Memorandum to the Home Affairs Committee

Post-Legislative Scrutiny of the Crime and Security Act 2010

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

December 2015

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MEMORANDUM TO THE HOME AFFAIRS COMMITTEE

POST-LEGISLATIVE ASSESSMENT OF THE CRIME AND SECURITY ACT 2010

INTRODUCTION

1. This memorandum provides a preliminary assessment of the Crime and Security Act 2010 (2010 c 17) ("the Act") 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 in the document *Post Legislative Scrutiny – The Government's Approach (Cm 7320)*.

OBJECTIVES OF THE CRIME AND SECURITY ACT 2010

2. The overriding objectives of the Act are to:

    - make our streets safer;
    - protect vulnerable members of society, including women and children;
    - shut down criminal and exploitative markets; and
    - provide justice for victims of crime and their families.

3. Specifically, the Act sought to:
    - provide additional powers for the collection of biometric data, including those convicted of serious offences overseas;
    - set up a regulatory framework for the retention, use and destruction of biometric data following the European Court of Human Rights' ruling in the *S and Marper v United Kingdom* case;
    - prevent gang violence by means of gang injunctions for under 18 year olds;
    - protect victims of domestic violence through the use of Domestic Violence Prevention Notices and Orders;
    - encourage parents' responsibility for their children's antisocial behaviour through the use of mandatory Parenting Needs Assessments and Parenting Orders;
    - prevent financial exploitation by licensing vehicle immobilisation businesses;
    - prevent inmates from continuing criminal activity from prison using mobile phones;
    - reduce police bureaucracy by reducing the statutory reporting requirements for stop and search; and
    - ensure air weapons are safely kept away from the reach of children.

4. Generally speaking, the objectives of the Act have not changed since enactment, although the means by which those objectives are to be achieved

has in several cases altered. For example, although the position in relation to police powers to obtain and use DNA and fingerprints remains the same, the previous administration believed that the retention periods set out in the Act were too long, so legislated, in the form of the Protection of Freedoms Act 2012 ("POFA"), to reduce them. The Police Reform and Social Responsibility Act 2011, POFA, the Anti-social Behaviour, Crime and Policing Act 2014 and the Terrorism Prevention and Investigation Measures Act 2011 have all superseded other provisions of the Act, as explained in further detail below. However, the provisions concerning the taking of fingerprints and samples, domestic and gang-related violence, prison security, air weapons and compensation of victims of overseas terrorism have all been implemented and have largely met the original policy objectives.

IMPLEMENTATION

5. Please see Annex 1 for a summary of the Act's implementation.

SECONDARY LEGISLATION, GUIDANCE AND OTHER RELEVANT MATERIAL

6. Please see Annex 2.

OTHER REVIEWS

7. Please see Annex 3.

PRELININARY ASSESSMENT OF THE ACT (INCLUDING ANY LEGAL ISSUES)

Section 1: Police powers of stop and search

8. Section 1 amended section 3 of the Police and Criminal Evidence Act 1984 ("PACE") which specifies the information which constables must record when they stop and search a person. The objective of the section 1 amendments was to reduce the bureaucratic burden on the police when operating stop and search powers. Subsection (3) provided that where a person is arrested as a result of a stop and search and taken to a police station, the constable who carried out the search must ensure that the search record forms part of the person's custody record (rather than completing a separate form). Subsection (4) removed the requirement for constables to record the person's name (or a note otherwise describing the person) and description of any vehicle searched. Section (5) further reduced the recording requirements for a stop and search, reducing the number of items of information to be recorded from ten to seven (date, time, place, ethnicity, object of search, grounds for search

and identity of the constable). Subsection (9) reduced the time within which a person can request a copy of the search record from 12 months to 3 months after the search.

9. Reducing the information required to be recorded by statute has saved police time. The time saved will vary from force to force according to local practices, particularly the method of recording the information e.g. whether by electronic means or paper. The amendments, which included placing the recording of ethnicity data on a statutory basis, did not change the ability to monitor the use of stop and search in respect of impacts on Black and Minority Ethic Communities.

