

## **Serious Organised Crime and Police Act 2005**

### **2005 Chapter 15 - continued**

An Act to provide for the establishment and functions of the Serious Organised Crime Agency; to make provision about investigations, prosecutions, offenders and witnesses in criminal proceedings and the protection of persons involved in investigations or proceedings; to provide for the implementation of certain international obligations relating to criminal matters; to amend the Proceeds of Crime Act 2002; to make further provision for combatting crime and disorder, including new provision about powers of arrest and search warrants and about parental compensation orders; to make further provision about the police and policing and persons supporting the police; to make provision for protecting certain organisations from interference with their activities; to make provision about criminal records; to provide for the Private Security Industry Act 2001 to extend to Scotland; and for connected purposes.

[7th April 2005]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

#### **PART 1**

#### THE SERIOUS ORGANISED CRIME AGENCY

#### **CHAPTER 1**

#### SOCA: ESTABLISHMENT AND ACTIVITIES

#### *Establishment of SOCA*

#### **1 Establishment of Serious Organised Crime Agency**

- (1) There shall be a body corporate to be known as the Serious Organised Crime Agency ("SOCA").
- (2) Schedule 1 makes provision about the constitution, members and staff of SOCA and other matters relating to it.
- (3) Each of the following bodies shall cease to exist on such date as the Secretary of State appoints by order-
  - (a) the National Criminal Intelligence Service and its Service Authority, and
  - (b) the National Crime Squad and its Service Authority.

#### *Functions*

#### **2 Functions of SOCA as to serious organised crime**

- (1) SOCA has the functions of-
  - (a) preventing and detecting serious organised crime, and
  - (b) contributing to the reduction of such crime in other ways and to the mitigation of its consequences.
- (2) SOCA's functions under subsection (1) are exercisable subject to subsections (3) to (5) (but subsection (3) does not apply to Scotland).
- (3) If, in exercising its function under subsection (1)(a), SOCA becomes aware of conduct appearing to SOCA to involve serious or complex fraud, SOCA may thereafter exercise that function in relation to the fraud in question only-
  - (a) with the agreement of the Director, or an authorised officer, of the Serious Fraud Office, or
  - (b) if the Serious Fraud Office declines to act in relation to it.

(4) If, in exercising its function under subsection (1)(a), SOCA becomes aware of conduct appearing to SOCA to involve revenue fraud, SOCA may thereafter exercise that function in relation to the fraud in question only with the agreement of the Commissioners.

(5) Before exercising its function under subsection (1)(b) in any way in relation to revenue fraud, SOCA must consult the Commissioners.

(6) The issue of whether SOCA's function under subsection (1)(a) continued to be exercisable in any circumstances within subsection (3) or (4) may not be raised in any criminal proceedings.

(7) In this section "revenue fraud" includes fraud relating to taxes, duties and national insurance contributions.

(8) In this Chapter "the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs.

### **3 Functions of SOCA as to information relating to crime**

(1) SOCA has the function of gathering, storing, analysing and disseminating information relevant to-

(a) the prevention, detection, investigation or prosecution of offences, or

(b) the reduction of crime in other ways or the mitigation of its consequences.

(2) SOCA may disseminate such information to-

(a) police forces within subsection (3),

(b) special police forces,

(c) law enforcement agencies, or

(d) such other persons as it considers appropriate in connection with any of the matters mentioned in subsection (1)(a) or (b).

(3) The police forces within this subsection are-

(a) police forces in the United Kingdom, and

(b) the States of Jersey Police Force, the salaried police force of the Island of Guernsey and the Isle of Man Constabulary.

(4) In this section "law enforcement agency" means-

(a) the Commissioners or any other government department,

(b) the Scottish Administration,

(c) any other person who is charged with the duty of investigating offences or charging offenders, or

(d) any other person who is engaged outside the United Kingdom in the carrying on of activities similar to any carried on by SOCA or a police force.

(5) In this Chapter "special police force" means-

(a) the Ministry of Defence Police,

(b) the British Transport Police Force,

(c) the Civil Nuclear Constabulary, or

(d) the Scottish Drug Enforcement Agency.

#### **4 Exercise of functions: general considerations**

(1) In exercising its functions SOCA must have regard to the matters mentioned in subsection (2).

(2) The matters are-

- (a) SOCA's current annual plan under section 6 together with any priorities determined by SOCA under that section that are specified in the plan,
- (b) any current strategic priorities determined by the Secretary of State under section 9, and
- (c) any current performance targets established by SOCA.

(3) In exercising any function to which a code of practice under section 10 relates, SOCA must have regard to the code.

#### *General powers*

#### **5 SOCA's general powers**

(1) SOCA has the general powers conferred by this section.

(2) SOCA may-

- (a) institute criminal proceedings in England and Wales or Northern Ireland;
- (b) at the request of the chief officer of a police force within section 3(3) or of a special police force, act in support of any activities of that force;
- (c) at the request of any law enforcement agency, act in support of any activities of that agency;
- (d) enter into other arrangements for co-operating with bodies or persons (in the United Kingdom or elsewhere) which it considers appropriate in connection with the exercise of any of SOCA's functions under section 2 or 3 or any activities within subsection (3).

(3) Despite the references to serious organised crime in section 2(1), SOCA may carry on activities in relation to other crime if they are carried on for the purposes of any of the functions conferred on SOCA by section 2 or 3.

(4) Subsection (3) does not affect the generality of section 3(1).

(5) SOCA may furnish such assistance as it considers appropriate in response to requests made by any government or other body exercising functions of a public nature in any country or territory outside the United Kingdom.

(6) Subsection (5) does not apply to any request for assistance which-

- (a) could be made under section 13 of the Crime (International Co-operation) Act 2003 (c. 32) (requests by overseas authorities to obtain evidence), and
- (b) is not a request in relation to which SOCA has functions under that section by virtue of an order under section 27(2) of that Act.

(7) In this section "law enforcement agency" has the meaning given by section 3(4).

#### *Annual plans and reports*

#### **6 Annual plans**

(1) Before the beginning of each financial year SOCA must issue a plan setting out how SOCA intends to exercise its functions during that year ("the annual plan").

(2) The annual plan must (in particular) set out how SOCA intends to exercise its functions in Scotland and in Northern Ireland.

(3) The annual plan must also include a statement of-

- (a) any priorities which SOCA has determined for that year,
- (b) any current strategic priorities determined by the Secretary of State under section 9,
- (c) any current performance targets established by SOCA, and
- (d) the financial resources that are expected to be available to SOCA for that year.

(4) Any priorities within subsection (3)(a) may relate-

- (a) to matters to which strategic priorities determined under section 9 also relate, or
- (b) to other matters,

but in any event must be so framed as to be consistent with strategic priorities determined under that section.

(5) The annual plan must state, in relation to each priority within subsection (3)(a) or (b), how SOCA intends to give effect to that priority.

(6) SOCA must arrange for the annual plan to be published in such manner as it considers appropriate.

(7) SOCA must send a copy of the annual plan to-

- (a) the Secretary of State,
- (b) the Scottish Ministers,
- (c) the Commissioners,
- (d) each police authority for an area in Great Britain, each joint police board and the Northern Ireland Policing Board,
- (e) the chief officer of each police force in the United Kingdom, and
- (f) such other persons as SOCA considers appropriate.

(8) In subsection (7)(d) the reference to a police authority for an area in Great Britain does not include a constituent authority in an amalgamation scheme approved under section 19(1) of the Police (Scotland) Act 1967 (c. 77).

(9) Before issuing its annual plan for any financial year, SOCA must-

- (a) consult the Scottish Ministers and agree with them what provision the plan is to make for Scotland by virtue of subsection (2); and
- (b) consult such other persons as it considers appropriate.

## **7 Annual reports**

(1) As soon as possible after the end of each financial year SOCA must issue a report on the exercise of its functions during that year (an "annual report").

(2) The annual report must include an assessment of the extent to which the annual plan for that year under section 6 has been carried out.

(3) SOCA must arrange for the annual report to be published in such manner as it considers appropriate.

(4) SOCA must send a copy of the annual report to-

- (a) the Secretary of State,
- (b) the Scottish Ministers,
- (c) the Commissioners,
- (d) each police authority for an area in Great Britain, each joint police board and the Northern Ireland Policing Board,
- (e) the chief officer of each police force in the United Kingdom, and
- (f) such other persons as SOCA considers appropriate.

(5) In subsection (4)(d) the reference to a police authority for an area in Great Britain does not include a constituent authority in an amalgamation scheme approved under section 19(1) of the Police (Scotland) Act 1967.

(6) The Secretary of State must lay a copy of the annual report before Parliament.

(7) The Scottish Ministers must lay a copy of the annual report before the Scottish Parliament.

#### *Central supervision and direction*

### **8 General duty of Secretary of State and Scottish Ministers**

The Secretary of State and the Scottish Ministers must exercise the powers respectively conferred on him and them under this Chapter in such manner and to such extent as appear to him and them to be best calculated to promote the efficiency and effectiveness of SOCA.

### **9 Strategic priorities**

(1) The Secretary of State may determine strategic priorities for SOCA.

(2) Before determining any such priorities the Secretary of State must consult-

- (a) SOCA,
- (b) the Scottish Ministers, and
- (c) such other persons as he considers appropriate.

(3) The Secretary of State must arrange for any priorities determined under this section to be published in such manner as he considers appropriate.

### **10 Codes of practice**

(1) The Secretary of State may issue codes of practice relating to the exercise by SOCA of any of its functions.

(2) The Secretary of State may from time to time revise the whole or any part of a code of practice issued under this section.

(3) Before issuing or revising a code of practice issued under this section the Secretary of State must consult-

- (a) SOCA,
- (b) the Scottish Ministers, and
- (c) such other persons as he considers appropriate.

(4) The Secretary of State must lay before Parliament-

- (a) any code of practice issued under this section, and

(b) any revisions of such a code.

(5) The Secretary of State-

(a) is not required by subsection (4) to lay before Parliament, or

(b) may exclude from what he does lay before Parliament,

anything to which subsection (6) applies.

(6) This subsection applies to anything the publication of which, in the opinion of the Secretary of State-

(a) would be against the interests of national security, or

(b) could prejudice the prevention or detection of crime or the apprehension or prosecution of offenders, or

(c) could jeopardise the safety of any person.

(7) The Secretary of State must provide the Scottish Ministers with a copy of-

(a) any code of practice issued under this section, or

(b) any revisions of such a code.

#### **11 Reports to Secretary of State**

(1) The Secretary of State may require SOCA to submit a report to him on such matters-

(a) connected with the exercise of SOCA's functions, or

(b) otherwise connected with any of SOCA's activities,

as may be specified in the requirement.

(2) A report submitted under subsection (1) must be in such form as may be so specified.

(3) The Secretary of State must consult the Scottish Ministers before imposing any requirement under that subsection relating to any functions or activities of SOCA-

(a) exercised or carried out in Scotland, or

(b) exercised or carried out outside, but in relation to, Scotland.

(4) The Secretary of State may-

(a) arrange, or

(b) require SOCA to arrange,

for a report under this section to be published in such manner as he considers appropriate.

(5) But the Secretary of State may exclude any part of a report from publication under subsection (4) if, in his opinion, publication of that part-

(a) would be against the interests of national security, or

(b) could prejudice the prevention or detection of crime or the apprehension or prosecution of offenders, or

(c) could jeopardise the safety of any person.

## **12 Power to direct submission of action plan**

(1) This section applies where an inspection report made to the Secretary of State states-

(a) that, in the opinion of the person making the report, the whole or any part of SOCA is (whether generally or in particular respects) not efficient or not effective; or

(b) that, in that person's opinion, the whole or part of SOCA will cease to be efficient or effective (whether generally or in particular respects) unless remedial measures are taken.

(2) If the Secretary of State considers that remedial measures are required in relation to any matters identified by the report, he may direct SOCA-

(a) to submit an action plan to him, and

(b) to do so within such period as is specified in the direction (which must be a period ending not less than 4, and not more than 12, weeks after the direction is given).

(3) An "action plan" is a plan setting out the remedial measures which SOCA proposes to take in relation to the matters in respect of which the direction is given.

(4) The provision that a direction under this section may require to be included in an action plan includes-

(a) provision setting out the steps that SOCA proposes should be taken in respect of the matters in respect of which the direction is given, and the performance targets that SOCA proposes should be met;

(b) provision setting out SOCA's proposals as to the times within which those steps are to be taken and those targets met, and the means by which the success of the plan's implementation is to be measured;

(c) provision for the making of progress reports to the Secretary of State about the plan's implementation;

(d) provision as to the times at which, and the manner in which, any progress report is to be made; and

(e) provision for the duration of the plan and for it to cease to apply in circumstances determined by the Secretary of State.

(5) But nothing in this section authorises the Secretary of State to direct the inclusion in an action plan of any requirement to do or not to do anything-

(a) in a particular case identified for the purposes of the requirement, or

(b) in relation to a particular person so identified.

(6) The Secretary of State must consult the Scottish Ministers before giving any direction under this section in connection with any functions or activities of SOCA-

(a) exercised or carried out in Scotland, or

(b) exercised or carried out outside, but in relation to, Scotland.

(7) In this section "an inspection report" means a report under section 16.

(8) If this section applies at a time when there is already an action plan in force-

(a) references in this section to the submission of an action plan to the Secretary of State include references to the submission of revisions of the existing plan, and

(b) the other provisions of this section have effect accordingly.

## **13 Revision of inadequate action plan**

(1) This section applies where the Secretary of State is of the opinion that any remedial measures contained in an action plan submitted to him under section 12 are inadequate.

(2) The Secretary of State may notify SOCA of that opinion and of his reasons for it.

(3) The Secretary of State must consult the Scottish Ministers before forming an opinion for the purposes of subsection (1) as to any remedial measures proposed in connection with any functions or activities of SOCA-

(a) exercised or carried out in Scotland, or

(b) exercised or carried out outside, but in relation to, Scotland.

(4) If SOCA receives a notification under subsection (2)-

(a) it must consider whether to revise the plan in the light of the matters notified to it, and

(b) if it does revise the plan, it must send a copy of the revised plan to the Secretary of State.

(5) References in this section to an action plan submitted to the Secretary of State under section 12 include references to revisions submitted to him by virtue of subsection (8) of that section.

#### **14 Procedure for giving directions under section 12**

(1) The Secretary of State may not give a direction under section 12 unless the conditions in subsection (2) are satisfied.

(2) The conditions are-

(a) SOCA must have been given such information about the Secretary of State's grounds for proposing to give the direction as he considers appropriate for enabling it to make representations or proposals under paragraphs (b) and (c) below;

(b) SOCA must have been given an opportunity of making representations about those grounds;

(c) SOCA must have had an opportunity of making proposals for the taking of remedial measures that would make it unnecessary to give the direction; and

(d) the Secretary of State must have considered any such representations and any such proposals.

#### **15 Reports relating to directions under section 12**

(1) This section applies where the Secretary of State exercises his power to give a direction under section 12.

(2) The Secretary of State must prepare a report on his exercise of that power.

(3) A report under subsection (2)-

(a) is to be prepared at such time as the Secretary of State considers appropriate, and

(b) may relate to more than one exercise of the power.

(4) The Secretary of State must-

(a) lay before each House of Parliament a copy of any report prepared under subsection (2), and

(b) send a copy of any such report to the Scottish Ministers.

(5) The Scottish Ministers must lay before the Scottish Parliament any copy of a report sent to them under subsection (4).

#### **16 Inspections**



- (1) Her Majesty's Inspectors of Constabulary ("HMIC") must inspect SOCA from time to time.
- (2) HMIC must also inspect SOCA if requested to do so by the Secretary of State either-
  - (a) generally, or
  - (b) in respect of a particular matter.
- (3) Before requesting an inspection that would fall to be carried out wholly or partly in Scotland, the Secretary of State must consult the Scottish Ministers.
- (4) Any inspection under this section must be carried out jointly by HMIC and the Scottish inspectors-
  - (a) if it is carried out wholly in Scotland, or
  - (b) in a case where it is carried out partly in Scotland, to the extent that it is carried out there.
- (5) Following an inspection under this section, HMIC must report to the Secretary of State on the efficiency and effectiveness of SOCA either-
  - (a) generally, or
  - (b) in the case of an inspection under subsection (2)(b), in respect of the matter to which the inspection related.
- (6) A report under subsection (5) must be in such form as the Secretary of State may direct.
- (7) The Secretary of State must arrange for every report which he receives under subsection (5) to be published in such manner as he considers appropriate.
- (8) The Secretary of State may exclude from publication under subsection (7) any part of a report if, in his opinion, the publication of that part-
  - (a) would be against the interests of national security, or
  - (b) could prejudice the prevention or detection of crime or the apprehension or prosecution of offenders, or
  - (c) might jeopardise the safety of any person.
- (9) The Secretary of State must send a copy of the published report-
  - (a) to SOCA, and
  - (b) if subsection (4) applied to the inspection, to the Scottish Ministers.
- (10) SOCA must-
  - (a) prepare comments on the published report, and
  - (b) arrange for its comments to be published in such manner as it considers appropriate.
- (11) SOCA must send a copy of any document published under subsection (10)(b)-
  - (a) to the Secretary of State, and
  - (b) if subsection (4) applied to the inspection, to the Scottish Ministers.
- (12) The inspectors shall carry out such other duties for the purpose of furthering the efficiency and effectiveness of SOCA as the Secretary of State may from time to time direct.

(13) In this section "the Scottish inspectors" means the inspectors of constabulary appointed under section 33(1) of the Police (Scotland) Act 1967 (c. 77).

#### *Financial provisions*

### **17 Grants by Secretary of State**

(1) The Secretary of State must make a grant to SOCA in respect of each of its financial years.

(2) The grant in respect of a financial year is to be paid-

(a) at such time, or

(b) in instalments of such amounts and at such times,

as the Secretary of State may determine (and any such time may fall within or after that year).

### **18 Determinations relating to grants under section 17**

(1) The Secretary of State must determine the amount of the grant to be made under section 17 in respect of each of SOCA's financial years.

(2) But a determination under subsection (1) may, if the Secretary of State thinks fit, specify a single amount in respect of two or more financial years.

(3) A determination under that subsection may be varied by a subsequent determination.

(4) Where the Secretary of State makes any determination under subsection (1), he must prepare a report-

(a) setting out the determination, and

(b) stating the considerations which he took into account in making it.

(5) The Secretary of State must-

(a) send SOCA a copy of each report under subsection (4), and

(b) lay a copy of each such report before the House of Commons.

(6) In connection with the exercise of his functions under this section, the Secretary of State may require SOCA-

(a) to provide him with such information as he may specify, and

(b) to do so within such period as he may specify.

### **19 Charges by SOCA and other receipts**

(1) SOCA may make charges in respect of-

(a) the provision by SOCA of any goods or services to any person, or

(b) an agreement for the provision by SOCA of any such goods or services.

(2) Any charges made under subsection (1) may include amounts calculated by reference to expenditure incurred, or expected to be incurred, by SOCA otherwise than directly in connection with the provision of the goods or services concerned.

(3) Apart from-

(a) grants under section 17,

(b) sums received under section 30(6), and

(c) sums borrowed by SOCA under paragraph 21 of Schedule 1,

all sums received by SOCA in the course of, or in connection with, the exercise of its functions must be paid to the Secretary of State.

