

These notes refer to the Anti-terrorism, Crime and Security Act 2001 (c.24) which received Royal Assent on 14th December 2001

ANTI-TERRORISM, CRIME AND SECURITY ACT 2001

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Anti-terrorism, Crime and Security Act 2001 which received Royal Assent on 14 December 2001. They have been prepared by the Home Office, Her Majesty's Treasury, the Department of Trade and Industry, the Ministry of Defence, the Department for Transport, Local Government and the Regions and the Foreign and Commonwealth Office, in order to assist the reader of the Act and to help inform debate on it. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation, none is given.

SUMMARY AND BACKGROUND

3. The purpose of this Act is to build on legislation in a number of areas to ensure that the Government, in the light of the new situation arising from the September 11 terrorist attacks on New York and Washington, have the necessary powers to counter the threat to the UK. The measures are intended to:
 - Cut off terrorist funding
 - Ensure that government departments and agencies can collect and share information required for countering the terrorist threat
 - Streamline relevant immigration procedures
 - Ensure the security of the nuclear and aviation industries
 - Improve the security of dangerous substances that may be targeted or used by terrorists
 - Extend police powers available to relevant forces
 - Ensure that we can meet our European obligations in the area of police and judicial co-operation and our international obligations to counter bribery and corruption
 - Update parts of the UK's anti-terrorist powers

OVERVIEW

4. The Act is in 14 Parts.

Terrorist property

5. [Part 1](#) and Schedules 1 and 2 of the Act contain provisions to prevent terrorists from gaining access to their money. They complement provisions in the new Proceeds of Crime Bill and ensure that investigative and freezing powers are available wherever funds could be used to finance terrorism.
6. The introduction of account monitoring orders enable the police to require financial institutions to provide information on accounts for up to 90 days. The existing requirement to report knowledge or suspicion of terrorist financing has been strengthened, for the regulated sector, so that it is an offence not to report where there were “reasonable grounds” for suspicion.
7. The Act gives law enforcement agencies the power to seize terrorist cash anywhere in the UK, and the power to freeze assets at the start of an investigation, rather than when the person is about to be charged, reducing the risk that funds will be used or moved before they can be frozen

Freezing orders

8. [Part 2](#) creates a new power which enables the Treasury to freeze the assets of overseas governments or residents who have taken, or are likely to take, action to the detriment of the UK's economy or action constituting a threat to the life or property of a national or resident of the UK. The Treasury's previous power to freeze assets, contained in the 1964 Act, is repealed.

Disclosure of information

9. [Part 3](#) and Schedule 4 of the Act deal with information disclosure provisions for public authorities.
10. [Section 17](#) clarifies and extends a number of existing provisions for disclosure of information from public authorities to agencies involved in criminal investigations and proceedings. The gateways ensure that public authorities can disclose information which is subject to a statutory restriction on disclosure for the purposes of a criminal investigation or criminal proceedings.
11. [Section 19](#) creates a new gateway giving HM Customs and Excise and the Inland Revenue a general power to disclose information held by them for law enforcement purposes and to the intelligence services for their purposes.

Immigration and asylum

12. [Part 4](#), sections 21 to 32 (“Suspected international terrorists”) allow the detention of those the Secretary of State has certified as threats to national security and who are suspected of being international terrorists where their removal is not possible at the present time. Such detention would be subject to regular independent review by the Special Immigration Appeals Commission (SIAC). These provisions change the current law, which allows detention with a view to removal only where removal is a realistic option within a reasonable period of time. The detention powers will cease to have effect on 10 November 2006.
13. It is also intended to speed up the asylum process for suspected terrorists. The Act excludes substantive consideration of asylum claims where the Secretary of State certifies that their removal would be conducive to the public good. This would not be in breach of the 1951 Refugee Convention because they are excluded from the protection of that Convention.
14. It also prevents judicial review of decisions of the SIAC, which is the body that deals with suspected terrorists' appeals against immigration decisions: it has three members hearing an appeal, one of whom holds or has held high judicial office and another of

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whom is or has been an immigration judge. The Act makes SIAC a superior court of record. There remains an avenue of appeal from SIAC to the Court of Appeal on a point of law.

15. The Act allows for the retention, for 10 years, of fingerprints taken in asylum and certain immigration cases. This helps prevent applicants who have had their case resolved from re-applying and creating multiple identities, which can be used in the perpetration of terrorism or other serious crimes.

Race and religion

16. [Part 5](#) of the Act extends the racially aggravated offences contained in the Crime and Disorder Act 1998 to cover offences aggravated by religious hostility. It amends the provisions in the Public Order Act 1986 concerning incitement to racial hatred to include cases where the hatred is directed against groups abroad, and increases the maximum penalty for such offences from 2 to 7 years imprisonment.

Weapons of mass destruction

17. [Part 6](#) of the Act strengthens current legislation controlling chemical, nuclear and biological weapons.

Control of pathogens and toxins

18. The provisions set out in [Part 7](#) (and Schedules 5 and 6) places an obligation on managers of laboratories and other premises holding stocks of specified disease-causing micro-organisms and toxins to notify their holdings, and to comply with any reasonable security requirements which the police may impose.
19. It also requires managers of laboratories and other premises, on request, to furnish the police with details of people with access to the dangerous substances held there. The Secretary of State is given power to direct that a named individual must not be allowed access to such disease strains or the premises in which they are held.

Nuclear Security

20. The provisions in [Part 8](#) reinforce and update the regulatory regime for security in the nuclear industry.
21. They also extend the jurisdiction for the United Kingdom Atomic Energy Authority Constabulary (AEAC) so that their constables can protect nuclear sites and nuclear material more effectively. They are now able to be deployed in all civil licensed nuclear sites, rather than at present only on premises of specified nuclear operators, and within five kilometres of such sites.
22. They also strengthen sanctions against the unauthorised disclosure of sensitive information on the security of nuclear sites, nuclear material and proliferation-sensitive nuclear technology.

Aviation security

23. [Part 9](#) improves enforcement of aviation security requirements and the ability of the police, Government Inspectors, and the aviation industry, to handle potentially dangerous situations at airports and on board aircraft. It includes provisions in respect of dealing with unauthorised persons in airports and on aircraft; enables the detention of aircraft if there are serious security concerns; introduces enabling legislation for the Secretary of State for Transport, Local Government & the Regions to “list” providers of aviation security services; and introduces a new offence of falsely claiming to be a security approved air cargo agent.

24. **Part 9** amends existing legislation, in particular the Aviation Security Act 1982, the Civil Aviation Act 1982 and the Police and Criminal Evidence Act 1984.

Police powers

25. In a small group of cases detainees in police custody will refuse to co-operate with the police as to their identity. Part 10 contains powers which give the police the authority to search for identifying marks, to take fingerprints of suspects solely for the purpose of identifying them and to photograph suspects and where necessary to demand the removal of facial coverings or face paint in order to take a positive photograph. It also strengthens police powers to require the removal of face coverings worn for the purpose of concealing identity and to seize any such items.
26. **Sections 98 to 101** and Schedule 7 allow the British Transport Police (“BTP”) to act outside their railways jurisdiction when asked to assist with a specific incident by a constable from the local police force, the UKAEA constabulary or a Ministry of Defence Police (“MDP”) officer, and in an emergency. The changes also give BTP officers certain powers available to local police officers, including powers under the Terrorism Act 2000 and powers to enter into mutual aid agreements with other forces.
27. Similarly, the MDP is now able to act outside Ministry of Defence land when asked to assist with a specific incident by a constable from the local police force, the BTP or the UKAEA constabulary, and in an emergency. The changes allow MDP to provide assistance, on request, to other forces, and extend to them certain powers in the Terrorism Act 2000.

Retention of communications data

28. **Part 11** contains provisions facilitating the retention by communications providers of data about their customers’ communications for national security purposes so that they can be accessed by the security, intelligence and law enforcement agencies by means of a statutory code of practice to be drawn up in consultation with industry and the Information Commissioner and approved by Parliament by affirmative resolution procedure.
29. The Act ensures that data which communications service providers would otherwise be obliged to erase when it is no longer needed for billing purposes may be retained if it is necessary to safeguard national security or to prevent, detect or prosecute crimes related to national security.
30. The Regulation of Investigatory Powers Act 2000 (Part 1, Chapter 2) sets out limits on the purposes for which the security, intelligence and law enforcement agencies may request access to data relating to specific communications. These provisions complement the 2000 Act by clarifying the lawful basis for the retention of data by communications service providers. They do not affect the access framework and safeguards set out in RIPA.
31. There is also a reserve power to review the voluntary arrangements under the code of practice and issue directions if necessary. If still needed, it must be renewed by an affirmative order every two years, unless the power is exercised.

Bribery and corruption

32. **Part 12** brings in provisions to strengthen the law on international corruption. The sections put beyond doubt that the law of bribery applies to acts involving officials of foreign public bodies, Ministers, MPs and judges; and to ‘agents’ (within the meaning of the 1906 Act) of foreign ‘principals’. They give courts jurisdiction over crimes of bribery committed by UK nationals and UK incorporated bodies overseas. There is also a technical provision, to ensure that the existing presumption of corruption in the

Prevention of Corruption Act 1916, which it is intended to abolish, does not apply any more widely as a result of these new provisions.

Miscellaneous

33. Measures on police and criminal judicial co-operation agreed by the JHA Council of the EU (third pillar) can currently only be implemented in the UK by primary legislation. This section will enable specified measures, that are closely related to the EU's anti-terrorism action plan, to be implemented by secondary legislation by the affirmative resolution procedure. Measures agreed on European Community matters (for example the environment or the internal market) can already be implemented by secondary legislation.
34. [Part 13](#) also contains measures relating to the use or threatened use of noxious substances, (including biological agents or toxins, toxic chemicals or radioactive material) for terrorist and other similar purposes.
35. It introduces a new offence of hoaxing involving apparently noxious substances
36. Provisions amending the Intelligence Services Act 1994 introduce greater flexibility for intelligence gathering outside the British Islands and adapt the scope and definition of serious crime. They achieve this through extending the powers of GCHQ.
37. The Act reintroduces the offence of a general failure to disclose information about terrorism. Such an offence in relation to Northern Ireland was previously contained in the Prevention of Terrorism (Temporary Provisions) Act 1989 . The new provision will extend the provision to domestic and international terrorism.
38. The Act amends Schedule 7 to the Terrorism Act 2000 to include internal journeys. It equalises provisions to stop, detain and search people who journey internally with those travelling to and from the UK and Common Travel Area.
39. It gives a power to require carriers to supply information about passengers and freight to enforcement agencies and allow sharing between the agencies. Details of the information that carriers will be required to provide is to be decided in secondary legislation.

Supplemental

40. [Part 14](#) includes provision for review of the Act, for consequential and supplementary provision to be made by secondary legislation, and for the commencement and extent of the Act.

COMMENTARY ON SECTIONS

Part 1: Terrorist Property

Section 1 Forfeiture of Terrorist cash

41. [Section 1](#) introduces Schedule 1, which expands and replaces the current provisions in the Terrorism Act 2000 for the seizure and forfeiture of terrorist cash at the borders in civil proceedings.
42. Terrorist cash is cash which is intended to be used for the purposes of terrorism, cash which consists of the resources of a proscribed organisation or cash which is or represents property obtained through terrorism. "Terrorism" and "proscribed organisation" are defined in paragraph 19 of Schedule 1. Property obtained through terrorism is defined as property obtained by or in return for acts of terrorism or by or in return for acts carried out for the purposes of terrorism (paragraph 11(1) of Schedule 1).

These notes refer to the Anti-terrorism, Crime and Security Act 2001 (c.24) which received Royal Assent on 14th December 2001

43. *Subsection (2)* makes it clear that the powers of seizure and forfeiture are exercisable whether or not any criminal proceedings have been brought for an offence in connection with the cash.
44. Schedule 14 to the Terrorism Act 2000 (as amended by section 2 to the Act) provides for a code of practice to be made in relation to the operation of powers under Schedule 1 to this Act. The code is subject to a consultation process and to the affirmative resolution procedure. *Subsection (5)* of section 1 provides that, in this instance, the modifications to the existing code may be made in the order commencing Schedule 1.

Section 2 Amendments relating to section 1

45. *Subsections (1) to (3)* amend the Access to Justice Act 1999 so that Community Legal Service funding is available for proceedings under Schedule 1.
46. *Subsections (4) to (7)* amend Schedule 14 to the Terrorism Act 2000 so that it applies to Schedule 1 to this Act.
47. *Subsection (8)* amends the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 so that legal aid is available for proceedings under Schedule 1.

Section 3 Terrorist property: amendments

48. **Section 3** introduces Schedule 2 to this Act.

Part 2: Freezing Orders

49. **Part 2** contains measures to allow the United Kingdom to take action to freeze the assets of overseas persons or governments who are threatening the economic interests of the United Kingdom or the life or property of United Kingdom nationals or residents.
50. These provisions allow the United Kingdom to impose sanctions in cases of urgency, where neither the United Nations nor the European Union has yet agreed a course of action, or in cases where it is appropriate for the United Kingdom to impose sanctions unilaterally.

The provisions replace section 2 of the Emergency Laws (Re-enactments and Repeals) Act 1964. Under that section, the United Kingdom can freeze the assets of an overseas government and overseas residents if the country or the persons in question is (or are) acting to the detriment of the United Kingdom economy. Under the provisions in this Act, the Treasury is able to freeze the assets of overseas governments or residents, including of groups or individuals, when there is a threat to the United Kingdom economy or to the life or property of United Kingdom nationals or residents.

Orders

Section 4 Power to make order

51. This section allows the Treasury to make a freezing order if two conditions are satisfied. First, the Treasury must reasonably believe that action threatening the United Kingdom's economy (or part of it) or the life or property of United Kingdom nationals or residents has taken place or is likely to take place. Secondly, the persons involved in the action must be resident outside the United Kingdom or be an overseas government.

Section 5 Contents of order

52. A freezing order prohibits all persons in the United Kingdom, and all persons elsewhere who are United Kingdom nationals, bodies incorporated in the United Kingdom or Scottish partnerships from making funds available to or for the benefit of a person or persons specified in the order. The order may specify the persons taking the action referred to in section 4 and any person who has provided or is likely to provide

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assistance (directly or indirectly) to those persons. The specification may be by name or by description of persons set out in the order. Where a person is specified by description, the description must be such that a reasonable person would know whether he fell within it.

Section 6 Contents: further provisions

This section introduces Schedule 3, which makes further provision about the contents of freezing orders.

Section 7 Review of order

53. This section requires the Treasury to keep under review whether any freezing order should be kept in force or amended.

Section 8 Duration of order

54. This section specifies that a freezing order lapses two years after it was made.

Interpretation

Section 9 Nationals and residents

55. This section sets out the persons who are nationals or residents of the United Kingdom for the purposes of this Part. It also sets out who is a resident of a country outside the United Kingdom for the purposes of this Part.

Orders: procedure etc.

Section 10 Procedure for making freezing orders

56. A freezing order must be made by statutory instrument. The order must be laid before Parliament and ceases to have effect after 28 days unless it is approved by each House of Parliament.

