



# **Memorandum to the Home Affairs Committee**

## **POST-LEGISLATIVE SCRUTINY OF THE POLICING AND CRIME ACT 2009**

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

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Any enquiries regarding this publication should be sent to us at:

Legal Advisors Branch  
Peel Building  
Home Office  
2 Marsham Street  
London  
SW1P 4DF

[Paul.rowlands1@homeoffice.gsi.gov.uk](mailto:Paul.rowlands1@homeoffice.gsi.gov.uk)

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## MEMORANDUM TO THE HOME AFFAIRS COMMITTEE

### POST-LEGISLATIVE SCRUTINY OF THE POLICING AND CRIME ACT 2009

#### INTRODUCTION

1. The memorandum provides a preliminary assessment of the Policing and Crime Act 2009 (2009 c 26) (the "PCA") and has been prepared by the Home Office for submission to the Home Affairs Committee. It is published as part of the process set out in the document *Post Legislative Scrutiny – The Government's Approach (Cm 7320)*.

#### OBJECTIVES OF THE POLICING AND CRIME ACT 2009

2. The PCA is a large enactment, comprising over 100 sections, as well as eight Schedules. It covers many policy areas and had a wide range of objectives. Its key aims were:
  - *Police accountability*: to ensure that police authorities have sufficient regard to the public's views on policing in their area;
  - *Senior police appointments*: to provide a statutory basis for, and greater independence to, the Police Senior Appointments Panel, whose function was to advise the Secretary of State as well as police authorities on matters relating to senior officer appointments and succession planning;
  - *Police collaboration*: to bring about collaborative working among police forces and police authorities;
  - *Prostitution and sex offenders*: to improve the protection of vulnerable groups by including provisions which aimed to reduce the demand for prostitution and to increase police powers to close premises associated with prostitution;
  - *Low level crime and disorder*: to reduce such crime and disorder by: introducing mandatory licensing conditions relating to alcohol; amending police powers to deal with children drinking alcohol in public; introducing stricter provisions for people who sell alcohol to children; providing for the mutual recognition of football banning orders between Scotland, Northern Ireland and England and Wales; and introducing a specific injunction intended to reduce gang-related violence;

- *Proceeds of crime*: to implement the main recommendations of the Asset Recovery Action Plan of 2007 and strengthen the arrangements for recovery of assets obtained through criminal means;
  - *Extradition*: to improve the arrangements for judicial co-operation in relation to extradition and to streamline the process of extradition;
  - *Customs powers*: to introduce measures aimed at strengthening customs powers at the border; and
  - *Airport security*: to implement the key recommendations of the Independent Review of Airport Policing by requiring the majority of airports to agree a local airport security plan with key stakeholders and allowing the police to recover policing costs.
3. Generally speaking, none of the objectives of the Act have changed since enactment, although the means by which those objectives are to be achieved has in several cases altered. The Police Reform and Social Responsibility Act 2011, the Protection of Freedoms Act 2012 and the Anti-social Behaviour, Crime and Policing Act 2014 have all superseded some provisions of the PCA, as explained in further detail below.

## **IMPLEMENTATION**

4. Please see Annex 1 for a summary of the PCA's implementation.

## **SECONDARY LEGISLATION, GUIDANCE AND OTHER RELEVANT MATERIAL**

5. Please see Annex 2.

## **OTHER REVIEWS**

6. Please see Annex 3.

## **PRELIMINARY ASSESSMENT OF THE ACT (INCLUDING ANY LEGAL ISSUES)**

### **PART 1 - POLICE REFORM**

#### *Public accountability*

7. Section 1 inserted a provision into section 6 of the Police Act 1996 to the effect that police authorities must have regard to the views of local people in the police authority's area. Section 6 was repealed by the Police Reform and Social Responsibility Act 2011 ("PRSRA") when Police and Crime Commissioners ("PCCs") replaced police authorities. Section 14 of the PRSRA inserted similar provisions into section 96 of the Police Act 1996 to require the local policing body (generally the PCC) to make arrangements to

obtain the views of local people on policing. The objective underpinning section 1 has therefore been pursued by means of provisions in the PRSRA, for which a post-legislative scrutiny memorandum will be produced in due course.

#### *Appointments of senior officers*

8. Sections 2 to 4 made provision for the establishment of a statutory Police Senior Appointments Panel and related measures concerning the process of appointments. Previously there was a senior appointments panel which existed on a non-statutory basis with the primary role of advising the Secretary of State about the appointment of senior officers. However, the Panel was abolished when the PRSRA established PCCs, which took on the function of appointing chief constables. The PRSRA also provided that chief constables were to appoint deputy and assistant chief constables.

#### *Police co-operation*

9. Section 5 replaced section 23 of the Police Act 1996 with 10 new sections that provided for the creation of agreements between police forces and between police authorities to collaborate. The new sections 23 to 23I conferred powers on chief officers and police authorities in England and Wales to enter into collaboration arrangements. Sections 6, 8 and 9 of the PCA inserted provisions on collaborative working among police forces and police authorities into the Police Act 1997 and the Regulation of Investigatory Powers Act 2000 ("RIPA"). These changes were necessary to ensure existing provisions in the relevant legislation addressing these issues reflected the new measures on collaborative policing introduced by section 5.
10. However the relevant sections of the Police Act 1996 have been superseded by the PRSRA. In summary, the changes made by section 5 of the PCA were supplemented by further amendments made by the PRSRA in order to replace the separate arrangements for "police force collaboration agreements" and "police authority collaboration agreements" with general provisions for collaboration agreements which could be made by chief officers and policing bodies either separately or together, and which could include other bodies. An assessment of the way these provisions have operated will be contained in a post legislative scrutiny memorandum for the PRSRA in due course.
11. Section 11 amended section 53 of the Police Act 1996, which contains a power for the Secretary of State to make regulations requiring equipment provided or used for police purposes to satisfy prescribed requirements as to design and performance. The amendment to section 53 provided for "software" to fall within the definition of equipment. This change has been

useful as it has enabled the making of regulations to prescribe national arrangements through which the police have been required to obtain commercial off-the-shelf software (see Annex 2). Section 11 also amends section 53 so that regulations made under section 53 can be made to apply to one or more forces. A similar amendment is made by section 12 of the PCA to section 57(3) of the 1996 Act, which allows for regulations to be made requiring police forces to use specified facilities or services if this would be in the interests of the efficiency or effectiveness of the police. Previously regulations under these provisions could only be made to apply to all forces. The only regulations so far made under these sections have applied to all forces in England and Wales, but the amendment has provided important flexibility for any further use of the power.

## **PART 2 - SEXUAL OFFENCES AND SEX ESTABLISHMENTS**

### *Prostitution*

12. Section 14 amended the Sexual Offences Act 2003 to introduce the section 53A offence of paying for sexual services of a prostitute subjected to force. The following table sets out some statistics concerning this offence<sup>1</sup>.