(4) Subsection (3) does not apply where the Secretary of State so directs.

(5) Any sums received by the Secretary of State under subsection (3) must be paid into the Consolidated Fund.

## **20 Accounts**

(1) SOCA must-

(a) keep proper accounts and proper records in relation to the accounts; and

(b) prepare a statement of accounts in respect of each financial year.

(2) A statement of accounts under subsection (1) must be in such form, and contain such information, as the Secretary of State may direct.

(3) SOCA must send copies of the statement of accounts for a financial year-

(a) to the Secretary of State, and

(b) to the Comptroller and Auditor General,

within such period following the end of the financial year as the Secretary of State may specify.

(4) The Comptroller and Auditor General must-

(a) examine, certify and report on the statement of accounts, and

(b) lay copies of the statement and of his report before each House of Parliament.

### *Operational matters*

## **21 Operational responsibility of Director General**

(1) The Director General of SOCA has the function of exercising general operational control in relation to the activities carried out in the exercise of SOCA's functions.

(2) This function includes deciding-

(a) which particular operations are to be mounted in the exercise of any of those functions, and

(b) how such operations are to be conducted.

## **22 Activities in Scotland in relation to crime**

(1) SOCA may only carry out activities in Scotland in relation to an offence which it suspects has been committed (or is being committed) if it does so with the agreement of the Lord Advocate.

(2) In carrying out any such activities in Scotland SOCA must comply with such directions (whether general or special) as it may receive from the Lord Advocate or from the procurator fiscal.

(3) If it suspects that an offence has been committed (or is being committed) in Scotland, SOCA must report the matter to the procurator fiscal as soon as is practicable.

### **23 Mutual assistance between SOCA and law enforcement agencies: voluntary arrangements**

(1) Subsection (2) applies if-

- (a) the chief officer of a police force in the British Islands or of a special police force, or
- (b) a law enforcement agency operating in the British Islands,

notifies the Director General of SOCA that that force or agency has a special need for assistance from SOCA and requests the Director General of SOCA to provide it with such assistance.

(2) In such a case the Director General of SOCA may provide that force or agency with-

- (a) such members of the staff of SOCA, or
- (b) such other assistance,

as the Director General of SOCA considers appropriate in the circumstances.

(3) Subsection (4) applies if the Director General of SOCA notifies-

- (a) the chief officer of a police force in the United Kingdom or of a special police force, or
- (b) a law enforcement agency operating in the United Kingdom,

that SOCA has a special need for assistance from that force or agency and requests it to provide SOCA with such assistance.

(4) In such a case the chief officer of that force or the agency in question may provide SOCA with-

- (a) such constables or members of the staff of the agency, or
- (b) such other assistance,

as the chief officer or the agency considers appropriate in the circumstances.

(5) But before the Scottish Drug Enforcement Agency provides any constable under subsection (4), its Director must obtain the agreement of the chief constable of the police force from which the constable is seconded to the Agency.

(6) Where a member of the staff of SOCA is provided under this section for the assistance of a police force, a special police force or a law enforcement agency, he shall be under the direction and control of the chief officer of the force or the head of the agency (as the case may be).

(7) Where-

- (a) a constable,
- (b) a member of the staff of the Scottish Drug Enforcement Agency, or
- (c) a member of the staff of a law enforcement agency,

is provided under this section for the assistance of SOCA, he shall be under the direction and control of the Director General of SOCA (despite anything in, or in any agreement made under, any other enactment).

(8) Where SOCA provides assistance under this section for-

- (a) a police force in the United Kingdom or a special police force, or
- (b) a law enforcement agency operating in the United Kingdom,

the relevant police authority or (as the case may be) that agency must pay to SOCA such contribution, if any, as may be agreed between them or, in the absence of agreement, as may be determined by the Secretary of State.

(9) Where SOCA is provided with assistance under this section by-

- (a) a police force in the United Kingdom or a special police force, or
- (b) a law enforcement agency operating in the United Kingdom,

SOCA must pay to the relevant police authority or (as the case may be) that agency such contribution, if any, as may be agreed between them or, in the absence of agreement, as may be determined by the Secretary of State.

(10) If the assistance mentioned in subsection (8) or (9) is provided for or (as the case may be) by-

- (a) a police force in Scotland,
- (b) the Scottish Drug Enforcement Agency, or
- (c) the Scottish Administration,

the Secretary of State must, before making a determination under the subsection in question, consult the Scottish Ministers.

(11) In this section-

"law enforcement agency" has the meaning given by section 3(4) (subject to any territorial restrictions contained in this section);

"police force", in relation to the British Islands, includes the States of Jersey Police Force, the salaried police force of the Island of Guernsey and the Isle of Man Constabulary;

"relevant police authority" means-

- (a) in relation to a police force in Great Britain, the police authority maintaining that force (or, in the case of a police force for a combined area, the joint police board for that area),
- (b) in relation to the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve, the Northern Ireland Policing Board,
- (c) in relation to the Ministry of Defence Police, the Secretary of State,
- (d) in relation to the British Transport Police Force, the British Transport Police Authority,
- (e) in relation to the Civil Nuclear Constabulary, the Civil Nuclear Police Authority, and
- (f) in relation to the Scottish Drug Enforcement Agency, the Agency itself.

## **24 Mutual assistance between SOCA and law enforcement agencies: directed arrangements**

(1) This section applies where it appears to the Secretary of State-

- (a) that a body within subsection (2) has a special need for assistance from SOCA or SOCA has a special need for assistance from a body within that subsection,
- (b) that it is expedient for such assistance to be provided by SOCA or (as the case may be) the body, and
- (c) that satisfactory arrangements cannot be made, or cannot be made in time, under section 23.

(2) The bodies within this subsection are-

- (a) any police force in England and Wales or Northern Ireland,

(b) any special police force other than the Scottish Drug Enforcement Agency, and

(c) any law enforcement agency operating in the United Kingdom other than the Scottish Administration.

(3) In a case where this section applies the Secretary of State may (as appropriate)-

(a) direct the chief officer of the police force to provide such constables or other assistance for the purpose of meeting the need in question as may be specified in the direction;

(b) direct the chief officer of the special police force to provide such constables or other persons, or such other assistance, for the purpose of meeting the need in question as may be so specified;

(c) direct the head of the law enforcement agency to provide such members of the staff of that agency or other assistance for the purpose of meeting the need in question as may be so specified;

(d) direct the Director General of SOCA to provide such members of the staff of SOCA or other assistance for the purpose of meeting the need in question as may be so specified.

(4) A direction under subsection (3) requires the consent of the Treasury if it is to be given to the Commissioners.

(5) Subsections (6) to (9) of section 23 apply in relation to assistance provided under this section-

(a) by SOCA to a police force, a special police force or a law enforcement agency, or

(b) to SOCA by a police force, a special police force or a law enforcement agency,

as they apply in relation to assistance so provided under that section.

(6) In this section "law enforcement agency" has the meaning given by section 3(4) (subject to the territorial restriction contained in subsection (2) above).

## **25 Directed arrangements: Scotland**

(1) This section applies where it appears to the Scottish Ministers-

(a) that a body within subsection (2) has a special need for assistance from SOCA or SOCA has a special need for assistance from a body within that subsection,

(b) that it is expedient for such assistance to be provided by SOCA or (as the case may be) the body, and

(c) that satisfactory arrangements cannot be made, or cannot be made in time, under section 23.

(2) The bodies within this subsection are-

(a) any police force in Scotland, and

(b) the Scottish Drug Enforcement Agency.

(3) In a case where this section applies the Scottish Ministers may (as appropriate)-

(a) direct the chief officer of the police force to provide such constables or other assistance for the purpose of meeting the need in question as may be specified in the direction;

(b) direct the Director of the Scottish Drug Enforcement Agency to provide such constables or other persons, or other assistance, for the purpose of meeting the need in question as may be so specified;

(c) with the agreement of the Secretary of State, direct the Director General of SOCA to provide such members of the staff of SOCA or other assistance for the purpose of meeting the need in question as may be so specified.

(4) Subsections (6) to (10) of section 23 apply in relation to assistance provided under this section-

(a) by SOCA to a police force in Scotland or to the Scottish Drug Enforcement Agency, or

(b) to SOCA by a police force in Scotland or by the Scottish Drug Enforcement Agency,

as they apply in relation to assistance so provided under that section.

## **26 Use by SOCA of police premises etc.**

(1) Arrangements may be made between-

(a) SOCA, and

(b) the relevant police authority,

under which SOCA may use such premises, equipment or other material, facilities or services made available by a police force in England and Wales or Northern Ireland as are specified or described in the arrangements.

(2) If it appears to the Secretary of State-

(a) that it is expedient for arrangements within subsection (1) to be made between SOCA and the relevant police authority, and

(b) that satisfactory arrangements cannot be made, or cannot be made in time, under that subsection,

he may direct SOCA and that authority to enter into such arrangements within that subsection as are specified in the direction.

(3) Before giving such a direction to SOCA or the relevant police authority the Secretary of State must-

(a) notify that body that he is proposing to give the directions, and

(b) consider any representations made to him by that body.

(4) Any arrangements under this section may be varied or terminated by agreement between the parties.

(5) But arrangements entered into in pursuance of a direction under subsection (2) may not be so terminated without the consent of the Secretary of State.

(6) Where any expenditure is incurred by the relevant police authority by virtue of any arrangements under this section, SOCA must pay to the authority such contribution, if any, in respect of that expenditure-

(a) as may be agreed between them, or

(b) in the absence of agreement, as may be determined by the Secretary of State.

(7) In this section "relevant police authority" means-

(a) in relation to a police force in England and Wales, the police authority maintaining that force, and

(b) in relation to the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve, the Northern Ireland Policing Board.

## **27 Regulations as to equipment**

(1) The Secretary of State may make regulations requiring equipment used by SOCA to satisfy such requirements as to design and performance as may be prescribed by the regulations.

(2) The Secretary of State may by regulations make any of the following kinds of provision-

(a) provision requiring SOCA, when using equipment for the purposes specified in the regulations, to use only-

- (i) the equipment which is specified in the regulations,
- (ii) equipment which is of a description so specified, or
- (iii) equipment which is of a type approved by the Secretary of State in accordance with the regulations;

(b) provision prohibiting SOCA from using equipment of a type approved as mentioned in paragraph (a)(iii) except-

- (i) where the conditions subject to which the approval was given are satisfied, and
- (ii) in accordance with the other terms of that approval;

(c) provision requiring equipment used by SOCA to comply with such conditions as may be specified in the regulations, or as may be approved by the Secretary of State in accordance with the regulations;

(d) provision prohibiting SOCA from using equipment specified in the regulations, or any equipment of a description so specified.

(3) Before making regulations under this section Secretary of State must consult-

- (a) SOCA, and
- (b) such other persons as he considers appropriate.

(4) In this section "equipment" includes-

- (a) vehicles, and
- (b) headgear and protective and other clothing.

#### *Liability for unlawful conduct*

### **28 Liability of SOCA for acts of seconded staff etc.**

(1) SOCA is liable in respect of unlawful conduct of persons to whom this section applies in the carrying out, or the purported carrying out, of their functions as such persons in the same manner as an employer is liable in respect of any unlawful conduct of his employees in the course of their employment.

(2) In the case of any such unlawful conduct of persons to whom this section applies which is a tort, SOCA is accordingly to be treated as a joint tortfeasor.

This subsection does not apply to Scotland.

(3) This section applies to-

- (a) any constable or other person who has been seconded to SOCA to serve as a member of its staff, and
- (b) any constable or other person who has been provided for the assistance of SOCA under section 23, 24 or 25.

### **29 Payment by SOCA of amounts in connection with unlawful conduct of employees etc.**

(1) SOCA may, in such cases and to such extent as appear to it to be appropriate, pay-

- (a) any damages or costs awarded against a person to whom this section applies in proceedings for any unlawful conduct of that person;
- (b) any costs (or, in Scotland, expenses) incurred and not recovered by such a person in such proceedings, and

(c) any sum required in connection with the settlement of a claim that has, or might have, given rise to such proceedings.



(2) This section applies to-

- (a) any person who is employed by SOCA,
- (b) any constable or other person who has been seconded to SOCA to serve as a member of its staff, and
- (c) any constable or other person who has been provided for the assistance of SOCA under section 23, 24 or 25.

### **30 Application of sections 28 and 29 to members of joint investigation teams**

(1) Subsection (2) applies where an international joint investigation team has been formed under the leadership of a member of SOCA's staff.

(2) In such a case-

- (a) section 28 has effect in relation to any member of that team who is not a member of SOCA's staff as if any unlawful conduct in the carrying out, or purported carrying out, of his functions as a member of the team were unlawful conduct of a person to whom that section applies; and
- (b) section 29(1) has effect as if it applied to every member of the team to whom it would not apply apart from this subsection.

(3) Subsection (4) applies where a person ("the relevant person") is carrying out surveillance under section 76A of the Regulation of Investigatory Powers Act 2000 (c. 23) (foreign surveillance operations).

(4) In such a case-

- (a) section 28 has effect as if any unlawful conduct of the relevant person in the course of carrying out the surveillance were unlawful conduct of a person to whom that section applies; and
- (b) section 29(1) has effect as if it applied to the relevant person.

(5) In this section "international joint investigation team" means any investigation team formed in accordance with-

- (a) any framework decision on joint investigation teams adopted under Article 34 of the Treaty on European Union;
- (b) the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and the Protocol to that Convention established in accordance with that Article of the Treaty; or
- (c) any international agreement to which the United Kingdom is a party and which is specified in an order made by the Secretary of State.

(6) Where-

- (a) a sum is paid by SOCA by virtue of this section, and
- (b) the Secretary of State receives under any international agreement a sum by way of reimbursement (in whole or in part) of the sum paid by SOCA,

he must pay to SOCA the sum received by him by way of reimbursement.

### **31 Liability of special police forces and law enforcement agencies for unlawful conduct of SOCA staff**

(1) The relevant authority is liable in respect of unlawful conduct of persons to whom this section applies in the carrying out, or the purported carrying out, of their functions as such persons in the same manner as an employer is liable in respect of any unlawful conduct of his employees in the course of their employment.

(2) In the case of any such unlawful conduct of persons to whom this section applies which is a tort, the relevant authority is accordingly to be treated as a joint tortfeasor.

This subsection does not apply to Scotland.

(3) In so far as a relevant authority does not already have power to do so it may, in such cases and to such extent as appear to it to be appropriate, pay-

(a) any damages or costs awarded against a person to whom this section applies in proceedings for any unlawful conduct of that person,

(b) any costs (or, in Scotland, expenses) incurred and not recovered by such a person in such proceedings, and

(c) any sum required in connection with the settlement of a claim that has, or might have, given rise to such proceedings.

(4) This section applies to a member of the staff of SOCA who under section 23, 24 or 25 is provided for the assistance of-

(a) a special police force, or

(b) a law enforcement agency operating in the United Kingdom.

(5) In this section-

"law enforcement agency" has the meaning given by section 3(4) (subject to the territorial restriction contained in subsection (4)(b) above), and

"relevant authority"-

(a) in relation to a member of the staff of SOCA provided for the assistance of the Ministry of Defence Police, means the Secretary of State,

(b) in relation to a member of the staff of SOCA provided for the assistance of the British Transport Police Force, means the British Transport Police Authority,

(c) in relation to a member of the staff of SOCA provided for the assistance of the Civil Nuclear Constabulary, means the Civil Nuclear Police Authority,

(d) in relation to a member of the staff of SOCA provided for the assistance of the Scottish Drug Enforcement Agency, means that Agency,

(e) in relation to a member of the staff of SOCA provided for the assistance of the Commissioners, means the Commissioners,

(f) in relation to a member of the staff of SOCA provided for the assistance of the Scottish Administration, means the Scottish Ministers, and

(g) in relation to a member of the staff of SOCA provided for the assistance of any other law enforcement agency, means such person as is prescribed in relation to that agency by regulations made by the Secretary of State.

#### *Use and disclosure of information*

### **32 Use of information by SOCA**

Information obtained by SOCA in connection with the exercise of any of its functions may be used by SOCA in connection with the exercise of any of its other functions.

### **33 Disclosure of information by SOCA**

(1) Information obtained by SOCA in connection with the exercise of any of its functions may be disclosed by SOCA if the disclosure is for any permitted purposes.

(2) "Permitted purposes" means the purposes of any of the following-

- (a) the prevention, detection, investigation or prosecution of criminal offences, whether in the United Kingdom or elsewhere;
- (b) the prevention, detection or investigation of conduct for which penalties other than criminal penalties are provided under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom;
- (c) the exercise of any function conferred on SOCA by section 2, 3 or 5 (so far as not falling within paragraph (a) or (b));
- (d) the exercise of any functions of any intelligence service within the meaning of the Regulation of Investigatory Powers Act 2000 (c. 23);
- (e) the exercise of any functions under Part 2 of the Football Spectators Act 1989 (c. 37);
- (f) the exercise of any function which appears to the Secretary of State to be a function of a public nature and which he designates by order.

(3) A disclosure under this section does not breach-

- (a) any obligation of confidence owed by the person making the disclosure, or
- (b) any other restriction on the disclosure of information (however imposed).

(4) But nothing in this section authorises-

- (a) a disclosure, in contravention of any provisions of the Data Protection Act 1998 (c. 29), of personal data which are not exempt from those provisions,
- (b) a disclosure which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000, or
- (c) a disclosure in contravention of section 35(2).

#### **34 Disclosure of information to SOCA**

(1) Any person may disclose information to SOCA if the disclosure is made for the purposes of the exercise by SOCA of any of its functions.

(2) A disclosure under this section does not breach-

- (a) any obligation of confidence owed by the person making the disclosure, or
- (b) any other restriction on the disclosure of information (however imposed).

(3) But nothing in this section authorises-

- (a) a disclosure, in contravention of any provisions of the Data Protection Act 1998, of personal data which are not exempt from those provisions, or
- (b) a disclosure which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000.

(4) Information may not be disclosed under subsection (1) on behalf of the Commissioners unless the disclosure is authorised by the Commissioners or by an authorised officer of theirs.

#### **35 Restrictions on further disclosure**

(1) Information disclosed by SOCA under section 33 to any person or body must not be further disclosed except-

- (a) for a purpose connected with any function of that person or body for the purposes of which the information was disclosed by SOCA, or otherwise for any permitted purposes, and

(b) with the consent of SOCA.

(2) Information disclosed to SOCA under any enactment by the Commissioners or a person acting on their behalf must not be further disclosed except-

(a) for any permitted purposes, and

(b) with the consent of the Commissioners or an authorised officer of Revenue and Customs.

(3) Consent under subsection (1) or (2) may be given-

(a) in relation to a particular disclosure, or

(b) in relation to disclosures made in circumstances specified or described in the consent.

(4) In this section "permitted purposes" has the meaning given by section 33(2).

*General duties of police etc.*

**36 General duty of police to pass information to SOCA**

(1) The chief officer of a police force in Great Britain must keep SOCA informed of any information relating to crime in his police area that appears to him to be likely to be relevant to the exercise by SOCA of any of its functions.

(2) The Chief Constable of the Police Service of Northern Ireland has a corresponding duty in relation to crime in Northern Ireland.