Section 11 Procedure for making certain amending orders

57. This section applies where a freezing order has already been made. Where a further order specifies additional persons of the same description as those specified in the original order, or amends the order to specify fewer persons, it is instead subject to the negative resolution procedure.

Section 12 Procedure for revoking orders

58. This section provides that an order revoking a freezing order (without-re-enacting it) is subject to the negative resolution procedure.

Section 13 De-hybridisation

59. This section provides that an order that would otherwise be treated as hybrid under Parliament's standing orders is not to be subject to the special procedure for hybrid instruments.

Section 14 Orders: supplementary

60. This section provides that a power under the Part to make a freezing order or an order amending or revoking a freezing order may be exercised so as to make different provision for different purposes. A freezing order or an order amending or revoking one may also include supplementary, incidental, saving or transitional provisions. Nothing in this Part affects the generality of this power.

Miscellaneous

Section 15 The Crown

61. Freezing orders bind the Crown and Crown servants, but the Crown is not criminally liable for breaches of freezing orders. The orders do not bind the Queen in Her personal capacity.

Section 16 Repeals

62. This section repeals the Treasury's existing power to freeze assets under section 2 of the Emergency Laws (Re-enactments and Repeals) Act 1964. The repeal of section 2 does not affect any references to that provision in other subordinate legislation.

Part 3: Disclosure of Information

Section 17 Extension of existing disclosure powers

63. This section clarifies and extends a number of information disclosure provisions available to public authorities. The powers are listed in Schedule 4. It permits disclosure to assist any criminal investigation or criminal proceedings being carried out in the UK or abroad or to facilitate determinations of whether or not such investigations or proceedings should begin or end. The section does not limit any power to disclose that exists apart from this section. In determining whether they may disclose information, public authorities must ensure that their disclosure is proportionate to that which is intended by disclosing.

Section 18 Restriction on disclosure of information for overseas purposes

64. This section enables the Secretary of State to prohibit the disclosure of information for the purposes of overseas criminal investigations or criminal proceedings that would otherwise be permitted by section 17 or without section 17 by the provisions modified by that section. This power may be exercised where it appears to him that the overseas investigation or proceeding relates to a matter in respect of which it would be more appropriate for any jurisdiction or investigation to be exercised or carried out by the authorities of the United Kingdom or a third country.
65. Any person who knowingly makes a disclosure prohibited by the Secretary of State pursuant to section 18 will be guilty of an offence. The person will be liable on conviction on indictment to imprisonment for a term of up to two years or a fine or to both, and on summary conviction to imprisonment for a term of up to three months or a fine of up to the statutory maximum (which is currently set at £5000).

Section 19 Disclosure of information held by revenue departments

66. This section applies to information held by or for the Commissioners of the Inland Revenue and Customs and Excise Departments. The section provides that no obligation of secrecy, excepting the Data Protection Act 1998 requirements, prevents the voluntary disclosure of information on the authority of the relevant Commissioners made for the following purposes: to assist any criminal investigation or criminal proceedings being carried out in the UK or abroad or to facilitate whether or not such investigations or proceedings should begin or end. In addition, the section allows for disclosure to the intelligence services (the Security Service, the Secret Intelligence Service and GCHQ) in support of their functions. These functions include the protection of national security and the prevention and detection of serious crime.
67. Disclosed information cannot be further disclosed by the recipient except for the purposes permitted for original disclosures and with the consent of the relevant Commissioners. Bodies who receive information from Customs and the Inland Revenue may not further disclose that information to the intelligence services except for

the purposes of criminal investigations or proceedings. The section does not limit any power to disclose that exists apart from this section. In determining whether they may disclose information, public authorities must ensure that their disclosure is proportionate to that which is intended by disclosing.

Section 20 Interpretation of Part 3

68. This section defines terms used throughout Part 3 and specifies that ‘criminal conduct’ refers to conduct which would be criminal if conducted in the UK.

Part 4: Immigration and Asylum

69. This Part contains measures concerned with the capacity of the UK’s immigration and asylum procedures to deal with people whose presence in the UK is not conducive to the public good.
70. The first two measures – extended powers to detain foreign nationals who are suspected international terrorists (sections 21 to 32) and non-consideration of the substance of an asylum claim made by certain people whose removal from the UK is conducive to the public good (sections 33 and 34) – are fairly narrow in their focus. They apply only to those cases where any appeal against a decision taken by the Secretary of State is to the Special Immigration Appeals Commission (SIAC). SIAC is an independent judicial body set up by the Special Immigration Appeals Commission Act 1997 to hear appeals which involve a public interest provision. A “public interest provision” is a provision by which a person’s presence in the UK is considered not to be conducive to the public good for reasons of national security, or the relations between the UK and any other country, or for other reasons of a political nature.
71. The third measure allows the Secretary of State to retain fingerprints taken in asylum and certain immigration cases which were previously destroyed once the case was decided.

Suspected international terrorists

Sections 21 to 23

72. These three sections extend the application of existing detention powers under the Immigration Act 1971 (the “1971 Act”) to cases where the Secretary of State is seeking to remove a suspected international terrorist but where such removal is not currently possible.
73. Although there are powers to detain people where the intention is to remove them, case law in the UK is that if removal is not going to be possible within a reasonable period of time, detention is unlawful. Similarly, the European Court of Human Rights has established that the relevant part of Article 5(1)(f) of the European Convention on Human Rights (ECHR) permits the detention of a person only in circumstances where action is being taken with a view to deportation.
74. The Government has concluded that, following the events of 11 September 2001 in the USA, there is a heightened threat from international terrorists, and that a public emergency exists in the UK. It has further concluded that in these circumstances action in the form set out in sections 21 to 23 needs to be taken to safeguard national security against the threat posed by suspected international terrorists whom the UK wishes to but cannot remove.
75. **Sections 21 to 23** enable suspected international terrorists to be detained in circumstances where either a legal impediment derived from an international obligation or a practical consideration prevents removal. In parallel with these provisions, the UK has on 18 December 2001 notified the Secretary General of the Council of Europe of a derogation from Article 5 of the ECHR (right to liberty and security) to the extent

necessary to ensure that the measures contained in sections 21 to 23 are not in breach of our obligations under the ECHR. Article 15 of the ECHR permits a derogation from Article 5 in a time of public emergency to the extent strictly required by that emergency.

76. The Human Rights Act (Designated Derogation) Order 2001 was made under powers in section 14(1) and (6) of the Human Rights Act 1998 on 11 November 2001 in anticipation of the making of a proposed derogation. It was approved by resolutions passed by each House of Parliament following debates on 19 November. This Order means that the Convention rights under the Human Rights Act 1998 have effect subject to the proposed derogation.

Section 21 Suspected international terrorist: certification

77. **Section 21** provides for the certification by the Secretary of State of a suspected international terrorist. A “suspected international terrorist” is defined as a person whose presence in the UK the Secretary of State reasonably believes to be a risk to national security and whom he reasonably suspects is a terrorist. The section also defines the terms “terrorism” (which is as defined in section 1 of the Terrorism Act 2000), and “terrorist”. It also provides that legal proceedings questioning the decision of the Secretary of State in connection with a certificate under this section, or actions of the Secretary of State taken wholly or partly in reliance on that certificate, may be brought only before SIAC in the course of proceedings under section 25 or 26 of this Act, or section 2 of the Special Immigration Appeals Commission Act 1997.

Section 22 Deportation, removal &c.

78. **Section 22** lists, in *subsection (2)*, actions which may be taken in respect of a suspected international terrorist despite the fact that those actions cannot at present result in the actual removal of that person because either a point of law relating to an international agreement or a practical consideration prevents this. The international agreement most likely to apply is the ECHR: case law from the European Court of Human Rights is clear that a person may not be removed where this would place them at a real risk of torture or inhuman or degrading treatment or punishment, contrary to Article 3 of the ECHR. There are no exceptions. By contrast the 1951 Convention and 1967 Protocol relating to the Status of Refugees (the “Refugee Convention”) contains provisions which exclude from its protection people whom it would be possible for the Secretary of State to certify under section 21.
79. A “practical consideration” might be the unavailability of routes to the country of intended removal (there may, for example, be no commercial flights to that country) or a lack of appropriate travel documentation.
80. The actions listed in *subsection (2)* relate to the refusal of entry, the refusal to vary leave to enter or remain, the giving of removal directions and various actions connected with deportation. This section does not permit a person to be removed contrary to any international obligations but enables actions to be taken with a view to future removal which, but for the person being certified as a suspected international terrorist, the courts might be able to set aside. The reason it is necessary to enable such actions to be taken even though they cannot, for the time being, result in a removal is that the immigration detention powers are tied to such actions (see section 23 below).
81. *Subsection (3)* provides that where a certificate is made under section 21 after one of the actions listed in *subsection (2)* has been taken, that action is to be treated as having been taken again immediately after certification. This means that where SIAC or a court is hearing a challenge against any of those actions it will do so on the basis that a certificate had been made immediately prior to the taking of such actions.

Section 23 Detention

82. **Section 23** provides that a suspected international terrorist may be detained under certain provisions in the 1971 Act even though their removal is temporarily or indefinitely prevented by a point of law relating to an international agreement or a practical consideration. These provisions are paragraph 16 of Schedule 2 to the 1971 Act (detention of persons liable to examination or removal) and paragraph 2 of Schedule 3 to that Act (detention pending deportation).

Sections 24 to 27

83. These four sections set out the role of SIAC and the higher courts in overseeing the use of the extended detention powers provided for in sections 21 to 23.

Section 24 Bail

84. **Section 24** is concerned with bail. Where an appeal is pending before it, SIAC is the body responsible for hearing bail applications. The effect of section 24 is to give SIAC the jurisdiction to hear bail applications for so long as a suspected international terrorist is detained under a provision of the 1971 Act, including a provision as extended by this Part.

Section 25 Certification: appeal

85. **Section 25** provides for an appeal against the decision of the Secretary of State to make a certificate under section 21. A person against whom such a certificate is made may appeal within three months of the date of the certificate against that decision to SIAC or, with leave of SIAC, after three months but before the commencement of the first review under section 26. SIAC will consider whether or not there are reasonable grounds for a belief or suspicion of a kind referred to in section 21(1). If SIAC considers that there are not reasonable grounds or if it finds any other reason why the certificate should not have been issued, it will cancel the certificate, in which case the certificate will be treated as having never been made. Otherwise it will dismiss the appeal. For either outcome, there will by virtue of section 27(1) (b) be the right to seek leave to appeal to the Court of Appeal (or its equivalents in Scotland and Northern Ireland).

Section 26 Certification: review

86. **Section 26** provides that for so long as a suspected international terrorist remains in detention there will be an automatic review of the certificate by SIAC. The first review will happen six months after the appeal (if there is one) is finally determined or after the date on which the certificate was issued (if there is not an appeal). Subsequent reviews will occur every three months beginning with the date on which the previous review is finally determined. As with the appeal, SIAC will be able to cancel the certificate on review if it does not consider there are reasonable grounds for a suspicion or belief. There is provision for a review to be brought forward, on application from the person certified, if SIAC considers that a change of circumstances warrants this. If a review is brought forward in this manner, the period for determining the date of the next review begins with the date of the final determination of the review which was brought forward.

Section 27 Appeal and review: supplementary

87. **Section 27** makes various supplementary provisions relating to the appeal and review. In particular, it provides that an appeal to the Court of Appeal (or its equivalents in Scotland and Northern Ireland) may be made on a point of law against a decision by SIAC in respect of an appeal or review of the certificate. It also provides that the Secretary of State is not prevented from issuing another certificate after the original one has been cancelled (for example, if new circumstances or new evidence justify such action).

88. As an appeal on the certificate may raise similar issues to those raised in the substantive appeal (that is, the appeal against any of the actions listed in section 22 which have been taken against the individual concerned), subsections (7) and (8) provide that SIAC should make every effort to hear those two appeals together, and to avoid or minimise delay resulting from this.

Section 28 Review of sections 21 to 23

89. This section requires the Secretary of State to appoint a person to review the operation of sections 21 to 23. That person will be required to conduct a review within 14 months of Royal Assent and thereafter at least one month prior to the expiry date set by an order made under section 29(2)(b) or (c). Following such a review, the person will send a report to the Secretary of State who will lay a copy of it before Parliament. The timings have been designed to ensure that a report is available to inform debates that would accompany consideration of an order made under section 29(2).

Section 29 Duration of sections 21 to 23

90. **Section 29** sets out the time limitations on sections 21 to 23. These sections will expire fifteen months after Royal Assent unless the Secretary of State renews them by order. Such an order may only extend the life of the sections by up to a year. This order needs to be approved by a resolution in both Houses of Parliament. In addition, section 29 enables the Secretary of State to repeal sections 21 to 23 at any time. Sections 21 to 23 will cease to have effect at the end of 10 November 2006. This is the day on which the derogation designated by the order made on 11 November 2001 will cease to have effect for the purposes of the Human Rights Act 1998 (unless extended by another order).

Section 30 Legal proceedings: derogation

91. **Section 30** is concerned with proceedings which to any extent challenge the UK's derogation from Article 5 of the ECHR or the designation under section 14(1) of the Human Rights Act 1998 which reflects that derogation. These are referred to as derogation matter. Section 30 provides that a derogation matter may be questioned only in proceedings before SIAC. One effect of this is that SIAC is the appropriate venue for hearing proceedings relating to derogation matter which are brought under section 7 of the Human Rights Act 1998. Ancillary provisions are made to enable SIAC to hear proceedings which, but for this section, could be brought in the High Court or the Court of Appeal; and to enable SIAC to award costs in relation to the derogation matter. An appeal against the decision of SIAC would go to the Court of Appeal (or its equivalents in Scotland and Northern Ireland).

Section 32 Channel Islands and Isle of Man

92. **Section 32** provides that sections 21 to 31 may with appropriate modification be extended by Order in Council to any of the Channel Islands or the Isle of Man.

Refugee convention

Section 33 Certificate that Convention does not apply

93. **Section 33** introduces new arrangements for the consideration and associated appeal to SIAC of asylum claims made by certain individuals. These are individuals whom the Secretary of State has certified as being excluded from refugee status or not entitled to the protection of Article 33(1) of the Refugee Convention because Article 1(F) and/or Article 33(2) of that Convention apply, and whose removal from the UK would be conducive to the public good. Where such a certificate is made, SIAC will, in hearing the asylum appeal, be able to consider only the statements made in that certificate, and will not be able to consider whether a person has a well-founded fear of persecution.