<b>Figures from the Crown Prosecution Service: proceedings for prostitution offences</b>					
		2010- 2011	2011- 2012	2012- 2013	2013- 2014
Section 53A of the Sexual Offences Act 2003, as inserted by Policing & Crime Act 2009 (section14)	Paying for sexual services of a prostitute subjected to force etc.	40	7	8	0

13. Section 14 was controversial during introduction, and remains so. The statistics demonstrate a clear decline in the number of cases which were brought before the magistrates' court. Earlier this year the then Minister for Crime Prevention wrote to the Director of Public Prosecutions to consider how this offence could be more effectively enforced and prosecuted.
14. Section 16 amended the definition of the offence of loitering for purposes of prostitution, as set out in section 1 of the Street Offences Act 1959. Under

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<sup>1</sup> Offences recorded in the tables in paragraphs 12 and 15 of this memorandum are those which reached a hearing in the magistrates' courts. This offence will remain recorded whether or not that offence was proceeded with. There is no indication of final outcome or if the offence charged was the substantive offence at finalisation. Data relates to the number of offences recorded in magistrates' courts, in which a prosecution commenced, as recorded on the Case Management System.



section 1 of the 1959 Act it was an offence for a “common prostitute” (whether male or female) to loiter or solicit in a street or public place for the purpose of prostitution. Section 16 of the PCA removed the reference to “common prostitute” – which was regarded as an outdated term with derogatory connotations – and inserted a requirement that the offence is only committed if a person acts “persistently”. Persistent conduct is defined as conduct which takes place on two or more occasions in any three month period.

15. The following table sets out some statistics concerning this offence.

<b>Figures from the Crown Prosecution Service: proceedings for prostitution offences</b>								
		2007- 2008	2008- 2009	2009- 2010	2010- 2011	2011- 2012	2012- 2013	2013- 2014
Section 1 of the Street Offences Act 1959, as amended by Policing & Crime Act 2009 (section 16)	Loitering or soliciting for purposes of prostitution	Not avail.	Not avail.	864	586	484	396	553

16. It has not been possible to determine whether the generally declining figures for proceedings in connection with this offence are attributable to the inclusion of the “persistent” requirement, or because fewer people are engaging in the prohibited conduct, or both.

17. Section 17 introduced orders requiring attendance at meetings, commonly referred to as “Engagement & Support Orders”. It amended section 1 of the 1959 Act to allow those convicted of loitering or soliciting for the purpose of prostitution to be made the subject of a rehabilitative order by the court, instead of imposing a fine or any other penalty. The order requires the offender to attend a series of three meetings with a named supervisor or another person directed by the supervisor. The purpose of the order is to assist the offender, through attendance at those meetings, to address the causes of their involvement in street prostitution and to find ways of ending that involvement. In cases where the court is satisfied that the offender has failed to comply with the order without reasonable excuse, they may deal with the offender for the original offence, taking into account the extent to which the offender complied with the order. The court has the power to impose any penalty that would have been available to it if the offender had just been convicted by the court of the original offence. Breach of an order is not in itself a criminal offence. Accompanying guidance was issued by the Home Office at the time that the orders were established (see Annex 2). The Home Office does not collate data centrally on applications, orders made, or breaches of such orders so it is difficult to assess their effectiveness.

18. Section 19 inserted a new section into section 51A of the Sexual Offences Act 2003 which replaced the two separate offences of kerb-crawling in a street or public place, and persistent soliciting in a street or public place, for the purposes of prostitution (sections 1 and 2 of the Sexual Offences Act 1985). It is an offence for a person in a street or public place to solicit another person for the purpose of obtaining the person's sexual services as a prostitute. The need for persistency was removed, making the offence punishable on the first occasion. In the case of "kerb-crawling" it also removed any requirement for the soliciting to be shown to cause nuisance or annoyance to others.

19. The following table sets out some statistics concerning this offence.

<b>Figures from the Crown Prosecution Service: proceedings for prostitution offences</b>							
	2010-2011	2011-2012	2012-2013	2007-2008	2008-2009	2009-2010	2013-2014
Sexual Offences Act 2003 (section 51A - soliciting), as amended by Policing & Crime Act 2009 (section 19)	123	305	230	0	0	0	237
<i>TOTAL</i>	<i>327</i>	<i>314</i>	<i>534</i>	<i>365</i>	<i>419</i>	<i>233</i>	<i>237</i>

20. The decline in proceedings for these offences may reflect a number of factors, for example a reduction in prevalence of on-street prostitution, or a shift in policing priorities, or a combination of the two. It should be noted that these offences are summary only, which means that they can be dealt with directly by the police without reference to the Crown Prosecution Service. As summary only offences, the police retain the discretion not to arrest or report those suspected of committing an offence, and can charge the offence without reference to a prosecutor, regardless of whether the suspect intends to plead guilty or not guilty. The police can also issue a simple caution to a suspect, or decide that no further action should be taken. If the police consider that the suspect might be suitable for a conditional caution for this offence, they can issue it.

*Closure Orders: sexual offences*

21. Section 21 introduced closure orders, granting the courts the power to close, on a temporary basis, premises being used for activities related to certain sexual offences. Service of a closure notice by the police will prevent anyone from entering or remaining on the premises, unless they regularly reside in or own the premises, until a magistrates' court decides whether to make a closure order. If the court is satisfied that the relevant conditions are met, the court can make a closure order for a period of up to three months. An application can be made for the closure order to be extended but the total

period for which a closure order has effect may not exceed six months. Guidance was published in connection with such orders (see Annex 2). The Home Office does not collate figures on use of such orders.

22. These closure order powers were extended via the Anti-social Behaviour, Crime & Policing Act 2014. The closure notices and orders available under Part 2A of the Sexual Offences Act 2003 Act originally related only to prostitution (involving adults and children) and child pornography offences. As the powers were circumscribed in this way, they did not cover premises which are being used to perpetrate other sexual offences, including rape of a child under 13 and other child sex offences. This meant the police could not close premises where these offences have been or are likely to be committed. Section 115 of, and Schedule 6 to, the 2014 Act extended the closure powers so that they can be used in connection with a wider range of offences and to conduct preparatory to offences (such as grooming).

*Orders imposed on sex offenders*

23. Under section 114 of the Sexual Offences Act 2003, the courts are able to impose a foreign travel order (“FTO”) to prohibit persons who are “qualifying offenders” (essentially, those dealt with in respect of certain sexual offences against a child under 16, either in this country or abroad) from travelling abroad, to protect a child or children from serious sexual harm outside the United Kingdom. Section 23 of the PCA altered the criteria determining which offenders qualified for a FTO, to include those who had committed sexual offences against children under 18, not just under 16. This reflected a wider statutory shift to recognise all under-18s as children. Section 22 of the PCA had the effect of ensuring that a provision in the Magistrates’ Courts Act 1980 requiring that some evidence provided in support of an application for an order must relate to conduct that has occurred within the six months prior to the application being made, does not apply to FTOs.

24. Following the PCA’s changes to the 2003 Act, there was an increase in the number of FTOs imposed.

<b>Year</b>	<b>Foreign Travel Orders imposed</b>
2006/07	3
2007/08	1
2008/09	12
2009/10	15
2010/11	22
2011/12	14
2012/13	13
2013/14	11

(source: *Multi-Agency Public Protection Arrangements Annual Report 2013-14*)

25. This increase may have been in part a result of the PCA's changes although this is difficult to determine. The overall number of orders imposed remained relatively low. In May 2013, a report was published following a review of FTOs, along with Sexual Offences Prevention Orders ("SOPOs") and Risk of Sexual Harm Orders ("RSHOs"), by Hugh Davies QC<sup>2</sup>. That review concluded that the existing civil prevention orders were not fit for purpose and failed to deliver adequate protection for children from sexual abuse. The report recommended a rationalisation and strengthening of the civil orders provided for in the Sexual Offences Act. FTOs, SOPOs and RSHOs are to be repealed by the Anti-social Behaviour, Crime and Policing Act 2014, and replaced with two new orders in England and Wales:

- Sexual Harm Prevention Orders can be applied to anyone convicted or cautioned for a sexual or violent offence, including where offences are committed overseas. They will replace SOPOs and FTOs; and
- Sexual Risk Orders can be applied to any individual who poses a risk of sexual harm in the UK or abroad, even if they have never been convicted. They will replace RSHOs.