(3) The chief officer of a special police force must keep SOCA informed of any information relating to crime that he has become aware of in his capacity as chief officer and appears to him to be likely to be relevant to the exercise by SOCA of any of its functions.

**37 General duty of police etc. to assist SOCA**

(1) It is the duty of every person to whom this section applies to assist SOCA in the exercise of its functions in relation to serious organised crime.

(2) This section applies to-

(a) any constable,

(b) any officer of Revenue and Customs, and

(c) any member of Her Majesty's armed forces or Her Majesty's coastguard.

*Prosecutions*

**38 Prosecution of offences investigated by SOCA**

(1) The Director of Revenue and Customs Prosecutions-

(a) may institute and conduct criminal proceedings in England and Wales that arise out of a criminal investigation by SOCA relating to a designated offence, and

(b) must take over the conduct of criminal proceedings instituted by SOCA in England and Wales in respect of a designated offence.

(2) The Director of Revenue and Customs Prosecutions must provide such advice as he thinks appropriate, to such persons as he thinks appropriate, in relation to-

(a) a criminal investigation by SOCA relating to a designated offence, or

(b) criminal proceedings instituted in England and Wales that arise out of such an investigation.

(3) The Director of Public Prosecutions-

(a) may institute and conduct criminal proceedings in England and Wales that arise out of a criminal investigation by SOCA relating to a non-designated offence, and

(b) must take over the conduct of criminal proceedings instituted by SOCA in England and Wales in respect of such an offence.

But paragraph (b) does not apply where the Director of the Serious Fraud Office has the conduct of the proceedings.

(4) The Director of Public Prosecutions must provide such advice as he thinks appropriate, to such persons as he thinks appropriate, in relation to-

(a) a criminal investigation by SOCA relating to a non-designated offence, or

(b) criminal proceedings instituted in England and Wales that arise out of such an investigation.

(5) Sections 23 and 23A of the Prosecution of Offences Act 1985 (c. 23) (power to discontinue proceedings) apply (with any necessary modifications) to proceedings conducted by the Director of Revenue and Customs Prosecutions in accordance with this section as they apply to proceedings conducted by the Director of Public Prosecutions.

(6) In the Commissioners for Revenue and Customs Act 2005 (c. 11)-

(a) section 37(1) (prosecutors), and

(b) section 38(1) (conduct of prosecutions by appointed persons),

have effect as if the reference to section 35 of that Act included a reference to this section.

(7) For the purposes of this section and section 39-

(a) "criminal investigation" means any process-

(i) for considering whether an offence has been committed,

(ii) for discovering by whom an offence has been committed, or

(iii) as a result of which an offence is alleged to have been committed;

(b) an offence is a "designated offence" if criminal proceedings instituted by SOCA in respect of the offence fall (or, as the case may be, would fall) to be referred to the Director of Revenue and Customs Prosecutions by virtue of directions under section 39(1);

(c) "non-designated offence" means an offence which is not a designated offence;

(d) a reference to the institution of criminal proceedings is to be construed in accordance with section 15(2) of the Prosecution of Offences Act 1985 (c. 23); and

(e) a reference to the institution of proceedings by SOCA includes a reference to their institution by the Director General of SOCA or a person authorised by him.

### **39 Directions as to reference of cases and proceedings to appropriate prosecutor**

(1) The Directors may give directions to SOCA-

(a) for enabling SOCA to determine whether cases arising out of criminal investigations by SOCA are to be referred to the Director of Revenue and Customs Prosecutions, or to the Director of Public Prosecutions, in order for him to consider whether to institute proceedings in accordance with section 38(1)(a) or (3)(a);

(b) for enabling SOCA to determine whether criminal proceedings instituted by SOCA are to be referred to the Director of Revenue and Customs Prosecutions, or to the Director of Public Prosecutions, in order for him to take over their conduct in accordance with section 38(1)(b) or (3)(b);

(c) specifying, in relation to any cases or proceedings that are to be so referred to the Director of Revenue and Customs Prosecutions or the Director of Public Prosecutions, the steps to be taken by SOCA in connection with referring them to him.

(2) Directions under subsection (1) may provide for cases or proceedings to be referred to one or other of the Directors by reference to-

(a) whether the cases or proceedings relate to an offence falling within a category of offences specified in the directions; or

(b) whether any criteria so specified are satisfied with respect to the cases or proceedings; or

(c) such other matters as the Directors think fit.

(3) The Directors may from time to time revise any directions given under this section.

(4) The Directors must publish in such manner as they think fit-

(a) any directions given under this section, and

(b) any revisions made to such directions;

and they must give a copy of any such directions or revisions to SOCA.

(5) A report to which this subsection applies must set out -

(a) any directions given under this section, and

(b) any revisions made to such directions,

in the year to which the report relates.

(6) Subsection (5) applies to-

(a) a report under section 9 of the Prosecution of Offences Act 1985 (c. 23) (report to Attorney General by Director of Public Prosecutions), and

(b) a report under paragraph 6 of Schedule 3 to the Commissioners for Revenue and Customs Act 2005 (c. 11) (report to Attorney General by Director of Revenue and Customs Prosecutions).

(7) Directions under this section may make different provision for different cases, circumstances or areas.

(8) If there is a failure to comply with directions under this section in relation to the reference of any matter to one of the Directors, neither-

(a) the reference, nor

(b) anything subsequently done in connection with the matter,

is invalid by reason of anything in the directions or in section 38.

(9) In this section "the Directors" means the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions, acting jointly.

#### **40 Functions of Director of Revenue and Customs Prosecutions as to persons arrested for designated offence**

(1) Sections 37 to 37B of the Police and Criminal Evidence Act 1984 (c. 60) (duties of custody officers; guidance etc.) have effect, in relation to a person arrested following a criminal investigation by SOCA relating to a designated offence, as if references to the Director of Public Prosecutions were references to the Director of Revenue and Customs Prosecutions.

(2) In subsection (1) the reference to a designated offence is to be read in accordance with section 38(7)(b) of this Act.

*Miscellaneous and supplementary*

#### **41 Directions**

Any person to whom a direction is given by the Secretary of State or the Scottish Ministers under this Chapter must comply with the direction.

#### **42 Interpretation of Chapter 1**

(1) In this Chapter-

"chief officer" means-

- (a) in relation to a police force in England and Wales, the chief officer of police,
- (b) in relation to a police force in Scotland, the chief constable,
- (c) in relation to the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve, the Chief Constable of the Police Service of Northern Ireland;
- (d) in relation to the States of Jersey Police Force or the salaried police force of the Island of Guernsey, the chief officer of that force;
- (e) in relation to the Isle of Man Constabulary, the chief constable;
- (f) in relation to a special police force mentioned in section 3(5)(a), (b) or (c), the Chief Constable;
- (g) in relation to the Scottish Drug Enforcement Agency, the Director of that Agency;

"the Commissioners" has the meaning given by section 2(8);

"constable", in relation to Northern Ireland, means a member of the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve;

"financial year", in relation to SOCA, means-

- (a) the period beginning with the date on which SOCA is established and ending with the following 31st March, and
- (b) each successive period of 12 months ending with 31st March;

"functions" includes powers and duties;

"government department" includes a Northern Ireland department;

"joint police board" has the same meaning as in the Police (Scotland) Act 1967 (c. 77);

"police force" means (unless the context otherwise requires)-

- (a) a police force in England, Wales or Scotland, or
- (b) the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve;

"special police force" has the meaning given by section 3(5).

(2) In this Chapter-

(a) "the Scottish Drug Enforcement Agency" means the organisation known by that name and established under section 36(1)(a)(ii) of the Police (Scotland) Act 1967; and

(b) "the Director" of that Agency means the person engaged on central service (as defined by section 38(5) of that Act) and for the time being appointed by the Scottish Ministers to exercise control in relation to the activities carried out in the exercise of the Agency's functions.

(3) Section 81(5) of the Regulation of Investigatory Powers Act 2000 (c. 23) (meaning of "prevention" and "detection") applies for the purposes of this Chapter as it applies for the purposes of the provisions of that Act not contained in Chapter 1 of Part 1.

## CHAPTER 2

### SOCA: SPECIAL POWERS OF DESIGNATED STAFF

#### *Designations*

#### **43 Designation of SOCA staff as persons having powers of constable etc.**

(1) The Director General of SOCA may designate a member of the staff of SOCA as one or more of the following-

(a) a person having the powers of a constable;

(b) a person having the customs powers of an officer of Revenue and Customs;

(c) a person having the powers of an immigration officer.

(2) A designation under this section-

(a) may be made subject to any limitations specified in the designation (whether as to the powers exercisable by virtue of it, the purposes for which they are exercisable or otherwise); and

(b) has effect either for a period so specified or without limit of time.

(3) Subsection (2) applies subject to any modification or withdrawal of the designation under section 45.

(4) A member of SOCA's staff may be designated as a person having the powers mentioned in any of paragraphs (a) to (c) of subsection (1) whether or not-

(a) he already has (for any reason) any powers falling within any of those paragraphs, or

(b) he had any such powers before becoming a member of SOCA's staff.

(5) But a person may not be designated as a person having the powers mentioned in any of paragraphs (a) to (c) of subsection (1) unless the Director General is satisfied that that person-

(a) is capable of effectively exercising the powers that would be exercisable by virtue of the designation,

(b) has received adequate training in respect of the exercise of those powers, and

(c) is otherwise a suitable person to exercise those powers.

(6) Where an employee of SOCA-

(a) before becoming such an employee, held an office by virtue of which he had any powers falling within subsection (1)(a), (b) or (c), and

(b) has not resigned that office,



that office is to be treated as suspended so long as he remains in SOCA's employment, and revives if (and only if) on ceasing to be so employed he returns to service as the holder of that office.

(7) References in this section to the powers of a constable, the customs powers of an officer of Revenue and Customs or the powers of an immigration officer are to be read in accordance with sections 46 to 49.

#### **44 Delegation of power to designate**

(1) The Director General of SOCA may, to such extent as he may specify, delegate his functions under section 43 to an employee of SOCA at the prescribed level.

(2) "At the prescribed level" means employed in a grade or on a pay scale not lower than that specified in an order made by the Secretary of State.

#### **45 Modification or withdrawal of designations**

(1) The Director General of SOCA may at any time modify or withdraw a designation made under section 43 by giving a notice to that effect to the designated person.

(2) An employee of SOCA by whom the power to make designations under section 43 is exercisable by virtue of section 44 may at any time modify or withdraw a relevant designation by giving a notice to that effect to the designated person.

(3) For the purposes of this section "a relevant designation", in relation to such an employee, means a designation of a kind that the employee is authorised to make by virtue of section 44.

#### *Powers exercisable*

#### **46 Person having powers of a constable**

(1) This section applies to a member of SOCA's staff who is for the time being designated under section 43 as a person having the powers of a constable.

(2) The designated person has all the powers and privileges of a constable.

(3) Those powers and privileges are exercisable by the designated person-

(a) throughout England and Wales and the adjacent United Kingdom waters, and

(b) in accordance with section 47, in Scotland or Northern Ireland and the adjacent United Kingdom waters.

(4) If any of those powers and privileges, when exercisable by a constable, are subject to any territorial restrictions on their exercise, they are similarly subject to those restrictions when exercised by the designated person.

(5) If any of those powers and privileges, when exercisable by a constable, are exercisable elsewhere than in the United Kingdom or the adjacent United Kingdom waters, they are similarly exercisable by the designated person.

(6) The designated person also has any powers exercisable by virtue of subsection (7).

(7) Any enactment under which a constable may be authorised by warrant to exercise any power in relation to any matter has effect, for the purpose of enabling the designated person to be authorised to exercise the power in relation to any such matter, as if he were a constable.

(8) Subsections (2) to (7) have effect subject to any limitation specified in the designation under section 43(2).

(9) In this section references to the powers and privileges of a constable are references to the powers and privileges of a constable whether under any enactment or otherwise.

#### **47 Person having powers of constable: Scotland and Northern Ireland**

(1) This section provides for persons designated as mentioned in section 46(1) ("relevant persons") to exercise the powers and privileges mentioned in section 46(2) in Scotland or Northern Ireland and the adjacent United Kingdom waters.

(2) If so agreed by-

- (a) the Scottish Ministers, and
- (b) SOCA,

the powers and privileges are exercisable by relevant persons in Scotland and the adjacent United Kingdom waters to such extent and in such circumstances as may be specified in the agreement.

(3) If so agreed by-

- (a) the Director of the Scottish Drug Enforcement Agency or a person nominated by him for the purposes of this subsection, and
- (b) SOCA,

a relevant person may exercise the powers and privileges in Scotland in connection with a particular operation.

(4) A person nominated for the purposes of subsection (3) must be either-

- (a) a person for the time being appointed as Deputy Director of that Agency, or
- (b) an appropriate officer of a police force for an area in Scotland.

(5) If so agreed by-

- (a) the Secretary of State, and
- (b) SOCA,

the powers and privileges are exercisable by relevant persons in Northern Ireland and the adjacent United Kingdom waters to such extent and in such circumstances as may be specified in the agreement.

(6) If-

- (a) an agreement under subsection (5) ("the general authorisation") is in force, and
- (b) an appropriate officer of the Police Service of Northern Ireland and SOCA so agree in conformity with the general authorisation,

a relevant person may exercise the powers and privileges in Northern Ireland in connection with a particular operation in accordance with the agreement mentioned in paragraph (b).

(7) In this section-

"appropriate officer" means an officer of or above the rank of assistant chief constable;

"the Scottish Drug Enforcement Agency" and "the Director" of that Agency have the meanings given by section 42(2).

#### **48 Person having customs powers**

(1) This section applies to a member of SOCA's staff who is for the time being designated under section 43 as a person having the customs powers of an officer of Revenue and Customs.

(2) The designated person has, in relation to any customs matter, the same powers as an officer of Revenue and Customs would have.

(3) The designated person also has any powers exercisable by virtue of subsection (4).

(4) Any enactment under which an officer of Revenue and Customs may be authorised by warrant to exercise any power in relation to any customs matter has effect, for the purpose of enabling the designated person to be authorised to exercise the power in relation to any such matter, as if he were an officer of Revenue and Customs.

(5) Where any power is exercisable by an officer of Revenue and Customs both-

(a) in relation to a customs matter, and

(b) in relation to any other matter,

it is exercisable by the designated person only in relation to the customs matter.

(6) Subsections (2) to (5) have effect subject to any limitation specified in the designation under section 43(2).

(7) In this section "customs matter" means any matter other than-

(a) a matter to which section 7 of the Commissioners for Revenue and Customs Act 2005 (c. 11) applies (former Inland Revenue matters), or

(b) any tax or duty not mentioned in Schedule 1 to that Act (which lists such matters).

#### **49 Person having powers of an immigration officer**

(1) This section applies to a member of SOCA's staff who is for the time being designated under section 43 as a person having the powers of an immigration officer.

(2) The designated person has, in relation to any matter in relation to which powers are exercisable by an immigration officer, the same powers as such an officer would have.

(3) The designated person also has any powers exercisable by virtue of subsection (4).

(4) Any enactment under which an immigration officer may be authorised by warrant to exercise any power in relation to any matter has effect, for the purpose of enabling the designated person to be authorised to exercise the power in relation to any such matter, as if he were an immigration officer.

(5) Subsections (2) to (4) have effect subject to any limitation specified in the designation under section 43(2).

(6) In this section "immigration officer" means a person who is an immigration officer within the meaning of the Immigration Act 1971 (c. 77).

#### *Exercise of powers*

#### **50 Designations: supplementary**

(1) If a designated person-

(a) exercises any power in relation to another person in reliance on his designation under section 43, or

(b) purports to do so,

he must produce evidence of his designation to the other person if requested to do so.

(2) A failure to comply with subsection (1) does not make the exercise of the power invalid.

(3) For the purpose of determining liability for the unlawful conduct of members of SOCA's staff, any conduct by a designated person in reliance, or purported reliance, on his designation is to be taken to be-

(a) if he is employed by SOCA, conduct in the course of his employment, or

(b) if he is a person to whom section 28 applies by virtue of subsection (3)(a) of that section, conduct falling within subsection (1) of that section.

(4) In the case of any unlawful conduct within subsection (3) which is a tort, SOCA is accordingly to be treated as a joint tortfeasor.

This subsection does not apply to Scotland.

## **51 Assaults, obstruction or deception in connection with designations**

(1) A person commits an offence if he assaults-

- (a) a designated person acting in the exercise of a relevant power, or
- (b) a person who is assisting a designated person in the exercise of such a power.

(2) A person commits an offence if he resists or wilfully obstructs-

- (a) a designated person acting in the exercise of a relevant power, or
- (b) a person who is assisting a designated person in the exercise of such a power.

(3) A person commits an offence if, with intent to deceive-

- (a) he impersonates a designated person,
- (b) he makes any statement or does any act calculated falsely to suggest that he is a designated person, or
- (c) he makes any statement or does any act calculated falsely to suggest that he has powers as a designated person that exceed the powers he actually has.

(4) A person guilty of an offence under subsection (1) or (3) is liable on summary conviction-

- (a) to imprisonment for a term not exceeding 51 weeks, or
- (b) to a fine not exceeding level 5 on the standard scale,

or to both.

(5) A person guilty of an offence under subsection (2) is liable on summary conviction-

- (a) to imprisonment for a term not exceeding 51 weeks, or
- (b) to a fine not exceeding level 3 on the standard scale,

or to both.

(6) In this section "relevant power", in relation to a designated person, means a power or privilege exercisable by that person by virtue of the designation under section 43.

(7) In the application of this section to Scotland the references to 51 weeks in subsections (4)(a) and (5)(a) are to be read as references to 12 months in each case.

(8) In the application of this section to Northern Ireland the references to 51 weeks are to be read as follows-

- (a) in subsection (4)(a) the reference is to be read as a reference to 6 months, and
- (b) in subsection (5)(a) the reference is to be read as a reference to 1 month.

## *Supplementary*

### **52 Modification of enactments**

(1) The Secretary of State may by order provide for any enactment (or description of enactments) to apply in relation to-

- (a) designated persons, or
- (b) the exercise of powers by such persons under this Chapter,

with such modifications as he considers necessary or expedient.

(2) An order under this section may include provision for or in connection with-

- (a) extending to such persons any exemption or protection afforded by an enactment to any other description of persons;
- (b) providing for the disclosure of information to, or the doing of other things in relation to, such persons under any enactment;
- (c) conferring on the Director General of SOCA functions exercisable in relation to such persons.

(3) Subsection (2) does not affect the generality of subsection (1).

(4) In this section any reference to designated persons includes a reference to any description of such persons.

(5) Before exercising the power conferred by subsection (1) in relation to an enactment which (expressly or otherwise) confers any function on-

- (a) the Commissioners for Her Majesty's Revenue and Customs, or
- (b) an officer of Revenue and Customs,

the Secretary of State must consult the Commissioners.

(6) Before exercising the power conferred by subsection (1) in relation to an enactment which extends to Scotland, the Secretary of State must consult the Scottish Ministers.

(7) The power conferred by subsection (1) is exercisable by the Scottish Ministers (rather than by the Secretary of State) where the provision to be made is within the legislative competence of the Scottish Parliament.

### **53 Employment provisions**

(1) A member of SOCA's staff who is for the time being designated under section 43 as a person having the powers of a constable is not, by virtue of section 46(2), to be treated as being in police service for the purposes of the enactments mentioned in subsection (2).