Sections 2-13: Fingerprints and samples etc

10. Sections 2-7 of the Act provide the police with additional powers to take fingerprints and "non-intimate" DNA samples[1] ("biometric material") from individuals arrested, charged or convicted in the UK of a "recordable offence"[2], as well as offenders convicted overseas of "qualifying" [3] offences.

11. Section 2 permits DNA to be taken where an individual has received a caution, reprimand or warning and also from individuals who had been charged or convicted but who had not had their DNA and fingerprints taken at the time of arrest. Section 3 allows the police to take fingerprints and DNA samples from a person convicted of certain qualifying offences outside England and Wales where authorised by an officer of the rank of inspector or above. Section 4 expands the information required to be provided on taking fingerprints without consent to include the power under which they were taken and, where authorised by a court or officer, the fact that this had been given. Section 5 extends the powers to speculatively search biometric material against the databases to include DNA samples and fingerprints taken using the new powers in the Act. Section 6 provides the police with new powers to compel a person to attend a police station for the purposes of having their DNA and fingerprints taken. Section 7 provides a definition of qualifying offences.

[1] The legislation allows for the taking of "non-intimate samples" which are, in practice, almost always DNA samples, and the rest of this note refers to them as such.
[2] Offences punishable by imprisonment together with certain more minor offences specified in secondary legislation.
[3]These are mostly serious violent, sexual or terrorist offences and the list may be amended by the Secretary of State by way of statutory instrument.

12. Sections 8-13 of the Act provide equivalent measures to those in sections 2-7 in relation to Northern Ireland. At the time of writing it remains unclear when the Department of Justice in Northern Ireland will be in a position to commence these provisions.

13. Section 2 of the Act has allowed the police to retain the biometrics of many more individuals than was previously possible. Cautions, reprimands and warnings tend to be given for more minor offences but evidence shows that there is no link between initial seriousness of offending and future offending (for example, data published in the National DNA Database ("NDNAD") Strategy Board Annual Report 2009/11[4] showed that 11 individuals convicted for criminal damage went on to commit murder; the joint second highest category of offences). We do not have figures on the additional number of crimes which were solved because the police had DNA taken in relation to a caution or taken following charge or conviction so are unable to say for certain to what extent this section of the Act has achieved the policy objectives; however, we can provide data on the number of matches made (see paragraph 15 below).

14. The implementation of section 3 of the Act, however, has proved more problematic. In his first annual report[5], the Biometrics Commissioner has raised the retention of biometrics belonging to those convicted of an offence abroad as an issue. He has said that the restriction that the offence must be a qualifying one means that the biometrics belonging to "many EU nationals" who have a conviction in another country (but not for the equivalent of a qualifying offence) must be destroyed. We are aware of this issue. In our response to the Biometrics Commissioner the then Government said:

"*Primary legislation would be needed to remove the need to take another set [of DNA and fingerprints where an individual has a conviction in Scotland or Northern Ireland] and to allow the retention of DNA and fingerprints in England and Wales on the basis of Scottish or Northern Irish offence…The Government will consider making these changes during the lifetime of the next parliament*."

[4] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/387581/NationalDNAdatabase201314.pdf
[5] https://www.gov.uk/government/publications/biometrics-commissioner-annual-report-2013-2014

And also:

"*This Government has widened the cases in which information can be retained on the Police National Computer beyond that agreed by the previous Government. There will therefore be more situations in which the foreign conviction is available to the police*."

15. In relation to section 5, speculative searches of fingerprints and DNA against the relevant databases (IDENT1 and NDNAD respectively) are conducted against all DNA profiles and fingerprint records obtained from individuals against whom no further action is anticipated before they are deleted. In 2013-14, there were 24,953 routine and 214 "urgent"[6] matches against NDNAD and 61.9% of crime scene DNA stains matched against a profile on the Database. This demonstrates how invaluable speculative searches are.

16. We do not have figures on the number of further crimes which were solved because the police had taken DNA following the requirement for an individual to attend a police station (section 6); however, we are confident that the powers provided under this section of the Act have been of assistance in the police's efforts to combat crime.

