



Memorandum to the  
Home Affairs Committee  
Post-Legislative Assessment  
of the  
Serious Organised Crime and Police Act 2005



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Presented to Parliament  
by the Secretary of State for the Home Department  
by Command of Her Majesty

November 2010

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# **MEMORANDUM TO THE HOME AFFAIRS SELECT COMMITTEE POST-LEGISLATIVE ASSESSMENT OF THE SERIOUS ORGANISED CRIME AND POLICE ACT 2005**

## **INTRODUCTION**

1. This memorandum provides a preliminary assessment of the Serious Organised Crime and Police Act 2005 (Ch.15) and has been prepared by the Home Office for submission to the Home Affairs Select Committee. It is published as part of the process set out by the previous Government in the document *Post Legislative Scrutiny – The Government’s Approach* (Cm 7320). The current Government has accepted the need to continue the practice of post legislative scrutiny as it supports the coalition aim of improving Parliament’s consideration of legislation.

## **OBJECTIVES OF THE SERIOUS ORGANISED CRIME AND POLICE ACT 2005**

2. The previous Government published the White Paper *One Step Ahead: A 21st Century Strategy to Defeat Organised Crime* (Cm 6167) in March 2004. The White Paper set out the Government’s three-pronged strategy for tackling organised crime, namely, reducing the profit incentive, disrupting the activities of criminal enterprises and increasing the risk to the major players of being caught and convicted. The Serious Organised Crime and Police Act 2005 (the 2005 Act), which received Royal Assent on 7th April 2005, implemented the legislative proposals in the White Paper. The Act also included a variety of other measures, for example, relating to police powers and public order, which are referred to in the following text.

## **THE PROVISIONS**

### **PART 1: THE SERIOUS ORGANISED CRIME AGENCY**

3. Part 1 of the Act created the Serious Organised Crime Agency (SOCA) setting out all the legislative underpinnings which were necessary to establish a completely new law enforcement agency, as envisaged in the White Paper. These provided for its establishment, its functions and arrangements for its oversight. Operational matters were made the responsibility of the Director General working to strategic priorities determined by the Home Secretary. The Director General was given the power to designate SOCA staff as having the powers of a constable, an officer of Revenue and Customs or an immigration officer and gave the Agency a wide ranging ability to disclose and to have disclosed to it, information relevant to its functions.

4. The Serious Crime Act 2007 merged the key functions of the Assets Recovery Agency with SOCA and improved proceeds of crime legislation. The merger took effect on 1st April 2008. The UK Human Trafficking Centre (UKHTC) became part of SOCA on 1st April 2010 to provide it with a long term legal status. SOCA was already working closely with the UKHTC on combating human trafficking.

5. The legislative basis for SOCA has not been found to be wanting in any significant way but the Government believes that, while SOCA has developed intelligence, analytical and enforcement capabilities, there is room for improvement. Accordingly we have announced that we will establish a National Crime Agency (NCA) which will build on those capabilities but better connect them to those within the police service, HM Revenue and Customs, the UK Border Agency and a range of other criminal justice partners. The NCA will be led by a senior chief constable and will be responsible for improving what is known about the threat from organised crime; providing effective national tasking and co-ordination; ensuring more law enforcement activity takes place against more organised criminals; and strengthening border policing arrangements.

## **PART 2: INVESTIGATIONS, PROSECUTIONS AND OTHER MEASURES**

6. The organised crime White Paper proposed a number of new powers to assist SOCA, the police and HMRC in disrupting and dismantling organised criminal groups.

### ***Chapter 1 (Sections 60-70) – Investigatory Powers of DPP, etc.***

7. Sections 60-70 introduced investigatory powers which had previously only been available to the Serious Fraud Office and the Assets Recovery Agency. These allow police constables, designated SOCA staff, and officers of Revenue and Customs acting under the supervision of the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions and the Lord Advocate to compel individuals in certain circumstances to answer questions, provide information, or produce documents. The power does not extend to legally privileged matters and there is a saving to prevent a person incriminating themselves.

8. Guidance to Scottish police forces was issued by the Scottish Crime and Drug Enforcement Agency (formerly the Scottish Drug Enforcement Agency) in September 2005 in advance of the provisions coming into effect. We understand that no disclosure notices have been issued in Scotland.

### ***Chapter 2 (sections 71-75) – Offenders Assisting Investigations and Prosecutions***

9. This provided a statutory framework for giving ‘Queen’s Evidence’ in England, Wales and Northern Ireland under arrangements supervised by specified prosecutors. Statutory powers have clear benefits over the existing common law provisions, as the Court of Appeal recognised in *R v P & Blackburn [2007] EWCA Crim 2290* – principally in that they provide for a more structured and transparent system. The key differences compared with the non-statutory mechanisms are:

- The creation of a scheme of express cooperation agreements specifically and separately considered by an identified prosecutor;
- The ability to refer a sentence back to the court where promised cooperation has not been forthcoming.

10. The Crown Prosecution Service (CPS) has issued guidance to prosecutors on the use of the provisions, the content of which is kept under review and amended when necessary.