(2) The enactments are-

- (a) section 280 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) (person in police service excluded from definitions of "worker" and "employee");
- (b) section 200 of the Employment Rights Act 1996 (c. 18) (certain provisions of the Act not to apply to persons in police service);
- (c) Article 145 of the Trade Union and Labour Relations (Northern Ireland) Order 1995 (S.I. 1995/1980 (N.I. 12)); and
- (d) Article 243 of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)).

### **54 Interpretation of Chapter 2**

(1) In this Chapter-

"designated person" means a person for the time being designated under section 43;

"United Kingdom waters" means the sea and other waters within the seaward limits of the United Kingdom's territorial sea.

(2) Any reference in this Chapter to the exercise of powers by virtue of a designation under section 43 is, in a case where any limitations were imposed under subsection (2) of that section, a reference to their exercise in conformity with those limitations.

### CHAPTER 3

#### SOCA: MISCELLANEOUS AND SUPPLEMENTARY

##### *Complaints and misconduct*

#### **55 Complaints and misconduct**

(1) Schedule 2 makes provision for, and in connection with, the operation in relation to SOCA of Part 2 of the Police Reform Act 2002 (c. 30) (which relates to complaints and misconduct).

(2) In the Police (Northern Ireland) Act 1998 (c. 32)-

(a) after section 60 insert-

#### **"60ZA Serious Organised Crime Agency**

(1) An agreement for the establishment in relation to members of the staff of the Serious Organised Crime Agency of procedures corresponding or similar to any of those established by virtue of this Part may, with the approval of the Secretary of State, be made between the Ombudsman and the Agency.

(2) Where no such procedures are in force in relation to the Agency, the Secretary of State may by order establish such procedures.

(3) An agreement under this section may at any time be varied or terminated with the approval of the Secretary of State.

(4) Before making an order under this section the Secretary of State shall consult-

(a) the Ombudsman; and

(b) the Agency.

(5) Nothing in any other statutory provision shall prevent the Agency from carrying into effect procedures established by virtue of this section.

(6) No such procedures shall have effect in relation to anything done by a member of the staff of the Agency outside Northern Ireland."; and

(b) in section 61(5) (reports), at the end of paragraph (b) insert"; and

(c) if the report concerns the Serious Organised Crime Agency, to the Agency."

##### *Application of discrimination legislation*

#### **56 Application of discrimination legislation to SOCA seconded staff**

(1) For the purposes of the provisions to which this subsection applies any constable or other person who has been seconded to SOCA to serve as a member of its staff shall be treated as being employed by SOCA as respects any act done by it in relation to that person.

(2) Subsection (1) applies to-

- (a) Part 2 of the Sex Discrimination Act 1975 (c. 65);
- (b) Part 2 of the Race Relations Act 1976 (c. 74);
- (c) Part II of the Sex Discrimination (Northern Ireland) Order 1976 (S.I. 1976/1042 (N.I. 15));
- (d) Part 2 of the Disability Discrimination Act 1995 (c. 50);
- (e) Part II of the Race Relations (Northern Ireland) Order 1997 (S.I. 1997/869 (N.I. 6)); and
- (f) the Fair Employment and Treatment (Northern Ireland) Order 1998 (S.I. 1998/3162 (N.I. 21)), except Part VII.

(3) For the purposes of the provisions to which this subsection applies-

- (a) any constable or other person who has been seconded to SOCA to serve as a member of its staff shall be treated as being employed by SOCA (and as not being employed by any other person); and
- (b) anything done by such a person in the performance, or purported performance, of his functions as such a person shall be treated as done in the course of that employment.

(4) Subsection (3) applies to-

- (a) section 41 of the Sex Discrimination Act 1975;
- (b) section 32 of the Race Relations Act 1976;
- (c) Article 42 of the Sex Discrimination (Northern Ireland) Order 1976;
- (d) section 58 of the Disability Discrimination Act 1995;
- (e) Article 32 of the Race Relations (Northern Ireland) Order 1997; and
- (f) Article 36 of the Fair Employment and Treatment (Northern Ireland) Order 1998.

*Joint investigation teams*

**57 Assaults or obstruction in connection with joint investigation teams**

(1) This section applies where an international joint investigation team has been formed under the leadership of a member of SOCA's staff.

(2) A person commits an offence if he assaults a member of the team who is carrying out his functions as a member of the team.

(3) A person commits an offence if he resists or wilfully obstructs a member of the team who is carrying out his functions as a member of that team.

(4) A person guilty of an offence under subsection (2) is liable on summary conviction-

- (a) to imprisonment for a term not exceeding 51 weeks, or
- (b) to a fine not exceeding level 5 on the standard scale,

or to both.

(5) A person guilty of an offence under subsection (3) is liable on summary conviction-

(a) to imprisonment for a term not exceeding 51 weeks, or

(b) to a fine not exceeding level 3 on the standard scale,

or to both.

(6) In this section "international joint investigation team" means any investigation team formed in accordance with-

(a) any framework decision on joint investigation teams adopted under Article 34 of the Treaty on European Union,

(b) the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and the Protocol to that Convention established in accordance with that Article of the Treaty, or

(c) any international agreement to which the United Kingdom is a party and which is specified in an order made by the Secretary of State.

(7) In the application of this section to Scotland the references to 51 weeks in subsections (4)(a) and (5)(a) are to be read as references to 12 months in each case.

(8) In the application of this section to Northern Ireland the references to 51 weeks are to be read as follows-

(a) in subsection (4)(a) the reference is to be read as a reference to 6 months, and

(b) in subsection (5)(a) the reference is to be read as a reference to 1 month.

#### *Transfers*

### **58 Transfers to SOCA**

Schedule 3 makes provision about the transfer of staff, property, rights and liabilities to SOCA.

#### *Amendments*

### **59 Minor and consequential amendments relating to SOCA**

Schedule 4 contains minor and consequential amendments relating to SOCA.

## **PART 2**

### **INVESTIGATIONS, PROSECUTIONS, PROCEEDINGS AND PROCEEDS OF CRIME**

#### **CHAPTER 1**

##### **INVESTIGATORY POWERS OF DPP, ETC.**

#### *Introductory*

### **60 Investigatory powers of DPP etc.**

(1) This Chapter confers powers on-

(a) the Director of Public Prosecutions,

(b) the Director of Revenue and Customs Prosecutions, and

(c) the Lord Advocate,

in relation to the giving of disclosure notices in connection with the investigation of offences to which this Chapter applies.



(2) The Director of Public Prosecutions may, to such extent as he may determine, delegate the exercise of his powers under this Chapter to a Crown prosecutor.

(3) The Director of Revenue and Customs Prosecutions may, to such extent as he may determine, delegate the exercise of his powers under this Chapter to a Revenue and Customs Prosecutor.

(4) The Lord Advocate may, to such extent as he may determine, delegate the exercise of his powers under this Chapter to a procurator fiscal.

(5) In this Chapter "the Investigating Authority" means-

- (a) the Director of Public Prosecutions,
- (b) the Director of Revenue and Customs Prosecutions, or
- (c) the Lord Advocate.

(6) But, in circumstances where the powers of any of those persons are exercisable by any other person by virtue of subsection (2), (3) or (4), references to "the Investigating Authority" accordingly include any such other person.

### **61 Offences to which this Chapter applies**

(1) This Chapter applies to the following offences-

- (a) any offence listed in Schedule 2 to the Proceeds of Crime Act 2002 (c. 29) (lifestyle offences: England and Wales);
- (b) any offence listed in Schedule 4 to that Act (lifestyle offences: Scotland);
- (c) any offence under sections 15 to 18 of the Terrorism Act 2000 (c. 11) (offences relating to fund-raising, money laundering etc.);
- (d) any offence under section 170 of the Customs and Excise Management Act 1979 (c. 2) (fraudulent evasion of duty) or section 72 of the Value Added Tax Act 1994 (c. 23) (offences relating to VAT) which is a qualifying offence;
- (e) any offence under section 17 of the Theft Act 1968 (c. 60) (false accounting), or any offence at common law of cheating in relation to the public revenue, which is a qualifying offence;
- (f) any offence under section 1 of the Criminal Attempts Act 1981 (c. 47), or in Scotland at common law, of attempting to commit any offence in paragraph (c) or any offence in paragraph (d) or (e) which is a qualifying offence;
- (g) any offence under section 1 of the Criminal Law Act 1977 (c. 45), or in Scotland at common law, of conspiracy to commit any offence in paragraph (c) or any offence in paragraph (d) or (e) which is a qualifying offence.

(2) For the purposes of subsection (1) an offence in paragraph (d) or (e) of that subsection is a qualifying offence if the Investigating Authority certifies that in his opinion-

- (a) in the case of an offence in paragraph (d) or an offence of cheating the public revenue, the offence involved or would have involved a loss, or potential loss, to the public revenue of an amount not less than £5,000;
- (b) in the case of an offence under section 17 of the Theft Act 1968 (c. 60), the offence involved or would have involved a loss or gain, or potential loss or gain, of an amount not less than £5,000.

(3) A document purporting to be a certificate under subsection (2) is to be received in evidence and treated as such a certificate unless the contrary is proved.

(4) The Secretary of State may by order-

- (a) amend subsection (1), in its application to England and Wales, so as to remove an offence from it or add an offence to it;

(b) amend subsection (2), in its application to England and Wales, so as to-

- (i) take account of any amendment made by virtue of paragraph (a) above, or
- (ii) vary the sums for the time being specified in subsection (2)(a) and (b).

(5) The Scottish Ministers may by order-

- (a) amend subsection (1), in its application to Scotland, so as to remove an offence from it or add an offence to it;
- (b) amend subsection (2), in its application to Scotland, so as to-
  - (i) take account of any amendment made by virtue of paragraph (a) above, or
  - (ii) vary the sums for the time being specified in subsection (2)(a) and (b).

#### *Disclosure notices*

### **62 Disclosure notices**

(1) If it appears to the Investigating Authority-

- (a) that there are reasonable grounds for suspecting that an offence to which this Chapter applies has been committed,
- (b) that any person has information (whether or not contained in a document) which relates to a matter relevant to the investigation of that offence, and
- (c) that there are reasonable grounds for believing that information which may be provided by that person in compliance with a disclosure notice is likely to be of substantial value (whether or not by itself) to that investigation,

he may give, or authorise an appropriate person to give, a disclosure notice to that person.

(2) In this Chapter "appropriate person" means-

- (a) a constable,
- (b) a member of the staff of SOCA who is for the time being designated under section 43, or
- (c) an officer of Revenue and Customs.

(3) In this Chapter "disclosure notice" means a notice in writing requiring the person to whom it is given to do all or any of the following things in accordance with the specified requirements, namely-

- (a) answer questions with respect to any matter relevant to the investigation;
- (b) provide information with respect to any such matter as is specified in the notice;
- (c) produce such documents, or documents of such descriptions, relevant to the investigation as are specified in the notice.

(4) In subsection (3) "the specified requirements" means such requirements specified in the disclosure notice as relate to-

- (a) the time at or by which,
- (b) the place at which, or
- (c) the manner in which,

the person to whom the notice is given is to do any of the things mentioned in paragraphs (a) to (c) of that subsection; and those requirements may include a requirement to do any of those things at once.

(5) A disclosure notice must be signed or counter-signed by the Investigating Authority.

(6) This section has effect subject to section 64 (restrictions on requiring information etc.).

### **63 Production of documents**

(1) This section applies where a disclosure notice has been given under section 62.

(2) An authorised person may-

(a) take copies of or extracts from any documents produced in compliance with the notice, and

(b) require the person producing them to provide an explanation of any of them.

(3) Documents so produced may be retained for so long as the Investigating Authority considers that it is necessary to retain them (rather than copies of them) in connection with the investigation for the purposes of which the disclosure notice was given.

(4) If the Investigating Authority has reasonable grounds for believing-

(a) that any such documents may have to be produced for the purposes of any legal proceedings, and

(b) that they might otherwise be unavailable for those purposes,

they may be retained until the proceedings are concluded.

(5) If a person who is required by a disclosure notice to produce any documents does not produce the documents in compliance with the notice, an authorised person may require that person to state, to the best of his knowledge and belief, where they are.

(6) In this section "authorised person" means any appropriate person who either-

(a) is the person by whom the notice was given, or

(b) is authorised by the Investigating Authority for the purposes of this section.

(7) This section has effect subject to section 64 (restrictions on requiring information etc.).

### **64 Restrictions on requiring information etc.**

(1) A person may not be required under section 62 or 63-

(a) to answer any privileged question,

(b) to provide any privileged information, or

(c) to produce any privileged document,

except that a lawyer may be required to provide the name and address of a client of his.

(2) A "privileged question" is a question which the person would be entitled to refuse to answer on grounds of legal professional privilege in proceedings in the High Court.

(3) "Privileged information" is information which the person would be entitled to refuse to provide on grounds of legal professional privilege in such proceedings.

(4) A "privileged document" is a document which the person would be entitled to refuse to produce on grounds of legal professional privilege in such proceedings.

(5) A person may not be required under section 62 to produce any excluded material (as defined by section 11 of the Police and Criminal Evidence Act 1984 (c. 60)).

(6) In the application of this section to Scotland-

(a) subsections (1) to (5) do not have effect, but

(b) a person may not be required under section 62 or 63 to answer any question, provide any information or produce any document which he would be entitled, on grounds of legal privilege, to refuse to answer or (as the case may be) provide or produce.

(7) In subsection (6)(b), "legal privilege" has the meaning given by section 412 of the Proceeds of Crime Act 2002 (c. 29).

(8) A person may not be required under section 62 or 63 to disclose any information or produce any document in respect of which he owes an obligation of confidence by virtue of carrying on any banking business, unless-

(a) the person to whom the obligation of confidence is owed consents to the disclosure or production, or

(b) the requirement is made by, or in accordance with a specific authorisation given by, the Investigating Authority.

(9) Subject to the preceding provisions, any requirement under section 62 or 63 has effect despite any restriction on disclosure (however imposed).

## **65 Restrictions on use of statements**

(1) A statement made by a person in response to a requirement imposed under section 62 or 63 ("the relevant statement") may not be used in evidence against him in any criminal proceedings unless subsection (2) or (3) applies.

(2) This subsection applies where the person is being prosecuted-

(a) for an offence under section 67 of this Act, or

(b) for an offence under section 5 of the Perjury Act 1911 (c. 6) (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath), or

(c) for an offence under section 2 of the False Oaths (Scotland) Act 1933 (c. 20) (false statutory declarations and other false statements without oath) or at common law for an offence of attempting to pervert the course, or defeat the ends, of justice.

(3) This subsection applies where the person is being prosecuted for some other offence and-

(a) the person, when giving evidence in the proceedings, makes a statement inconsistent with the relevant statement, and

(b) in the proceedings evidence relating to the relevant statement is adduced, or a question about it is asked, by or on behalf of the person.

## *Enforcement*

## **66 Power to enter and seize documents**

(1) A justice of the peace may issue a warrant under this section if, on an information on oath laid by the Investigating Authority, he is satisfied-

(a) that any of the conditions mentioned in subsection (2) is met in relation to any documents of a description specified in the information, and

(b) that the documents are on premises so specified.

(2) The conditions are-

- (a) that a person has been required by a disclosure notice to produce the documents but has not done so;
- (b) that it is not practicable to give a disclosure notice requiring their production;
- (c) that giving such a notice might seriously prejudice the investigation of an offence to which this Chapter applies.

(3) A warrant under this section is a warrant authorising an appropriate person named in it-

- (a) to enter and search the premises, using such force as is reasonably necessary;
- (b) to take possession of any documents appearing to be documents of a description specified in the information, or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such documents;
- (c) in the case of any such documents consisting of information recorded otherwise than in legible form, to take possession of any computer disk or other electronic storage device which appears to contain the information in question, or to take any other steps which appear to be necessary for preserving, or preventing interference with, that information;
- (d) to take copies of or extracts from any documents or information falling within paragraph (b) or (c);
- (e) to require any person on the premises to provide an explanation of any such documents or information or to state where any such documents or information may be found;
- (f) to require any such person to give the appropriate person such assistance as he may reasonably require for the taking of copies or extracts as mentioned in paragraph (d).

(4) A person executing a warrant under this section may take other persons with him, if it appears to him to be necessary to do so.

(5) A warrant under this section must, if so required, be produced for inspection by the owner or occupier of the premises or anyone acting on his behalf.

(6) If the premises are unoccupied or the occupier is temporarily absent, a person entering the premises under the authority of a warrant under this section must leave the premises as effectively secured against trespassers as he found them.

(7) Where possession of any document or device is taken under this section-

- (a) the document may be retained for so long as the Investigating Authority considers that it is necessary to retain it (rather than a copy of it) in connection with the investigation for the purposes of which the warrant was sought, or
- (b) the device may be retained for so long as he considers that it is necessary to retain it in connection with that investigation,

as the case may be.

(8) If the Investigating Authority has reasonable grounds for believing-

- (a) that any such document or device may have to be produced for the purposes of any legal proceedings, and
- (b) that it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.

(9) Nothing in this section authorises a person to take possession of, or make copies of or take extracts from, any document or information which, by virtue of section 64, could not be required to be produced or disclosed under section 62 or 63.

(10) In the application of this section to Scotland-

- (a) subsection (1) has effect as if, for the words from the beginning to "satisfied- ", there were substituted "A sheriff may issue a warrant under this section, on the application of a procurator fiscal, if he is satisfied- ";

(b) subsections (1)(a) and (3)(b) have effect as if, for "in the information", there were substituted "in the application"; and

(c) subsections (4) to (6) do not have effect.

## **67 Offences in connection with disclosure notices or search warrants**

(1) A person commits an offence if, without reasonable excuse, he fails to comply with any requirement imposed on him under section 62 or 63.

(2) A person commits an offence if, in purported compliance with any requirement imposed on him under section 62 or 63-

(a) he makes a statement which is false or misleading, and

(b) he either knows that it is false or misleading or is reckless as to whether it is false or misleading.

"False or misleading" means false or misleading in a material particular.

(3) A person commits an offence if he wilfully obstructs any person in the exercise of any rights conferred by a warrant under section 66.

(4) A person guilty of an offence under subsection (1) or (3) is liable on summary conviction-

(a) to imprisonment for a term not exceeding 51 weeks, or

(b) to a fine not exceeding level 5 on the standard scale,

or to both.

(5) A person guilty of an offence under subsection (2) is liable-

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both;

(b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both.

(6) In the application of this section to Scotland, the reference to 51 weeks in subsection (4)(a) is to be read as a reference to 12 months.

### *Supplementary*

## **68 Procedure applicable to search warrants**

In Part 1 of Schedule 1 to the Criminal Justice and Police Act 2001 (c. 16) (powers of seizure to which section 50 applies) after paragraph 73E (inserted by the Human Tissue Act 2004 (c. 30)) insert-

*"73F Serious Organised Crime and Police Act 2005*

The power of seizure conferred by section 66 of the Serious Organised Crime and Police Act 2005 (seizure of documents for purposes of investigation by DPP or other Investigating Authority)."

## **69 Manner in which disclosure notice may be given**

(1) This section provides for the manner in which a disclosure notice may be given under section 62.

