of any requirement in a parenting contract is to prevent the child or young person from engaging in anti-social behaviour, or further such behaviour. New section 25A(5) specifies that the contract must be signed by the parent and on behalf of the authority.
230. New section 25A(6) makes clear that no obligations in contract or tort are to arise from any breach of the contract.
231. New section 25A(7) requires local authorities in England, when carrying out their functions in relation to such contracts, to have regard to any guidance issued by the Secretary of State. It also requires local authorities in Wales, when carrying out their functions in relation to such contracts, to have regard to any guidance issued by the National Assembly for Wales.

**New section 25B: Parenting contracts in respect of anti-social behaviour: registered social landlords**

232. New section 25B(1) sets out the circumstances in which a registered social landlord (an "RSL") can enter into a parenting contract with the parent of a child or a young person. These are where the RSL has reason to believe that the child or young person has engaged in anti-social behaviour, or is likely to engage in such behaviour, and that the behaviour directly or indirectly relates to, or affects, the RSL's housing management functions or, in the case of likely behaviour, would do so.
233. New section 25B(2) indicates that a parenting contract is a document containing a statement by the parent that he or she agrees to comply with any requirements specified in the contract for any period so specified, and a statement by the RSL that it agrees to make arrangements for the provision of support to the parent to help him or her to comply with those requirements. New section 25B(3) states that the contract may, in particular, include a requirement for the parent to attend a counselling or guidance programme.
234. New section 25B(4) states that the purpose of any requirement in the contract is to prevent the child or young person from engaging in anti-social behaviour, or further such behaviour. New section 25B (5) specifies that the contract must be signed by the parent and on behalf of the RSL.
235. New section 25B(6) makes clear that no obligations in contract or tort are to arise from any breach of the contract.
236. New section 25B(7) requires RSLs in England, when carrying out their functions in relation to such contracts, to have regard to any guidance issued by the Secretary of

State. It also requires RSLs in Wales, when carrying out their functions in relation to such contracts, to have regard to any guidance issued by the National Assembly for Wales.

237. *Subsection (2)* of the section inserts in section 29(1) of the Anti-social Behaviour Act 2003 various definitions relating to the new sections 25A and 25B, namely, the definitions of “housing accommodation”, “housing management functions”, “local authority” and “registered social landlord”.

#### ***Section 24: Parenting orders: local authorities and registered social landlords***

238. This section inserts in Part 3 of the Anti-social Behaviour Act 2003 two new sections (26A and 26B), so as to enable a local authority or a registered social landlord to apply to a magistrates’ court for a parenting order against a parent in respect of anti-social behaviour by his or her children, and a new section (26C) so as to enable a local authority or a RSL to apply for such an order as an adjunct to certain proceedings in the county court. These provisions supplement the powers of magistrates’ courts to make parenting orders in cases of exclusion from school or truancy and in respect of criminal conduct or anti-social behaviour contained in sections 8 to 10 of the Crime and Disorder Act 1998 and Part 3 of the Anti-Social Behaviour Act 2003.

#### **New section 26A: Parenting orders in respect of anti-social behaviour: local authorities**

239. New section 26A(1) sets out the circumstances in which a local authority can apply to a magistrates’ court (or in certain circumstances a county court) for a parenting order in respect of a parent of a child or young person. These are where the authority has reason to believe that the child or young person has engaged in anti-social behaviour and where the child or young person resides, or appears to reside, in the authority’s area.
240. New section 26A(2) provides that the court may make such an order if it has reason to believe that the child or young person has engaged in anti-social behaviour and that it would be in the interests of preventing him or her from engaging in further such behaviour. New section 26A(3) indicates that a parenting order is an order which requires the parent to comply, for not more than twelve months, with any requirements specified in the order and, subject to new section 26A(4) to attend, for no more than three months, a counselling or guidance programme specified in directions given by the responsible officer.
241. New section 26A(4) indicates that a parent is not necessarily to be required to attend a counselling or guidance programme when he or she has already been subject to a parenting order.
242. New section 26A(5), (6) and (7) provides that a counselling or guidance programme which a parent is required to attend by virtue of a parenting order may be residential, only if that is likely to be more effective than a non-residential course in preventing the child or young person from engaging in further anti-social behaviour, and if any interference with family life is likely to be proportionate.
243. New section 26A(8) makes clear that the responsible officer is required to be an officer of the local authority or a person or body nominated by that local authority. A person cannot be nominated by the local authority without their consent.

#### **New section 26B: Parenting orders in respect of anti-social behaviour: registered social landlords**

244. New section 26B(1) sets out the circumstances in which a RSL can apply for a parenting order in respect of a parent of a child or young person. These are where the RSL has reason to believe that the child or the young person has engaged in anti-social

behaviour and the behaviour directly or indirectly relates to or affects the RSL's housing management functions.

245. New section 26B(2) to (7) makes parallel provisions to new section 26A(2) to (7) described above.
246. New section 26B(8) requires an RSL to consult with the local authority in whose area the child or young person resides before applying for a parenting order.
247. New section 26B(9) and (10) makes clear the responsible officer may be an officer of the RSL or a person nominated by the RSL. A person may not be nominated by the RSL without their consent. When deciding whom to nominate the RSL must take into account the views of the local authority and other appropriate persons and bodies.

### **New section 26C: Applications under section 26A or 26B in county court proceedings**

248. New section 26C(1) provides that where a local authority or an RSL is a party to proceedings in the county court and it considers that another party is a person in relation to whom it could be reasonable to apply for a parenting order it may make such an application to the court.
249. New section 26C(2) provides that where a local authority or an RSL is not a party to proceedings but considers that a party is a person in relation to whom it would be reasonable to make an application, it may apply to be joined to the proceedings for that purpose.
250. New section 26C(3) provides that where a local authority or an RSL is a party to proceedings, and considers that a child or young person has engaged in anti-social behaviour which is material in relation to the proceedings, the local authority or the RSL may apply for a person who is the parent of the child or the young person to be joined to enable it to apply for a parenting order in respect of that person.
251. New section 26C(4) makes it clear that a person is not to be joined under new section 26C(3) unless the anti-social behaviour in question is material to the proceedings.

### ***Section 25: Contracting out of local authority functions with regard to parenting contracts and parenting orders***

252. This section inserts a new section 28A in Part 3 of the Anti-social Behaviour Act 2003 so as to make it possible for the Secretary of State to make an order enabling a local authority to contract out to a person specified in the order (subject to the negative resolution procedure) the functions of entering into parenting contracts and applying for parenting orders.
253. New section 28A(1) confers on the Secretary of State the power to make an order providing for a local authority to make arrangements with a specified person, or a person of a specified description, for the exercise of any of its functions under the new sections 25A and 26A. The power is conferred on the National Assembly for Wales to make such an order in relation to Welsh local authorities.
254. New section 28A(2) indicates that such an order may provide, first that the local authority's power to contract out is subject to any conditions specified in the order, secondly that the contracting out arrangements must be subject to such conditions as are so specified and, thirdly, that the contracting out arrangements may be subject to any other conditions which the local authority considers appropriate.
255. New section 28A(3) indicates that the order may also provide that the contracting out arrangements can authorise the exercise of the function wholly or to such an extent as may be specified, and generally or in specified cases or areas.

