Memorandum to the

Home Affairs Committee

Post-legislative assessment

of the

Police and Justice Act 2006

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MEMORANDUM TO THE HOME AFFAIRS COMMITTEE

POST-LEGISLATIVE ASSESSMENT OF THE POLICE AND JUSTICE ACT 2006

INTRODUCTION

1. This memorandum provides a preliminary assessment of the Police and Justice Act 2006 in line with the commitments given to Parliament by the then Leader of the House of Commons in Government in *Post-Legislative Scrutiny – the Government's Approach* Cm. 7320 on 20 March 2008.

SUMMARY OF OBJECTIVES

2. The Police and Justice Act 2006 is a statute whose provisions originate in the then Government's White Paper, *Building Communities, Beating Crime* (CM 6360) published on 9 November 2004 and debated by the House of Commons on that date. This White Paper's stated aim was a focus on attaining improved performance and responsiveness from the police service in the light of increased investment. Prominent amongst its aspirations was the national coverage of neighbourhood policing, an increased local responsiveness to the public and measures to improve the performance of police authorities. The Government of the day signalled provisions around the flexibility of the workforce, including the powers of police staff. A National Policing Improvement Agency (NPIA), to be professionally led and active in professional development and in providing operational support functions was included in the White Paper. As such, it was the legislative expression of the beginning of that Government's second phase of police reform.

3. Many of the statutory changes sought found their way into the Police and Justice Act 2006 (hereafter, "the Act".) Introduced into the House of Commons on 26 January 2006, it completed its parliamentary passage and received Royal Assent on 8 November 2006. While the statute has only 55 sections, it does have 15 schedules with extensive provisions. The following is a summary of the Act's provisions with a more detailed breakdown thereafter on objectives, implementation, any legal issues and the making of secondary legislation. A full list of secondary legislation under the Police and Justice Act 2006 can be found at the end of this document.

4. Under a title of *Police Reform* in Part 1 of the Act, principal provisions are the creation of the NPIA, amendments to the composition, functions and powers of delegation of police authorities and their status as best value authorities, the merging of pension schemes, and a provision to standardise the powers of community support officers.

5. Part 2 of the Act is entitled *Powers of Police etc* and concerns a number of technical amendments to these as well as accreditation for Trading Standards Officers to issue penalty notices for disorder. Part 3 of the Act contains additional measures the Government felt would be helpful in tackling anti-social behaviour. Part 4 concerns the five justice sector inspectorates, including Her Majesty's Inspectorate of Constabulary and provisions for joint action. The Bill as first published had provisions for a single criminal justice inspectorate.

6. Part 5 entitled *Miscellaneous* has a number of provisions and amendments for penalties and offences, including on computer crime, photographs of children as well as bail offences and amendments to extradition legislation. Part 6 is supplemental.

THE PROVISIONS

PART 1: POLICE REFORM

NATIONAL POLICING IMPROVEMENT AGENCY (SECTION 1 AND SCHEDULE 1)

7. Section 1 and Schedule 1 enact the creation of the NPIA as a non-departmental public body to replace the Central Police Training and Development Authority (CPTDA) and the Police Information Technology Organisation (PITO). Schedule 1 in particular sets out the objects, powers, governance, financial provisions and transfer schemes relating to the new Agency.

8. The Agency was established on 1 April 2007, subsuming PITO and the CPTDA, a number of other services and certain Home Office functions. It assumed many of the advice and guidance functions of both the Association of Chief Police Officers (ACPO) and the Home Office. It has a tripartite governance structure reporting to the Secretary of State, ACPO and the Association of Police Authorities (APA). The annual Business Plan sets out its main aims and key deliverables for each year. An Annual Report and Accounts are laid before Parliament. The NPIA is funded through grant-in-aid, but may also charge for the provision of services on a cost recovery basis. The Chief Executive has given evidence to the Home Affairs Committee at its invitation.

9. The NPIA has delivered on the role envisioned for it through its management of national police infrastructure (for example national communication systems such as Airwave and national databases as in the Police National Computer), building police capability (through training, procurement, and improvement and efficiency programmes) and providing operational expertise in specialist areas as required (e.g. forensics, IT and advanced search). It has delivered faithfully in the landscape in which it was set.

10. On 26 July 2011 the Government launched a consultation document *Policing in the 21st Century* with proposals for reviewing and reforming the policing landscape. As well as radical accountability and transparency, this Government stated its intention to phase out the NPIA as part of its commitment to reduce the number of Non-Departmental Public Bodies. Work is currently underway therefore to consider which of the functions currently performed by the NPIA it may be necessary to continue in the new landscape and how to do so.

POLICE FORCES AND POLICE AUTHORITIES (SECTIONS 2-4 AND SCHEDULE 2)

11. **Section 2 (Amendments to the Police Act 1996)** gives effect to Schedule 2 which makes amendments to the Police Act 1996, replacing the provisions in respect of the membership of police authorities. The Schedule gives powers to the Secretary of State to make provision as to the membership of police authorities both in and outside London by regulations. The Police Authority Regulations 2008 and the Metropolitan Police Authority Regulations 2008 were later issued under these powers, and corresponded with the provisions of those schedules.

12. The Police Authority Regulations 2008 removed the separate category of lay justice members of police authorities. Until then the local bench of magistrates appointed one third of the members of police authorities. The Regulations removed that and replaced it with a requirement that police authorities appoint at least one independent member who was a lay justice. Other changes were to remove the role of Home Secretary in appointing independent members of police authorities. Until this time the Home Secretary reviewed the list of candidates compiled by the selection panel and produced a shortlist from which the police authority made appointments – after the regulations came into force selection panels instead produced a shortlist for the police authorities.

13. The regulations also increased the number of police authority appointees on independent member selection panels from 1 to 3 and added a fifth member who had to be qualified in human resources so as to ensure greater propriety. The Metropolitan Police Authority Regulations made all the changes listed above, but also increased the role of the Mayor of London in making appointments, allowing him or her to either chair the authority or to appoint the chair from among the authority's members.

14. Later changes made by the Police Authority (Community Engagement and Membership) Regulations 2010 removed the Home Secretary's appointee from the selection panel, completely removing central Government influence over local appointments. They also provided that directly elected Mayors should sit on police authorities regardless of political balance, and provided that a police authority was able to remove its chairman without having to wait until the AGM. The regulations required police authorities to take into account the competency of councillors before appointing them to police authorities.

15. These changes removed central Government influence from local appointment procedures, and made police authorities, their chairs and their members more accountable to the public they served. However, the Government was still not content with the lack of accountability in policing governance, and introduced the Police Reform and Social Responsibility Bill into Parliament in December 2010. The Bill became an Act of Parliament on 15 September 2011. This Act will abolish police authorities and replace them with directly elected Police and Crime Commissioners. These provisions from the 2006 Act will be repealed by the Police Reform and Social Responsibility (PRSR) Act 2011.

16. Paragraph 14 of Schedule 2 amended the Police Act 1996 to make provision for police authorities, with the approval of the Secretary of State, to appoint more than one deputy chief constable. Paragraph 15 amended the same Act to require the chief constable of a force with more than one deputy chief constable to designate the deputy chief constables in the order in which he would wish them to exercise the powers of the chief constable in his or her absence. Paragraph 15 also amended the 1996 Act to require the chief constable to designate an assistant chief constable to exercise the chief constable's powers in his or her absence, where all of the force's deputy chief constables are also absent. These amendments came into force on Royal Assent in November 2006. The provisions amended by these paragraphs (sections 11A and 12A of the Police Act 1996) are being repealed by the Police Reform and Social Responsibility Act. However, the effect of these amendments is preserved in clauses 40 and 42 of the Act.