94. **Article 33(1)** - often termed the *non-refoulement* provision - prevents the removal of a refugee where this would lead to their life or freedom being threatened on account of their race, religion, nationality, membership of a particular social group or political opinion. Article 33(2) provides an exception to this protection where there are reasonable grounds for regarding the refugee as a danger to the security of the country. Article 1(F) states that the provisions of the Convention are not to apply to persons with respect to whom there are serious grounds for considering that they have committed an offence or action listed in that Article. These include acts contrary to the purposes and principles of the United Nations, which is taken to include terrorist acts – see, for example, Article 3(3) of UN Security Council Resolution 1373, passed on 28 September 2001, which required States to “Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts”.
95. So if either or both of Article 1(F) or 33(2) applies then a person can be removed without contravening the UK’s obligations under the Refugee Convention. The Government is therefore of the view that it is not necessary to consider whether, had a person not been so excluded, he would have qualified for refugee status based on a well-founded fear of persecution. The purpose of this section is to reflect this by enabling an asylum claim to be refused solely on the basis that the applicant is excluded from the protection of the Refugee Convention.
96. Accordingly, where SIAC upholds the Secretary of State’s certificate it must dismiss such part of the appeal as amounts to a claim for asylum. If there are other elements to the appeal SIAC would proceed to consider those elements.
97. Should SIAC allow the appeal, the case would return to the Secretary of State who would have to consider the substance of the asylum claim. If the claim was still refused any appeal would lie to the Immigration Appellate Authority in the normal way (under the Immigration and Asylum Act 1999), assuming that no public interest provision applied (in which case the appeal would go back to SIAC).
98. The section provides for appeals against decisions of SIAC to be made to the Court of Appeal (or its equivalents in Scotland and Northern Ireland). It also prevents legal proceedings being taken against a decision or action of the Secretary of State in connection with a certification except through SIAC; and enables, with appropriate modifications, the clause to be extended by Order in Council to any of the Channel Islands or the Isle of Man.

Section 34 Construction

99. This section provides that in considering whether or not Article 1F or Article 33(2) applies, there is no requirement to consider the fear of persecution the person may have or the threat to their life or freedom they may face if removed from the UK. That is, consideration of whether a person comes within the scope of Article 1F or 33(2) will be determined solely by reference to the appropriate Article.

Section 35 Special Immigration Appeals Commission

100. This section inserts two new provisions into section 1 of the Special Immigration Appeals Commission Act 1997. First, it provides that SIAC is to be a superior court of record. This means that the tribunal enjoys the same status as the High Court and the Court of Appeal. Second, it provides that decisions of SIAC may be challenged only on appeal to the Court of Appeal (or its equivalents in Scotland and Northern Ireland), as set out in section 7 of the 1997 Act and section 30(5)(a) of this Act.

Fingerprints

Section 36 Destruction of Fingerprints

101. Section 141 of the Immigration and Asylum Act 1999 allows fingerprints to be taken in certain circumstances relating to immigration and asylum. Section 143 requires the fingerprints to be destroyed within a certain time. Section 36 removes this requirement, both for fingerprints taken in future and ones already held. Such fingerprints will now be retained for 10 years

Part 5: Racial and Religious Hatred

Section 37 Meaning of racial hatred

102. This section removes from the definition of racial hatred in section 17 of the Public Order Act 1986 the requirement that the group of persons against whom the hatred is directed is in Great Britain. The effect is that “racial hatred” in Part 3 of the Public Order Act 1986 will include hatred manifested in Great Britain but directed against a racial group outside Great Britain.

Section 38 Meaning of fear and hatred

103. This section makes corresponding amendments to Northern Ireland legislation.

Section 39 Religiously aggravated offences

104. *Subsections (1) to (6)* of the section amend Part 2 of the Crime and Disorder Act 1998 so that the nine existing offences under sections 29 to 32 described as “racially aggravated” are committed if they are aggravated by either racial or religious factors.
105. *Subsections (3) and (4)* amend section 28 of the 1998 Act so that it provides for when an offence is racially or religiously aggravated. The effect of the changes is that an offence will be an aggravated offence under the 1998 Act if there is evidence of hostility towards the victim of the offence by the perpetrator at the time of committing the offence or immediately before or after doing so and that hostility is based on the victim's membership of a racial or religious group. Alternatively, an offence is aggravated if there is evidence that it was motivated by hostility towards members of a racial or religious group. The nine aggravated offences in sections 29 to 32 of the Crime and Disorder Act 1998 carry higher maximum penalties than the offences they are based upon.
106. *Subsection (3)(c)* deletes a reference in the 1998 Act to religious hostility being immaterial in determining whether an offence is racially aggravated. This reference is no longer needed as the amended test for aggravation covers hostility based on either racial or religious grounds.
107. *Subsection (4)* defines a religious group as a group of persons defined by reference to religious belief or lack of religious belief.
108. The definition means that offences can be aggravated if the hostility that is shown, or which motivates them, is based on the victim's membership of a group defined by reference to a particular religious belief, lack of a particular religious belief, or lack of any religious belief. This covers those who have no belief, such as atheists, and also cases where the hostility is based on the fact that the victim does not share the particular religious beliefs of the perpetrator.
109. The reference to lack of religious belief does not mean that a group identified by any other factors, such as political opinion, would be caught.
110. *Subsections (5) and (6)* provide for the offences that are currently committed if they are racially aggravated to be committed if they are racially or religiously aggravated.

These notes refer to the Anti-terrorism, Crime and Security Act 2001 (c.24) which received Royal Assent on 14th December 2001

111. *Subsection (7)* amends section 153 of the Powers of Criminal Courts (Sentencing) Act 2000 to refer to racial or religious aggravation. (This section is derived from section 82 of the Crime and Disorder Act 1998.) The effect is that an offence (other than the nine specific aggravated offences listed in sections 29 to 32 of the 1998 Act) may now be aggravated by either racial or religious hostility. If a court is considering the seriousness of an offence and finds that it was aggravated by either of those factors, it is required to treat this as increasing the seriousness of the offence and to state in open court that the offence was found to be aggravated.
112. *Subsection (8)* amends section 24(2) of the Police and Criminal Evidence Act 1984 to reflect the fact that an offence under section 32(1)(a) of the Crime and Disorder Act 1998 can now be racially or religiously aggravated.
113. **Section 40** Racial hatred offences: penalties
114. The section amends section 27(3) of the Public Order Act 1986 to increase the maximum penalty for racial hatred offences in Part 3 from 2 years imprisonment to 7 years.

Section 41 Hatred and fear offences: penalties

115. This section makes a similar amendment to penalties contained in Northern Ireland legislation.

Section 42 Saving

116. This section makes it clear that the changes made by Part 5 do not apply to anything done before the Part comes into force. The Part will come into force on Royal Assent of the Act.

Part 6: Weapons of Mass Destruction

Amendment of the Biological Weapons Act 1974 and the Chemical Weapons Act 1996

Section 43 Transfers of biological agents and toxins

117. This section amends the Biological Weapons Act 1974 to make it an offence to transfer biological agents or toxins outside the UK or to assist another person to do so. Biological agents and toxins are defined in the Act as "any microbial or other biological agent and any toxin, whatever its origin or method of production".

Section 44 Extraterritorial application of biological weapons offences

118. This section extends UK jurisdiction over offences under section 1 of the Biological Weapons Act 1974 carried out overseas by a United Kingdom person.
119. A United Kingdom person is a UK national, Scottish partnership, body incorporated under the law of a part of the UK or, on extension by Order in Council, a body incorporated under the law of any of the Channel Islands, the Isle of Man or any Overseas Territory.

Sections 45 and 46 Customs and excise prosecutions for biological and chemical weapons offences

120. These sections permit the Customs and Excise Commissioners to enforce proceedings under the Biological Weapons Act 1974 and the Chemical Weapons Act 1996, in cases involving the movement of a biological or chemical weapon across a border. Officers of the Commissioners will be able to institute offences in England and Wales and Northern Ireland (assuming the Attorney General gives his consent under section 2 of the 1974 Act and section 31 of the 1996 Act).

Nuclear weapons

Section 47 Use etc. of nuclear weapons

121. This section makes it an offence to knowingly cause a nuclear weapon explosion, develop, produce, transfer, possess or engage in military preparations to use or threaten to use a nuclear weapon. In this section “nuclear weapon” is taken to include nuclear explosive devices not intended for use as a weapon.
122. *Subsection (6)* makes the offences apply to acts outside the United Kingdom by a United Kingdom person.
123. *Subsection (8)* provides for the offence of knowingly causing a nuclear weapon explosion to cease to have effect under this Act on the coming into force of the Nuclear Explosions (Prohibitions and Inspections) Act 1998. That Act will come into force following the entry into force of the Comprehensive Test Ban Treaty, and includes a similar offence.

Section 48 Exceptions

124. This section makes exceptions for actions carried out in the course of an armed conflict or for actions authorised by the Secretary of State.

Section 49 Defences

125. This section sets out defences for lack of knowledge that a thing was a nuclear weapon or for an attempt to inform the authorities as soon as practicable after discovering that an object was a nuclear weapon.

Assisting or inducing weapons-related acts overseas

Section 50 Assisting or inducing certain weapons-related activities overseas

126. Under this section it has become an offence for a United Kingdom person outside the UK to assist a foreigner to do an act which would (for a UK person) be contrary to section 1 of the Biological Weapons Act, section 2 of the Chemical Weapons Act, or Section 47 of the Act. Offences under this section carry a sentence of up to life imprisonment.

Supplemental provisions relating to [sections 47](#) and [50](#)

Section 51 Extraterritorial application

127. This section supplements the provisions of sections 47 and 50 that extend to acts of United Kingdom persons overseas.

Section 52 Powers of entry

128. This Section gives powers of entry under warrant to constables and officers of the Secretary of State to search for evidence for the commission of an offence under sections 47 and 50.

Section 53 Customs and Excise prosecutions

129. This section permits the Customs and Excise Commissioners to enforce proceedings under sections 47 and 50, in cases involving the movement of a nuclear weapon across a border. Officers of the Commissioners is able to institute offences in England and Wales and Northern Ireland (assuming the Attorney General gives his consent under section 55).

Section 54 Offences

130. *Subsection (1)* sets out additional offences in relation to obtaining an authorisation from the Secretary of State under section 49 by fraud. These offences carry a sentence of up to two years imprisonment and a fine.
131. *Subsection (3)* lays out individual liability of the relevant senior office holder in a body corporate, in addition to corporate responsibility.

Section 55 Consent to prosecution

132. This section requires the Attorney General's consent for prosecutions under section 47 and 50 in England and Wales and Northern Ireland.

Part 7: Security of Pathogens and Toxins

Section 58 Pathogens and toxins in relation to which requirements under Part 7 apply

133. This section identifies those dangerous pathogens and toxins which have been brought immediately within the controls set out in this part of the Act when Part 7 is brought into effect. These pathogens and toxins - listed in Schedule 5 - are those that potentially pose the greatest risk to human life if misused by terrorists. The section gives the Secretary of State a power, by order, to modify the list.
134. *Subsections (4) and (5)* defines "dangerous substance" to include, in addition to the substances listed in Schedule 5 themselves, anything (such as a plant or animal) that is infected by or is a carrier of a pathogen listed in Schedule 5 unless it satisfies prescribed conditions or is kept or used in prescribed conditions. This allows, for instance, for certain medicinal substances to be exempt from control provided that conditions guaranteeing the public against harm are met.

Section 59 Duty to notify Secretary of State before keeping or using any dangerous substances

135. This places a duty on the occupiers of premises to notify the Secretary of State before keeping or using any dangerous substance there. Occupiers of premises holding these substances when this Part of the Act is implemented must notify the Secretary of State within one month. Similarly, occupiers of premises holding substances which are subsequently added to the Schedule have one month in which to notify the Secretary of State of their holdings once any such modification comes into effect.

Section 60 Information about security of dangerous substances

136. This section is concerned with the security of dangerous substances and the premises in which they are kept or used. It allows the police to require occupiers to provide information about the security of any dangerous substances kept or used on their premises.

Section 61 Information about persons with access to dangerous substances

137. This allows the police to request information about persons who have access to dangerous substances or to the premises in which they are kept or used. When such a request has been made, the section also places a duty on occupiers to ensure that other persons do not have access to the premises or substances ;where it is intended to give access to anyone else, notification of this must be given to the police, and access should be denied until 30 days following the notification unless otherwise agreed by the police.

Section 62 Directions requiring security measures

138. This gives the police the power to require the occupier of premises holding dangerous substances to make improvements to the security arrangements operating there.

Section 63 Directions requiring disposal of dangerous substances

139. This gives the Secretary of State a power to require the disposal of any dangerous substances kept or used on premises where security arrangements are unsatisfactory.

Section 64 Directions requiring denial of access

140. This section gives the Secretary of State the power to require that any specified person be denied access to dangerous substances or the premises in which they are held. The Secretary of State is able to do so only where this is necessary in the interest of national security.

Section 65 Powers of entry

141. This gives the police the power to enter relevant premises, following notice, with any other persons, to assess security measures. This includes power to search or inspect the premises.

Section 66 Search warrants

142. This section deals with the issue of search warrants to enable the police to enter and search premises. They may be issued where the police believe that dangerous substances are kept or used on premises for which no notification has been given, or where it is believed that the occupier may not be complying with directions under Part 7.

Section 67 Offences

143. This section makes it an offence for occupiers of premises to fail, without reasonable excuse, to comply with any duty or directions imposed by or under this Part of the Act.

Section 68 Bodies corporate

144. This section concerns offences committed by a body corporate, as the occupier of premises, under this Part of the Act. It enables the prosecution of certain officers or employees, in addition to the body corporate.

Section 69 Partnerships and unincorporated associations

145. This section clarifies how the provisions relating to offences apply to an unincorporated association or partnership where it is the occupier of the premises.

Section 70 Denial of access: appeals

146. This section provides for the establishment of the Pathogens Access Appeal Commission to receive appeals made by any person denied access on the direction of the Secretary of State under section 64. It also clarifies that a further appeal may be made on a question of law and brings Schedule 6 into effect, defining the constitution and procedures of the new commission.

Section 71 Other appeals

147. This section provides occupiers of premises with a right of appeal against directions relating to compliance with security directions, disposal of dangerous substances or the provision of information about security arrangements, on the grounds that the requirement is unreasonable.

Section 72 Giving of directions or notices

148. This allows directions or notices under Part 7 to be sent by post.

Section 73 Orders and regulations

149. This contains supplementary provisions about orders or regulations under Part 7. They will be made by statutory instrument subject to the draft affirmative resolution procedure (in the case of orders amending Schedule 5) and the negative resolution procedure (in other cases).

Section 75 Power to extend Part 7 to animal or plant pathogens, pests or toxic chemicals

150. This provides the Secretary of State with the power to add toxic chemicals, animal and plant pathogens and pests to the controls set out in this part of the Act. The powers may be extended where the Secretary of State is satisfied that the chemicals concerned could be used in an act of terrorism to endanger life or cause serious harm to human health or the pathogens or pests could be used in an act of terrorism to cause widespread damage to property, significant disruption or alarm. Orders under this section are subject to the draft affirmative resolution procedure.

Part 8: Civil Nuclear Security

Section 76 Atomic Energy Authority special constables

151. *Subsection (1)* extends the places within which the AEAC has powers of constables to include any licensed nuclear sites, and not just those of those of UKAEA, BNFL and Urenco Limited.
152. *Subsections (2) and (8)* provide an order-making power which can be used to list the sites used primarily or exclusively for defence purposes at which the AEAC will not operate. It is intended that the AEAC will operate on civil nuclear sites only.
153. *Subsection (3)* extends the constabulary powers and privileges of AEAC officers to 5 km from any licensed site. It is intended that administrative arrangements between the AEAC and local police forces set out how the two exercise their powers in relation to the other.
154. *Subsection (4)* gives the AEAC power to escort nuclear material and to pursue, arrest and detain any person who steals, attempts to steal or otherwise interferes with nuclear material whilst it is in the care of the AEAC.
155. *Subsection (5)* confers constabulary powers to prepare a trans-shipment or storage point that nuclear material will pass through or be stored whilst it is being transported. A trans-shipment point is a point of transport interchange, such as from road to air, sea to air, train to train, etc.
156. The definition of “nuclear material” in *subsection (7)* is a narrower definition than that contained in the current legislation. It includes only fissile material, and not non-nuclear radioactive material, which is less sensitive and does not require AEAC escort.