<u>Sections 14-23: Retention, destruction and use of fingerprints and samples etc</u>

17. In December 2008, in the case of *S and Marper v United Kingdom* [2008] ECHR 1581, the European Court of Human Rights ("ECtHR") ruled that the powers in PACE (and the equivalent legislation in Northern Ireland) allowing the indefinite retention of fingerprints, DNA samples and profiles taken from someone arrested for, but not convicted of, an offence was a breach of Article 8 (right to respect for private life) of the European Convention on Human Rights ("ECHR"). Although the ECtHR accepted that the retention pursues the legitimate purpose of the detection and prevention of crime, it found that the "blanket and indiscriminate nature" of the retention powers was disproportionate to those aims and failed to strike a fair balance between the public interest in preventing crime and the rights of the individual to private life.

[6] Urgent matches are those made following searches carried out in relation to serious offences including homicides and rapes.

18. In response to this judgment, the then Government brought forward provisions in sections 14-23 of the Act which, amongst other things, allowed for the retention for six years of fingerprints and DNA profiles of people arrested for, but not convicted of, an offence. The provisions also established a separate approach to the retention of DNA profiles and fingerprints by the police for national security purposes, allowing for the extended retention of DNA and fingerprints on national security grounds.

19. However, the General Election took place just under a month after the Bill received Royal Assent. The Coalition Programme for Government (published 20 May 2010), included a commitment to introduce a 'Freedom' Bill which would lead to the implementation of specific commitments in the Programme for Government. One of those commitments was made in respect of the regulation of biometric data. Specifically, the Programme for Government stated that the Government "will adopt the protections of the Scottish model for the DNA database". As a result, sections 14, 16-19 and 21-23 of the Act were subsequently repealed by POFA (section 20 was repealed by the Terrorism Prevention and Investigations Measures Act 2011)[7].

20. POFA, which was enacted in May 2012, reduced the retention periods previously set down in the Act. The substantive provisions governing the regulation of biometric data held by the police and other law enforcement authorities are included at Chapter 1 of, and Schedule 1 to, POFA and came into force in October 2013. Post-legislative scrutiny of these provisions will take place in due course.

Sections 24-33: Domestic violence

21. Sections 24-33 of the Act established powers to enable the police to issue a domestic violence protection notice ("DVPN") and for magistrates subsequently to grant domestic violence protection orders ("DVPO")[8]. The policy intention was that, where there is insufficient evidence to charge a

[7] Section 15 of the Act, which made equivalent provision for the retention of biometric data in Northern Ireland, was never commenced as the Northern Ireland Assembly subsequently decided to legislate for a new biometric regulatory framework themselves (see Schedule 2 to the Criminal Justice Act (Northern Ireland)). Section 15 will be repealed by Part 3 of Schedule 4 to the CJNIA, in conjunction with the coming into force of Schedule 2. Schedule 2 has yet to be brought into force and there is currently no date for their commencement.

[8] See Annex 2 for non-statutory guidance concerning DVPNs and DVPOs.

perpetrator and provide protection to a victim via bail conditions, a DVPO can prevent the perpetrator from returning to a residence and from having contact with the victim for up to 28 days, allowing the victim a level of “breathing space” to consider their options, with the help of a support agency. Such options might include seeking a longer-term protective measure such as a civil injunction.

22. In more detail, section 24 contains the power for a police officer, with the authorisation of an officer not below the rank of Superintendent, to issue a DVPN if the officer reasonably believes that a perpetrator (P) has been violent towards, or has threatened violence towards an “associated person” (as defined by section 62 of the Family Law Act 1996), and the officer reasonably believes that the DVPN is necessary to protect the associated person from further violence from P. Section 24 sets out the considerations the officer must take into account, such as the welfare of any person aged under 18 whose interests may be affected by the notice, the opinion of the associated person, and any representations from P. Crucially, section 24 allows the officer to issue a DVPN without the consent of the associated person, thus distinguishing the new power from a non-molestation order. Section 24 then stipulates the restrictions that may be placed on P following issue of the notice, such as prohibiting P from entering premises, requiring P to leave premises, and prohibiting P from coming within a specified distance of the premises.

