

CRIME AND SECURITY BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Crime and Security Bill as introduced into the House of Commons on 19 November 2009. They have been prepared by the Home Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So, where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND AND OVERVIEW

Police powers of stop and search

3. The Bill contains provisions to reduce the reporting requirements on the police when they stop and search individuals.

Fingerprints and samples etc

4. The Bill contains provisions to give additional powers to the police to take fingerprints and DNA samples from people who have been arrested, charged or convicted in the UK, and from those convicted overseas of serious sexual and violent offences.

5. In response to the European Court of Human Rights judgment in the case of *S and Marper v United Kingdom* [2008] ECHR 1581, the Bill also sets out a statutory framework for the retention and destruction of biometric material, including DNA samples, DNA profiles and fingerprints, that has been taken from an individual as part of the investigation of a recordable offence. These powers were consulted upon in the *Keeping the Right People on the DNA Database* paper published in May 2009.

Domestic violence

6. The Bill contains provisions to implement a recommendation from the *Together We Can End Violence Against Women and Girls* consultation published in March 2009. The provisions provide the police with the power to issue an alleged

perpetrator of an offence relating to domestic violence with a Domestic Violence Protection Notice, requiring the perpetrator to vacate the premises of the victim and not to contact the victim. The Notice must be heard by a magistrates' court within 48 hours, whereupon a Domestic Violence Protection Order can be made, lasting for up to 28 days.

Gang-related violence

7. The Bill contains provision to 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 Bill provides that when a person aged 14 to 17 breaches such an injunction, the court may make a supervision order or a detention order.

Anti-social behaviour orders

8. The Bill contains provision requiring a family circumstances assessment to be carried out when an application for an anti-social behaviour order (ASBO) is made; and provision about the circumstances in which the court must make a parenting order on breach of an ASBO.

Private security

9. The Bill amends the Private Security Industry Act 2001 to enable the Security Industry Authority to introduce a licensing regime for private security businesses, in particular vehicle immobilisation businesses. Such businesses will be prevented from operating without a relevant licence, with penalties of up to five years' imprisonment or a fine, or both. The Bill also contains a provision to extend the Approved Contractor Scheme in the 2001 Act to enable in-house private security services to apply for approved status.

Prison security

10. The Bill implements a recommendation from the strategy document *Extending Our Reach: A strategy for a new approach to tackling serious organised crime*, which was published in July 2009. It amends the Prison Act 1952 to create a new criminal offence of possessing an unauthorised mobile phone, or component part, in prison.

Air weapons

11. The Bill amends 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.

TERRITORIAL EXTENT AND APPLICATION

12. Clause 44 sets out the territorial extent of the Bill. Different parts of the Bill have different extent:

*These notes refer to the Crime and Security Bill
as introduced in the House of Commons on 19 November 2009 [Bill 3]*

- Clause 1, on police powers of stop and search, amends the Police and Criminal Evidence Act 1984 (“PACE”) and, like the provisions it amends, extends only to England and Wales;
- Clauses 2 to 7 on police powers to take fingerprints and samples, amend PACE and, like the provisions they amend, extend only to England and Wales (although clause 5(2), which amends the International Criminal Court Act 2001, also extends to Northern Ireland);
- Clauses 8 to 13 make equivalent provision to that in clauses 2 to 7 for Northern Ireland and extend only to Northern Ireland (although clause 11(2) which amends the International Criminal Court Act 2001, also extends to England and Wales);
- Clause 14 on police powers to retain and destroy fingerprints and samples etc, extends to England and Wales only. Clause 15 makes equivalent provision for Northern Ireland;
- Clause 16 amends the Terrorism Act 2000 and like the provision amended extends to England and Wales, Scotland and Northern Ireland;
- Clause 17 amends the International Criminal Court Act 2001 and like the provision amended extends to England and Wales and Northern Ireland;
- Clauses 18 to 20 (which make further provision in relation to the retention, destruction and use of fingerprints and samples) extend to the whole of the United Kingdom;
- Clauses 21 to 30 (domestic violence) extend only to England and Wales;
- Clauses 31 to 36, on injunctions in respect of gang-related violence, amend Part 4 of the Policing and Crime Act 2009 and, like that Part, extend only to England and Wales;
- Clauses 37 and 38, on ASBOs, amend Part 1 of the Crime and Disorder Act 1998, and, like that Part, extend only to England and Wales;
- Clauses 39 and 40 and the Schedule amend the Private Security Industry Act 2001 and, like that Act, extend to the whole of the United Kingdom;
- Clause 41 (offence of possessing a mobile phone in prison) amends section 40D of the Prison Act 1952 and, like that section, extends only to England and Wales;

*These notes refer to the Crime and Security Bill
as introduced in the House of Commons on 19 November 2009 [Bill 3]*

- Clause 42 (offence of allowing minors access to air weapons) amends the Firearms Act 1968 and, like that Act, extends to England and Wales and Scotland;
- The final clauses (clauses 43 to 46) extend to the whole of the United Kingdom.

Territorial application: Wales

13. The Bill applies to Wales in the same way as to England.

Territorial application: Scotland

14. At introduction this Bill contains provisions that trigger the Sewel Convention. The Scottish Parliament's consent has been sought for these provisions, which relate to the requirement for businesses to be licensed by the Security Industry Authority. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. If there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

15. The provisions of the Bill that relate to the retention, destruction and use of fingerprints and samples held under the Terrorism Act 2000 and the Counter-Terrorism Act 2008 (clauses 16 and 18) and on air weapons (clause 42) extend to Scotland and relate to reserved matters.

Territorial application: Northern Ireland

16. Many of the provisions of the Bill on police powers on fingerprinting and DNA (clauses 5(2), 8 to 13, 15 to 20) and the provisions relating to the private security industry (clauses 39 and 40) extend to Northern Ireland and relate to excepted matters.

17. The Bill will not require a Legislative Consent Motion to be passed by the Northern Ireland Assembly Government.

COMMENTARY ON CLAUSES

Police powers: stop and search

Clause 1: Records of searches

18. Clause 1 amends 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.

19. *Subsection (3)* provides 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). In all other cases the constable must make the record of

the search at the time it takes place or as soon as practicable after completion of the search.

20. *Subsection (4)* removes the requirement for constables to record the person's name (or a note otherwise describing the person) and description of any vehicle searched.

21. *Subsection (5)* further reduces the recording requirements for a stop and search. The previous section 3 of PACE and Code of Practice A required ten items of information to be recorded, including whether anything was found and whether any injury or damage was caused. These are reduced to the following seven items of information:

- Date;
- Time;
- Place;
- Ethnicity;
- Object of search;
- Grounds for search;
- Identity of the officer carrying out the stop and search.

22. *Subsection (6)* provides that the requirement to state a person's ethnic origins is a requirement in the first place to record the person's self-defined ethnicity. However, if a constable thinks that this is different from their own assessment then they will also record their own assessment.

23. *Subsections (2), (7) and (8)* amend section 3 of PACE to take account of the fact that the person who makes the record in the custody record may not be the constable who carried out the search.

24. *Subsection (9)* reduces the time within which a person can request a copy of the search record from 12 months to 3 months after the date of the search.

Taking of fingerprints and samples: England and Wales

Clause 2: Powers to take material in relation to offences

25. *Subsections (1) and (4)* amend sections 61 and 63 of PACE to enable biometric data (fingerprints and non-intimate samples respectively) to be taken from people who have been arrested for a recordable offence, either if they have been released on bail before their biometric data have been taken or if their biometric data have been taken and subsequently have proved inadequate for analysis and/or

*These notes refer to the Crime and Security Bill
as introduced in the House of Commons on 19 November 2009 [Bill 3]*

loading onto the national fingerprint or DNA database. For the purposes of this clause, it does not matter when the arrest took place, so the police may take biometric data from a person who was arrested before the clause comes into force.

26. “Recordable offence” is defined in sections 118 and 27 of PACE. In practice, all offences which are punishable with imprisonment are recordable offences, as are around 60 other more minor offences which are specified in regulations made under section 27.

27. *Subsection (2)* amends section 61 of PACE to enable fingerprints to be taken from people who are not detained at a police station but who have been charged with a recordable offence, where either their fingerprints have not been taken in the course of the investigation or their fingerprints have been taken and subsequently have proved inadequate for analysis and/or loading onto the national database. Currently, PACE allows the taking of the fingerprints of a person who has been charged, but only if the person is detained at a police station. Again, it does not matter whether the person was charged before the commencement of the clause.

28. *Subsection (3)* re-enacts, with some modifications, the existing power in section 61 of PACE to take fingerprints from people who have been convicted, cautioned, warned or reprimanded for a recordable offence (before or after commencement). The re-enactment contains limitations on the exercise of the power. In future, fingerprints may only be taken under this power with the authorisation of an officer of at least the rank of inspector who must be satisfied that taking the fingerprints is necessary to assist in the prevention or detection of crime. The person must not have had their fingerprints taken since the conviction, caution, warning or reprimand or, if they have, the fingerprints must have proved inadequate for analysis and/or loading onto the national database.

29. *Subsection (5)* extends the power in PACE to take non-intimate samples from persons who have been charged. The power is extended so as to enable the police to take a non-intimate sample from a person who has been charged with a recordable offence in circumstances where the person has had a sample taken previously, from which a DNA profile has been created, but the sample has since been destroyed and the person now claims that the DNA profile did not come from his sample. As explained below, the provisions of the Bill will oblige the police to destroy all DNA samples within six months of their being taken.

30. *Subsection (6)* re-enacts the existing power to take non-intimate samples after conviction. But it also now includes a power to take non-intimate samples following a caution, reprimand or warning (which is already possible in the case of fingerprints). This modified power is subject to the same limitations as are provided for in relation to the taking of fingerprints after conviction (see the discussion of *subsection (3)* above).

31. The power may be exercised in relation to convictions, cautions, reprimands and warnings occurring before commencement. However, this is subject to the existing restriction in subsection (9A) of section 63, by virtue of which a non-intimate sample may not be taken from a person convicted prior to 10th April 1995 unless the person is one to whom section 1 of the Criminal Evidence (Amendment) Act 1997 applies: that is, that the offence was one specified in Schedule 1 to the Criminal Evidence (Amendment) Act 1997 (primarily sexual and violent offences) and the person is in prison or detained under the Mental Health Act 1983 at the time the sample is to be taken. The Bill also now secures that a non-intimate sample may not be taken from a person *cautioned* before that date (see *subsection (7)*).

32. *Subsection (8)* amends section 1 of the Criminal Evidence (Amendment) Act 1997, which is referred to in section 63(9A) of PACE (described above). The amendment to the 1997 Act made by *subsection (8)* means that a sample may be taken from a person convicted before 10th April 1995 of an offence in Schedule 1 to that Act even if he is no longer in prison or detained.

33. *Subsection (9)* amends section 2 of the Criminal Evidence (Amendment) Act 1997. The effect of this amendment is that a non-intimate sample may be taken from a person who has at any time been detained following acquittal for an offence on grounds of insanity or was found unfit to plead. Currently, the person must be detained at the time the sample is to be taken.