Section 77 Regulation of security of civil nuclear industry

157. *Subsection (1)* contains a power to make regulations to ensure security in the civil nuclear industry. The main areas covered by the regulations are the security of nuclear sites, nuclear material in course of transport, and sensitive information relating to the security of nuclear sites, nuclear material and sensitive nuclear technology, in particular uranium enrichment technology.

158. *Subsection (2)* provides that the regulations may, for the purposes of security regulation, include specified measures which are set out in the Health and Safety at Work Act 1974. These include the enforcement provisions, since the new security regulations have borrowed the existing enforcement provisions in that Act. *Subsection (2)* also provides that the new regulations may create criminal offences.

Section 78 Repeals relating to security of civil nuclear installations

159. This repeals certain provisions which are no longer needed.
160. *Subsection (1)* repeals paragraphs 5 and 6 of Schedule 1 to the Nuclear Installations Act 1965. Paragraph 5 gives the Secretary of State powers to issue directions to certain designated nuclear operating bodies (BNFL, UKAEA, and later Urenco Ltd). This is the basis of the current system of nuclear security regulation at sites other than nuclear generating stations. This system has been replaced by the regulations which made under section 77.
161. *Paragraph 6* has become redundant. It provided a safeguard for employees in the bodies listed above through requiring the Minister's consent to be obtained before dismissing an employee on security grounds. In recent years however, the appeal procedures established under the security vetting system have replaced the need for this provision.
162. *Subsection (2)* amends section 19(1) of the Atomic Energy Authority Act 1971 to reflect the changes in subsection 1.

Section 79 Prohibition of disclosures in relation to nuclear security

163. *Subsections (1) and (2)* set out the circumstances in which the offence is committed. The offence covers disclosures that might prejudice the security of nuclear sites or of nuclear material held on such sites or being transported to or from such sites or being carried on a British ship.
164. *Subsection (3)* sets out the penalties for the offence.
165. *Subsection (4)* defines terms used in the section. The definition of "nuclear site" covers all sites which require a licence under s.1(1) of the Nuclear Installations Act 1965.
166. *Subsections (5) and (6)* ensure that the offence can be committed outside the United Kingdom by United Kingdom persons as defined in Section 81 (i.e. as well as by any person in the UK). Such persons may be prosecuted in the United Kingdom.

Section 80 Prohibition of disclosures of uranium enrichment technology

167. *Subsections (1) and (2)* confer a power to make regulations prohibiting the disclosure of uranium enrichment technology and define what is meant by uranium enrichment for the purposes of this section.
168. *Subsection (3)* makes it an offence to contravene a prohibition in the regulations and sets out the penalties for the offence.
169. *Subsection (4)* enables the regulations to provide for disclosures not to be prohibited in prescribed circumstances or when authorised by the Secretary of State, and enables the regulations to create defences to the offence.
170. *Subsection (5a)* enables the regulations to provide that the prohibition on disclosure applies to United Kingdom persons abroad.
171. *Subsections (6) and (7)* provide that the regulations are to be made by statutory instrument subject to affirmative resolution in both Houses of Parliament.
172. *Subsection (8)* defines terms used in this section.

Section 81 Part 8: supplementary

173. *Subsection (1)* provides that a prosecution under section 79 or 80 can only be instituted by, or with the consent of, the Attorney General (as regards a prosecution in England and Wales) and the Attorney General for Northern Ireland (as regards a prosecution in Northern Ireland).
174. *Subsections (2) and (3)* define what is meant by a United Kingdom person for the purposes of sections 79 and 80.

Part 9: Aviation Security

Section 82 Arrest without warrant

175. This section provides for certain offences to be inserted at the end of section 24(2) of the Police and Criminal Evidence Act 1984 (PACE). This has the effect of giving the police the power to arrest suspects, even though the maximum penalties for the offences in themselves are not sufficient to give an automatic power of arrest.
176. The offences to be covered are those relating to unauthorised presence in the restricted zone of an airport or on an aircraft (sections 21(C)(1) and 21D(1) of the Aviation Security Act 1982) and trespassing on a licensed aerodrome (section 39(1) of the Civil Aviation Act 1982).
177. Section 24 of PACE extends only to England and Wales. Section 82 of this Act therefore also makes similar change to the equivalent policing legislation in Northern Ireland to ensure consistency. In Scotland, powers of arrest for these offences would be subject to the general rule that arrest without warrant is not justified unless a constable has reasonable grounds for suspecting that a person has committed certain offences. In order to ensure that the police in Scotland have the desired power of arrest a statutory power of arrest without warrant has been introduced.

Section 83 Trespass on aerodrome: penalty

178. The penalty for the above offence has been increased from a level 1 fine (currently £200) to a level 3 fine (currently £1,000). This reflects the view that the offence is not as serious as unauthorised access in a Restricted Zone or on an aircraft (level 5 fine, currently £5,000), but is proportionate to penalties existing under Article 122 of the current [Air Navigation Order 2000 \(S.I 2000/No.1562\)](#). Currently these involve fines in the level 3 and level 4 scale. At the present time a fine under level 4 involves a maximum sum of £2,500.

Section 84 Removal of intruder

179. Sections 21C and 21D of the Aviation Security Act 1982 make it an offence for an unauthorised person to go into an airport's restricted zone, or onto an aircraft, or to remain in either place after being asked to leave. However there has been no specific power to remove someone who refuses to leave after being asked to do so. This section provides such a power to enable a constable or duly authorised person to do so. *Subsection (1)* deals with aerodromes and *subsection (2)* deals with aircraft.
180. Similar powers appear in section 31(4) of the Channel Tunnel (Security) Order 1994 and in section 39(2A) of the Aviation and Maritime Security Act 1990, as amended.

Section 85 Aviation security services

181. Under section 21F of the Aviation Security Act 1982, the Secretary of State for Transport, Local Government and the Regions may, by regulations, maintain a list of air cargo agents who are approved by him to offer secure air cargo services. Under the regulations ([S.I 1993/No.1073](#)) air cargo agents may only apply to be included on the list if they are involved in applying security controls to air cargo.

182. **Section 85** enables the Government to make similar arrangements for other parts of the industry which provide security services to civil aviation - for example companies contracted by airports and airlines to provide passenger and baggage screening services, and companies and individuals who provide aviation security training services.
183. The section inserts a new section 20A into the 1982 Act, to give the Secretary of State the power to set up, by regulations, lists of other categories of companies or individuals associated with the provision of aviation security services.

Section 86 Detention of aircraft

184. Under the Aviation Security Act 1982 there has been no specific power for a Department for Transport, Local Governments & the Regions (DTLR) Aviation Security Inspector, who is an example of “an authorised person” for the purposes of the 1982 Act, to detain an aircraft other than for the purposes of inspecting it (see section 20(3) of the 1982 Act). However, once that inspection is finished, an inspector has had no further powers to detain the aircraft even if he was concerned about the standard of security applied. Similarly there has been no direct power for an authorised person to prevent aircraft from flying because there was good reason to believe it could be a target for attack.
185. The section inserts into the 1982 Act a new section 20B, which gives an authorised person the power to detain aircraft by direction if there is reason to believe that its security has been compromised because of a failure to comply with the Department's statutory Directions or an Enforcement Notice. Directions are issued by the Secretary of State to aerodrome managers and airline operators using the powers contained in sections 12-14 of the 1982 Act. An Enforcement Notice is defined in section 24A of the 1982 Act. Consequently if a threat has been made against the aircraft; or an act of violence is likely to be committed against the aircraft, then a detention direction can be issued.
186. **Section 86** enables a detention direction to be issued in respect of any aircraft in, operating in, or registered in, the United Kingdom. Such a direction can apply to all aircraft in a specified class, for example all flights leaving for the USA from UK airports. In effect this means the power ranges from the detention of a single aircraft, to detaining all flights going to specific destinations.
187. The new section also provides for what the authorised person may do. This may include entering the aircraft, removing things and using reasonable force to ensure that the aircraft does not fly. The new provision also allows for objections to the direction, and provides for offences for failing to comply or obstruction. On summary conviction fines up to £5,000 (level 5) can be imposed. Alternatively, on indictment the penalty could be a maximum of 2 years and or a fine of any level set by the court.
188. An analogous provision for detention of ships and Channel Tunnel trains exists (section 21 of the Aviation & Maritime Security Act 1990 and article 27 of the Channel Tunnel (Security) Order 1994 respectively) when there has been failure to comply with a direction or Enforcement Notice.

Section 87 Air cargo agent: documents

189. By regulations under Section 21F of the Aviation Security Act 1982, the Secretary of State operates a listing system for security approved air cargo agents. Such agents are allowed to apply security controls to cargo before it is passed to an airline for carriage. To be added to the list, a cargo agent must be able to demonstrate that he has the capability to meet security criteria set down by the Secretary of State. However, there has been no offence of pretending to have been approved by DTLR to operate as a security approved air cargo agent.

190. The section inserts into the 1982 Act a new section 21FA, to create a new offence of issuing a document which falsely claims to come from a security approved air cargo agent. This is a summary offence, attracting a maximum penalty of six months imprisonment or a fine not exceeding £5,000 (level 5) on the standard scale, or both.

Section 88 Extent outside the United Kingdom

191. The enactments amended by this Part of this Act are all capable of extension outside the United Kingdom to the Channel Islands and the Isle of Man.
192. The purpose behind the section is to make it clear that additions or amendments to existing legislation contained in Part 9 of the Act are intended to be capable of being extended to the Channel Islands and the Isle of Man.
193. The effect will be that Jersey, Guernsey and the Isle of Man will be able to make use of the enhanced aviation security powers contained in the Act.

Part 10: Police Powers

Identification

194. **Section 90** of the Act amends the Police and Criminal Evidence Act 1984 (PACE) to provide additional powers to carry out searches and examinations of those in police detention for identification purposes and to take fingerprints for identification purposes.
195. In respect of searches of detained persons for identification purposes, the police have existing powers of search for other reasons. In particular section 54 (6) of PACE allows a custody officer to authorise a detained person to be searched if this is necessary in order to ascertain and record everything the detained person has with him. The new provisions make it clear that searching can be specifically directed towards establishing identity. Currently, where identifying marks are clearly visible and outside those parts of the body normally covered by clothing, it is normally a straightforward matter for the police to record them for the purposes of identification. However, in circumstances where they are not clearly visible the only powers currently available to the police are to question the suspect as to whether such marks exist. The suspect may agree to submit to a voluntary examination, but if he refuses there is no authority whatsoever to compel him to do so. The new provisions rectify that.
196. Sections 27 and 61 of PACE as amended by section 78 of the Criminal Justice and Police Act 2001 provide powers to take fingerprints without consent where persons have been convicted or charged or cautioned for a recordable offence or where there are reasonable grounds to suspect their involvement in a criminal offence and that fingerprints would tend to confirm or disprove that; and on answering bail at a court or police station if there is a dispute about identity. Where fingerprints are authorised to be taken to confirm or disprove a person's involvement in a crime, the prints can only be taken if an officer of at least superintendent rank (to be amended to inspector rank on implementation of section 78 of the 2001 Act) authorises them to be so taken. Fingerprints cannot, however, be taken where the issue is merely one of identity. Where someone enters police custody and refuses to identify themselves or where the police have reason to doubt the information they provide about their identity, there is no legal entitlement for the police to take fingerprints which could be examined against existing databases in an attempt to resolve the identification issue.
197. The effect of section 90(2) is to provide an additional power in PACE to take fingerprints from an arrested person in an effort to establish or check their identity.
198. There were previously no provisions in PACE on the taking of photographs of suspects. PACE Code D sets out guidance on the taking of photographs of those in police custody. In short, photographs can be taken without consent on charge or conviction for a recordable offence; where there are reasonable grounds to suspect involvement in an

offence and identification evidence in relation to the offence is available; and where a number of people are arrested at once and it is necessary to photograph them to establish who was arrested and when and where. But there is no power to use force to take a photograph.

199. Consequently there was no explicit power for the police to require the removal of masks, face coverings or face paint of those in custody so that those wearing them could be reliably photographed. Section 92 provides both the power to require the removal of masks, coverings or face paint to identify and photograph a person and to use reasonable force to do so, if necessary.
200. **Section 94** strengthens police powers in relation to the removal of face coverings. It adds to the power in section 60 of the Criminal Justice and Police Act 1994 to require the removal of face coverings where an authorisation is given by a senior officer for a given locality. The test for an authorisation under section 60 is reasonable belief that incidents of serious violence may take place in the locality and that it is expedient to give an authorisation to prevent their occurrence. An authorisation under that section gives the police powers to stop and search pedestrians and vehicles for offensive weapons or dangerous instruments. It also gives the police power to require the removal of face coverings. Section 94 provides that in relation to the power to require the removal of face coverings only, an authorisation may also be given where a senior officer reasonably believes activities may take place in the locality involving the commission of offences and that it is expedient to give such an authorisation to prevent or control those activities.

Section 89 Fingerprinting of terrorist suspects

201. **Section 89** amends the provisions in the Schedule 8 to the Terrorism Act 2000 by providing that in addition to the grounds already specified fingerprints can be taken from those detained under the Act in order to ascertain their identity. At present fingerprints may only be taken from a person detained under the Act to establish if he has been involved in certain offences under the Act or to establish if he has been concerned in the commission, preparation, or instigation of acts of terrorism.
202. **Subsection (2)** amends that part of Schedule 8 which covers the fingerprinting of persons detained under the Act in England Wales and Northern Ireland by inserting two new sub-paragraphs in paragraph 10 of Schedule 8. Sub-paragraph (6A) allows an officer of at least superintendent rank to authorise the taking of fingerprints of a person detained at a station without the person's consent if the officer is satisfied that the fingerprints will enable the identification of the person, and that the person has refused to identify himself or the officer reasonably believes that he has given a false identity. Sub-paragraph (6B) allows the powers to be used to show that a person is not a particular person. For example this would cover incidents where an officer believes that a suspect has claimed to be his brother or friend rather than himself.
203. **Subsection (3)** makes similar amendments to the provisions of Schedule 8 which apply to Scotland by adding two further subsections after section 18(2) of the Criminal Procedure (Scotland) Act 1995. The new subsections allow a constable to take or require fingerprints from a person if he is satisfied that they will help to identify the person and the person has refused to identify himself or the constable reasonably believes that the person has given a false identity including circumstances where the constable believes that the person has claimed to be another person such as a relative or friend.