23. Because the DVPN is a police-issued notice, it is effective from the time of issue, thereby giving the victim the immediate support they require in such a situation.

24. Section 25 makes further provision in relation to the powers contained in section 24 by stipulating certain conditions on what must be specified within the DVPN and how the DVPN is to be served on P including that an application for a DVPO must be made to magistrates within 48 hours of the notice being served on P. To ensure compliance with the European Convention on Human Rights, this stipulation is built-in to provide judicial oversight and to confirm whether the prohibitions placed on P are proportionate and can therefore continue. Section 27 stipulates that the application must be heard not later than 48 hours after the DVPN has been served (Sundays and bank holidays are excluded from the 48 hour

calculation). Section 27 then gives powers to magistrates to hear the application.

25. Section 28 specifies the conditions and contents of a DVPO that a magistrates' court may make. Two conditions must be fulfilled – the first is that the court is satisfied on the balance of probabilities that the perpetrator has been violent towards, or has threatened violence towards, an associated person; the second is that the court thinks that the DVPO is necessary to protect the associated person from violence or a threat of violence by the perpetrator. Section 28 then stipulates the duration of the DVPO (between 14 to 28 days) and the restrictions that may be placed on P following grant of the order, such as prohibiting P from entering a premises, requiring P to leave a premises, and prohibiting P from coming within a specified distance of the premises.

26. Section 32 makes provision for a member of the Ministry of Defence Police not below the rank of superintendent to issue a DVPN. To date, this section has not been commenced as it is MoD policy to refer instances of domestic abuse committed by military personnel to the local civilian police force.

27. Section 33 empowers the Secretary of State to conduct a pilot on the effectiveness of sections 24-32. This section was commenced in July 2011, to enable a pilot to be conducted in three police force areas (Greater Manchester, West Mercia and Wiltshire) from July 2011 to September 2012, and two orders were made under section 33 (see Annex 2) to make provision for these pilots to take place. A formal evaluation was conducted by a consortium led by the London Metropolitan University and Middlesex University published in November 2013. The evaluation report findings can be found at https://www.gov.uk/government/publications/evaluation-of-the-pilot-of-domestic-violence-protection-orders.

28. The evaluation of the pilot found that DVPOs succeeded in providing protection to victims by reducing re-victimisation compared to cases where arrest was followed by no further action – on average, one fewer additional incident of reported domestic violence per victim over an average follow-up period of just over a year. The reduction in re-victimisation was greater when DVPOs were used in cases where there had been three or more previous police attendances. The pilot also found that front-line practitioners and victims viewed DVPOs as a positive intervention.

29. During the pilot, the following number of DVPNs and DVPOs were issued:

Force	Number of DVPN applications to Superintendent	Number of cases authorised by Supt	Number of DVPOs applied for to court	Number of DVPOs granted by courts
Greater Manchester	188	183	176	164
Wiltshire	161	151	150	122
West Mercia	39	38	34	33
Totals	**388**	**372**	**360**	**319**

Source: Local police monitoring data: 1 July 2011 – 30 June 2012.

30. On the evidence provided by the evaluation, the Home Secretary decided to implement sections 24-30 across the 43 police forces in England and Wales from 8 March 2014. Data published by the police under the Freedom of Information Act 2000 on 25 January 2015 showed that 2,220 DVPOs had been granted by the courts.

Sections 34-39: Gang-related violence

31. Sections 34 to 39 of the Act amend the powers in Part 4 of the Policing and Crime Act 2009 under which the police or a local authority may apply to a court for an injunction against an individual for the purposes of preventing gang-related violence. In particular the Act extends the use of injunctions to young people under 18, and provides for the court to make a supervision order or a detention order where such an injunction is breached. We are only aware of two instances of gang injunctions having been taken out against a person under the age of 18 since January 2012. A review of the operation of injunctions to prevent gang-related violence, including those for 14-17 year olds, was published in January 2014 (see Annex 3).