(2) The notice may be given to a person by-

(a) delivering it to him,

(b) leaving it at his proper address,

(c) sending it by post to him at that address.

(3) The notice may be given-

(a) in the case of a body corporate, to the secretary or clerk of that body;

(b) in the case of a partnership, to a partner or a person having the control or management of the partnership business;

(c) in the case of an unincorporated association (other than a partnership), to an officer of the association.

(4) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) in its application to this section, the proper address of a person is his usual or last-known address (whether residential or otherwise), except that-

(a) in the case of a body corporate or its secretary or clerk, it is the address of the registered office of that body or its principal office in the United Kingdom,

(b) in the case of a partnership, a partner or a person having the control or management of the partnership business, it is that of the principal office of the partnership in the United Kingdom, and

(c) in the case of an unincorporated association (other than a partnership) or an officer of the association, it is that of the principal office of the association in the United Kingdom.

(5) This section does not apply to Scotland.

## **70 Interpretation of Chapter 1**

(1) In this Chapter-

"appropriate person" has the meaning given by section 62(2);

"the Investigating Authority" is to be construed in accordance with section 60(5) and (6);

"disclosure notice" has the meaning given by section 62(3);

"document" includes information recorded otherwise than in legible form.

(2) In relation to information recorded otherwise than in legible form, any reference in this Chapter to the production of documents is a reference to the production of a copy of the information in legible form.

## **CHAPTER 2**

### **OFFENDERS ASSISTING INVESTIGATIONS AND PROSECUTIONS**

#### **71 Assistance by offender: immunity from prosecution**

(1) If a specified prosecutor thinks that for the purposes of the investigation or prosecution of any offence it is appropriate to offer any person immunity from prosecution he may give the person a written notice under this subsection (an "immunity notice").

(2) If a person is given an immunity notice, no proceedings for an offence of a description specified in the notice may be brought against that person in England and Wales or Northern Ireland except in circumstances specified in the notice.

(3) An immunity notice ceases to have effect in relation to the person to whom it is given if the person fails to comply with any conditions specified in the notice.

(4) Each of the following is a specified prosecutor-

(a) the Director of Public Prosecutions;

(b) the Director of Revenue and Customs Prosecutions;

(c) the Director of the Serious Fraud Office;

(d) the Director of Public Prosecutions for Northern Ireland;

(e) a prosecutor designated for the purposes of this section by a prosecutor mentioned in paragraphs (a) to (d).

(5) The Director of Public Prosecutions or a person designated by him under subsection (4)(e) may not give an immunity notice in relation to proceedings in Northern Ireland.

(6) The Director of Public Prosecutions for Northern Ireland or a person designated by him under subsection (4)(e) may not give an immunity notice in relation to proceedings in England and Wales.

(7) An immunity notice must not be given in relation to an offence under section 188 of the Enterprise Act 2002 (c. 40) (cartel offences).

## **72 Assistance by offender: undertakings as to use of evidence**

(1) If a specified prosecutor thinks that for the purposes of the investigation or prosecution of any offence it is appropriate to offer any person an undertaking that information of any description will not be used against the person in any proceedings to which this section applies he may give the person a written notice under this subsection (a "restricted use undertaking").

(2) This section applies to-

(a) criminal proceedings;

(b) proceedings under Part 5 of the Proceeds of Crime Act 2002 (c. 29).

(3) If a person is given a restricted use undertaking the information described in the undertaking must not be used against that person in any proceedings to which this section applies brought in England and Wales or Northern Ireland except in the circumstances specified in the undertaking.

(4) A restricted use undertaking ceases to have effect in relation to the person to whom it is given if the person fails to comply with any conditions specified in the undertaking.

(5) The Director of Public Prosecutions for Northern Ireland or a person designated by him under section 71(4)(e) may not give a restricted use undertaking in relation to proceedings in England and Wales.

(6) The Director of Public Prosecutions or a person designated by him under section 71(4)(e) may not give a restricted use undertaking in relation to proceedings in Northern Ireland.

(7) Specified prosecutor must be construed in accordance with section 71(4).

## **73 Assistance by defendant: reduction in sentence**

(1) This section applies if a defendant-

(a) following a plea of guilty is either convicted of an offence in proceedings in the Crown Court or is committed to the Crown Court for sentence, and

(b) has, pursuant to a written agreement made with a specified prosecutor, assisted or offered to assist the investigator or prosecutor in relation to that or any other offence.

(2) In determining what sentence to pass on the defendant the court may take into account the extent and nature of the assistance given or offered.

(3) If the court passes a sentence which is less than it would have passed but for the assistance given or offered, it must state in open court-

(a) that it has passed a lesser sentence than it would otherwise have passed, and



(b) what the greater sentence would have been.

(4) Subsection (3) does not apply if the court thinks that it would not be in the public interest to disclose that the sentence has been discounted; but in such a case the court must give written notice of the matters specified in paragraphs (a) and (b) of subsection (3) to both the prosecutor and the defendant.

(5) Nothing in any enactment which-

(a) requires that a minimum sentence is passed in respect of any offence or an offence of any description or by reference to the circumstances of any offender (whether or not the enactment also permits the court to pass a lesser sentence in particular circumstances), or

(b) in the case of a sentence which is fixed by law, requires the court to take into account certain matters for the purposes of making an order which determines or has the effect of determining the minimum period of imprisonment which the offender must serve (whether or not the enactment also permits the court to fix a lesser period in particular circumstances),

affects the power of a court to act under subsection (2).

(6) If, in determining what sentence to pass on the defendant, the court takes into account the extent and nature of the assistance given or offered as mentioned in subsection (2), that does not prevent the court from also taking account of any other matter which it is entitled by virtue of any other enactment to take account of for the purposes of determining-

(a) the sentence, or

(b) in the case of a sentence which is fixed by law, any minimum period of imprisonment which an offender must serve.

(7) If subsection (3) above does not apply by virtue of subsection (4) above, sections 174(1)(a) and 270 of the Criminal Justice Act 2003 (c. 44) (requirement to explain reasons for sentence or other order) do not apply to the extent that the explanation will disclose that a sentence has been discounted in pursuance of this section.

(8) In this section-

(a) a reference to a sentence includes, in the case of a sentence which is fixed by law, a reference to the minimum period an offender is required to serve, and a reference to a lesser sentence must be construed accordingly;

(b) a reference to imprisonment includes a reference to any other custodial sentence within the meaning of section 76 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) or Article 2 of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/ 3160).

(9) An agreement with a specified prosecutor may provide for assistance to be given to that prosecutor or to any other prosecutor.

(10) References to a specified prosecutor must be construed in accordance with section 71.

#### **74 Assistance by defendant: review of sentence**

(1) This section applies if-

(a) the Crown Court has passed a sentence on a person in respect of an offence, and

(b) the person falls within subsection (2).

(2) A person falls within this subsection if-

(a) he receives a discounted sentence in consequence of his having offered in pursuance of a written agreement to give assistance to the prosecutor or investigator of an offence but he knowingly fails to any extent to give assistance in accordance with the agreement;

(b) he receives a discounted sentence in consequence of his having offered in pursuance of a written agreement to give assistance to the prosecutor or investigator of an offence and, having given the assistance in accordance with the agreement, in pursuance of another written agreement gives or offers to give further assistance;

(c) he receives a sentence which is not discounted but in pursuance of a written agreement he subsequently gives or offers to give assistance to the prosecutor or investigator of an offence.

(3) A specified prosecutor may at any time refer the case back to the court by which the sentence was passed if-

(a) the person is still serving his sentence, and

(b) the specified prosecutor thinks it is in the interests of justice to do so.

(4) A case so referred must, if possible, be heard by the judge who passed the sentence to which the referral relates.

(5) If the court is satisfied that a person who falls within subsection (2)(a) knowingly failed to give the assistance it may substitute for the sentence to which the referral relates such greater sentence (not exceeding that which it would have passed but for the agreement to give assistance) as it thinks appropriate.

(6) In a case of a person who falls within subsection (2)(b) or (c) the court may-

(a) take into account the extent and nature of the assistance given or offered;

(b) substitute for the sentence to which the referral relates such lesser sentence as it thinks appropriate.

(7) Any part of the sentence to which the referral relates which the person has already served must be taken into account in determining when a greater or lesser sentence imposed by subsection (5) or (6) has been served.

(8) A person in respect of whom a reference is made under this section and the specified prosecutor may with the leave of the Court of Appeal appeal to the Court of Appeal against the decision of the Crown Court.

(9) Section 33(3) of the Criminal Appeal Act 1968 (c. 19) (limitation on appeal from the criminal division of the Court of Appeal) does not prevent an appeal to the Supreme Court under this section.

(10) A discounted sentence is a sentence passed in pursuance of section 73 or subsection (6) above.

(11) References-

(a) to a written agreement are to an agreement made in writing with a specified prosecutor;

(b) to a specified prosecutor must be construed in accordance with section 71.

(12) In relation to any proceedings under this section, the Secretary of State may make an order containing provision corresponding to any provision in-

(a) the Criminal Appeal Act 1968 (subject to any specified modifications), or

(b) the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) (subject to any specified modifications).

(13) A person does not fall within subsection (2) if-

(a) he was convicted of an offence for which the sentence is fixed by law, and

(b) he did not plead guilty to the offence for which he was sentenced.

(14) Section 174(1)(a) or 270 of the Criminal Justice Act 2003 (c. 44) (as the case may be) applies to a sentence substituted under subsection (5) above unless the court thinks that it is not in the public interest to disclose that the person falls within subsection (2)(a) above.

(15) Subsections (3) to (9) of section 73 apply for the purposes of this section as they apply for the purposes of that section and any reference in those subsections to subsection (2) of that section must be construed as a reference to subsection (6) of this section.

#### **75 Proceedings under section 74: exclusion of public**

(1) This section applies to-

- (a) any proceedings relating to a reference made under section 74(3), and
- (b) any other proceedings arising in consequence of such proceedings.

(2) The court in which the proceedings will be or are being heard may make such order as it thinks appropriate-

- (a) to exclude from the proceedings any person who does not fall within subsection (4);
- (b) to give such directions as it thinks appropriate prohibiting the publication of any matter relating to the proceedings (including the fact that the reference has been made).

(3) An order under subsection (2) may be made only to the extent that the court thinks-

- (a) that it is necessary to do so to protect the safety of any person, and
- (b) that it is in the interests of justice.

(4) The following persons fall within this subsection-

- (a) a member or officer of the court;
- (b) a party to the proceedings;
- (c) counsel or a solicitor for a party to the proceedings;
- (d) a person otherwise directly concerned with the proceedings.

(5) This section does not affect any other power which the court has by virtue of any rule of law or other enactment-

- (a) to exclude any person from proceedings, or
- (b) to restrict the publication of any matter relating to proceedings.

### **CHAPTER 3**

#### **FINANCIAL REPORTING ORDERS**

#### **76 Financial reporting orders: making**

(1) A court sentencing or otherwise dealing with a person convicted of an offence mentioned in subsection (3) may also make a financial reporting order in respect of him.

(2) But it may do so only if it is satisfied that the risk of the person's committing another offence mentioned in subsection (3) is sufficiently high to justify the making of a financial reporting order.

(3) The offences are-

- (a) an offence under any of the following provisions of the Theft Act 1968 (c. 60)-  
section 15 (obtaining property by deception),

section 15A (obtaining a money transfer by deception),  
section 16 (obtaining a pecuniary advantage by deception),  
section 20(2) (procuring execution of valuable security, etc.),

(b) an offence under either of the following provisions of the Theft Act 1978 (c. 31)-

section 1 (obtaining services by deception),  
section 2 (evasion of liability by deception),

(c) any offence specified in Schedule 2 to the Proceeds of Crime Act 2002 (c. 29) ("lifestyle offences").

(4) The Secretary of State may by order amend subsection (3) so as to remove an offence from it or add an offence to it.

(5) A financial reporting order-

(a) comes into force when it is made, and

(b) has effect for the period specified in the order, beginning with the date on which it is made.

(6) If the order is made by a magistrates' court, the period referred to in subsection (5)(b) must not exceed 5 years.

(7) Otherwise, that period must not exceed-

(a) if the person is sentenced to imprisonment for life, 20 years,

(b) otherwise, 15 years.

#### **77 Financial reporting orders: making in Scotland**

(1) A court sentencing or otherwise dealing with a person convicted of an offence mentioned in subsection (3) may also make a financial reporting order in respect of him.

(2) But he or it may do so only if satisfied that the risk of the person's committing another offence mentioned in subsection (3) is sufficiently high to justify the making of a financial reporting order.

(3) The offences are-

(a) at common law, the offence of fraud,

(b) any offence specified in Schedule 4 to the Proceeds of Crime Act 2002 (c. 29) ("lifestyle offences": Scotland).

(4) The Scottish Ministers may by order amend subsection (3) so as to remove an offence from it or add an offence to it.

(5) A financial reporting order-

(a) comes into force when it is made, and

(b) has effect for the period specified in the order, beginning with the date on which it is made.

(6) If the order is made by the sheriff, the period referred to in subsection (5)(b) must not exceed 5 years.

(7) If the order is made by the High Court of Justiciary, that period must not exceed-

(a) if the person is sentenced to imprisonment for life, 20 years,

(b) otherwise, 15 years.

## **78 Financial reporting orders: making in Northern Ireland**

(1) A court sentencing or otherwise dealing with a person convicted of an offence mentioned in subsection (3) may also make a financial reporting order in respect of him.

(2) But the court may do so only if it is satisfied that the risk of the person's committing another offence mentioned in subsection (3) is sufficiently high to justify the making of a financial reporting order.

(3) The offences are-

(a) an offence under any of the following provisions of the Theft Act (Northern Ireland) 1969 (c. 16 (N.I.))-

section 15 (obtaining property by deception),

section 15A (obtaining a money transfer by deception),

section 16 (obtaining a pecuniary advantage by deception),

section 19(2) (procuring execution of valuable security, etc.),

(b) an offence under either of the following provisions of the Theft (Northern Ireland) Order 1978 (S.I. 1978/1407 (N.I. 23))-

Article 3 (obtaining services by deception),

Article 4 (evasion of liability by deception)

(c) any offence specified in Schedule 5 to the Proceeds of Crime Act 2002 ("lifestyle offences": Northern Ireland).

(4) A financial reporting order-

(a) comes into force when it is made, and

(b) has effect for the period specified in the order, beginning with the date on which it is made.

(5) If the order is made by a magistrates' court, or by the county court on appeal, the period referred to in subsection (4)(b) must not exceed 5 years.

(6) Otherwise, that period must not exceed-

(a) if the person is sentenced to imprisonment for life, 20 years,

(b) otherwise, 15 years.

## **79 Financial reporting orders: effect**

(1) A person in relation to whom a financial reporting order has effect must do the following.

(2) He must make a report, in respect of-

(a) the period of a specified length beginning with the date on which the order comes into force, and

(b) subsequent periods of specified lengths, each period beginning immediately after the end of the previous one.

(3) He must set out in each report, in the specified manner, such particulars of his financial affairs relating to the period in question as may be specified.

(4) He must include any specified documents with each report.

- (5) He must make each report within the specified number of days after the end of the period in question.
- (6) He must make each report to the specified person.
- (7) Rules of court may provide for the maximum length of the periods which may be specified under subsection (2).
- (8) In this section, "specified" means specified by the court in the order.
- (9) In Scotland the specified person must be selected by the court from a list set out in an order made for the purposes of this section by the Scottish Ministers.
- (10) A person who without reasonable excuse includes false or misleading information in a report, or otherwise fails to comply with any requirement of this section, is guilty of an offence and is liable on summary conviction to-

(a) imprisonment for a term not exceeding-

(i) in England and Wales, 51 weeks,

(ii) in Scotland, 12 months,

(iii) in Northern Ireland, 6 months, or

(b) a fine not exceeding level 5 on the standard scale,

or to both.

#### **80 Financial reporting orders: variation and revocation**

(1) An application for variation or revocation of a financial reporting order may be made by-

(a) the person in respect of whom it has been made,

(b) the person to whom reports are to be made under it (see section 79(6)).

(2) The application must be made to the court which made the order.

(3) But if the order was made on appeal, the application must be made to the court which originally sentenced the person in respect of whom the order was made.

(4) If (in either case) that court was a magistrates' court, the application may be made to any magistrates' court acting in the same local justice area (or in Northern Ireland for the same county court division) as that court.

(5) Subsections (3) and (4) do not apply to Scotland.

#### **81 Financial reporting orders: verification and disclosure**

(1) In this section, "the specified person" means the person to whom reports under a financial reporting order are to be made.

(2) The specified person may, for the purpose of doing either of the things mentioned in subsection (4), disclose a report to any person who he reasonably believes may be able to contribute to doing either of those things.

(3) Any other person may disclose information to-

(a) the specified person, or

(b) a person to whom the specified person has disclosed a report,

for the purpose of contributing to doing either of the things mentioned in subsection (4).

(4) The things mentioned in subsections (2) and (3) are-

- (a) checking the accuracy of the report or of any other report made pursuant to the same order,
- (b) discovering the true position.

(5) The specified person may also disclose a report for the purposes of-

- (a) the prevention, detection, investigation or prosecution of criminal offences, whether in the United Kingdom or elsewhere,
- (b) the prevention, detection or investigation of conduct for which penalties other than criminal penalties are provided under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom.

(6) A disclosure under this section does not breach-

- (a) any obligation of confidence owed by the person making the disclosure, or
- (b) any other restriction on the disclosure of information (however imposed).

(7) But nothing in this section authorises a disclosure, in contravention of any provisions of the Data Protection Act 1998 (c. 29), of personal data which are not exempt from those provisions.

(8) In this section, references to a report include any of its contents, any document included with the report, or any of the contents of such a document.

## CHAPTER 4

### PROTECTION OF WITNESSES AND OTHER PERSONS

#### **82 Protection of persons involved in investigations or proceedings**

(1) A protection provider may make such arrangements as he considers appropriate for the purpose of protecting a person of a description specified in Schedule 5 if-

- (a) the protection provider considers that the person's safety is at risk by virtue of his being a person of a description so specified, and
- (b) the person is ordinarily resident in the United Kingdom.

(2) A protection provider may vary or cancel any arrangements made by him under subsection (1) if he considers it appropriate to do so.

(3) If a protection provider makes arrangements under subsection (1) or cancels arrangements made under that subsection, he must record that he has done so.

(4) In determining whether to make arrangements under subsection (1), or to vary or cancel arrangements made under that subsection, a protection provider must, in particular, have regard to-

- (a) the nature and extent of the risk to the person's safety,
- (b) the cost of the arrangements,
- (c) the likelihood that the person, and any person associated with him, will be able to adjust to any change in their circumstances which may arise from the making of the arrangements or from their variation or cancellation (as the case may be), and
- (d) if the person is or might be a witness in legal proceedings (whether or not in the United Kingdom), the nature of the proceedings and the importance of his being a witness in those proceedings.

(5) A protection provider is-

- (a) a chief officer of a police force in England and Wales;
- (b) a chief constable of a police force in Scotland;
- (c) the Chief Constable of the Police Service of Northern Ireland;
- (d) the Director General of SOCA;
- (e) any of the Commissioners for Her Majesty's Revenue and Customs;
- (f) the Director of the Scottish Drug Enforcement Agency;
- (g) a person designated by a person mentioned in any of the preceding paragraphs to exercise his functions under this section.