*These notes refer to the Police and Justice Act 2006  
(c.48) which received Royal Assent on 8 November 2006*

256. New section 28A(4) indicates that the order may provide that the person with whom the contracting out arrangements are made is to be treated as a public body for the purposes of section 1 of the Local Authorities (Goods and Services) Act 1970.
257. New section 28A(5) stipulates that before making an order under the new section the Secretary of State and the National Assembly for Wales must consult with such representatives of local government, and with such other persons, as he or it thinks appropriate.
258. New section 28A(6) provides that any contracting out arrangements made under such an order are not to prevent the local authority from exercising the functions to which the arrangements relate.
259. New section 28A(7) and (8) provides that certain provisions of the Deregulation and Contracting Out Act 1994 are to apply for the purposes of arrangements made in the pursuance of an order under this section.
260. New section 28A(9) requires local authorities in England and any person to whom they contract out functions by arrangements made in pursuance of an order under section 28 to have regard to any guidance issued by the Secretary of State for the purposes of that section.
261. New section 28A(10) requires local authorities in Wales and any person to whom they contract out functions by arrangements made in pursuance of an order under section 28 to have regard to any guidance issued by the National Assembly for Wales for the purposes of that section.

***Section 26: Anti-social behaviour injunctions***

262. *Section 26* replaces the existing section 153A of the Housing Act 1996, which extended the powers of certain social landlords to apply for injunctions to prohibit housing-related anti-social behaviour and allowed social landlords to obtain injunctions against a wide range of persons, not just residents, in order to protect other residents, visitors and their own staff. It also applied to situations where the conduct in question was capable of causing nuisance or annoyance (even if a complaint had not been received), but which directly or indirectly affected the landlord's management of its housing stock.
263. The section re-enacts section 153A of the Housing Act 1996 with modifications. In particular, the effect of the definition of “anti-social behaviour” in subsection (1) of the new section 153A, and of subsection (4), is that a housing related anti-social behaviour injunction may be granted without a particular individual being named as someone adversely affected by the conduct referred to in the injunction. An injunction may be granted in respect of conduct which is not described by reference to any person or persons at all. If conduct is described in an injunction by reference to a person or persons, these may be persons generally, or persons of a particular description, or a specified person.

***Section 27 and Schedule 10: Injunctions in local authority proceedings: power of arrest and remand***

264. Under section 222 of the Local Government Act 1972, a local authority may in certain cases apply to the High Court or a county court for an injunction to stop anti-social behaviour.
265. Section 91 of the Anti-social Behaviour Act 2003 provides that, where such an injunction is granted, the court may attach a power of arrest to the injunction in certain cases, namely where the conduct in question consists of or includes the use of violence, or there is a significant risk of harm. That means that a person who is suspected of breaching the conditions of an injunction can be arrested.

266. However, section 91 makes no provision for what happens when a person is arrested. That means that a person arrested has to be released on bail pending a court hearing. The release may cause problems because of the subsequent behaviour of the person who has been arrested, or because the victim(s) of the anti-social behaviour may believe that the matter will not be taken seriously or dealt with swiftly.
267. [Section 91](#) is repealed by Schedule 14 to the Act. In its place, section 27 of the Act gives the court the power to remand a person in custody pending trial, where he has been arrested for breach of an injunction.
268. The power to attach a power of arrest to the injunction remains as it was (*subsections (2) and (3)*). But the section and [Schedule 10](#) go on to make new provision about what happens thereafter.
269. In essence, where a power of arrest is attached to an injunction, if the person against whom the injunction is taken out is suspected of breaching it, he may be arrested by a constable without warrant (*subsection (4)*). The constable must inform the local authority forthwith (*subsection (5)*).
270. The person arrested must then be brought before the court within 24 hours (*subsection (6)*). If the court does not deal with him immediately, it must remand him either on bail, or in custody, in accordance with the remaining provisions of the section and the provisions of Schedule 10.
271. Those provisions closely follow sections 155 and 156 of, and Schedule 15 to, the Housing Act 1996 (which deal with the arrest of a person suspected of breaching an injunction under section 153A, 153B and/or 153D of that Act). There are similar provisions in sections 47 and 48 of, and Schedule 5 to, the Family Law Reform Act 1996.
272. Under [paragraph 4\(1\)](#) of Schedule 10 a person may not be remanded in custody or on bail for a period of more than eight days at a time, except with the consent of all parties in a case where the person arrested is remanded on bail, or where the case is adjourned to allow for a medical examination.
273. A person remanded in custody for a period not exceeding three days may be remanded to police custody ([paragraph 4\(2\)](#) of Schedule 10).

## **Part 4: Inspectorates**

### ***Section 28: Her Majesty's Chief Inspector of Prisons***

274. [Section 28](#) inserts a new Schedule A1 into the Prison Act 1952, conferring certain additional powers and duties on Her Majesty's Chief Inspector of Prisons. These are intended to assist and promote joint work and co-operation between the Chief Inspector and other public sector inspection authorities, particularly between the five criminal justice chief inspectors.
275. Paragraph 1 of new Schedule A1 enables the Chief Inspector to delegate his functions to another public authority. For example, he may need to delegate functions to another inspectorate to enable efficient management of a joint inspection, by asking the staff of another inspectorate to obtain information in the course of an interview or visit to an institution, thus removing the need for staff from both inspectorates to attend.
276. [Paragraphs 2 to 5](#) are designed to ensure that the inspectorates work efficiently together and do not duplicate inspections so as to place unnecessary burdens on the services inspected.
277. [Paragraph 2](#) provides that the Chief Inspector shall prepare an inspection programme and an inspection framework and contains definitions for those terms. Before preparing an inspection programme and an inspection framework he is required to consult the

persons and bodies listed at paragraph 2(2), unless both the Chief Inspector and the consultee agree to waive the requirement. Paragraph 2(3) enables the Secretary of State by order to specify the form of the document in question. Paragraph 2(4) makes explicit that nothing in any inspection programme or inspection framework is to be read as preventing the Chief Inspector from making visits without notice.