Clause 3: Powers to take material in relation to offences outside England and Wales

34. *Subsections (1) and (4)* enable the police to take fingerprints and non-intimate samples from a UK national or resident convicted of a qualifying offence (see clause 7) outside England and Wales whether the conviction occurred before or after the coming into force of these provisions. The person must not have had their fingerprints or sample (as the case may be) taken previously under the respective powers or, if such data have been taken previously, it must have proved inadequate for analysis and/or loading onto the national database. The taking of the fingerprints or non-intimate sample must be authorised by an officer of at least the rank of inspector who must be satisfied that taking the sample is necessary to assist in the prevention or detection of crime.

35. *Subsection (2)* provides the police with the power to take an intimate sample from a UK national or resident convicted of a qualifying offence outside England and Wales where two or more non-intimate samples have been taken under the powers provided in *subsection (4)* but have proved insufficient and that person consents. The taking of the sample must be authorised by an officer of at least the rank of inspector who must be satisfied that taking the sample is necessary to assist in the prevention or detection of crime.

Clause 4: Information to be given on taking of material

36. Clause 4 re-enacts the provisions in PACE relating to the information given to those from whom biometric data are taken without consent, with modifications, and applies these provisions to the new powers to take biometric data. In relation to fingerprints and non-intimate samples, the result is that a person must be informed of the reason for taking the biometric data, the power being used, and the fact that authorisation has been given (where authorisation is necessary). A police officer (or designated detention officer) must also inform the person that his data will be subject to a speculative search (in other words that the reference samples will be compared with those already on the existing databases). Those matters must then be recorded as soon as practicable after the data has been taken. Similar information and recording requirements apply in relation to the taking of intimate samples as well as a requirement to record the fact that the person gave their consent to the intimate sample being taken. In relation to the taking of intimate and non-intimate samples prior to conviction, the existing requirement to specify the nature of the offence in which it is suspected that the person has been involved is preserved.

Clause 5: Speculative searches

37. Clause 5 adds to the existing provisions in PACE that permit the speculative searching of biometric data so that such searches can be carried out in relation to samples and fingerprints taken using the new powers in this Bill.

Clause 6: Power to require attendance at police station

38. Clause 6 inserts a new Schedule 2A into PACE which sets out the powers to require attendance at a police station in respect of both the existing and new powers to take biometric data. For each power in PACE to take biometric data from those no longer in police detention (whether existing or which is being inserted by these provisions), there is a power to require a person to attend a police station for the purpose of taking those data, and for a constable to arrest a person who does not comply with a requirement to attend.

39. The Schedule puts some time limits on the power to require attendance. In cases where fingerprints or samples of a person arrested or charged are being taken because the previous ones were inadequate in some way, the power must be exercised within six months of the day on which the relevant police officer learnt of the inadequacy. There are also time limits where the fingerprints or samples are to be taken under new section 61(5B) (fingerprints from person charged), section 61(6) (fingerprints from person convicted) new section 63(3A) (non-intimate sample from person charged) and new section 63(3B) (non-intimate sample from person convicted) of PACE. But the time limits do not apply in cases where a person has been convicted of a qualifying offence or, in the case of non-intimate samples, where the person is convicted of an offence prior to 10th April 1995 and he is a person to whom section 1 of the Criminal Evidence (Amendment) Act 1997 applies (see above). In these cases the power to compel attendance may be exercised at any time.

40. Paragraph 6 of new Schedule 2A to be inserted into PACE provides that where a person's fingerprints have been taken under section 61 of PACE on two occasions in relation to any offence, he may not be required to attend a police station to have his fingerprints taken again under that section in relation to that offence without the authorisation of an officer of at least the rank of inspector. Paragraph 14 imposes the same requirement for non-intimate samples taken under section 63 of PACE.

41. Paragraph 15 of new Schedule 2A stipulates that where authorisation is required for the taking of fingerprints or a sample this must be obtained before a person is required to attend the police station.

42. Paragraph 16 of new Schedule 2A makes provision regarding the time a person shall be given to attend a police station and the ability of a person to vary the date or time of attendance.

Clause 7: Qualifying offence

43. Clause 7 defines the "qualifying offences" referred to in other provisions dealing with biometric material. These offences are serious violent, sexual or terrorist offences, and also include the offences of aiding, abetting, conspiring etc the commission of such offences. The list of qualifying offences may be amended by order, using the affirmative resolution procedure (see *subsections (3) and (4)*).

Taking of fingerprints and samples: Northern Ireland

44. Clauses 8 to 13 make provision for Northern Ireland equivalent to that made for England and Wales by clauses 2 to 7.

Retention, destruction and use of fingerprints and samples etc

Clause 14: Material subject to the Police and Criminal Evidence Act 1984

45. Clause 14 substitutes a new section 64 into PACE and inserts fourteen new sections immediately after it. Section 64 (destruction of fingerprints and samples) currently sets out the purposes for which fingerprints, impressions of footwear and samples may be retained but permits them to be retained after they have fulfilled the purposes for which they were taken without reference to a retention period. The effect of this clause is to establish a framework for the retention and destruction of such material, following the decision of the European Court of Human Rights in *S and Marper v United Kingdom* [2008] ECHR 1581. The new provisions require the destruction of samples (for example, biological DNA material, dental and footwear impressions) and fingerprints once they have been loaded satisfactorily onto the national database (in the case of DNA samples) and have served the investigative purpose for which they were taken (for other samples). In any event, all DNA samples are required to be destroyed within six months of their being taken (see new section 64ZA).

46. The retention periods for the various categories of data depend on a number of factors including the age of the individual concerned, the seriousness of the offence or alleged offence, whether the individual has been convicted, and if so whether it is a first conviction. The different categories can be summarised as follows:

- Adults - convicted: indefinite retention of fingerprints, impressions of footwear and DNA profile (see substituted section 64(2));
- Adults - arrested but unconvicted: retention of fingerprints, impressions of footwear and DNA profile for 6 years (see new section 64ZD);
- Under 18 year olds - convicted of serious offence or more than one minor offence: indefinite retention of fingerprints, impressions of footwear and DNA profile (see substituted section 64(2));
- Under 18 year olds - convicted of single minor offence: retention of fingerprints, impressions of footwear and DNA profile for 5 years (see new section 64ZH);
- 16 and 17 year olds - arrested for but unconvicted of serious offence: retention of fingerprints, impressions of footwear and DNA profile for 6 years (see new section 64ZG);
- All other under 18 year olds - arrested but unconvicted: retention of fingerprints, impressions of footwear and DNA profile for 3 years (see new sections 64ZE and 64ZF);
- Persons subject to a control order: retention of fingerprints and DNA profile for 2 years after the control order ceases to have effect (see new section 64ZC);
- All DNA samples: retained until profile loaded onto database, but no more than 6 months (see new section 64ZA).

47. For the purposes of these provisions, the concept of “qualifying offence” is used to distinguish between serious and minor offences. Qualifying offence is defined in clause 7.

48. The substitution of new section 64 also has the effect of removing the existing right of a person to witness the destruction of their fingerprints or impressions of footwear as, with the increasing use of technology, there are often no physical prints to destroy. However, a person still has the right to request a certificate from the police confirming that their data have been destroyed (see new section 64ZM).

49. The clause also contains provision in new section 64ZB for material which has been given voluntarily to be destroyed as soon as it has fulfilled the purpose for which it was taken, unless the individual is subsequently convicted, has previous convictions or consents to its retention.

50. In addition, where fingerprints or DNA profiles would otherwise need to be destroyed because of the expiry of a time limit set out in the above clauses, new section 64ZK enables a chief officer of police to determine that, for reasons of national security, those fingerprints or DNA profiles may be retained for up to two further years on that basis. It is open to chief officers to make further determinations to retain material where the necessity continues to exist.

Clause 15: Material subject to the Police and Criminal Evidence (Northern Ireland) Order 1989

51. Clause 15 makes provision for Northern Ireland equivalent to that made for England and Wales by clause 14.

Clause 16: Material subject to the Terrorism Act 2000

52. Paragraph 14 of Schedule 8 to the Terrorism Act 2000 currently provides for the retention of fingerprints and samples (and DNA profiles derived from samples) taken from persons detained under section 41 of or Schedule 7 to the Terrorism Act 2000 (that is persons arrested as a suspected terrorist or persons detained under the ports and borders provisions in Schedule 7). Paragraph 14 of Schedule 8 to the 2000 Act sets out the purposes for which these fingerprints, samples and profiles may be used while they are retained, but permits retention without reference to a retention period.

53. Clause 16 substitutes for paragraph 14 a new paragraph 14 to 14I, making provision for a destruction and retention regime broadly equivalent to that in the amendments to PACE. New paragraph 14A makes provision for the destruction of samples, which must be destroyed within 6 months of being taken, or in the case of a DNA sample, as soon as a profile has been derived from it. Paragraphs 14B to 14E provide for retention periods broadly equivalent to those provided in PACE as amended by clause 14. The time limits for retention depend on the age of the person, whether the person has previous convictions and whether the person is detained under section 41 (arrest on suspicion of terrorism) or under Schedule 7 (detention at ports and borders). But where the person is convicted for a recordable offence in England and Wales or Northern Ireland (or where the person already has such a conviction, other than a conviction for a minor offence committed when they were under 18), the material need not be destroyed.

54. As in relation to the PACE provisions, where fingerprints or DNA profiles would otherwise need to be destroyed because of the expiry of a time limit set out in the new provisions, if a chief officer of police determines that it is necessary to retain

that material for the purposes of national security, those fingerprints or DNA profiles may be further retained for up to two years (new paragraph 14G). It is open to a chief officer to make further determinations to retain the material, which have effect for a maximum of 2 years.

55. Paragraph 14I largely replicates the existing provision in paragraph 14 (as prospectively amended by section 16 of the Counter-Terrorism Act 2008) in relation to the use to which retained material may be put: it may be used in the interests of national security, in a terrorist investigation, for the investigation of crime or for identification-related purposes (sub-paragraphs (1) and (4)). Sub-paragraph (2) replicates the existing provision in paragraph 14 about the material against which fingerprints and samples taken under the Terrorism Act 2000 may be checked. Sub-paragraph (3) is new, and provides that, once the new requirement to destroy material applies, the material cannot be used in evidence against the person to whom it relates or for the purposes of the investigation of any offence.

Clause 17: Material subject to the International Criminal Court Act 2001

56. Fingerprints and samples may be taken from a person under Schedule 4 to the International Criminal Court Act 2001 if the International Criminal Court requests assistance in obtaining evidence of the identity of a person (who will usually be a person suspected of committing an “ICC crime” such as genocide or war crimes). Clause 17 amends Schedule 4 to make provision about the retention and destruction of material taken under that Schedule, so that all material must be destroyed within six months of it being transferred to the International Criminal Court, or, if later, as soon as it has fulfilled the purposes for which it was taken. But a chief officer of police may determine that, for reasons of national security, the material may be retained for up to two further years. It is open to chief officers to make further determinations to retain material where the necessity continues to exist.

Clause 18: Other material

57. Section 18 of the Counter-Terrorism Act 2008 (yet to be brought into force) makes provision for the retention by law enforcement authorities in England and Wales and Northern Ireland of DNA samples and profiles and fingerprints obtained by or supplied to the authority in the way described in subsection (3) of that section (which includes covertly acquired material and material supplied by overseas authorities) and which is not held subject to “existing statutory restrictions” such as those set out in PACE or in Schedule 8 to the Terrorism Act 2000. This includes material which is on the police ‘counter-terrorism database’. Section 18 sets out the purposes for which this material may be used while it is retained, but permits retention without reference to a retention period.