(6) The Secretary of State may, after consulting the Scottish Ministers, by order amend Schedule 5 so as to add, modify or omit any entry.

(7) Nothing in this section affects any power which a person has (otherwise than by virtue of this section) to make arrangements for the protection of another person.

### **83 Joint arrangements**

(1) Arrangements may be made under section 82(1) by two or more protection providers acting jointly.

(2) If arrangements are made jointly by virtue of subsection (1), any powers conferred on a protection provider by this Chapter are exercisable in relation to the arrangements by-

- (a) all of the protection providers acting together, or
- (b) one of the protection providers, or some of the protection providers acting together, with the agreement of the others.

(3) Nothing in this section or in section 84 affects any power which a protection provider has to request or obtain assistance from another protection provider.

### **84 Transfer of responsibility to other protection provider**

(1) A protection provider who makes arrangements under section 82(1) may agree with another protection provider that, as from a date specified in the agreement-

- (a) the protection provider will cease to discharge any responsibilities which he has in relation to the arrangements, and
- (b) the other protection provider will discharge those responsibilities instead.

(2) Any such agreement may include provision for the making of payments in respect of any costs incurred or likely to be incurred in consequence of the agreement.

(3) If an agreement is made under subsection (1), any powers conferred on a protection provider by this Chapter (including the power conferred by subsection (1)) are, as from the date specified in the agreement, exercisable by the other protection provider as if he had made the arrangements under section 82(1).

(4) Each protection provider who makes an agreement under subsection (1) must record that he has done so.

### **85 Duty to assist protection providers**



(1) This section applies if a protection provider requests assistance from a public authority in connection with the making of arrangements under section 82(1) or the implementation, variation or cancellation of such arrangements.

(2) The public authority must take reasonable steps to provide the assistance requested.

(3) "Public authority" includes any person certain of whose functions are of a public nature but does not include-

- (a) a court or tribunal,
- (b) either House of Parliament or a person exercising functions in connection with proceedings in Parliament, or
- (c) the Scottish Parliament or a person exercising functions in connection with proceedings in the Scottish Parliament.

### **86 Offence of disclosing information about protection arrangements**

(1) A person commits an offence if-

- (a) he discloses information which relates to the making of arrangements under section 82(1) or to the implementation, variation or cancellation of such arrangements, and
- (b) he knows or suspects that the information relates to the making of such arrangements or to their implementation, variation or cancellation.

(2) A person who commits an offence under this section is liable-

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.

(3) In the application of this section to Scotland or Northern Ireland, the reference in subsection (2)(b) to 12 months is to be read as a reference to 6 months.

### **87 Defences to liability under section 86**

(1) A person (P) is not guilty of an offence under section 86 if-

- (a) at the time when P disclosed the information, he was or had been a protected person,
- (b) the information related only to arrangements made for the protection of P or for the protection of P and a person associated with him, and
- (c) at the time when P disclosed the information, it was not likely that its disclosure would endanger the safety of any person.

(2) A person (D) is not guilty of an offence under section 86 if-

- (a) D disclosed the information with the agreement of a person (P) who, at the time the information was disclosed, was or had been a protected person,
- (b) the information related only to arrangements made for the protection of P or for the protection of P and a person associated with him, and
- (c) at the time when D disclosed the information, it was not likely that its disclosure would endanger the safety of any person.

(3) A person is not guilty of an offence under section 86 if he disclosed the information for the purposes of safeguarding national security or for the purposes of the prevention, detection or investigation of crime.

(4) A person is not guilty of an offence under section 86 if-

(a) at the time when he disclosed the information, he was a protection provider or involved in the making of arrangements under section 82(1) or in the implementation, variation or cancellation of such arrangements, and

(b) he disclosed the information for the purposes of the making, implementation, variation or cancellation of such arrangements.

(5) The Secretary of State may by order make provision prescribing circumstances in which a person who discloses information as mentioned in section 86(1) is not guilty in England and Wales or in Northern Ireland of an offence under that section.

(6) The Scottish Ministers may by order make provision prescribing circumstances in which a person who discloses information as mentioned in section 86(1) is not guilty in Scotland of an offence under that section.

(7) If sufficient evidence is adduced to raise an issue with respect to a defence under or by virtue of this section, the court or jury must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

### **88 Offences of disclosing information relating to persons assuming new identity**

(1) A person (P) commits an offence if-

(a) P is or has been a protected person,

(b) P assumed a new identity in pursuance of arrangements made under section 82(1),

(c) P discloses information which indicates that he assumed, or might have assumed, a new identity, and

(d) P knows or suspects that the information disclosed by him indicates that he assumed, or might have assumed, a new identity.

(2) A person (D) commits an offence if-

(a) D discloses information which relates to a person (P) who is or has been a protected person,

(b) P assumed a new identity in pursuance of arrangements made under section 82(1),

(c) the information disclosed by D indicates that P assumed, or might have assumed, a new identity, and

(d) D knows or suspects-

(i) that P is or has been a protected person, and

(ii) that the information disclosed by D indicates that P assumed, or might have assumed, a new identity.

(3) A person who commits an offence under this section is liable-

(a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both;

(b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.

(4) In the application of this section to Scotland or Northern Ireland, the reference in subsection (3)(b) to 12 months is to be read as a reference to 6 months.

### **89 Defences to liability under section 88**

(1) P is not guilty of an offence under section 88(1) if, at the time when he disclosed the information, it was not likely that its disclosure would endanger the safety of any person.

(2) D is not guilty of an offence under section 88(2) if-

(a) D disclosed the information with the agreement of P, and

(b) at the time when D disclosed the information, it was not likely that its disclosure would endanger the safety of any person.

(3) D is not guilty of an offence under section 88(2) if he disclosed the information for the purposes of safeguarding national security or for the purposes of the prevention, detection or investigation of crime.

(4) D is not guilty of an offence under section 88(2) if-

(a) at the time when he disclosed the information, he was a protection provider or involved in the making of arrangements under section 82(1) or in the implementation, variation or cancellation of such arrangements, and

(b) he disclosed the information for the purposes of the making, implementation, variation or cancellation of such arrangements.

(5) The Secretary of State may by order make provision prescribing circumstances in which a person who discloses information as mentioned in subsection (1) or (2) of section 88 is not guilty in England and Wales or in Northern Ireland of an offence under that subsection.

(6) The Scottish Ministers may by order make provision prescribing circumstances in which a person who discloses information as mentioned in subsection (1) or (2) of section 88 is not guilty in Scotland of an offence under that subsection.

(7) If sufficient evidence is adduced to raise an issue with respect to a defence under or by virtue of this section, the court or jury must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

## **90 Protection from liability**

(1) This section applies if-

(a) arrangements are made for the protection of a person under section 82(1), and

(b) the protected person assumes a new identity in pursuance of the arrangements.

(2) No proceedings (whether civil or criminal) may be brought against a person to whom this section applies in respect of the making by him of a false or misleading representation if the representation-

(a) relates to the protected person, and

(b) is made solely for the purpose of ensuring that the arrangements made for him to assume a new identity are, or continue to be, effective.

(3) The persons to whom this section applies are-

(a) the protected person;

(b) a person who is associated with the protected person;

(c) a protection provider;

(d) a person involved in the making of arrangements under section 82(1) or in the implementation, variation or cancellation of such arrangements.

## **91 Transitional provision**

(1) This section applies to arrangements which were, at any time before the commencement of section 82, made by a protection provider, or any person acting with his authority, for the purpose of protecting a person of a description specified in Schedule 5.

(2) If the following three conditions are satisfied, the arrangements are to be treated as having been made by the protection provider under section 82(1).

- (3) The first condition is that the protection provider could have made the arrangements under section 82(1) had it been in force at the time when the arrangements were made.
- (4) The second condition is that the arrangements were in operation immediately before the commencement of section 82.
- (5) The third condition is that the protection provider determines that it is appropriate to treat the arrangements as having been made under section 82(1).
- (6) A determination under subsection (5) may be made at any time before the end of the period of six months beginning with the day on which section 82 comes into force.
- (7) A protection provider must make a record of a determination under subsection (5).
- (8) Subsection (9) applies if-
- (a) at any time before the commencement of section 82, arrangements were made by a person specified in subsection (11), or any person acting with the authority of such a person, for the purpose of protecting a person of a description specified in Schedule 5, and
  - (b) functions in relation to the arrangements are, at any time before the end of the period of six months mentioned in subsection (6), exercisable by a protection provider.
- (9) The provision made by subsections (1) to (7) applies in relation to the arrangements as if they had been made by the protection provider.
- (10) Accordingly, if the three conditions mentioned in subsections (3) to (5) are satisfied in relation to the arrangements, they are to be treated, by virtue of subsection (2), as having been made by the protection provider under section 82(1).
- (11) The persons specified in this subsection are-
- (a) the Director General of the National Criminal Intelligence Service;
  - (b) the Director General of the National Crime Squad;
  - (c) any of the Commissioners of Her Majesty's Customs and Excise.

## **92 Transitional provision: supplemental**

- (1) In this section-
- (a) "the arrangements" are arrangements which are treated as having been made by a protection provider by virtue of section 91(2), and
  - (b) "the relevant date" is the date of the record made by the protection provider, in relation to the arrangements, in pursuance of section 91(7).
- (2) A person does not commit an offence under section 86(1) by disclosing information relating to the arrangements unless the information is disclosed on or after the relevant date.
- (3) But it is immaterial whether the information relates to something done in connection with the arrangements before or on or after the relevant date.
- (4) A person does not commit an offence under section 88(1) or (2) by disclosing information relating to a person who assumed a new identity in pursuance of the arrangements unless the information is disclosed on or after the relevant date.
- (5) But it is immaterial whether the person assumed a new identity before or on or after the relevant date.
- (6) Section 90 applies in relation to a false or misleading representation relating to a person who assumed a new identity in pursuance of the arrangements only if the false or misleading representation is made on or after the relevant date.
- (7) But it is immaterial whether the person assumed a new identity before or on or after the relevant date.

### **93 Provision of information**

(1) This section applies if-

- (a) a protection provider makes arrangements under section 82(1), or
- (b) a protection provider determines under section 91(5) that it is appropriate to treat arrangements to which that section applies as having been made under section 82(1).

(2) The protection provider must inform the person to whom the arrangements relate of the provisions of this Chapter as they apply in relation to the arrangements.

(3) If the protection provider considers that the person would be unable to understand the information, by reason of his age or of any incapacity, the information must instead be given to a person who appears to the protection provider-

- (a) to be interested in the welfare of the person to whom the arrangements relate, and
- (b) to be the appropriate person to whom to give the information.

(4) If arrangements are made jointly under section 82(1) (by virtue of section 83), the protection providers involved in the arrangements must nominate one of those protection providers to perform the duties imposed by this section.

### **94 Interpretation of Chapter 4**

(1) This section applies for the purposes of this Chapter.

(2) "Protection provider" is to be construed in accordance with section 82.

(3) A person is a protected person if-

- (a) arrangements have been made for his protection under subsection (1) of section 82, and
- (b) the arrangements have not been cancelled under subsection (2) of that section.

(4) A person is associated with another person if any of the following apply-

- (a) they are members of the same family;
- (b) they live in the same household;
- (c) they have lived in the same household.

(5) A person assumes a new identity if either or both of the following apply-

- (a) he becomes known by a different name;
- (b) he makes representations about his personal history or circumstances which are false or misleading.

(6) A reference to a person who is a witness in legal proceedings includes a reference to a person who provides any information or any document or other thing which might be used in evidence in those proceedings or which (whether or not admissible as evidence in those proceedings)-

- (a) might tend to confirm evidence which will or might be admitted in those proceedings,
- (b) might be referred to in evidence given in those proceedings by another witness, or
- (c) might be used as the basis for any cross examination in the course of those proceedings,

and a reference to a person who might be, or to a person who has been, a witness in legal proceedings is to be construed accordingly.

(7) A reference to a person who is a witness in legal proceedings does not include a reference to a person who is an accused person in criminal proceedings unless he is a witness for the prosecution and a reference to a person who might be, or to a person who has been, a witness in legal proceedings is to be construed accordingly.

(8) A reference to a person who is or has been a member of staff of an organisation includes a reference to a person who is or has been seconded to the organisation to serve as a member of its staff.

(9) "The Scottish Drug Enforcement Agency" and "the Director" of that Agency have the meanings given by section 42(2).

## CHAPTER 5

### INTERNATIONAL OBLIGATIONS

#### 95 Enforcement of overseas forfeiture orders

In section 9 of the Criminal Justice (International Co-operation) Act 1990 (c. 5) (enforcement of overseas forfeiture orders), for subsection (6) (offences to which section applies) substitute-

"(6) This section applies to any offence that corresponds to or is similar to-

- (a) an offence under the law of England and Wales;
- (b) an offence under the law of Scotland; or
- (c) an offence under the law of Northern Ireland."

#### 96 Mutual assistance in freezing property or evidence

(1) The Secretary of State or the Scottish Ministers may by order make provision-

- (a) for the purpose of implementing any obligation of the United Kingdom created or arising by or under the Decision or enabling any such obligation to be implemented,
- (b) for the purpose of enabling any rights enjoyed or to be enjoyed by the United Kingdom under or by virtue of the Decision to be exercised, or
- (c) for the purpose of dealing with matters arising out of or related to any such obligation or rights.

(2) In subsection (1) "the Decision" means Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.

(3) The provision that may be made under subsection (1) by the Secretary of State includes, subject to subsections (5) and (7), any provision (of any extent) that might be made by Act of Parliament.

(4) The provision that may be made under subsection (1) by the Scottish Ministers includes, subject to subsections (6) and (7), any provision that might be made by Act of the Scottish Parliament.

(5) The power conferred by subsection (1) on the Secretary of State does not include power to make provision that would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament.

(6) The power conferred by subsection (1) on the Scottish Ministers is limited to the making of provision that would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament.

(7) The powers conferred by subsection (1) do not include power-

- (a) to make any provision imposing or increasing taxation,
- (b) to make any provision taking effect from a date earlier than that of the making of the instrument containing the provision,

(c) to confer any power to legislate by means of orders, rules, regulations or other subordinate instrument, other than rules of procedure for a court or tribunal, or

(d) to create criminal offences.

(8) Subsection (7)(c) does not preclude-

(a) the modification of a power to legislate conferred otherwise than under subsection (1), or

(b) the extension of any such power to purposes of the like nature as those for which it was conferred,

and a power to give directions as to matters of administration is not to be regarded as a power to legislate within the meaning of subsection (7)(c).

## CHAPTER 6

### PROCEEDS OF CRIME

#### 97 Confiscation orders by magistrates' courts

(1) The Secretary of State may by order make such provision as he considers appropriate for or in connection with enabling confiscation orders under-

(a) Part 2 of the Proceeds of Crime Act 2002 (c. 29) (confiscation: England and Wales), or

(b) Part 4 of that Act (confiscation: Northern Ireland),

to be made by magistrates' courts in England and Wales or Northern Ireland (as the case may be).

(2) But an order under subsection (1) may not enable such a confiscation order to be made by any magistrates' court in respect of an amount exceeding £10,000.

(3) An order under subsection (1) may amend, repeal, revoke or otherwise modify any provision of Part 2 or 4 of the 2002 Act or any other enactment relating to, or to things done under or for the purposes of, either (or any provision) of those Parts.

#### 98 Civil recovery: freezing orders

(1) In the Proceeds of Crime Act 2002 (c. 29), after section 245 insert-

*"Property freezing orders (England and Wales and Northern Ireland)*

##### 245A Application for property freezing order

(1) Where the enforcement authority may take proceedings for a recovery order in the High Court, the authority may apply to the court for a property freezing order (whether before or after starting the proceedings).

(2) A property freezing order is an order that-

(a) specifies or describes the property to which it applies, and

(b) subject to any exclusions (see section 245C(1)(b) and (2)), prohibits any person to whose property the order applies from in any way dealing with the property.

(3) An application for a property freezing order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.

(4) The court may make a property freezing order on an application if it is satisfied that the condition in subsection (5) is met and, where applicable, that the condition in subsection (6) is met.

(5) The first condition is that there is a good arguable case-

- (a) that the property to which the application for the order relates is or includes recoverable property, and
- (b) that, if any of it is not recoverable property, it is associated property.

(6) The second condition is that, if-

- (a) the property to which the application for the order relates includes property alleged to be associated property, and
- (b) the enforcement authority has not established the identity of the person who holds it,

the authority has taken all reasonable steps to do so.

#### **245B Variation and setting aside of order**

(1) The court may at any time vary or set aside a property freezing order.

(2) If the court makes an interim receiving order that applies to all of the property to which a property freezing order applies, it must set aside the property freezing order.

(3) If the court makes an interim receiving order that applies to some but not all of the property to which a property freezing order applies, it must vary the property freezing order so as to exclude any property to which the interim receiving order applies.

(4) If the court decides that any property to which a property freezing order applies is neither recoverable property nor associated property, it must vary the order so as to exclude the property.

(5) Before exercising power under this Chapter to vary or set aside a property freezing order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.

(6) Subsection (5) does not apply where the court is acting as required by subsection (2) or (3).

#### **245C Exclusions**

(1) The power to vary a property freezing order includes (in particular) power to make exclusions as follows-

- (a) power to exclude property from the order, and
- (b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.

(2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.

(3) An exclusion may, in particular, make provision for the purpose of enabling any person-

- (a) to meet his reasonable living expenses, or
- (b) to carry on any trade, business, profession or occupation.

(4) An exclusion may be made subject to conditions.

(5) Where the court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that he has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion-

- (a) is limited to reasonable legal expenses that the person has reasonably incurred or that he reasonably incurs,
- (b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion, and



(c) is made subject to the required conditions (see section 286A) in addition to any conditions imposed under subsection (4).

(6) The court, in deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses of his in respect of proceedings under this Part-

(a) must have regard (in particular) to the desirability of the person being represented in any proceedings under this Part in which he is a participant, and

(b) must, where the person is the respondent, disregard the possibility that legal representation of the person in any such proceedings might, were an exclusion not made, be funded by the Legal Services Commission or the Northern Ireland Legal Services Commission.

(7) If excluded property is not specified in the order it must be described in the order in general terms.

(8) The power to make exclusions must, subject to subsection (6), be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct is not unduly prejudiced.

(9) Subsection (8) does not apply where the court is acting as required by section 245B(3) or (4).

#### **245D Restriction on proceedings and remedies**

(1) While a property freezing order has effect-

(a) the court may stay any action, execution or other legal process in respect of the property to which the order applies, and

(b) no distress may be levied against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.

(2) If a court (whether the High Court or any other court) in which proceedings are pending in respect of any property is satisfied that a property freezing order has been applied for or made in respect of the property, it may either stay the proceedings or allow them to continue on any terms it thinks fit.

(3) If a property freezing order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise the right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose.

(4) Before exercising any power conferred by this section, the court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision."

(2) In the Proceeds of Crime Act 2002 (c. 29), after section 255 insert-

*"Prohibitory property orders (Scotland)*

#### **255A Application for prohibitory property order**

(1) Where the enforcement authority may take proceedings for a recovery order in the Court of Session, the authority may apply to the court for a prohibitory property order (whether before or after starting the proceedings).