#### *Indecent photographs of children*

26. Section 49 of the Regulation of Investigatory Powers Act 2000 ("RIPA") contains a power which enables properly authorised persons (such as members of the law enforcement, security and intelligence agencies) to serve notices on individuals or bodies requiring the disclosure of protected (e.g. encrypted) information which they lawfully hold. Section 53 of RIPA makes it an offence to knowingly fail to comply with a notice given under section 49. Under section 53(5A) the maximum sentence on indictment for failing to comply with a section 49 notice is five years in a national security case or two years in any other case. Section 26 of the PCA amended section 53(5A) of RIPA so that a maximum sentence of five years' imprisonment is available in relation to "a child indecency case" too. A "child indecency case" was defined as one in which the grounds for issuing a notice relating to encrypted information were or included a belief that the notice was necessary for the purpose of preventing or detecting any one of five offences relating to showing, taking or possessing an indecent photograph of a child.

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<sup>2</sup> [http://www.ecpat.org.uk/sites/default/files/the\\_davies\\_review.pdf](http://www.ecpat.org.uk/sites/default/files/the_davies_review.pdf)

27. Convictions for this offence are too low (three or under per year since 2009) to enable any meaningful analysis of average sentence lengths, and whether these have changed since the availability of increased sentencing penalties.

### *Sex establishments*

28. Section 27 inserted a new category of “sex establishment” called a “sexual entertainment venue” into Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. This brought the licensing of lap dancing and pole dancing clubs and other similar venues under the regime set out in the 1982 Act, which is used to regulate establishments such as sex shops and sex cinemas.
29. The following are not defined as “sexual entertainment venues” for the purpose of the regulatory regime: sex shops and sex cinemas; or any premises that at the time in question has not provided relevant entertainment on more than 11 occasions within the previous 12 months *and* no such occasion has begun within the period of one month beginning with the end of any previous occasion *and* no such occasion has lasted for more than 24 hours. This exemption was intended to avoid the need for venues which may host an infrequent event to have to obtain a full sexual entertainment venue licence.
30. Following some interest from MPs, the Home Office was made aware that this exemption was open to potential abuse, for example by individuals owning several venues in a locality and thereby putting on more frequent events at different venues. Where such events have been authorised by temporary event notices, local authorities may have had very little information about the precise nature of the event taking place. As a result, the temporary event notice form, which venues use to seek permission to host events that are outside their regular licence provisions, has been amended. The temporary event notice now has to explicitly state whether the proposed event will include “relevant entertainment”. This change means the nature of the event is made absolutely clear to licensing authorities, the police and environmental health authorities, allowing informed decisions to be made.
31. The legislation allows local authorities to set a limit on the number of sex establishments of a particular type in a locality, as well as the number of sex establishments generally, and to refuse a licence on the basis that the number of establishments in the locality is equal to or exceeds the number which the authority considers appropriate. It also allows local authorities to impose different standard conditions on a sexual entertainment venue compared with other kinds of sex establishment, such as a sex shop and ensures that the local authority will be able to charge a fee for applications to vary a licence

granted under the 1982 Act. The powers for local authorities are adoptive, that is, it is for the local authority to “opt-in” and adopt the powers. The Home Office does not collate figures on the number of local authorities that have adopted the powers.

### **PART 3 - ALCOHOL MISUSE**

32. Section 28 amended section 147A(1)(a) of the Licensing Act 2003, changing the threshold for the offence of selling alcohol to children from three or more different occasions to two or more different occasions. This was further amended by the Police Reform and Social Responsibility Act 2011 which doubled the maximum fine to £20,000 and introduced a flexible closure notice period, during which a premises cannot sell alcohol, from 48 to 336 hours. The information below shows the number of people found guilty of the offence from 2008-2012:

Year	Number found guilty
2008	7
2009	4
2010	7
2011	1
2012	11

33. Guidance under section 182 of the Licensing Act 2003 has since October 2012 encouraged licensing authorities to review premises licences with a view to revoking them where the offence has been committed and where age verification due diligence has not been undertaken – this might be action in addition to or in place of court proceedings on the basis of the s 147A offence.

34. Section 29 amended section 1 of the Confiscation of Alcohol (Young Persons) Act 1997, requiring a constable who confiscates alcohol from a person to also require them to state their name and address. If the constable reasonably suspects the person to be under the age of 16, the constable can remove the person to their place of residence or a place of safety. Statistics are not collected centrally on the number of confiscations or the use of the power to take a child under the age of 16 to their place of residence or a place of safety but it is considered a useful power to have available.

35. Section 30 created an offence whereby a person under 18 is guilty of an offence if they are in possession of alcohol in a public place (or other place to which they have unlawfully gained access) on three or more occasions within a 12 month period. The information below shows the number of people cautioned, proceeded against and sentenced between 2010 and 2013, showing an increase in all of these outcomes between 2010 and 2012:

**Offenders cautioned and defendants proceeded against at magistrates courts and found guilty and sentenced at all courts for offences under Section 30, Policing and Crime Act 2009, England and Wales, 2010 to 2013<sup>3 4</sup>**

<b>Outcome</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Cautioned <sup>5</sup>	2	0	0	0
Proceeded against	12	19	21	4
Found guilty	7	15	11	3
Sentenced	7	15	11	3
<i>of which</i>				
Absolute discharge	0	2	0	1
Conditional discharge	2	3	1	0
Fine	2	4	6	1
Community sentence	2	6	4	1
Suspended sentence	0	0	0	0
Immediate custody	0	0	0	0
Not separately dealt with <sup>6</sup>	1	0	0	0
Average fine (£)	20.00	75.00	63.33	30.00

Source: Justice Statistics Analytical Services - Ministry of Justice.

Ref: 896-14

36. Section 31 amended section 27 of the Violent Crime Reduction Act 2006, which provided the police with a power to issue a direction to an individual to leave a locality to minimise the risk of alcohol related crime or disorder arising and/or taking place. The effect of section 31 was to extend use of the power from anyone aged 16 or over to anyone aged 10 or over. Section 31 also amended that power so that if the constable reasonably suspected that the individual was aged under 16, the constable could take the person to their place of residence or to a place of safety. Statistics on the numbers of “Direction to Leave” notices are not collated centrally. However, the police have reported this to be a useful power, as it allows them to remove individuals from an area before trouble starts or to stop problems escalating

<sup>3</sup> The figures given in the table relate to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been cautioned for or found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe.

<sup>4</sup> Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

<sup>5</sup> Up to 8 April 2013, juveniles received reprimands and warnings instead of cautions. On 8 April 2013 these were replaced for juveniles by youth conditional cautions.

<sup>6</sup> This is similar in character to an absolute discharge, in that it indicates not further action to be taken.