32. Further changes to the gang injunction were made by section 51 of the Serious Crime Act 2015 (which came into force on 1 June 2015). One of the aims of these changes is to increase the use of gang injunctions for young people aged 14 to 17 years old in order to protect younger teenagers from being drawn further into gang-related violence and drug dealing activity. Post-legislative scrutiny of these changes will follow in due course.

Sections 40-41: Anti-social behaviour orders

33. Anti-social behaviour orders ("ASBOs") are designed to prevent individuals from engaging in specific anti-social acts. Section 40 amends the Crime and Disorder Act 1998 ("the 1998 Act") under which ASBOs are made and inserts a new subsection (1C) into section 1 of the 1998 Act. This requires anyone who makes an application for an ASBO to the magistrates' court under section 1 of the 1998 Act, in relation to a young person under the age of 16, to prepare a report on the young person's family circumstances in accordance with regulations made by the Secretary of State. It was intended that regulations would specify certain topics or issues that the report should address, for example, levels of family support for the young person.

34. Section 41 of the Act amended the 1998 Act in relation to parenting orders by strengthening the assumption that a parenting order will be made when a young person under the age of 16 is convicted of an offence of breaching an ASBO. It inserts a new section 8A into the 1998 Act. New section 8A provides that when a young person under the age of 16 is convicted of an offence of breaching an ASBO, the court must make a parenting order unless there are exceptional circumstances. The parenting order must specify the requirements it considers would be desirable in the interests of preventing any repetition of the behaviour that led to the ASBO being made, or the commission of any further offence by the person convicted.

35. Neither section 40 nor 41 was commenced. ASBOs were included in the coalition government's review of the tools designed to tackle anti-social behaviour. In February 2011, the coalition government consulted on proposals to simplify and streamline the tools available to deal with anti-social behaviour by individuals, including the ASBO. ASBOs on application were replaced with injunctions under Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014 (the "ASBCP Act") on 23 March 2015. ASBOs on conviction have been replaced by criminal behaviour orders under Part 2 of the ASBCP Act on 20 October 2014. In the case of the injunction and the criminal behaviour order, applicants must consult with the local youth offending team before applying for the order against an individual under the age of 18. Post legislative scrutiny of these measures will take place in due course.

Sections 42-44: Private security

36. The three provisions are un-commenced whilst parts have been repealed. Section 42 of the Act amended the Private Security Industry Act 2001 to introduce a licensing regime specifically for private security businesses involved in vehicle immobilisation and related activities. It also introduced a provision to enable the potential licensing of other designated private security businesses. Shortly after the Act received Royal Assent, the new government in its May 2010 paper: 'The Coalition: Our Programme for Government' and in a press release on 17 August 2010, stated that it intended to ban wheel clamping on private land in England and Wales to prevent financial exploitation by such businesses. Therefore, section 54 of POFA made it an offence on 1 October 2012 to clamp, tow, block in or otherwise immobilise a vehicle without lawful authority if the intention was to prevent the motorist from moving that vehicle. Section 42(3) of the Act was subsequently repealed upon introduction of POFA.

37. Immobilising vehicles and related activity remains lawful in Northern Ireland (it has not been lawful in Scotland since 1992). Whilst the remaining provisions at section 42 of the Act are no longer required in relation to *any* vehicle immobilisation activity in England or Wales, the provisions remain un-commenced for vehicle immobilisation businesses in Northern Ireland – because the wider business licensing ('approvals') scheme is still under consideration by the government. Likewise, the provision at section 44 of the Act – which amended the Private Security Industry Act 2001 to provide an independent avenue of appeal for motorists of release fees, imposed by businesses carrying out vehicle immobilising and related activities – was also repealed in England and Wales at the time of introduction of POFA, but remains law, albeit un-commenced, in Northern Ireland, pending the government's consideration of the introduction of a wider business approvals scheme.