58. Clause 18 amends section 18 of the 2008 Act to introduce the requirement to destroy any DNA sample referred to in section 18 as soon as a profile has been derived from it or, if sooner, within 6 months of the sample coming into the authority’s possession (new subsection (3A) of section 18). New subsection (3B) provides that fingerprints or DNA profiles (“material”) relating to an identifiable

individual aged under 16 at the time they came into the authority's possession must be destroyed within 3 years. New subsection (3C) provides for destruction of such material relating to a person aged 16 or over within 6 years of that material coming into the authority's possession. In each case, where the person is convicted of a recordable offence in England and Wales or Northern Ireland (or where the person already has such a conviction, other than a conviction for a minor offence committed when they were under 18), the material need not be destroyed.

59. Where fingerprints or DNA profiles would otherwise need to be destroyed because of the expiry of a time limit set out in the new provisions, if the Commissioner of the Metropolitan Police determines that it is necessary to retain that material for the purposes of national security, those fingerprints or DNA profiles may be further retained for up to two years (new subsections (3E) and (3F) of section 18). The Commissioner may make further determinations to retain the material, which again have effect for a maximum of 2 years.

60. New subsections (3G) and (3H) of section 18 replicate the provisions in PACE (as amended by this Bill) about the destruction of copies of fingerprints and DNA profiles, and new subsection (3I) and substituted sections (4) and (4B) (inserted by *subsection (5)* of clause 18) make provision about the uses to which the material may be put (which largely reproduces what is currently in section 18(2) and (4)).

61. *Subsection (8)* inserts a new section 18A into the Counter-Terrorism Act 2008 which provides definitions of terms used in section 18 (as amended by the Bill).

Clause 19: Destruction of material taken before commencement

62. Clause 19 requires the Secretary of State to make a statutory instrument prescribing the manner, timing and other procedures in respect of destroying relevant biometric material already in existence at the point this legislation comes into force. This will enable the Secretary of State to ensure that the retention and destruction regime set out in this Bill is applied to existing material, while recognising that this exercise may take some time to complete; there are some 850,000 profiles of unconvicted persons on the National DNA Database. The statutory instrument will be subject to the negative resolution procedure.

Clause 20: National DNA Database Strategy Board

63. Clause 20 provides for the Secretary of State to make arrangements for a National DNA Database Strategy Board. Such a Board already exists, and reports to the Home Secretary, providing strategic oversight of the application of powers under PACE for taking and using DNA. The principal partners are the Association of Chief Police Officers, the Association of Police Authorities and the Home Office. This clause puts this body on a statutory footing.

Domestic violence

Clause 21: Power to issue a domestic violence protection notice

64. Clause 21 creates a new power for a senior police officer to issue a Domestic Violence Protection Notice (DVPN). The purpose of a DVPN is to secure the immediate protection of a victim of domestic violence (V) from future violence or a threat of violence from a suspected perpetrator (P). A DVPN prohibits P from molesting V and, where they cohabit, may require P to leave those premises.

65. The issue of a DVPN triggers an application for a Domestic Violence Protection Order (DVPO). This is an order lasting between 14 and 28 days, which prohibits P from molesting V and may also make provision about access to shared accommodation by P and V. Clauses 24 to 27 deal with DVPOs.

66. Clause 21 sets out the conditions and considerations that must be met in order for the police to issue a DVPN.

67. *Subsection (1)* creates the power for a senior police officer, of rank of superintendent or higher (the “authorising officer”), to issue a DVPN.

68. *Subsection (2)* sets out the test for issuing a DVPN. A DVPN may be issued where the authorising officer has reasonable grounds for believing that, firstly, P has been violent or has threatened violence towards an associated person, V, and that, secondly, the issue of a notice is necessary in order to secure the protection of V from violence or the threat of violence. “Associated person” is defined in *subsection (9)* (see below).

69. *Subsections (3) and (4)* set out particular matters that the authorising officer must take into consideration before issuing a DVPN. The authorising officer must take reasonable steps to find out the opinion of V as to whether the DVPN should be issued. Consideration must also be given to any representation P makes in relation to the issuing of the DVPN. Reasonable steps must also be taken to find out the opinion of any other associated person who lives in the premises to which the DVPN would apply.

70. While the authorising officer must take reasonable steps to discover V’s opinion, and must take this into consideration, the issue of the notice is not dependent upon V’s consent, as the authorising officer may nevertheless have reason to believe that V requires protection from P. *Subsection (5)* specifies that an authorising officer may issue a DVPN, regardless of consent from V.

71. *Subsection (6)* ensures that a DVPN must contain provision to prohibit P from molesting V for the duration of the DVPN. As set out in *subsection (7)*, this may include molestation in general, particular acts of molestation, or both.

72. *Subsection (8)* specifies that where P and V share living premises, the DVPN may explicitly: prohibit P from evicting or excluding V from the premises; prohibit P

from entering the premises; require P to leave the premises; or prohibit P from coming within a certain distance of the premises (as specified in the DVPN) for the duration of the DVPN. It does not matter for these purposes whether the premises are owned or rented in the name of P or V.

73. *Subsection (9)* specifies the definition of “associated person”, for whom the DVPN would seek to provide protection. The definition is that given in section 62 of the Family Law Act 1996 and includes persons:

- who are, or have been, married to each other or civil partners of each other;
- who are cohabitants or former cohabitants;
- who live, or have lived, in the same household, otherwise than merely by reason of one of them being the other’s employee, tenant, lodger or boarder;
- who are relatives;
- who have agreed to marry one another or to enter into a civil partnership agreement (whether or not that agreement has been terminated);
- who have or have had an intimate personal relationship with each other which is or was of significant duration.

74. Under *subsections (10) and (11)*, where a DVPN is issued which prevents P from entering premises, and the authorising officer believes that P is subject to service law and the premises are service living accommodation then the authorising officer must make reasonable efforts to inform P’s commanding officer that the notice has been issued. “Service living accommodation” carries the same meaning as in section 96(1)(a) of the Armed Forces Act 2006, being a building or part of a building which is occupied for the purposes of Her Majesty’s Armed Forces and is provided exclusively for use as living accommodation. Clause 29 provides for the issuing of a DVPN in respect of such premises by the Ministry of Defence Police.

Clause 22: Contents and service of a domestic violence protection notice

75. *Subsection (1)* sets out the details that must be specified in the DVPN, which include the grounds for issuing a DVPN; the fact that a power of arrest attaches to the DVPN; the fact that the police will make an application for a DVPO which will be heard in court within a 48 hour period; the fact that the DVPN will continue to be in effect until the DVPO application is determined; and the provisions that may be included in a subsequent DVPO.

76. *Subsection (2)* of this clause specifies the procedure for issuing a DVPN. A DVPN can only be served on P by a constable, and must be personally served and in writing.

77. *Subsection (3)* requires the constable serving the DVPN to ask P to supply an address in order to enable P to be given notice of the hearing for the DVPO.

Clause 23: Breach of a domestic violence protection notice

78. Should P breach the conditions of the DVPN, then a constable may arrest P without warrant as set out in *subsection (1)(b)* of clause 22.

79. *Subsection (1)* requires that if P is arrested, P must be held in custody and brought before the magistrates' court that will hear the application for the DVPO. P must be brought before this court at the latest within a period of 24 hours beginning with the time of arrest. However, if the DVPO hearing has already been arranged to take place within that 24 hour period, then P is to be brought before the court for that hearing.

80. If P is brought before the court in advance of the DVPO hearing, then the court may remand P under *subsection (2)*.

81. If the court adjourns the DVPO hearing by virtue of *subsection (8)* of clause 24, the court may remand the person under *subsection (3)*.

82. In calculating when the period of 24 hours mentioned in *subsection (1)(a)* ends, Sundays, Christmas Day, Good Friday and all other bank holidays (in England and Wales, as per the Banking and Financial Dealings Act 1971) are to be disregarded (see *subsection (4)*).

Clause 24: Application for a domestic violence protection order

83. *Subsections (1) and (2)* specify that once a DVPN has been issued, a police constable must apply to the magistrates' court for a DVPO.

84. *Subsection (3)* states that the magistrates court hearing must be no later than 48 hours after the time when the DVPN was served. Sundays, Christmas Day, Good Friday and all other bank holidays (in England and Wales, as per the Banking and Financial Dealings Act 1971) are to be excluded from this 48-hour period (see *subsection (4)*).

85. *Subsections (5) to (7)* cover the steps to be taken to give P notice of the DVPO hearing. Under *subsection (5)*, notice of the hearing must be given to P. If P gave an address for the purposes of service at the point of issue of the DVPN, then the notice is deemed given if it is left at that address. Where no address has been given by P, then under *subsection (7)* the court must be satisfied that reasonable efforts have been made to give P the notice of the hearing.

86. *Subsection (8)* provides that the magistrates' court may adjourn the hearing of an application for a DVPO. If the hearing is adjourned, under *subsection (9)* the DVPN continues in effect until the application is determined by the court.

87. *Subsection (10)* operates to prevent V being compelled, under section 97 of the Magistrates' Courts Act 1980, to attend the hearing of an application for a DVPO or to answer questions, unless V has given oral or written evidence at the hearing.

Clause 25: Conditions for and contents of a domestic violence protection order

88. Clause 25 details the two conditions that must be met for a DVPO to be made, as set out in *subsections (2) and (3)*.

89. The first condition is that the court must be satisfied on the balance of probabilities that P has been violent, or threatened violence, towards an associated person, V.

90. The second condition is that the court thinks the DVPO is necessary to secure the protection of V from violence, or the threat of violence, from P.

91. *Subsection (4)* specifies particular matters a court must consider prior to making a DVPO, where it is made aware of these matters. These are the opinion of V and also the opinion of any other associated person who lives in the premises to which the DVPO would relate.

92. It is not necessary that V consent to the order. *Subsection (5)* specifies that a court may issue a DVPO regardless of whether or not V consents.

93. *Subsection (6)* provides that a DVPO must contain provision explicitly prohibiting P from molesting V for the duration of the DVPO. As set out in *subsection (7)*, this may include molestation in general, particular acts of molestation, or both.

94. *Subsection (8)* specifies that where P and V share living premises, the DVPO may explicitly: prohibit P from evicting or excluding V from the premises; prohibit P from entering the premises; require P to leave the premises; or prohibit P from coming within a certain distance of the premises (as specified in the DVPO) for the duration of the DVPO. This provision can be made irrespective of who owns the premises.

95. *Subsection (9)* attaches a power of arrest to the DVPO which can be exercised if a police constable has reasonable grounds for believing that P is in breach of the DVPO. In these circumstances, the constable may arrest P without warrant.

96. *Subsections (10) and (11)* specify the duration of the DVPO. A DVPO may be in force for a minimum of 14 days from the day on which it is made, to a maximum of 28 days from the day on which it is made. The DVPO must state the period for which it is to be in force.

Clause 26: Breach of a domestic violence protection order

97. *Subsection (1)* requires that if P is arrested by virtue of clause 25(9) (which provides that a DVPO must state that a person may be arrested on breach of a DVPO), P must be held in custody and brought before a magistrates' court within a period of

24 hours beginning with the time of arrest. *Subsection (2)* specifies that if the matter is not disposed of when P is brought before the court, the court may remand the person.