37. Nevertheless, it became apparent that there were limitations to the effectiveness of the section 27 power: it could only be used in relation to alcohol-related disorder and it could not be used by Police Community Support Officers (“PCSOs”). The section 27 power was repealed by the Anti-social Behaviour, Crime and Policing Act 2014 and has been replaced by the dispersal power under Part 3 of that Act which came into force on 20 October. The new power can be used by constables. PCSOs can also use the new power if designated by their chief constable. The new power applies to anyone aged 10 or over and retains the ability to return children under 16 back to their home or to a place of safety. The new power will allow police to react quickly to a range of anti-social behaviour. An assessment of its effectiveness will be contained in a post legislative scrutiny memorandum for the 2014 Act.
38. Section 32 gives effect to Schedule 4 which amends section 19(3) of the Licensing Act 2003 so that the Secretary of State may by order specify conditions relating to the supply of alcohol under any of the premises licences, where the Secretary of State considers it appropriate for the promotion of the licensing conditions. There may be up to a total of nine mandatory conditions. The Home Office consultation on the Alcohol Strategy in 2012-13 asked whether each of the mandatory licensing conditions is effective in promoting each of the four licensing objectives. The majority of respondents to that question believed that the mandatory conditions are effective in promoting all of the licensing objectives, and that only small changes were needed to increase their effectiveness<sup>7</sup>. An impact assessment has been published for the changes introduced by the Licensing Act 2003 (Mandatory Licensing Conditions) (Amendment) Order 2014; this represents a cost to business of £0.38m<sup>8</sup>.
39. During the debate on the Licensing Act 2003 (Mandatory Licensing Conditions) (Amendment) Order 2014 in the House of Lords, a member of the Opposition queried why there were only five conditions when the PCA had given the Secretary of State the power to make nine. The response was that only five were deemed necessary at the time following consultation, but conditions could be added at a later time.
40. Section 33 amended sections 13 and 69 of the Licensing Act 2003 to allow members of a licensing authority to act as “interested parties”. This allowed members of licensing authorities to make representations to object to licence

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<sup>7</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/223773/Alcohol\\_consultation\\_response\\_report\\_v3.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/223773/Alcohol_consultation_response_report_v3.pdf)

<sup>8</sup>[http://www.legislation.gov.uk/ukia/2014/190/pdfs/ukia\\_20140190\\_en.pdf](http://www.legislation.gov.uk/ukia/2014/190/pdfs/ukia_20140190_en.pdf)



applications or to call for a licensing review. However, section 33 was repealed by the Police Reform and Social Responsibility Act 2011, which also removed the category of interested party from the legislation. This had the effect of enabling any person to make representations in relation to applications for the grant or variation (including a minor variation) of a premises licence or club premises certificate, the grant of a provisional statement and to make applications for the review of such authorisations, and to make representations in relation to other discrete processes. An assessment of the effect of these amendments will be the subject of the post legislative scrutiny memorandum for the 2011 Act.

#### **PART 4 - INJUNCTIONS: GANG-RELATED VIOLENCE**

##### *Power to grant injunctions*

41. Please see the Government review referred to in paragraph 3 of Annex 3.

#### **PART 5 - PROCEEDS OF CRIME**

42. The purpose of the provisions in Part 5 is to improve and expand upon the mechanisms allowing for the recovery of criminal assets. The PCA included powers in, and made amendments to, existing provisions in the Proceeds of Crime Act 2002 (“POCA”). However, most provisions have yet to be commenced; other pressing matters, including further primary legislation, have meant that the Government has not been able to begin implementing these provisions until earlier this year. However, the process of bringing into force those uncommenced elements of Part 5 in England, Wales and Scotland is progressing and, subject to Parliamentary timetabling, the intention is for them to come into force in the summer of 2015. The timetable and extent of commencement in Northern Ireland is to be determined following discussions with the Northern Ireland administration. A preliminary assessment of those commenced Part 5 provisions is set out below.

##### *Recovery of receivers’ expenses*

43. Section 51 amends section 55 of POCA to enable receivers appointed in confiscation proceedings who are members of staff of the Crown Prosecution Service (“CPS”), Her Majesty Revenue and Customs (“HMRC”), and members of staff from other departments and public bodies specified in new subsection 55(8) of POCA, to deduct their expenses from recovered sums. Previously, such “in-house” receivers were unable to recover their expenses as these were to be met from within the bodies’ budget. It is important to note that remuneration costs are still met from public funds as part of the bodies’ baseline budget for the payroll of the staff it employs. Section 51 of the PCA

also amends section 203 of POCA to make similar provision for Northern Ireland.

44. There has been limited use of this provision by law enforcement agencies as they rely upon the CPS to appoint and provide such receivers on their behalf. The Serious Fraud Office (“SFO”) has not used this provision but has indicated possible future use where members of its staff are appointed to perform the role of receiver in smaller straight-forward cases. This suggests that they will still engage external specialist receivers for more complex cases. The CPS specifically had asked to make use of in-house receivers, rather than appointing external receivers due to the costs involved *“but to date have not incurred expenses for which we have needed to bill”*. They *“have mainly used in-house receivers to move money from bank accounts to Her Majesty’s Courts and Tribunals Service account in satisfaction of confiscation orders”*. The CPS does, however, consider this provision to be *“a very helpful change in the law and we are likely to make more use of it in the future”*. Other bodies, such as HMRC, have not used this provision and need to continue to rely on external receivers.

#### *Compensation*

45. Section 72 of POCA provides for compensation to be paid to a person whose property has been affected by the enforcement of confiscation legislation. Compensation is only payable where an investigation is started but proceedings are never brought, or the defendant is not convicted of an offence, or the conviction is quashed, or the defendant is pardoned. In all cases there must have been a serious default on the part of one or more of the enforcement authorities specified in section 72(9) for compensation to be payable. Section 61 amended sections 72(9) of POCA, and the corresponding provisions for Scotland and Northern Ireland: sections 139(9), and 220(9) of POCA, to add the Serious Organised Crime Agency (now replaced by the National Crime Agency) to the list of enforcement authorities that are liable to pay compensation. It also amended section 72(9) and 220(9) to add to the list certain bodies that have accredited financial investigators on their staff.
46. There have been no reported cases by the law enforcement agencies where a successful compensation claim has been made. There had been one civil case against the CPS in which the claim had been successfully struck out. It has therefore not been possible to determine the associated costs or benefits of this provision. All the agencies do however consider this as an important provision as it does re-enforce the importance of conducting valid and proper investigations and avoiding reputational damage. None of the agencies have asked for this provision to be removed, and the Government considers it a

requirement that those bodies who undertake confiscation investigations and proceedings are liable to pay compensation in appropriate cases.

### *Limitation*

47. Section 62 provides for the limitation period for actions for the civil recovery of property obtained through unlawful conduct under Chapter 2 of Part 5 of POCA to be extended from 12 years to 20 years. This effectively means that a body bringing civil recovery proceedings could do so within 20 years of the property being obtained rather than 12 years.
48. There has been a generally positive response from enforcement agencies of this provision; in particular the Scottish Civil Recovery Unit is looking at additional assets that fall within the 20 year timeframe that have previously been excluded under the 12 year limit. The CPS consider *“the extension of the time limit from 12 to 20 years for civil recovery as an important change in the law and have a number of civil recovery investigations underway, the extension of time is enabling the CPS to investigate cases that would otherwise be statute barred”*. The SFO are also looking to initiate civil recovery proceedings, benefiting from the extended limitation period on current investigations, which they believe will lead to higher recovery of assets. They are particularly considering long running bribery and corruption cases which they believe will lead to successful recovery of assets. There are no completed examples to provide at this time, which has made it difficult to realise the cost / savings.