11. Since 2006 the CPS has issued 2 immunities and 7 restricted use undertakings under these provisions. In addition, there have been 31 written agreements with assisting offenders under section 73 for the purposes of obtaining a guilty plea and facilitating a sentence discount. Since the provisions came into force there have been no immunities or restricted use undertakings under the pre-existing common law powers.

12. Section 113 of the Coroners and Justice Act 2009 amended sections 71 and 72 of the 2005 Act to ensure that these powers can only be used for the investigation or prosecution of serious criminal offences. While a person who assists the authorities under these powers can

be offered immunity or a restricted use undertaking or sentence reduction agreement for any offence, the assistance must be in relation to the investigation or prosecution of an offence that is capable of being tried in the Crown Court (that is, it is either an indictable only offence or triable either way).

13. That amendment was made because it was considered desirable to make explicit the existing intention that the provisions are to be used only in obtaining assistance in respect of serious offences, particularly in view of the extension of the powers to two additional authorities as described below.

14. Section 113 added to the list of “specified prosecutors” who can use the above statutory powers the Financial Services Authority and the Secretary of State for Business, Innovation and Skills. Because those authorities are not superintended by the Attorney General, their power to grant immunity from prosecution was made subject to the consent of the Attorney General. They may delegate the powers within their respective organisations only to one prosecutor and a nominated deputy to act in that person’s absence. Their addition to the list reflects the fact that both prosecute serious financial crime, such as insider dealing and major frauds, under a number of Acts.

15. Also added was a power for the Attorney General to issue guidance to all “specified prosecutors” about the exercise by them of these powers, to ensure consistency of approach and proper liaison in the event of overlapping interests, should the Attorney consider such guidance necessary.

16. The amendments to sections 71-75 came into force on 6 April 2010.

### ***Chapter 3 (sections 76-81) – Financial Reporting Orders***

17. Section 76 introduced as part of the sentence that may be imposed on offenders convicted of specified fraud and organised criminal lifestyle offences, a new financial reporting order. This order is available at the point of sentence. It imposes requirements on offenders to provide, on a regular basis, details of their income and assets as the court sets out. In certain circumstances, the orders may operate for a maximum of 20 years from the point of sentence.

18. Section 76(4) confers a power of the Secretary of State to amend the list of qualifying offences for a financial reporting order by order subject to the affirmative resolution procedure. The Serious Organised Crime and Police Act 2005 (Amendment of Section 76(3)) Order 2007 (SI 2007 No 1392) added to the offences in respect of England and Wales.

19. As at February 2010, SOCA was managing 72 financial reporting orders under Part 2 Chapter 3 of the Act all of which were court issued. SOCA is the main agency to apply for these orders, but they are available to all agencies involved in the sentencing of offenders.

### ***Chapter 4 – (sections 82-94) – Protection of Witnesses and other persons***

20. Chapter 4 placed existing arrangements for the protection of witnesses and others on a statutory footing. The organised crime White Paper made it clear that if defendants were

to co-operate against their co-conspirators, they needed strong assurance in respect of their safety. A review of witness protection arrangements ended in September 2004. That review concluded that the case had not been made out for a national witness protection agency, but instead recommended rationalising witness protection arrangements by consolidating force units on a regional basis and having a central unit to provide assistance nationally to the regional units.

21. Guidance and training was provided to police officers. Home Office Circular 9/2006 can be found at: <http://www.homeoffice.gov.uk/about-us/home-office-circulars/circulars-2006/009-2006/>

22. The provisions are being reviewed as part of a more general review of national witness protection legislation which started in April 2010.

23. The legislation is helping to ensure more consistent decisions are made across forces on who should be accepted onto a Witness Protection Scheme. The Ministry of Justice understands from contact with police forces that these provisions are generally working in accordance with the original objectives. The new offences (for disclosing information relating to protection arrangements) are an effective prevention tool for managing potential breaches in security arrangements. The duty of care provision on public bodies is helping officers to set up witness protection arrangements more quickly, efficiently and effectively thus making the best possible use of resources.

#### ***Chapter 5 (sections 95-96) – International Obligations***

24. Section 95 amended section 9 of the Criminal Justice (International Cooperation) Act 1990 which provides for the enforcement of overseas forfeiture orders. As a result the UK can provide assistance to other designated countries by enforcing a forfeiture order made by an overseas court in respect of anything used or intended for use in connection with the commission of the offence (an instrumentality).

25. The order-making power under section 96 enables the implementation of any obligations of the UK resulting from the Council Framework Decision of July 2003 on the execution in the European Union of orders freezing property or evidence.

#### ***Chapter 6 (sections 97 – 109) – Proceeds of Crime***

26. Section 97 gives the Secretary of State order making powers to enable magistrates' courts to make confiscation orders under the Proceeds of Crime Act 2002. The confiscation order is subject to a restriction that the amount does not exceed £10,000. We are currently considering the best way to take forward implementation of this power in a way that supports value for money and respects civil liberties.