98. In calculating when the period of 24 hours mentioned in *subsection (1)* ends, Sundays, Christmas Day, Good Friday and all other bank holidays (in England and Wales, as per the Banking and Financial Dealings Act 1971) are to be disregarded (see *subsection (3)*).

Clause 27: Further provision about remand

99. Clause 27 makes further provision about remand of a person by a magistrates' court under clause 23(2) or (3) or clause 26(2).

100. *Subsection (2)* makes a minor modification to section 128 of the Magistrates' Courts Act (which makes provision about remand in custody or on bail) in its application to these provisions.

101. *Subsection (3)* gives the court the power to remand P for the purposes of allowing a medical report to be made, and *subsections (4) and (5)* provide that, in such a case, the adjournment may not be for more than three weeks at a time if P is remanded in custody and not for more than four weeks at a time if P is remanded on bail.

102. *Subsection (6)* gives the court the same power as it has in respect of an accused person to make an order under section 35 of the Mental Health Act 1983 if it suspects that P is suffering from a mental disorder. Section 35 of that Act enables a court to remand an individual to a hospital specified by the court for a report on his mental condition. Such a remand may not be for more than 28 days at a time or for more than 12 weeks in total.

103. Under *subsection (7)*, when remanding a person on bail, the court may impose requirements which appear to the court as necessary to ensure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

Clause 28: Guidance

104. Clause 28 provides that the Secretary of State may, after consultation with specified stakeholders, issue and publish guidance. *Subsection (2)* requires that when exercising functions to which the guidance relates, police officers must have regard to it.

Clause 29: Ministry of Defence Police

105. Clause 29 creates a new power for a senior officer in the Ministry of Defence Police to issue a DVPN under clause 21 for the protection of an associated person, V, in relation to premises that are occupied for the purposes of the Armed Forces and are provided as living accommodation.

106. *Subsection (1)* creates the power for a senior officer in the Ministry of Defence Police, not below the rank of superintendent (the “authorising officer”), to issue a DVPN for the protection of V, but only if V or P lives in service living accommodation.

107. *Subsection (2)* specifies that where a member of the Ministry of Defence police issues a DVPN under *subsection (1)* the DVPN may, by virtue of clause 21(8), also apply to any other premises in England or Wales lived in by P and V.

Clause 30: Pilot schemes

108. Clause 30 provides that the Secretary of State may make an order to allow any provision under clauses 21 to 29 to come into force for a limited period of time. The purpose of such an order is to allow an assessment of the effectiveness of the provision in practice.

109. *Subsections (2) and (3)* provide that the Secretary of State may make different provision for different areas, and that more than one order may be issued under this clause.

Gang-related violence

110. Injunctions to prevent gang-related violence were established in the Policing and Crime Act 2009 (“the 2009 Act”). Such an injunction may be granted where the court is satisfied that a person has engaged in, or has encouraged or assisted, gang-related violence, and where the court thinks the injunction necessary to grant the injunction for the purpose of preventing the person from continuing to do so or for the purpose of protecting the person from gang-related violence.

Clause 31: Grant of injunction: minimum age

111. Clause 31 amends section 34 of the 2009 Act so that injunctions may only be obtained against persons aged 14 or over.

Clause 32: Review on respondent to injunction becoming 18

112. Clause 32 in the first place inserts a new subsection into section 36 of the 2009 Act.

113. Section 36 allows the court to review the terms of an injunction at any time, and requires the court to review an injunction after one year. The new subsection has the effect of requiring the court to review an injunction where it is granted in respect of a respondent under the age of 18 and remains effective after the respondent reaches 18.

114. Secondly, the clause amends section 42 of the 2009 Act so as secure that it is not necessary for a review hearing to be held if the injunction is varied within the 4 weeks preceding the respondent's 18th birthday.

Clause 33: Consultation of youth offending team

115. Clause 33 amends section 38 of the 2009 Act to insert a new requirement for injunction applicants to consult youth offending teams before applying for an injunction in relation to a person under 18 years of age.

116. The youth offending team to be consulted is the one for the area in which it appears the proposed respondent resides.

Clause 34: Application for variation or discharge of injunction

117. This clause amends section 42 of the 2009 Act by inserting a provision which prevents a further application to vary or discharge an injunction being made without the consent of the court if a previous application to vary or discharge has been dismissed. This amendment has effect for injunctions granted against adults or against 14-17 year olds.

Clause 35: Powers of court to remand

118. This clause amends Schedule 5 to the 2009 Act (power of remand) and prevents respondents aged under 18 from being remanded in custody by the courts. This means that they would only be eligible for remand on bail.

Clause 36: Powers of court on breach of injunction by respondent under 18

119. Clause 36 inserts a new section 46A and a new Schedule 5A into the 2009 Act to enable the courts to make further orders when a person under the age of 18 breaches an injunction. Currently a breach of such an injunction would be dealt with as a contempt of court, but this is often not considered appropriate where the respondent is under 18. Therefore new Schedule 5A provides the court with two new powers for dealing with a breach of an injunction in respect of an individual aged under 18 at the time of breach. These are the power to make a supervision order and the power to make a detention order.

New Schedule 5A: Part 1

120. Paragraph 1 of new Schedule 5A sets out the circumstances in which the court may make a supervision order or detention order.

121. *Sub-paragraph (1)* states that the injunction must have been granted in respect of a person under 18 and that the court must be satisfied beyond reasonable doubt that the respondent is in breach of the injunction. Once the court is so satisfied, it has the power to make a supervision order (see Part 2 of the Schedule) or a detention order (see Part 3).

*These notes refer to the Crime and Security Bill
as introduced in the House of Commons on 19 November 2009 [Bill 3]*

122. *Sub-paragraph (3)* states that these orders are available in addition to the court's other powers for dealing with a breach of the injunction. For persons under the age of 18, this means a fine could also be imposed as a penalty for contempt of court.

123. *Sub-paragraph (4)* sets out that the youth offending team consulted in relation to the grant of the injunction (see clause 33), must be consulted by the applicant before a supervision order or detention order can be made.

124. *Sub-paragraph (6)* provides that a detention or supervision order cannot be made where an injunction was granted in respect of a person under the age of 18, but the respondent is aged 18 or over at the time when the court comes to deal with the respondent for breach of the injunction.

125. *Sub-paragraph (7)* states that a detention order cannot be made unless the court is of the view that the injunction breach is so severe or so extensive that no other power of the court is appropriate. This includes the court's powers to impose a fine for contempt of court.

New Schedule 5A: Part 2

126. Paragraph 2 of new Schedule 5A describes the contents of supervision orders and sets out the issues the court must consider in the making of a supervision order.

127. *Sub-paragraph (1)* provides that a supervision order can include supervision, activity, and/or curfew requirements.

128. *Sub-paragraphs (2) to (4)* require the court to give consideration to the practicality of the supervision order's components and to the impact it may have on the defaulter's family circumstances, religious beliefs, education or work life and any other court order to which the defaulter may be subject.

129. *Sub-paragraphs (5) and (6)* require the supervision order to state a maximum period of time for which it can be in operation which must not exceed 6 months.

130. *Sub-paragraphs (7) and (8)* make provision for a youth offending team to be specified in the supervision order. This youth offending team will be responsible for administration of the supervision order.

131. Paragraph 3 of new Schedule 5A sets out what is meant by a supervision requirement. The defaulter may be required to attend appointments with the responsible officer (a position set out in paragraph 7) or another person instructed by the responsible officer.

132. Paragraph 4 makes provision about activity requirements. Activity requirements can require the defaulter to participate in non-residential activities or in

*These notes refer to the Crime and Security Bill
as introduced in the House of Commons on 19 November 2009 [Bill 3]*

a residential exercise. The defaulter must comply with instructions given by the responsible officer or the person in charge of any specified place or activities.

133. *Sub-paragraph (2)* provides that if an activity requirement is specified in the supervision order, it must be for between 12 and 24 days.

134. *Sub-paragraphs (8) and (9)* provide that a residential exercise (which will not constitute the totality of an activity requirement) may not be for a period of more than 7 days and cannot be given without the consent of the defaulter's parent or guardian.

135. *Sub-paragraph (12)* provides that the court cannot include an activity requirement within a supervision order unless it is satisfied that the youth offending team specified, or to be specified, in the order has been consulted. It must also be satisfied that it is feasible to secure compliance with the requirement, that the activities are available within the youth offending team area, and that any other persons needed for delivery of the requirement consent to the requirement's inclusion in the order.

136. The activity requirement may be amended by the court on application (see *sub-paragraphs (11) and (12)*).

137. Paragraph 5 makes provision for the making of curfew requirements. Curfew requirements may specify different places or periods for different days. A curfew may not be for less than two hours or more than eight hours in any day. The curfew requirement may be amended by the court on application (see *subparagraph (5)*).

138. Paragraph 6 makes provision for an electronic monitoring requirement which may be made as part of a curfew requirement. An electronic monitoring requirement may be imposed for a period specified in the supervision order, or determined by the responsible officer in accordance with that order.

139. The court may amend the electronic monitoring requirement on application (see *sub-paragraph (7)*).

140. Paragraph 7 defines the "responsible officer" and the duties of that role.

141. *Sub-paragraph (1)* provides that in the case of a supervision order which only contains a curfew requirement with an electronic monitoring requirement, the responsible officer will be the person who is responsible for the electronic monitoring; this person will be specified in the supervision order.

142. In any other case, the responsible officer will be a member of the youth offending team specified in the order.

*These notes refer to the Crime and Security Bill
as introduced in the House of Commons on 19 November 2009 [Bill 3]*

143. *Sub-paragraph (2)* states the two duties of the responsible officer, namely to make any arrangements necessary in connection with the requirements of the order, and to promote the defaulter's compliance with the order.

144. *Sub-paragraph (4)* provides that the defaulter must keep in touch with the responsible officer and notify the responsible officer of any change of address.

145. Paragraph 8 provides for the amendment of the period for which a supervision order operates.

146. Paragraph 9 sets out the court's powers where the defaulter changes their area of residence.

147. Paragraph 10 provides that either the injunction applicant or the defaulter may apply to the court to have the supervision order revoked or amended to remove a requirement from it. The court may grant the application if it is considered to be in the interests of justice, having had regard to the circumstances which have arisen since the order was made. These circumstances may include the conduct of the defaulter.

148. *Sub-paragraph (4)* provides that if an application to revoke, or remove part of, a suspension order is dismissed, no further such application may be made without the consent of the appropriate court.

149. Paragraph 11 states that when the responsible officer considers that the young person has complied with all the requirements of the supervision order, he must notify the injunction applicant.

150. Paragraph 12 makes provision about non-compliance with a supervision order.

151. *Sub-paragraphs (1) and (2)* place a requirement on the responsible officer to inform the injunction applicant when the young person does not comply with the conditions of the supervision order. Once the applicant authority has been informed they can apply to the appropriate court after consulting as specified in *sub-paragraph (3)*.

152. *Sub-paragraph (4)* states that once the court is satisfied beyond reasonable doubt that the defaulter has, without reasonable excuse, failed to comply with any requirement of the supervision order, it can either revoke the supervision order and grant a new one with different requirements or it can revoke the order and make a detention order.