17. The provisions in the 2006 Act were made in anticipation of the formation of strategic (merged) police forces in the first half of 2007. In practice, while strategic forces were not formed as originally proposed, police authorities have since used the amendment in paragraph 14 to appoint deputy chief constables to oversee collaboration programmes at a regional level. For administrative purposes the officer is appointed by one of the authorities, but is funded by and works to a joint board across all the authorities involved in the collaboration.

18. The provision was employed in 2009 by the four forces in Wales to establish a senior ACPO role overseeing collaboration on behalf of the whole region, answering to all four Chief Constables but with clear responsibility for the management of shared assets. This move was recognised as a positive step which reflected the high level of importance being attached by some ACPO regions to collaborative working, in particular to strengthen the combined response to protective service functions. Although the appointment process was complicated by the lack of legislative provision to enable more than one police authority to influence the appointment, this was achieved by mutual consent. Similar appointments have subsequently followed in the Yorkshire and Humber region and in the East Midlands, both also regions where a strong and pro-active collaboration programme was flourishing.

19. Paragraph 16 of Schedule 2 amended section 15 of the Police 1996 so that all police staff employed solely to assist the force were under the direction and control of the Chief Officer, whereas previously the Chief Officer and police authority were able to agree not to place such a person under the Chief Officer's direction and control. The direction and control of other staff is left to the discretion of the police authority to agree with the Chief Officer as before. Paragraph 17 of the Schedule enabled the same staff to be placed under the direction and control of the Chief Officer of another force if they were to assist that force. These changes brought some degree of clarity to the confused lines of accountability in police staff. However, the Government do not think this was sufficient and from November 2012 onwards Chief Officers will be able to directly employ staff, rather than having direction and control of staff employed by police authorities.

20. Paragraphs 18-20 of Schedule 2 renamed 'police authority clerks' as 'police authority Chief Executives'. This recognised the changing role of police authorities over the preceding decades from committees of local authorities to independent bodies charged with several important functions. The change of name was to recognise the weight of the role, which had moved on substantially in that time. The Head of Staff in every police authority is now called a Chief Executive, and since this change an Association of Police Authority Chief Executives has been formed which has provided Government consistently over the last few years with expert and politically neutral advice on policing. Their contribution to police reform, including on the Police and Crime Commissioners policy has been very important. Although police authorities will be abolished as of November 2012, Police Authority Chief Executives will become the Chief Executives of the Police and Crime Commissioner's office.

21. Paragraphs 27-29 of Schedule 2 insert new sections 40, 40A and 40B into the 1996 Act to widen the sources of information that the Secretary of State can draw upon in deciding whether to exercise her powers to direct failing police forces and authorities. These would then include sources such as public enquiries rather than simply inspection reports. The amended powers place a duty upon the Secretary of State to consult Her Majesty's Inspectorate of Constabulary on the grounds for intervention and a duty to publish the Inspectorate's response. They also, by requiring evidence to be given to police authorities ahead of any direction being made, ensured these powers were only used as a last resort. Parliament would also have to be informed of any direction, as would the relevant Chief Officer and police authority. The provisions continued the power of the Secretary of State to set out by regulations the procedures to be followed in issuing directions, following consultation with ACPO and APA. These powers have never been used, but provide a vital backstop to ensure the public are protected. As such the powers will continue to apply both to police forces and Police and Crime Commissioners after November 2012.

22. **Section 3 (Delegation of police authority functions)** amends the Local Government Act 1972 to confer additional flexibility to police authorities to delegate their functions, in particular a power to delegate to an area committee or to an individual member of the authority. The provision also enables the Secretary of State to impose limitations on the kinds of functions that police authorities can delegate by area, on the make-up of area committees, and in respect of the officers and members of authorities to whom delegation can be made. The provisions contained in this section will be replaced by new provisions in the Police Reform and Social Responsibility Act setting out clearly which functions Police and Crime Comissioners can and cannot delegate.

23. Section 4 (Police authorities as best value authorities) amends section 1 of the Local Government Act 1999 to limit the extent to which the best value provisions of that Act apply to police authorities. In particular this section removes from police authorities the requirement to conduct best value reviews and publish best value performance plans. The overarching best value duty to make arrangements to secure continuous improvement efficiently and effectively would continue to apply. The Government is clear that Police and Crime Commissioners will replace bureaucratic accountability with democratic accountability and therefore has removed police authorities as best value authorities. Police and Crime Commissioners, introduced by the PRSR Act, will be required to produce Police and Crime Plans setting out the police and crime objectives for the area. The Police and Crime Commissioner will be required to publish both the Plan and an Annual Report setting out progress against the objectives outlined in the Plan. The Act introduces Police and Crime Panels which will be responsible for scrutinising the Plan.

POLICE PENSION SCHEMES (SECTION 5 AND SCHEDULE 3)

24. **Section 5 (Provision to enable merger of police pension schemes) and Schedule 3 (Power to merge police pension schemes)** provide a power to merge through a statutory instrument, the police pension scheme in England and Wales with that in Northern Ireland, to become one scheme. This is the main provision for the power to consolidate all regulations relating to the “old” 1987 police pension scheme to create a UK-wide pension scheme based on a single set of regulations, merging what are practically identical police pension schemes across the constituent parts of UK. This would provide a clearer and less burdensome basis to arrange the transfer of officers between the Police Service of Northern Ireland (PSNI) and one of the territorial forces (i.e. a “Home Office” force in England and Wales, or one of the Scottish territorial forces) in terms of pension.

25. The intention was to merge these schemes at the earliest opportunity, but this is dependent on implementation of a number of necessary amendments to the main regulations governing the 1987 police pension scheme in England and Wales and then to prepare the required

consolidation statutory instrument. This has yet to be done, but it would still be the Home Office's intention to make use of this power and merge the schemes, to create a UK-wide basis for the police pension scheme, when opportunity presents itself. The Home Office would intend to complete this process as early as possible in 2012.

STATUTORY CONSULTATION REQUIREMENTS (SECTION 6 AND SCHEDULE 4)

26. **Section 6 and Schedule 4 (Consultation with APA and ACPO)** amends provisions in existing legislation requiring consultation with persons representing the interests of police authorities or chief officers of police, before the Secretary of State exercises powers conferred by her in legislation. The effect of the amendments is to require consultation with the APA or ACPO instead. Section 6 also provides a power for the Secretary of State to amend by order (subject to the negative procedure) these consultation requirements, should other bodies represent these interests in the future, or if the APA or ACPO were to change its name. The PRSR Act will replace these provisions. The Act requires the Secretary of State- in connection with the exercise of any function relating to the police or policing- to obtain, and have regard to, advice from representative bodies which appears to her to represent the professional views of police forces, and makes a requirement for these bodies to give the advice within a specified period.

COMMUNITY SUPPORT OFFICERS ETC (SECTIONS 7-9 AND SCHEDULE 5)

27. These sections amended the Police Reform Act 2002 to create a standard set of Police Community Support Officer (PCSO) powers, in particular the discretionary power to deal with truants (section 8). Section 7(2)(1) enabled the Secretary of State by order to provide for provisions of Part 1 of Schedule 4 to the Police Reform Act (the PCSO powers) to apply to every person designated as a community support officer.

28. The Police Reform Act 2002 (Standard Powers and Duties of Community Support Officers) Order 2007 (SI 2007/3202) introduced a set of 22 standard powers for every person designated as a PCSO. Twenty powers remain discretionary. PCSOs have 20 standard powers (introduced on 1 December 2007 under Schedule 4 of the Police Reform Act) which apply to all PCSOs across England and Wales and then a range of discretionary additional powers which may be granted by the local Chief Constable should he/she feel they are required to tackle particular issues in their area, for example the power to detain or deal with begging.

29. Their limited set of powers allow PCSOs to spend more time in communities dealing with anti-social behaviour, engaging with the community – particularly young people - and freeing up officers to deal with more serious crime that requires their specific training and powers.