### *Detention of seized cash*

49. Section 64 allows a magistrate (or a sheriff in Scotland) to make an order for continued detention of seized cash, if satisfied that there are reasonable grounds for the officer’s suspicion that the continued detention is justified for the purposes of investigating its origin or intended use. The ultimate intention is to forfeit the cash as the proceeds of crime or intended for use in crime. Section 295(2)(a) of POCA originally provided that the magistrate could order the detention of seized cash for a maximum of a three month period at a time. Section 64 amended this by providing that the period of detention may be extended for six months. The maximum period during which seized cash may be detained overall before an application is made for forfeiture remains at two years from the date of the first order.
50. The extension of time from three to six months has generally been accepted by agencies as a useful amendment; one police officer has stated *“This is a very effective amendment to legislation. The burden of monitoring and reapplying for orders is less which allows more time to be spent actually*

*investigating the derivation of the cash. We are now finding that decisions can usually be reached one way or the other within the first detention period; previously this was unheard of".* Other forces have welcomed the additional time allowed to carry out effective investigations within a backdrop of budget cuts leading to reducing staff, long running criminal investigations and increased workload. Other agencies which support this provision include the Scottish CRU and the SFO. The SFO mirror the police response: *"The SFO has carried out a limited number of cash detentions but this provision has been useful as it provides a sensible length of time for further enquiries to be made."* The SFO consider the savings and/or benefits to *"include a reduction in the number and frequency of hearings"* leading to lower court costs and time.

## **PART 6 - EXTRADITION**

51. Part 6 amended various provisions in the Extradition Act 2003 ("the 2003 Act"). Some of the largely technical changes were introduced to streamline certain provisions in the 2003 Act while others enable the UK to deal with European Arrest Warrant ("EAW") alerts transmitted via the second generation Schengen Information System ("SISII"), a computer database used for law enforcement, immigration and border control in the EU. Other changes to the 2003 Act enable other EU Member States, in provisional arrest cases, to apply for a 48 hour extension in which to submit a full request for extradition. The changes made by the PCA also allow for the use of live links in certain hearings in extradition cases (but not the extradition hearing itself). The PCA made a number of technical amendments to the 2003 Act concerning the temporary surrender of people to the State requesting extradition, and required/allowed for judges to adjourn extradition proceedings when they are informed prior to the extradition hearing that the person has been charged with a domestic offence or is serving a prison sentence in the UK (before the PCA, adjournment could only take place if the judge was informed of such matters during the extradition hearing itself). The PCA amendments also reflected changes to sentencing legislation, such as the introduction of the possibility of release on licence.
52. The changes made to the 2003 Act by the PCA strengthened the way in which the UK operates extradition arrangements to ensure they operate transparently, and in a way which sensibly balances the interests of justice and the interests of victims against the rights of the individual whose extradition is being sought. In relation to SISII, the expectation was that the UK would begin sending and receiving data via SISII in April 2011, hence why the relevant sections of the PCA were commenced in 2010. However, at present, the UK has yet to connect to SISII, with the date of connection being expected in early 2015. SISII provisions in the PCA will ensure that the system becomes the principal way in which the UK transmits and receives

EAWs and will give the UK the advantage of receiving EAW alerts in real time which will better protect the UK's borders and provide long term efficiency savings to the police and the National Crime Agency, reducing the likely time it takes to locate criminals who have absconded from the UK, especially if their precise location is unknown.

## **PART 7 – AVIATION SECURITY**

53. The Aviation Security Act 1982, as amended by Part 7 of, and Schedule 6 to, the PCA, requires all airports falling within the scope of the UK's National Aviation Security Programme ("NASP") to establish a mandatory process for planning security. It provides the necessary structures so that airport operators, the police and other airport security stakeholders can deliver a secure environment for all those using UK airports. The process requires a multi-agency collaborative approach to assess risks at an airport and to plan for effective mitigation, and for airport security planning decisions to be taken on a co-operative, local basis.
54. In terms of implementation, the Aviation Security Act, as amended by the PCA, required all airports falling within the scope of the NASP to:
- form a Risk Advisory Group, responsible for compiling a risk report by 29 March 2010;
  - form a Senior Executive Group ("SEG"), responsible for agreeing an Airport Security Plan ("ASP") on the basis of the risk report, by 29 January 2011, and a Police Service Agreement ("PSA") by 29 April 2011. A PSA is only necessary if the requirement for dedicated policing has been identified in the ASP.
55. These provisions form a vital component of aviation security, ensuring that the threats to airports are reviewed and assessed on a regular basis, and that appropriate mitigations are put in place to protect the public and wider aviation industry – including (where necessary) a dedicated protective policing presence. The requirements have been put in place successfully across the (more than) sixty security regulated airports in the UK, with only one dispute – which was referred to the Secretary of State and settled quickly and amicably.

## **PART 8 - MISCELLANEOUS**

### **Chapter 1: Safeguarding vulnerable groups and criminal records**

56. This Chapter of Part 8 of the PCA made a number of changes to the vetting and barring scheme which was planned at that time in relation to the process of assessing those who wished to work with children and vulnerable adults. The main provisions of this scheme were set out in the Police Act 1997 (criminal records disclosure) and the Safeguarding Vulnerable Groups Act

2006 (vetting and barring scheme). Since that time, the scheme has been fully reviewed and a number of the planned measures were either not commenced, or repealed by the Protection of Freedoms Act 2012. The following provisions of this Chapter have been implemented and remain in force.

57. Section 81 renamed the then Independent Barring Board as the Independent Safeguarding Authority and made consequential changes to legislation where IBB appeared. The ISA operated the relevant barring provisions under the 2006 Act until being merged with the Criminal Records Bureau under changes made in the 2012 Act, to form the new Disclosure and Barring Service. The DBS came into existence on 1 December 2012 and began operating in 2013.
58. Section 88 inserted a new provision into the 2006 Act that empowered the ISA to provide information that it holds to the police in England and Wales for use by the police for the prevention, detection and investigation of crime and the apprehension and prosecution of offenders. Section 91 made similar provision in Northern Ireland. This power provided an additional safeguard by allowing the ISA to provide information to the police in cases where it considered an individual may pose a risk of harm to vulnerable groups. This power now applies to information held by the DBS.
59. Section 96 enabled the CRB, when checking the suitability of individuals to be registered, to countersign and receive Standard and Enhanced Disclosures in respect of applicants, to be checked against the barred lists established under the 2006 Act. Such individuals are known as “Registered Persons” under the Police Act 1997. This provision now applies to the DBS.
60. Section 97 made amendments to the 1997 Act so that the Secretary of State may determine the “form, manner and contents” in which applications for criminal records certificates are made. Regulations were previously required for any change to such applications and this provision enabled the Secretary of State to determine administratively the way people apply, what applicants are required to disclose on the applications and how people sign and countersign them without having to make regulations each time. This includes providing for electronic or on-line applications. This power has reduced the bureaucracy involved in applying for criminal records certificates.
61. Section 94 deals with the provision of “right to work” information, to enable an employer to be informed whether prospective or current employees have a “right to work” in the UK based on the UK Border Agency (now UK Visa and Immigrations) records. Section 95 provides for methods of identity verification to be prescribed under section 118 of the 1997 Act when making an application for a certificate, such as a passport, driving licence and current utility bills, etc. The taking of fingerprints is already provided for under section

118 and any method prescribed under the section as amended by the PCS is likely to be less intrusive than requiring fingerprints. Neither sections have yet been commenced.