(2) A prohibitory property order is an order that-

(a) specifies or describes the property to which it applies, and

(b) subject to any exclusions (see section 255C(1)(b) and (2)), prohibits any person to whose property the order applies from in any way dealing with the property.

(3) An application for a prohibitory property order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.

(4) The court may make a prohibitory property order on an application if it is satisfied that the condition in subsection (5) is met and, where applicable, that the condition in subsection (6) is met.

(5) The first condition is that there is a good arguable case-

- (a) that the property to which the application for the order relates is or includes recoverable property, and
- (b) that, if any of it is not recoverable property, it is associated property.

(6) The second condition is that, if-

- (a) the property to which the application for the order relates includes property alleged to be associated property, and
- (b) the enforcement authority has not established the identity of the person who holds it,

the authority has taken all reasonable steps to do so.

### **255B Variation and recall of prohibitory property order**

(1) The court may at any time vary or recall a prohibitory property order.

(2) If the court makes an interim administration order that applies to all of the property to which a prohibitory property order applies, it must recall the prohibitory property order.

(3) If the court makes an interim administration order that applies to some but not all of the property to which a prohibitory property order applies, it must vary the prohibitory property order so as to exclude any property to which the interim administration order applies.

(4) If the court decides that any property to which a prohibitory property order applies is neither recoverable property nor associated property, it must vary the order so as to exclude the property.

(5) Before exercising power under this Chapter to vary or recall a prohibitory property order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.

(6) Subsection (5) does not apply where the court is acting as required by subsection (2) or (3).

### **255C Exclusions**

(1) The power to vary a prohibitory property order includes (in particular) power to make exclusions as follows-

- (a) power to exclude property from the order, and
- (b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.

(2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.

(3) An exclusion may, in particular, make provision for the purpose of enabling any person-

- (a) to meet his reasonable living expenses, or
- (b) to carry on any trade, business, profession or occupation.

(4) An exclusion may be made subject to conditions.

(5) An exclusion may not be made for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Part.

(6) If excluded property is not specified in the order it must be described in the order in general terms.

(7) The power to make exclusions must be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct is not unduly prejudiced.

(8) Subsection (7) does not apply where the court is acting as required by section 255B(3) or (4).

#### **255D Restriction on proceedings and remedies**

(1) While a prohibitory property order has effect the court may sist any action, execution or other legal process in respect of the property to which the order applies.

(2) If a court (whether the Court of Session or any other court) in which proceedings are pending in respect of any property is satisfied that a prohibitory property order has been applied for or made in respect of the property, it may either sist the proceedings or allow them to continue on any terms it thinks fit.

(3) Before exercising any power conferred by this section, the court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

#### **255E Arrestment of property affected by prohibitory property order**

(1) On the application of the enforcement authority the Court of Session may, in relation to moveable recoverable property to which a prohibitory property order applies (whether generally or to such of it as is specified in the application), grant warrant for arrestment.

(2) An application under subsection (1) may be made at the same time as the application for the prohibitory property order or at any time thereafter.

(3) Such a warrant for arrestment may be granted only if the property would be arrestable if the person entitled to it were a debtor.

(4) A warrant under subsection (1) has effect as if granted on the dependence of an action for debt at the instance of the enforcement authority against the person and may be executed, recalled, loosed or restricted accordingly.

(5) An arrestment executed under this section ceases to have effect when, or in so far as, the prohibitory property order ceases to apply in respect of the property in relation to which the warrant for arrestment was granted.

(6) If an arrestment ceases to have effect to any extent by virtue of subsection (5) the enforcement authority must apply to the Court of Session for an order recalling or, as the case may be, restricting the arrestment.

#### **255F Inhibition of property affected by prohibitory property order**

(1) On the application of the enforcement authority, the Court of Session may, in relation to the property mentioned in subsection (2), grant warrant for inhibition against any person specified in a prohibitory property order.

(2) That property is heritable property situated in Scotland to which the prohibitory property order applies (whether generally or to such of it as is specified in the application).

(3) The warrant for inhibition-

(a) has effect as if granted on the dependence of an action for debt by the enforcement authority against the person and may be executed, recalled, loosed or restricted accordingly, and

(b) has the effect of letters of inhibition and must forthwith be registered by the enforcement authority in the register of inhibitions and adjudications.

(4) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (c. 101) (effective date of inhibition) applies in relation to an inhibition for which warrant is granted under subsection (1) as it applies to an inhibition by separate letters or contained in a summons.

(5) An inhibition executed under this section ceases to have effect when, or in so far as, the prohibitory property order ceases to apply in respect of the property in relation to which the warrant for inhibition was granted.

(6) If an inhibition ceases to have effect to any extent by virtue of subsection (5) the enforcement authority must-

(a) apply for the recall or, as the case may be, the restriction of the inhibition, and

(b) ensure that the recall or restriction is reflected in the register of inhibitions and adjudications."

#### **99 Civil recovery: interim receivers' expenses etc.**

(1) The Proceeds of Crime Act 2002 (c. 29) is amended as follows.

(2) In section 280 (civil recovery orders: applying realised proceeds), after subsection (2) insert-

"(3) The Director may apply a sum received by him under subsection (2) in making payment of the remuneration and expenses of-

(a) the trustee, or

(b) any interim receiver appointed in, or in anticipation of, the proceedings for the recovery order.

(4) Subsection (3)(a) does not apply in relation to the remuneration of the trustee if the trustee is a member of the staff of the Agency."

(3) In section 284 (payment of interim administrator or trustee (Scotland))-

(a) the existing words become subsection (1), and

(b) after that subsection insert-

"(2) The Scottish Ministers may apply a sum received by them under section 280(2) in making payment of such fees or expenses.

(3) Subsection (2) does not apply in relation to the fees of a trustee for civil recovery if the trustee is a member of their staff."

(4) In paragraph 5 of Schedule 1 (finances of the Assets Recovery Agency), after sub-paragraph (1) (paragraph (b) of which provides for the expenses of the Director and staff of the Agency to be paid out of money provided by Parliament) insert-

"(1A) Sub-paragraph (1)(b) has effect subject to anything in this Act."

#### **100 Detention of seized cash: meaning of "48 hours"**

(1) In the Proceeds of Crime Act 2002 (c. 29), Chapter 3 of Part 5 (civil recovery of cash in summary proceedings) is amended as follows.

(2) In section 295 (detention of seized cash, initially for 48 hours), after subsection (1) insert-

"(1A) The period of 48 hours mentioned in subsection (1) is to be calculated in accordance with subsection (1B).

(1B) In calculating a period of 48 hours in accordance with this subsection, no account shall be taken of-

(a) any Saturday or Sunday,

(b) Christmas Day,

(c) Good Friday,

(d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom within which the cash is seized, or

(e) any day prescribed under section 8(2) of the Criminal Procedure (Scotland) Act 1995 as a court holiday in a sheriff court in the sheriff court district within which the cash is seized."

(3) In sections 290(6), 296(1) and 302(2), after "48 hours" insert "(calculated in accordance with section 295(1B))".

### **101 Appeal in proceedings for forfeiture of cash**

(1) For section 299 of the Proceeds of Crime Act 2002 (appeal against forfeiture of cash) substitute-

#### **"299 Appeal against decision under section 298**

(1) Any party to proceedings for an order for the forfeiture of cash under section 298 who is aggrieved by an order under that section or by the decision of the court not to make such an order may appeal-

(a) in relation to England and Wales, to the Crown Court;

(b) in relation to Scotland, to the Sheriff Principal;

(c) in relation to Northern Ireland, to a county court.

(2) An appeal under subsection (1) must be made before the end of the period of 30 days starting with the day on which the court makes the order or decision.

(3) The court hearing the appeal may make any order it thinks appropriate.

(4) If the court upholds an appeal against an order forfeiting the cash, it may order the release of the cash."

(2) This section does not apply to a decision of a court not to order the forfeiture of cash under section 298 of that Act taken before this section comes into force.

### **102 Money laundering: defence where overseas conduct is legal under local law**

(1) In the Proceeds of Crime Act 2002 (c. 29), Part 7 (money laundering) is amended as follows.

(2) In section 327 (concealing etc.), after subsection (2) insert-

"(2A) Nor does a person commit an offence under subsection (1) if-

(a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and

(b) the relevant criminal conduct-

(i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and

(ii) is not of a description prescribed by an order made by the Secretary of State.

(2B) In subsection (2A) "the relevant criminal conduct" is the criminal conduct by reference to which the property concerned is criminal property."

(3) In section 328 (arrangements), after subsection (2) insert-

"(3) Nor does a person commit an offence under subsection (1) if-

(a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and

(b) the relevant criminal conduct-

(i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and

(ii) is not of a description prescribed by an order made by the Secretary of State.

(4) In subsection (3) "the relevant criminal conduct" is the criminal conduct by reference to which the property concerned is criminal property."

(4) In section 329 (acquisition, use and possession), after subsection (2) insert-

"(2A) Nor does a person commit an offence under subsection (1) if-

(a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and

(b) the relevant criminal conduct-

(i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and

(ii) is not of a description prescribed by an order made by the Secretary of State.

(2B) In subsection (2A) "the relevant criminal conduct" is the criminal conduct by reference to which the property concerned is criminal property."

(5) In section 330 (failure to disclose: regulated sector), after subsection (7) insert-

"(7A) Nor does a person commit an offence under this section if-

(a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the United Kingdom, and

(b) the money laundering-

(i) is not unlawful under the criminal law applying in that country or territory, and

(ii) is not of a description prescribed in an order made by the Secretary of State."

(6) In section 331 (failure to disclose: nominated officers in the regulated sector), after subsection (6) insert-

"(6A) Nor does a person commit an offence under this section if-

(a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the United Kingdom, and

(b) the money laundering-

(i) is not unlawful under the criminal law applying in that country or territory, and

(ii) is not of a description prescribed in an order made by the Secretary of State."

(7) In section 332 (failure to disclose: other nominated officers), after subsection (6) insert-

"(7) Nor does a person commit an offence under this section if-

(a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the United Kingdom, and

(b) the money laundering-

(i) is not unlawful under the criminal law applying in that country or territory, and

(ii) is not of a description prescribed in an order made by the Secretary of State."

### **103 Money laundering: threshold amounts**

(1) The Proceeds of Crime Act 2002 (c. 29) is amended as follows.

(2) In section 327 (concealing etc.), after subsection (2B) (which is inserted by section 102 of this Act) insert-

"(2C) A deposit-taking body that does an act mentioned in paragraph (c) or (d) of subsection (1) does not commit an offence under that subsection if-

(a) it does the act in operating an account maintained with it, and

(b) the value of the criminal property concerned is less than the threshold amount determined under section 339A for the act."

(3) In section 328 (arrangements), after subsection (4) (which is inserted by section 102 of this Act) insert-

"(5) A deposit-taking body that does an act mentioned in subsection (1) does not commit an offence under that subsection if-

(a) it does the act in operating an account maintained with it, and

(b) the arrangement facilitates the acquisition, retention, use or control of criminal property of a value that is less than the threshold amount determined under section 339A for the act."

(4) In section 329 (acquisition, use and possession), after subsection (2B) (which is inserted by section 102 of this Act) insert-

"(2C) A deposit-taking body that does an act mentioned in subsection (1) does not commit an offence under that subsection if-

(a) it does the act in operating an account maintained with it, and

(b) the value of the criminal property concerned is less than the threshold amount determined under section 339A for the act."

(5) In Part 7 (money laundering), after section 339 insert-

#### *"Threshold amounts*

### **339A Threshold amounts**

(1) This section applies for the purposes of sections 327(2C), 328(5) and 329(2C).

(2) The threshold amount for acts done by a deposit-taking body in operating an account is £250 unless a higher amount is specified under the following provisions of this section (in which event it is that higher amount).

(3) An officer of Revenue and Customs, or a constable, may specify the threshold amount for acts done by a deposit-taking body in operating an account-

(a) when he gives consent, or gives notice refusing consent, to the deposit-taking body's doing of an act mentioned in section 327(1), 328(1) or 329(1) in opening, or operating, the account or a related account, or

(b) on a request from the deposit-taking body.

(4) Where the threshold amount for acts done in operating an account is specified under subsection (3) or this subsection, an officer of Revenue and Customs, or a constable, may vary the amount (whether on a request from the deposit-taking body or otherwise) by specifying a different amount.

(5) Different threshold amounts may be specified under subsections (3) and (4) for different acts done in operating the same account.

(6) The amount specified under subsection (3) or (4) as the threshold amount for acts done in operating an account must, when specified, not be less than the amount specified in subsection (2).

(7) The Secretary of State may by order vary the amount for the time being specified in subsection (2).

(8) For the purposes of this section, an account is related to another if each is maintained with the same deposit-taking body and there is a person who, in relation to each account, is the person or one of the persons entitled to instruct the body as respects the operation of the account."

(6) In section 340 (interpretation of Part 7), after subsection (13) insert-

"(14) "Deposit-taking body" means-

(a) a business which engages in the activity of accepting deposits, or

(b) the National Savings Bank."

(7) In section 459(4)(a) and (6)(a) (provision for certain orders to be subject to affirmative procedure), after "309," insert "339A(7),".

#### **104 Money laundering: disclosures to identify persons and property**

(1) In the Proceeds of Crime Act 2002 (c. 29), Part 7 (money laundering) is amended as follows.

(2) In section 330(1) (regulated sector: failure to disclose: offence committed if three conditions satisfied), for "each of the following three conditions is satisfied" substitute "the conditions in subsections (2) to (4) are satisfied".

(3) For section 330(4) to (6) (the required disclosure) substitute-

"(3A) The third condition is-

(a) that he can identify the other person mentioned in subsection (2) or the whereabouts of any of the laundered property, or

(b) that he believes, or it is reasonable to expect him to believe, that the information or other matter mentioned in subsection (3) will or may assist in identifying that other person or the whereabouts of any of the laundered property.

(4) The fourth condition is that he does not make the required disclosure to-

(a) a nominated officer, or

(b) a person authorised for the purposes of this Part by the Director General of the Serious Organised Crime Agency,

as soon as is practicable after the information or other matter mentioned in subsection (3) comes to him.

(5) The required disclosure is a disclosure of-

(a) the identity of the other person mentioned in subsection (2), if he knows it,

(b) the whereabouts of the laundered property, so far as he knows it, and

(c) the information or other matter mentioned in subsection (3).

(5A) The laundered property is the property forming the subject-matter of the money laundering that he knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in.



(6) But he does not commit an offence under this section if-

(a) he has a reasonable excuse for not making the required disclosure,

(b) he is a professional legal adviser and-

(i) if he knows either of the things mentioned in subsection (5)(a) and (b), he knows the thing because of information or other matter that came to him in privileged circumstances, or

(ii) the information or other matter mentioned in subsection (3) came to him in privileged circumstances, or

(c) subsection (7) applies to him."

(4) For section 331(4) to (6) (failure to disclose: nominated officers in the regulated sector: the required disclosure) substitute-

"(3A) The third condition is-

(a) that he knows the identity of the other person mentioned in subsection (2), or the whereabouts of any of the laundered property, in consequence of a disclosure made under section 330,

(b) that that other person, or the whereabouts of any of the laundered property, can be identified from the information or other matter mentioned in subsection (3), or

(c) that he believes, or it is reasonable to expect him to believe, that the information or other matter will or may assist in identifying that other person or the whereabouts of any of the laundered property.

(4) The fourth condition is that he does not make the required disclosure to a person authorised for the purposes of this Part by the Director General of the Serious Organised Crime Agency as soon as is practicable after the information or other matter mentioned in subsection (3) comes to him.

(5) The required disclosure is a disclosure of-

(a) the identity of the other person mentioned in subsection (2), if disclosed to him under section 330,

(b) the whereabouts of the laundered property, so far as disclosed to him under section 330, and

(c) the information or other matter mentioned in subsection (3).

(5A) The laundered property is the property forming the subject-matter of the money laundering that he knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in.

(6) But he does not commit an offence under this section if he has a reasonable excuse for not making the required disclosure."

(5) In section 332(3) (failure to disclose: other nominated officers: the second condition), for "section 337 or 338" substitute "the applicable section".

(6) For section 332(4) to (6) (the required disclosure) substitute-

"(3A) The third condition is-

(a) that he knows the identity of the other person mentioned in subsection (2), or the whereabouts of any of the laundered property, in consequence of a disclosure made under the applicable section,

(b) that that other person, or the whereabouts of any of the laundered property, can be identified from the information or other matter mentioned in subsection (3), or

(c) that he believes, or it is reasonable to expect him to believe, that the information or other matter will or may assist in identifying that other person or the whereabouts of any of the laundered property.

(4) The fourth condition is that he does not make the required disclosure to a person authorised for the purposes of this Part by the Director General of the Serious Organised Crime Agency as soon as is practicable after the information or other matter mentioned in subsection (3) comes to him.

(5) The required disclosure is a disclosure of-

- (a) the identity of the other person mentioned in subsection (2), if disclosed to him under the applicable section,
- (b) the whereabouts of the laundered property, so far as disclosed to him under the applicable section, and
- (c) the information or other matter mentioned in subsection (3).

(5A) The laundered property is the property forming the subject-matter of the money laundering that he knows or suspects that other person to be engaged in.

(5B) The applicable section is section 337 or, as the case may be, section 338.

(6) But he does not commit an offence under this section if he has a reasonable excuse for not making the required disclosure."

(7) In section 337 (protected disclosures), after subsection (4) insert-

"(4A) Where a disclosure consists of a disclosure protected under subsection (1) and a disclosure of either or both of-

- (a) the identity of the other person mentioned in subsection (3), and
- (b) the whereabouts of property forming the subject-matter of the money laundering that the discloser knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in,

the disclosure of the thing mentioned in paragraph (a) or (b) (as well as the disclosure protected under subsection (1)) is not to be taken to breach any restriction on the disclosure of information (however imposed)."

### **105 Money laundering: form and manner of disclosures**

(1) In the Proceeds of Crime Act 2002 (c. 29), Part 7 (money laundering) is amended as follows.

(2) In each of sections 330(9)(b), 337(5)(b) and 338(5)(b) (disclosure to nominated officer is ineffective if employer's procedures not followed), omit "and in accordance with the procedure established by the employer for the purpose".

(3) In section 334 (penalties), after subsection (2) insert-

"(3) A person guilty of an offence under section 339(1A) is liable on summary conviction to a fine not exceeding level 5 on the standard scale."

(4) In section 338(1) (authorised disclosures), omit paragraph (b) (disclosure must be made in prescribed form and manner) but not the "and" at the end.

(5) In section 339 (form and manner of disclosures), for subsections (2) and (3) substitute-

"(1A) A person commits an offence if he makes a disclosure under section 330, 331, 332 or 338 otherwise than in the form prescribed under subsection (1) or otherwise than in the manner so prescribed.

(1B) But a person does not commit an offence under subsection (1A) if he has a reasonable excuse for making the disclosure otherwise than in the form prescribed under subsection (1) or (as the case may be) otherwise than in the manner so prescribed.

(2) The power under subsection (1) to prescribe the form in which a disclosure must be made includes power to provide for the form to include a request to a person making a disclosure that the person provide information specified or described in the form if he has not provided it in making the disclosure.