153. *Sub-paragraph (5) and (6)* provide that where the person has breached a supervision order after the age of 18, then the court cannot revoke the supervision order and make a new one, nor can it revoke the supervision order and make a detention order. Instead it will treat the person as a person over the age of 18 who is in breach of their injunction. The consequence of this is that the person is liable to be

sentenced for contempt of court as an adult; this currently carries a maximum penalty of an unlimited fine and/or two years' imprisonment (for those aged 21 and over) or two years' detention (for those aged between 18 and 20).

154. Paragraph 13 makes provision for copies of orders to be provided to persons affected by them.

New Schedule 5A: Part 3

155. Paragraph 14 describes a detention order which may be made following breach of an injunction.

156. *Sub-paragraph (1)* states that the young person can be detained in youth detention accommodation determined by the Secretary of State. This may be a secure training centre, a young offender institution or local authority secure accommodation (see *sub-paragraph (3)*). Decisions as to which youth detention accommodation is appropriate in a particular case will be taken jointly by the Secretary of State and by the Youth Justice Board, based upon a range of considerations (see *sub-paragraph (4)*).

157. *Sub-paragraph (2)* states that the period of detention specified in a detention order cannot exceed three months.

158. Paragraph 15 provides for the revocation of a detention order.

159. *Sub-paragraph (1)* states that the injunction applicant or the young person subject to the order can apply to the appropriate court for the revocation of the detention order.

160. *Sub-paragraphs (2) and (3)* allow a court to revoke a detention order if subsequent circumstances (including the young person's conduct) mean it is in the interests of justice to do so.

161. *Sub-paragraph (4)* prevents a further application to revoke a detention order being made without the consent of the court if a person's application to revoke has been dismissed.

162. *Sub-paragraph (5)* imposes consultation requirements.

163. The amendment made by subsection (4) confers an additional function on the Youth Justice Board, namely that of entering into agreements for the provision of accommodation referred to in paragraph 13(3) of the new Schedule 5A.

Anti-social behaviour orders

Clause 37: Report on family circumstances

164. Anti-social behaviour orders (ASBOs) are designed to prevent individuals from engaging in specific anti-social acts. This clause amends the Crime and Disorder Act 1998 (“the 1998 Act”) under which ASBOs are made.

165. *Subsection (2)* inserts 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, 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 is intended that the regulations will specify certain topics or issues that the report should address, for example levels of family support for the young person.

166. *Subsections (3) and (4)* of the clause make consequential amendments as a result of new subsection 1(1C). This includes a requirement that the court must take into account this report when considering whether to make a parenting order under section 9 of the 1998 Act.

Clause 38: Parenting orders on breach

167. This clause amends 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.

168. *Subsection (3)* 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.

169. Section 8A(3) provides that 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.

170. Section 8A(4) provides that if a court does not make a parenting order in reliance on the exceptional circumstances proviso, it must state in open court that it is of that opinion and what the exceptional circumstances are.

171. Section 8A(5) applies provisions of section 8 of the 1998 Act to parenting orders made under new section 8A. The provisions of section 8 which are applied are:

- Subsection (3) (court not to make parenting order unless arrangements available in local area);

*These notes refer to the Crime and Security Bill
as introduced in the House of Commons on 19 November 2009 [Bill 3]*

- Subsection (4) (definition of parenting order);
- Subsection (5) (counselling or guidance programme not necessary if there has been a previous parenting order);
- Subsection (7A) (counselling or guidance programme may require parent to attend a residential course).

172. Section 8A(6) ensures that section 9(3) to section 9(7) of the 1998 Act also apply to parenting orders made under new section 8A. These sections:

- require the court to explain to the parent the effect of the order and the consequences of breaching it;
- specify that, as far as practical, the requirements in the order and directions given under it should not conflict with a parent's religious beliefs or interfere with a parent's work or education;
- enable the court to discharge or vary the order;
- make parents convicted of failing to comply with requirements in the parenting order or directions given under the parenting order liable to a fine.

Private security industry

Clause 39: Extension of licensing scheme

173. Clause 39 amends the Private Security Industry Act 2001 ("the 2001 Act").

174. At present the 2001 Act makes provision for the licensing of individuals carrying out security industry activities. The licensing is the responsibility of the Security Industry Authority ("the SIA") It is an offence under the 2001 Act for an unlicensed *individual* to engage in any activity for which a licence is required, or to supply an unlicensed individual to engage in such activities. In the case of vehicle immobilisers it is an offence for an occupier of premises to permit an unlicensed individual to engage in vehicle immobilisation on the premises.

175. The new clause provides for *businesses* to be licensed by the SIA. At the outset, businesses carrying out vehicle immobilisation activities will require a licence. The purpose is to regulate the activities of such businesses (and particularly, in relation to vehicle immobilisation, such matters as release fees and warning signs).

176. Clause 39 inserts new sections 4A and 4B into the 2001 Act.

177. The new section 4A of the 2001 Act introduces a licence requirement in relation to businesses carrying vehicle immobilisation or restriction and removal of vehicles (see *subsection (2)(a) and (b)*). The Secretary of State may designate other security activities in the future which will require business licensing if they are

*These notes refer to the Crime and Security Bill
as introduced in the House of Commons on 19 November 2009 [Bill 3]*

activities listed in Schedule 2 to the 2001 Act (see *subsection (2)(c)*). New section 4A creates an offence of engaging in an activity licensable under the section without a licence (see *subsection (1)*).

178. *Subsection (3)* deals with the application of the section to Scotland and requires Scottish Ministers exercising functions of the Secretary of State under new section 4A to consult the Secretary of State.

179. *Subsections (4) to (7)* limit the business licence requirement to those responsible for control of, or decisions of, businesses carrying out the licensable activity. This includes sub-contractors, except where the sub-contractor is an individual. Individuals acting as sub-contractors or under the employment or direction of another would not require a business licence (but they would continue to require an individual's licence).

180. *Subsection (8)* provides penalties for the offences in new section 4A, of up to 12 months' imprisonment or a fine not exceeding the statutory maximum, or both, on summary conviction; and on indictment of imprisonment up to five years or an unlimited fine, or both.

181. New section 4B sets out exemptions to the requirement for businesses to be licensed under new section 4A. *Subsections (1) and (2)* enable the Secretary of State to prescribe in regulations the circumstances in which a person need not be licensed where suitable alternative arrangements apply.

182. *Subsection (3)* of clause 39 amends section 6 of the 2001 Act (offence of using unlicensed wheel-clampers) to make it an offence for a land-owner to allow an unlicensed business to carry out wheel-clamping on his land. Section 6 of the Act provides the same penalties for offences under that section as those set out in new subsection 4A(8).

183. *Subsection (4)* amends section 9 of the 2001 Act, which makes provision about the conditions that may be included in a licence under the Act. The amendments will mean that the new business licences may include a condition that the licensee is a member of a body or scheme nominated by the SIA.

184. *Subsection (5)* amends section 19 of the 2001 Act, which sets out the powers of entry and inspection which enable the SIA to inspect premises and documents for the purposes of checking compliance with the Act. These amendments extend these powers to premises on which it appears that activities requiring a business licence are being carried out.

185. *Subsections (6) and (7)* insert a new subsection into section 23 of the 2001 Act to deal with the prosecution and punishment of offences committed by unincorporated associations. As explained above, new criminal offences are being created in respect

of business licences, and it is anticipated that many licensees will be unincorporated associations.

186. *Subsection (8)* introduces the Schedule to the Bill which makes amendments to the 2001 Act which are consequential upon new sections 4A and 4B. In particular, paragraph 15 of the Schedule inserts a new section 23A into the 2001 Act making procedural provision in relation to offences by unincorporated associations.

Clause 40: Extension of approval scheme

187. Clause 40 amends the 2001 Act to extend the SIA's Approved Contractor Scheme (to be known as the "Approval Scheme"), provided under section 15 of the Act, to enable in-house private security services to apply for approved status.

188. The SIA is required under section 14 of the 2001 Act to establish and maintain a register of approved providers of security industry services. The register has to contain particulars of every person who is approved under arrangements which the SIA has to make under section 15 of the 2001 Act. Section 15 provides that approvals must be subject to certain conditions.

189. The SIA currently carries out its obligations under sections 14 and 15 of the 2001 Act by way of its Approved Contractor Scheme. This is a voluntary scheme, which has been developed in consultation with representatives from the private security industry, under which security providers who satisfactorily meet the agreed standards can obtain approved status. Approved status carries benefits for those contractors who hold it. The amendments made to sections 14 and 15 by clause 40 will enable approved status to be available to businesses which have in-house security arrangements and wish, for example, to establish their quality. As the scheme will no longer apply only to contractors, it is to be renamed the 'Approval Scheme'

Prison security

Clause 41: Offence of possessing mobile telephone in prison

190. Clause 41 creates a new criminal offence under the Prison Act 1952 for the possession of a mobile phone (or a component part, or article designed or adapted for use with a mobile phone device), within a prison without authorisation. The punishment for committing this offence is up to two years' imprisonment (on indictment) or up to 12 months' imprisonment or a fine (on summary conviction).

Air weapons

Clause 42: Offence of allowing minors access to air weapons

191. Clause 42 inserts a new section 24ZA into the Firearms Act 1968 ("the 1968 Act") which makes it an offence for a person in possession of an air weapon to fail to take reasonable precautions to prevent it coming into the hands of a person under 18. The offence does not apply where the person under 18 is permitted by the Act to have the weapon with him, and these circumstances are set out in section 23 of the 1968 Act. For this new offence, it is a defence to show that the person charged believed that the other person was 18 or over and had reasonable grounds for that belief. For a

*These notes refer to the Crime and Security Bill
as introduced in the House of Commons on 19 November 2009 [Bill 3]*

defendant to show these matters, the defendant must adduce sufficient evidence of them and the contrary must not be proved beyond reasonable doubt.

192. *Subsection (3)* adds the new offence to the list in section 57(3) of the Firearms Act 1968 which sets out various offences which relate specifically to air weapons.

193. *Subsection (4)* makes the offence punishable on summary conviction only with a maximum penalty of a fine at level 3 on the standard scale (currently £1,000).

194. *Subsection (5)* amends paragraphs 7 and 8 of Part 2 of Schedule 6 to the 1968 Act, so that these provisions apply in respect of the new offence. Under paragraph 7, the court can order the forfeiture or disposal of the air weapon in respect of which the offence was committed. Under paragraph 8, the court can order the forfeiture or disposal of any firearm found in the possession of the person convicted.

FINANCIAL EFFECTS OF THE BILL

195. The total costs of the Bill to the public sector (excluding one-off costs) are estimated by the Home Office to be £6.3 million in each of the financial years 2010-2011, 2011-2012 and 2012-2013. The total one-off costs of the Bill to the public sector are estimated by the Home Office to be between £53.2 million and £55.5 million. All the estimated costs, including consequential costs to other departments, will be subject to a number of variables, including take up and use of the provisions; timing of implementation; efficiency savings; and the behaviour of the criminal justice agencies and courts.