38. Finally, the provision at section 43 of the Act was introduced to enable the extension of the Security Industry Authority's voluntary 'Approved Contractor Scheme'. The scheme itself is provided for in sections 14-18 of the Private Security Industry Act 2001 and established a voluntary system of inspection of providers of security services, under which those which satisfactorily meet agreed standards may be registered as approved. The proposed introduction of the extension provision followed interest from some organisations providing

in-house security services to seek approval under the 'Approved Contractor Scheme' as a sign of the quality of their staff and to promote their services. The government will consider commencing this provision following the introduction of any wider business approvals scheme.

Section 45: Prison security

39. The National Offender Management Service ("NOMS") takes the issue of illicit mobile phones in prisons very seriously. Illicit mobile phones present serious risks to both the security of prisons and the safety of the public. They are used for a range of criminal purposes and are strongly associated with drug supply, violence and bullying. Consequently, NOMS has implemented an approach to minimise the number of mobile phones entering prisons, to find phones that do get in and to disrupt mobile phones that cannot be found. In 2012 there were 6,959 discoveries[9] of mobile phones and SIM cards in England and Wales and in 2013 this increased to 7,451. It was for these reasons that Government decided to strengthen the existing measures to further reduce and prevent mobile phones entering prisons.

40. The offence of possession, without authorisation, of a device capable of transmitting or receiving images, sounds or information by electronic communications in a prison was introduced by section 45 of the Act as an amendment to section 40D of the Prison Act 1952 and was commenced on 26 March 2012.

41. The prohibition was also designed to operate as an additional deterrent for those who traffic a mobile phone and or component parts into prison or to have them in their possession. Additionally, it removed the inconsistency which existed in legislation whereby the conveyance of a mobile phone into a prison was a criminal offence but possession of a mobile was not. Furthermore, it demonstrated that tackling the issues of mobile phones in prisons was a high priority for NOMS and still remains one of the strategic threats.

[9] One mobile phone seizure could constitute a phone only, a SIM card only, or a mobile phone with one SIM card or media card inside.

42. Between 26 March 2012 and the end of December 2012, 110 defendants were proceeded against at magistrates' courts for this offence. Over the same period, 93 offenders were found guilty of the offence at all courts, and 81 offenders were sentenced. Of those, 71 were given an immediate custodial sentence. For the remaining 10:

- two were given a suspended sentence order;
- one was issued a fine;
- one was given a community sentence;
- five were given a conditional discharge;
- one was otherwise dealt with.

43. In 2013, 233 defendants were proceeded against for this offence, 190 were convicted and 163 were sentenced. Of those, 154 were given an immediate custodial sentence. The maximum possible custodial sentence for this offence is two years. Custodial sentences given in 2013 ranged from 14 days to 18 months and the average custodial sentence was 82 days. In addition, 19 people were cautioned for this offence in 2013.

Sentenced,	163
of which:	
• Absolute discharge	-
• Conditional discharge	3
• Fine	2
• Community sentence	1
• Suspended sentences	2
• Otherwise dealt with	1
• Immediate custody	154

44. This represents a 44% increase in convictions from 2012.

45. NOMS continues to engage with prosecuting authorities in order to ensure that the detrimental impact to prisons is fully appreciated and duly reflected in the disposal of cases referred to them for consideration.

Section 46: Air weapons

46. Section 46 was commenced on 10 February 2012 and amended the Firearms Act 1968 to create a new offence of failing to take reasonable precautions to prevent a person under the age of 18 from having unauthorised access to an air weapon.

47. Since the commencement of section 46 there have been four prosecutions brought under section 24 of the Firearms 1968. Of those, three resulted in guilty convictions[10].

Sections 47-54: Compensation of victims of overseas terrorism

48. Section 47 provides powers for the Secretary of State to make payments to individuals injured as a result of a designated terrorist attack overseas. Section 48 allows for the creation of The Victims of Overseas Terrorism Compensation Scheme ("VOTCS") to administer payments to those individuals injured in a designated attack.

49. Sections 49-54 cover the contents, governance and oversight of the scheme. In particular the scheme may set out an eligibility criteria, application rules, payment amounts, and specification as to who would consider cases. The scheme must contain provision for a review and appeals process, and governance (e.g. annual reports, accounts) of the scheme. Parliamentary oversight of the making, and certain subsequent changes, to the scheme is required.