Section 90 Searches, examinations and fingerprinting: England and Wales

204. **Subsection (1)** inserts after section 54 of the Police and Criminal Evidence Act 1984 (searches of detained persons) a new section 54 A. The new section provides that where an officer of at least inspector rank authorises it, a person who is detained in a police station may be searched or examined or both (a) for the purposes of ascertaining whether he has any mark on him which would identify him as a person involved in

*These notes refer to the Anti-terrorism, Crime and Security Act
2001 (c.24) which received Royal Assent on 14th December 2001*

- the commission of an offence or (b) for the purpose of facilitating the ascertainment of his identity.
205. *Subsection (2)* of the new section 54A limits the grounds for authorising a search or examination under subsection (1)(a) to circumstances where the suspect withholds consent to an examination for a mark, or it is not practicable to obtain such consent, because for example the suspect is drunk and unable to give consent.
206. Under *Subsection (3)* in a case to which subsection (2) does not apply, the officer can only authorise a search to establish identity where the person has refused to identify himself or there are reasonable grounds for doubting whether he is the person who he says he is.
207. *Subsection (5)* provides that any identifying mark found during a search or examination may be photographed with appropriate consent or where consent is withheld or it is not practicable to obtain it, a photograph may be taken without the appropriate consent.
208. *Subsection (6)* provides that where a search or examination or the taking of a photograph are authorised, only constables and persons who are designated for the purposes of this section by the relevant chief officer of police, may carry out the search or examination or take the photograph. This subsection also applies section 117 of PACE, the use of reasonable force, to the exercise of the powers conferred by subsection (1) and (5) to designated non constables.
209. Under *Subsection (7)* a person may not carry out a search or examination of a person of the opposite sex or take a photograph of any part of the body of a person of the opposite sex. Where a search involves the removal of more than outer clothing it falls within the definition of a strip search for the purposes of PACE Code C and is subject to the safeguards contained in the code in relation to the conduct of such a search.
210. *Subsection (8)* prohibits the carrying out of an intimate search under new Section 54 A. An intimate search is a search of body orifices other than the mouth.
211. *Subsection (9)* provides that a photograph of an identifying mark can be used by or disclosed to any person for the purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution and they can be subsequently retained, but then only used for a related purpose.
212. *Subsections (10) to (12)* set out definitions of references to crime, references to ascertaining a person's identity, references to taking a photograph and marks.
213. *Subsection (2)* of Section 90 amends section 61 (4) of PACE which sets out the grounds on which an officer of at least superintendent rank can authorise the taking of fingerprints of a person detained at a police station without the appropriate consent. Authorisation can currently only be given where the officer has reasonable grounds (a) for suspecting the involvement of the person whose fingerprints are to be taken in a criminal offence; and (b) for believing that his fingerprints will tend to confirm or disprove his involvement. *Subsection (2)* amends the grounds in s.61 (4)(b) so that an officer may authorise the taking of a person's fingerprints if the prints will facilitate the identification of the person.
214. By virtue of *subsection (2) (b)* the power only applies to a person who is detained at a police station and refuses to identify himself or there are reasonable grounds for doubting whether he is the person who he says he is.
215. The effect of the amendments to section 61 (4) of PACE as amended by section 82 of the Criminal Justice and Police Act 2001 is that fingerprints taken for identification purposes may be retained in the same way in which fingerprints taken in order to prove or disprove involvement in a crime are now retained. In other words, fingerprints may be retained regardless of whether the person is proceeded against or convicted, but can

be used only for the purposes of the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.

Section 91 Searches, examinations and fingerprinting: Northern Ireland

216. This section makes provision for Northern Ireland which corresponds to that made by section 91 for England and Wales.

Section 92 Photographing of suspects etc.: England and Wales

217. **Section 92** inserts a new section 64A after section 64 of PACE.
218. *Subsection (1)* of the new section 64A provides a power to photograph a person who is detained at a police station with the appropriate consent or, where consent is withheld, without it.
219. *Subsection (2)* provides that a person may, in order to take a photograph of a person, require the removal of any item or substance, such as face paint, worn on or over the whole or any part of that person's face or head and if the person does not comply with this requirement, they may remove the item or substance themselves.
220. *Subsection (3)* limits who can take a photograph to constables and persons who are not constables but are designated for the purpose by the relevant chief officer of police. *Subsection (3)* also applies section 117 of PACE (power to use reasonable force) to persons other than constables in the exercise of the powers conferred under section 64A.
221. *Subsection (4)* provides that photographs can be used by or disclosed to any person for the purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution and that they can be subsequently retained, but then only used for a related purpose.
222. *Subsection (5)* sets out the definition of references to crime, investigation and prosecution.
223. *Subsection (6)* defines references to taking a photograph to include references to using any process to produce a visual image.

Section 93 Photographing of suspects etc.: Northern Ireland

224. This section makes provision for Northern Ireland which corresponds to that made by section 92 for England and Wales.

Section 94 Powers to require removal of disguises England and Wales

225. *Subsection (1)* of the section provides for the Criminal Justice and Public Order Act 1994 to be amended by the insertion of a new section (s 60AA)
226. *Subsection (1)* of new section 60 AA sets out the circumstances in which these powers may be used. These circumstances are where
- an authorisation under section 60 of the Criminal Justice and Public Order Act 1994 is in force; or
 - an authorisation under subsection (3) is in force.
227. Currently an authorisation under section 60 may be given where a senior officer reasonably believes incidents involving serious violence may take place in any locality. It gives the police powers to stop and search pedestrians and vehicles for offensive weapons or dangerous instruments. It also gives power to require the removal of face coverings worn for the purpose of concealing identity and to seize any such items.
228. *Subsection (2)* of section 60AA confers power on any constable in uniform:

These notes refer to the Anti-terrorism, Crime and Security Act 2001 (c.24) which received Royal Assent on 14th December 2001

- to require the removal of any item which he reasonably believes a person is wearing wholly or mainly for the purpose of concealing his identity;
 - to seize any item which he reasonably believes any person intends to wear wholly or mainly for that purpose.
229. *Subsection (3)* describes the circumstances which must exist before the authorisation, referred to in subsection (1)(b), in order for an authorisation to be given. The circumstances are that a police officer of or above the rank of inspector reasonably believes that:
- activities may take place in that area that are likely, if they take place, to involve the commission of offences; and
 - it is expedient in order to prevent or control the activities to give an authorisation.
230. The authorisation means that the powers mentioned in para 227 shall be exercisable at any place within that locality for a period of 24 hours.
231. *Subsection (4)* provides that an officer of or above the rank of superintendent may direct that the authorisation referred to in *subsection (3)* shall continue in force for a further 24 hours if it is expedient to do so, having regard to offences which have been committed in connection with the activities in respect of which the authorisation was given, or are reasonably suspected to have been so committed.
232. *Subsection (5)* states that if an authorisation under subsection (3) is given by an inspector, he must, as soon as it is practicable to do so, inform an officer of or above the rank of superintendent.
233. *Subsection (6)* specifies the contents of an authorisation. It must be in writing signed by the officer giving it and specify the grounds on which it is given; the locality in which the powers are exercisable; the period during which those powers are exercisable. A direction under *subsection (4)* shall also be given in writing or, where that is not practicable, be recorded in writing subsequently.
234. *Subsection (7)* creates an offence of failing to remove an item when required to do so by a constable in the exercise of his power under this section. The penalty for this offence is, on summary conviction, imprisonment for a term not exceeding one month or a fine not exceeding level 3 on the standard scale i.e. £1,000.
235. *Subsection (8)* defines the meaning of locality for the provisions of this section if the authorisation is given by a member of the British Transport Police.
236. *Subsection (9)* defines 'British Transport Police' and 'policed premises' for the purposes of this section.
237. *Subsection (10)* states that the powers conferred by this section are in addition to, and not in derogation, of any power otherwise conferred.
238. *Subsection (11)* states that this section does not extend to Scotland.
239. *Subsections (2)-(3)* of Section 94 make minor consequential amendments to the Criminal Justice and Public Order Act 1994 and the Police and Criminal Evidence Act 1984, making a power of arrest available for the offence in s.60AA(7).

Section 95 Powers to require removal of disguises: Northern Ireland

240. **Section 95** provides for the Public Order (Northern Ireland) Order 1987 to be amended by the insertion of a new Article 23A, which makes similar provision for Northern Ireland to that made for Great Britain by virtue of Section 94. Accordingly, where a senior police officer reasonably believes that incidents involving the commission of offences may take place within a locality, he may issue an authorisation which will

enable the police to exercise powers to require the removal of face coverings worn for the purpose of concealing identity, and to seize any such items. Under the Northern Ireland (Emergency Provisions) Act 1996, it was an offence to wear a mask or hood in a public place for the purpose of concealing identity. This provision was repealed when the Terrorism Act 2000 took effect.

241. A consequential amendment is also made to the Police and Criminal Evidence (Northern Ireland) Order 1989 to provide that failure to comply with the requirement to remove a disguise is an arrestable offence.

Powers of stop, search and seizure in Northern Ireland

Section 96 Power to Stop and Search in Anticipation of Violence

242. **Section 96** provides for the Public Order (Northern Ireland) Order 1987 to be amended by the insertion of a new Article, which makes similar provision for Northern Ireland to that made for Great Britain by virtue of Section 60 of the Criminal Justice and Public Order Act 1994 which does not extend to Northern Ireland. Where a senior police officer reasonably believes that incidents involving serious violence may take place in a locality, he may issue an authorisation which enables the police to stop and search pedestrians and vehicles for offensive weapons or dangerous instruments and to seize any such instruments.

Section 97 Seized Articles

243. **Section 97** provides for the Public Order (Northern Ireland) Order 1987 to be amended by the insertion of a new Article 23C, which will enable the Secretary of State to make regulations to govern the retention and disposal of things seized under new Articles 23A and 23B.

MOD and transport police

Section 98 Jurisdiction of MOD police

244. The Ministry of Defence Police (“MDP”) is a civilian police force exercising full constabulary powers within its jurisdiction. This jurisdiction is defined in the Ministry of Defence Police Act 1987 (“the 1987 Act”), which is the principal legislation governing the force. The limitations on the jurisdiction of the force have been reviewed in the light of the threat of terrorism and of the changed deployment pattern of the MDP. The changes in deployment include the increased use of mobile patrols, involving movement between defence establishments and bringing MDP officers more into contact with the public than previously.
245. The jurisdiction of the MDP is governed by section 2 of the 1987 Act. The overall effect is to give the force jurisdiction in relation to defence land, property and personnel within the United Kingdom and its territorial waters. The MDP is also able to operate on land in the vicinity of defence land where a constable of a local force has asked for assistance.
246. The section extends the MDP’s jurisdiction, by amending section 2 of the 1987 Act.
247. *Subsection (2)* amends section 2(2) of the 1987 Act, which deals with the places where the MDP have jurisdiction. *It* repeals the existing power in relation to acting on land in the vicinity of defence land in response to specific requests from a member of a local force. The repealed power is superseded by a new power provided for by *subsection (4)*.
248. Section 2(3)(b) of the 1987 Act currently provides for the MDP to have an additional jurisdiction in relation to defence personnel. It applies anywhere in the United Kingdom in which the MDP do not have jurisdiction under section 2(2) of the 1987 Act. The jurisdiction is thought to be confined to the alleged commission of offences by defence

personnel. *Subsection (3)* extends the jurisdiction to offences against defence personnel; for example, an attempt to bribe defence personnel to disclose confidential information.

249. *Subsection (4)* confers powers on the MDP where a request is made by a member of a local police force, the Police Service of Northern Ireland, the British Transport Police or the United Kingdom Atomic Energy Authority Constabulary. The new powers supersede those repealed by *subsection (2)*. Unlike those repealed by *subsection (2)*, the new powers are restricted to the particular incident, investigation or operation in relation to which assistance is requested, but they are not restricted to the vicinity of defence land. They will be exercisable within the police area of a requesting local police force, within Northern Ireland (in the case of a request by the Police Service for Northern Ireland), within their railway jurisdiction (in the case of a request by the British Transport Police), or (in the case of a request by the United Kingdom Atomic Energy Authority Constabulary) where an officer of that force may act.
250. *Subsection (4)* also deals with occasions on which MDP officers face emergencies where their normal jurisdiction would not apply. It may not be possible for the MDP officer to obtain timely authority from the local police force to deal with the incident. *Subsection (4)* empowers an MDP officer in uniform (or having proof of being an MDP officer) to act without a request for assistance from an officer of a local police force or other police officer, in limited circumstances, if he reasonably believes that waiting for such a request would frustrate or jeopardise the purpose of his intended action. These circumstances are where the MDP officer has reasonable grounds for suspecting that an offence is about to be committed, is being committed or has been committed, or where he reasonably believes that action is necessary to save life or prevent or minimise personal injury.

Section 99 Provision of assistance by MoD police

251. This section inserts a new section (section 2A) in the 1987 Act. It deals with cases where another police force requires extra resources to meet a special burden. The new section allows such assistance to be given by the MDP, where requested by the chief police officers listed in subsection (4), to enable their force to meet any special demand on its resources. It provides that, where MDP officers serve with other forces as a part of such assistance, they come under the direction of the chief officer of the force with which they are serving for the time being and have full powers of a constable of that force, (i.e. without the jurisdictional limits applying to MDP officers).

Overview

250. [Sections 100, 101](#) and Schedule 7 allow the British Transport Police (“BTP”) to act outside their railways jurisdiction when asked to assist in relation to a specific incident by a constable from the local police force, the UKAEA constabulary or a Ministry of Defence Police (“MDP”) officer, and in an emergency. The changes also give BTP officers certain powers already available to local police officers, including powers under the Terrorism Act 2000 and the ability to enter into mutual aid agreements with other forces.

Section 100 Jurisdiction of transport police

251. This section permits British Transport Police (“BTP”) officers to act outside their normal railways jurisdiction. These measures are to improve the effectiveness of the BTP by enabling it to play a full role in protecting the public from terrorism and other crimes.
252. The BTP’s railways jurisdiction gives its officers the powers and privileges of a constable on, and in the vicinity of, the railways and elsewhere on railways matters. However they need to move between railway sites and often have a presence in city centres. BTP officers are frequently called upon to intervene outside their ‘railways’ jurisdiction and it is estimated that some such 8,000 incidents occur each year. In these

circumstances BTP officers previously only had the powers of an ordinary citizen, despite being police officers fully trained to the standards of a local police force, and routinely dealing with the same range of incidents in the course of their railway activities.

253. *Subsection (1)* allows a BTP officer to assist a member of a local police force, the MDP or the UK Atomic Energy Authority Constabulary (“UKAEAEC”) when assistance is requested by a constable of one of those forces. The BTP officer can only assist in relation to a specific incident, investigation or operation but will have the same powers and privileges as a constable of the requesting police force. This is to avoid confusion, so that there will be no difference in the powers available to the BTP officer on such an occasion and an officer from the other force whom he is assisting.
254. *Subsection (2)* allows a BTP officer to intervene if he reasonably believes that an offence has been, is being committed or is about to be committed; or to prevent injury or save life. In these circumstances the BTP officer will have the same powers and privileges as an officer of a local police force. A BTP officer can only act under *subsection (2)* if he satisfies the requirements of *subsection (3)*.
255. *Subsection (3)* sets out the circumstances in which a BTP officer can act under *subsection (2)*. He must be able to show evidence that he is a BTP officer, i.e. be in uniform or have documentary proof, such as his warrant card. In addition, he can only act if he reasonably believes that waiting for a request for assistance from the police force with primary jurisdiction (i.e. the local police force, MDP or UKAEAEC) or waiting for a constable of one of those forces to act, would frustrate or seriously prejudice the purpose of his intended action.