27. Sections 98 and 99 made amendments to the civil recovery provisions in the Proceeds of Crime Act 2002. This included the creation of property freezing orders which did not require the appointment of an interim receiver; these are now widely used by SOCA. These provisions also enable defendants to have regulated access to their frozen assets in order to fund the cost of their representation; regulations were made in the form of the Proceeds of Crime Act

2002 (Legal Expenses in Civil Recovery Proceedings) Regulations 2005 (SI 2005 No 3382). Sections 100 and 101 made adjustments to the forfeiture of cash scheme

28. Sections 102 to 107 made a number of amendments to the money laundering provisions within the Proceeds of Crime Act. Section 102 of the Act provides a defence to money laundering offences where the person knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a country or territory outside the United Kingdom, and where the criminal conduct was not unlawful under the criminal law applying in that country or territory at the time it occurred. The defence does not apply where the relevant conduct is of a type described by an order made by the Secretary of State. The Proceeds of Crime Act 2002 (Money Laundering: Exceptions to Overseas Conduct Defence) Order 2006 (SI 2006 No. 1070) sets out the exceptions and includes, for example, various gambling-related offences.

29. Section 103 allows deposit-taking bodies to continue to operate accounts without the need to seek consent from SOCA under Part 7 of the Proceeds of Crime Act 2002. This applies to transactions below £250 or such higher threshold amount as may be specified by order by the Secretary of State.

30. Section 105 amended section 339 of the Proceeds of Crime Act 2002. The Secretary of State has an order making power to prescribe the form and manner in which disclosures about money laundering should be made to SOCA.

### **PART 3: POLICE POWERS ETC.**

31. Part 3 of the 2005 Act further amended the police powers set out in the Police and Criminal Evidence Act 1984 (PACE) and extended the powers of Community Support Officers (CSOs) and other persons designated or accredited under the provisions of Part 4 of the Police Reform Act 2002.

32. Sections 110, 111, 113 and 114 and Schedule 7 revised the framework of arrest and search powers in PACE. In particular they provided for a constable to have a single power of arrest for all offences which is subject to a necessity test rather than seriousness and, in the case of search warrants, extended the provisions for issuing warrants to search premises and seize evidence as well as introducing an extension to the specific premises warrant to cover more than one set of premises. At the same time, Schedule 7 provided for the terms 'arrestable offence' and 'serious arrestable offence' to be replaced by 'indictable offence'

33. Section 112 introduced a new offence of failing to obey a police direction to leave an exclusion area. Home Office Circular 29/2005 explained the content and scope of section 112 of the Act and advised that the provisions came into force on 1 July 2005. The provisions apply to those offenders, both adult and juveniles, who have had an exclusion requirement imposed as part of a community sentence, a suspended sentence order or a licence condition on release from custody. The offence carries the power of arrest without warrant.

34. Sections 120 and 121 introduced staff custody officers. The amendments to PACE and the Police Reform Act 2002 were not commenced and with one exception, they have been repealed by Part 13 of Schedule 7, and Part 13 of Schedule 8, to the Policing and Crime Act 2009 with effect from 12 January 2010.

35. This repeal was as a result of concerns raised by the Police Federation of England and Wales, the Police Superintendents' Association, Liberty and the Law Society that responsibility for custody under PACE and the Codes should not be handed to non-sworn police staff and that management of custody suites should remain with police sergeants. The then police Minister acknowledged this and gave assurance that the legislation to implement custody staff officers would be reversed in statute at the earliest opportunity.

36. Apart from sections 120 and 121, the final outcome of the PACE Review which was published on 4 March 2010 (see Annex B for the link to it and the preceding consultation document and the previous Government's reply) indicated that the changes to PACE and the Codes arising from the 2005 Act have achieved their objectives in providing police with up-to-date powers to detect, prevent and investigate crime more effectively and efficiently.

37. Guidance, including references to litigation and other material relevant to Part 3, is listed in Annex B.

## **PART 4: PUBLIC ORDER AND CONDUCT IN PUBLIC PLACES ETC.**

38. Part 4 strengthened the protection afforded by the criminal and civil law against acts of harassment, trespass on sites of national importance and unauthorised demonstrations in the vicinity of Parliament.

### ***Harassment***

39. Section 125 of the 2005 Act amended the Protection of Harassment Act 1997 to create a new offence of harassment intended to deter lawful activities. Section 126 inserted section 42A of the Criminal Justice and Police Act 2001 which is a new offence of harassment etc of a person in his home. Section 127 amended section 42 of the Criminal Justice and Police 2001 to provide the police with an additional power to direct a person to leave the vicinity and not return within such a period as a constable may specify which can be up to 3 months.

40. These sections resulted from the then Government's published strategy for countering animal rights extremists – 'Animal Welfare: Human Rights - Protecting People from Animal Rights Extremists' (July 2004). The Government announced that it was intending to strengthen the law to tackle campaigns of harassment by animal rights extremists and create a new offence of harassment of a person in their home. It also flagged its intention to consider new offences of causing economic damage to the suppliers of firms or research organisations engaged in the legitimate and licensed use of animals. It had already made several changes to the law to strengthen the protection it affords against animal rights extremists. For example, section 42 of the Criminal Justice and Police Act 2001 introduced police directions stopping the harassment of a person in his home. The Anti-social Behaviour Act 2003 amended the definition of a public assembly in section 16 of the Public Order Act 1986 from "20 or more persons in a public place which is wholly or partly open to the air" to 2 persons. The 2003 Act also extended the offence of aggravated trespass to cover trespass in buildings. In July 2005, as part of the strategy to eradicate the threat from animal rights extremism, a number of additional measures came into force to strengthen the protection of the law against the criminal activities of animal rights extremists.