## **Chapter 2: Other**

### ***Border controls***

#### *General information powers*

62. Section 98 inserts a provision into the Customs and Excise Management Act 1979 which gives customs officials in Border Force a clear legal power to require anyone entering or leaving the UK to produce their passport or travel documents and to question them about their journey in support of the exercise of a customs power. This power is used routinely on a daily basis and is essential as it provides customs officials with the ability to ask a person arriving in or leaving the UK any questions necessary relating to their journey, their baggage or any items carried with them. Having the ability to require this information from a person at the border allows a customs official to assess the circumstances of the person's journey and to use that information to assess whether the person poses a customs risk and, if so, the subsequent follow up action needed. For example, it enables officers to determine whether a person has arrived in the UK from another EU country or started their journey outside the EU, the officer can then assess what goods the person is entitled to import before being subject to a tax or duty.

#### *Powers in relation to cash*

63. Customs officials have the power to seize or detain cash under the Proceeds of Crime Act 2002, where there are reasonable grounds for suspecting that it is recoverable property or intended by any person for use in unlawful conduct. Section 99 inserts provisions into CEMA which provides clarity on the application of certain customs powers of access, search and examination that refer in some places to "goods" and in others to "articles" and confirms that these can be read as "cash". It also ensures compliance with the Cash Control Regulation on controls of cash entering or leaving the Community (Regulation (EC) No. 1889/2005). This regulation requires people entering or leaving the Community to declare cash with a value of 10,000 Euros or more.
64. This power is essential. Customs officials in Border Force target criminal cash movements suspected of being derived from or intended for use in crime and/or revenue fraud on a daily basis to disrupt organised crime groups and to prevent money laundering by means of the movement of cash into and out of the UK.

#### *Lawful interception of postal items by Revenue and Customs*

65. Section 100 inserts subsection (3A) into section 3 of the Regulation of Investigatory Powers Act 2000. It puts beyond doubt that the protection from interception afforded to postal communications under section 3 of RIPA does not restrict customs officials in Border Force from examining postal items under section 159 of CEMA for customs and excise purposes.
66. Border Force is responsible for assessing and raising charges on all parcels and packets arriving in the UK that are liable for customs duty, import VAT, excise duties and other taxes. Border Force undertakes risk based compliance and anti-smuggling checks on arriving international postal packages and examines hundreds a day for customs purposes. This customs activity is essential to protect the revenue by ensuring the correct tax and duty is paid and to protect the UK from those wishing to smuggle illegal goods such as drugs and firearms into the UK. Without this provision Border Force would be severely restricted in its ability to target and examine these postal packets.

*Prohibition on importation or exportation of false identity documents*

67. Section 101 creates a prohibition on the import and export of false identity documents and sets out clearly the definitions for these items. False identity documents are often detected en route to the UK to facilitate criminal offences such as identity and benefit fraud and immigration offences. These items are mainly sent by post and in international parcels and courier services but are also found in passenger baggage. Customs officials target illegal importations of false identity documents but may also discover these items through the normal course of their daily duties. This provision means that where the prohibited items are discovered they are liable to forfeiture under section 49 of CEMA and can be seized under section 139 of that Act. Improper importation of a prohibited item is an offence under section 50 CEMA and evading the prohibition is an offence under section 170. Without this provision customs officials in Border Force would not have the ability to seize or detain false identity documents.
68. The prohibition on importation of offensive weapons remains to be commenced but Border Force are able to seize offensive weapons at the border under other legislation.

***Football spectators***

69. Sections 103–107 make provision for the mutual recognition of football banning orders issued in Scotland, England and Wales and Northern Ireland. Section 103 ensures football banning orders issued in England and Wales are recognised in Scotland and Northern Ireland, with the effect that banned individuals are prevented from attending regulated matches (involving national teams and league clubs). This removes the need for police in Scotland or



Northern Ireland to seek a further banning order against certain “risk individuals” who, for example, follow Scottish teams or the Northern Ireland national team if those individuals have already been banned under the legislation in England and Wales. This has proved useful in preventing banned risk individuals from England and Wales from attending matches in Scotland. Preventing such individuals from attending matches involving the club or national side they follow, or a Scottish team they have an affiliation with, previously necessitated the enforcing authority for England and Wales to issue reporting notices that required the banned individual travel to a local police station. In practice police have, on occasion, sought further banning orders in Scottish courts against a few Scottish residents, already subject to a banning order issued in England or Wales. This is because the Scottish enforcing authority finds it an easier process to administer reporting, and other, conditions of the ban than using the enforcing authority for England and Wales.

70. Section 104 enabled individuals subject to a banning order issued in England and Wales to report to a police station, when directed to by the enforcing authority, in Scotland or Northern Ireland. This has meant that banned individuals are no longer required to travel to England or Wales for their initial reporting or passport surrender requirements.
71. Section 105 empowers the police in Scotland and Northern Ireland to arrest and prosecute individuals who breach an order issued in England and Wales. Enabling police to arrest individuals breaching their orders, irrespective of the jurisdiction in which the order is imposed or breached, is a proportionate measure. Statistics on the use of this measure are not held centrally. Scottish Football Liaison Prosecutors report they have successfully prosecuted in a number of cases where people subject to football banning orders issued in England and Wales have attended, or attempted to attend, a regulated football match in Scotland. The average penalty following conviction is a fine of £300. In cases where the accused has failed to report or surrender their passport to police, it has been more difficult to secure convictions, although intelligence on the offending behaviour is logged in the event of a similar incident happening again.
72. Similarly, section 106 empowers police in England, Wales and Northern Ireland to arrest individuals subject to banning orders issued in Scotland who have breached their order. There are no statistics held on the use of this power. The powers in section 105 and 106 were not considered likely to deal with a significant volume of offending: the objective was more modest, to close the “loophole” of individuals being banned under one legislative regime but not the other. The enforcing authorities for England and Wales, and Scotland, consider that the objectives behind the provisions in sections 103-

107 have been met, with effective liaison and information sharing between the two authorities.

### ***Other***

73. Prior to section 111, there was legal uncertainty as to whether officers working for national agencies at the time – such as the Scottish Crime and Drugs Enforcement Agency (“SCDEA”), as well as the Serious Organised Crime Agency (“SOCA”) - had authority to apply for search warrants under section 23(3) of the Misuse of Drugs Act 1971. Section 111 of the PCA removed the requirement for a constable, who wishes to obtain a warrant under section 23(3) of the 1971 Act to enter and search premises, to be “acting for the police area within which the premises are situated.” The amendment was made following strong representations from the SCDEA that the then limitation was having an adverse operational impact. However, since the SCDEA was incorporated into Police Scotland on 1 April 2013, officers are now able to apply and execute warrants nationwide as one police area. SOCA is the other organisation affected by the amendment. Since 2013, when SOCA was abolished and replaced by the National Crime Agency, its officers in England and Wales apply for warrants under section 8 of the Police and Criminal Evidence Act 1984. The NCA in Scotland applies for warrants under the common law. Meanwhile, the NCA in Northern Ireland does not have the power to apply for section 23(3) search warrants because NCA officers may not be designated with the powers and privileges of a Northern Ireland constable until the “relevant NCA provisions” listed in Schedule 24 to the Crime and Courts Act 2013 are extended to Northern Ireland.