Section 101 Further provisions about transport police and MoD police

256. This section gives effect to Schedule 7 which provides the BTP with additional police powers in certain circumstances. These powers were only previously available to local police force constables, and not BTP officers. Certain powers are also extended to the MDP. The BTP and MDP are under the same restrictions as local police forces regarding the application and use of these powers. Details of the amendments to the certain Acts of Parliament are contained in the note on Schedule 7.

Part 11: Retention of Communications Data

Overview

257. **Part 11** sets up a structure within which the Secretary of State can issue a code of practice relating to the retention of communications data by communications service providers, such as telephone and internet companies. Communications data is data relating to telephone, Internet and postal communications which does not include the substance of the communications itself.
258. The Telecommunications (Data Protection and Privacy) Regulations 1999 regulate the retention of such data by communication service providers providing that such data can only be retained for certain specific purposes. Otherwise it must be erased or made anonymous. Communications data can be a useful tool for law enforcement agencies and if held by a communications service provider is accessible by a public authority under Chapter II of Part I of the Regulation of Investigatory Powers Act 2000. However, whilst the Regulations permit the retention of communications data on national security and crime prevention grounds, they do not give any general guidance as to when these might apply. Accordingly, before these provisions were introduced communications service providers did not have a clear lawful basis for retaining communications data beyond the period for which it was required for their own business purposes.

259. **Part 11** establishes a structure to regulate the continued retention of such data on national security and crime related to national security grounds so that it may then be accessed by public authorities under the Regulation of Investigatory Powers Act 2000. Under section 102 the Secretary of State can issue a voluntary code of practice which will provide a basis for retention of communications data. Section 104 provides that if the voluntary scheme proves ineffective the Secretary of State may by affirmative order be authorised to impose mandatory retention directions on communications service providers. Section 105 provides that the power to invoke the mandatory scheme in section 104 will itself lapse unless renewed by affirmative order.

Section 102 Codes and agreements about the retention of communications data

260. *Subsection (1)* sets out that a voluntary code of practice will be drawn up and issued by the Secretary of State. The code will be applicable to communications providers and will apply to communications data that they have generated or is otherwise in their possession.
261. *Subsection (2)* explains that the Secretary of State may enter into further agreements with specific communications providers, with the consent of both parties. These will specify in greater detail than the generic code the type of data that is retained, and the conditions of retention and retrieval. The aim of these individual agreements is to provide greater clarity as to each provider's retention practices for public authorities who are eligible under the Regulation of Investigatory Powers Act 2000 to access communications data.
262. *Subsection (3)* sets out that the code and any agreements may contain provisions necessary to safeguard national security, or to prevent or detect crime and to prosecute offenders where this is directly or indirectly related to national security. . Data retained in accordance with the code will therefore be held for national security and law enforcement purposes, without prejudice to the communication provider's own business purposes.
263. *Subsection (4)* makes it clear that the code is voluntary: there are no penalties for non-compliance.
264. *Subsection (5)* allows the code or any agreement drawn up under this section to be used in legal proceedings brought against a communications provider by a person whose communications data they hold. Adherence to the terms of the code or agreement may be used as evidence that the retention of data is justified for national security or law enforcement purposes. This provision is intended to prevent a communications provider facing civil liability for retaining data in accordance with the code when they have no further need of it for business purposes.

Section 103 Procedure for codes of practice

265. *Subsections (1), (2), (3) and (4)* explain that the code of practice will be drawn up in two stages: firstly consultation with the Information Commissioner and communications providers to whom the code applies, leading to the publication of a draft, and secondly public consultation during which comments may be taken from any quarter.
266. *Subsections (5), (6) and (7)* require the Secretary of State to use an affirmative statutory instrument to bring the code into force, so ensuring that Parliament have the chance to consider and approve the code. The code may contain transitional provisions, covering for example data collected before the code is finalised or no longer judged necessary for the purposes of this Act under subsequent revisions of the code.
267. *Subsections (8), (9) and (10)* provide for the code to be revised and re-issued following consultation with the Information Commissioner and those communications providers who would be affected by the revisions. The order bringing a revised code into force would also need to be approved by both Houses of Parliament.

Section 104 Directions about retention of communications data

268. This section permits the Secretary of State to issue compulsory directions if he is not satisfied that the operation of the voluntary code of practice is effective. Directions may only be given if the Secretary of State is authorised to do so by affirmative order and for the purposes of safeguarding national security and the prevention and detection of crime or the prosecution of offenders which may relate directly or indirectly to national security.
269. *Subsection (1)* provides that the Secretary of State may by order authorise the giving of directions under this section.
270. *Subsection (2)* explains that the mandatory directions may apply to any of three categories: either all communications providers, a particular type of communications providers, or one or several specific communications providers.
271. *Subsection (3)* explains that the statutory order authorising the giving of directions must specify the maximum period for which any communications provider can be directed to retain any particular type of data.
272. *Subsection (4)* obliges the Secretary of State to consult with those who may be affected by the mandatory directions, or their representatives, before giving them. If the requirement is only being placed on particular communications providers (as in subsection 2(c) above), the Secretary of State must consult with them directly.
273. *Subsection (5)* explains that any direction must be explicitly brought to the attention of those to whom it applies.
274. *Subsection (6)* puts a duty on the communications provider to comply with any direction given under this section that applies to him.
275. *Subsection (7)* sets out the consequences of non-compliance with any direction. The Secretary of State may bring civil proceedings against the communications provider, seeking an injunction, or other appropriate relief.
276. *Subsection (8)* requires that the Secretary of State lay a draft of any order made under subsection (1) before Parliament and seek the approval of both the House of Commons and the House of Lords for that order.

Section 105 Lapsing of powers in section 104

277. This section provides for the renewal every two years of the Secretary of State's power under section 104(1) to authorise the issue of compulsory directions. The power will lapse unless it is either exercised or renewed.
278. *Subsection (1)* provides that the power to authorise the issue of compulsory directions ceases to have effect unless an order is made under section 104 before the end of the initial period.
279. *Subsections (2), (3) and (4)* define the initial period as two years beginning from the day on which the Act is passed and provide for it to be extended by order more than once, so long as the order extending the period is made within the two years. The extension may only be for two years at a time.
280. *Subsection (5)* requires that an order extending the initial period must be approved by affirmative resolution.

Section 106 Arrangements for payments

281. This section allows for payment arrangements to be made in order to compensate communications providers for the costs of adhering to the provisions of the code of

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practice or any agreements. It is consistent with similar provisions in the Regulation of Investigatory Powers Act 2000 (sections 24 and 52 of that Act).

282. *Subsection (1)* puts a duty on the Secretary of State to set up arrangements for paying an appropriate contribution of the costs incurred by communications providers acting in accordance with the code of practice or any agreements.
283. *Subsection (2)* clarifies that the Secretary of State may make arrangements for payments to be made out of money provided by Parliament.

Section 107 Interpretation of Part 11

284. This section provides a definition of the terms used in the Part.
285. *Subsection (1)* lists definitions of a number of terms. The terminology is consistent with that used in the Regulation of Investigatory Powers Act 2000.
286. *Subsection (2)* specifies that the provisions of any code of practice, agreements or directions under this Part are applicable to all data obtained or held by the communications provider, including that which came into their possession before the code, agreements or directions took effect.

Part 12: Bribery and Corruption

Section 108 Bribery and corruption: foreign officers etc

287. **Sections 108** and **109** implement proposals contained in the Government White Paper “Raising Standards and Upholding Integrity: the Prevention of Corruption” (CM 4759, June 2000).
288. **Section 108** ensures that the common law offence of bribery extends to persons holding public office outside the UK (*subsection (1)*). It also amends the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916 to ensure that those Acts cover the bribery and corruption of officials of foreign public bodies, as well as ‘agents’ (within the meaning of the 1906 Act) of foreign ‘principals’ (who may be in the public or private sector), (*subsections (2) – (4)*).

Section 109 Bribery and corruption committed outside the UK

289. This section gives the courts extra-territorial jurisdiction over bribery and corruption offences committed abroad by UK nationals and bodies incorporated under UK law. It enables the offences specified in subsection (3), when committed by UK nationals and bodies incorporated under UK law, to be prosecuted here, wherever those offences take place.
290. “UK national” is defined in *subsection (4)* in the same way as in section 67 of the International Criminal Court Act 2001.
291. As regards legal persons, the section applies to any body incorporated under the law of any part of the UK (*subsection (1)*). It thus applies not only to companies but also, for example, to limited liability partnerships.

Section 110 Presumption of corruption not to apply

292. The purpose of this section is to ensure that the existing presumption of corruption contained in the Prevention of Corruption Act 1916 does not apply any more widely as a result of the two previous sections. Following a recommendation of the Law Commission (Legislating the Criminal Code: Corruption (No. 248)), accepted by the Government in its White Paper on Corruption, the intention is to abolish the

presumption in the longer term, as part of a wider reform of corruption law. This section therefore allows it to continue to apply only in those cases where it applies at present.

Part 13: Miscellaneous

Third Pillar of the European Union

Section 111 Implementation of the third pillar

293. This section will allow a specific list of measures adopted under Title VI of the Treaty on European Union (Police and Judicial Co-operation in Criminal Matters) to be implemented by secondary legislation. The measures listed are all included in the European Union's anti-terrorism "road-map", a list of measures identified for urgent agreement and implementation after 11 September. The measures are: the 1995 and 1996 European Conventions on Extradition; three Framework Decisions on combating terrorism, on joint investigation teams and on the freezing of property and evidence; and the 2000 Convention on Mutual Assistance in Criminal Matters together with its Protocol.
294. The section follows closely the wording of section 2(2) of the European Communities Act 1972, which allows measures adopted under the Treaties establishing the European Communities and related treaties to be implemented by secondary legislation. Like the power in section 2(2) of the 1972 Act, the section enables such provision to be made as might be made by Act of Parliament but subject to a number of limitations. The power conferred by the section does not include power to raise taxes, to legislate retrospectively, or to create further legislative powers. The power to create new criminal offences is also limited. The powers conferred by the section are not exercisable after 30 June 2002.

Section 112 Third pillar: supplemental

295. This section sets out supplementary provisions concerning the exercise of the powers conferred by section 111.
296. The enabling power would be exercised by any Secretary of State, the Lord Chancellor, the Chancellor of the Exchequer or by the Devolved Administrations where the powers relate to devolved issues. The secondary legislation will be subject to the draft affirmative procedure.

Dangerous Substances

Section 113 Use of noxious substances to cause harm

297. Under this section it will become an offence for a person to use or threaten to use a biological, chemical, radioactive or other noxious substance to cause various kinds of serious harm in a manner designed to influence the government or to intimidate the public. Offences under this section carry a sentence of up to 14 years and a fine.

Section 114 Hoaxes involving noxious substances or things

298. Section 51 of the Criminal Law Act 1977 (as amended by the Criminal Justice Act 1991) makes it an offence for someone to place or send any article intending to make another person believe that it is likely to explode or ignite and thereby cause personal injury or damage to property. It is also an offence for someone to communicate any information which he knows or believes to be false intending to make another person believe that a bomb is likely to explode or ignite. Section 63 of the act makes similar provision for Scotland. The Criminal Law (Amendment) Northern Ireland) Order 1977 created a similar offence in Northern Ireland.

These notes refer to the Anti-terrorism, Crime and Security Act 2001 (c.24) which received Royal Assent on 14th December 2001

299. These offences relate only to hoax explosive devices. Other hoaxes, such as sending powders or liquids through the post and claiming that they are harmful, are not covered. This section fills that gap
300. *Subsection (1)* makes it an offence to place anywhere or send any substance or article intending to make others believe that that it is likely to be or contain a noxious substance or thing which could endanger human life or health.
301. *Subsection (2)* makes it an offence for a person to falsely communicate any information to another that a noxious substance or thing is or will be in a place and so likely to cause harm to endanger human life or health.
302. *Subsection (3)* sets out the penalties for these offences. On summary conviction a person may be imprisoned for up to six months, or receive a fine up to the statutory maximum or both. On conviction on indictment a person may be imprisoned for up to seven years, or receive a fine or both.

Intelligence Services Act 1994

Section 116 Amendments of the Intelligence Services Act 1994

303. This amendment serves two purposes: it amends and extends to Government Communications Headquarters (GCHQ) the authorisation procedure which currently applies only to the Secret Intelligence Service (SIS) by adding their name to Section 7 of the Intelligence Services Act 1994; and it brings the definition of the prevention and detection of crime which applies to SIS into line with the definition used by the Security Service, as set out in the Regulation of Investigatory Powers Act 2000.
304. *Section 7* sets out the authorisation procedure for acts necessary for the proper discharge of the functions of the SIS which take place abroad. The amendment extends this authorisation to GCHQ, for the purpose of discharging its own functions, and allows both GCHQ and SIS to be authorised under section 7 to act in this country when the intention is for those actions to have an effect only on apparatus located abroad.
305. *Subsection (1)* adds GCHQ to the agencies entitled to seek authorisation under Section 7 of the Intelligence Service Act and ensures that safeguards are in place concerning GCHQ's functions and disclosures in relation to its activities under this section.
306. *Subsection (2)* makes an amendment to Section 7 which affects the location at which acts authorised under Section 7 may take place. Section 7, Subsection (1) provides that the acts to be authorised must take place abroad. This extra subsection provides that the authorisation procedure in Section 7 may also apply to acts undertaken in this country, if they are intended only to have an effect on apparatus located outside the British Islands or on material originating from such apparatus.
307. The definition of "apparatus" used here is the same as in the Regulation of Investigatory Powers Act 2000, i.e. any equipment, machinery or device, or any wire or cable.
308. *Subsection (3)* provides for the meaning of the prevention and detection of crime as set out in Section 81(5) of the Regulation of Investigatory Powers Act 2000 for the purposes of the provisions of that Act not contained in Chapter 1 of Part 1 to be applied to the Secret Intelligence Service. The same definition will therefore apply to the Secret Intelligence Service as applies to the Security Service in the Security Service Act 1989. The effect is to clarify that the Secret Intelligence Service can support evidence gathering activities.