278. [Paragraph 3\(1\)](#) provides that if another inspectorate listed in [Paragraph 3\(2\)](#) proposes to carry out an inspection of a “specified organisation”, and the Chief Inspector considers that the proposed inspection would impose an unreasonable burden on that organisation, then the Chief Inspector shall give notice to that other inspectorate not to carry out that inspection.
279. [Paragraph 3\(4\)](#) enables the Secretary of State to specify by order (subject to the negative resolution procedure) a person or body who is to be a “specified organisation” for the purposes of paragraph 3(1), and so whom the Chief Inspector is to be obliged to protect from an unreasonable inspection. Paragraph 3(5) provides that only persons or bodies that the Chief Inspector has a duty to inspect himself can be specified and paragraph 3(6) enables the Secretary of State to specify persons or bodies in relation to particular functions of theirs.
280. [Paragraph 3\(7\)](#) enables the Secretary of State to specify by order (subject to the negative resolution procedure) circumstances where the notice procedure under paragraph 3(1) need not or shall not apply. The power could for example be used to exclude the notice procedure in relation to urgent inspections.
281. [Paragraph 3\(8\)](#) provides that where notice is given under this paragraph the proposed inspection is not to take place, subject to sub-paragraph (9), which enables the Secretary of State to give consent to the inspection if satisfied that it would not impose an unreasonable burden.
282. [Paragraph 3\(10\)](#) enables Secretary of State by order (subject to the negative resolution procedure) to supplement provisions made in this paragraph.
283. [Paragraph 4](#) imposes a duty on the Chief Inspector to co-operate with the other persons and bodies listed.
284. [Paragraph 5](#) enables the Chief Inspector to act jointly with other public authorities where it is appropriate to do so for the efficient and effective discharge of his functions. Paragraph 5(2) requires the Chief Inspector to prepare a joint inspection programme with Her Majesty’s Chief Inspector of Constabulary, Her Majesty’s Chief Inspector of the Crown Prosecution Service, Her Majesty’s Chief Inspector of the National Probation Service for England and Wales and Her Majesty’s Chief Inspector of Court Administration, setting out what inspections he proposes to carry out pursuant to his power to act jointly with another public authority, and what inspections the other Chief Inspectors propose to so carry out. The consultation requirements in paragraph 2 apply, as does the proviso that the Chief Inspector and the consultee may agree to waive the consultation requirement. Paragraph 2(4) applies, so that nothing in any joint inspection programme or inspection framework is to be read as preventing the Chief Inspector from making visits without notice.
285. [Paragraph 6](#) enables the Chief Inspector to provide assistance to another public authority, on such terms (including terms as to payment) as he thinks fit.
286. [Sections 29 to 32](#) make equivalent provision in respect of Her Majesty’s Inspectors of Constabulary, Her Majesty’s Chief Inspector of the Crown Prosecution Service, Her Majesty’s Inspectorate of the National Probation Service for England and Wales and Her Majesty’s Inspectorate of Court Administration. In addition, the effect of paragraph 7 of the new Schedule inserted by [section 30](#) in the Crown Prosecution Service Inspectorate Act 2000 is that an inspector has the power, for the purposes of an inspection under the Crown Prosecution Service Inspectorate Act 2000, to require documents and other information to be provided.

287. *Section 33* makes transitional provision in connection with Her Majesty's Chief Inspector of Education, Children's Services and Skills. This office is to be established under the *Education and Inspections Act 2006 (c.40)*.

## **Part 5: Miscellaneous**

### ***Section 34: Sentences of imprisonment for bail offences***

288. *Section 34* amends the Criminal Justice Act 2003 so that the sentencing arrangements for prison sentences of less than 12 months introduced by sections 181 and 182 of the Criminal Justice Act 2003 are not applied to offences of absconding while released on bail, committed under section 6 of the Bail Act 1976.
289. *Subsection (2)* amends the definition of "sentence of imprisonment" in section 195 of the Criminal Justice Act 2003, which applies in Chapter 3 of the 2003 Act, to exclude sentences of imprisonment following summary conviction for offences of absconding while released on bail.
290. *Subsection (3)* amends section 237 of the 2003 Act so that offenders serving sentences of imprisonment following summary conviction for offences of absconding while released on bail are excluded from the definition of "fixed term prisoner" in Chapter 6.
291. *Subsection (4)* amends section 257 of the 2003 Act so that offenders serving sentences of imprisonment for offences of absconding while released on bail may be awarded additional days for disciplinary offences.
292. *Subsection (5)* amends section 258 of the 2003 Act so that offenders serving sentences of imprisonment following summary conviction for offences of absconding while released on bail are subject to the same early release arrangements as fine defaulters and contemnors.
293. *Subsection (6)* amends the definition of "sentence of imprisonment" in section 305(1) of the 2003 Act, which applies to Part 12 of that Act, to clarify that a committal for contempt of court or any kindred offence is excluded from that definition.

### ***Section 35: Unauthorised access to computer material***

294. *Section 35* amends section 1 of the Computer Misuse Act 1990 (offence of unauthorised access to computer material). Section 1 of the 1990 Act deals with the unauthorised access to computer systems or data, commonly known as "hacking" or "cracking". Under that section, it is an offence to cause a computer to perform any function with intent to secure unauthorised access to any program or data held in any computer. It is necessary to prove that the access secured is unauthorised and that the suspect knew that this was the case.
295. *Section 35(2)* extends the section 1 offence so that it would be committed where the person's intention is to enable someone else to secure unauthorised access to a computer or to enable the person himself to secure unauthorised access to a computer at some later time.
296. *Section 35(3)* replaces the penalty for this offence by substituting a new subsection (3) into section 1 of the 1990 Act. The offence is made indictable, and the maximum sentence is increased from six months imprisonment to two years.
297. The European Union Framework Decision on Attacks Against Information Systems, adopted by the European Union and Justice and Home Affairs Council of Ministers on 24 February 2005 (<http://register.consilium.eu.int/pdf/en/04/st15/st15010.en04.pdf>), requires the approximation of Member States' criminal law (offences, penalties and jurisdiction) on attacks against information systems; this amendment to the 1990 Act is designed to ensure compliance. The EU Framework Decision requires all Member States to give effect to its provisions in legislation by 24 February 2007. This is to

ensure that there are adequate and more effective penalties available for the offence of unauthorised access to computer material, to reflect the seriousness of the criminal activities which can be involved in committing this offence.

***Section 36: Unauthorised acts with intent to impair operation of computer, etc***

298. The existing section 3 of the Computer Misuse Act 1990 makes unauthorised modification of computer material an offence, for which the penalty for conviction is imprisonment for a maximum of five years or a fine or both. Section 36 of the Act substitutes a new section 3.
299. The effect of the new section 3(1) to (4) is that a person commits an offence if he does any unauthorised act in relation to a computer, knowing it to be unauthorised, and if he intends by doing the act to do one of the things set out in subsection (2), or if he is reckless as to whether by doing the act he will do one of the things set out in subsection (2). Subsection (2) refers to impairing the operation of any computer, preventing or hindering access to programs or data, impairing the operation of programs or the reliability of data and to enabling any of these things to be done.
300. New section 3(6) increases the maximum penalty for an offence under section 3 to an unlimited fine and/or ten years imprisonment. (The maximum period of imprisonment that may be imposed for an offence under the existing section 3 is five years.)
301. This amendment is designed to ensure that adequate provision is made to criminalise all forms of denial of service attacks in which the attacker denies the victim(s) access to a particular resource, typically by preventing legitimate users of a service accessing that service, for example by overloading an Internet Service Provider of a website with actions, such as emails. Article 5 of the Council of Europe Cybercrime Convention 2001 (<http://conventions.coe.int/Treaty/EN/Treaties/Html/185.htm>) and Article 3 of the EU Framework Decision on Attacks Against Information Systems detail an offence of illegal system interference. This requires the criminalisation of the intentional serious hindering of a computer system by the inputting, transmitting, damaging, deleting, deteriorating, altering, suppressing, or rendering inaccessible of computer data. Such serious hindering is intended to cover programmes that generate denial of service attacks, or malicious code such as viruses.