196. Based on the same assumptions, the Home Office has identified that the Bill will result in some consequential financial costs for the Criminal Justice departments and their agencies. The Criminal Justice departments and agencies involved are the Ministry of Justice, Her Majesty's Court Services (HMCS), Her Majesty's Prison Service (HMPS) and the National Offenders Management System. The consequential costs are currently estimated by the Home Office and affected departments at £600,000 for each of the financial years 2010-11, 2011-2012 and 2012-2013.

197. These estimated costs, including consequential costs, will be met from within the existing Home Office and Criminal Justice Departments' Comprehensive Spending Review 2007 settlements, or existing police authority budgets. The Secretary of State also expects there will be potential efficiency and cost savings and benefits for the Home Office, the police, and local authorities which have not been quantified.

198. The main financial implications for the Bill for the public sector lie in the following areas:

Police powers: stop and search

199. It is estimated that this provision to reduce reporting requirements for stop and search encounters will save £4.2 million per annum, by reducing police officer and police staff time spent on stop and search processes by up to 15 minutes per encounter.

Police powers relating to fingerprints and samples etc

200. These provisions will lead to estimated average annual costs (excluding one-off costs) of £5.2 million per annum in each of the financial years 2010-2011, 2011-2012 and 2012-2013. Initial estimates suggest that the provisions would also incur one-off costs of between £51.4 million and £53.4 million due to the need to delete orphaned profiles, re-program computer software, destroy DNA samples and destroy fingerprint records. There would also be estimated potential savings of £7.8 million from refrigeration savings in each of the financial years 2010-2011, 2011-2012 and 2012-2013. There will also be potential one-off savings of £5.1 million. In addition there could be potential saving on investigative and prosecution time as a result of speculative DNA and fingerprint searches against crime scene samples for both past and future offences.

Domestic violence

201. The provisions to pilot new Domestic Violence Protection Notices and Domestic Violence Protection Orders in two police force areas will entail a capped running cost of £450,000. This includes any net additional costs to the Ministry of Justice for legal aid and of granting DVPOs in the pilot area and legal aid for granting subsequent longer-term non-molestation orders or occupation orders. Once the pilot has finished and has been evaluated, a further impact assessment will be produced with national costs and national savings for DVPOs to be introduced in each relevant local authority in England and Wales.

Gang-related violence

202. The provisions which effectively extend the use of gang injunctions under the Policing and Crime Act 2009 to those aged 14-17 will be piloted in one area in 2010-11 at an estimated cost of £70,000. This includes average net additional costs to the Ministry of Justice for legal aid, supervision orders and detention orders as well as County Court fees and security, which will fall to the applicant authority.

Anti-social behaviour orders

203. The provisions to introduce a mandatory parenting needs assessment when a child is considered for an ASBO and impose a parenting order upon breach of a child's ASBO are estimated to be cost neutral. In 2009-2010 £97 million was paid to the Youth Justice Board for prevention work and parenting programmes are funded from this.

Private security industry

204. It is estimated that the licensing of private vehicle immobilisation companies will cost an estimated £525,000 for each of the financial years 2010-2011, 2011-2012

*These notes refer to the Crime and Security Bill
as introduced in the House of Commons on 19 November 2009 [Bill 3]*

and 2012-2013. These costs will be recovered by the Security Industry Authority through fees and by the individual vehicle immobilisation businesses.

Prison security

205. The estimated average annual cost of the provision to create a new offence of possessing an unauthorised mobile telephone in prison will be £0.5 million for each of the financial years 2010-2011, 2011-2012 and 2012-2013.

Air weapons

206. This provision creates an offence of not taking reasonable precautions to prevent young children from coming into the possession of an air weapon. The estimated annual cost will be £42,000 for each of the financial years 2010-2011, 2011-2012 and 2012-2013.

EFFECTS OF THE BILL ON PUBLIC SECTOR MANPOWER

207. The effects of the Bill on Public Sector Manpower are set out below. These costs are a subset of the identified costs in the financial effects of the Bill. For the majority of provisions the Secretary of State does not expect there to be an increase in manpower but for the new powers or responsibilities to be subsumed into everyday business as determined by local priorities.

Private security industry

208. The licensing of private security businesses made under this Part will be processed by the Security Industry Authority (a Non-Departmental Public Body sponsored by the Home Office). As at November 2009 the Authority had 182 staff (full-time equivalents). The Authority accepted some 141,000 individual licence applications during the financial year 2008 to 2009. It is expected that most of the additional work connected with businesses licensing will be met from within planned staff resources, but there will be an additional 1 full-time equivalent member of staff, at a cost of £50,000 per annum, from 2010 onwards. These staff costs will be recovered as part of the fee charged by the SIA.

REGULATORY IMPACT ASSESSMENT

209. The Better Regulation Executive guidance requires the Secretary of State to publish an Impact Assessment (IA) when it introduces any legislation likely to:

- Impose a cost on the private sector in any one year;
- Cost the public sector more than £5 million; or
- Attract high levels of political or media interest.

*These notes refer to the Crime and Security Bill
as introduced in the House of Commons on 19 November 2009 [Bill 3]*

210. IAs have been prepared in respect of 10 provisions in the Crime and Security Bill. The individual IAs are available on the Home Office website (<http://www.crimereduction.homeoffice.gov.uk/crimeandsecuritybill/>). All IAs will be made available in the Vote Office.

211. The costs identified in IAs are economic rather than financial – the Financial Statement above provides the expected costs of the Crime and Security Bill.

212. The Bill contains one provision that will have an impact on business or the voluntary sector, namely:

- Private security industry.

213. The remaining provisions meet the Public Services Threshold (either on grounds of cost or political/media interest), namely:

- Police powers: stop and search;
- Police powers relating to fingerprints and samples etc;
- Domestic violence;
- Gang-related violence;
- Anti-social behaviour orders;
- Prison security;
- Air weapons.

EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

214. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). The statement has to be made before Second Reading. The Rt Hon. Alan Johnson MP, Secretary of State for the Home Department, has made the following statement:

“In my view, the provisions of the Crime and Security Bill are compatible with the Convention rights.”

Taking of fingerprints and samples etc: England and Wales; Taking of fingerprints and samples etc: Northern Ireland; Retention, destruction and use of fingerprints and samples etc

215. Clauses 2 to 13 widen the powers of the police to take fingerprints and samples under the Police and Criminal Evidence Act 1984 (PACE) or, in

Northern Ireland, the Police and Criminal Evidence (Northern Ireland) Order 1989, in a number of ways. In particular, the provisions will: a) confer on the police the power to take fingerprints and non-intimate samples without consent from UK nationals or residents convicted of a specified violent, sexual or terrorist related offence committed outside England, Wales or Northern Ireland at any time; b) remove the bar in section 63(9A) of PACE on the taking of non-intimate samples from persons convicted of offences listed in Schedule 1 to the Criminal Evidence (Amendment) Act 1997 before 10th April 1995 unless they remain in prison; and c) extend the time limits for requiring someone to attend a police station for the purpose of having their fingerprints or sample taken. Other changes will increase the existing powers which the police have to take fingerprints and samples following arrest and charge. The Secretary of State considers that these provisions potentially raise issues under Article 8 (right to respect for private and family life) but has concluded that the provisions are compatible with Article 8.

216. The Secretary of State accepts that the taking of fingerprints and samples is likely to constitute an interference with a person's right to a private life under Article 8. However, the interference with a person's physical integrity is short-lived and was characterised as 'minimal' by Lady Hale in *R (on the application of S and Marper) v Chief Constable of South Yorkshire* [2004] UKHL 39. Having to attend a police station for the purpose of having the sample or fingerprints taken, if such a requirement is imposed by a constable, is difficult to describe as much more than an inconvenience. It will be possible to run speculative searches of the sample or fingerprints against the national DNA or fingerprint database but this will only have a significant impact on a person if there is found to be a match.

217. These provisions are permissive rather than mandatory and the police will be under a duty under section 6 of the Human Rights Act 1998 to exercise their powers compatibly with Article 8. In addition, in relation to those convicted of an offence whether in England, Wales or Northern Ireland or elsewhere there will be a specific requirement for an officer of at least the rank of inspector to be satisfied that it is necessary to take the sample or fingerprints to assist in the prevention or detection of crime.

218. It will be for the police to consider whether they can justify the taking of a sample or fingerprints in an individual case under Article 8(2). It is clear that the provisions are in accordance with the law and have the aim of preventing disorder or crime and protecting the rights and freedoms of others. The Secretary of State considers that taking fingerprints and samples in these cases will be proportionate in striking a fair balance between competing public and private interests given the minimal nature of the interference, the substantial contribution which fingerprints and DNA databases have made to the prevention and detection of crime and the new and existing legislative safeguards (in particular, the insertion of an express requirement for an officer of at least the rank of inspector to be satisfied that the taking of samples is necessary to assist in the prevention or detection of crime). There will also be time limits on how long after a conviction a person can be required to attend a police

station for the purposes of having his fingerprints or sample taken in the case of those convicted of offences which are not specified violent, sexual or terrorist offences and in the case of those arrested or charged but no longer in police detention.

219. Clauses 2 and 3 (and for Northern Ireland, clauses 8 and 9) contains four new powers which can be applied to those arrested but not convicted; to those charged; to those convicted; and to those with foreign convictions. Looking at each in turn, for the power in relation to those arrested but not convicted: where a person is continuing to be investigated for a recordable offence, the current law recognises that it may be necessary and proportionate to take fingerprints and samples from the person whilst they are in police detention to check that data against any fingerprints or samples recovered from the scene of the crime or any other unsolved crimes. Where the initial fingerprints or samples taken on arrest have proved insufficient or unsuitable for analysis, it is appropriate that the police should be able to take another sample or set of fingerprints, even though the person is no longer in police detention, and that the person can be required to attend a police station for that purpose. The police will have to make their request for the person to attend the police station within six months of the officer concerned being informed that the fingerprints or sample were insufficient.

220. The power to take fingerprints and samples, where such fingerprints and samples were not taken when the person was in police detention, will not be available in relation to those who are no longer subject to ongoing investigation, and against whom it has been decided to take no further action, as the person must still be on bail. In these cases, further investigation of the offence may make it necessary to obtain fingerprints and/or samples from the suspect in order to confirm or disprove his involvement in the offence. Rather than changing the bail return date purely to take the DNA sample or fingerprints, the provisions will enable the police to require a person's attendance at the police station for this specific purpose if necessary at less than seven days notice where the data is required urgently as part of the investigation.

221. The inconvenience caused to the person by having to attend the police station will be limited by the fact that the police officer, when imposing the requirement, will have to consider whether the sample or fingerprints could be taken on the next occasion when the person is due to answer bail at the police station. It will also be possible for the person concerned to re-arrange the date with the officer who imposes the requirement if the time specified by the officer is inconvenient.

222. For the power in relation to those charged or reported: where a person has never been detained but there is nevertheless sufficient evidence to charge the person or report them for a recordable offence, it is anomalous that at present the police can only require a person to attend a police station to have a non-intimate sample taken but not their fingerprints. These provisions will allow for the taking of fingerprints in such circumstances and will also increase the one month time limit for requiring a person to attend the station for the purpose of having the sample taken to six months after they are charged or informed that they will be reported for an offence or their previous sample or fingerprints have been found to be inadequate. This is necessary

because the police cannot always be expected to impose the requirement within the one month time limit given that they may have other operational priorities, they may not have an up to date address for the offender and the fact that new evidence may come to light some time after the person has been charged or reported for the offence which means that fingerprints and/or samples may now assist in proving the person's guilt or innocence.