50. The gap between Royal Assent of the Act and commencement of these provisions was due to a full review of victims' services, including the domestic Criminal Injuries Compensation Scheme ("CICS") 2008 by the Government. The decision was made for the VOTCS to match the CICS 2012 (both schemes came into force on 27 November 2012) and for payments to come under the same tariff of injuries as the revised domestic scheme.

51. The Government also introduced an ex gratia scheme to make separate payments to eligible victims of certain past incidents of terrorism. The ex gratia scheme was introduced on 16 April 2012 and ran until the start of the statutory scheme. It provided for incidents that occurred on or after 1 January 2002 but before 27 November 2012.

[10] The statistics relate to persons for whom the offence under section 24 of the Firearms Act was the principal offence for which they were dealt with. When a defendant has been 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. Therefore, there may have been other prosecutions for this offence but these are not recorded.

52. The ex gratia scheme limited payments to the 2008 Scheme tariff and did not include payments for loss of earnings or special expenses. Also, payments were limited to those victims who continued to suffer an ongoing disability as a direct result of injuries sustained and payments were not available to any bereaved relatives.

53. Since the introduction of the VOTCS, and up to the end of October 2015, the Criminal Injuries Compensation Authority ("CICA") which administers the VOTCS has received 119 applications: 66 for personal injury and 53 fatal injury applications. The following incidents have been designated as terrorist acts for the purpose of the VOTCS:

    - the hostage crisis In Amenas, Algeria on 16 January 2013;
    - the kidnap of Setraco employees in Jama'are, Nigeria on 16 February 2013;
    - the attack at the Westgate shopping mall in Nairobi, Kenya on 21 September 2013;
    - the attack at the Bardo National Museum in Tunis, Tunisia on 18 March 2015; and
    - the attack at Port el Kantaoui near Sousse, Tunisia on 26 June 2015.

54. So far CICA has paid compensation for designated incidents in Amenas, Algeria in January 2013, Jama'are, Nigeria in March 2013, Bardo, Tunisia in March 2015 and Port el Kantaoui, Tunisia, in June 2015.

55. 19 applications have been concluded at a cost of £321,421, one of which was refused for being out of time. The highest award paid so far was £123,785. The smallest was £5,500. The average paid per successful application is £16,917.

56. The average resolution time for applications under the VOTCS is under 3 months. This would suggest that there are no significant delays inherent in the operational process. The Foreign and Commonwealth Office has so far designated all of the terrorist incidents which it has been requested to by the CICA and the Ministry of Justice. We note that fatal injury applications are generally concluded earlier than personal injury applications. This is because of the time taken to obtain medical information and a settled prognosis. We consider that the scheme is operating efficiently and effectively as envisaged providing UK nationals and EU/EEA nationals resident in the United Kingdom with payments should they be affected by terrorist attacks overseas.

Section 55: Sale and supply of alcohol

57. Section 55 amended the Licensing Act 2003 by adding new provisions, sections 172A-172E, allowing licensing authorities to make an early morning restriction order to prohibit the supply of alcohol from premises (including supplies authorised by a temporary event notice) between 3am and 6am in the whole or part of its area. The order could apply every day or on specified days, and for a limited or unlimited period. A decision to make an order had to be made by the full council of a licensing authority. A licensing authority could only make an order if it considered that this will promote one or more of the licensing objectives, and the making of the order was subject to a licensing authority observing prescribed procedures. The procedures included a requirement that a licensing authority must advertise its decision to make an order, a right of affected persons to make representations and a requirement on a licensing authority to hold a hearing to consider such representations.