30. A 2010 Neighbourhood Policing Stocktake by the NPIA obtained returns from 22 forces on the powers they granted to PCSOs. Seven of those forces reported that they did not grant one or more of the standard powers. Powers not granted by more than one force were powers to: require name and address (2 forces), seize tobacco from a person aged under 16 (3), seize drugs and require name and address for possession of drugs (2), issue fixed penalty notices in respect of offences under dog control orders (3). Eight forces reported that they had granted the discretionary power to remove truants to their PCSOs.

31. **Section 9** gives effect to **Schedule 5 (Exercise of police powers by civilians).** This Schedule made a number of amendments to the Police Reform Act 2002, mostly necessitated by the changes made by sections 7 and 8. For example, paragraph 2(2) amends section 38(4)(c) of the Police Reform Act so that it speaks in terms of (discretionary) powers conferred or (standard powers) imposed.

PART 2: POWERS OF POLICE ETC

POLICE POWERS (SECTIONS 10-12 AND SCHEDULES 6 & 14)

32. **Section 10 and Schedule 6 (Police bail)** amended the Police and Criminal Evidence Act 1984 (PACE) to extend the power to attach conditions to police bail before charge to attend a police station to include bail granted: (a) to a detained person at a police station by the custody officer under section 37(2) of PACE for further investigation or under 37(7)(b) to consider action other than a charging decision; and (b) to an arrested person not at a police station ("street bail") by the arresting officer under section 30A of PACE.

33. The amendments allow the officer granting bail to impose conditions only if they appear necessary: (a) to secure that the person; (i) surrenders to custody; (ii) does not commit an offence while on bail, or (iii) does not interfere with witnesses or otherwise obstruct the course of justice; (b) for the person's own protection or, if they are under 17, for their own welfare, or own interests. When granting 'street bail', unlike bail granted at a police station, a surety or security may not be required. For enforcement purposes, the changes extended the power to arrest without warrant any person suspected of breaching any conditions of their pre-charge bail to include conditional 'street bail' and conditional bail under sections 37(2) and 37(7)(b) of PACE.

34. A person released on conditional bail must be given a copy of their conditions which also explains their right to apply to a custody officer or a magistrates' court for the variation of the conditions.

35. The purpose of the changes in the 2006 Act is to raise the value and effectiveness of pre-charge bail to the benefit of both police and the individual. The ability to impose conditions ensures, so far as possible, that a detainee spends as little time as necessary in police custody, for example whilst other avenues of the investigation are pursued, while the released person remains available but does not interfere with the investigation or otherwise break the law. This in turn allows the police to better manage and arrange the conduct of the investigation.

36. It was recognised and accepted that the use of conditional bail at a stage when there is insufficient evidence to charge would restrict the possibility of enforcement action following a breach of conditions. This is because the option to charge or to detain without charge for investigation may not always be possible. However, this is an operational consideration for the officer granting bail and does not detract from the value or the ability to impose conditions in appropriate circumstances. Informal correspondence and contact with the police service and the meetings and discussions concerning police bail which took place during the PACE Review process (see below for links) indicated that there have been many occasions when the extended powers to grant conditional bail have been used which have demonstrated that the intended objective has been achieved.

37. Since the PACE Review and following the introduction of the Police (Detention and Bail) Act 2011 on 12 July 2011, the Home Office has begun a formal review of the operational application by police of their powers to grant bail before charge. This will focus on the bail periods, the occasions when individual suspects are re-bailed for the same offence and the application of conditions to that bail. A consultation document is expected to be published towards the end of 2011.

38. The power of the custody officer to impose conditions when releasing a person on bail before charge for investigation at a stage when there was insufficient evidence to charge the person was considered in the case of The Queen on the Application of Torres (Claimant) -v- The Commissioner of Police of The Metropolis [2007] EWHC 3212 (Admin) see:
http://www.bailii.org/ew/cases/EWHC/Admin/2007/3212.html

39. This was a judicial review in which the court held that the power was confined to bail granted under section 37(2) of PACE and did not extend to bail granted under section 34 of PACE.

40. Although the judgment confirmed the words of the Act and upheld the power to grant conditional bail for further investigation, comments in the judgment indicated a need to consider further amendments to clarify the relationship between sections 37(2) and 34 of PACE. These were considered as part of the PACE Review which proposed that a further amendment should be considered to clarify the point. See paragraphs 11.18 to 11.20 of:

http://tna.europarchive.org/20100419081706/http://homeoffice.gov.uk/documents/cons-2008-pace-review/cons-2008-pace-review-pdf2835.pdf?view=Binary

41. The proposal is that the power to attach conditions to bail should be extended to include sections 34 and 40 of PACE. As indicated at page 23 of the outcome of the Review published in 2010, this is conditional upon a suitable legislative slot.
http://tna.europarchive.org/20100419081706/http://homeoffice.gov.uk/documents/cons-2008-pace-review/PACE-review-20102835.pdf?view=Binary
PACE Review website link:
http://tna.europarchive.org/20100419081706/homeoffice.gov.uk/documents/cons%2d2008%2dpace%2dreview/

42. **Section 11 and Schedule 14 (Power to detain pending DPP's decision about charging)** amends section 37(7) of PACE to make the custody officer responsible for determining on an individual basis whether a person should be detained or granted bail to await the outcome of the statutory charging decision made by the Director of Public Prosecutions (in practice a duty Crown Prosecutor (Crown Prosecution Service lawyer)).

43. Paragraphs 9 and 10 of Schedule 14 (minor and consequential amendments) make amendments to section 37B PACE (Consultation with the Director of Public Prosecutions). These apply if a person is not released on bail for the charging decision and allow notification of the CPS decision to be given orally and confirmed later in writing as an alternative to making the initial notification in writing. This is to avoid delay in implementing the charging decision.

44. The overall purpose of the amendments is to make it explicit that once the custody officer has determined that there is sufficient evidence to charge a detained person with an offence, that person may be kept in police detention without being charged whilst the CPS make a decision about charging without having to come back again to the police station on a later date. This provides savings for police time and resources and reduces the time it takes for cases to come before the courts.

45. The amendments do not impose a statutory time limit for detention. During the Parliamentary process, Ministers in both Houses explained that a statutory limit would be unnecessarily bureaucratic and inflexible, for example, when an extra five minutes may mean that the person can be charged, bailed and dealt with without having to come back again to the police station.

See Hansard; House of Commons 10 May 2006: Column 368
http://www.publications.parliament.uk/pa/cm200506/cmhansrd/vo060510/debtext/60510-0012.htm#06051057001079 and

House of Lords 4 July Column 196
http://www.publications.parliament.uk/pa/ld199697/ldhansrd/pdvn/lds06/text/60704-0836.htm

46. The changes have not been subject to legal challenge. However, their implementation on 15 January 2007 in advance of the Court of Appeal decision in G v Chief Constable of West Yorkshire [2008] EWCA Civ 28 on 5 February 2008, which held that the power did not exist under the law as it stood before the amendments, has ensured that the potentially adverse implications of that judgment never materialised. See http://www.bailii.org/ew/cases/EWCA/Civ/2008/28.html.

47. No problems have been reported and informal enquiries with the police and the CPS indicate that the provisions have achieved their intended purposes and continue to so operate.

48. **Section 12 (Power to stop and search at aerodromes)** amends section 24 of the Aviation Security Act 1982 to allow a constable to stop and search persons, vehicles and aircraft and anything that they contained for stolen or prohibited items at any aerodrome. A prohibited item is something that is made or adapted for use in criminal activity.

49. The power can only be used when a constable has a reasonable suspicion that he/she will find stolen or prohibited items. The power was introduced to address recommendations made by the Rt Hon Sir John Wheeler in his report on airport security, published by the Dept. for Transport in 2002.