***Section 37: Making, supplying or obtaining articles for use in computer misuse offences***

302. This section inserts a new section 3A into the Computer Misuse Act 1990. The new section creates three new offences, each punishable on conviction on indictment with two years' imprisonment or a fine or both. The offences are:
- making, adapting, supplying or offering to supply an article intending it to be used to commit, or to assist in the commission of, an offence under section 1 or section 3 (subsection (1) of the new section);
  - supplying or offering to supply an article believing that it is likely to be used in this way (subsection (2));
  - obtaining an article with a view to its being supplied for use in this way (subsection (3)).

If a person were charged with a subsection (2) offence in relation to a quantity of articles, the prosecution would need to prove its case in relation to any particular one or more of those articles; it would not be enough to prove that the person believed that a certain proportion of the articles was likely to be used in connection with an offence under section 1 or 3.

303. The background to these new offences is the existence of a ready and growing market in electronic tools such as "hacker tools" which can be used for hacking into computer

systems, and the increase in the use of such tools in connection with organised crime. Also, Article 6(1)(a) of the 2001 Council of Europe Cybercrime Convention requires the criminalisation of the distribution or making available of a computer password or similar data by which a computer system is capable of being accessed with the intent to commit an offence. The new offences are designed to implement this. (By virtue of subsection (4) of the new section 3A, "article" includes "any program or data held in electronic form" and would therefore include computer passwords as well as much else.)

### ***Section 38: Transitional and saving provision***

304. This section makes transitional arrangements for provisions of the Act that amend the Computer Misuse Act 1990 so as to provide that the amendments do not apply in relation to offences committed before the coming into force of the amendments or acts done before that time.

### ***Section 39: Forfeiture of indecent photographs of children: England and Wales***

305. This section provides a mechanism for the forfeiture of indecent photographs of children held by the police. As it stands the law allows for the forfeiture of such material only following seizure under a warrant under the Protection of Children Act 1978, and requires all material that it is proposed be forfeited to be brought before the court irrespective of whether its owner consents to its forfeiture. The effect of the amendments at section 39 is to permit forfeiture of material by the police irrespective of the power under which the material was seized, and to permit forfeiture of material along with any other material that it is not possible to separate from it. The effect of the amendments is also that forfeiture may take place without the involvement of a court unless the owner or some other person with an interest in the material objects.
306. *Subsection (1)* introduces the amendments to the Protection of Children Act 1978 to bring into effect the new procedures for the forfeiture of indecent images of children.
307. *Subsection (2)(a)* amends section 4 (entry, search and seizure) of the Protection of Children Act 1978 by omitting subsection (3) thereby removing the mandatory production in court of articles seized under that Act to be considered for forfeiture.
308. *Subsection (2)(b)* substitutes subsection (4) of section 4 of the 1978 Act to define "premises" in line with the definition in section 23 of PACE.
309. *Subsection (3)* and *subsection (4)* replace section 5 (forfeiture) of the 1978 Act and insert into that Act the Schedule set out in Schedule 11 to the Act (forfeiture of indecent photographs of children). The inserted Schedule provides the new mechanism for the forfeiture of indecent images of children and the devices that hold them regardless of the powers of seizure used.
310. *Subsection (5)* limits the amendments made by subsection (2)(b) to warrants issued under section 4 of the 1978 Act after the commencement of that subsection.
311. *Subsections (6)* and *(7)* ensure that the new forfeiture procedures apply to articles seized lawfully before or after these provisions come into effect provided that the property has not already been brought before the court under the 1978 Act.

### ***Schedule 11: Schedule to be inserted into the Protection of Children Act 1978***

312. *Schedule 11* inserts a new Schedule into the Protection of Children Act 1978. This Schedule creates a mechanism whereby the police can forfeit indecent images of children and the devices that hold them. For example, computer hard drives that contain indecent images where deletion of the indecent images only is not technically possible. The existing procedure applies only if such articles were seized under a warrant under the Protection of Children Act 1978 or following conviction for an offence in which the items were used. This new Schedule applies irrespective of the power the material

is seized under, so will include indecent material inadvertently seized in investigations into other matters. For example, computers seized in a fraud investigation may on subsequent analysis be found to contain both the business records sought and child pornography.

313. The inserted Schedule gives the police the power to forfeit such articles and creates an avenue of appeal for owners and third parties. Paragraphs 1 to 4 of the inserted Schedule provide that once the police no longer have a legitimate reason for possessing the articles and if they believe they are suitable for forfeiture on the grounds they are indecent photographs of children, they are obliged under the Schedule to issue a notice of forfeiture to those persons that they believe to be owners of the articles, the occupier of the premises they were seized from, and the person from whom they were seized.
314. [Paragraph 4](#) requires the notice of forfeiture to describe the articles and explain how a notice of claim against forfeiture should be pursued. A notice of claim is made under paragraph 5 to a constable at a police station in the police area where the articles were seized. Paragraph 6 sets out what must be in a notice and that it must be made within one month from the date of the giving of the notice of forfeiture. Under paragraph 7 if no notice has been given the articles can be automatically forfeited by the police.
315. If a notice of claim is received, the constable who has custody of the property must decide under paragraphs 8 and 9 whether to return the property or take proceedings to ask the court to condemn the property.
316. [Paragraphs 10 to 12](#) set out the procedure for forfeiture proceedings, and permit the court, when considering an application for forfeiture from the police, to condemn or return the property or a separable part of the property. The court must return the property in question to the person claiming it, if it concludes that the property is neither an indecent image of a child, nor material which it is not reasonably possible to separate from such an image. The court must also return the property to the person claiming it if it is satisfied that although the property is an indecent image of a child, that person has a legitimate reason for possessing it. For example, under the Criminal Justice Act 1988 it is not an offence to possess an indecent photograph of one's spouse if he or she is over 16 (see paragraph 21).
317. Under paragraph 11 the court in considering a forfeiture claim is also able to order the copying of data by the police and has the power to order payment of costs for any steps that it orders to be taken. For example, a computer hard drive may have on it both indecent photographs and business records. If it is not possible to delete one but not the other, the court can order that the business records be copied before the hard drive is forfeited and then destroyed by the police.