### **Trespass on Designated Sites**

41. Sections 128 to 131 introduced a new offence of trespass on sites designated by the Secretary of State. This followed a number of intrusions into Royal premises in recent years which had resulted in no formal prosecutions.

42. The following orders were made:

- The Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) Order 2007 (SI 2007 No. 930)
- The Serious Organised Crime and Police Act 2005 (Designated Sites) Order 2005 (SI 2005 No. 3447)

The first Order designated 16 Royal, governmental and parliamentary sites as ones to which the offence of criminal trespass would apply. The second Order designated 13 Ministry of Defence sites on the grounds of national security (Ministry of Defence legislation).

- The Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) (Amendment) Order 2007 (SI 2007 No. 1387)

This Order amended SI 2007 No. 930 by making minor changes to one of the designation maps.

43. Section 12 of the Terrorism Act 2006 amended the 2005 Act so that all licensed nuclear sites were included in the designation under sections 128-129.

44. The Joint Committee on Human Rights (JCHR) expressed concern about the provisions of sections 128-131 during the legislative process. It stated, in its report on the Bill, “the power...may extend to open land as well as buildings and their immediate vicinity, and so far as it restricts people’s access to land to which they would otherwise have had rights of access for purposes of pleasure or political action it may engage the right to freedom of peaceful assembly and freedom of expression under ECHR Articles 10 and 11”. The Committee further described the powers as “a sledgehammer to crack a nut”. The Home Office replied “the crux of the matter is that any order made in exercise of the power complies with the ECHR. In exercising these provisions full account will be taken of any ECHR issues which will be balanced against the security and operational needs of the site”. The JCHR was not content with this response and drew the attention of both Houses to the clauses. During Standing Committee, the then Minister gave the assurance “The legislation is designed to address a particular set of circumstances, specifically mischief, although we are not in the business of using that as a catch-all to enable a wide designation of sites across the country”.

45. In 2009, the JCHR once more raised the powers in its Report *Demonstrating respect for rights? A human rights approach to policing protest*: “Many of the concerns which we expressed during the passage of the Bill which became the Serious Organised Crime and Police Act 2005 have been borne out in practice: we do not have confidence that section 128 has been implemented in a manner compatible with Convention rights, or that appropriate safeguards are in place to secure compatibility”. It recommended that the sections be repealed, and the Chairman tabled an amendment to the Policing and Crime Bill to that effect. The Government rebutted this claim, stating “The Secretary of State is already required to designate only sites that are deemed “appropriate” to protect in the interests of national security. This decision is subject to parliamentary scrutiny. Assurances given at the time that the power to designate sites for criminal trespass would be used sparingly have been adhered to strictly”.

46. These powers have been used occasionally, and any prosecution must be authorised by the Attorney General.

### ***Demonstrations in the Vicinity of Parliament***

47. Sections 132 to 138 introduced a new offence of demonstrating without police authorisation in a designated area around Parliament. Proposals by the previous Government to repeal these in the Constitutional Reform and Governance Bill fell at the final stages. The Government is currently reviewing Sections 132 to 138.

### ***Anti-Social Behaviour Orders***

48. Sections 139 to 143 contain provisions relating to Anti-Social Behaviour Orders (ASBOs). In particular, they lifted the automatic reporting restrictions in Youth Courts in relation to proceedings for breach of an ASBO. Guidance can be found at:

[http://www.asb.homeoffice.gov.uk/uploadedFiles/Members\\_site/Articles/Enforcement\\_tools\\_and\\_powers/Changes\\_to\\_legislation/SeriousOrganisedCrimeandPoliceAct2005\\_SOCAGuidance\\_HomeOffice30June2005.doc](http://www.asb.homeoffice.gov.uk/uploadedFiles/Members_site/Articles/Enforcement_tools_and_powers/Changes_to_legislation/SeriousOrganisedCrimeandPoliceAct2005_SOCAGuidance_HomeOffice30June2005.doc)

### ***Parental Compensation Orders***

49. Section 144 and Schedule 10 provided for magistrates' courts in England and Wales and Northern Ireland to make parental compensation orders (PCOs) on application by a local authority or person specified by the Secretary of State in the case of Northern Ireland. The PCO is available where a child under the age of 10 has taken or caused loss or damage to property in the course of behaving anti-socially or committing an act that would have been criminal if he were 10 or over.

50. Guidance on Parental Compensation Orders was issued in October 2006 by the Home Office in conjunction with the then Department for Education and Skills.

## **PART 5: MISCELLANEOUS**

### ***Interference with Activities of Animal Research Organisations***

51. In July 2005, as part of the then strategy to eradicate the threat from animal rights extremism, two new offences came into force to strengthen the protection of the law against the criminal activities of animal rights extremists. Section 145 created a new offence of interference with contractual and similar relationships with the intention of harming an animal research organisation. Section 146 created a further offence criminalising the intimidation of specified persons connected with an animal research organisation. Section 148 defines 'an animal research organisation' for the purpose of the 2005 Act. Section 147 contains the penalties for offences, and section 149 contains a power for the legislation to be extended by means of affirmative resolution and describes the circumstances in which that power may be used. To date this order making power has not been used. However, if the tactics used by animal rights extremists to close down or interfere with animal research organisations were used by other extremist groups to target other sectors, the order could extend similar protection to those targets.