50. Prior to the amendment, section 27 of the Aviation Security Act 1982 allowed the police to search individuals only at the 9 designated airports. The only exception was when the individual was in a publically accessible area, where the police could use their powers under section 1 of PACE. A number of subsections of section 27 of the Aviation Security Act 1982 were repealed by paragraph 8(4) of Schedule 14 of this act, as the amendments introduced in section 12 allows for the same powers to be used at all aerodromes rather than only designated airports.

51. The 9 designated airports covered in the previous legislation did not include a number of major UK airports such as Luton and East Midlands. With the continued expansion of regional airports in the UK, the Wheeler report identified that there were risks associated with the limitation of police search powers to only designated ports. These risks primarily come from serious and organised criminality and terrorism. The Wheeler report also recognised that staff corruption could contribute to such threats and search powers that could be used in non-public areas were needed. The National Security Strategy published in October 2010 recognises that these risks continue to pose a significant threat to the UK.

52. The changes have not been subject to legal challenge. No problems have been reported and informal enquiries with the police indicate that the provisions are vital to their activity in addressing airport related serious

criminality and terrorism. There is no national data available on the number of searches that are conducted under these provisions, as searches by a constable at an aerodrome are conducted under a number of powers.

INFORMATION FROM REGISTERS OF DEATH (SECTION 13)

53. The objective of **section 13 (Supply of information to police etc. by Registrar General)** is to prevent criminals using the identities of deceased people to commit fraud by disclosing death registration information to private sector organisations on a weekly basis in line with provision of such data to public sector bodies. In 2004 there were around 70,000 cases of "impersonation of the deceased" fraud annually with losses estimated at £300m. An exercise demonstrated that the data held by the Registrar General and passed to the Department of Work and Pensions could dramatically reduce the level of such fraud if passed to a private sector body like CIFAS. This provision sped up the process of death registration data reaching the public domain effectively closing the 12 week window during which fraudsters commit impersonation of the deceased fraud with reduced chance of detection.

54. The disclosure of death registration information (DDRI) scheme is administered, on behalf of the three registrars general, by the data delivery team in the General Register Office (England and Wales). Data is supplied weekly via an encrypted and password-protected disc. Organisations wishing to apply for a weekly supply of UK death registration data must meet legislative and security requirements. Successful applicants must sign a bespoke licence agreement which contains a number of compliance provisions on data, security measures and non-disclosure of confidential information. There is a fee for those who receive death registration information. During 2010 there were 10 customers in the scheme.

55. The Registrars General committed to undertake a review of the scheme around 12 months after it launched. That review took place last year and considered the following processes: application; security and business compliance; licence agreement renewal; marketing, products and fees; and delivery options. A number of recommendations were made with a timetable for implementation.

TRAVEL AND FREIGHT INFORMATION (SECTION 14)

56. **Section14 (Information-gathering powers: extension to domestic flights and voyages)** confers a power on the police across the UK to require carriers (airlines, ferry operators) to provide them with passenger, crew and service data on journeys that start and finish within the UK. The power is achieved by extending the provisions of section 32 of the Immigration, Nationality and Asylum Act 2006. Section 32 initially provided the power for the police to require carriers to provide passenger,

crew and service data for international journeys that began or ended in the UK. This power was required for the implementation of the UK e-Border programme.

57. The Home Secretary indicated at Commons 2nd Reading of the Police and Justice Bill 2006 that it was intended "to mirror provisions that we have made in respect of international journeys in the [then] Immigration, Asylum and Nationality Bill [...]. This power will greatly enhance the ability of the police to investigate serious organised crime and even terrorism." During the Lords 2nd reading Baroness Scotland for the Government explained that the power was intended "to help police gain effective intelligence on the movement of known terrorists and those involved in organised crime." During Commons Committee the Government made clear that the intention was to use the power selectively on specific domestic routes where there was an identifiable intelligence dividend to be obtained.

58. The power in section 14 is to be implemented by a negative resolution Statutory Instrument for each specified domestic route. The police identified that the particular circumstances of Northern Ireland, with the land border with the Republic of Ireland, meant there was a particular risk that individuals associated with international terrorism or serious organised crime could arrive in the Republic of Ireland and then cross the land border where there are no fixed immigration controls, before then continuing their journey in the UK without further checks. The Government therefore decided in 2008 to proceed with an SI for data on air and sea routes between Great Britain and Northern Ireland.

59. An impact assessment was completed and it was decided that a formal period of public consultation would be necessary in view of costs that would fall to carriers to record passenger and crew identity details on domestic journeys. Consultation was also necessary to agree suitable documents for passengers to verify their identity to carriers. For international journeys a passport or EU ID card is the normal identity document required. A passport requirement could not be applied for travel wholly within the UK. The Government's proposal to consult faced strong opposition. In the face of this opposition it was decided to postpone the consultation for a period.

60. In 2009 the Government considered again undertaking the consultation. The proposed timing of this exercise happened to coincide with the Government's attempt to reform the operation of the Common Travel Area (CTA) (UK, Ireland and the Crown Dependencies, where routine immigration controls are not permitted under UK law) through a clause in the then Borders, Citizenship and Immigration Bill. Among other things, the clause was intended to impose an identity document requirement on journeys made within the CTA where none had previously existed. The clause was withdrawn from the Bill in the face of opposition. The Government decided that it could not proceed with the implementation of an identity document requirement for journeys within the UK where it had decided not to impose such a requirement on international journeys

to/from the Republic of Ireland and the consultation on section 14 was abandoned.

61. The current Government has not yet taken a view on whether to retain section14.

FIXED PENALTY NOTICES (SECTIONS 15-16 AND SCHEDULE 7)

62. **Section 15 (Accreditation of weights and measures inspectors)** and **Schedule 7 (Schedule to be inserted into the Police Reform Act 2002)** insert (respectively) a new section 41A and a new Schedule 5A into the Police Reform Act 2002 ("the PRA").

63. New section 41A extends the range of people who may be accredited to issue penalty notices for disorder (PNDs) under Chapter 1of Part 1of the Criminal Justice and Police Act 2001 to weights and measures inspectors. Although it was already possible for a chief officer of police to give inspectors the power to issue notices via a community safety accreditation scheme, this section allows for direct accreditation, thus avoiding the complexities of the existing process.

64. New Schedule 5A to the PRA allows accredited weights and measures inspectors referred to in section 41A to issue penalty notices for specified offences without the need for a uniformed police officer to be present, to require persons suspected of committing a relevant offence to give their names and addresses, and to take photographs of such persons. These powers are in line with those given to other persons already accredited to issue PNDs. The power to ask for names and addresses helps to establish the identity of the suspect, and photographs can help disprove any later claim by them that they were not the recipient of the penalty notice.

65. **Section 16** of the 2006 Act inserts a new section 41B into the PRA allowing accreditation by a chief officer to be applied to other classes of persons by order, subject to the affirmative resolution procedure in Parliament. This would allow such persons to have the power to issue specified penalty notices for disorder. This power is to provide flexibility and greater scope to the PND scheme so that other classes of people may also gain from the use of penalty notices for dealing with minor offending.

66. We are aware of nine police forces accrediting trading standards officers (TSOs). Feedback shows that the provision has been welcomed by TSOs and accreditation has enabled weights and measures inspectors to issue PNDs themselves, eliminating the need for a police officer to be on standby for every operation.

CONDITIONAL CAUTIONS (SECTIONS 17-18)

67. **Section 17 (Conditional cautions: types of condition)** amended Part 3 of the Criminal Justice Act 2003, to widen the scope of the conditions that

can be attached to a conditional caution. Section 22(3) of the 2003 Act originally provided that the conditions which can be attached to a conditional caution must have the object of either facilitating the rehabilitation of the offender or ensuring the offender makes reparation for the offence.