#### ***Section 40: Forfeiture of indecent photographs of children: Northern Ireland***

318. [Section 40](#) and [Schedule 12](#) make provision in relation to Northern Ireland corresponding to that made by section 39 and Schedule 11.

#### ***Section 41: Immigration and asylum enforcement functions: complaints and misconduct***

319. This section enables the remit of the IPCC to be expanded to provide oversight of certain personnel in the Immigration and Nationality Directorate (IND) exercising specified enforcement functions. The IPCC was established under Part 2 of the Police Reform Act 2002.
320. *Subsection (1)* enables the Secretary of State to make regulations (subject to the negative resolution procedure) conferring functions on the IPCC in relation to the exercise of specified enforcement functions by immigration officers, and the exercise by officials of the Secretary of State of specified enforcement functions relating to immigration and asylum.

321. *Subsection (2)* provides that the reference to “enforcement functions” in subsection (1) includes reference to powers of entry, powers to search persons or property, powers to seize or detain property, powers of arrest and detention, powers of examination, and powers in connection with the removal of persons from the United Kingdom.
322. *Subsection (3)* provides that the regulations made under subsection (1) may not confer functions on the IPCC in relation to the exercise by any person of a function conferred on him by or under Part 8 of the Immigration and Asylum Act 1999, which relates to removal centres and detained persons.
323. *Subsection (4)(a)* provides for the IPCC to carry out for IND a similar role to that it performs in respect of police forces in England and Wales where it examines police complaint handling procedures and undertakes or supervises investigations of conduct and complaints. The subsection does not simply apply the relevant provisions of the Police Reform Act 2002 because the regulations will need to be tailored to the circumstances of IND. Under these regulations, the IPCC would be able to look at allegations of criminal conduct or gross misconduct within IND. Again reflecting the practice for the police, regulations could enable the IPCC to investigate directly, to supervise or manage an investigation, or to determine that there be an investigation by the appropriate authority (the IPCC may determine that there should be an internal investigation and that the IPCC may supervise or manage it), depending on the circumstances.
324. *Subsection (4)(b)* enables the Secretary of State to make provision under the regulations for payment by the Secretary of State to or in respect of the IPCC.
325. *Subsection (5)* provides that the IPCC and the Parliamentary Commissioner for Administration (“PCA”) may disclose information to each other for the purposes of exercising their functions under this section and the Parliamentary Commissioner Act 1967 respectively.
326. *Subsection (6)* provides that the IPCC and the PCA may jointly investigate a matter in relation to which the IPCC has functions under this section and the PCA has functions under the Parliamentary Commissioner Act 1967.
327. *Subsection (7)* provides that regulations made under this section may only confer functions on the IPCC in relation to the exercise of enforcement functions in or in relation to England and Wales.

### ***Section 42 and Schedule 13: Amendments to the Extradition Act 2003 etc***

328. *Section 42* introduces *Schedule 13* which makes amendments to the Extradition Act 2003 (the “2003 Act”).

### ***Paragraphs 1 and 2: Requests for extradition of persons unlawfully at large***

329. *Paragraphs 1 and 2* amend the wording in the 2003 Act relating to extradition requests for persons who are unlawfully at large in relation to the offence for which they have been requested. Case law has established that, as long as it is clear from the information contained in the warrant or request that the person is in fact alleged to be “unlawfully at large”, the warrant or request does not actually have to contain those words. And indeed many warrants and requests for the extradition from the United Kingdom of persons already convicted do not contain these words. This has given rise to difficulties, given the way in which a number of the provisions of the 2003 Act are worded.
330. These paragraphs amend various sections of the Act to refer instead to a person who “has been convicted.” The convicted person can only be sought if wanted for the purpose of sentencing or to carry out a sentence of imprisonment.

***Paragraph 3: Restriction on extradition following transfer from International Criminal Court***

331. *Paragraph 3* arises as a consequence of a new draft agreement between the UK and the International Criminal Court (ICC). The agreement will allow the UK to enforce sentences of imprisonment imposed by the ICC and will mean that ICC prisoners can be transferred to prisons in the UK to serve their sentences.
332. The agreement will also require the consent of the Presidency of the ICC if such a person's extradition is then requested from the UK to another state. In Part 1 of the 2003 Act, section 11 is amended and a new section 19A is added; in Part 2, section 93 is amended and a new section 96A is added, such that extradition is barred without the consent of the Presidency of the ICC.

***Paragraphs 4 to 6: Restriction on extradition in cases where trial in United Kingdom more appropriate***

333. *Paragraphs 4 and 5* are amendments to Parts 1 and 2 of the Act respectively. They introduce a ground for refusal of extradition where an accused person is requested for conduct a significant part of which occurred in the UK, and it would not be in the interests of justice for the person to be tried in the requesting territory.
334. *Paragraph 6(1)* provides that an order bringing the amendments contained in paragraphs 4 and 5 into force may not be made within 12 months of the day on which the 2006 Act was passed.
335. In addition, the effect of *paragraph 6(2)* is that the Secretary of State is not obliged to make a commencement order bringing paragraph 4 or 5 into force unless both Houses of Parliament have passed a resolution requiring him to do so. In that case he would be under a duty to make such an order within a month of the resolutions being passed (*paragraph 6(3)*).

***Paragraph 7: Remand of persons serving sentence in United Kingdom***

336. *Paragraph 7* deals with the case where a person's extradition has been requested, but the proceedings have been adjourned while he serves a sentence of imprisonment in England and Wales.
337. Section 131 of the Magistrates' Courts Act 1980 makes provision for a person who is serving a domestic sentence, and who is simultaneously on remand awaiting trial for another domestic offence, to be remanded every 28 days in respect of the unconvicted offence. Section 131 is also applied to persons serving a domestic sentence who are simultaneously the subject of an extradition request. Paragraph 7, via amendments to sections 23 and 89 of the Act, amends the references to 28 days in section 131 of the Magistrates' Courts Act 1980 to have effect as if they were a reference to 6 months.

***Paragraph 8: Remands in connection with appeal proceedings***

338. *Paragraph 8* makes explicit provision for remands in appeal proceedings. The paragraph amends various provisions in Part 1 and Part 2 of the 2003 Act which provide for appeal routes to the High Court and House of Lords.

***Paragraph 9: Time for extradition***

339. *Paragraph 9* extends the deadline by which the subject of an executed Part 1 warrant must be removed if the person decides not to appeal. Upon a decision of a judge to order extradition the person has seven days in which to lodge an appeal. If at the end of the seven day period the person decides not to appeal, the Act (unamended) provides the police with only three days in which to remove the person from the UK.

340. The amendments give the police the same period of time to remove the person from the UK in an unappealed case as in a case which has been appealed (10 days), the short timescales reflecting the requirements of the Framework Decision on the European Arrest Warrant which Part 1 of the 2003 Act implements. Sections 35, 37 and 38 in Part 1 of the Act are amended.