52. A number of leading animal rights extremists have been convicted of offences under sections 145 and 146 and have received significant custodial sentences. The legislative measures introduced in 2005, combined with a cross-departmental strategy of the then Government to combat the criminal activities of animal rights extremism and the appointment of a National Coordinator for Domestic Extremism, has led to a decrease in criminal activity. Consequently, the legislative measures put in place have been used less frequently than originally envisaged. Nevertheless the threat of animal rights extremism remains and the tactics employed have been copied by other single issue groups who, for example, have been convicted of harassment of people in their homes after staging protests at the home of targets.

53. The Joint Committee on Human Rights in its 8th report of session 2004-05 on the Serious Organised Crime and Police Bill expressed concern about the amendments to the Protection from Harassment Act 1997 and their impact on political protests. The guidance provided in Home Office Circular 34/2005 issued on 1 July 2005 sought to address concerns of the JCHR. The circular can be found at: <http://www.homeoffice.gov.uk/about-us/home-office-circulars/circulars-2005/034-2005/>

### ***Vehicle Registration and Road Traffic Offences***

54. Sections 150 to 152 introduced a new offence of using an incorrectly registered vehicle and conferred powers on the police to require the production of vehicle registration documents and to seize vehicles driven by someone who does not have appropriate insurance or a valid driving licence. Section 150 inserted a new section 43C into the Vehicle Excise and Registration Act 1994 (VERA). The power under the new section 43C(6) to make regulations prescribing, varying or revoking exceptions to application of the new provision has not been used. Section 151 inserted a new section 28A into VERA. It provides constables and persons authorised by the Secretary of State with a power to require a person using a vehicle to produce the registration document issued in respect of that vehicle on demand. The regulation making

power under section 28A(12) has not been used. Section 152 inserted a new section 165A and 165B into the Road Traffic Act 1988. These concern the power of constables to immediately seize vehicles which are detected as being used by uninsured drivers or drivers who do not have a valid licence, and for the vehicle to be removed, released or disposed of in accordance with regulations made by the Secretary of State. The regulations that have been made are the Road Traffic Act (Retention and Disposal of Seized Motor Vehicles) Regulations 2005/1606 and the Road Traffic Act (Retention and Disposal of Seized Motor Vehicles) (Amendment) Regulations 2008/2097.

55. Section 153 enables the police to have access to insurance industry data relating to vehicles whose use is no longer insured. The purpose of this power is to support police exercising the seizure power referred to in paragraph 54. The nature of the information, how it is supplied and how it can then be used is governed by regulations. These are the Disclosure of Vehicle Insurance Information Regulations 2005/2833.

56. Section 154 amended the provisions of the Road Traffic Act 1988 that relate to evidential breath tests at the road side. These are not yet possible because they can only be conducted by use of a type approved device and for scientific/technical reasons it has not yet been possible to approve such a device.

57. Sections 155 and 156 enable payments to be made to police authorities in relation to the enforcement of certain traffic offences; such payments would be funded from revenue from fixed penalty notices. Section 155(4) gives power to make regulations changing the offences to which section 155 relates. This has not been used. The purpose of this power was to provide funding for developing the use of enforcement using Automatic Number Plate Recognition technology (ANPR). The netting off arrangement ended on 31st March 2006.

58. With the exception of section 154, the provisions in the 2005 Act relating to vehicle registration and road traffic offences have essentially fulfilled expectations. The use of ANPR technology has increased significantly and up to 180,000 vehicles a year are being seized for no insurance, with significant impact on uninsured driving.

59. Initial guidance on provisions of the 2005 Act relevant to roads policing was given in a letter to chief officers of police in June 2005.

### ***Local Policing Information***

60. Amongst the issues addressed in the previous Government's police reform Green Paper "Policing: Building Safer Communities Together", published in November 2003, was the need for forces and police authorities to provide better information on community safety. Section 157 of the Act requires police authorities to publish an annual "local policing summary" and confers powers on the Home Secretary to set minimum requirements in respect of the information to be included in such summaries.

### ***Breaches of Health and Safety by Police Forces***

61. Section 158 provides that liability for breaches of health and safety legislation by police forces will normally rest with the office of Chief Constable rather than with the office holder.

## ***Complaints against Police Officers and Police Staff***

62. Section 159 and Schedule 11 amended Schedule 3 to the Police Reform Act 2002 to enable disciplinary action to be brought, when certain special conditions are met, against a police officer before the point at which an investigation into a complaint or misconduct relating to that officer would normally be completed. Where the special conditions are met, the amendments allow a report to be submitted before the investigation has been completed and for disciplinary proceedings to be brought earlier than would otherwise have been possible. The disciplinary proceedings may also be brought before any related criminal proceedings (the appropriate authority would consult the Director of Public Prosecutions before proceeding in this way). These procedures were designed to deal with the most serious cases of police misconduct where an officer may have committed an imprisonable offence and where it is in the public interest for the officer to cease to be a member of a police force without delay. Whilst no data is held centrally on the use of the accelerated procedure, anecdotal evidence suggests that since the further amendment to these provisions in Schedule 23 to the Criminal Justice and Immigration Act 2008, the use of the accelerated procedure has increased.