68. Section 17(2) expanded the conditions attached to a conditional caution to include the object of punishing the offender. Section 17(3) inserts new sub sections (3A), (3B) and (3C) in section 22 of the 2003 Act. New sub section (3A) provides that the conditions that may be included in a conditional caution may include the imposition of a financial penalty and/or a requirement for attendance at a specified place at a specified time (which might include completion of a specified activity). New subsection (3B) provides that where a condition involves an attendance requirement this is limited to 20 hours. This limit does not apply to an attendance requirement as part of a rehabilitative condition. Subsection (3C) permits the 20 hour limit to be amended by order.

69. Section 17(4) inserts new section 23A into the 2003 Act. This new section makes provision for a 'financial penalty condition' and specifies that this condition may only be attached to a conditional caution given in respect of certain offences prescribed by order. The maximum amount of the penalty for each offence is specified by order.

70. Section 17(5) inserted additional provisions into section 330 of the 2003 Act to provide that orders made under section 22(3C) and certain orders under section 23A(4) would be subject to the affirmative resolution procedure.

71. Section 17 was commenced to a limited extent immediately before 8th July 2009 in the police areas of Cambridgeshire, Merseyside and Norfolk by the Police and Justice Act 2006 (Commencement No 11) Order 2009 No 1679 and on 16th November 2009 in the police areas of Hampshire and Humberside by the Police and Justice Act 2006 (Commencement No 12) Order 2009 No 2774. Both orders only commenced section 17(3) insofar as inserting section 22(3A)(a) of the 2003 Act (the financial penalty condition).

72. Section 17 has thus not been commenced nationally. Instead, the financial penalty condition has been piloted only within these five areas. Pilots ran until 25 January 2011 and are now subject to an assessment by the Ministry of Justice and a decision on national roll out.

73. **Section 18 (Arrest for failing to comply with conditional caution)** inserts sections 24A and 24B into the Criminal Justice Act 2003. Section 24A provides a power of arrest for a police constable where an offender has failed to comply with any condition attached to a conditional caution, together with other appropriate provisions, regarding charging and release, information to be provided to the offender and detention. Section 24B provides for the application of certain provisions of the Police and Criminal

Evidence Act 1984, modified as appropriate, in respect of a person arrested under section 24A.

74. Prior to the introduction of sections 24A and 24B in the Criminal Justice Act 2003 a constable had no power of arrest where a person has failed to comply with any condition. In practice this caused problems with investigating the non-compliance and charging the offender for the original offence as attendance at a police station could not be compelled.

75. Section 18 of the 2006 Act inserted sections 24A and 24B into the 2003 Act to provide that power of arrest together with other related provisions. This power was necessary to facilitate the management of offenders who fail to comply and ensure they are charged with the original offence where that is appropriate.

76. It is not possible to state how often the power of arrest provided by section 18 is used in practice. However, there were approximately 950 cases of non-compliance with a conditional caution in the year to October 2010, indicating that these powers are likely to be regularly used.

PART 3: CRIME AND ANTISOCIAL BEHAVIOUR

CRIME AND DISORDER (SECTIONS 19-22 AND SCHEDULES 8 & 9)

77. **Section 19 (Local authority scrutiny of crime and disorder matters)** of the Act extends the remit of local authorities to scrutinise the functions of Community Safety Partnerships (CSPs). **Section 20 (Guidance and regulations regarding crime and disorder matters)** gives the Secretary of State the power to issue guidance to local authorities and CSPs regarding section 19, and to make regulations supplementing section 19 in relation to various matters, including frequency of meetings and co-option of additional members. The National Assembly for Wales can issue guidance after consulting the Secretary of State, and the Secretary of State must consult the Assembly before making regulations.

78. These provisions were inserted to ensure that CSPs were held to account. The Secretary of State's powers in the Act ensure that ministers had some oversight of how crime and disorder scrutiny committees operate. There has been no formal assessment of these provisions but a 2009 survey conducted by the Centre for Public Scrutiny (to which 65% of local authorities responded) found that all areas indicated that local government scrutiny provides a useful function in terms of challenge and support.

79. **Section 21 (Joint crime and disorder committees)** extends the order-making power contained in section 5 of the Crime and Disorder Act (CDA) 1998 to enable the Secretary of State to require councils to appoint a joint committee to carry out crime and disorder scrutiny functions. This provision was put in place to ensure that where CSPs had formally merged, they were not subject to more than one crime and disorder scrutiny committee. However, no mergers of crime and disorder scrutiny

committees have taken place. We are in the process of identifying which local authorities want to merge their scrutiny committees.

80. **Section 22 and Schedule 9 (Amendments to the Crime and Disorder Act 1998)** amend the Crime and Disorder Act. Paragraph 2 of Schedule 9 enables the list of authorities responsible for strategies to be added to or otherwise changed. Paragraph 3 expands the scope of the crime and disorder reduction strategies to include combating the use of alcohol and other substances. Paragraph 4 expands the scope of the duty of bodies preventing crime and disorder to include the misuse of drugs, alcohol and other substances, anti-social behaviour and other behaviour adversely affecting the local environment. It also enables the appropriate national authority to extend the duty to other persons or bodies as required by order.

81. Paragraphs 5 to 7 place specified agencies in England and Wales under a duty to share data; it gives the Secretary of State the power to prescribe the definition of data in regulations. They also place a duty on the Fire and Rescue authorities to share information. Local partners often state that information sharing is one of the remaining barriers to effective partnership working. These provisions were put into place to address this issue.

PARENTING CONTRACTS AND PARENTING ORDERS (SECTIONS 23-25)

82. **Section 23 (Parenting contracts: local authorities and registered social landlords)** amends section 25 of the Anti-Social Behaviour Act 2003, inserting two new sections (25A and 25B) into Part 3 of the Anti-Social Behaviour Act 2003, which allows local authorities and registered social landlords to enter into Parenting Contracts with a parent of a child to prevent that child engaging in anti-social behaviour.

83. The effect of section 23 is that a local authority can apply for a Parenting Contract if it has reason to believe that: the child is engaged, or is likely to engage in anti-social behaviour; and the child resides in their area.

84. Another effect of this section is that a registered social landlord can apply for a Parenting Contract where that child's behaviour affects housing management functions of the housing association.

85. **Section 24 (Parenting orders: local authorities and registered social landlords)** amends section 26 of the Anti-Social Behaviour Act 2003, inserting three new sections (26A, 26B and 26C) into Part 3 of the Anti-Social Behaviour Act 2003, which allows local authorities and registered social landlords to apply for Parenting Orders in the magistrates' court or the county court if there were already proceedings involving the individual.

86. Local authorities can apply to the court for a Parenting Order on the same grounds as they can enter into a Parenting Contract.

87. A housing association can apply for Parenting Orders in similar situations but must first consult with the local authority in the area to ensure that a Parenting Order is not already in place or that other action is not planned.

88. Section 26C covers procedures for applications in county court proceedings under 26A and 26B.

89. **Section 25 (Contracting out of local authority functions with regard to parenting contracts and parenting orders)** amends section 28 of the Anti-Social Behaviour Act 2003, inserting a new section (28A) into Part 3 of the Anti-Social Behaviour Act 2003, which allows local authorities to contract out certain functions under or by virtue of sections 23 and 24.

90. These provisions (sections 23-25) were brought into force on 29 June 2007. There has been no assessment of how the provisions have worked in practice. Although there have been a few academic studies on parenting contracts and orders not on these provisions in particular.