223. For the power in relation to those convicted, the current law already acknowledges that it may be necessary and proportionate to take fingerprints and samples from those convicted in order to detect crime and to deter the person from re-offending in the future. It is necessary to enable the police to require a person to attend a police station for the purpose of taking their fingerprints or a sample at any time after the conviction in relation to specified violent and sexual offences, not just within one month after that time or whilst they are still in custody, because these people may still pose a significant risk to the public. The police may only become aware of the continued risk posed by the offender some time after their conviction, for example, once they exhibit behaviour following their release from prison but not sufficient to merit arrest.

224. The Secretary of State is also concerned to provide a mechanism for the police to be able to require people to attend a police station for the purpose of having their sample or fingerprints taken when they have been convicted of a recordable offence prior to commencement of these provisions but after 10th April 1995. Limiting such a power to two years following commencement provides the offender with some certainty as to how long the police will have to collate the data whilst giving the police enough time to assess the risk posed by this cohort of convicted offenders and find the offender given that some offenders may well be difficult to trace. Similarly, the provisions will increase the time limit for samples and fingerprints to be taken from those convicted following commencement from one month to two years.

225. As discussed above, there will be a specific statutory requirement for an officer of at least the rank of inspector or above to be satisfied that it is necessary to take the sample or fingerprints following conviction to assist in the prevention or detection of crime. In this way, the power is intended to be targeted at those offenders who continue to represent a risk to the public of committing further crime or where there is sufficient evidence to suggest that it will assist in the detection of past crimes.

226. For the power in relation to foreign convictions, the Secretary of State considers it anomalous that a person convicted of a recordable offence in England, Wales and Northern Ireland can have their fingerprints, samples and profiles taken and retained indefinitely, yet the police will not be able to obtain similar data for a person who may have been convicted of very serious offences abroad. Even if fingerprints and samples are taken in the country where the person was convicted, that data will not always be shared with law enforcement agencies in the UK. In relation to UK nationals and residents who commit serious sexual, violent and terrorist offences, the Secretary of State therefore considers it necessary and proportionate to the

*These notes refer to the Crime and Security Bill
as introduced in the House of Commons on 19 November 2009 [Bill 3]*

prevention and detection of crime that the police should be given the power to take fingerprints and non-intimate samples from such offenders on their return to England, Wales or Northern Ireland in order that this data can be checked against and recorded on the national DNA database and fingerprint database in case it matches any unsolved crimes and to deter such people from re-offending.

227. Clauses 14 to 20 amend the Police and Criminal Evidence Act 1984 (“PACE”), the Terrorism Act 2000 and the International Criminal Court Act 2001 to provide that DNA and fingerprints taken by the police in connection with the investigation of an offence are subject to a retention and destruction regime. Clause 19 enables the making of a statutory instrument to make similar provision in respect of pre-existing material. The existing position under section 64 of PACE is that such material may be used only for defined purposes, but it may be retained after it has fulfilled the purposes for which it was taken without reference to a retention period.

228. These clauses are at the heart of the Secretary of State’s response to the decision of the Grand Chamber of the European Court of Human Rights *S and Marper v United Kingdom*. In this case the applicants complained that their fingerprints and cellular samples and DNA profiles were retained after criminal proceedings against them had ended with an acquittal or had been discontinued. The Administrative Court, Court of Appeal and House of Lords had all dismissed applications that this material should be destroyed.

229. The Strasbourg Court found that the mere storage and retention of fingerprints and DNA samples and profiles constituted an interference with the right to private life under ECHR Article 8. Although agreeing that retention pursued the legitimate purpose of the detection and prevention of crime, when the Court considered if retention was justified it noted that the power did not have regard to the nature or gravity of the offence, or the age of the suspected offender; that the retention was not time limited, and material was retained indefinitely whatever the nature or seriousness of the offence; that there were limited possibilities for an acquitted individual to have the data removed; and that there was no provision for independent review of justification of retention. In conclusion, the Court found that the “blanket and indiscriminate nature” of the retention powers for fingerprints, samples and profiles of suspected, but not convicted, persons, did not strike a fair balance between the public interest of prevention of crime and the rights of the individuals to privacy. The UK had overstepped any acceptable margin of appreciation. The retention at issue constituted a disproportionate interference with the applicants’ right to respect for a private life and could not be regarded as necessary in a democratic society. Accordingly there had been a violation of Article 8.

230. In the light of the *Marper* judgment, the Secretary of State considers that Article 8 is clearly engaged by this clause. But for a number of reasons it considers that the retention regime which is established is proportionate and compatible with Article 8 and fully implements the *Marper* judgment.

231. *Marper* held that the mere retention and storage of material had a “direct impact on the private-life interest of an individual concerned, irrespective of whether subsequent use is made of the data”. The Secretary of State accepts this finding, but nevertheless considers that the level of impact on such an individual is modest. A person’s DNA profile can be accessed and used only for very limited statutory purposes. By far the greatest practical effect retention has on a person occurs only if he is implicated in a future crime, by a DNA sample found at the scene. It does not (unlike, for example, a person’s criminal record) affect his employment prospects. It does not stigmatise him as a past or future suspect in any public sense. Nor does it place him on a list of “usual suspects” which the police can use in future investigations.

232. In balancing the competing public and private interests, the Secretary of State notes that *Marper* in its apparent approval of the corresponding Scottish legislation seems to have accepted the principle that retaining the DNA of unconvicted people is in some cases proportionate. The Secretary of State also considers it is rational to assume that at least some people – but an inevitably unquantifiable number – whose DNA is on the database are likely to be inhibited from criminality by the increased likelihood of detection.

233. The Secretary of State further notes that *Marper* held that the greatest interference with private life was caused by the retention of DNA samples. Since it is now proposed to delete all samples as soon as a profile has been obtained, the Secretary of State considers that this should go a long way to meeting concerns as to excessive retention.

234. The Secretary of State’s proposed six year retention period for adults arrested but not convicted of an offence is based on research which suggests that a person who has been arrested is for six years at a higher risk of re-arrest than the chance of arrest in the general population. This in turn suggests that some detections of future crimes would be lost if the data relating to arrested persons were not retained.

235. The Secretary of State notes that *Marper* set some store by the existing “consensus” among Contracting States which narrows the UK’s margin of appreciation for setting retention periods (though at paragraph 47 the Court noted that France allows DNA profiles to be retained for 25 years following acquittal or discharge). However, it seems that little work has been done on the evidence base for retention periods in any of the other countries with a DNA database. It seems to the Secretary of State, therefore, that the special responsibility which the UK’s “pioneer role” confers on it should not prevent it from setting longer retention periods than is the norm in other countries, as this is supported by the best available evidence.

236. In proposing a single retention period, irrespective of the seriousness of the offence for which an adult is arrested, the Secretary of State is acting on research which points strongly to the heterogeneity of criminality – in other words, the type of offence a person is first arrested for or convicted of is not a good indicator of the type

or seriousness of offence he is likely to be arrested for or convicted of in future. As the retention of biometric data of innocent people is emphatically not a punishment but rather a measure to facilitate the detection of future offences, it therefore seems appropriate to have a single retention period. Although this approach runs counter to the steer in *Marper* that the seriousness of the offence is a material criterion in determining whether retention is proportionate, the Secretary of State submits that this approach is supported by the best available evidence.

237. In proposing retention periods for children, the Secretary of State has again acted on the basis of evidence which shows that the earlier a criminal career starts, the longer it is likely to last, while paying regard to the Strasbourg ruling and results of the consultation exercise which supported a more liberal policy for people aged under 18. The retention period for children aged 16 or 17 who are arrested for but not convicted of a serious offence will however be the same as for adults (namely six years), reflecting the fact that peak offending occurs at this age.

238. The proposal that biometric data of adults convicted of an offence should be retained indefinitely is made in the light of the unequivocal statement in paragraph 106 of *Marper* that “The only issue to be considered by the Court is whether the retention of the fingerprint and DNA data of the applicants, as persons who had been suspected, but not convicted, of certain criminal offences, was justified under Article 8, paragraph 2 of the Convention”. In other words, the *Marper* court’s judgment, the arguments it heard and the evidence it was presented with, were all directed at the issue of retaining data from people who had not been convicted. Moreover, the arguments above about the real benefit in preventing crime, and the limited interference with individuals’ rights, apply *a fortiori* to convicted people.

239. Under the Bill, data can be retained for a renewable period of up to two years beyond the time that destruction would otherwise occur if the chief officer of police determines that this is necessary for national security purposes. The Secretary of State is satisfied that this is a proportionate interference with the Article 8 rights of people whose data are retained. In reaching this view, the Secretary of State has had regard to the facts that issues relating to terrorism and national security frequently have a special status in legislation (for example, in *Murray v United Kingdom* [1994] (19 EHRR 193) the ECtHR recognised that “terrorist crime falls within a specialist category”), that investigations to counter national security threats are by nature often prolonged, and that the harm that can be caused by terrorist activity is likely to be particularly devastating.

Domestic violence

240. Clauses 21 to 30 make provision for Domestic Violence Protection Orders (DVPO). The process will be initiated by the police issuance of a Domestic Violence Protection Notice (DVPN). This notice can be issued where a police officer of the rank of superintendent or above has reasonable grounds to believe that a person (P)

*These notes refer to the Crime and Security Bill
as introduced in the House of Commons on 19 November 2009 [Bill 3]*

has been violent, or has threatened violence, towards a person with whom he is associated¹ (V); and that the issue of the notice is necessary to secure the protection of V. The DVPN will prohibit P from molesting V; where P and V cohabit, it may also exclude P from the home, and a defined area around the home.

241. Following the issue of the notice, the police must apply to a magistrates' court for a DVPO. A court may make this order where it is satisfied on the balance of probabilities that P has been violent towards, or has threatened violence towards, V; and the court thinks that the order is necessary to secure the protection of V. The types of restrictions that can be imposed by a DVPO are the same as those for a DVPN. A DVPO lasts for a minimum of 14 days and a maximum of 28 days.

242. The DVPN will have a power of arrest attached, and if P breaches the notice he can be arrested and held in custody pending the hearing for the DVPO. If P breaches the DVPO, P can be arrested and brought before the court to be dealt with by way of contempt of court.

243. The Secretary of State considers that these provisions engage Article 8 (right to respect for private and family life) and Article 1, Protocol 1 (protection of property). This is because a DVPN/DVPO can have the effect of excluding P from P's place of residence and from having contact with members of P's family. However, the Secretary of State considers that any interference with these rights is justified as it would be prescribed by law, and be proportionate in pursuit of a legitimate aim (the prevention of crime or disorder, and the protection of the rights and freedoms of others). A DVPN/DVPO will only be issued where there is clear evidence of past violent behaviour and in circumstances where it is necessary to act to prevent future violent behaviour and can only last for a limited period of time.

244. In relation to the DVPN, the Secretary of State considers that no civil right is being determined, and hence Article 6 is not engaged, because the notice is best seen as an interim measure imposed so that a substantive hearing for the DVPO can be held.