58. The Police Reform and Social Responsibility Act 2011 made changes to the early morning restriction order regime. Section 119 of the 2011 Act excepts the decision of a licensing authority to make an early morning restriction order from those licensing functions which can be exercised by licensing committees. This has the consequence that a licensing authority's decision to make such an order must be made by its full council. Section 119 repealed section 55 of the Act (which inserted sections 172A to 172E into the Licensing Act 2003) and introduced these provisions in an amended form. This has the effect of enabling a licensing authority to make an order of any duration beginning at or after 12 midnight and ending at or before 6am. An order can be made, amongst other things, at different times on different days. A licensing authority's ability to exercise this power remains subject to the existing processes prescribed in sections 172A to 172E of the Licensing Act 2003. Post-legislative scrutiny of these early morning restriction orders will be forthcoming when the preliminary assessment of the 2011 Act is conducted.

Section 56: Searches of controlled persons

59. Section 56 amended the Prevention of Terrorism Act 2005 - which contained the powers to impose control orders on those suspected of terrorism - to insert new powers allowing a constable, for specified purposes, to conduct a search of a person subject to a control order and to seize and retain articles found. However, the Terrorism Prevention and Investigation Measures Act

2011 replaced control orders with terrorism prevention and investigation measures ("TPIMs"). This meant the repeal of the 2005 Act and of the amendment made to it by section 56 of the Act. Post legislative scrutiny of the 2011 Act will follow in due course.

CONCLUSION

60. The Act has been generally effective in meeting the original policy objectives. There have been areas where the policy objectives have changed and this has been reflected by repeals of certain of the Act's provisions (or decisions not to commence certain provisions) but the majority of the Act's measures have been implemented and have yielded positive results.

Annex 1: Implementation

Sections 1- 7 were commenced on 7 March 2011 by SI 2011/414.

Sections 8-13 have not been commenced and are subject to commencement by the Department of Justice in Northern Ireland.

Sections 14, 16-19 and 21- 23 were not commenced and were repealed by the Protection of Freedoms Act 2012 on 31 October 2013.

Section 15 has not been commenced.

Section 20 was repealed by the Terrorism Prevention and Investigation Measures Act 2011 on 15 December 2011.

Sections 24-30 were commenced for certain purposes and certain periods on 30 June 2011 by SI 2011/1440, 7 October 2011 by SI 2011/2279, 30 June 2012 by SI 2012/1615 and 8 March 2014 by SI 2014/478. Section 31 was commenced on 8 March 2014 by SI 2014/478.

Section 32 has not been commenced.

Section 33 was commenced on Royal Assent, 8 April 2010.

Sections 34-36 and 39 were commenced on 9 January 2012 by SI 2011/3016.

Sections 37 and 38 were commenced on 31 January 2011 by SI 2010/2989.

Sections 40 and 41 have not been commenced and will be were repealed by the Anti-social Behaviour, Crime and Policing Act 2014 when the repealing provision is commenced.

Sections 42-44 have not been commenced; in relation to England and Wales, some provisions were repealed by the Protection of Freedoms Act 2012 on 1 October 2012.

In relation to Northern Ireland, sections 42(2), 44(2) and the related commencement provision in section 59 were amended by Article 22(3), (4) and (5) of the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I.2012/2595), but these sections have not been commenced.

Section 45 was commenced on 26 March 2012 by SI 2012/584.

Section 46 was commenced on 10 February 20122 by SI 2011/144.

Sections 47-54 were commenced on Royal Assent, 8 April 2010.

Section 55 was repealed by the Police Reform and Social Responsibility Act 2011 on 31 October 2012.

Section 56 was repealed by the Terrorism Prevention and Investigation Measures Act 2011 on 15 December 2011.

Sections 57-60 were commenced on Royal Assent, 8 April 2010.

Annex 2: Secondary legislation, guidance and other relevant material

Crime and Security Act 2010 (Domestic Violence: Pilot Schemes) Order 2011, SI 2011/1440

Crime and Security Act 2010 (Domestic Violence: Pilot Schemes) Order (No 2) 2011, SI 2011/2279

The guidance relating to Domestic Violence Protection Orders can be found at https://www.gov.uk/government/publications/domestic-violence-protection-orders

Annex 3: Other reviews

Gang-related violence:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278786/ReviewInjunctionsGangRelatedViolence.pdf

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