INJUNCTIONS (SECTIONS 26-27 AND SCHEDULE 10)

91. **Section 26 (Anti-social behaviour injunction)** substitutes a new section 153A into the Housing Act 1996, which gives social landlords powers to apply for injunctions to prohibit housing-related anti-social behaviour which affects their management of their stock. This section enables housing-related anti-social behaviour injunctions (ASBIs) to be granted without a particular individual being named as someone adversely affected by the conduct referred to in the injunction. An injunction may be granted in respect of conduct which is not described by reference to any person or persons at all.

92. There has been no formal assessment of how the provision has worked in practice. However, we know that social landlords have found ASBIs a useful tool in combating housing related ASB. Available data suggests that the provision has been very useful to landlords who can now protect victims of ASB by not having to name them in applications for ASBIs.

93. Earlier this year, the Home Office set out proposals to streamline and improve the formal powers available to the police and others to tackle anti-social behaviour, including the ASBI. The proposals include introducing a 'Crime Prevention Injunction' – a preventative civil court order designed to stop anti-social behaviour quickly before it escalates, and available to the police and local authorities as well as social landlords.

94. **Section 27 (Injunctions in local authority proceedings: power of arrest and remand)** operates on provisions which provide that the courts can attach a power of arrest to ASBIs in certain cases but fails to make provision for what happens when a person is arrested, which means that a

person arrested has to be released on bail pending a court hearing. This may cause problems because of the subsequent behaviour of the person who has been arrested, or because the victim(s) of the anti-social behaviour may believe that the matter will not be taken seriously or dealt with swiftly. Section 27 gives the court the power to remand a person in custody pending trial, where he has been arrested for breach of such injunction.

95. There has been no formal assessment of how the provision has worked in practice. However, anecdotal evidence suggests that the provision has been helpful where it is necessary to protect victims and witnesses of serious ASB from further intimidation or violence by ensuring that the perpetrators are remanded in custody when they are arrested for breaching the conditions of their injunction.

PART 4

INSPECTORATES (SECTIONS 28-33)

96. Part 4 of the Police and Justice Act 2006 relates to inspectorates. The Act placed the previously voluntary collaboration within a legislative framework by establishing a statutory responsibility on each of the inspectorates to:

- co-operate with each other and other named inspectorates;
- draw up a joint inspection programme and associated framework;
- consult the Secretary of State, other inspectorates and named stakeholders in the formulation of the plan; and
- delegate authority to inspect such organisations to each other or other public authorities as appropriate.

97. The inspectorates publish inspection frameworks and an annual programme of the inspections they intend to carry out, either as individual inspectorates or jointly with other criminal justice inspectorates. The inspection programmes of each inspectorate are subject to consultation with ministers, other inspectorates and other key stakeholders as set out in the legislation. The programme of inspections is published in each inspectorate's business plan.

98. Her Majesty's Inspectorate of Court Administration (HMICA) was established in 2005 and closed administratively in December 2010. Her Majesty's Courts Service was established as a single body responsible for the administration of all courts and with the establishment of Her Majesty's Court and Tribunal Service (HMCTS), for the administration of all courts and tribunals.

99. The Government proposes to abolish HMICA on the grounds that it is no longer appropriate for an independent body to provide oversight of purely administrative functions and because there are other arrangements in place to ensure effective administration. The Government is committed to joint inspection of the criminal justice system. It is proposed that functions

will be transferred from HMICA to the other criminal justice inspectorates to enable future joint criminal justice inspections to include inspection of HMCTS. The Public Bodies Bill includes provision for functions to be transferred from abolished bodies.

100. New provisions set out in the Police Reform and Social Responsibility Act allow for Her Majesty's Inspectorate of Constabulary ("HMIC") to become a more independent inspectorate, acting in the public interest, and include:

- giving Police and Crime Commissioners (PCCs) the power to request an inspection of their police force but the PCC must pay the inspectors the costs incurred;
- amending section 54 of the Police Act 1996 by removing the requirement for HMIC to report to the Secretary of State, thus emphasising that they report for the benefit of the public;
- removing the requirement for the Secretary of State to publish HMIC reports and instead requiring HMIC to arrange publication and send a copy to the PCC, the chief officer, and the Police and Crime Panel;
- removing the power of the Secretary of State to direct by order the time when HMIC should prepare an inspection programme;
- providing for HM Chief Inspector of Constabulary, rather than the Secretary of State, to lay before Parliament, publish and distribute the inspections framework and programme;
- giving the Secretary of State the power to specify by order matters which the Chief Inspector must have regard to in preparing HMIC's inspection framework and programme;
- enabling the Secretary of State to ensure that inspections address policing issues of national importance and do not place an undue burden on police forces; and
- creating a new right of access to police information and premises for HMIC.

101. HMIC will continue to monitor and inspect police performance and publish an annual report on policing. HMIC will also continue to conduct a risk-based inspection programme based on strategic concerns. The Home Office is also working with HMIC to make them the gateway for all police inspections to help coordinate and manage the impact on forces, and prevent duplication of inspections.

102. A long history of collaborative working between the criminal justice inspectorates - of Constabulary, CPS, Court Administration (subsequently abolished in 2010), Prisons, and Probation – was placed on a statutory footing by the Police and Justice Act 2006.

103. The Chief Inspectors of the criminal justice inspectorates meet on a quarterly basis to discuss joint working and that group, the Criminal Justice Chief Inspectors Group (CJCIG), meets twice a year with the Solicitor General and ministers responsible for policing, prisons and probation for

their input to the joint business planning process. The CJCIG is the vehicle for enabling the inspectorates to meet their statutory responsibilities in respect of joint inspection.

104. The CJCIG publishes a programme of joint inspection which has been subject of consultation with key stakeholders, other inspectorates and Government. Although published annually, the programme is designed to be delivered within a two year period.

105. A key benefit of joint inspection is its ability to examine processes and activities which cross boundaries between, or otherwise involve, two or more criminal justice agencies. This focus allows us to better relate individual or joint activities to outcomes, and to identify efficiencies, good practice and barriers to service.

PART 5: MISCELLANEOUS

BAIL OFFENCES (SECTION 34)

106. **Section 34 (Sentences of imprisonment for bail offences)** changes the nature of a Bail Act offence so any committal to custody for such an offence is not a sentence of imprisonment. This would make such an offence akin to the way contempt of court is dealt with (not being a sentence of imprisonment). These provisions were introduced to prevent the custody plus provisions applying to bail offences. Clause 72 of the Legal Aid, Sentencing and Punishment of Offenders Bill will repeal the custody plus provisions and therefore, as an associated and now redundant provision, section 34 will also be repealed.

COMPUTER MISUSE (SECTIONS 35-38)

107. The changes made to the Computer Misuse Act 1990 ("the CMA") through the Police and Justice Act 2006 were intended to upgrade the CMA to meet the challenges of the changing technical environment in which online crime was being committed, and to ensure that UK legislation is sufficient to meet the requirements of the Council of Europe Cybercrime Convention, which the UK is seeking to ratify.

108. The key changes were to:

- increase the maximum sentence from one to two years for the offence in section 1 CMA offence (unauthorised access to computer material)
- increase to ten years the maximum sentence for the offence in section 3 CMA (unauthorised attempts to impair the operation of a computer)
- create a new offence in section 3A of the CMA of making, supplying or obtaining articles for use in computer misuse offences.

109. The House of Lords Science & Technology Committee considered the changes to the CMA as part of their review into "Personal Internet

Security" in 2007/8. The Committee asked whether the creation of the new section 3A offence would lead to those who had legitimate reason for creating tools to commit offences, such as security testers, being penalised. This was addressed by CPS guidance on the new offence, which made clear that the authorised use of such tools would not be considered an offence.

110. The changes made to the CMA have made the UK compliant with the Cybercrime Convention, in the areas the changes were focussed on. The CMA remains the principal legislation for prosecuting cyber crime, and the enhancing of the Act to allow for the prosecution of those making, supplying and using tools to carry out CMA offences has ensured that the UK does have appropriate legislation to prosecute those suspected of doing so.