63. Section 160 and Schedule 12 brought a new category of cases under the jurisdiction of the Independent Police Complaints Commission (IPCC). The new category 'death or serious injury matters' (DSI) covers cases where persons died or were seriously injured following some form of direct or indirect contact with the police and there was reason to believe that the contact may have caused or contributed to the death or serious injury. These powers came into force on 1 July 2005. Since these provisions came into force there have been a number of referrals of DSI matters to the IPCC. These provisions have been welcomed by the police service and are an important safeguard to ensure that all cases involving death or serious injury following contact with the police are subject to independent scrutiny by the IPCC. The prompt referral and independent investigation of DSI cases assists the IPCC and the UK more broadly in discharging its duty under Article 2 (Right to life) and Article 3 (Prohibition of torture) of the European Convention on Human Rights.

64. These powers are seen by the police service, IPCC and the Home Office as an important provision.

## ***Abolition of the Royal Parks Constabulary***

65. Following a review of the Royal Parks Constabulary by the former Assistant Commissioner, Anthony Speed, responsibility for policing the Royal Parks transferred to the Metropolitan Police Service on 8th May 2006. Sections 161 and 162 and Schedule 13 provided for the abolition of the Royal Parks Constabulary and for the transfer of responsibility for policing the Royal Parks to the Metropolitan Police.

## ***Criminal Record Checks***

66. Sections 163 to 168 and Schedule 14 made amendments to Part 5 of the Police Act 1997 which sets out the framework under which the Criminal Records Bureau (CRB) and Disclosure Scotland operate. In particular, the amendments extended the range of law enforcement agencies from whom non-conviction information may be obtained and also enable

the CRB and Disclosure Scotland to access passport, driving licence and national insurance number data in order to verify the identity of applicants for a criminal record disclosure.

### ***Witness Summons***

67. Previously, a witness summons could only be issued where the court was satisfied that a person 'will not voluntarily attend as a witness'. The then Government believed this threshold was too high; in many cases the test would not be met until the witness had failed to turn up at the appointed time leading to further trial delays. Accordingly, sections 169 and 170 of the 2005 Act substituted new tests for courts and courts-martial respectively.

### ***Private Security Industry Act 2001: Scotland***

68. Section 171 and Schedule 15 extended the provisions of the Private Security Industry Act 2001 to Scotland and thereby provide for the licensing by the Security Industry Authority of security operatives in Scotland.

69. The 2005 Act has achieved its aim in extending the Security Industry Authority's remit to cover Scotland and has been working well. In the period following the introduction of regulation in Scotland, industry compliance with the Private Security Industry Act 2001 has increased from 60% in 2008 to 96% in 2010. Scottish Ministers welcome the contribution that industry regulation has made to reducing the criminal element in the security industry.

## **SCHEDULES**

### ***Community Safety Accreditation Scheme***

70. Schedule 8, Part 2 introduced new powers for accredited persons. 26 police forces operate the Community Safety Accreditation Schemes. The powers granted to an accredited person are at the discretion of the accrediting chief officer. An audit of the Scheme in 2009 identified the following:

- Require the name and address for traffic offences (granted by 10 forces)
- Control traffic for the purpose of escorting a load of exceptional dimensions (granted by 10 forces)
- Photographing persons issued with a penalty notice (granted by 8 forces)

## Annex A

### Serious Organised Crime and Police Act 2005

#### List of Commencement Orders (in chronological order)

- Serious Organised Crime and Police Act 2005 (Commencement No. 1, Transitional and Transitory Provisions) Order 2005 (2005/1521) (7 June 2005)
- Serious Organised Crime and Police Act 2005 (Commencement No. 2) Order 2005 (2005/2026) (20 July 2005)
- Serious Organised Crime and Police Act 2005 (Commencement No. 3) Order 2005 (2005/3136) (9 November 2005)
- Serious Organised Crime and Police Act 2005 (Commencement No. 4 and Transitory Provision) Order 2005 (2005/3495) (18 December 2005)
- Serious Organised Crime and Police Act 2005 (Commencement No. 5 and Transitional and Transitory Provisions and Savings) Order 2006 (2006/378) (15 February 2006)
- Serious Organised Crime and Police Act 2005 (Commencement No. 6 and Appointed Day) Order 2006 (2006/1085) (6 April 2006)
- Serious Organised Crime and Police Act 2005 (Commencement) (No. 8) Order 2006 (2006/1871) (12 July 2006)
- Serious Organised Crime and Police Act 2005 (Commencement No. 9 and Amendment) Order 2006 (2006/2182) (15 August 2006)
- Serious Organised Crime and Police Act 2005 (Commencement No. 10) Order 2007 (2007/3064) (24 October 2007)
- Serious Organised Crime and Police Act 2005 (Commencement No. 11) Order 2007 (2007/3341) (26 November 2007)
- Serious Organised Crime and Police Act 2005 (Commencement No. 12) Order 2008 (2008/306) (7 Feb 2008)
- Serious Organised Crime and Police Act 2005 (Commencement No. 12) Order 2008 (2008/697) (10 March 2008)
- Serious Organised Crime and Police Act 2005 (Commencement No. 13) Order 2008 (2008/1325) (20 May 2008)

#### List of Secondary Legislation (in chronological order)

- **Serious Organised Crime and Police Act 2005 (Designated Area) Order 2005 (2005/1537)** (1 July 2005) – This order specified the area around Parliament as a designated area for the purposes of sections 132-137 of the Serious Organised Crime and Police Act 2005.