***Paragraphs 10 to 14: Extradition of person serving sentence in United Kingdom***

341. *Paragraphs 10 to 14* make provision for a person who is on licence in the UK following conviction for an offence to be extradited while on licence. While the Act makes provision for a serving prisoner to be temporarily surrendered to the requesting jurisdiction, it does not make equivalent provision for someone who has completed the custodial part of the sentence and is out on licence. The amendments also cover arrangements for both the surrender of the person to the requesting jurisdiction and for his return to the UK to complete his licence period after his trial in the other state.
342. The amendments do not apply where someone has been given a suspended sentence or conditional discharge.

***Paragraphs 15 and 16: “The appropriate judge”***

343. *Paragraphs 15 and 16* provide that a case may be heard by a different judge at different times.

***Paragraph 17: Extradition to category 2 territories: requests and certificates***

344. *Sub-paragraphs (1), (2)(a) and (3) of paragraph 17* amend section 70(1) and (2) of the Act to provide Ministers with a discretion whether to certify an extradition request for a person who:
- has been recorded by the Secretary of State as a refugee within the meaning of the Refugee Convention, or
  - who has been granted leave to enter or remain in the United Kingdom on the ground that it would be a breach of Article 2 or 3 of the Human Rights Convention to remove him to the territory to which extradition is requested.
345. *Sub-paragraph (2)(b) of paragraph 17* amends section 70(1) to provide for a Part 2 request to be certified whether or not the person is in the UK on the day of certification.
346. *Sub-paragraph (5) of paragraph 17* removes the reference at section 70(9) to the Order in Council which designated the requesting state. This is because the orders designating states for extradition purposes are made by Order of the Secretary of State not by Order in Council. It also removes the requirement at section 70(9) for the relevant order to *accompany* each certified request when it is sent to the court. The amendment made by *sub-paragraph (4)* requires Ministers instead to *identify* the relevant order when sending the request to the court.

***Paragraph 18: Time for representations and consideration of case under Part 2***

347. *Sub-paragraph (2) of paragraph 18* reduces the time permitted for the requested person to make representations to 4 weeks. (This has the consequence of equalising the time for the making of representations with the time within which the Secretary of State is required to consider them).
348. *Sub-paragraph (3) of paragraph 18* provides that if the person has consented to his extradition Ministers are not required to wait until the end of the permitted period (i.e. 4 weeks) to order extradition.

***Paragraph 19: Applications for discharge or for extension of time limit***

349. *Paragraph 19* amends section 99 of the 2003 Act to provide for applications in England and Wales to be made to the Magistrates' Court instead of the High Court in the following cases: where the person is applying for discharge (because Ministers have not ordered extradition within the permitted period), and where Ministers are applying for an extension of time in which to consider the case (because it raises issues that are too complex to be dealt with in the permitted period).

***Paragraph 20: Scotland: references to Secretary of State***

350. *Paragraph 20* corrects a small drafting flaw in the 2003 Act which attributed to Scottish Ministers a function that should properly be attributed to the Secretary of State. Section 141 is thereby amended, with the effect that, in Scottish cases, references to section 70(2)(b) (as amended) and section 93(4)(c) are references to the Secretary of State and not to Scottish Ministers.

***Paragraph 21: Issue of part 3 warrant: persons unlawfully at large who may be arrested without domestic warrant***

351. *Paragraph 21* amends section 142 of the 2003 Act to provide for additional grounds upon which a Part 3 warrant (a UK European Arrest Warrant for transmission to another Category 1 territory) may be issued, where the wanted person is unlawfully at large.

***Paragraph 22: Issue of part 3 warrant: domestic warrant issued at common law by judge in Northern Ireland***

352. *Paragraph 22* amends section 142(8) of the 2003 Act by adding common law warrants issued by a Crown Court judge in Northern Ireland to the list of domestic warrants.

***Paragraph 23: Dealing with person for pre-extradition offences following extradition to UK***

353. *Paragraph 23* amends section 146(3)(c) to provide the basis upon which the UK authorities can issue a request for pre-extradition offences to be dealt with following a wanted person's return to the UK. The amendment makes provision for such a request to be issued by a judge, analogous to the issue of the original Part 3 warrant.

***Paragraph 24: Extradition requests to territories not applying European framework decision to old cases***

354. *Paragraph 24* makes provision (by inserting a new section 155A into the 2003 Act) for the issue of extradition requests (as opposed to Part 3 warrants) to certain category 1 territories for certain old offences. A small number of territories have availed themselves of the provisions of Article 32 of the Framework Decision on the European Arrest Warrant, which states that where a person is wanted for offences committed before 7 August 2002 an extradition request rather than a European Arrest Warrant may be issued for their extradition.

***Paragraph 25: Extradition of serving prisoners***

355. *Paragraph 25* adds a new section to make it clear that a serving prisoner may be removed from custody in the United Kingdom if he is extradited to another country.

***Paragraph 26: Authentication of receivable documents***

356. *Paragraph 26* corrects an oversight in the 2003 Act which removed the ability of an officer of the requesting state to certify documents so that they are receivable in an extradition hearing in the UK. The amendment to section 202(4) of the 2003 Act restores

the receivability of documents in court which have been authenticated by an officer, in addition to documents authenticated by a judicial authority of the requesting state.

***Paragraphs 27 to 30: Powers of High Court in relation to bail decisions by magistrates' courts etc***

- 357. *Paragraphs 27 to 30* deal with bail proceedings in the extradition process.
- 358. *Paragraph 27* gives a requested person refused bail by a magistrates' court an avenue of appeal.
- 359. *Paragraph 28* changes the venue for appeals in bail proceedings from the Crown Court, which has no other involvement in extradition proceedings, to the High Court, which hears all other appeals in extradition proceedings.
- 360. *Paragraphs 29 and 30* provide a prosecution right of appeal against the grant of bail in extradition proceedings in Northern Ireland where bail has been granted either by a Magistrates' Court or by a County Court Judge.
- 361. Section 22 of the Criminal Justice Act 1967, section 1(1A) of the Bail (Amendment) Act 1993 and section 10 of the Justice (Northern Ireland) Act 2004 are thereby amended.

***Paragraphs 31 to 33: Credit against sentence for periods of remand in custody of persons extradited to UK***

- 362. *Paragraphs 31 to 33* amend section 243 of the Criminal Justice Act 2003, section 101 of the Powers of Criminal Courts (Sentencing) Act 2000 and section 47 of the Criminal Justice Act 1991 to provide that time served abroad while awaiting extradition to the UK can be considered for deduction from the person's eventual UK sentence, subject to judicial discretion in line with domestic sentencing legislation. Without the amendments, credit could not be given in cases where the person is convicted before he is extradited, but is not sentenced until after he is extradited. There were also no provisions to give credit to juveniles sentenced to a detention and training order. The amendments apply regardless of when the person is convicted or sentenced in the UK, and regardless of the person's age.