FORFEITURE OF INDECENT PHOTOGRAPHS OF CHILDREN (SECTIONS 39-40 AND SCHEDULES 11 & 12)

111. **Section 39 (Forfeiture of indecent photographs of children: England and Wales)** amended sections 4 and 5 of the Protection of Children Act 1978 ("the PCA 1978") and inserted a Schedule to the PCA 1978 (see Schedule 11 to the Police and Justice Act 2006). Section 39 provided a mechanism for the forfeiture of indecent photographs or pseudo photographs held by the police closing a very small "loophole" in the law relating to the forfeiture of indecent images of children.

112. Prior to this change, section 4 of the PCA 1978 allowed the court to issue a warrant authorising the police to enter premises, search for and seize any articles which they had reasonable cause to believe to be or to include indecent photographs or pseudo-photographs of children. That section laid an obligation on the police to bring articles not returned before the court so that their fate could be considered.

113. However, if the articles were discovered and seized under a warrant other than a section 4 PCA 1978 warrant (for example following a search under the Police & Criminal Evidence Act 1984) forfeiture could not proceed under PCA 1978. The only possible alternative would have been to use section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 and seek a deprivation order. However, those powers could only be used following a conviction.

114. If the case did not fit into any of the above circumstances, for example, a seizure during a fraud investigation that did not result in a conviction, there was no power of forfeiture in relation to the images and the articles may have had to have been returned to the offender.

115. Section 39 and Schedule 11 closed the loophole, giving the police a wider power of forfeiture regardless of the powers of seizure used to obtain the articles. The reforms additionally remove the obligation under PCA 1978 to produce all items for forfeiture at court: thereby freeing up

court and police time. The courts should now only become involved if there were to be a formal challenge against the decision of the police to forfeit. The courts then have the power to order forfeiture, return or separation of articles, including copying of legal data.

116. In addition the reforms allow forfeiture to apply to articles that are impossible to separate from illegal data: for example legal data held alongside illegal data on a computer hard drive.

117. These provisions came into effect on 1 April 2008. An informal evaluation of their effectiveness was carried out by the Ministry of Justice in autumn 2009. The Ministry of Justice consulted the police forces represented on the Combating Child Abuse Images Working Group (CCAI) which is chaired by the ACPO, on the effectiveness of the powers and on the Ministry's guidance notes to the police. The consultation results showed that the new powers were, as expected, used in limited circumstances, in the main when suspects had been cautioned or where no prosecution had taken place.

118. The powers, and guidance notes, were positively received and forces reported no problems with the new forfeiture mechanisms. One force reported that the powers had "vastly simplified and placed on a secure legal footing" the forfeiture process. Another described the mechanism as an "excellent piece of legislation that has really helped to close down a legal loophole", and suggested the new system "will significantly lead to the improved protection of children."

119. In summary following a limited consultation with major stakeholders the forfeiture powers under section 39 and Schedule 11 were shown to be being used effectively, appropriately and in the circumstances for which they were created.

INDEPENDENT POLICE COMPLAINTS COMMISSION (SECTION 41)

120. Historically whilst immigration officers and some officials of the Secretary of State had police-like enforcement powers (for instance they were given the power of arrest in 1971) they worked alongside and in tandem with police officers who would ordinarily take the lead in using those powers. However, working practices changed and in response to this the Government decided that if such powers are to be exercised by immigration officers and officials routinely and independently from the police, levels of scrutiny similar to those in place for the police would be required.

121. The Independent Police Complaints Commission (IPCC) agreed to take on responsibility for the independent oversight of serious complaints and incidents arising where police-like enforcement powers have been used (or should have been used and were not) by immigration officers and officials. Regulations came into force on 25 February 2008 and were

subsequently amended in August 2009 (due to machinery of Government changes) and then April 2010 (to extend remit to include contractors).

122. **Section 41** of the Police and Justice Act 2006 **(Immigration and asylum enforcement functions: complaints and misconduct)** provides for the IPCC to carry out a similar role to that it performs in respect of police forces in England and Wales where it examines police complaint handling procedures and undertakes or supervises investigations of conduct and complaints.

123. Permission to seek judicial review is being sought at the time of writing but details are not yet known.

124. Section 41 has strengthened the oversight of UK Border Agency staff exercising specified enforcement functions in England and Wales. In practice this has seen 34 referrals to the IPCC since February 2008 of which 6 have been referred back to the Agency to resolve outside of the Regulations; 25 have been resolved locally by the Agency, 2 have been resolved under the management of the IPCC and 1 case has been independently investigated by the IPCC.

EXTRADITION (SECTIONS 42-43 AND SCHEDULE 13)

125. **Section 42 (Amendments to the Extradition Act 2003 etc)**. Part 1 of this section introduced Schedule 13 which contained a number of technical amendments to the Extradition Act 2003 ('the 2003 Act') to ensure its effective operation. Part 2 of section 42 amended other Acts with a link to extradition. These amendments were suggested by authorities involved in the extradition process, again to ensure the efficient operation of the legislation – such as the Serious Organised Crime Agency, CPS, Metropolitan Police Service and the City of Westminster Magistrates' Court[1]. Although it is difficult to measure the effectiveness of what are principally technical amendments, no significant deficiencies in these amendments have been brought to the attention of the Home Office since the legislation entered into force.

126. Paragraph 3 concerns extradition requests for persons transferred to the UK from the International Criminal Court (ICC) to serve a sentence imposed by the ICC. Should the UK receive such a request, the consent of the President of the ICC would need to be sought before the District Judge (in European Arrest Warrant cases) or the Secretary of State (concerning extradition requests from non-EU territories) could order extradition. If the President of the ICC does not consent, the person must be discharged from extradition proceedings.

[1] The City of Westminster Magistrates' Court is the only court which hears EAW and extradition proceedings in England and Wales.

127. With the exception of the 'forum' amendments to the 2003 Act (paragraphs 4 and 5 of Schedule 13), the provisions of this Schedule came into force on 15 January 2007. From the 8 November 2007 onwards there was the option to enact the forum bar to extradition. These provisions in the Police and Justice Act 2006 could be commenced by order. The Police and Justice Act also provides a mechanism pursuant to which Parliament can, by passing a motion in both Houses, require the Government to lay such an order. This mechanism has never been used.

128. The 'forum' amendments have been the subject of significant parliamentary debate since 2006. The amendments are now being considered as part of a wider review of the UK's extradition arrangements, as explained below.

129. On 8 September 2010, the Government announced that it had commissioned an independent review into the UK's extradition arrangements to ensure they operate effectively and in the interests of justice. The review is being led by Sir Scott Baker, assisted by Anand Doobay and David Perry QC.

130. The panel invited written submissions from both organisations and practitioners involved in the extradition process and the public. The deadline for these views to be submitted was 31 January 2011. Recently the panel heard oral evidence from individuals and organisations with experience of, or interest in, the extradition process and met with officials from Scotland, the Netherlands, the EU and USA. The Review panel reported to the Home Secretary on the 30 September and the report will be published in October when the House returns.

131. **Section 43 (Designation of the United States of America)** made provision for an amendment to be made to the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003 (S.I. 2003/3334) that would have removed the United States of America from the list of territories designated by the order. The practical effect of such an amendment would have been to require the US to provide *prima facie* evidence in support of extradition requests made to the UK. This provision was inserted in view of the fact that the 2003 extradition treaty between the UK and the US that relaxed the prima facie evidence requirement had not been ratified at the time at which the Bill was being taken through Parliament.