## **CONCLUSION**

74. In summary, the above assessment supports the proposition that the PCA has generally succeeded in its overall aims, as set out in paragraph 2. However, a number of its provisions have either yet to be commenced or have been superseded by subsequent legislation (in particular, in relation to police accountability and collaboration; and the powers available to deal with low level crime and disorder and with sexual offenders). But the provisions of the PCA that have been commenced and remain in force have been generally agreed to meet the objectives for which they were designed.

## **Annex 1: Implementation**

1. By virtue of section 116(5), sections 81, 100, 111, 112(3) to (9), 113-117 and Part 12 of Schedule 8 came into force on 12 November 2009 (Royal Assent).
2. By virtue of section 116(6), Part 13 of Schedule 7 and Part 13 of Schedule 8 came into force on 12 January 2010 (2 months after Royal Assent).
3. The Policing and Crime Act 2009 (Commencement No 1 and Transitional and Saving Provisions) Order 2009 (SI 2009/3096) brought into force sections 88 and 91 on 30 November 2009 and sections 7-9, 26, 51, 61, 62, 64, 67-78, Part 2, paragraph 25 and Part 9 of Schedule 7 and Part 6 of Schedule 8 on 25 January 2010.
4. The Policing and Crime Act 2009 (Commencement No 2) Order 2010 (SI 2010/52) brought into force sections 98, 99, 101 and Part 9 of Schedule 8 on 25 January 2010.
5. The Policing and Crime Act 2009 (Commencement No 3) Order 2010 (SI 2010/125) brought into force sections 10-13, 29-33, 79, 80, 83, 84 (for the purpose of making regulations only), 97, 110, Schedule 4, Schedule 6 (in relation to England, Wales and Scotland only), Part 4 and Part 5 of Schedule 7 and Parts 3, 7 and 8 (insofar as it relates to repeals in the Police Act 1997 and the Criminal Justice Act 2003) of Schedule 8, on 29 January 2010. The Order also commenced section 1 on 15 March 2010.
6. The Policing and Crime Act 2009 (Commencement No 4) Order 2010 (SI 2010/507) brought into force sections 27(11), 109(4) and (5) for the purpose of making regulations under section 6 of the Crime and Disorder Act 1998, and paragraphs 3 and 5 of Schedule 3 on 2 March 2010. The Order commenced section 5 and Part 1 of Schedule 7 on 12 March 2010. The Order commenced sections 14-25, 79 and 80 (in relation to Northern Ireland only), 103-108, paragraphs 18-22, 24 and 26 and Part 12 of Schedule 7, Parts 2 and 11 of Schedule 8, Schedules 1, 2 (in relation to England and Wales only) and 6 (in relation to Northern Ireland only) on 1 April 2010.
7. The Policing and Crime Act 2009 (Commencement No 1 and Transitional and Saving Provisions) (England) Order 2010 (SI 2010/752) brought into force section 27 and Schedule 3 to the extent not already in force and paragraph 23 of Schedule 7 on 6 April 2010.
8. The Policing and Crime Act 2009 (Commencement No 5) Order 2010 (SI 2010/999) brought into force sections 3, 4 and Part 1 of Schedule 8 on 19 April 2010. The Order commenced paragraph 23 of Schedule 7 on 8 May

2010 (in relation to Wales only). The Order also provided for the commencement of section 2 on 1 September 2010 but this was amended by The Policing and Crime Act 2009 (Commencement No 6 and Commencement No 5 (Amendment)) Order 2010 so that only subsection (2) was commenced on that date.

9. The Policing and Crime Act 2009 (Commencement No 1) (Wales) Order 2010 (SI 2010/1375) brought into force, in Wales, section 27(11) and paragraphs 3 and 5 of Schedule 3 on 1 May 2010 and section 27 and Schedule 3 to the extent not already in force, and paragraph 23 of Schedule 7, on 8 May 2010.
10. The Policing and Crime Act 2009 (Commencement No 6 and Commencement No 5 (Amendment)) Order 2010 (SI 2010/1986) brought into force section 109 on 6 November 2010 and amended the commencement date of section 2.
11. The Policing and Crime Act 2009 (Commencement No 7) Order 2010 (SI 2010/2988) brought into force Part 4 on 31 January 2011.
12. The Policing and Crime Act 2009 (Commencement No 8) Order 2012 (SI 2012/2235) brought into force section 96 and Part 10 of Schedule 7 on 10 September 2012.
13. Section 46A was inserted by the Crime and Security Act 2010 and came into force on 9 January 2012 (The Crime and Security Act 2010 (Commencement No 4) Order 2011).

## **Annex 2: Secondary legislation, guidance and other relevant material**

### *Statutory instruments*

1. The following statutory instruments have been made under provisions contained in the PCA:
  - The Policing and Crime Act 2009 (Consequential Provisions) (England) Order 2010 (SI 2010/723), made under section 112(3). This Order repealed provisions of a number of local Acts as a result of the coming into force of section 27 (lap dancing and other sexual entertainment venues) of the PCA.
  - The Policing and Crime Act 2009 (Transitional and Saving Provisions) (Wales) Order 2010 (SI 2010/1395), made under paragraphs 3 and 5 of Schedule 3 to the PCA. This Order contains transitional and saving provisions in respect of the provisions of the PCA relating to sexual entertainment venues.
2. Other pieces of secondary legislation have been made under various powers in other enactments which were inserted or amended by the PCA. Whilst it would generally be for the post-legislative scrutiny memoranda for those other enactments to review those statutory instruments, some of the enactments pre-date the PCA so no new memoranda would be forthcoming. Therefore this memorandum also covers the following pieces of secondary legislation.
3. In relation to provisions in Part 1 (Police Reform) of the PCA:
  - The Police Act 1996 (Equipment) Regulations 2011 (SI 2011/300) of 4 March 2011 (made under powers in the Police Act 1996 which were amended by section 11 of the PCA). These regulations require the police to buy certain equipment, including commercial off-the-shelf IT software, through specified contractual arrangements.
  - The Police Act 1996 (Equipment) (Amendment) Regulations 2014 (SI 2014/395) of 19 March 2014. These regulations disapply the 2011 regulations when a specified contractual arrangement expires or has terminated.
4. In relation to provisions in Part 3 (Alcohol Misuse) of the PCA:
  - The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010 (SI 2010/860), made under section 19A of the 2003 Act, which was

inserted by section 32 of, and Schedule 4 to, the PCA. Section 19A provides for the Secretary of State to prescribe by order up to nine mandatory conditions applicable to relevant premises licences and club premises certificates. This Order prescribed five such conditions.

- The Licensing Act 2003 (Mandatory Licensing Conditions) (Amendment) Order 2014 (SI 2014/2440) amended the five conditions to make them more effective. Guidance on these changes was published on 3 September 2014 so that it was available prior to the commencement of the Order<sup>9</sup>.
- The Licensing Act 2003 (Mandatory Conditions) Order 2014 (SI 2014/1252) introduced a ban on selling alcohol below the price of duty and VAT. This bans anyone from selling alcohol at heavily discounted prices. The intention is to reduce alcohol-related health harms and alcohol-related crime and disorder, both of which are linked to the availability of cheap alcohol. The document, *Guidance on banning the sale of alcohol below the cost of duty plus VAT* was published in May 2014<sup>10</sup>.