Terrorism Act 2000

Section 117 Information about acts of terrorism

309. This section inserts a new section 38B in the Terrorism Act 2000 making the failure to disclose information about acts of terrorism a criminal offence. The new offence is similar to that which was found in section 18 of the Prevention of Terrorism (Temporary Provisions) Act 1989 which was repealed by the Terrorism Act 2000. Section 18 related only to acts of terrorism in Northern Ireland. The new offence has no such geographical limitation.
310. *Subsections (1) and (2)* of the new section 38B make it an offence for a person, subject to the defence in subsection (4), to fail to disclose information which he either knows or believes might help prevent another person carrying out an act of terrorism or might help in bringing a terrorist to justice in the UK. The words “an act of terrorism” are to be read with the definition of terrorism in section 1 of the Terrorism Act 2000 and include acts of terrorism anywhere in the world. *Subsection (3)* identifies the people to whom disclosure should be made - in England and Wales to a constable, in Scotland to a constable, in Northern Ireland to a constable or a member of Her Majesty's forces. *Subsection (4)* makes it a defence for a person to prove a head a reasonable excuse for not making the disclosure. *Subsection (5)* sets out the penalties for people found guilty of offences under this legislation: on conviction on indictment a person may be imprisoned for up to five years, or receive a fine or both; or on summary conviction a person may be imprisoned for up to six months or receive a fine not exceeding the statutory minimum (level 1 up to £200 on the scale) or both. *Subsection (6)* allows a person to be charged with the offence even if he was outside the United Kingdom at the time he became aware of the information.
311. *Subsection (3)* of section 117 amends the Terrorism Act 2000 to make it an offence for someone to disclose information to another person which would be likely to prejudice an investigation resulting from a disclosure under section 38B or to interfere with material that is likely to be relevant to such an investigation. The penalties for these offences are the same as for that under section 38B.

Section 118 Port and Airport controls for domestic travel

312. The section extends the existing powers under paragraphs 2 - 8 of Schedule 7 to the Terrorism Act 2000 to stop, question, detain and search people. *Subsection (2)* extends them to cover any person whose presence at a port an examining officer (a constable, immigration officer or customs officer) believes to be connected with their travelling on a flight within Great Britain or Northern Ireland. *Subsection (3)* extends them to cover any person on a ship or aircraft that has arrived at any place in Great Britain or Northern Ireland whether from within or outside Great Britain or Northern Ireland.
313. Similarly *subsection (4)* extends the powers in paragraphs 9 to 11 of that Schedule to search and detain goods (including any property and containers) to cover flights within Great Britain or Northern Ireland.

Section 119 Passenger information

314. Under Paragraph 17 of Schedule 7 to the Terrorism Act 2000, if an examining officer (a constable or immigration officer or customs officer) makes a written request to the owners or agents of a ship or aircraft for information about passengers, crew or vehicles belonging to the passengers or crew the owners or agents must comply with the request as soon as is reasonably practicable. The provision only applies to the Common Travel Area (journeys between Great Britain, Northern Ireland, the Republic of Ireland and the Islands). The information to be collected must be specified by the Secretary of State.
315. The ATCS Act extends these powers to cover a ship or aircraft which arrives in any place in the United Kingdom, or which leaves or is expected to leave the United

Kingdom irrespective of whether the travel is international or domestic. These extended powers apply to goods as well as passenger freight.

Section 120 Weapons training for terrorists

316. Section 54 of the Terrorism Act 2000 makes it an offence to provide, receive or invite another person to receive instruction or training in the use of firearms, explosives or chemical, biological or nuclear weapons. A person guilty of an offence under this section may be imprisoned for up to ten years or receive a fine or both. It is a defence for the person to be able to show their involvement was wholly for a purpose other than terrorism.
317. **Section 55** of the Act defines a biological weapon as anything to which section 1(1)(b) of the Biological Weapons Act 1974 applies, a chemical weapon as anything to which section 1 of the Chemical Weapons Act 1996 applies; and a nuclear weapon as a weapon which contains nuclear material as set out in the schedule to the Nuclear Materials (Offences) Act 1983.
318. *Subsection (1)* adds a new paragraph to sections 54 (1) and (2) of the Terrorism Act 2000 to cover training relating to radioactive material and weapons designed or adapted for the discharge of radioactive material.
319. *Subsection (2)* amends section 55 of the Terrorism Act 2000. Paragraph (a) substitutes a new definition for a biological weapon to include any biological agent or toxin which is in a form that can be used for hostile purposes. Paragraph (b) inserts a definition of a radioactive material as one capable of endangering life or causing harm to health. Paragraph (c) deletes the definition of a nuclear weapon, which is now out of date.

Section 121 Crown Court judges Northern Ireland

320. This section amends the Terrorism Act 2000 to substitute Crown Court judges for county court judges.

Section 122 Review of Act

321. Under this section the Home Secretary is required to appoint a committee of at least seven privy counsellors, who are required to complete the review and submit a report to the Home Secretary within two years of the act receiving Royal Assent i.e. by 13th December, 2003.
322. The Home Secretary is also required to lay a copy of the report before Parliament as soon as is reasonably practical after receipt.

Section 123 Effect of report

323. Unless a motion is made in each House of Parliament to consider the report within 6 months of the report being laid before Parliament, any provisions of this Act specified for this purpose in the report will cease to have effect. This would in effect time limit any provisions specified unless Parliamentary time has been made to debate the content of the report.

Schedule 1 Forfeiture of Terrorist Cash

Part 1 Introductory

324. *Sub-paragraph (1)* of paragraph 1 provides that Schedule 1 applies to terrorist cash, that is cash which is intended to be used for the purposes of terrorism, consists of resources of a proscribed organisation or is earmarked as terrorist property. Part 5 of the Schedule explains what is meant by cash which is earmarked as terrorist property.

325. *Sub-paragraph (2)* of paragraph 1 defines cash for the purposes of Schedule 1 and makes it clear that the definition applies wherever the cash is found in the United Kingdom. The definition of cash is intended to cover the most readily realisable monetary instruments used by terrorists; the order making power in *sub-paragraph (3)* enables the Secretary of State to prescribe by order (subject to the negative resolution procedure) monetary instruments as the need arises.

Part 2 Seizure and detention

326. *Sub-paragraph (1)* of paragraph 2 enables an authorised officer (defined at paragraph 19 as a customs officer, immigration officer or constable) to seize cash if he has reasonable grounds for suspecting that it is terrorist cash as defined in *sub-paragraph (1)* of paragraph 1 of the Schedule. In normal circumstances, if the authorised officer only has reasonable grounds for suspecting that part of the cash in question is terrorist cash, then he may only seize that part. However, where the cash is in a non-divisible form (such as travellers' cheques), this will not be possible, and *sub-paragraph (2)* allows him in these circumstances to seize all of the cash including the non-terrorist part. *Sub-paragraph 4(2)* makes further provision as to what is to happen in such circumstances.
327. The effect of paragraph 3 is that cash may not be detained for more than 48 hours except by order of a magistrates' court or justice of the peace (or a sheriff in Scotland). Under *sub-paragraphs (6), (7) and (8)*, a magistrate may make an order for continued detention if satisfied that there are reasonable grounds for the officer's suspicion and that the continued detention is justified for the purposes of investigating its intended use, whether or not it consists of the resources of a proscribed organisations or its origin. The magistrate may also make an order for continued detention if consideration is being given to the bringing of criminal proceedings, or if such proceedings have been commenced and not concluded. Detention orders must be renewed every three months, but must not last for more than a total of two years from the date of the first order (*sub-paragraph (2)*). Paragraph 9 makes provision for any victim to intervene in the detention proceedings.
328. *Paragraph 4* provides that cash detained for more than 48 hours must be paid into an interest-bearing account unless it is required as evidence of an offence or evidence in proceedings under this Schedule. *Sub-paragraph (2)* provides that where part of the cash seized is not terrorist cash (as explained above, this may occur, for example, where the cash is in the form of a travellers' cheque), the non-terrorist part must be released at the time it is paid into the interest-bearing account.
329. *Paragraph 5* envisages two situations in which cash or any part of the cash may be released to the person from whom it was seized. Firstly, the magistrates' court (or a sheriff in Scotland) may do so in response to an application by the person from whom the cash was seized on the grounds that it no longer satisfies any of the conditions in paragraph 3 for its detention. Secondly, an authorised officer may release cash or any part of it after notifying the justice, magistrates' court or sheriff if satisfied that the detention can no longer be justified. Paragraph 9 makes provision for a victim who claims the terrorist cash to apply for it to be released to him.

Part 3 Forfeiture

330. The effect of paragraph 6 is to enable the magistrates' court or sheriff to order the forfeiture of cash or any part of it if satisfied that the cash or part is terrorist cash.
331. Where the cash belongs to joint tenants, one of whom did not obtain it through terrorism, the order may not apply to so much of the cash as the court thinks attributable to the "innocent" partner's share. An example of this might be the joint bank account into which terrorist proceeds has been paid by one signatory and clean money by the other. If the former withdraws all the cash and it is subsequently seized, the "innocent" partner's share of the money will not be forfeited.

332. Under paragraph 7, appeals must be lodged within 30 days. A successful appeal would result in the cash being paid back, together with any accrued interest. *Sub-paragraph (6)* provides for the situation where an organisation is deproscribed following a successful appeal to the Proscribed Organisations Appeal Commission (POAC), and a forfeiture order has been made in reliance (in whole or in part) on the fact that the organisation is proscribed. In such cases, the person whose cash has been forfeited may appeal at any time before the end of the period of 30 days beginning with the date on which the deproscription order comes into force, but only where the cash was seized on or after the date of the initial refusal to deproscribe against which the appeal to POAC was brought.

Part 4 Miscellaneous

333. [Paragraph 9](#) provides for those who claim ownership of the cash or any part of it that is detained. The court may release the cash to the applicant if it is satisfied that he was a victim of criminal conduct (as defined in paragraph 19) and that the cash belongs to him. However, it may not release the cash to him if the property that the applicant was originally deprived of was itself property obtained through criminal conduct. So a thief who is deprived of the property that he has stolen cannot benefit from these provisions. The victim's application may be made at the time of a detention hearing under paragraph 3, a forfeiture hearing under paragraph 6 or any other time.
334. [Paragraph 10](#) provides that where no forfeiture order is made following the detention of cash the person from whom it was seized or the person to whom the cash belongs may apply to the court for compensation. If cash has not been held in an interest bearing account because it is needed as evidence, *sub-paragraph (2)* allows the court to pay an amount of compensation in respect of the interest lost. *Sub-paragraph (4)* also gives the court discretion to pay compensation where loss has occurred and the circumstances are exceptional. This applies whether or not interest has been paid. Where as a result of proceedings under paragraph 9, cash is returned to a victim, it is not thought appropriate that compensation should be payable and *sub-paragraph (10)* reflects this.

Part 5 Property earmarked as terrorist property

335. [Paragraphs 11 to 16](#) say what "property earmarked as terrorist property" means. It covers:
- property obtained through terrorism, and
 - property which represents property obtained through terrorism.
336. [Paragraph 11](#) defines when property is obtained through terrorism. A person will obtain property through terrorism if he obtains it:
- by or in return for acts of terrorism – for example by being paid to commit murder, or
 - by or in return for acts carried out for the purposes of terrorism – for example, stealing a car to perpetrate a terrorist act.
337. The purpose of *sub-paragraph (2)(a)* is to ensure that property counts as having been obtained through terrorism regardless of any investment in that terrorism. So if a person buys guns with honestly come by money, and sells them at a profit, the whole of the proceeds of the sale will count as having been obtained through terrorism, and not just the profit.
338. *Sub-paragraph 2(b)* provides that it is not necessary to show that property was obtained through a particular act of terrorism, so long as it can be shown to have been obtained through terrorism of one kind or another. So it will not matter, for example, if it cannot be established whether certain funds are attributable to gun smuggling, blackmail, extortion, or stealing from a bank, provided that it can be shown that they are attributable to an act of terrorism, or an act carried out for the purposes of terrorism.

339. **Paragraph 12** explains that property may be earmarked as terrorist property even if it is not in the hands of the person who originally obtained it. That is to say, property obtained through terrorism may be followed.
340. **Paragraphs 13 to 15** describe circumstances in which property is treated as representing property obtained through terrorism.
341. **Paragraph 13** provides that, if property obtained through terrorism is disposed of, the proceeds of the disposal represent the property disposed of. In other words, property obtained through terrorism may be traced into other property. For example, if a person obtains a car in return for carrying out an act of terrorism, and then sells it, the cash that he obtains in return will be property earmarked as terrorist property. The same principle will apply again when he spends the cash.
342. **Paragraph 14** provides that where property obtained through terrorism is mixed with other property, then the portion of the mixed property which is attributable the property obtained through terrorism will itself represent property obtained through terrorism. So, for example, if the car mentioned above is sold and the cash paid into a bank account which is in credit through deposits from honest sources, then a proportion of any cash withdrawn from that bank account will be property earmarked as terrorist property. Again, the same principle will apply if representative property is mixed with other property.
343. **Paragraph 15** provides that if profits accrue in respect of the property obtained through terrorism, or representative property, the profits are also to be treated as representative property. So, for example, if property obtained through terrorism is placed in a bank account and interest is credited to the account, any cash taken from the account may be seized.

General exceptions

344. **Paragraph 16** sets out exceptions as to when property that would by virtue of paragraphs 11 to 15 be earmarked as terrorist property is not to be treated as such. The effect of paragraph 12 is that where, for example, someone is given a car in return for action of a terrorist nature, and then sells the car to someone else, the car continues to be earmarked as terrorist property. This is qualified by *sub-paragraph (1)* which provides that if the purchaser paid full value for the car, and was unaware of its terrorist origins, the property is no longer earmarked. However, the money paid for the car continues to be earmarked by virtue of *sub-paragraph (7)*.
345. *Sub-paragraphs (2) to (6)* set out other circumstances in which terrorist property will cease to be earmarked: where a claimant obtains property from a defendant in civil proceedings which are based on the defendant's criminal conduct (as defined in paragraph 19), and the property would otherwise be earmarked; where a payment is made following a compensation or restitution order under the Powers of Criminal Courts (Sentencing) Act 2000, and the sum or property received would otherwise be earmarked; where an amount is paid in accordance with a restitution order made by the court under the Financial Services and Markets Act 2000 and the amount would otherwise be earmarked; and where restitution is required to be made by the Financial Services Authority under that Act paying an amount which would otherwise be earmarked.

Part 6 Interpretation

346. "Disposing" of property is a key feature of the provisions at paragraph 12 and 13. Disposal of property may take place, for instance:
- where the property is dealt with to some extent only (including where an interest in the property is created); a disposal might also consist of the grant of an interest in a part (*sub-paragraph (1)* of paragraph 18);

These notes refer to the Anti-terrorism, Crime and Security Act 2001 (c.24) which received Royal Assent on 14th December 2001

- where a person makes a payment, in cash or any other kind of property, to another (*sub-paragraph (3)* of paragraph 18);
 - where property changes hands on death (*sub-paragraph (4)* of paragraph 18).
347. *Sub-paragraph (5)* is relevant to the protection provided at *sub-paragraph (1)* of paragraph 16 for persons who obtain property “for value”. It provides that a person obtains property “for value” only when he has given executed consideration for it. That means that if someone obtains property in return for a promise to pay for it or to perform some service in exchange, that will not count as having “obtained for value” until the payment is actually made or the service performed.
348. *Sub-paragraph (2)* provides that where a person grants an interest in property which is earmarked, that interest is also to be treated as property which is earmarked. For example, if a person grants a lease on a car obtained through terrorism, then the lease on the car should also be treated as being obtained through terrorism i.e. as property which is earmarked.
349. *Sub-paragraph (1)* of [paragraph 19](#) defines certain terms used in this Schedule.
350. *Sub-paragraph (3)* provides that the provisions on property earmarked as terrorist property apply to events occurring before commencement of this Schedule. So if cash is obtained through terrorism before commencement of the Schedule, it is still liable to seizure and forfeiture under the Schedule.