- **Serious Organised Crime and Police Act 2005 (Amendment) Order 2005 (2005/3496)** (1 January 2006) – This order amended the Serious Organised Crime and Police Act 2005, and provisions in the Police Act 1997 and Police and Criminal Evidence Act 1984 which were prospectively inserted by the Serious Organised Crime and Police Act 2005. It also corrected some minor errors.
- **Serious Organised Crime and Police Act 2005 (Powers of Arrest) (Consequential Amendments) Order 2005 (2005/3389)** (1 January 2006) – This order amended 30 statutory instruments as a consequence of the changes to arrest powers made by section 110 of the Serious Organised Crime and Police Act 2005 which inserted a new section 24 into the Police and Criminal Evidence Act 1984.
- **Serious Organised Crime and Police Act 2005 (Delegation Under Section 43) Order 2006 (2006/100)** (1 March 2006) – This order prescribed the grade of Deputy Director of the Serious Organised Crime Agency as the prescribed level for the purposes of section 44(1) of the Serious Organised Crime and Police Act 2005. The effect of section 44 of the Act is that the Director General of SOCA cannot delegate his functions under section 43 (designation of SOCA staff as persons having the powers of constable etc.) to an employee of that Agency who is employed in a grade lower than the grade of Deputy Director of SOCA.
- **Serious Organised Crime and Police Act 2005 (Consequential and Supplementary Amendments to Secondary Legislation) Order 2006 (2006/594)** (1 April 2006) – The schedule to this order omitted references in the secondary legislation listed in the Schedule to the National Criminal Intelligence Service and the National Crime Squad (and their service authorities) consequential on the abolition of those bodies by the Serious Organised Crime and Police Act 2005. Where the functions were taken on by the Serious Organised Crime Agency, references to that Agency were substituted. It also ensured that the traffic provisions mentioned in the Order applied to SOCA as they applied to the police and other emergency services.
- **Serious Organised Crime and Police Act 2005 (Application and Modification of Certain Enactments to Designated Staff of SOCA) Order 2006 (2006/987)** (1 April 2006) – This order modified a number of Acts which confer powers on the police (as well as constables) and immigration officers to enable those powers to be exercised by designated members of SOCA. The Acts in question are the Police and Criminal Evidence Act 1984, the Anti-social Behaviour Act 2003, the Immigration Act 1971 and the Immigration and Asylum Act 1999.
- **Serious Organised Crime and Police Act 2005 (Designated Sites) Order 2005 (2005/3447)** (1 April 2006) – This order listed thirteen Ministry of Defence sites which the Secretary of State considered appropriate for designation in the interests of national security.
- **Serious Organised Crime and Police Act 2005 (Amendment of Section 61(1)) Order 2006 (2006/1629)** (20 June 2006) – Section 61(1) of the Serious Organised Crime and Police Act 2005 lists the offences to which Chapter 1 of Part 2 of that Act applies.

That Chapter confers powers on the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions and the Lord Advocate in relation to the giving of disclosure notices in connection with the investigation of offences to which that Chapter applies. The order also amended section 61(1) to add offences to it.

- **Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006 (2006/2135)** (28 August 2006) – This order describes the process for referring a case back to court. This may be in cases where an offender has offered further assistance, has offered assistance following sentence, or has offered assistance and as a consequence has received a discounted sentence, but has failed to provide it. The order extends to England, Wales and Northern Ireland.
- **Serious Organised Crime and Police Act 2005 (Amendment of Section 76(3)) Order 2007 (2007/1392)** (4 May 2007) – If a person is convicted of an offence that is mentioned in section 76(3) of the Serious Organised Crime and Police Act 2005 the court when sentencing or otherwise dealing with the person may also make a financial reporting order in respect of him. This Order amends section 76(3) to add offences to it.
- **Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) Order 2007 (2007/930)** (1 June 2007) – This Order applied the new offence of criminal trespass on protected sites, established by sections 128 to 131 of the Serious Organised Crime and Police Act 2005 (as amended by section 12 of the Terrorism Act 2006) to 16 Royal, governmental and parliamentary sites.
- **Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) (Amendment) Order 2007 (2007/1387)** (1 June 2007) – This Order corrected an error in the Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) Order 2007 to amend the area to which the new offence of criminal trespass on protected sites applies in respect of the Chequers Estate.
- **Serious Organised Crime and Police Act 2005 and Serious Crime Act 2007 (Consequential and Supplementary Amendments to Secondary Legislation) Order 2008 (2008/574)** (1 April 2008) – The Order revoked and amended references to the Assets Recovery Agency and its Director consequential on the abolition of those persons by the Serious Crime Act 2007. Where the functions of those persons were taken on by another person references to that person were substituted. The Order also made a small number of minor amendments in relation to the creation of the Serious Organised Crime Agency.
- **Serious Organised Crime and Police Act 2005 (Disclosure of Information by SOCA) Order 2008 (2008/1908)** (23 July 2008) – This order made provision in relation to disclosures of information by the Serious Organised Crime Agency and designated the functions (in addition to the functions listed in section 33) for the purposes of the exercise of which the Agency may disclose information.