#### *Guidance and other relevant material*

5. *Police collaboration*: statutory guidance was published in 2010<sup>11</sup> to assist police authorities and forces considering and implementing collaborative working as a means to achieving more efficient and effective delivery of policing services. A “toolkit” for forces<sup>12</sup>, including a number of case studies, was published alongside the guidance, setting out the processes and steps required in forming collaboration agreements.
6. *Prostitution*: In March 2010, guidance was produced in relation to the section 17 provisions concerning orders requiring those convicted of loitering or soliciting for purposes of prostitution to attend meetings with suitable persons<sup>13</sup>. Guidance was also produced in April 2010 in relation to the section 21 provisions concerning sex establishment closure orders<sup>14</sup>.
7. *Alcohol misuse*: There are three sets of relevant guidance:

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<sup>9</sup> <https://www.gov.uk/government/publications/guidance-on-mandatory-licensing-conditions>

<sup>10</sup> <https://www.gov.uk/government/publications/banning-the-sale-of-alcohol-below-the-cost-of-duty-plus-vat>

<sup>11</sup> <https://www.gov.uk/government/publications/statutory-guidance-for-police-collaboration>

<sup>12</sup> <https://polka.pnn.police.uk/en/System/Not-member/?returnUrl=https://polka.pnn.police.uk/>

<sup>13</sup> <http://www.uknswp.org/wp-content/uploads/GuidanceonSection17PolicingandCrimeAct2009FINAL.pdf>

<sup>14</sup> <http://www.uknswp.org/wp-content/uploads/ClosureOrderGuidanceFINAL30THMARCH2010.pdf>

- Statutory guidance is issued under section 182 of the Licensing Act 2003. The guidance covers those provisions of the Licensing Act which were amended by the PCA - that is, section 147A, the offence of persistently selling alcohol to children (amended by section 28 of the PCA); and the mandatory licensing conditions in section 19 (amended by section 32 of the PCA). This guidance is regularly reviewed in order to keep up to date with changes to the Licensing Act. The latest version was published on 13 October 2014<sup>15</sup>.
  - There is also specific guidance relating to the section 147A(1)(a) Licensing Act offence (as amended by section 28 of the PCA) of selling alcohol to children. The document, *Guidance: persistently selling alcohol to children (revised guidance following amendments introduced through the Police Reform and Social Responsibility Act 2011)*<sup>16</sup> was published to coincide with the coming into force of provisions in the Police Reform and Social Responsibility Act 2011 in April 2012).
  - The document ‘*A tiered approach to tackling young people drinking alcohol in public places*’<sup>17</sup> was published to coincide with the coming into force of section 30 of the PCA. This guidance explains the offence of persistently possessing alcohol in a public place contained in section 30.
8. *Gang injunctions*: The following guidance has been published in respect of injunctions to prevent gang-related violence:
- Statutory guidance (last updated December 2011)<sup>18</sup>.
  - Ministry of Justice operational guidance to the courts and Youth Offending Teams (published in October 2012)<sup>19</sup>.
9. *Airport Security*: Guidance issued in January 2010<sup>20</sup> provides UK airport security stakeholders with advice on how to strengthen security planning arrangements at their airports as required by the Aviation Security Act 1982, as amended by the PCA.

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<sup>15</sup><https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>

<sup>16</sup><https://www.gov.uk/government/publications/guidance-on-persistently-selling-alcohol-to-children>

<sup>17</sup><http://tna.europarchive.org/20100413151441/crimereduction.homeoffice.gov.uk/crimereduction054a.pdf>

<sup>18</sup><https://www.gov.uk/government/publications/statutory-guidance-injunctions-to-prevent-gang-related-violence--2>

<sup>19</sup><http://www.justice.gov.uk/youth-justice/courts-and-orders/disposals/gang-injunctions>

<sup>20</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/11516/guide.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11516/guide.pdf)

### Annex 3: Other reviews

1. *Prostitution*: In March 2014, the All-Party Parliamentary Group on Prostitution & the Global Sex Trade published *Shifting the Burden: Inquiry to assess the operation of the current legal settlement on prostitution in England and Wales*<sup>21</sup>. The inquiry focused on how the law operates at four levels: legislation, policing and enforcement, entry into and exit from prostitution, and cultural attitudes. The conclusions of the report were broadly critical of the legal settlement around prostitution.
2. *Alcohol misuse*: The document *Children in Pubs* published by Parliament on 4 July 2013<sup>22</sup> looked at the law concerning the presence of children in pubs. It states that the involvement of children in test purchasing raises a number of legal issues concerning consent, child welfare and evidence. The report signposts test purchasing guidance available for local authorities and coordinators of regulatory services in relation to under age sales test purchasing, including that for the offence of persistently selling alcohol to children (*A practical guide to test purchasing, March 2010*)<sup>23</sup>.
3. *Gang injunctions*: The Government published a review<sup>24</sup> of the operation of injunctions to prevent gang related violence in January 2014. Please see this review for a preliminary assessment of Part 4 of the PCA.
4. *Extradition*: Legislation in this area has been the subject of a number of reviews by independent bodies since the PCA came into force:
  - *The Baker review* - on 8 September 2010, the Home Secretary announced the Scott Baker QC review. He was joined by two independent lawyers with expertise in extradition matters; David Perry QC and Anand Doobay,. The panel reported back to the government on 30 September 2011<sup>25</sup>.
  - *The Joint Committee on Human Rights (JCHR) review* - in December 2010 the JCHR announced an inquiry into the human rights implications of UK extradition policy. The JCHR inquiry ran in parallel with the Baker review, but had no formal connection to it. On 22 June 2011, the JCHR published its report<sup>26</sup>.

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<sup>21</sup> <http://prostitutionresearch.com/wp-content/uploads/2014/04/UK-shifting-the-burden-Mar-2014.pdf>

<sup>22</sup> <http://www.parliament.uk/briefing-papers/SN04908/children-in-pubs>

<sup>23</sup> [http://www.xact.org.uk/information/downloads/RIPA/Test\\_Purchase\\_Guidance.pdf](http://www.xact.org.uk/information/downloads/RIPA/Test_Purchase_Guidance.pdf)

<sup>24</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/278786/ReviewInjunctionsGangRelatedViolence.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278786/ReviewInjunctionsGangRelatedViolence.pdf)

<sup>25</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/117673/extradition-review.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117673/extradition-review.pdf)

<sup>26</sup> <http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/156/156.pdf>



- *The Home Affairs Select Committee (HASC) review* - on 30 March 2012, the HASC published its report into the extradition arrangements between the UK and USA<sup>27</sup>.
  - *The House of Lords Select Committee review of Extradition Law* - on 12 June 2014 this committee<sup>28</sup> was formed to consider and report on the law and practice relating to extradition, in particular the Extradition Act 2003. This review is currently ongoing and the Committee is expected to submit its recommendations and publish a report by 5 March 2015.
5. *Safeguarding vulnerable groups and criminal records*: The Government undertook several reviews of the vetting, barring and disclosure arrangements arising from the Police Act 1997 and the Safeguarding Vulnerable Groups Act 2006, to which various changes were made by the PCA. Changes arising from those reviews were implemented in the Protection of Freedoms Act 2012. The reviews were:
- A Common Sense Approach – A review of the criminal records regime in England and Wales – Phase 1<sup>29</sup>.
  - Vetting and Barring Scheme Remodelling Review<sup>30</sup>.

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<sup>27</sup> <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/644/644.pdf>

<sup>28</sup> <http://www.parliament.uk/business/committees/committees-a-z/lords-select/extradition-law/role/>

<sup>29</sup> <https://www.gov.uk/government/publications/criminal-records-regime-review-phase-one>

<sup>30</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/97748/vbs-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97748/vbs-report.pdf)





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