(3) Where under subsection (2) a request is included in a form prescribed under subsection (1), the form must-

- (a) state that there is no obligation to comply with the request, and
- (b) explain the protection conferred by subsection (4) on a person who complies with the request."

### **106 Money laundering: miscellaneous amendments**

(1) In the Proceeds of Crime Act 2002, Part 7 (money laundering) is amended as follows.

(2) In section 330 (regulated sector: failure to disclose), after subsection (9) insert-

"(9A) But a disclosure which satisfies paragraphs (a) and (b) of subsection (9) is not to be taken as a disclosure to a nominated officer if the person making the disclosure-

- (a) is a professional legal adviser,
- (b) makes it for the purpose of obtaining advice about making a disclosure under this section, and
- (c) does not intend it to be a disclosure under this section."

(3) In section 337(5)(a) (disclosure to person nominated to receive disclosures under section 337), after "disclosures under" insert "section 330 or".

(4) In section 338(1)(c) (first or second condition must be satisfied for disclosure to be authorised), for "or second" substitute ", second or third".

(5) In section 338 (authorised disclosures), after subsection (2) insert-

"(2A) The second condition is that-

- (a) the disclosure is made while the alleged offender is doing the prohibited act,
- (b) he began to do the act at a time when, because he did not then know or suspect that the property constituted or represented a person's benefit from criminal conduct, the act was not a prohibited act, and
- (c) the disclosure is made on his own initiative and as soon as is practicable after he first knows or suspects that the property constitutes or represents a person's benefit from criminal conduct."

(6) In section 338(3) (the second condition), for "second" substitute "third".

### **107 Money laundering offences**

(1) The Proceeds of Crime Act 2002 (c. 29) is amended as follows.

(2) In section 364 (meaning of customer information) in subsection (5)-

(a) after paragraph (a) insert-

"(aa) constitutes an offence specified in section 415(1A) of this Act,";

(b) in paragraph (b) after "paragraph (a)" insert "or (aa)".

(3) In section 398 (meaning of customer information: Scotland) in subsection (5)-

(a) after paragraph (a) insert-

"(aa) constitutes an offence specified in section 415(1A) of this Act,";

(b) in paragraph (b) after "paragraph (a)" insert "or (aa)".

(4) In section 415 (money laundering offences) after subsection (1) insert-

"(1A) Each of the following is a money laundering offence-

- (a) an offence under section 93A, 93B or 93C of the Criminal Justice Act 1988;
- (b) an offence under section 49, 50 or 51 of the Drug Trafficking Act 1994;
- (c) an offence under section 37 or 38 of the Criminal Law (Consolidation) (Scotland) Act 1995;
- (d) an offence under article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996."

### **108 International co-operation**

(1) Part 11 of the Proceeds of Crime Act 2002 (c. 29) (co-operation) is amended as follows.

(2) In section 444 (external requests and orders), for subsection (3)(a) (Order under the section may include provision about the functions of the Secretary of State, the Lord Advocate, the Scottish Ministers and the Director of the Assets Recovery Agency) substitute-

"(a) provision about the functions of any of the listed persons in relation to external requests and orders;"

(3) In that section, after subsection (3) insert-

"(4) For the purposes of subsection (3)(a) "the listed persons" are-

- (a) the Secretary of State;
- (b) the Lord Advocate;
- (c) the Scottish Ministers;
- (d) the Director;
- (e) the Director of Public Prosecutions;
- (f) the Director of Public Prosecutions for Northern Ireland;
- (g) the Director of the Serious Fraud Office; and
- (h) the Director of Revenue and Customs Prosecutions."

(4) In section 447(3) (meaning of "external investigation"), after paragraph (a) insert-

"(aa) the extent or whereabouts of property obtained as a result of or in connection with criminal conduct, or".

### **109 Minor and consequential amendments relating to Chapter 6**

Schedule 6, which contains minor and consequential amendments relating to provisions of this Chapter, has effect.

## **PART 3**

### **POLICE POWERS ETC.**

#### *Powers of arrest*

### **110 Powers of arrest**

(1) For section 24 of PACE (arrest without warrant for arrestable offences) substitute-

## **"24 Arrest without warrant: constables**

(1) A constable may arrest without a warrant-

- (a) anyone who is about to commit an offence;
- (b) anyone who is in the act of committing an offence;
- (c) anyone whom he has reasonable grounds for suspecting to be about to commit an offence;
- (d) anyone whom he has reasonable grounds for suspecting to be committing an offence.

(2) If a constable has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it.

(3) If an offence has been committed, a constable may arrest without a warrant-

- (a) anyone who is guilty of the offence;
- (b) anyone whom he has reasonable grounds for suspecting to be guilty of it.

(4) But the power of summary arrest conferred by subsection (1), (2) or (3) is exercisable only if the constable has reasonable grounds for believing that for any of the reasons mentioned in subsection (5) it is necessary to arrest the person in question.

(5) The reasons are-

- (a) to enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his name is his real name);
- (b) correspondingly as regards the person's address;
- (c) to prevent the person in question-
  - (i) causing physical injury to himself or any other person;
  - (ii) suffering physical injury;
  - (iii) causing loss of or damage to property;
  - (iv) committing an offence against public decency (subject to subsection (6)); or
  - (v) causing an unlawful obstruction of the highway;
- (d) to protect a child or other vulnerable person from the person in question;
- (e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question;
- (f) to prevent any prosecution for the offence from being hindered by the disappearance of the person in question.

(6) Subsection (5)(c)(iv) applies only where members of the public going about their normal business cannot reasonably be expected to avoid the person in question.

## **24A Arrest without warrant: other persons**

(1) A person other than a constable may arrest without a warrant-

- (a) anyone who is in the act of committing an indictable offence;

(b) anyone whom he has reasonable grounds for suspecting to be committing an indictable offence.

(2) Where an indictable offence has been committed, a person other than a constable may arrest without a warrant-

(a) anyone who is guilty of the offence;

(b) anyone whom he has reasonable grounds for suspecting to be guilty of it.

(3) But the power of summary arrest conferred by subsection (1) or (2) is exercisable only if-

(a) the person making the arrest has reasonable grounds for believing that for any of the reasons mentioned in subsection (4) it is necessary to arrest the person in question; and

(b) it appears to the person making the arrest that it is not reasonably practicable for a constable to make it instead.

(4) The reasons are to prevent the person in question-

(a) causing physical injury to himself or any other person;

(b) suffering physical injury;

(c) causing loss of or damage to property; or

(d) making off before a constable can assume responsibility for him."

(2) Section 25 of PACE (general arrest conditions) shall cease to have effect.

(3) In section 66 of PACE (codes of practice), in subsection (1)(a)-

(a) omit "or" at the end of sub-paragraph (i),

(b) at the end of sub-paragraph (ii) insert"or

(iii) to arrest a person;"

(4) The sections 24 and 24A of PACE substituted by subsection (1) are to have effect in relation to any offence whenever committed.

### **111 Powers of arrest: supplementary**

Schedule 7, which supplements section 110 by providing for the repeal of certain enactments (including some which are spent) and by making further supplementary provision, has effect.

#### *Exclusion zones*

### **112 Power to direct a person to leave a place**

(1) A constable may direct a person to leave a place if he believes, on reasonable grounds, that the person is in the place at a time when he would be prohibited from entering it by virtue of-

(a) an order to which subsection (2) applies, or

(b) a condition to which subsection (3) applies.

(2) This subsection applies to an order which-

(a) was made, by virtue of any enactment, following the person's conviction of an offence, and

(b) prohibits the person from entering the place or from doing so during a period specified in the order.

(3) This subsection applies to a condition which-

(a) was imposed, by virtue of any enactment, as a condition of the person's release from a prison in which he was serving a sentence of imprisonment following his conviction of an offence, and

(b) prohibits the person from entering the place or from doing so during a period specified in the condition.

(4) A direction under this section may be given orally.

(5) Any person who knowingly contravenes a direction given to him under this section is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 4 on the standard scale, or to both.

(6) A constable in uniform may arrest without warrant any person he reasonably suspects is committing or has committed an offence under subsection (5).

(7) Subsection (6) ceases to have effect on the commencement of section 110.

(8) In subsection (3)(a)-

(a) "sentence of imprisonment" and "prison" are to be construed in accordance with section 62(5) of the Criminal Justice and Court Services Act 2000 (c. 43);

(b) the reference to a release from prison includes a reference to a temporary release.

(9) In this section, "place" includes an area.

(10) This section applies whether or not the order or condition mentioned in subsection (1) was made or imposed before or after the commencement of this section.

#### *Search warrants*

### **113 Search warrants: premises**

(1) PACE is amended as follows.

(2) Section 8 (power to authorise entry and search of premises) is amended as provided in subsections (3) and (4).

(3) In subsection (1)-

(a) in paragraph (b), for "specified in the application" substitute "mentioned in subsection (1A) below",

(b) in paragraph (e), at the end add "in relation to each set of premises specified in the application".

(4) After subsection (1) insert-

"(1A) The premises referred to in subsection (1)(b) above are-

(a) one or more sets of premises specified in the application (in which case the application is for a "specific premises warrant"); or

(b) any premises occupied or controlled by a person specified in the application, including such sets of premises as are so specified (in which case the application is for an "all premises warrant").

(1B) If the application is for an all premises warrant, the justice of the peace must also be satisfied-

(a) that because of the particulars of the offence referred to in paragraph (a) of subsection (1) above, there are reasonable grounds for believing that it is necessary to search premises occupied or controlled by the person in question which are not specified in the application in order to find the material referred to in paragraph (b) of that subsection; and

(b) that it is not reasonably practicable to specify in the application all the premises which he occupies or controls and which might need to be searched."

(5) Section 15 (search warrants- safeguards) is amended as provided in subsections (6) to (8).

(6) For subsection (2)(b) substitute-

"(b) to specify the matters set out in subsection (2A) below; and".

(7) After subsection (2) insert-

"(2A) The matters which must be specified pursuant to subsection (2)(b) above are-

(a) if the application is for a specific premises warrant made by virtue of section 8(1A)(a) above or paragraph 12 of Schedule 1 below, each set of premises which it is desired to enter and search;

(b) if the application is for an all premises warrant made by virtue of section 8(1A)(b) above or paragraph 12 of Schedule 1 below-

(i) as many sets of premises which it is desired to enter and search as it is reasonably practicable to specify;

(ii) the person who is in occupation or control of those premises and any others which it is desired to enter and search;

(iii) why it is necessary to search more premises than those specified under sub-paragraph (i); and

(iv) why it is not reasonably practicable to specify all the premises which it is desired to enter and search."

(8) For subsection (6)(a)(iv) substitute-

"(iv) each set of premises to be searched, or (in the case of an all premises warrant) the person who is in occupation or control of premises to be searched, together with any premises under his occupation or control which can be specified and which are to be searched; and".

(9) In section 16 (execution of warrants)-

(a) after subsection (3) insert-

"(3A) If the warrant is an all premises warrant, no premises which are not specified in it may be entered or searched unless a police officer of at least the rank of inspector has in writing authorised them to be entered.",

(b) in subsection (9), after paragraph (b) add-

"and, unless the warrant is a specific premises warrant specifying one set of premises only, he shall do so separately in respect of each set of premises entered and searched, which he shall in each case state in the endorsement.",

(c) in subsection (12), for "the premises" substitute "premises".

(10) Schedule 1 (special procedure) is amended as follows.

(11) In each of paragraphs 2(a)(ii) and 3(a), at the end add ", or on premises occupied or controlled by a person specified in the application (including all such premises on which there are reasonable grounds for believing that there is such material as it is reasonably practicable so to specify);".

(12) In paragraph 3(b), for "the premises" substitute "such premises".

(13) In paragraph 12-



(a) in sub-paragraph (a)(ii), after "fulfilled" insert "in relation to each set of premises specified in the application",

(b) at the end add "or (as the case may be) all premises occupied or controlled by the person referred to in paragraph 2(a)(ii) or 3(a), including such sets of premises as are specified in the application (an "all premises warrant")".

(14) After paragraph 12 insert-

"12A The judge may not issue an all premises warrant unless he is satisfied-

(a) that there are reasonable grounds for believing that it is necessary to search premises occupied or controlled by the person in question which are not specified in the application, as well as those which are, in order to find the material in question; and

(b) that it is not reasonably practicable to specify all the premises which he occupies or controls which might need to be searched."

(15) In paragraph 14(a), omit "to which the application relates".

#### **114 Search warrants: other amendments**

(1) PACE is amended as follows.

(2) In section 8 (power to authorise entry and search of premises), after the subsection (1B) inserted by section 113(4) of this Act insert-

"(1C) The warrant may authorise entry to and search of premises on more than one occasion if, on the application, the justice of the peace is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which he issues the warrant.

(1D) If it authorises multiple entries, the number of entries authorised may be unlimited, or limited to a maximum."

(3) Section 15 (search warrants- safeguards) is amended as provided in subsections (4) to (7).

(4) In subsection (2)(a)-

(a) omit "and" at the end of sub-paragraph (i),

(b) at the end of sub-paragraph (ii) insert "and",

(c) after that sub-paragraph insert-

"(iii) if the application is for a warrant authorising entry and search on more than one occasion, the ground on which he applies for such a warrant, and whether he seeks a warrant authorising an unlimited number of entries, or (if not) the maximum number of entries desired;"

(5) In subsection (5), at the end add "unless it specifies that it authorises multiple entries".

(6) After subsection (5) insert-

"(5A) If it specifies that it authorises multiple entries, it must also specify whether the number of entries authorised is unlimited, or limited to a specified maximum."

(7) For subsection (7) substitute-

"(7) Two copies shall be made of a specific premises warrant (see section 8(1A)(a) above) which specifies only one set of premises and does not authorise multiple entries; and as many copies as are reasonably required may be made of any other kind of warrant."

(8) In section 16 (execution of warrants)-

(a) in subsection (3), for "one month" substitute "three months",

(b) after the subsection (3A) inserted by section 113(9)(a) of this Act, insert-

"(3B) No premises may be entered or searched for the second or any subsequent time under a warrant which authorises multiple entries unless a police officer of at least the rank of inspector has in writing authorised that entry to those premises.",

(c) for subsection (10) substitute-

"(10) A warrant shall be returned to the appropriate person mentioned in subsection (10A) below-

(a) when it has been executed; or

(b) in the case of a specific premises warrant which has not been executed, or an all premises warrant, or any warrant authorising multiple entries, upon the expiry of the period of three months referred to in subsection (3) above or sooner.

(10A) The appropriate person is-

(a) if the warrant was issued by a justice of the peace, the designated officer for the local justice area in which the justice was acting when he issued the warrant;

(b) if it was issued by a judge, the appropriate officer of the court from which he issued it."

(9) In Schedule 1 (special procedure), in paragraph 17, for "a Circuit judge" substitute "a judge of the High Court, a Circuit judge, a Recorder".

#### *Fireworks*

### **115 Power to stop and search for prohibited fireworks**

(1) Section 1 of PACE (powers of constables to stop and search) is amended as follows.

(2) In subsection (2), for "or any article to which subsection (8A) below applies" substitute ", any article to which subsection (8A) below applies or any firework to which subsection (8B) below applies".

(3) In subsection (3), for "or any article to which subsection (8A) below applies" substitute ", any article to which subsection (8A) below applies or any firework to which subsection (8B) below applies".

(4) In subsection (6), for "or an article to which subsection (8A) below applies" substitute ", an article to which subsection (8A) below applies or a firework to which subsection (8B) below applies".

(5) After subsection (8A) insert-

"(8B) This subsection applies to any firework which a person possesses in contravention of a prohibition imposed by fireworks regulations.

(8C) In this section-

(a) "firework" shall be construed in accordance with the definition of "fireworks" in section 1(1) of the Fireworks Act 2003; and

(b) "fireworks regulations" has the same meaning as in that Act."

#### *Photographing of suspects etc.*

### **116 Photographing of suspects etc.**

(1) Section 64A of PACE (photographing of suspects etc.) is amended as follows.

(2) After subsection (1) insert-

"(1A) A person falling within subsection (1B) below may, on the occasion of the relevant event referred to in subsection (1B), be photographed elsewhere than at a police station-

(a) with the appropriate consent; or

(b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.

(1B) A person falls within this subsection if he has been-

(a) arrested by a constable for an offence;

(b) taken into custody by a constable after being arrested for an offence by a person other than a constable;

(c) made subject to a requirement to wait with a community support officer under paragraph 2(3) or (3B) of Schedule 4 to the Police Reform Act 2002 ("the 2002 Act");

(d) given a penalty notice by a constable in uniform under Chapter 1 of Part 1 of the Criminal Justice and Police Act 2001, a penalty notice by a constable under section 444A of the Education Act 1996, or a fixed penalty notice by a constable in uniform under section 54 of the Road Traffic Offenders Act 1988;

(e) given a notice in relation to a relevant fixed penalty offence (within the meaning of paragraph 1 of Schedule 4 to the 2002 Act) by a community support officer by virtue of a designation applying that paragraph to him; or

(f) given a notice in relation to a relevant fixed penalty offence (within the meaning of paragraph 1 of Schedule 5 to the 2002 Act) by an accredited person by virtue of accreditation specifying that that paragraph applies to him."

(3) In subsection (4)(a), after "prosecution" insert "or to the enforcement of a sentence".

(4) In subsection (5), after paragraph (b) insert"; and

(c) "sentence" includes any order made by a court in England and Wales when dealing with an offender in respect of his offence."

(5) After subsection (6) insert-

"(6A) In this section, a "photograph" includes a moving image, and corresponding expressions shall be construed accordingly."

#### *Fingerprints and footwear impressions*

### **117 Fingerprints**

(1) Section 61 of PACE (fingerprinting) is amended as provided in subsections (2) to (4).

(2) After subsection (6) insert-

"(6A) A constable may take a person's fingerprints without the appropriate consent if-

(a) the constable reasonably suspects that the person is committing or attempting to commit an offence, or has committed or attempted to commit an offence; and

(b) either of the two conditions mentioned in subsection (6B) is met.

(6B) The conditions are that-

(a) the name of the person is unknown to, and cannot be readily ascertained by, the constable;

(b) the constable has reasonable grounds for doubting whether a name furnished by the person as his name is his real name.

(6C) The taking of fingerprints by virtue of subsection (6A) does not count for any of the purposes of this Act as taking them in the course of the investigation of an offence by the police."

(3) In subsection (7), for "or (6)" substitute ", (6) or (6A)".

(4) In subsection (7A)-

(a) after "police station," insert "or by virtue of subsection (6A) at a place other than a police station,"

(b) in paragraph (a), after "an officer" insert "(or, in a subsection (6A) case, the constable)".

(5) In section 63A of PACE (fingerprints and samples: supplementary provisions)-

(a) after subsection (1) insert-

"(1ZA) Fingerprints taken by virtue of section 61(6A) above may be checked against other fingerprints to which the person seeking to check has access and which are held by or on behalf of any one or more relevant law-enforcement authorities or which are held in connection with or as a result of an investigation of an offence.",

(b) in subsection (1A), after "subsection (1)" insert "and (1ZA)".

(6) Section 64 of PACE (destruction of fingerprints and samples) is amended as follows.

(7) In subsection (1A), for "or the conduct of a prosecution" substitute ", the conduct of a prosecution or the identification of a deceased person or of the person from whom a body part came