Schedule 2 Terrorist Finance

351. This Schedule amends the [Terrorism Act 2000 \(c. 11\)](#) in a number of respects.

Part 1 Account monitoring orders

352. The Terrorism Act contains provision enabling a judge to order a person to produce particular material to a constable for the purposes of a terrorist investigation (paragraphs 5 to 10 of Schedule 5). Information on accounts held by financial institutions is included and may be subject to such orders. This power is, however, not well suited to information relating to transactions. In particular it only relates to material in the possession, power or custody of the financial institution or to material which will come into existence within 28 days of the order. As a result such production orders cannot require the “real-time” disclosure of the fact that a transaction on the account has occurred, as there may well be a delay before the material recording that fact is produced.
353. Thus there is a gap in the current provisions where investigating authorities need to be able to obtain information relating to the account or accounts held with a specified financial institution by a named individual or body. Account monitoring orders will be the mechanism available to obtain this information. The information required is principally that relating to transactions on the account. The information sought is similar to that which is sought by account monitoring orders provided for in the Proceeds of Crime Bill. However, it has a different scope to that Bill, in that the order can be obtained for the purposes of a terrorist investigation* and so is focused on terrorism as opposed to all criminal activity. Account monitoring orders are to be provided for by the addition of a new Schedule (Schedule 6A) to the Terrorism Act 2000.
- *Terrorist investigation is defined in section 32 of the Terrorism Act.
354. An account monitoring order will have the effect of requiring a financial institution to provide specified information in relation to an account (for example, details of all transactions passing through the account) at a specified place or places for a specified period not exceeding 90 days. This information will normally be provided in the form of a bank statement.

355. An account monitoring order may be obtained if the person making it is satisfied that the application satisfies all three requirements of *subparagraph (1)* of paragraph 2 of new Schedule 6A.
356. *Paragraph 3, subparagraph (2)* allows an applicant for an account monitoring order to vary the description of information sought in the application. This is necessary so that an application does not fail completely where the judge is prepared to make the order in relation to certain of the information specified but not all. This flexibility avoids the need for a further application to be made.
357. *Paragraph 6(1)* provides that account monitoring orders made by a judge have effect as if they were orders of the court. This enables a failure to comply with an account monitoring order to be dealt with as a contempt.
358. *Paragraph 6(2)* is necessary as the information which is described in the order will be held by the financial institution subject to various restrictions on its disclosure to third parties. This subparagraph makes it clear that the order has effect, and must be complied with, despite the existence of such restrictions.
359. *Paragraph 7(1)* precludes the use of a statement made by a financial institution in response to an account monitoring order as evidence against the financial institution in any criminal proceedings.
360. There are three exceptions to this rule. Failure to comply with an account monitoring order will be dealt with as a contempt of court. *Subparagraph (2)(a)* provides that any statement given by a financial institution can be used in such proceedings. *Subparagraph (2)(c)* prevents a financial institution being free to provide evidence inconsistent with a statement already provided in proceedings against it for an offence. The third exception addresses the possibility, albeit low, that a financial institution which has given a statement in response to an account monitoring order is subsequently convicted of an offence under any of sections 15 to 18 of the Terrorism Act. The statement made may well contain information relevant to what money or other property may be subject to a forfeiture order under section 23 of that Act. This provision allows the statement to be used in such proceedings.

Part 2 Restraint orders

361. At present, the Terrorism Act contains a provision enabling the High Court to make a restraint order, freezing assets, to prevent someone accused of an offence under sections 15 to 18 of the Terrorism Act from selling his property in order to avoid forfeiture.
362. The Act makes a fundamental change to this scheme. The point at which a restraint order may be made is brought forward to any time after an investigation has been started (at present, although a restraint order may be made at the investigative stage, it is only possible to do so where charges are anticipated). This will reduce the risks that funds will be dissipated or used for terrorism before a decision has been made on whether to institute criminal proceedings .
363. *Paragraph 2, subparagraph (2)* allows the High Court to make a restraint order where a criminal investigation has commenced into a suspected offence under any of sections 15 to 18 of the Terrorism Act. Because at an early stage of a criminal investigation, there are no proposed proceedings, the references to proposed proceedings have been changed to any proceedings for the offences under investigation.

Part 3 Disclosure of information

364. Under section 19 of the Terrorism Act it is an offence for a person who, by virtue of information which has come to him in the course of a trade, profession, business or employment, believes or suspects that another person has committed an offence under sections 15 to 18 of that Act to fail to disclose it to a constable.

365. **Paragraph 5** adds a number of provisions to the Terrorism Act. By virtue of new section 21A (inserted by *paragraph 5(2)*) where a person knows or suspects, or has reasonable grounds for knowing or suspecting, that a person has committed an offence under any of sections 15 to 18 of that Act, and the information came to him in the course of a business in the regulated sector, he must disclose that information. Failure to do so is an offence. Section 19 is amended to remove such persons from the scope of that section (*paragraph 5(3)*). The regulated sector is defined in Part 1 of Schedule 3A added by *sub-paragraph (6)* of paragraph 5.
366. That this provision is only directed at persons who are carrying out activities in the regulated sector reflects the fact that they should be expected to exercise a higher level of diligence in handling transactions than those engaged in other businesses. Where a business carries out some activities which are specified in Schedule 3A, Part 1 and some which are not, then it is only to the extent that information is obtained in the course of the specified activities that is covered by these provisions.
367. The requirement to pass on information where there are reasonable grounds to know or suspect that someone has committed an offence lays down an objective test for criminal liability. In recognition of this *subsection (6)* of section 21A provides that the court must take any guidance issued by a supervisory authority or any other appropriate authority into account when determining whether an offence has been committed. That guidance has to be approved by the Treasury and is published in a manner approved by the Treasury so as to bring it to the attention of persons likely to be affected by it. A list of supervisory authorities is to be found in Schedule 3A, Part 2.
368. **Paragraph 5** also adds a further new provision to the Terrorism Act (section 21B). This provision ensures that persons in the regulated sector can disclose information which causes them to know or suspect, or gives them reasonable grounds to know or suspect, that an offence has been committed to the police without fear of breaching any other legal restriction which would otherwise apply.

Schedule 3: Freezing Orders

369. The Schedule sets out a series of measures that the Treasury may include in a freezing order. The Treasury may include other supplementary, incidental, saving or transitional provisions.

Interpretation

370. References to a person specified in a freezing order means those specified by name or description in accordance with section 5(4).

Funds

371. This section provides that freezing orders may include a provision defining funds.

Making funds available

372. This paragraph provides that a freezing order must define the meaning of making funds available to or for the benefit of a person.

Licences

373. A freezing order must include provisions for authorising funds to be made available, subject to conditions set out by the Treasury. The Treasury may charge fees to cover the administrative costs of granting a licence.

Information and documents

374. A freezing order may provide that a person must provide information or a document if it is reasonably needed in order to establish whether an offence under the order has been

committed. The requirement to provide information or a document may be made by the Treasury or a person authorised by the Treasury. The requirement is to do so, in a certain time period and at a place set out in the order. The order may provide that the requirement to provide information is not to be taken to breach any restriction on the disclosure of information. However, the requirement does not apply to information or documents subject to legal privilege, except to the extent that the information or document is held with the intention of furthering a criminal purpose.

Disclosure of information

375. This paragraph provides that a freezing order may include a provision requiring a person to disclose information if three conditions apply. First, the person required to disclose must be specified in the order. Secondly, the person must know or suspect, or have grounds to know or suspect, that a person specified in a freezing order is a customer of his or has dealings with him. Thirdly, the information must have come to him in the course of a business in the regulated sector. The freezing order may include provisions: that the requirement to disclose information is not a breach of any restriction on the disclosure of information; on the use to which the information may be put and further disclosures; and, that the obligation to disclose does not apply to privileged information except where the information is held with the intention of furthering a criminal purpose.

Offences

376. A freezing order may include any of the following provisions providing for offences.
377. A person commits an offence if he fails to comply with a prohibition imposed by an order or facilitates the breach of a freezing order by another person. A person does not commit these offences if he did not know and had no reason to suppose that the person to whom funds were made available was the person specified in the freezing order. On summary conviction, a person guilty of an offence under either provision is subject to imprisonment for up to 6 months or a fine not exceeding the statutory maximum or to both. On conviction on indictment, a person guilty of an offence under either such provision is subject to imprisonment for up to 2 years or to a fine or to both.
378. A person commits an offence if he fails, without reasonable excuse to provide information or a document as required by an order. A person commits an offence if he provides information or a document which he knows includes information which is false in a material particular, or he does so recklessly. On summary conviction, a person guilty of an offence under either such provision is subject to imprisonment for up to 6 months or a fine not exceeding level 5 on the standard scale.

Offences: procedure

379. A freezing order may include a provision that proceedings for an offence under the order are not to be instituted unless the relevant Director of Public Prosecutions or the Treasury consents.
380. An information or complaint relating to an offence under the order may be tried in England and Wales or Northern Ireland if it is laid or made within one year from the commission of the offence. In Scotland, summary proceedings for an offence may be commenced within one year of the commission of the offence.

Offences by bodies corporate

381. A freezing order may provide that where an offence has been committed by a body corporate with the consent, connivance or by neglect of a director, manager, secretary or other similar officer, or by a partner of a Scottish partnership, then he is also liable for the offence.

Compensation

382. A freezing order may include provision for compensation to be paid to a person who has suffered loss as a result of the order, or the grant or refusal of a licence under the order, or the revocation of a licence. The entitlement to compensation may be made subject to a requirement that the claimant has behaved reasonably (for example by mitigating his loss).

Treasury's duty to give reasons

384. A freezing order must provide that if a person specified as having their funds frozen makes a request to the Treasury to give him the reason why he is so specified, then the Treasury must give the person the reason in writing as soon as practicable.

Schedule 5

384. This lists the pathogens and toxins to be brought under control under Part 7.

Schedule 6

835. This provides details relating to the composition, constitution and administration of the Pathogens Access Appeal Commission.

Schedule 7

386. This amends certain Acts of Parliament to extend certain police powers and provisions to the BTP and MDP.
387. The [Police \(Scotland\) Act 1967 \(c.77\)](#). The amendment of section 11 allows the BTP and Scottish police forces to provide aid to one another to meet any special demands, subject to payment. The amendment of section 12 enables the BTP to enter collaboration agreements with Scottish police forces. The amendment of sections 42 and 43 make it an offence to cause disaffection in the BTP or impersonate a BTP constable.
388. [Firearms Act 1968 \(c.27\)](#). The amendment of section 54 allows BTP officers and associated civilian employees to possess, purchase and acquire CS incapacitant sprays and ammunition used for such sprays, but not any other prohibited firearm.
389. [Police and Criminal Evidence Act 1984 \(c.60\)](#). The amendment of sections 35 and 36 allows the BTP's chief constable to designate police stations to be used to detain arrested persons and to appoint custody officers for these stations.
390. [Criminal Justice and Public Order Act 1994 \(c.33\)](#). The amendment of section 60 allows a BTP officer of the rank of inspector or above to authorise, in certain circumstances, the use of certain stop and search powers in, on and in the vicinity of premises policed by the BTP when it is reasonably believed that incidents of violence may take place or that persons are carrying dangerous weapons.
391. [Sections 136, 137 and 140](#) (cross-border enforcement) are amended so that the BTP can make use of these powers. The amendment of section 136 allows a BTP officer in England or Wales to execute a warrant issued in Scotland or Northern Ireland and, equally, allows a BTP constable in Scotland to execute a warrant issued in England, Wales or Northern Ireland. The amendment of section 137 allows a BTP officer from England and Wales or Scotland to arrest someone suspected of committing an offence in his own country, but now present in one of the other countries. The amendment of Section 140 provides a BTP constable from England, Wales or Scotland with the same powers of arrest as a local constable when that officer is in either of the other two countries.
392. [Police Act 1996 \(c.16\)](#). The amendment of section 23 enables the BTP to enter into collaboration agreements with local police forces. The amendment of section 24 allows

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2001 (c.24) which received Royal Assent on 14th December 2001*

the BTP and local police forces to provide aid to one another to meet any special demands, subject to payment. When providing such aid, the BTP officer will be under the direction and control of the chief officer of police of that other force. The amendment to section 25 allows the BTP to provide special police services to any person, subject to payment.

393. The amendment of sections 90 and 91 makes it an offence to impersonate a BTP constable or cause disaffection in the BTP.
394. [Terrorism Act 2000 \(c.11\)](#). The amendment of section 34 allows the BTP and the MDP, in certain circumstances, to designate areas in which cordons may be erected for the purposes of terrorist investigations. This allows a constable in uniform to order a person or vehicle to leave the cordoned area and any adjacent area, to remove any vehicle from the area, and to restrict access to the area.
395. The amendment of section 44 allows the BTP and MDP, in certain circumstances where it is expedient for the prevention of acts of terrorism, to specify areas or places in which for up to 28 days a uniformed constable of the BTP or MDP can stop and search vehicles, their occupants and pedestrians. An assistant chief constable, or higher, may authorise the use of these powers and the Secretary of State must confirm any such orders within 48 hours.

HANSARD REFERENCES

The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

<i>Stage</i>	<i>Date</i>	<i>Hansard Reference</i>
House of Commons		
Introduction	12 November 2001	Vol 374 Col 571
Second Reading	19 November 2001	Vol 375 Cols 21 - 123
Committee 1 st Sitting	21 November 2001	26 November 2001
Committee 2 nd Sitting	Vol 375 Cols 325 – 432	Vol 375 Cols 673 - 790
Report & Third Reading	26 November 2001	Vol 375 Cols 790 – 804
House of Lords		
Introduction	26 November 2001	Vol 629 Col 130
Second Reading	27 November 2001	Vol 629 Cols 140 – 162 and 183 – 290
Committee	28 November	Vol 629 Cols 301 – 311, 329 – 369 and 385 - 446
	29 November 2001	Vol 629 Cols 458 - 522 and 539 - 572
	3 December 2001	Vol 629 Cols 583 – 652 and 669 - 696
	4 December 2001	Vol 629 Cols 707 – 722, 734 – 783 and 786 – 826
Report	6 December 2001	Vol 629 Cols 949 – 1019 and 1036 - 1062

*These notes refer to the Anti-terrorism, Crime and Security Act
2001 (c.24) which received Royal Assent on 14th December 2001*

<i>Stage</i>	<i>Date</i>	<i>Hansard Reference</i>
	10 December 2001	Vol 629 Cols 1141 - 1208
Third Reading	11 December 2001	Vol 629 Cols 1238 – 1256 and 1271 - 1291
Commons Consideration of Lords Amendments	12 December 2001	Vol 376 Cols 894 – 967
Lords Consideration of Commons Reasons and Amendments	13 December 2001	Vol 629 Cols 1420 - 1485
Commons Consideration of Lords Reasons and Amendments	13 December 2001	Vol 376 Cols 1108 - 1124
Lords Consideration of Commons Reason and Amendment	13 December 2001	Vol 629 Cols 1531 - 1539
Royal Assent		
House of Commons	14 December 2001	Vol 376 Col 1124
House of Lords	14 December 2001	Vol 629 Col 1540