***Paragraphs 34 and 35: Amendments consequential on amendments in Part 1***

- 363. *Paragraph 34* provides for an amendment to the Bail Act 1976 which is consequential on the amendments in relation to the provisions amending "unlawfully at large".
- 364. *Paragraph 35* amends Schedule 9 to the Constitutional Reform Act 2005 in respect of amendments to have effect on the Extradition Act 2003, substituting "Supreme Court" for "House of Lords".

***Section 43: Designation of the United States of America***

- 365. *Section 43(1)* makes provision for an amendment to be made to the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003, which would restore the requirement for the United States to provide *prima facie* evidence with its extradition requests to the UK.
- 366. *Section 43(2)* provides that an order bringing such an amendment into force may not be made within 12 months of the day on which the 2006 Act was passed (i.e. 8 November 2006), nor may such an order be made if the instruments of ratification of the 2003 Extradition Treaty between the United States and the United Kingdom have been exchanged.
- 367. In addition, the effect of *subsection (3)* is that the Secretary of State is not obliged to make a commencement order bringing section 43(1) into force unless both Houses of Parliament have passed a resolution requiring him to do so. In that case he would be

under a duty to make such an order within a month of the resolutions being passed (subsection (4)).

***Section 44: Repatriation of foreign national prisoners***

368. *Section 44* amends the Repatriation of Prisoners Act 1984 to enable a prisoner to be transferred without his consent where the relevant international arrangement does not require a prisoner to consent to transfer.

***Section 45: Attendance by accused at certain preliminary or sentencing hearings***

369. *Section 45* substitutes for the existing section 57 of the Crime and Disorder Act 1998 a new Part 3A consisting of new sections 57A to 57E. The existing section 57 allows courts to direct that a defendant in custody should appear at preliminary hearings over a live link from prison. The new Part 3A extends the provision to allow live links also to be used, provided the defendant consents, in sentencing hearings and in preliminary hearings where the defendant is at a police station (whether in police detention or in answer to bail).
370. The new section 57A sets out provisions common to sections 57B to 57E. Subsection (2) of new section 57A provides that an accused is to be treated as present when he attends via a live link. Subsection (3) sets out relevant definitions. A “live link” means that the accused must be able to see and hear, and be seen and heard by, the court. While “live link” will typically refer to giving evidence over a closed circuit television link, the definition is drafted sufficiently widely to apply to any technology with the same effect. “Custody” will typically refer to prison or secure psychiatric accommodation, but also includes secure juvenile accommodation. The section states that custody does not include police detention, which is defined as having the same meaning as in PACE (but new section 57C makes separate provision for the use of live links where a defendant is in police detention).
371. The new section 57B provides that the Crown Court or a magistrates’ court may direct an offender who is expected to be in custody during a preliminary hearing to attend that hearing by way of link: section 57B(1) and (2). The defendant need not be physically present at court for a live link direction to be given: the court may give a live link direction either on the papers or immediately before a hearing with the defendant present over live link. Subsection (5) provides that, before giving or rescinding a live link direction, the court must give the parties the opportunity to make representations.
372. If a magistrates’ court decides not to give a live link direction where it has power to do so, it must state its reasons in open court and record the reasons in the register of its proceedings (subsection (6)).
373. The new section 57C provides that a magistrates’ court may direct the accused to attend a preliminary hearing over a live link from a police station. This applies both to defendants who are detained at the police station (subsection (3)), and to defendants who have been bailed to return to the police station for a live link appearance in connection with the offence (“live link bail”) (subsection (4)). Subsection (7) contains an express requirement for the defendant’s consent to be given before the court makes a live link direction. An accused answering to live link bail is to be treated as having surrendered to custody of the court from the time when it makes a live link direction in respect of him (subsection (10)).
374. New section 57D provides that where the accused attends a preliminary hearing over a live link and he is convicted in the course of it, and the court proposes to proceed immediately to sentence, the accused may continue to attend over the link provided that he agrees and the court is satisfied that it is not contrary to the interests of justice.
375. Subsection (3) provides that, where a preliminary hearing over a live link continues as a sentencing hearing under subsection (2), the offender can give oral evidence over the

live link only if he has specifically agreed to give evidence in that way and the court is satisfied that it is not contrary to the interests of justice.

376. The new section 57E provides that, where it is likely that an offender who has been convicted by a court of an offence will be held in custody during a sentencing hearing or hearings, the court may, of its own motion or following an application from either party, direct that the offender attend over a live link, provided that he agrees and the court is satisfied that it is not contrary to the interests of justice (subsection (5)).
377. The court may, if it is in the interests of justice to do so, rescind a live link direction, either of its own motion or on the application of either party (subsection (6)).
378. Subsection (7) provides that the offender can only give oral evidence over the live link under this section if he has specifically agreed to do so and the court is satisfied that it is not contrary to the interests of justice.
379. If the court refuses an application for, or rescinds, a live link direction under section 57E, it must state its reasons in open court and, in the magistrates' courts, record the reasons in the register of its proceedings (subsection (8)).

### ***Section 46: Live Link bail***

380. *Section 46* amends the Police and Criminal Evidence Act 1984 ('PACE') to create a special class of bail – "live link bail". The amended subsection 47(3) of PACE allows the police to grant bail subject to a duty to appear at a police station for the purpose of a live link hearing (see the amendment made by *subsection (5)* of section 46).
381. Subsection (2) of new section 46ZA of PACE (inserted by *subsection (3)*) provides that persons answering live link bail are not treated as being in police detention. But this is qualified by new section 46ZA(3) and (4) which provide that the accused is to be treated as if he had been arrested for and charged with the offence for which he was given live link bail if -
- the accused informs the police that he does not intend give his consent to a live link direction,
  - a live link is not available, or
  - the court determines not to give a live link direction (whether because the defendant does not give his consent or for any other reason).

In such cases (and in cases where an accused granted live link bail is arrested under section 46A) section 38 of PACE will operate again in relation to the accused. This means that the defendant may (depending on the circumstances) be detained and brought before a court or granted bail afresh subject to a duty to appear in court in the usual way or to attend again at the police station for the purposes of a live link hearing.

382. Section 46A(1) of PACE allows the police to arrest without warrant a person who fails to attend a police station to answer bail (including the new live link bail). Subsection (1ZA) of section 46A of PACE (inserted by *subsection (4)*) extends this power to cover the case where an accused person does attend a police station in answer to live link bail but leaves the police station before the court has begun to consider giving a live link direction, without informing a constable that he does not intend to give consent to the direction.

### ***Section 47: Evidence of vulnerable accused***

383. *Section 47* inserts into the Youth Justice and Criminal Evidence Act 1999 a new Chapter 1A consisting of new sections 33A to 33C.
384. New section 33A allows the court in criminal proceedings, on application by the accused, to direct that any evidence given by the accused should be given over a live

video link. Before doing so the court must be satisfied that it would be in the interests of justice, and that the following conditions are met:

- if the accused is under the age of 18, that his ability to participate effectively as a witness is compromised by his level of intelligence or social functioning, and that his ability to participate effectively would be improved by giving evidence over a live link: new section 33A(4).
- if the accused is aged 18 or over, that he is unable to participate in the proceedings effectively because he has a mental disorder or a significant impairment of intelligence or social function, and that his ability to participate effectively would be improved by giving evidence over a live link: new section 33A(5).