245. The provisions do however raise issues as to whether Article 6 is engaged in that, for the purposes of a DVPO hearing, section 97 of the Magistrates' Courts Act 1980 does not apply in relation to persons for whose protection the DVPO would be made. This means that a person for whose protection the DVPO would be made cannot be compelled to attend the hearing.

246. There is some case law of the European Court of Human Rights relating to criminal proceedings which is helpful on this issue. In *Bricmont v Belgium* ((1990) 12 EHRR 217), the court held that there are exceptional circumstances which could prompt a court to conclude that the failure to hear a witness was incompatible with

¹ "Associated person" is defined by reference to the Family Law Act 1996.

Article 6, but the court did not have enough grounds to form the view that such circumstances existed in that case. Further, in *Vidal v Belgium* ((1992) Series A, No 235-B), it was held that the task of the court is to consider whether, as a whole, the proceedings are fair. In that case, the complete silence of the Belgian appeal court on the point that the defendant's witnesses had not been called was not consistent with the concept of a fair trial.

247. From these cases it is clear that the absence of a witness for the defendant does not automatically mean that there is a breach of Article 6. The courts will need to consider the particular circumstances of each case to see whether the proceedings are still fair. It is also useful to note that the two ECtHR cases mentioned above are both criminal cases. It is likely that the courts will require a higher level of safeguards for the individual in criminal proceedings, than in civil proceedings. This is reflected in Article 6 itself, which states that the particular safeguards mentioned in Article 6(2) and (3) only apply to criminal proceedings. If V cannot be compelled to attend the DVPO hearing, the court will have to ensure that the proceedings are otherwise fair before making a DVPO and on this basis, the Secretary of State is content that overall proceedings for a DVPO can be compatible with Article 6.

248. The provisions engage Article 5 (right to liberty and security) as the police have a power to arrest and detain P for breach of the DVPN. The police also have a power to arrest and detain P pending his being brought before the court for breach of a DVPO. The Secretary of State considers that these provisions are compatible with Article 5, in reliance on Article 5(1)(b) which deals with the:

“lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law”.

249. The provisions also raise a question as to whether Article 3 (prohibition of torture or inhuman or degrading treatment) is engaged in that P can be required to leave P's place of residence and no provision is made for alternative accommodation. However, the Secretary of State considers that the provisions are compatible with Article 3. The power to issue a DVPN/make a DVPO is a discretionary one and, as public authorities, the police and the courts will need to exercise these powers compatibly with the Convention rights. They will be able to do this in a way that does not interfere with Article 3.

250. The provisions give the Secretary of State the power to issue statutory guidance to the police about the exercise of their functions. This will assist in the consistent and fair application of these powers.

Gang-related violence

251. Clause 36 inserts a new Schedule 5A into the Policing and Crime Act 2009 which gives the courts the power to make a supervision order (for a maximum of 6 months) or a detention order (for a maximum of 3 months) when a respondent aged at

least 14 but under 18 is found, beyond reasonable doubt, to have breached his injunction granted under Part 4 of that Act.

252. During the injunction process and any proceedings brought for breach young persons will be accompanied by a litigation friend whose role is to help the young person, they will be able to be accompanied by a lawyer, and the youth offending team will play an important role at all stages of the injunction process, which includes assisting the court with the disposal options for breach of an injunction. For these reasons the Secretary of State considers that the young person will be able to participate effectively in the proceedings against him thereby safeguarding his Article 6 rights.

253. As a supervision order of maximum intensity is still restricted to an 8 hour curfew combined with supervision and activities, the Secretary of State does not think that this order could meet the threshold of being a deprivation of liberty under Article 5. The Secretary of State has considered the type, duration, effect and manner of implementation of the measure in question (*Engel v Netherlands* (1976) 1 EHRR 647) together with domestic case law indicating that curfews of up to 16 hours may constitute a restriction of liberty but not a deprivation of liberty: *Secretary of State for the Home Department v AE, AF, AM & AN* [2008] EWCA Civ 1148 and *Secretary of State for the Home Department v AP* [2009] EWCA Civ 731.

254. The Secretary of State accepts that the proposed detention order will engage Article 5 and that, in order to comply with Article 5, the detention must be lawful under domestic law and it must also comply with the general requirements of the ECHR: *R v Governor of HMP Brockhill ex. p. Evans (No. 2)* [2002] 2 AC 19. The detention order will fall within Article 5(1)(b) – detention for non-compliance with court orders. The law will be sufficiently clear and accessible so that the young person will be able to foresee when he may be at risk of becoming subject to a detention order. Safeguards which will be available are legal representation, assistance by a litigation friend, the representations of the youth offending team (to which the court must have regard before imposing either a supervision order or a detention order) and the right of the young person to make representations.

255. The Secretary of State recognises the importance of Article 37 of the UN Convention on the Rights of the Child (CRC) which places an obligation on the UK to ensure that detention of children is used as a last resort and has therefore included a provision to the effect that the detention order should only be given when the breach is so serious that any other disposal would be inappropriate.

256. The obligation in Article 3 CRC that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration” is already enshrined in domestic law as far as courts, including

civil courts, are concerned. Section 44 of the Children and Young Persons Act 1933 provides that:

“Every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.”

257. For all of these reasons, the Secretary of State considers that its proposals are compatible with both the ECHR and the CRC.

Anti-social behaviour orders

258. Parenting orders have been found to be compliant with both Article 6 and Article 8: *R on the application of M v Inner London Crown Court* [2003] EWHC 301 Admin.

259. If Article 8 is engaged by clause 37 due to the provision of personal information then any interference would be in accordance with the law in pursuance of a legitimate aim, namely for both the prevention of disorder and crime and the protection of the rights of others (by taking into account family circumstances). The Secretary of State considers that the report is a proportionate manner in which to ensure that the court has all the necessary and relevant information which will assist it to carry out its functions under the Crime and Disorder Act 1998 (“CDA”).

260. Article 8 may be engaged by clause 38 as a parenting order may interfere with the parent’s private life. Any interference would be justified under Article 8(2) as the clause ensures that any interference is in accordance with the law and it is for the legitimate objective of preventing juvenile crime (as endorsed by Henriques J in the case of *M* cited above). The Secretary of State considers that clause 38 is proportionate as it still enables exceptional cases to fall outside the scope of the section 8A parenting orders, parents can appeal against the making of a parenting order (section 10 CDA) and the offence of breaching a parenting order is qualified by a “reasonable excuse” defence (section 9(7) CDA).

Private security industry

261. Clauses 39 and 40 amend and extend the Private Security Industry Act 2001 to require licensing of businesses carrying out vehicle immobilisation (‘VI’) activities.

262. Clause 39 introduces a new offence for businesses of engaging in licensable conduct under the section without a licence. That conduct consists of the VI activities specified in paragraphs 3 and 3A of Schedule 2 to the 2001 Act, which relate to VI on private land, specifically elsewhere than on a road within the meaning of the Road Traffic Act 1988 and where a fee is payable for the release of the vehicle. Individuals are already required to be licensed in respect of those activities; it is now proposed to extend this to businesses and ‘in house’ operators.

263. The Secretary of State considers that Convention rights are unlikely to be engaged by the introduction of this new licensing requirement. While VI activity will normally take place on private land, there may be situations where a public authority, such as a hospital or local authority, will contract out VI activities to a private VI business. Thus public authorities can currently undertake VI activity, which may engage Convention rights, but it is unlikely that the new licensing requirement alters that situation. Insofar as human rights may be involved at all, it is possible that prescribing requirements to obtain a licence (as the Secretary of State may do under section 8 of the 2001 Act) and the criteria which the Security Industry Authority ('SIA') may set for granting, varying or revoking licences, or attaching conditions to licences, engage Article 1, Protocol 1, if the licence is a possession. If so, the Secretary of State considers that any interference is justified in the public interest, as the aim of VI licensing is to regulate the VI sector and end bad practices such as using insufficient signage and charging excessive release fees, and a licensing requirement is a proportionate response. While existing individual licences promote the same aims, including conditions regulating business practices in the licences of individual workers in the sector is not sufficient as those practices may be beyond an individual's control.

264. The SIA, established with the function of regulating the private security industry by the 2001 Act, is clearly a public authority for the purposes of the Human Rights Act and thus will be required to act compatibly, such as when setting licence conditions, but this position is not altered by the provisions in this Bill.

265. Clause 40 extends the existing approved contractor scheme for those providing security industry services under section 15 of the 2001 Act to those persons who carry out the activities of a security operative in house as opposed to under contract, as they are not currently covered. This is a minor extension of an existing scheme, and the Secretary of State considers that no Convention rights are engaged.

Air weapons

266. Clause 42 creates a new offence relating to air weapons. It makes it an offence for a person in possession of an air weapon to fail to take reasonable precautions to prevent any person under the age of 18 from having the weapon with him. However, this does not apply where a person under the age of 18 is not prevented from having the weapon with him by section 23 of the Firearms Act 1968. It is a defence for a person charged with this offence to show that he believed the other person to be 18 or over, and had reasonable grounds for that belief. The clause imposes an evidential burden only on the defendant in respect of this defence.

267. This offence potentially engages Article 7 (no punishment without law) on the basis that it is committed where there has been a failure to take "reasonable precautions". It can be argued that there is insufficient legal certainty in this offence, as it may not be clear in a particular case whether or not reasonable precautions have

been taken and therefore whether an offence has been committed. Ultimately, this will be a matter for the courts.

268. The Secretary of State considers that this offence does not interfere with Article 7. This is because it is acceptable for the purposes of Article 7 that a person can know what conduct comes within the scope of the offence having regard to the wording of the legislation and the courts' interpretation of it.

269. In addition, there are already offences in the firearms context which require a person to take reasonable precautions. For example, the majority of firearms are regulated under section 1 of the Firearms Act 1968. Such a firearm is subject to secure storage requirements as set out in the Firearms Rules 1998 (S.I. 1998/1941). One of the requirements is that a firearm must at all times be stored securely so as to prevent, so far as is reasonably practicable, access to the weapon by an unauthorised person. However, only reasonable precautions for the safe custody of the weapon need be taken if:

- the weapon is in use;
- the holder of the certificate has the weapon with him for the purpose of cleaning, repairing or testing it, or for some other purpose connected with its use, transfer or sale;
- the weapon is in transit in connection with its use or any such purpose.

270. Another relevant offence is section 14 of the Firearms (Amendment) Act 1988. Under this section, it is an offence for an auctioneer, carrier or warehouseman to:

- fail to take reasonable precautions for the safe custody of any firearm or ammunition which, by virtue of section 9(1) of the 1968 Act, he or any servant of his has in his possession without holding a certificate; or
- fail to report forthwith to the police the loss or theft of any such firearm or ammunition.

271. Overall, the Secretary of State considers that the offence created by clause 42 does not interfere with Article 7.

COMMENCEMENT DATE

272. By virtue of clause 45, clause 30 (pilot schemes for a DVPNs and DVPOs) will come into force on Royal Assent.

273. All of the other provisions in the Bill will be brought into force by means of commencement orders made by the Secretary of State. Insofar as clauses 39 and 40

*These notes refer to the Crime and Security Bill
as introduced in the House of Commons on 19 November 2009 [Bill 3]*

(private security industry) relate to Scotland, they will be brought into force by the Scottish Ministers after consulting the Secretary of State.