132. In view of this concern, the power to commence section 43 was time limited so that an order bringing the provision into force could not have been made within 12 months of the Police and Justice Act 2006 coming into force. This was in order to give the UK and the US 12 months in which to ratify the 2003 extradition treaty. Section 43 also provided that the power to commence this provision could not be exercised once the 2003 US-UK Extradition Treaty was ratified. As the 2003 Treaty has now been ratified this provision is no longer of any practical effect.

REPATRIATION OF PRISONERS (SECTION 44)

133. The Repatriation of Prisoners Act 1984 (the 1984 Act) governs the repatriation of prisoners to and from the United Kingdom for the purpose of serving a prison sentence. Section 1(1)(c) of the Act required a prisoner to give his or her consent before transfer could take place. If a prisoner withheld that consent then transfer could not proceed. Since enactment of the 1984 Act international prisoner transfer arrangements have been put in place which provide for the transfer of a prisoner without the consent of the person concerned where that individual was also subject to a Deportation Order. As the Act stood the UK could not ratify these arrangements.

134. **Section 44 (Enabling repatriation of prisoners without consent)** of the Police and Justice Act amended section 1(1)(c) of the 1984 Act. A prisoner's consent to transfer would only be required where that consent is required by the relevant international arrangement. Following the enactment of the Police and Justice Act, the United Kingdom ratified the Additional Protocol to Council of Europe Convention on the Transfer of Sentenced Persons which provides for transfer without the consent of the person concerned, and has concluded bilateral "no consent" prisoner transfer agreements with Libya and Rwanda. Council Framework Decision 2008/909/JHA governing the transfer of prisoners between Member States of the European Union, enters into force from December this year. It also provides for transfer without consent. It is the intention of the Government to negotiate further compulsory prisoner transfer agreements where this is possible. Negotiations are currently underway with Nigeria.

LIVE LINKS (SECTIONS 45-48)

135. **Section 45 (Attendance by accused at certain preliminary or sentencing hearings)** extended the existing power to direct defendants in custody to appear at preliminary hearings over a live link from prison, so as to allow defendants also to appear by live link (if they consented): in sentencing hearings; and in preliminary hearings where the defendant is at a police station, whether in police detention, or having returned there in answer to 'live link bail' under **section 46 (Live link bail)**; this arrangement is known as the 'Virtual Court'.

136. **Section 47 (Evidence of vulnerable accused)** provides for the giving of evidence over a link by vulnerable defendants at their trial. This is one of several special measures (similar to those that apply to vulnerable witnesses) adopted following the ECHR case of *SC*[2] to assist defendants whose understanding is so limited that they would not otherwise be able to participate in their trial.

137. **Section 48 (Appeals under Part 1 of the Criminal Appeal Act 1968)** enables the Court of Appeal Criminal Division to direct appellants in custody to attend their appeal by way of a live link.

[2] [*SC v UK* (Application no. 60958/00)]

138. These provisions were brought into force nationally on 15th January 2007, except for section 46 and section 45 insofar as it applies to police stations (the 'Virtual Court'), implementation of which cannot take place without a related commencement order (on an area by area basis). So far, the provisions can only be used in London and Kent. We are currently trialling Virtual Courts (where a defendant is charged in a police custody suite to appear in a magistrates' court for a first hearing by means of a video link while still physically located in a police station) before Ministers decide on whether to extend the provision to further areas in early 2012.

139. The Virtual Court was piloted between May 2009 and May 2010 in one magistrates' court and fifteen police stations in London and one magistrates' court and a police station in North Kent. In the Virtual Court qualifying defendants did not have to physically attend the first hearing in the magistrates' court, but remained in the police station with a video link to the court. The pilot assessment considered the cost effectiveness, speed and justice outcomes of the pilot sites compared to the traditional courts over the period from January to April 2010, as well as the implications of rolling out the scheme nationally.

140. The findings indicate that the pilot was successful in reducing the average time from charge to first hearing, failure to appear rates and prisoner transportation and police cell costs. However, further work will be undertaken to look at how savings can be increased.

141. Taking on board the recommendations of the evaluation, a trial operational period was introduced to allow London and North Kent an opportunity to make further changes to their operating models; specifically to see if a more cost-effective business case could be identified (by increasing the number of cases and reducing technology costs). We are monitoring progress by assessing key indicators and we are capturing practitioner experiences and perceptions in a qualitative exercise.

142. We are keen to test in two further areas and Commencement Orders have been put in place (SI 2011/2144 and SI2011/ 2149) to allow testing to commence in Cheshire and Hertfordshire this autumn. London and Kent will also extend their operation of the Virtual Court to further areas. The further tests will help inform Ministerial decisions on next steps in early 2012.

143. The Virtual Court forms part of the CJS Efficiency Programme which is seeking to improve how we move information around the criminal justice system; ensure that we streamline and remove unnecessary bureaucracy; and making the best possible use of our existing combined assets (be this IT, buildings, money or people).

Commencement Orders
UK

The following commencement orders have been made.

Police and Justice Act 2006 (Commencement No 1, Transitional and Saving Provisions) Order 2006, SI 2006/3364
Police and Justice Act 2006 (Commencement No 1, Transitional and Saving Provisions) (Amendment) Order 2007, SI 2007/29
Police and Justice Act 2006 (Commencement No 2, Transitional and Saving Provisions) Order 2007, SI 2007/709
Police and Justice Act 2006 (Commencement No 3) Order 2007, SI 2007/1614
Police and Justice Act 2006 (Commencement No 1) (Northern Ireland) Order 2007, SI 2007/2052
Police and Justice Act 2006 (Commencement No 4) Order 2007, SI 2007/2754
Police and Justice Act 2006 (Commencement No 5) Order 2007, SI 2007/3073
Police and Justice Act 2006 (Commencement No 6) Order 2007, SI 2007/3203
Police and Justice Act 2006 (Commencement No 1) (Wales) Order 2007, SI 2007/3251
Police and Justice Act 2006 (Commencement No 7 and Savings Provision) Order 2008, SI 2008/311
Police and Justice Act 2006 (Commencement No 1, Transitional and Saving Provisions) (Amendment) Order 2008, SI 2008/617
Police and Justice Act 2006 (Commencement No 8) Order 2008, SI 2008/790
Police and Justice Act 2006 (Commencement No 9) Order 2008, SI 2008/2503
Police and Justice Act 2006 (Commencement No 10) Order 2008, SI 2008/2785
Police and Justice Act 2006 (Commencement No 1) (England) Order 2009, SI 2009/936
Police and Justice Act 2006 (Commencement No 11) Order 2009, SI 2009/1679
Police and Justice Act 2006 (Commencement No 2) (Wales) Order 2009, SI 2009/2540
Police and Justice Act 2006 (Commencement No 12) Order 2009, SI 2009/2774
Police and Justice Act 2006 (Commencement No 13) Order 2010, SI 2010/414

Scotland

Police and Justice Act 2006 (Commencement) (Scotland) Order 2007, SSI 2007/434

Other secondary legislation made under the 2006 Act

Section 13(1)(d)

Supply of Information (Register of Deaths) (England and Wales) Order 2008, SI 2008/570Supply of Information (Register of Deaths) (Northern Ireland) Order 2008, SI 2008/700

Section 20
Crime and Disorder (Overview and Scrutiny) Regulations 2009, SI 2009/942
Crime and Disorder (Overview and Scrutiny) (Amendment) Regulations 2010, SI 2010/616

Section 41
UK Border Agency (Complaints and Misconduct) Regulations 2010, SI 2010/782
Section 51
Police and Justice Act 2006 (Supplementary and Transitional Provisions) Order 2006, SI 2006/3365.
Police Authorities (Particular Functions and Transitional Provisions) Order 2008, SI 2008/82.
Policing Plan Regulations 2008, SI 2008/312.
Police and Justice Act 2006 (Supplementary and Transitional Provisions) (Amendment) Order 2008, SI 2008/619.

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