## Scottish Orders

### List of Commencement Orders (in chronological order)

- Serious Organised Crime and Police Act 2005 (Commencement No. 1) (Scotland) Order 2005 (2005/358) (20 June 2005)
- Serious Organised Crime and Police Act 2005 (Commencement No. 2) (Scotland) Order 2006 (2006/166) (22 March 2006)
- Serious Organised Crime and Police Act 2005 (Commencement No. 7) Order 2006 (2006/381) (28 June 2006)
- Serious Organised Crime and Police Act 2005 (Commencement No. 10) Order 2007 (2007/241) (13 March 2007)

### List of Secondary Legislation (in chronological order)

- **Serious Organised Crime and Police Act 2005 (Consequential and Supplementary Amendments) (Scotland) Order 2006 (2006/129)** (1 April 2006) – The schedule to this order omitted references in the secondary legislation listed in the Schedule to the National Criminal Intelligence Service (and its service authority) consequential on the abolition of that body by the Serious Organised Crime and Police Act 2005. Where the functions were taken on by the Serious Organised Crime Agency, references to that Agency were substituted. It also ensured that the traffic provisions mentioned in the Order applied to SOCA as they applied to the police and other emergency services in so far as they related to the non-reserved functions of the Agency.
- **Serious Organised Crime and Police Act 2005 (Specified Persons for Financial Reporting Orders) (Scotland) Order 2006 (2006/170)** (1 May 2006) – The Order specified for the purposes of financial reporting orders the list of persons from which a court may select a “specified person”. Specified persons are Chief Constables of the eight Scottish police forces and the Director of the Scottish Drug Enforcement Agency.
- **The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Modifications) Order 2007 (2007/89)** (1 April 2007) - This Order made consequential modifications. It amended the Serious Organised Crime and Police Act 2005 (Specified Persons for Financial Reporting Orders) (Scotland) Order 2006 by replacing the existing reference to the Director of the Scottish Drug Enforcement Agency with a reference to the Director General of the Scottish Crime and Drug Enforcement Agency.

## Annex B

### ADDITIONAL INFORMATION RELEVANT TO PART 3: POLICE POWERS

#### Home Office Circular 56/2005 – Police and Criminal Evidence Act 1984:

Revised Codes of Practice 2005 and accompanying guidance Revised Notice of Rights and Entitlements:

<http://webarchive.nationalarchives.gov.uk/20100413151426/http://www.homeoffice.gov.uk/about-us/publications/home-office-circulars/circulars-2005/056-2005/>

The Circular deals with all the changes to PACE and Codes A, B, C and D and a new Code G arising from amendments made by the Serious Organised Crime and Police Act 2005. Guidance is attached at:

<http://webarchive.nationalarchives.gov.uk/20100413151426/http://www.homeoffice.gov.uk/about-us/publications/home-office-circulars/circulars-2005/056-2005/annex-g-a2835.doc?view=Binary>

<http://webarchive.nationalarchives.gov.uk/20100413151426/http://www.homeoffice.gov.uk/about-us/publications/home-office-circulars/circulars-2005/056-2005/annex-b2835.doc?view=Binary>

<http://webarchive.nationalarchives.gov.uk/20100413151426/http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/pace-code-intro/index.html>

#### **Litigation**

In terms of litigation, the following cases concern changes to a constable's power of arrest under PACE introduced by the 2005 Act:

- Arrest – necessity, see <http://www.bailii.org/ew/cases/EWHC/Admin/2006/2352.html> and <http://www.bailii.org/nie/cases/NIHC/QB/2009/20.html>

The potential problem highlighted in both cases arises from the *operational* application and interpretation of the arrest provisions by the police in the context of 'voluntary interviews', not from any defect in the provisions themselves.

The PACE Review proposals identified these and other issues relating to necessity for arrest and the provisions of PACE Code G (Arrest). They are being considered as part of the ongoing work to keep the PACE Codes of Practice up to date.

- Search Warrants for multiple premises provision of copy of warrant for occupier of premises search: See <http://www.bailii.org/ew/cases/EWHC/Admin/2009/3004.html>

The problem in this case arises from the operational implementation of the provisions for providing an occupier with a copy of the search warrant, not from any defect in the provisions themselves.

The PACE Review also identified potential problems in this area and work is in hand to update the existing guidance in HOC 56/2005 mentioned above.

**PACE Review** (commenced March 2007)

<http://webarchive.nationalarchives.gov.uk/20100413151426/http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/PACE-Review/index.html>

**Government's Response:**

<http://webarchive.nationalarchives.gov.uk/20100413151426/http://homeoffice.gov.uk/documents/cons-2008-pace-review/cons-2008-pace-review-pdf2835.pdf?view=Binary>

**Final Published Outcome** (4 March 2010):

<http://webarchive.nationalarchives.gov.uk/20100413151426/http://homeoffice.gov.uk/documents/cons-2008-pace-review/PACE-review-20102835.pdf?view=Binary>



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