385. “Mental disorder” for the purposes of subsection 33A(5) is a disorder within the meaning of the Mental Health Act 1983.

386. New section 33A draws a distinction between juvenile and adult defendants. The starting assumption in relation to adult defendants is that almost everyone should and can give evidence in court. The criteria set out in subsection (5), which include the requirements in section 16(2)(a)(i) and (ii) of the Youth Justice and Criminal Evidence Act 1999, are intended to provide the court with a structured approach to the decision-making process and to ensure that the use of a live link is reserved for exceptional cases where the accused has a condition that prevents effective participation as a witness and so may prevent a fair trial from taking place. In the case of a juvenile accused the test of eligibility is less strict: there is no reference to a mental disorder or impairment, and it is sufficient that the ability to participate is compromised. The lower threshold recognises that it may be more common for juveniles to experience difficulties during the trial through limited intelligence and social development, than it would be for adults. But new section 33A(4) is aimed at juvenile defendants with a low level of intelligence or a particular problem in dealing with social situations, and is not intended to operate merely because an accused is a juvenile and is nervous, for example.

387. Where a direction for a live link has been given, the accused must give all his evidence through a live link (subsection (3)). The accused may not give oral evidence other than through a live link; for example, any cross-examination of the accused is also to take place through a live link (subsection (6)). The court can discharge a direction if it appears to be in the interests of justice to do so. This is a matter for the court to determine in the exercise of its discretion, and may cover a wide range of circumstances, for example, where an accused finds that giving evidence over a live link is very difficult and believes that giving evidence in open court would allow him to give a better quality of evidence (subsection (7)). A direction also ceases to have effect if the proceedings relating to the accused are determined or abandoned.

388. New section 33B is an interpretation provision. It defines in subsection (1) the arrangements that will amount to a “live link”. Whilst “live link” will typically involve evidence over a closed circuit television link, the definition is drafted sufficiently widely to encompass any technology with the same effect, which will enable the accused to see and hear a person in the courtroom, and to be seen and heard by the persons listed in subsection (2).

### ***Section 48: Appeals under Part 1 of the Criminal Appeal Act 1968***

389. *Section 48* amends section 22 of the Criminal Appeal Act 1968 to enable the Court of Appeal Criminal Division, after taking account of any representations from the parties, to direct that an appellant in custody who is entitled to attend his appeal (whether by virtue of section 22(1) or leave given under section 22(2)) is to do so by way of a live link. “Live link” has the same meaning as in the new section 57A (3) of the Crime and Disorder Act 1998. The Court may rescind a live link direction at any time. Section 23(5) of the 1968 Act is amended to provide that an appellant may only give oral evidence over a link only if the direction expressly provides.

## **Part 6: Supplemental**

### ***Section 49: Orders and regulations***

390. This section makes provision in connection with the various powers under the Act to make orders or regulations. The effect of subsection (4) is that all such powers exercisable by the Secretary of State, or by the Registrar General (see section 13(1)(d) and (2)(a)) are subject to the negative resolution procedure, except for powers to make commencement orders (where no parliamentary procedure applies) and powers to make orders specified in *subsection (5)* (where the affirmative resolution procedure applies). (Subsection (1)(c) refers also to powers exercisable by “the responsible ministers (within the meaning of Part 4)”, but references to the “responsible ministers” were removed from Part 4 by amendment during the passage of the Bill, and so this provision is of no effect.) *Subsection (3)* provides that any power under the Act to make orders or regulations includes a power to make different provision for different purposes or areas. This subsection also enables orders and regulations to make incidental, supplemental, consequential, saving or transitional provision.

### ***Section 50: Money***

391. *Section 50* authorises any expenditure incurred by a Minister of the Crown under the Act. It also authorises any additional expenditure incurred under any other Acts, where that additional expenditure results from the Act. Any receipts received by a Minister of the Crown must be paid into the Consolidated Fund.

### ***Section 51: Power to make consequential amendments and transitional provisions etc***

392. This section enables the Secretary of State by order to make supplementary, incidental, consequential, transitional or saving provision. The power conferred by this section differs from the power provided in section 49(3) in that it is exercisable independently of any other power to make orders or regulations under the Act. It is effectively a power to make consequential provisions at any time, including amendments to primary and secondary legislation. The Scottish Ministers have corresponding powers in relation to any provision of the Act that is within the legislative competence of the Scottish Parliament.

### ***Section 52 and Schedules 14 and 15: Amendments and repeals***

393. This section introduces *Schedules 14* (minor and consequential amendments) and *15* (repeals).

### ***Section 53: Commencement***

394. This section provides for commencement. The provisions mentioned in paragraph 400 below came into force on Royal Assent (i.e. on 8 November 2006). The other provisions of the Act are to be brought into force by means of commencement orders.

395. Commencement orders will be made by the Secretary of State and, where the Act so provides, by the Scottish Ministers or the National Assembly for Wales.

396. *Sections 35 to 38* (computer misuse), and repeals and amendments consequential on those sections, will be brought into force by the Scottish Ministers in so far as they relate to Scotland.

397. *Sections 19 and 20* (crime and disorder committees) and *27* (injunctions in local authority proceedings) and *Schedules 8 and 10* will be brought into force by the National Assembly for Wales in so far as they relate to local authorities in Wales. *Sections 23 to 25* (parenting contracts and parenting orders), and amendments and repeals consequential on those sections, will be brought into force by the National Assembly

*These notes refer to the Police and Justice Act 2006  
(c.48) which received Royal Assent on 8 November 2006*

for Wales in so far as they relate to local authorities and registered social landlords in Wales. Section 26 (anti-social behaviour injunctions) and consequential amendments and repeals relating to housing-related injunctions will be brought into force by the National Assembly for Wales in so far as they relate to Welsh landlords as defined in *subsection (9)*.

398. *Subsection (10)* provides that the commencement order bringing section 4 into force may include modifications to Part 1 of the Local Government Act 1999 in its application to police authorities.

#### ***Section 54: Extent***

399. This section sets out the extent of the Act. This is detailed in paragraphs 14 to 17 above.
400. *Subsection (7)* amends section 63 (extent) of the Immigration, Asylum and Nationality Act 2006 (“the 2006 Act”) by inserting a new subsection (3A). The new subsection (3A) provides that an order made under section 63(3) of the 2006 Act (power to extend the 2006 Act to Channel Islands or Isle of Man with or without modification or adaptation) may so extend a provision of the 2006 Act either as amended by the Act or as though the amendments to the 2006 Act by the Act had not been made.

#### ***Section 55: Short title***

401. This section sets out the short title of the Act.